

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CLEARVALUE, INC. AND
RICHARD ALAN HAASE

VS.

PEARL RIVER POLYMERS, INC.,
POLYCHEMIE, INC., SNF, INC.,
SNF/POLYDYNE, INC. AND SNF
HOLDING COMPANY

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Case #: 6:06-cv-00197-RRR

JURY TRIAL DEMANDED

PLAINTIFFS' SECOND AMENDED COMPLAINT

As ordered by the Court, and pursuant to discussions between counsel, Plaintiffs ClearValue, Inc. and Richard Alan Haase, file this Second Amended Complaint against Defendants Pearl River Polymers, Inc. (“Pearl River”), Polychemie, Inc. (“Polychemie”), SNF, Inc. (“SNF”), Polydyne, Inc. (“Polydyne”), and SNF Holding Company (“SNF Holding”) (the Defendants sometimes being collectively referred to as “Defendants”) and for cause of action would show the Court and Jury the following:

Nature of the Case

This is primarily a misappropriation of trade secrets and patent infringement case. Specifically, Plaintiffs sue for infringement of U.S. Patent No. 6,120,690 (“‘690”). However, other causes of action are alleged herein for breach of confidential relationship/agreement, fraud, conspiracy, and breach of contract.

Parties

1. Plaintiff ClearValue, Inc. is a corporation licensed to do business in the State of Texas. Its founder was the individual Plaintiff Haase. Plaintiff Richard Alan Haase is a citizen of Texas. Mr. Haase is the creator/inventor of the trade secrets, patents, and other inventions and

proprietary information involved in this case. Clear Value, Inc. is an assignee of certain of those rights. Both plaintiffs have standing to sue.

2. Defendant Pearl River Polymers, Inc. is a corporation organized, on information and belief, under the laws of the State of Delaware, and has a principal place of business in Pearlington, Mississippi. It has appeared and answered herein. On information and belief, effective December 27, 2004, Pearl River merged with Polychemie, Inc. As such, on information and belief, both Pearl River and Polychemie are wholly owned subsidiaries of SNF Inc., a/k/a SNF Holding.

3. Defendant Polychemie, Inc. is a corporation organized, on information and belief, under the laws of the State of Delaware, and also has its principal place of business in Pearlington, Mississippi. It too has appeared and answered herein. On information and belief, Polychemie, Inc. is also a wholly owned subsidiary of SNF Inc. a/k/a SNF Holding.

4. Defendant SNF/Polydyne, Inc. is also a corporation organized, on information and belief, under the laws of the State of Delaware. Its principal place of business is at 1 Chemical Plant Road, Riceboro, Georgia. Polydyne has also appeared and answered herein. On information and belief, Polydyne is also a wholly owned subsidiary of SNF Inc. a/k/a SNF Holding. On its website, it touts itself as “the world’s largest producer of acrylamide monoer and polymers.” www.polydyneinc.com. It claims that its “added-value product line” includes both filtration and coagulation. It also claims to *train* customers in the use of its products.

5. Defendant SNF, Inc., also known as “SNF Holding” is also a corporation organized, on information and belief, under the laws of the State of Delaware, and has it principal place of business at 1 Chemical Plant Road, Riceboro, Georgia. It has appeared and answered herein. SNF, Inc. is a subsidiary of SNF Floerger, an international company, founded in 1978 and headquartered in France. SNF Inf. has also appeared and answered herein. SNF promotes itself as “one of the

world's leading manufacturers of water-soluble polymers" and indicates that it "specializes in serving the municipal, industrial and wastewater industries." www.snfinc.com.

Jurisdiction and Venue

6. The Court has exclusive subject matter jurisdiction over the patent infringement claims under 28 U.S.C. § 1338(a). The Court has ancillary or supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. Finally, although not necessary, the Court also has diversity jurisdiction under 28 U.S.C. § 1332.

7. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391, 1400(b).

Facts

Suit has been necessitated by virtue of the following facts.

Haase's Discovery

8. Richard Haase is a chemist, inventor, and business entrepreneur. He has focused considerable energies on trying to improve the health and the well-being of all of humanity by improving the environment, and, particularly pertinent to this lawsuit, by devising better ways to clarify and purify water. Specifically, Haase has invested significant time and resources developing unique and novel technology directed towards the clarification of water and wastewater used for human consumption and industrial applications. Significantly, Haase has developed proprietary and commercially successful technologies for clarifying waters and wastewaters and removing organic and inorganic contaminants from these waters and wastewaters. These proprietary technologies are used in, *e.g.*, municipal, military and industrial water treatment facilities to provide clean, safe drinking water for human consumption and pure water for industrial applications demanding such.

9. In late 1994, Haase and Haase's newly formed company, the Plaintiff ClearValue, Inc. ("ClearValue"), established a business relationship with Chemtall, Inc., a subsidiary of SNF Holding,

located at 1 Chemical Plant Road, Riceboro, Georgia. This relationship was premised on confidentiality and related to Chemtall's provision to ClearValue of polyacrylamides for use in dewatering bio-solids.

10. In 1995, Haase and ClearValue established a business relationship with Pearl River regarding supply of low molecular weight polyamines and poly DADMAC's for use in clarifying water. This relationship was also premised on an agreement of confidentiality and trust.

11. Beginning in early 1995, ClearValue and Haase initiated research and development ("R&D") efforts that would last for years to improve the existing water and wastewater clarification methodologies which had existed for thousands of years without significant improvement. These R&D efforts were extensive and involved bench testing of various chemical formulations and methodologies for water clarification in about 150 locations in the United States and abroad. These R&D efforts were conducted at considerable time, effort and expense to Haase and to ClearValue. As such, Haase and ClearValue maintained these R&D efforts as trade secret and confidential information of Haase and ClearValue.

12. At the appropriate time, *i.e.*, after Haase's research efforts culminated in a novel, useful and non-obvious invention, Haase sought protection of these intellectual property assets by filing applications for patent protection with the U.S. Patent & Trademark Office ("USPTO"). While the patent application was pending, the information maintained by Haase and ClearValue as trade secret and confidential was not readily available elsewhere. This trade secret and confidential information provided Haase and ClearValue advantage over their competition.

13. Haase and ClearValue took adequate precautions to safeguard the secrecy of this trade secret and confidential information. For example, employees at ClearValue signed Employment and Proprietary Information Agreements obligating employees to maintain the secrecy of such

information and not to use same for any purpose other than for the benefit of ClearValue, wherein Haase is the major shareholder. ClearValue also required confidentiality undertakings, in writing or via binding “handshake” oral agreements, from its suppliers. ClearValue did not allow visitors to roam unescorted through its offices, and maintained its data under lock and key. Additionally, when ClearValue’s offices were located in an office building, the office building had its own monitored security system.

14. Significantly, during the course of Haase’s R&D efforts, Haase made a breakthrough discovery that had the potential to *revolutionize* the water clarification industry. Specifically, he discovered that **high** molecular weight polyquaternary ammonium moieties significantly improve coagulation when they are combined with an aluminum polymer such as aluminum chlorohydrate [ACH]. This revolutionary technology enabled end users to get cleaner water, and to obtain it more efficiently. This discovery was not known in the industry and was maintained as a trade secret and confidential information by Haase and ClearValue.

15. Haase shared this proprietary information in trust and in confidence – with a full expectation that his trade secrets and confidential information would be safeguarded, protected, and honored, with Pearl River and SNF. Moreover, on or about December 16, 1997, he advised Mr. Richard Rosenkoetter, in writing, (a) that his proprietary technology had the ability to “revolutionize” the water clarification industry, and (b) that he was seeking patent protection. As he has testified in this case, Mr. Rosenkoetter “wished [Haase] well” and said that he “hoped” Haase would get a patent.

16. To further protect his intellectual property rights in these new discoveries and inventions, Haase prepared and filed a first application for a U.S. Patent with the USPTO on September 6, 1997. A continuation-in-part application was later filed on August 28, 1998. Pursuant

to U.S. Patent Laws, 35 U.S.C. § 122, the first application and the CIP application were held in secrecy at the USPTO until issuance on September 19, 2000 as U.S. Patent No. 6,120,690 (“‘690”). Thus, the information contained in the application(s) resulting as the ‘690 patent were maintained by Haase and ClearValue as trade secret and confidential information until September 19, 2000.

17. On September 19, 2000, the ‘690 patent was duly and legally issued by the USPTO to Richard A. Haase. The protected invention is a “methods” patent relating to a process for clarifying waters and wastewaters by using aluminum polymers and newly formulated high molecular weight polymers. The ‘690 patent is presumed to be valid pursuant to 35 U.S.C. § 282.

18. Plaintiff Haase is still the inventor and owner of the ‘690 patent. However, he has provided a license under this patent to his company, ClearValue. Inc. Consequently, both are proper parties with standing to assert claims for patent infringement. At the present time, no other company is licensed to, or has authority to, make, use, or sell the technology covered by the claims of the ‘690 patent.

Successful Commercial Exploitation

19. Initially, Haase and ClearValue enjoyed a great deal of success by commercially exploiting the technologies of the ‘690 patent and other trade secret technologies to end user water and wastewater treatment facilities. As the inventor and owner of a technology that would provide the end user with cleaner water at a better price, Haase had a clear business advantage over his competition. Consequently, he and Clear Value developed many good customer relationships and grew Haase’s small company to one having revenues in excess of one million dollars a year.

Betrayal

20. And then something changed. Competitors began to achieve the same or similar results, and to do so at cheaper prices. Clear Value began to lose business. Although he did not

initially know what had happened, Haase subsequently learned that the Defendants Pearl River and SNF had breached the confidentiality agreements with him, had purloined his trade secrets, and, in fact, were broadcasting information about this revolutionary technology to his competitors. To add insult to injury, Haase learned that the Defendants were even *teaching* his competitors how to use his proprietary, secret method of water clarification, and were selling the raw materials which were necessary to perform this method to Haase's competitors at rates which were below those that Defendants charged Haase himself (and Clear Value).

21. Although Clear Value's business was decimated, it should, to the extent that the available evidence supports a claim for such, recover as legal damages those *lost profits* that it would and should have obtained, absent the Defendants' violations of its trade secrets and patent rights.

Intentional, Flagrant and Wilful Infringement

22. This happened before the Patent Office approved and issued the '690 patent. Amazingly, even *after* the '690 patent issued, it continued. Thus, there is ample evidence to conclude that the Defendants intentionally and wilfully violated Haase's and Clear Value's intellectual property rights.

Remaining Secrets Become "Sort Of" Public

23. Additional continuation-in-part applications for patent relating to the '690 were filed with the USPTO on June 30, 1999; September 29, 2000; and April 15, 2003 and remain pending in the USPTO ("Pending Applications"). These Pending Applications are now pending as a single application for patent serial number 10/413,849 ("849"). As part of the operation of U.S. Patent law, the subject matter of the '849 was published by the USPTO on November 13, 2003 as US20030209499. Thus, the information contained in the Pending Applications, including the '849, was maintained by Haase and ClearValue as trade secret and confidential information until

November 13, 2003. On information and belief, Defendants were aware of the publication of the '849 proximate to the time of its publication in November 2003.

24. Although the publication of the '849 put most of Haase's remaining trade secrets in the public domain, under Texas trade secrets law, Pearl River, SNF, and the other Defendants in this case are still obliged to honor their pledge of confidentiality, and still legally liable for damages if they fail to do so.

Other Shared Trade Secrets

25. Pursuant to the confidential relationship between Haase and ClearValue with Pearl River, Haase and ClearValue approached Pearl River to manufacture and supply ClearValue with high molecular weight moieties which were discovered by Haase and ClearValue to significantly enhance the coagulation of aluminum polymers thereby enhancing the clarification of water and wastewater. Haase and ClearValue also desired that Pearl River blend these formulations as well. Some of these high molecular weight ammonium moieties include: di-allyl di-methyl ammonium chloride ("DADMAC") and epichlorohydrin di-methyl amine ("Epi-DMA").

26. In furtherance of this confidential business relationship, Haase and ClearValue provided trade secret and confidential information to Pearl River and Pearl River accepted the trade secret and confidential information as such. This trade secret and confidential information included, for example, subject matter made the subject of the Haase applications for patent and subject matter set out in Haase's/ClearValue's letter of December 16, 1997 to Mr. Richard Rosenkoetter, the manager of Pearl River. This letter expressly identified that it contained confidential information of Haase/ClearValue.

27. Over the ensuing months, Haase and ClearValue spend considerable time dealing with Pearl River personnel to provide insight to them into the chemical formulation and blending

requirements for Haase's innovations. Haase and ClearValue also taught Pearl River the importance of manufacturing high molecular weight ammonium moiety polymers that did not contain sulfate moieties thereby allowing for stable blending with an aluminum polymer. Haase and ClearValue also taught Pearl River to adjust the pH of the ammonium polymer to near 4.0 with hydrochloric acid prior to blending with an aluminum polymer to provide enhanced stability of the blend. Haase and ClearValue also taught Pearl River the importance of manufacturing poly-DADMAC with sodium persulfate, thereby allowing for stable blending with an aluminum polymer. These blending ideas were also valuable trade secrets of Haase/Clear Value, which were shared in confidence with Pearl River/SNF. Plaintiffs also shared considerable additional proprietary information, in an expectation of confidence, with Pearl River and SNF. Pearl River/SNF has also misappropriated and purloined these trade secrets and confidential information as well.

The Infringing Products

28. One or more of the Defendants have manufactured and marketed four primary products which are used in Haase's proprietary methods for water clarification, namely:

- a. PRP 4820, aka Floquat 4820, Hychem CP 627 or others comprising a 4800 series designation, a high molecular weight DADMAC polymer never made by Pearl River prior to the Pearl River relationship with Haase and ClearValue.
- b. PRP 4620, aka Floquat 4620, or others comprising a 4600 series designation, a high molecular weight DADMAC polymer never before previously blended with or blendable with aluminum polymers prior to the confidential relationship with Haase and ClearValue made by Pearl River prior to the Pearl River relationship with Haase and ClearValue.
- c. PRP 3249, aka Floquat 3249 or others comprising a 3249 designation, a high molecular weight Epi-DMA polymer which had been sold previously by Pearl River, but was not previously blended with or blendable with aluminum polymers prior to the confidential relationship with Haase and ClearValue; and

- d. PRP 2449, aka Floquat 2449 or others comprising a 2449 designation, a low molecular weight Epi-DMA, while previously available by Pearl River, was not previously sold to be blended in combination with high molecular weight ammonium polymers and aluminum polymers prior to the confidential relationship with Haase and ClearValue.
- e. PRP 4400 series or others comprising a 44xx designation, a low molecular weight DADMAC.

Some of these products have been “blended” with others to enable practice of the protected method.

29. Pearl River has always represented the 4600 series of DADMAC’s to be “high molecular weight” and the 4800 series to be “high, high.” Although the quality control measures employed by Pearl River measure viscosity instead of molecular weight, Pearl River’s manual shows the molecular weight of the 4600 series to be 1.4 million and of the 4800 series to be 1.8 million. Moreover, the plant manager, Mr. Rosenkoetter, who was responsible for manufacturing the products, usually represented that the molecular weight of the 4600 series was “about a million.” Finally, Pearl River’s own, internal, presuit testing, utilizing gel permeation chromatography, reflects that the molecular weight of both polymers was substantially in excess of one million. Therefore, all of the presuit evidence suggests that both series of polymers have a molecular weight at or above 1,000,000, within the meaning of the Claims of the ‘690 patent.

30. Additionally, the Defendants’ post-litigation testing also shows a similar result when molecular weight is measured by one of the acceptable modes as per the Court’s *Markman* ruling. Specifically, the “Jordi” report shows that the molecular weight of the 4600 series, in terms of M_z is 3.9 million and of the 4800 series is 4.4 million.

31. Because these products were manufactured and marketed, in part, to perform Haase’s proprietary process, and because Defendants not only sold the materials to others, but actually published information about these secret (and then patented) methods, and even *taught* other

customers (who are competitors of Haase) how to do this, Defendants are, individually, jointly, and severally, liable for legal damages based on their sales of these products.

32. The damages for misappropriation of trade secrets could be computed based on a theory or measure of “unjust enrichment”. Alternatively, damages under both state and federal theories of liability should and could be – at absolute minimum – a *reasonable royalty*. Based on the expert report and testimony in this case, a reasonable royalty should be at least 10% of all products sold for potentially infringing uses.

33. On information and belief, Defendants have sold in excess of One Hundred Million Dollars worth of these products for use in water clarification.

A Trial Aborted

34. This case first came to trial in March of 2007. After several days of trial, the Court sent the Jury home and held a sanctions hearing. After hearing the evidence, Judge Davis assessed both substantial (*i.e.*, \$2.7 million) monetary and “death penalty” sanctions against Plaintiff Haase and one of his lawyers. The death penalty sanctions, and most of the monetary sanctions, were reversed by the Federal Circuit on appeal. However, that Court affirmed the finding of a discovery violation and the imposition of approximately \$110,000 in monetary sanctions.

35. As his *pro se* filed First Amended Complaint alleges, Mr. Haase believes that the Defendants’ Motion for Sanctions contained a number of false representations and omissions to this Court, and that these actions were calculated, as were many prior actions of the defendants, to bully Haase out of his intellectual property rights. The factual allegations of such First Amended Complaint have been excerpted into the Addendum to this Second Amended Complaint and are hereby incorporated herein by reference.

36. Mr. Haase believes that these facts establish legally cognizable claims against both the Defendants, and their counsel in this case. A separate suit in that regard has been filed in state court in Ft. Bend County. For purposes of this case, both sides have agreed that, *if* this Court is going to try these theories of liability, that it can do so in a non-jury trial, and Judge Davis has already ordered that such trial would be conducted separately and after the currently scheduled trial of this case. Therefore, Plaintiffs ask leave of Court to further amend and supplement their allegations regarding this conduct, and their theories of liability, at the appropriate time, if necessary.

Causes of Action

I. PATENT INFRINGEMENT: (Paragraphs 1–36 are hereby incorporated by reference).

37. As authorized by 35 U.S.C. §§ 281-84, Plaintiffs Haase and Clear Value hereby sue all Defendants for infringement of the ‘690 patent. Specifically, Plaintiffs allege that Defendants are guilty of actual infringement, and, because of their publication and teaching activities, of both inducing and contributing to infringement by others, of Claims 1, 9, 10 and 17 of the ‘690 patent.

38. Specifically, Defendants are making, using, offering to sell, inducing and/or selling products and process within this district that infringe one or more valid claims of the ‘690 without authority or license from Haase. Defendants’ infringement includes, at a minimum, provision and use of high molecular weight DADMAC in combination with an aluminum polymer for the clarification of water. Defendants’ infringing activities have been willful and deliberate.

39. As a result of Defendants’ infringing activities, Haase and ClearValue have suffered actual damages in an amount to be determined at trial. To the extent that the evidence establishes it, damages in the form of lost profits are sought. However, alternatively, and at minimum, the damages should be assessed based on a *reasonable royalty*.

40. Upon a finding of willful infringement by the trier of fact, the Court could, and should, treble the damages. The Court should also find this to be an “exceptional” case and should assess attorney’s fees and costs incurred in prosecuting this action. 28 U.S.C. §§ 284 – 285.

41. Finally, to prevent future infringement, the Court should enjoin Defendants, and all those in concert with them, from practicing the method of water clarification which is disclosed in and protected by the ‘690 patent, without first obtaining a license from Plaintiffs to do so.

A Word – or Two – About “Prior Art”

42. Defendants have alleged that the ‘690 patent is invalid, *inter alia*, because it was “anticipated” by “prior art” or otherwise “known or used” within the meaning of 35 U.S.C. § 102. They bear the burden of proving this defense by competent, “clear and convincing” evidence. Although we are not required to plead anything with regard to these asserted defenses, two brief observations and allegations might assist the Court.

43. The first is that, because the principal alleged “prior art” is the so-called Hassick ‘039 patent, and because this patent was considered and rejected by the Examiner prior to the issuance of the ‘690, in addition to the normal burden of proof by clear and convincing evidence, the Defendants bear the “*added burden* of overcoming the deference that is due to a qualified government agency presumed to have properly done its job, which includes one or more examiners who are assumed to have some expertise in interpreting the references and to be familiar from their work with the level of skill in the art and whose duty it is to issue only valid patents.” *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1353 (Fed.Cir. 2001).

44. Secondly, as our Trial Brief regarding Objections to Exhibits points out, knowledge or use by others “means knowledge or use which is *accessible to the public.*” *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986). *Accord Woodland Trust v. Flowertree*

Nursery, Inc., 148 F.3d 1368, 1370 (Fed.Cir. 1998)(“in order to invalidate a patent based on prior knowledge or use, that knowledge or use must have been available to the public.”) Defendants have unearthed some internal, unpublished documents, which, if legitimate at all, are undoubtedly trade secrets or other proprietary information concerning internal company activities. Without laying a “clear” predicate to establish “convincingly” that these documents reflect truly public “prior art” which was anticipatory of the ‘690 invention, these documents are not competent proof on the issue of invalidity. Moreover, at least one of the documents describes technology which was expressly cited in the ‘690 patent itself as an example of the utility of the ‘690 invention.

45. These matters are pled in this manner to alert the Court to an issue of sufficient gravity that it could result in a mistrial. Moreover, in view of the reassignment of the case to Judge Rader, this pleading is also meant to apprise the Court of the fact that, because Plaintiffs do not believe that the evidence regarding invalidity is sufficiently competent to sustain a verdict on that defense, they previously filed an extensive Motion for Summary Judgment on the point. The same arguments and authorities made in that motion will, in all likelihood, be made via Motion for JMOL at the conclusion of the Defendants’ case in chief.

II. MISAPPROPRIATION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION: (Paragraphs 1–36 are again incorporated by reference).

46. As set out above, Haase and ClearValue have, at all material times to this Second Amended Complaint, maintained as trade secret and confidential information pertinent information regarding their water clarification technologies. This information provided Haase and ClearValue with a competitive advantage over competitors, and, but for Defendants’ unlawful appropriation and disclosure of same, would have continued to do so, at least until 2003.

47. Pearl River, and on information and belief, the other Defendants, learned of these trade secrets and confidential information from Haase and ClearValue under obligations of confidentiality. On information and belief, Pearl River shared Haase's and ClearValue's trade secrets with other of the Defendants and with competitors of Haase/Clear Value and others in the relevant industries. Additionally, Pearl River and the other Defendants have used and disclosed these trade secrets without authorization by Haase or ClearValue.

48. Defendants' unlawful and unauthorized use and disclosure of Haase's and ClearValue's Trade Secrets has been willful and deliberate.

49. As a result of Defendants' unlawful and unauthorized use and disclosure of Haase's and ClearValue's Trade Secrets, Haase and ClearValue have suffered actual damages in an amount to be determined at trial. As noted above, the damages may be measured either (a) via an unjust enrichment/disgorgement method, or (b) via reasonable royalties.

50. Moreover, because of the willful and deliberate nature of Defendants' unlawful activities, the Jury could, if it chose, impose punitive or exemplary damages under the common and statutory law of Texas.

51. Finally, should the facts support it, the Court should also consider appropriate injunctive relief to protect against future violations of Plaintiffs' rights.

III. BREACH OF CONFIDENTIAL RELATIONSHIP AND TRUST: (Paragraphs 1–36 are again incorporated by reference).

52. As set out above, Haase and ClearValue entered into a business relationship with Pearl River premised on confidentiality and trust. Pursuant to and in reliance on this relationship of confidence and trust, Haase and ClearValue provided information to Pearl River of a highly confidential and competitive nature. On information and belief, Pearl River shared Haase's and

ClearValue's confidential information with other of the Defendants and with competitors and others in the relevant industries.

53. Pearl River and the other Defendants have breached this agreement of confidence and trust by using and disclosing such confidential information without the authorization of Haase or ClearValue. As a result of Defendants' unlawful and unauthorized use and disclosure of Haase's and ClearValue's confidential information, Haase and ClearValue have suffered actual damages in an amount to be determined at trial in excess of the minimum jurisdictional limits of this Honorable Court.

IV. FRAUD AND CONSPIRACY: Paragraphs 34-36, and the factual averments of the Addendum are incorporated by reference. These allegations support claims for fraud and conspiracy under the common law of Texas.

V. BREACH OF CONTRACT: Paragraphs 34-36, and the factual averments of the Addendum are incorporated by reference.

54. The confidentiality order of this Court was an agreement between the parties, with the Court's blessing. As three (3) mislabeled product shipments only occurred after Rule 26 Disclosures and within weeks of same, it is obvious that Defendants violated the contract, protective order, of this Court to make said mislabeled product shipments. It is highly improbable to impossible that said mislabeled product shipments could have occurred by chance; therefore, said mislabeled product shipments were intentional.

55. Haase and ClearValue have been significantly harmed by said breach of this Courts Protective Order; especially as said breach was performed in concert with an attempt to defraud Haase and ClearValue of significant sums and in concert with attempt to extort intellectual property from Haase.

Jury Demand

56. Plaintiffs continue to demand trial by Jury of all issues of fact in this case with exception of those relating to Causes of Action IV and V.

Prayer

Wherefore, Plaintiffs Haase and Clear Value respectfully request that, after trial, the Court enter judgment against Defendants, jointly and severally, granting such damages and other relief as requested herein and appropriate under the law.

Respectfully submitted,

VICKERY, WALDNER & MALLIA, LLP

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Certificate of Service

I certify that on this 31st day of March, 2010, Plaintiffs' Second Amended Complaint has been electronically filed with the Clerk using the CM/ECF system, which will automatically send email notifications of such filing to the following attorneys of record:

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Addendum from *Pro Se* First Amended Complaint

The first trial was halted and a severe result and burden was placed upon Haase and ClearValue as a result of this.

Said severe burden and result comprised significant disparagement to Haase, a \$2.7 million sanction upon Haase and ClearValue, invalidation of the '690, and repeated efforts on the part of Defendants and their Attorneys to extort via blackmail Haase of his intellectual property. In summary, Defendants and their Attorneys performed the Motion in concert with exploitation of the legal process.

Up and until September of 2009, Haase and ClearValue were represented by legal counsel in this cause. Said legal counsel was part and parcel to said discovery violation. However, in an effort to correct the most difficult situation, Attorneys for Haase and ClearValue did the proper thing performing an appeal of the 2007 Opinion, Ruling and Judgment. The Federal Court of Appeals affirmed the discovery violation of \$121 thousand and reversed, as well as, remanded remaining portions of the \$2.7 million. Most unfortunately, the disparagement placed upon Haase has Haase incapable of obtaining legal representation; therefore, Haase is Pro Se' at this time.

Haase and ClearValue performed Federal Disclosures pursuant to the Federal Rules of Civil Procedure in June of 2005. By July of 2005, Haase and ClearValue were unable to obtain via a confidential third-party/third-party purchasing network any PRP 4820 which was in specification. Said third-party/third-party purchasing network included the blender of Haase and ClearValue, Moon Chemical Company, as well as Hychem, Inc., a significant distributor of Defendants. Said third-party/third-party network had been in use since 2002 (3 years) without any delivery specification challenge. Then, beginning in July of 2005, just weeks after disclosing to Defendants via confidential Federal Disclosures according to the Federal Rules of Civil Procedure, Haase and

ClearValue are unable to obtain even one (1) of three (3) product shipments of PRP 4820, labeled Hychem CP 627, which was in specification.

Haase and ClearValue had an independent ASTM Certified Laboratory perform an analysis of the out-of-specification product finding the out-of-specification product to measure 585 centipoise seconds (“cps”) at 22.5 % concentration in water when the minimum release specification for Defendants was 1000 cps at 19 to 21 % concentration in water. This is while, the quality control release measurement purported the product to be 1980 cps at 20.5 % concentration in water. During trial in 2007, Defendants’ Corporate Representative, Mr. Jim Carlson, and Defendants Attorneys, most notably Mr. Close and Mr. Tindel, all stated to this Honorable Court in Motion, testimony and argument that the tested out-of-specification product was a product-in-suit. This is when, the Markman Ruling of this Honorable Court requires that a high molecular weight quaternized ammonium polymer to measure greater than 1,000 cps at 20 % concentration in water and the out-of-specification product when correlated to 20 % concentration in water would measure about 495 cps. Therefore, Mr. Carlson, Mr. Close and Mr. Tindel made false representations to this Honorable Court; as, it is impossible for either 585 or 495 to be greater than 1000. This is while the quality assurance measurement performed by Pearl River and reported by Ms. Dawn Treat was false, as well. This is while, Mr. Carlson, Mr. Close and Mr. Tindel omitted to inform this Honorable Court of the required viscosity and concentration specifications of a product-in-suit, along with the required manufacturing specifications of the high molecular weight DADMAC products-in-suit, *e.g.*, PRP 4820 and PRP 4620.

It is not reasonable to conclude that either 585 or 495 is greater than 1000.

It is reasonable to conclude that Mr. Carlson, Mr. Close and Mr. Tindel can count.

It is unreasonable and improbable to conclude that three (3) such shipments would occur by chance within weeks of confidential Federal Disclosures; therefore, the three (3) out-of-specification shipments were intentional.

The above is while the out-of-specification product shipped correlates to a “new” laboratory method of molecular weight measurement performed by an Expert of Defendants, Mr. Jordi. Mr. Jordi’s new laboratory method was performed just weeks after issuance of the ‘690 contradicting all previous measurement by Defendants.

However, the “new” laboratory method results use an average molecular weight (“Mw”); while, the Markman Ruling of this Honorable Court strictly forbid use of Mw.

Still however, in Motion, argument and testimony, during the trial and hearing of March 2007, Mr. Carlson, Defendants’ Corporate Representative, Mr. Close and Mr. Tindel presented to this Honorable Court that the defining Mw of the out-of-specification product is a smoking gun, thereby demonstrating concealment by Haase of a laboratory result which would harm his cause herein. Again, however, the Markman Ruling of this Honorable Court strictly forbids use of Mw; yet, Defendants used Mw anyway.

It is unreasonable for Mr. Carlson, Mr. Close and Mr. Tindel to present Motion, argument and testimony before this Honorable Court when the Markman Ruling of this Honorable Court strictly forbids.

It is reasonable to conclude that Mr. Carlson, Mr. Close and Mr. Tindel can read.

As of the filing of this Amended Complaint, Defendants have refused to produce any product samples to Haase; this is even though such production is required by the Federal Rules of Civil Procedure pursuant to a discovery request. Therefore, and in combination with the out-of-specification product shipments, Haase is unable to perform any in-specification molecular weight

measurement of Defendants high molecular weight DADMAC products-in-suit, *e.g.*, PRP 4820 and PRP 4620. Haase must, then, work with Defendants previous testing results, along with published industry testing results.