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13 **THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 BDP INNOVATIVE CHEMICALS
16 COMPANY, a Florida corporation,

17 Plaintiff,

18 vs.

19 E.P. CONSULTING, INC., a Delaware
20 corporation; LANCE RENFROW, an
21 individual; and CLEAR SOLUTIONS USA,
22 LLC, an Arizona limited liability company,

23 Defendants.

Case No. CV06-0009-PHX-MHM

COMPLAINT

(Assigned to Hon. Mary H. Murguia)

24 Plaintiff BDP INNOVATIVE CHEMICALS COMPANY (hereinafter "BDP" or
25 "Plaintiff"), by and through its undersigned counsel, alleges as follows:

PARTIES

26 1. BDP is a Florida corporation organized and existing under the laws of the
State of Florida.

2. E.P. Consulting, Inc. ("E.P.") is a Delaware corporation organized and
existing under the laws of the State of Delaware.

3. Lance Renfrow ("Renfrow") is an unmarried individual and a resident of the
State of Arizona.

4. Clear Solutions USA, LLC ("Clear Solutions") is an Arizona limited liability
company organized and existing under the laws of Arizona.

JURISDICTION AND VENUE

5. This Court has jurisdiction over these claims pursuant to, *inter alia*, 28 U.S.C. §§ 1331 and 1332.

6. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND ALLEGATIONS COMMON TO ALL COUNTS

A. The Parties.

7. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

8. BDP produces, sells, distributes, and markets chemical compositions for use in a variety of industries including, but not limited to, breweries, restaurants and other food and beverage-related industries ("F&B Industries").

9. E.P. is in the business of developing chemical compositions for use in various industries including, but not limited to, the F&B Industries.

10. Clear Solutions sells, distributes, and markets chemical compositions for use in a variety of industries which, on information and belief, includes the F&B Industries.

11. Renfrow is, based upon his representations, a chemical engineer who developed, among other things, chemical compositions for use in various industries including, but not limited to, the F&B Industries.

12. Renfrow is the President of E.P.

13. Renfrow is the manager and a member of Clear Solutions. Based on information and belief, Renfrow held an ownership interest in Clear Solutions before, and at the time of, the execution of an agreement between Clear Solutions and BDP.

B. Letter of Understanding.

14. On or about May 6, 2002, BDP and Renfrow entered into a Letter of Understanding wherein they agreed that, contingent upon mutual development and executions of a licensing agreement and a separate consulting agreement, BDP would pay

1 Renfrow periodic royalty fees for the use of certain intellectual property and a monthly
2 consulting fee for consulting services.

3 15. Although the Letter of Understanding envisioned entering into subsequent
4 agreements and provided some key terms for those agreements, the Letter of
5 Understanding, in an of itself, did not impose any obligations on the parties with regard to
6 licensing, royalties, consulting, or related payments.

7 **C. License Agreement.**

8 16. On or about July 29, 2002, BDP, on the one hand, and E.P. and Renfrow, on
9 the other hand, entered into the License Agreement which memorialized some of the terms
10 of the Letter of Understanding. Pursuant to the License Agreement, E.P. and Renfrow
11 have granted BDP an exclusive worldwide license, including the right to grant sublicenses,
12 to manufacture and sell certain products developed and/or owned by E.P. and Renfrow
13 (the "Products").

14 17. Pursuant to the License Agreement, BDP is to pay E.P. and Renfrow a
15 percentage of the gross revenues minus returns, freight, shipping and handling, taxes, trade
16 discounts, and duties earned from the sale of the Products as a Royalty Fee.

17 18. The term of the License Agreement was initially two years, and included
18 automatic annual renewals thereafter, contingent upon BDP's continued payment of the
19 Royalty Fee. The renewals are still in effect.

20 19. The License Agreement obligated E.P. and Renfrow to provide the exact
21 formulas and processes for manufacturing the Products.

22 20. E.P. and Renfrow, to date, have failed to provide the exact formulas and
23 processes for manufacturing the Products.

24 21. The License Agreement contained a Non-Competition provision which
25 precluded competition with regard to the Products during its term for a period of twelve
26 months following termination of the License Agreement.

1 22. Upon information and belief, E.P. and/or Renfrow are attempting to sell,
2 have sold, and/or are selling products in violation of the Non-Competition provision
3 contained in the License Agreement.

4 23. The License Agreement contained no provisions creating an obligation on
5 the part of BDP or Renfrow with regard to any consulting services by Renfrow to BDP.

6 24. The License Agreement contained a provision which specifically states
7 “This is the entire agreement between the parties”.

8 25. The License Agreement provided for an award of attorney’s fees and
9 reasonable costs for the prevailing party in any arbitration or litigation.

10 26. The License Agreement is valid and enforceable, and BDP continues to
11 honor it to date.

12 27. E.P. and Renfrow have breached and/or interfered with the License
13 Agreement, and have wrongfully, an in bad faith, attempted to terminate it without
14 following the express provisions thereof or having a proper basis for doing so.

15 **D. Consulting by Renfrow.**

16 28. BDP and Renfrow never memorialized the consulting arrangement between
17 the parties in a written agreement as was contemplated by the Letter of Understanding.
18 However, BDP did retain Renfrow as an at-will consultant and paid him consulting fees
19 for some time.

20 29. Because no written consulting agreement was in fact entered into, BDP and
21 Renfrow’s relationship regarding Renfrow’s consulting services was at-will rather than
22 based on a written contract having a specified term.

23 30. In fact, in 2005, BDP presented Renfrow with a written consulting
24 agreement which Renfrow refused to sign. Furthermore, on or about May 10, 2005,
25 Renfrow’s counsel, G. Gregory Eagleburger (“Eagleburger”), indicated that he would draft
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1 a consulting agreement to be executed by BDP and Renfrow. Eagleburger never drafted
2 that agreement, and BDP and Renfrow never entered into a written consulting agreement.

3 31. In conjunction with Renfrow's consulting, BDP paid Renfrow a monthly fee
4 of \$8,000, commissions based on sales and customer retention, and provided Renfrow
5 \$2,500 monthly in advance of each month for reimbursement of office expenses. In total,
6 BDP paid Renfrow over \$400,000 in consulting fees and related costs and expenses over
7 the course of the relationship between the parties.

8 32. Renfrow's monthly consulting fee was reduced on some occasions based on
9 his failure to perform by, *inter alia*: (1) failing to contact BDP customers and suppliers; (2)
10 failing to respond to correspondence and inquiries from BDP; (3) otherwise failing to keep
11 BDP updated on projects that he was to be working on for BDP; and (4) failing to make
12 himself available to assist BDP as needed.

13 33. BDP, throughout the period Renfrow was to have been acting as a consultant
14 on its behalf, also paid for numerous trips during which Renfrow was to have been
15 soliciting, negotiating, and otherwise doing business on behalf of BDP.

16 34. Contrary to Renfrow's fiduciary and contractual obligations, Renfrow,
17 throughout the consulting relationship, *inter alia*: (1) used BDP assets to obtain personal
18 gain by, among other things, secretly soliciting and negotiating with BDP customers for
19 his own personal benefit and/or for the benefit of E.P. and/or Clear Solutions while
20 utilizing an office and while on trips funded by BDP for the purposes of BDP-related
21 business; (2) attempted to circumvent BDP by requesting that customers place orders
22 through Renfrow, Clear Solutions, and/or E.P. rather than going directly through BDP; (3)
23 attempted to circumvent BDP by interacting with and placing orders with suppliers as
24 Renfrow, Clear Solutions, and/or E.P. rather than on behalf of BDP; (4) failed to act in the
25 best interest of BDP by recommending a business relationship with an entity with which
26 Renfrow was associated as more fully described below in section F entitled The Sub-

1 License Agreement; and (5) generally failed to perform the duties required of him as a
2 consultant to BDP.

3 35. BDP, as it had the right to do, terminated Renfrow as a consultant on
4 December 1, 2005.

5 **E. The March 2003 Agreement.**

6 36. On or about March 7, 2003, Accseus, BDP, E.P., and Renfrow entered into
7 the March 2003 Agreement which envisioned the licensing of additional technology by
8 E.P. and Renfrow to BDP, and memorialized some of the terms of the compensation
9 structure for Renfrow's at-will consulting duties. The March 2003 Agreement did not
10 change the at-will nature of the consulting relationship between BDP and Renfrow.

11 37. The March 2003 Agreement was developed based upon the expectation that
12 Accseus would be playing a significant role as a joint venture partner by raising and/or
13 investing one million dollars. That expectation never materialized.

14 38. Soon after execution of the March 2003 Agreement, Accseus indicated that
15 it would not perform.

16 39. Pursuant to the March 2003 Agreement, E.P. and Renfrow were to, *inter*
17 *alia*: (1) sign a modified licensing agreement providing BDP the exclusive rights to
18 manufacture and produce unique new products developed by Renfrow for the brewing,
19 dairy, food, soda, and juice industries; and (2) help in any way to develop, manufacture,
20 and sell all products of BDP as well as products developed for BDP by Renfrow, which
21 included developing or aiding in the development of new products sought by BDP.

22 40. E.P. and Renfrow breached the agreement by failing to: (1) perform the
23 consulting duties associated with the compensation structure referenced in the March 2003
24 Agreement; (2) sign the modified licensing agreement for the brewing, dairy, food, soda,
25 and juice industries, despite repeated urging by BDP and BDP's presenting a draft of the
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1 agreement to E.P. and Renfrow; and (3) assist in the development, manufacture, and sale
2 of BDP products.

3 41. E.P., Renfrow, and BDP subsequently entered into an oral agreement for the
4 technology associated with the brewing, dairy, food, soda, and juice industries that was
5 mentioned in the March 2003 Agreement. The term of that agreement is to last as long as
6 BDP continues to pay royalties for the technology and remains in effect to date.

7 **F. The Sub-License Agreement.**

8 42. On or about November 7, 2004, BDP and Clear Solutions entered into a
9 Sub-License Agreement.

10 43. The Sub-License Agreement granted Clear Solutions an exclusive sub-
11 license to utilize certain technology and applications thereof.

12 44. BDP entered into the Sub-License Agreement as a result of Renfrow's
13 advice, in his capacity as a consultant to BDP, to do so.

14 45. E.P., Clear Solutions, Renfrow, and Eagleburger, counsel acting for all of
15 Defendants and an individual holding an ownership interest in Clear Solutions *via* his
16 401(k) plan: (1) intentionally failed to disclose to BDP that Renfrow was the manager and
17 a member of Clear Solutions; (2) affirmatively represented to BDP that Clear Solutions
18 would hire a full-time salesperson to carry out the Sub-License Agreement and that
19 Renfrow would not have involvement in the operations of Clear Solutions or execution of
20 the Sub-License Agreement; (3) affirmatively represented to BDP that Clear Solutions
21 would invest substantial capital into executing the Sub-License Agreement; and (4)
22 affirmatively represented to BDP that Clear Solutions was capable of and would make
23 sales in the first year of in excess of \$500,000. By doing so, E.P. and Renfrow induced
24 BDP, *via* affirmative representation and subterfuge, into sub-licensing *back* to Renfrow
25 the exclusive license granted to BDP *by* Renfrow and E.P.
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1 46. Pursuant to Paragraph 2 of the Sub-License Agreement, Clear Solutions was
2 obligated to “advise BDP of all prospective customers who sell competing products to
3 breweries and allow BDP to join in such marketing efforts and have final approval.”

4 47. Clear Solutions represented to BDP that it has been in contact with at least
5 one prospective customer of BDP, Mays Group, which sells competing products to
6 breweries.

7 48. Renfrow, pursuant to his consulting duties, should have been in contact with
8 Mays Group on behalf of BDP.

9 49. Despite Renfrow’s obligations, Clear Solutions, the entity of which Renfrow
10 was a member and manager, communicated to BDP that Clear Solutions would not
11 facilitate communications between BDP and Mays Group without additional
12 compensation.

13 50. Clear Solutions, further advised BDP that Clear Solutions entered into a sub-
14 license agreement with Mays Group that prohibits Mays Group from directly contacting
15 BDP.

16 51. Clear Solutions, pursuant to the Sub-License Agreement, was also obligated
17 to “market produce and transport all products sold to customers in the F&B Industry and
18 pay BDP” a percentage of sales as a royalty fee.

19 52. Clear Solutions failed to use reasonable efforts to market the products that
20 were the subject of the Sub-License Agreement. In the first year of the Sub-License
21 Agreement, Clear Solutions paid BDP only \$386.59 in royalties which, in turn, meant that
22 Clear Solutions sold approximately \$2,100.00 in products, rather than the \$500,000.00
23 represented by Clear Solutions and Renfrow during negotiations.

24 53. As a result of Clear Solutions’ breaches and the discovery of self-dealing
25 and misrepresentations by Renfrow and Eagleburger, BDP terminated the Sub-License
26 Agreement effective December 1, 2005.

1 54. Upon information and belief, Clear Solutions has sold and/or is selling in
2 industries that were previously sub-licensed to Clear Solutions pursuant to the Sub-
3 License Agreement.

4 **G. Defendants' recent conduct, sales, and manufacturing.**

5 55. In October/November 2005, Defendants requested contact information for
6 Ecolab, a BDP competitor, from one of BDP's largest customers, Micro Matic in an
7 attempt to secretly discuss and/or sell BDP's confidentially-licensed technology to Ecolab.

8 56. Subsequently, Defendants contacted another BDP competitor, L&W
9 Chemicals, to sell to it technology licensed exclusively to BDP.

10 57. On information and belief, Defendants also disclosed confidential BDP
11 information to L&W Chemicals obtained only because of Defendants' relationship with
12 BDP.

13 58. On or about December 6, 2005, Renfrow contacted Haas TCM, a BDP
14 customer, to induce them into doing business with Clear Solutions and/or E.P. instead of
15 BDP for their brewery cleaning needs despite the existence of an in-force exclusive
16 licensing arrangement for the brewing industry.

17 59. In or about December 2005, Renfrow contacted William Schilling, a former
18 shareholder in BDP, about starting up a new business to compete with BDP.

19 60. In December 2005, Renfrow also contacted Southside River Rail, a key BDP
20 supplier, and instructed them to stop blending surfactant for BDP.

21 61. Defendants filed the instant action on January 3, 2006.

22 62. Defendants, on or about January 3, 2006, sent correspondence to Miller
23 Brewing, another major BDP customer, alleging that E.P. and Renfrow had terminated the
24 License Agreement, and offering to sell products directly to Miller and/or its suppliers.

25 63. On information and belief, Defendants, through The Eagleburger Law
26 Group, also provided Miller Brewing Company a copy of the complaint in this matter

1 before serving it on BDP. Consequently, Miller Brewing Company indicated to BDP that
2 it did not want to begin any additional trials of BDP's products and that it would not
3 continue current usage if the matter involving BDP and Renfrow was not resolved by
4 January 16, 2006.

5 64. Micro Matic and Miller Brewing combined currently account for
6 approximately 85% of BDP's current business.

7 65. On or about January 5, 2006, Defendants also sent correspondence to Micro
8 Matic (one of BDP's largest customers) accompanied by a copy of the complaint
9 threatening Micro Matic with liability for patent infringement arising out of its doing
10 business with BDP.

11 66. On or about January 5, 2006, Defendants sent correspondence to S&S
12 Industries, a.k.a. Benbow Chemical ("Benbow") threatening Benbow with patent
13 infringement liability arising out of its continuing to do business with BDP, and enclosing
14 a copy of the complaint in this matter before having served it on BDP.

15 67. Defendants attempted to market and sell products licensed exclusively to
16 BDP on other occasions. Specifically, on information and belief, Renfrow, on behalf of
17 Clear Solutions, submitted a bid to The Mays Group, a BDP competitor, for Miller
18 Brewing Company's business within the facility or facilities under The Mays Group's
19 control.

20 68. Moreover, on information and belief, Clear Solutions has, under the guise of
21 the Sub-License Agreement and in violation thereof, secretly relabeled, marketed, and/or
22 sold products Clear Solutions obtained from BDP to the brewing industry via The Mays
23 Group in violation of: (1) the express terms of the Sub-License Agreement; (2) Clear
24 Solutions' representations during negotiations regarding the Sub-License Agreement; and
25 (3) Eagleburger's letter to BDP that The Mays Group was involved in a dairy trial and
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1 could not use BDP's products in the brewery industry because of the restrictions contained
2 in the Sub-License Agreement.

3 69. On information and belief, Clear Solutions misrepresented to BDP that The
4 Mays Group was involved in a dairy trial and sold BDP product via The Mays Group to
5 the brewing industry.

6 70. On or about December 1, 2005, Defendants corresponded with one of BDP's
7 major suppliers, DuPont, and instructed them not to sell to BDP.

8 71. On February 8, 2006, Eagleburger sent correspondence to an unspecified
9 number of BDP's customers and suppliers: (1) asserting that BDP did not have permission
10 to move production of the Products to another blender/packager; (2) calling into question
11 the quality of BDP's products; and (3) disclaiming responsibility or liability for that
12 quality.

13 72. Defendants instructed the prior blender to cease doing business with BDP,
14 forcing BDP to move to another blender.

15 73. Most recently, on March 13, 2006, Renfrow sent correspondence to BDP
16 stating that he, to date, has not provided BDP with the exact formulas and manufacturing
17 processes for the Products, despite the express requirements under the License Agreement.

18 **COUNT ONE**

19 **(Breach of contract as to the License Agreement against E.P. and Renfrow)**

20 74. BDP hereby repeats and incorporates by reference each and every allegation
21 of this Complaint as if herein alleged again in full.

22 75. BDP, on the one hand, and E.P. and Renfrow, on the other hand, entered into
23 a valid and binding contract -- the License Agreement.

24 76. The agreement imposed contractual obligations on E.P. and Renfrow.

25 77. E.P. and Renfrow willfully breached and otherwise failed to perform under
26 the agreement by, *inter alia*: (1) failing to provide the exact formula and manufacturing

1 processes for the licensed products; (2) attempting to terminate the License Agreement
 2 without complying with the 30-day notice provision; (3) violating the non-competition
 3 provision contained in the License Agreement by competing with BDP during the term of
 4 the License Agreement as well as after E.P. and Renfrow's alleged termination thereof; (4)
 5 consistently ignoring requests by BDP for technical information relating to the licensed
 6 technology; (5) purporting to act in the best interests of BDP in respect to inducing BDP to
 7 enter into a contractual relationship with Clear Solutions, without disclosing that Renfrow
 8 was the managing member of Clear Solutions; (6) making false representations to BDP's
 9 customers and potential customers regarding BDP's business and E.P. and Renfrow's
 10 authority or lack of authority in respect to BDP's business; and (7) failing to aid in the
 11 hiring of BDP personnel, and, instead, hiring personnel for his own gain.

12 78. As a result of E.P. and Renfrow's numerous breaches of the agreements,
 13 BDP has suffered irreparable competitive injuries and monetary damages in an amount to
 14 be proven at trial.

15 79. As this matter arises out of contract, BDP is entitled to its attorneys' fees
 16 pursuant to, *inter alia*, A.R.S. § 12-341.01.

17 **COUNT TWO**

18 **(Breach of the covenant of good faith and fair dealing based on the License** 19 **Agreement against E.P. and Renfrow)**

20 80. BDP hereby repeats and incorporates by reference each and every allegation
 21 of this Complaint as if herein alleged again in full.

22 81. Implied into every contract is a covenant of good faith and fair dealing in its
 23 performance and enforcement.

24 82. E.P. and Renfrow were obligated to act in BDP's best interest.

25 83. Instead, E.P. and Renfrow, *inter alia*: (1) induced BDP to enter into an
 26 agreement with Clear Solutions, an entity that, unbeknownst to BDP at the outset of

1 negotiations, Renfrow was the manger and a member of, and had a secret ownership
2 interest in; and (2) made false representations to BDP's customers and potential customers
3 regarding BDP's business and E.P. and Renfrow's authority or lack of authority in respect
4 to BDP's business.

5 84. E.P. and Renfrow's actions constitute a breach of the covenant of good faith
6 and fair dealing.

7 85. As a direct and proximate result of E.P. and Renfrow's conduct, BDP has
8 been damaged in an amount to be proven at trial.

9 86. As this matter arises out of contract, BDP is entitled to its attorneys' fees
10 pursuant to, *inter alia*, A.R.S. § 12-341.01.

11 **COUNT THREE**

12 **(Breach of Contract as to the March 2003 Agreement against E.P. and Renfrow)**

13 87. BDP hereby repeats and incorporates by reference each and every allegation
14 of this Complaint as if herein alleged again in full.

15 88. E.P., Renfrow, Accseus, and BDP entered into a binding agreement -- the
16 March 2003 Agreement.

17 89. The March 2003 Agreement imposed contractual obligations on E.P. and
18 Renfrow.

19 90. E.P. and Renfrow breached the March 2003 Agreement by, *inter alia*, failing
20 to: (1) perform the consulting duties associated with the compensation structure
21 memorialized by the March 2003 Agreement; (2) sign the modified licensing agreement
22 for the brewing, dairy, food, soda, and juice industries; and (3) assist in the development,
23 manufacture, and sale of BDP products.

24 91. As a direct and proximate result of E.P. and Renfrow's conduct, BDP has
25 been damaged in an amount to be proven at trial.

102. The Sub-License Agreement imposed contractual obligations on Clear Solutions.

103. Clear Solutions breached the Sub-License agreement by, *inter alia*, failing to perform and to use reasonable efforts to market, produce, and transport the products that were the subject of the Sub-License Agreement.

104. As a direct and proximate result of E.P. and Renfrow's conduct, BDP has been damaged in an amount to be proven at trial.

105. As this matter arises out of contract, BDP is entitled to its attorneys' fees pursuant to, *inter alia*, A.R.S. § 12-341.01.

COUNT SIX

(Breach of the covenant of good faith and fair dealing as to the Sub-License Agreement against Clear Solutions)

106. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

107. Implied into every contract is a covenant of good faith and fair dealing.

108. Clear Solutions, in conjunction with Renfrow and E.P., intentionally failed to disclose to BDP that Renfrow was the manager and member of Clear Solutions, and that the transaction constituted self-dealing that would directly benefit Renfrow.

109. Clear Solutions' actions constitute a breach of the covenant of good faith and fair dealing.

110. As a direct and proximate result of Clear Solutions' conduct, BDP has been damaged in an amount to be proven at trial.

111. As this matter arises out of contract, BDP is entitled to its attorneys' fees pursuant to, *inter alia*, A.R.S. § 12-341.01.

COUNT SEVEN

(Fraudulent inducement as to the Sub-License Agreement against Clear Solutions and Renfrow)

112. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

113. Clear Solutions, Renfrow, and Eagleburger made certain representations to BDP including, *inter alia*: (1) that Clear Solutions was an independent entity that would use its best efforts to market and sell the products that were the subject of the Sub-License Agreement; (2) that Clear Solutions was capable of and would sell \$500,000 in the first year of the agreement; (3) that Clear Solutions would hire a full-time salesperson to carry out its obligations under the Sub-License Agreement; (4) that Clear Solutions would invest substantial capital into execution of the Sub-License Agreement; (5) that members of Clear Solutions had extensive expertise in the sub-licensed industries; and (6) that Renfrow would not be active in Clear Solutions.

114. Clear Solutions, Renfrow, and Eagleburger's representations were false in that: (1) Renfrow was a manager and member of Clear Solutions; (2) Eagleburger held an ownership interest in Clear Solutions and was involved in its formation; (3) Clear Solutions never intended to use its best efforts to fulfill the Sub-License Agreement; (4) Renfrow intended to use Clear Solutions and the Sub-License Agreement as a means of circumventing BDP and acting solely in his own best interests; (5) Clear Solutions had no members aside from Renfrow and Eagleburger; and (6) Renfrow was intimately involved with Clear Solutions and performed the majority of the duties therefor.

115. Clear Solutions, Renfrow, and Eagleburger knew their representations to be false.

116. BDP was not aware of the falsity of the representations.

117. Clear Solutions, Renfrow, and Eagleburger's misrepresentations were material in that they effectively induced BDP to enter into a sub-licensing agreement with the individual who had previously granted BDP an exclusive license for the same technology and was compensated therefor.

118. Clear Solutions, Renfrow, and Eagleburger intended their representations to induce BDP to enter into the Sub-License Agreement.

119. BDP relied on Clear Solutions, Renfrow, and Eagleburger's representations by entering into the Sub-License Agreement with Clear Solutions.

120. BDP's reliance on Clear Solutions, Renfrow, and Eagleburger's representations was based in part on Renfrow's status as a paid consultant to BDP.

121. BDP is entitled to rescission of the purported agreement, and/or its being declared void or voidable.

122. In addition, as a direct and proximate result of Renfrow and Clear Solutions' conduct, BDP has been damaged in an amount to be proven at trial.

COUNT EIGHT

(Constructive fraud as to the Sub-License Agreement against Clear Solutions and Renfrow)

123. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

124. Clear Solutions, Renfrow, and Eagleburger made certain representations to BDP including, *inter alia*, (1) that Clear Solutions was an independent entity that would use its best efforts to market and sell the products that were the subject of the Sub-License Agreement; (2) that Clear Solutions was capable of and would sell \$500,000 in the first year of the agreement; (3) that Clear Solutions would hire a full-time salesperson to carry out its obligations under the Sub-License Agreement; and (4) that Clear Solutions would invest substantial capital into execution of the Sub-License Agreement.

1 Agreement; (2) that Clear Solutions was capable of and would sell \$500,000 in the first
2 year of the agreement; (3) that Clear Solutions would hire a full-time salesperson to carry
3 out its obligations under the Sub-License Agreement; and (4) that Clear Solutions would
4 invest substantial capital into execution of the Sub-License Agreement.

5 134. Clear Solutions, Renfrow, and Eagleburger's representations were false in
6 that: (1) Renfrow was a manager and member of Clear Solutions; (2) Eagleburger held an
7 ownership interest in Clear Solutions and was involved in its formation; (3) Clear
8 Solutions never intended to use its best efforts to fulfill the Sub-License Agreement; and
9 (4) Renfrow intended to use Clear Solutions and the Sub-License Agreement as a means of
10 circumventing BDP and acting in his own best interests.

11 135. Clear Solutions, Renfrow, and Eagleburger were negligent as to the falsity of
12 their representations.

13 136. BDP was not aware of the falsity of the representations.

14 137. Clear Solutions, Renfrow, and Eagleburger's misrepresentations were
15 material in that they effectively induced BDP to enter into a sub-licensing agreement with
16 the individual who previously granted BDP an exclusive license.

17 138. Clear Solutions, Renfrow, and Eagleburger intended their representations to
18 induce BDP to enter into the Sub-License Agreement.

19 139. BDP relied on Clear Solutions, Renfrow, and Eagleburger's representations
20 by entering into the Sub-License Agreement with Clear Solutions.

21 140. BDP's reliance on Clear Solutions, Renfrow, and Eagleburger's
22 representations was based in part on Renfrow's status as a paid consultant to BDP.

23 141. BDP is entitled to rescission of the purported agreement, and/or its being
24 declared void or voidable.

25 142. In addition, as a direct and proximate result of Renfrow and Clear Solutions'
26 conduct, BDP has been damaged in an amount to be proven at trial.

COUNT TEN

(Breach of fiduciary duty against Renfrow)

143. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

144. Renfrow was acting as a consultant and agent for BDP regarding the Products.

145. As a consultant and agent, Renfrow owed BDP a fiduciary duty.

146. While Renfrow was acting as a consultant, and agent for BDP, he, *inter alia*: (1) solicited potential and existing BDP customers for his own personal gain; (2) solicited potential and existing BDP suppliers for his own personal gain; (3) induced potential BDP customers to enter into agreements prohibiting them from entering into negotiations or otherwise communicating with BDP, (4) induced BDP to enter into an agreement with Clear Solutions, an entity of which Renfrow was, and remains, the manager and a member; (5) failed to and/or refused to follow through on leads provided by or at the request of BDP; (6) consistently ignored and/or responded belligerently and insufficiently to other communications by BDP; (7) failed to account for and supply supporting documentation for office expenses; (8) failed to account for and supply supporting documentation for travel expenses; (9) failed to perform work reasonably expected by BDP; and (10) misused BDP's Material Safety Data Sheets for improper packaging and shipping of corrosive materials to third parties.

147. Renfrow's actions constitute a breach of his fiduciary duty to BDP.

148. As a result of Renfrow's actions, BDP has been damaged in an amount to be proven at trial.

COUNT ELEVEN

(Unfair competition pursuant to 15 U.S.C. § 1125(a) against E.P. and Renfrow)

149. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

150. On or about February 15, 2005, Renfrow had issued to him U.S. Patent No. 6,855,679 pertaining to a detergent composition developed for and on behalf of BDP.

151. The '679 patent is directed to a detergent blend which, for its uniqueness, relies upon a specific blend of an amphoteric sultaine surfactant hydrotope and a fluorinated surfactant which surfactant is a 50/50 weight mixture of two types of phosphonic acid-based perfluoro compounds.

152. During the course of the prosecution of this application it was necessary, in order to obtain issuance of the patent, that the claims of this patent be limited to the specific fluorinated surfactant blend and the specific hydrotope.

153. During the course of the relationship between the parties, Renfrow initiated a change in the formulation of the products which he designed for BDP to such an extent to bring the formulation outside the scope of the '679 Patent.

154. The present composition is being manufactured and sold by BDP based on Renfrow's own revised formulation and does not include such fluorinated surfactant blend and, due to the principals of file history estoppel, Renfrow cannot now seek to expand the scope of the patent to include the surfactant blend of '679 patent.

155. E.P. and Renfrow knowingly made false assertions to customers that the BDP formulations fall within the scope of the patents.

156. On or about April 29, 2003, Renfrow had issued to him U.S. Patent No. 6,555,511 which is directed to a detergent composition having specific components, namely, an alcohol alkoxylate nonionic surfactant and an amphoteric sultaine-based hydrotrope.

1 part on customer, and the amount of \$2,500 per month for office expenses and paid other
2 travel and related expenses.

3 164. Unbeknownst to BDP, Renfrow was not acting in BDP's best interests
4 because he was, *inter alia*: (1) approaching competitors, and potential existing suppliers
5 and customers of BDP's in an attempt to enter into business relationships with them
6 personally when he should have referred them to BDP; and (2) failing to disclose his
7 relationship with Clear Solutions during his purported negotiations with Clear Solutions
8 on behalf of BDP.

9 165. Renfrow's actions ran directly contrary to his duties to BDP as a consultant.

10 166. Renfrow, during this period, was being paid by BDP and financially
11 supported as a consultant.

12 167. Renfrow was unjustly enriched by these payments as he was not acting in
13 BDP's interests and not performing adequately during his tenure as a consultant to BDP.

14 168. As a result of Renfrow's actions, BDP has been damaged in an amount to be
15 proven at trial.

16 **COUNT THIRTEEN**

17 **(Tortious interference with contractual relations against E.P., Clear Solutions, and** 18 **Renfrow)**

19 169. BDP hereby repeats and incorporates by reference each and every allegation
20 of this Complaint as if herein alleged again in full.

21 170. BDP has an ongoing contractual and business relationship with one of its
22 customers, Micro-Matic, a manufacturer and supplier of draft beer equipment.

23 171. E.P., Clear Solutions, Renfrow, and Eagleburger were aware of BDP's
24 contractual and business relationship with Micro-Matic.

25 172. E.P., Renfrow, and Clear Solutions, intentionally and without justification,
26 interfered with BDP's relationship with Micro-Matic by: (1) misrepresenting to Micro-

1 Matic that E.P. and Renfrow had the ability to sell, and/or license certain technology to
2 BDP's competitors when, in fact, the technology is licensed exclusively to BDP; and (2)
3 misrepresenting to Micro-Matic that BDP named or will name them in a lawsuit.

4 173. E.P., Renfrow, and Eagleburger, intentionally and without justification,
5 forwarded a copy of the instant action accompanied by accompanied by correspondence
6 containing falsehoods about the respective rights of the parties, all before serving the
7 summons and complaint on BDP, and in an effort to interfere with BDP's business
8 relationship with Micro-Matic.

9 174. E.P., Renfrow, and Eagleburger, intentionally and without justification,
10 threatened Micro Matic with patent infringement resulting from continuing business with
11 BDP.

12 175. As a result of E.P., Clear Solutions, Renfrow, and Eagleburger's actions,
13 BDP has been damaged in an amount to be determined at trial.

14 **COUNT FOURTEEN**

15 **(Tortious interference with business expectancy against E.P., Renfrow, and Clear**
16 **Solutions)**

17 176. BDP hereby repeats and incorporates by reference each and every allegation
18 of this Complaint as if herein alleged again in full.

19 177. BDP has ongoing business relationships with certain suppliers and
20 customers.

21 178. E.P., Clear Solutions, Renfrow, and Eagleburger were aware of BDP's
22 business relationship with those suppliers and customers.

23 179. E.P., Clear Solutions, and Renfrow, intentionally and without justification,
24 interfered with BDP's relationship with those suppliers and customers by, *inter alia*,
25 misrepresenting to them that E.P., Renfrow, and Clear Solutions had the authority to sell
26 certain technology exclusively licensed to BDP.

1 180. E.P., Renfrow, and Eagleburger, on information and belief, intentionally and
2 without justification, interfered with BDP's relationship with those suppliers and
3 customers by, *inter alia*, forwarding a copy of the instant action to BDP's potential and
4 existing customers accompanied by correspondence containing falsehoods about the
5 respective rights of the parties, all before serving the summons and complaint on BDP, and
6 in an effort to interfere with BDP's business relationship with those suppliers and
7 customers.

8 181. Renfrow, intentionally and without justification, interfered with BDP's
9 relationship with those suppliers and customers by, *inter alia*, instructing at least one of
10 BDP's suppliers not to sell to BDP.

11 182. As a result of E.P., Clear Solutions, Renfrow, and Eagleburger's actions,
12 BDP has been damaged in an amount to be determined at trial.

13 **COUNT FIFTEEN**

14 **(Conversion against Clear Solutions and Renfrow)**

15 183. BDP hereby repeats and incorporates by reference each and every allegation
16 of this Complaint as if herein alleged again in full.

17 184. Clear Solutions was a sub-licensee of certain technology as a result of the
18 Sub-License Agreement.

19 185. BDP terminated the Sub-License Agreement based on Clear Solutions'
20 breach of that Agreement.

21 186. Subsequent to the termination, Clear Solutions, and Renfrow, both
22 individually and on behalf of Clear Solutions, continued to market and sell the technology
23 despite the fact that BDP held an exclusive license thereto.

24 187. As a result of Defendants' actions, BDP has been damaged in an amount to
25 be proven at trial.

COUNT SIXTEEN

(Abuse of process against E.P. and Renfrow)

188. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

189. On or about January 3, 2006, E.P. and Renfrow filed the instant action in this Court.

190. Subsequent to the commencement of the action, E.P., Renfrow, and Eagleburger committed willful acts that were not proper in the use of such process.

191. The act, or acts, of misuse were, *inter alia*, prior to serving the summons and complaint on BDP, E.P., Renfrow, and Eagleburger forwarding a copy of the complaint to potential and current BDP suppliers and customers accompanied by correspondence containing falsehoods about the respective rights of the parties, all in an effort to induce those suppliers and customers to cease doing business and/or negotiations with BDP.

192. E.P., Renfrow, and Eagleburger had an ulterior motive in the abuse of process because they hold an ownership interest in Clear Solutions, a company that competes with BDP with regard to the Products and other technology, and a former sub-licensee of BDP.

193. As a result of E.P., Renfrow, and Eagleburger's misuse of process, BDP has been damaged in an amount to be proven at trial.

194. E.P., Renfrow, and Eagleburger's abuse of process was willful and wanton and committed with malice and reckless disregard of the rights of BDP, and, as a result, BDP is entitled to recover punitive damages in an amount to be determined by this Court in its discretion at trial.

COUNT SEVENTEEN

(Declaratory Judgment for non-infringement of U.S. Patent Nos. 6,555,511 and 6,855,679)

195. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

196. This action arises under the Federal Declaratory Judgment Statute, namely, 28 U.S.C. § 2201.

197. This is an action arising under the patent laws of the United States of America, namely, 35 U.S.C. § 271.

198. An actual dispute and/or controversy exists between the parties.

199. Jurisdiction is proper with this court pursuant to 28 U.S.C. § 1338(a).

200. Venue is proper with this court pursuant to 28 U.S.C. § 1400(b).

A. Non-Infringement of U.S. Patent No. 6,855,679.

201. BDP hereby repeats and incorporates by reference all of the responses and allegations set forth above.

202. On or about February 15, 2005, Renfrow had issued to him U.S. Patent No. 6,855,679 pertaining to a detergent composition developed for and on behalf of BDP.

203. The '679 patent is directed to a detergent blend which, for its uniqueness, relies upon a specific blend of an amphoteric sultaine surfactant hydrotope and a fluorinated surfactant which surfactant is a 50/50 weight mixture of two types of phosphonic acid-based perfluoro compounds.

204. During the course of the prosecution of this application it was necessary, in order to obtain issuance of the patent, that the claims of this patent be limited to the specific fluorinated surfactant blend and the specific hydrotope.

1 205. During the course of the relationship between the parties, Renfrow initiated a
2 change in the formulation of the products which he designed for BDP to such an extent to
3 bring the formulation outside the scope of the '679 Patent.

4 206. The present composition is being manufactured and sold by BDP based on
5 Renfrow's own revised formulation and does not include such fluorinated surfactant blend
6 and, due to the principals of file history estoppel, Renfrow cannot now seek to expand the
7 scope of the patent to include the surfactant blend of '679 patent.

8 207. E.P. and Renfrow's knowingly false assertions to customers that the BDP
9 formulations fall within the scope of the patents have caused and are continuing to cause
10 irreparable harm and unless enjoined by this court will continue to do so.

11 208. BDP is without adequate remedy at law.

12 **B. Non-Infringement of U.S. Patent No. 6,855,511.**

13 209. BDP hereby repeats and incorporates by reference each and every allegation
14 of this Complaint as if herein alleged again in full.

15 210. On or about April 29, 2003, Renfrow had issued to him U.S. Patent No.
16 6,555,511 which is directed to a detergent composition having specific components,
17 namely, an alcohol alkoxylate nonionic surfactant and an amphoteric sultaine-based
18 hydrotrope.

19 211. During the course of the relationship between the parties, Renfrow and BDP
20 created certain formulations which do not contain alcohol alkoxylate nonionic surfactant.
21 However, the '511 patent requires two nonionic surfactants, one having a cloud point less
22 than 14°C and second having a cloud point greater than 40°C.

23 212. The present compositions being manufactured and sold by BDP are based on
24 Renfrow's own revised formulations which, as noted, do not include such a mixture of
25 nonionic surfactants and, due to the principals of file history estoppel, Renfrow cannot
26 now seek to expand the scope of the patent to include such surfactants.

1 213. Renfrow, knowing full well that the formulations being sold by BDP are
2 outside the scope of the patent, has threatened and continues to threaten customers with
3 patent infringement knowing the falsity of such assertions, and as a consequence thereof,
4 has caused and will continue to cause irreparable harm to BDP unless enjoined by the
5 court.

6 214. BDP has no adequate remedy at law.

7 **C. Invalidity of the '511 Patent.**

8 215. BDP hereby repeats and incorporates by reference all of the responses and
9 allegations set forth above.

10 216. According to the specification of the '511 Patent, it is necessary that there be
11 two alcohol alkoxyate nonionic surfactants present in the detergent thereof.

12 217. Claim 1 of the '511 Patent is invalid pursuant to the principles of 35 U.S.C.
13 § 112 for failure to particularly point out and distinctly claim that which the applicant
14 regards as the invention.

15 218. Claim 1 of the patent does not recite the presence of two surfactants but only
16 one. However, the one such surfactant cannot have both a cloud point less than 14°C and a
17 cloud point greater than 40°C. As a matter of law such patent is, therefore, invalid and
18 unenforceable.

19 219. Therefore, BDP is entitled to declaratory judgment that: (1) BDP does not
20 infringe U.S. Patent No. 6,855,679; (2) BDP does not infringe U.S. Patent No. 6,555,511;
21 (3) U.S. Patent No. 6,555,511 is not valid; (4) E.P. and Renfrow having knowingly falsely
22 asserted these patents against BDP and its customers thereby renders this case exceptional
23 within the meaning of the Patent Statutes; (5) BDP is entitled to attorney fees and costs
24 incurred as a consequence of having to bring this action; and (6) E.P. and Renfrow, jointly
25 and severally, and all others acting in concert therewith be and are hereby enjoined, both
26

1 preliminarily and permanently, from asserting in any manner whatsoever that BDP
2 infringes in any way U.S. Patent Nos. 6,855,679 or 6,555,111.

3 220. Plaintiff seeks this declaratory judgment as a remedy in aid of its other
4 claims herein.

5 **COUNT EIGHTEEN**

6 **(Declaratory judgment against all Defendants)**

7 221. BDP hereby repeats and incorporates by reference each and every allegation
8 of this Complaint as if herein alleged again in full.

9 222. A justiciable dispute has arisen regarding the parties' relative rights pursuant
10 to certain technology, written and oral agreements, and at-will relationships described in
11 this Complaint.

12 223. A case of actual controversy exists and BDP is, therefore, entitled to
13 declaratory judgment pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57.

14 224. BDP seeks this declaratory judgment as a remedy in aid of its other claims
15 herein.

16 **COUNT NINETEEN**

17 **(Punitive damages against all Defendants)**

18 225. BDP hereby repeats and incorporates by reference each and every allegation
19 of this Complaint as if herein alleged again in full.

20 226. Defendants' conduct was willful, wanton and/or malicious, or done with
21 reckless disregard to the interests of BDP. It was based on spite, pettiness, ill will, or
22 some other unlawful basis, designed to injure, harass, harm, humiliate, and put BDP in an
23 unfavorable light.

24 227. The nature of Defendants' conduct requires that BDP be awarded punitive
25 damages in an amount to be determined by the trier of fact and sufficient to punish
26 Defendants' and to deter future similar conduct by Defendants and others.

COUNT TWENTY

(Preliminary and permanent injunction against all Defendants)

228. BDP hereby repeats and incorporates by reference each and every allegation of this Complaint as if herein alleged again in full.

229. Defendants continue to interfere with BDP's potential and existing business relationships with suppliers and customers.

230. Damages alone are an inadequate remedy at law. As part of the remedy necessary to make BDP whole and as a result of Defendants' conduct as alleged herein, this Court should enter a preliminary and permanent injunction, *inter alia*, prohibiting Defendants from interfering with BDP's potential and existing business relationships with their suppliers and customers.

WHEREFORE, BDP prays for relief against Defendants as follows:

1. For judgment in their favor on all counts of the Complaint;
2. For damages as may be proven;
3. For punitive damages;
4. For pre-judgment and post-judgment interest;
5. For their attorneys' fees and costs, as may be permitted by applicable law;
6. For declaratory judgment;
7. For preliminary and/or permanent injunction;
8. For such equitable relief as may be required; and
9. For such other and/or further relief as may be deemed fair and equitable under the circumstances.

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1 RESPECTFULLY SUBMITTED this 12th day of April, 2006.

2 GALBUT & HUNTER
3 A Professional Corporation

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on April 12th, 2006 I electronically filed the foregoing with the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following e-mail address:

G. Gregory Eagleburger
ggelaw@aol.com

s/ Martin R. Galbut