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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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3FORM, INC., a Utah corporation,

Plaintiff,

v.

DANNY YEHIA, an individual; GROSVENOR  
WESTERN TECHNOLOGIES, INC., a  
Washington company,

Defendants.

**COMPLAINT**

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

Judge \_\_\_\_\_

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**NATURE OF THIS CASE**

1. Plaintiff 3form, Inc. ("**3form**") is a Utah corporation that manufactures building materials and architectural hardware solutions. Central to 3form's business is its resin-based line of products.

2. In October 2002, 3form contracted with Grosvenor Western Technologies, Inc. ("**Grosvenor**") and Danny Yehia ("**Yehia**") (collectively "**Defendants**") as a Sales Representative. In October 2002, Defendants and 3form entered into a Sales

Representative Agreement. In October 2004, the Parties entered into another Sales Representative Agreement (the “**Sales Representative Agreement**”) that was substantially similar to the 2002 agreement, but contained, among other things, a renewal provision on the term of the agreement.

3. On October 21, 2004, and in consideration for the contractual relationship with 3form, Defendants were required to enter into a Proprietary Information and Inventions and Noncompetition Agreement with 3form (the “**Noncompetition Agreement**”). Among other things, the Noncompetition Agreement prohibits Defendants from disclosing 3form’s proprietary information and from selling, marketing, distributing or manufacturing resin-based architectural products.

4. After over six years of being immersed in 3form’s business and being provided with access to its clients and most confidential business information – all in reliance on the Noncompetition Agreement – Defendants have decided that they do not need to honor the Noncompetition Agreement. As described below, 3form has learned that Defendants are currently working with a 3form supplier on a resin-based line of products in competition with 3form.

5. Defendants’ conduct violates the Noncompetition Agreement, established common law governing fair and appropriate competition, and statutory law in Utah addressing the theft of trade secrets.

6. 3form has also learned that Defendants are currently infringing 3form’s patent rights by making, using, selling and/or offering to sell, or inducing or contributing to the infringement of the below-mentioned patent in the United States, including the

state of Utah, one or more of the Accused Products that are covered by one of more of the claims of the below-mentioned patent.

### **THE PARTIES**

7. Plaintiff 3form is a Utah corporation with its principal place of business in Salt Lake County, Utah. 3form manufactures building materials and architectural hardware solutions. Central to 3form's business is its resin-based line of products.

8. Upon information and belief, Defendant Danny Yehia is an individual and a resident of Vancouver, British Columbia. At the time he was hired by 3form, and as a condition of his employment, Yehia signed the Noncompetition Agreement.

9. Upon information and belief, Defendant Grosvenor Western Technologies, Inc. is a Washington corporation. Yehia is the President of Grosvenor. Upon information and belief, Yehia is the sole officer and/or has a controlling membership and management interest in Grosvenor.

### **JURISDICTION AND VENUE**

10. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35 of the United States Code.

11. Subject-matter jurisdiction over 3form's claims is conferred upon this Court by 28 U.S.C. §§ 1331, 1338(a).

12. On information and belief, Defendants have solicited business in the State of Utah, transacted business within the State of Utah and attempted to derive financial benefit from residents of the State of Utah, including benefits directly related to the

instant patent infringement, breach of contract, breach of duty of good faith and fair dealing, theft of trade secrets and unjust enrichment causes of action set forth herein.

13. On information and belief, Defendants have placed their infringing products into the stream of commerce and/or advertised or offered to sell their products, throughout the United States, which products have been offered for sale, sold and/or used in the State of Utah and/or in the District of Utah.

14. Defendants have committed acts of infringement in this judicial district, are subject to personal jurisdiction in this judicial district, and/or are doing business in this judicial district.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and/or 1400.

### **GENERAL ALLEGATIONS**

16. 3form was built on hard work and the hard-earned development of loyal customer relationships. Its goodwill comes from these client relationships and customer service, as well as through its ability to manufacture quality building materials. With this investment of time, effort and money, and with the gradual development of trade secrets and confidential information, 3form has spent years building itself into the leading manufacturer of sustainable building materials and architectural hardware solutions for the Architecture and Design industry.

17. Over the years, 3form has created valuable trade secrets and other proprietary information which it continues to rely on in its business. 3form has also

created and seeks to maintain substantial and valuable goodwill in this industry, including with its customers, which cannot be easily monetized as damages or otherwise.

18. In order to protect its trade secrets, its confidential and proprietary business information, and its valuable goodwill, 3form entered into the Noncompetition Agreement with Defendants. (A true and correct copy of the Noncompetition Agreement is attached hereto as Exhibit A.)

19. Based on the covenants and promises made in the Noncompetition Agreement, 3form provided an opportunity for Defendants to represent and sell the 3form line of products and enjoy substantial freedom in activities related to sales and marketing of such products.

20. As a result of Defendants' position as a sales representative, and based on Defendants' covenants and promises to 3form, Defendants were able to develop relationships on behalf of 3form with key clients and suppliers worldwide.

21. Defendants became intimately familiar with 3form's business model, plans, strategies, pricing, customers, customer lists, and products, among other things.

22. The Noncompetition Agreement signed and agreed to by Defendants in October 2004 recognizes and seeks to protect 3form's confidential business information and its investment and hard-earned position in this industry.

23. Paragraph 2 of the Noncompetition Agreement provides, in part:

I agree that all Inventions and all other business, technical and financial information (including, without limitation, the identity of and information relating to customers or employees) I develop, learn or obtain during the

term of my contractual relationship that relate to the Company or business or that are received by or for the Company in confidence, constitute “*Proprietary Information.*” I will hold in confidence and not disclose or, except within the scope of my contractual relationship, use any Proprietary Information.

24. Paragraph 4 of the Noncompetition Agreement provides, in part: [W]hile performing services for Company and for a period of one year after the date of my termination of my services for the Company . . . , I, in further consideration of the Company’s agreement to utilize my services, agree not to engage, personally or as an employee or independent contractor of any other business organization, in selling, marketing, distributing or manufacturing resin-based architectural products (including PETG, acrylic, polycarbonate and others),nor shall I induce any of the Company’s employees or independent contractors to engage in any such activity.

25. Paragraph 4 of the Noncompetition Agreement also contains an acknowledgment by Defendants that the “covenant not to compete is reasonable as to time and does not place any unreasonable burden on [Defendants] . . . .”

26. Paragraph 7 of the Noncompetition Agreement provides, in part, that “[a]ny dispute in the meaning, effect or validity of [the Noncompetition Agreement] shall be resolved in accordance with the laws of the State of Utah without regard to the conflict of laws provisions thereof.”

27. In January 2011, 3form sent Defendants a written notice of termination of the Sales Representative Agreement. In the written notice, 3form reminded Defendants of the continuing restrictions and covenants of the Noncompetition Agreement.

28. Despite the plain language of the Noncompetition Agreement, upon information and belief, Defendants are currently working with a 3form supplier on a resin-based line of products in competition with 3form. This is in direct violation of the Noncompetition Agreement.

29. Furthermore, Defendants' acts are likely in violation of the Utah Trade Secret Act (the "UTSA").

30. At or around the time of Defendants' termination from 3form, Defendants had ordered products from 3form in the amount of \$37,147.89.

31. 3form delivered the products to Defendants. Defendants, however, failed to make full payment for the products. Defendants owe 3form \$20,833.62 for the products provided to Defendants by 3form.

### **ACCUSED PRODUCTS**

32. On information and belief, Defendants make, use, offer to sell, or sell architectural products with thatch reed designs or imitations of thatch reed designs in the United States.

33. On information and belief, Defendants make, sell and/or offer for sale or allow others to make, use, sell and/or offer for sale infringing products, including, but not limited to, various architectural products with thatch reed designs or imitations of thatch reed designs that infringe the patent described below.

34. Defendants' products referenced above are collectively referred to hereinafter as "the Accused Products."

35. The Accused Products do not necessarily represent an exhaustive list, and additional products may be added pending further discovery.

### **3FORM'S INTELLECTUAL PROPETY**

36. 3form owns U.S. Design Patent No. 621,068 (the "'068 Patent") entitled "Architectural Panel with Thatch Reed Design," a copy of which is attached as Exhibit B. On information and belief, Defendants have infringed and continue to infringe the '068 Patent by making, using, selling and/or offering to sell, or inducing or contributing to the infringement of the '068 Patent in the United States, including the state of Utah, one or more of the Accused Products that are covered by one or more of the claims of the '068 Patent.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF (Breach of Contract)**

37. 3form incorporates all prior and subsequent allegations relevant to this claim for relief.

38. By the foregoing conduct, Defendants have breached the Noncompetition Agreement, including but not limited to covenants not to compete and covenants not to use or disclose proprietary information of 3form.

39. Defendants' breaches were knowing, intentional and willful.



40. 3form has performed its duties under the Noncompetition Agreement and the Sales Representative Agreement.

41. As a result of Defendants' breaches, 3form has been damaged in an amount to be elected and determined at trial.

**SECOND CLAIM FOR RELIEF  
(Breach of Duty of Good Faith and Fair Dealing)**

42. 3form incorporates all prior and subsequent allegations relevant to this claim for relief.

43. The Noncompetition Agreement and Sales Representative Agreement carries a duty of good faith and fair dealing.

44. Defendants received significant benefits under the Sales Representative Agreement and Noncompetition Agreement but, by their misconduct, have taken actions that deprive 3form of benefits fairly and reasonably expected under these agreements.

45. Defendants have breached their duty of good faith and fair dealing to 3form.

46. Defendants' breaches were knowing, intentional and willful.

47. As a result of Defendants' breaches, 3form has been damaged in an amount to be elected and determined at trial.

**THIRD CLAIM FOR RELIEF**  
**(Theft of Trade Secrets)**

48. 3form incorporates all prior and subsequent allegations relevant to this claim for relief.

49. At all relevant times, 3form possessed confidential and trade secret information as defined by the Utah Uniform Trade Secret Act, Utah Code Ann. § 13-24-1, as described herein, including but not limited to client lists and client information, client contract information (current and historical) related to 3form's services, work in progress, pricing lists and pricing information, business plans and strategies, resource lists and information, market and marketing plans and processes, vendor identities, costing and competitive pricing and margins used to provide quotes and attract bids, and information relating to 3form's resin-based products.

50. The confidential and proprietary information described herein constitutes 3form's trade secrets because 3form derives independent economic value, both actual and potential, from such information not being generally known by nor readily ascertainable by the public or other persons, including its competitors.

51. 3form's competitors would obtain economic value from disclosure and/or use of 3form's trade secrets and confidential business information.

52. At all relevant times, 3form undertook reasonable efforts to maintain the secrecy of such information such that it was not generally known in the industry. Such steps include but are not limited to entering the Noncompetition Agreement with Defendants.

53. As a result of Defendants' status as a Sales Representative at 3form, Defendants had access to and continues to possess 3form's most valuable and sensitive trade secrets and confidential information. Upon information and belief, Defendants have used this information to work with a 3form competitor on a resin-based line of products.

54. Defendants have thus misappropriated and will continue to misappropriate 3form's trade secrets by improper means.

55. Defendant knew at all relevant times that the information acquired and being used by Defendants was the trade secret and proprietary information of 3form and that their existed a duty to maintain its secrecy.

56. As a proximate result of Defendants actual and threatened misappropriation of trade secrets and confidential information, 3form has suffered and will continue to suffer damages in an amount to be determined at trial.

57. As a proximate result of Defendants actual and threatened misappropriation of trade secrets and confidential information, Defendants have been unjustly enriched and 3form is entitled to recover damages in an amount to be proven at trial.

58. As a proximate result of Defendants actual and threatened misappropriation of trade secrets and confidential information, 3form has suffered and will continue to suffer irreparable harm and loss of goodwill. As a result, Defendants should be restrained and enjoined by the Court as allowed by Utah Code Ann. § 13-24-3(3).

59. Defendants' conduct is intentional, malicious, and oppressive justifying an award of exemplary or punitive damages and attorneys fees.

**FOURTH CLAIM FOR RELIEF  
(Unjust Enrichment)**

60. 3form incorporates all prior and subsequent allegations relevant to this claim for relief.

61. Defendants knowingly received products from 3form.

62. The retention of these products by Defendants is under such circumstances that it is inequitable for Defendants to retain such products without payment of their value.

63. The principles of justice, equity and good conscience dictate that Defendants pay the amounts that it owes to 3form for providing the aforementioned products.

64. 3form is entitled to a judgment sufficient to disgorge Defendants of the amounts by which they have been unjustly enriched in an amount to be proven at trial but not less than \$20,833.62.

**FIFTH CLAIM FOR RELIEF  
(Patent Infringement)**

65. 3form incorporates all prior and subsequent allegations relevant to this claim for relief.

66. On August, 3, 2010, the '068 Patent was duly and legally issued to the assignee, 3form.

67. Upon information and belief, Defendants have infringed and continue to infringe the '068 Patent by making, using, selling and/or offering to sell, or inducing or contributing to the infringement of the '068 Patent in the United States, including the state of Utah, one or more of the Accused Products that are covered by the claims of the '068 Patent.

68. Defendants are liable for infringement of the '068 Patent pursuant to 35 U.S.C. § 271.

69. Defendants' acts of infringement have caused damage to 3form, and 3form is entitled to recover from the Defendants the damages sustained by 3form as a result of the Defendants' wrongful acts in an amount subject to proof at trial.

70. As a consequence of the infringement complained of herein, 3form has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by this Court from committing further acts of infringement.

71. Upon information and belief, one or more of the Defendants' acts of infringement were made or will be made with knowledge of the '068 Patent. Such acts constitute willful infringement and make this case exceptional pursuant to 35 U.S.C. § 284 and 285 and entitle 3form to enhanced damages and reasonable attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, 3form prays for relief and an order against Defendants as follows:

1. For all consequential and compensatory damages proximately caused by Defendants' conduct and breaches;

2. That Defendants (along with their agents or any other person in active concert or participation with them), be enjoined by way of a permanent injunction from:
  - (a) competing with 3form in developing, selling, marketing, distributing or manufacturing resin-based architectural products;
  - (b) soliciting, contacting or otherwise communicating or accepting as a client any customer of 3form;
  - (c) using or disclosing any of 3form's confidential information or trade secrets; and,
  - (d) destroying or disposing of all information and documents, including electronically stored information and email, that may be relevant to the issues in dispute in this lawsuit;
3. For all relief and damages provided under the Sales Representative Agreement and Noncompetition Agreement;
4. For disgorgement or restitution of any ill-gotten gains and profits;
5. For an award of damages based on Defendants' unjust enrichment in an amount to be proven at trial but in no event less than \$20,833.62;
6. For exemplary and punitive damages;
7. Judgment that Defendants have each infringed the '068 Patent;
8. An order requiring Defendants to account for and pay to 3form all damages caused by their infringement of the '068 Patent, whether lost profits or a reasonable royalty, and to enhance such damages by three times in light of Defendants' willful infringement, all in accordance with 35 U.S.C. § 284;

9. Entry of a permanent injunction pursuant to 35 U.S.C. § 283 enjoining Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;
  10. An order that 3form be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' patent infringement;
  11. A declaration by the Court that this is an exceptional case and that 3form be granted its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
  12. For costs of suit, including reasonable attorneys' fees as permitted by contract or by applicable law;
  13. For other equitable or injunctive relief as may be necessary or appropriate;
- and
14. For such other relief as the Court deems just and proper.

DATED this 3rd day of May, 2011.

RAY QUINNEY & NEBEKER PC

/s/ D. Zachary Wiseman

D. Zachary Wiseman

*Attorneys for Plaintiff 3form, Inc.*

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