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UNITED STATES DISTRICT COURT
EASTERN DISTRICT CALIFORNIA
FRESNO DIVISION

* * *

Deerpoint Group, Inc., an Illinois Corporation,
Plaintiff,

vs.

Acqua Concepts, Inc. (DBA Ag Water
Chemical of California), a California
Corporation;

Mr. Andres Barrera, an Individual;

Mr. Eduardo Erenas, an Individual; and

Does 1-10.

Defendants.

Case No.

COMPLAINT FOR:

- 1) PATENT INFRINGEMENT (No. 6,238,573)
- 2) PATENT INFRINGEMENT (No. 7,638,064)
- 3) MISAPPROPRIATION OF TRADE SECRETS
- 4) BREACH OF CONFIDENTIALITY AGREEMENTS

JURY TRIAL DEMANDED

1. Plaintiff Deerpoint Group, Inc. (“Plaintiff”) complains against Acqua Concepts, Inc. (DBA Ag Water Chemical of California), a California Corporation (“Acqua”); Mr. Andres Barrera (“Barrera”), and Mr. Eduardo Erenas (“Erenas”) (collectively “Defendants”) as follows:

Nature of the Action

2. This is an action against Defendants seeking, among other things, the following: 1) damages and injunctive relief for Defendants’ infringement of Plaintiff’s patents; 2) damages and injunctive relief for Defendants’ misappropriation of Plaintiff’s trade secrets; and 3) damages from Defendants Eduardo Erenas and Andres Barrera for breach of confidentiality agreements.

1 **The Parties**

2 3. Plaintiff is a corporation organized and existing under the laws of the State of
3 Illinois with its principal place of business at 4339 N. Selland Ave., Fresno, CA 93722. Plaintiff
4 provides water treatment for agricultural users and Plaintiff installs hardware to maintain a
5 turnkey system involving the use of chemicals, monitoring, and chemical feed equipment, which
6 is maintained and monitored by Plaintiff.

7 4. Defendant Acqua is a corporation organized and existing under the laws of the
8 State of California with its principal place of business at 2665 S. Chestnut, Fresno, CA 93725.
9 Defendant Acqua provides water treatment services to agricultural users in California.

10 5. On information and belief, Defendant Barrera is an individual residing in Fresno
11 County, CA, and is a former employee of Plaintiff. On information and belief, Barrera is
12 currently an employee of Acqua.

13 6. On information and belief, Defendant Erenas is an individual residing in Fresno
14 County, CA, and is a former employee of Plaintiff. On information and belief, Barrera is
15 currently an employee of Acqua.

16 **Jurisdiction and Venue**

17 7. This is an action for patent infringement, misappropriation of trade secrets, and
18 breach of confidentiality agreements. The patent infringement action arises under the laws of
19 United States, 35 U.S.C §§ 271 and 281, therefore this court has subject matter jurisdiction
20 pursuant to 28 U.S.C. §§ 1331, 1338(a). The Court has supplemental jurisdiction under 28
21 U.S.C. § 1367(a) for Plaintiff's related claims under California law, as the related claims arise
22 from the same case or controversy.

23 8. Defendant Acqua is subject to personal jurisdiction in this judicial district because
24 it maintains its principal place of business in this district.

25 9. On information and belief, Defendant Barrera is subject to personal jurisdiction in
26 this judicial district because he resides in Fresno County, CA and otherwise has substantial,
27 systematic and continuous contacts with this district. On information and belief, at least some of
28 the actions of Defendant Barrera took place in Fresno County

1 and Erenas have both been hired by Defendant Acqua and have breached their confidentiality
2 agreements with Plaintiffs.

3 **FIRST CLAIM**

4 Infringement of U.S. Patent No. 6,238,573

5 (Against All Defendants)

6 15. All of the allegations in the foregoing paragraphs are re-alleged and incorporated
7 herein by this reference.

8 16. In violation of 35 U.S.C. § 271, all Defendants have infringed and continue to
9 infringe (directly, contributorily, and/or by actively inducing others to infringe) the '573 patent
10 by making, using, importing, servicing, offering for sale, and/or selling services/products, to
11 customers throughout the United States, which products embody the patented method(s) or
12 systems set forth in the '573 patent. All Defendants have infringed against Claims 1-8 in Patent
13 '573. All Defendants continue to engage in this infringing activity and, based upon information
14 and belief, will continue to do so unless enjoined by this Court.

15 17. The Defendants' infringement of the '573 patent has irreparably damaged
16 Plaintiff, and will cause added injury and loss unless enjoined by this Court.

17 18. The Defendants' infringement of the '573 patent has been, and continues to be
18 willful and deliberate.

19 **SECOND CLAIM**

20 Infringement of U.S. Patent No. 7,638,064

21 (Against All Defendants)

22 19. All of the allegations in the foregoing paragraphs are re-alleged and incorporated
23 herein by this reference.

24 20. In violation of 35 U.S.C. § 271, all Defendants have infringed and continue to
25 infringe (directly, contributorily, and/or by actively inducing others to infringe) the '064 patent
26 by making, using, importing, servicing, offering for sale, and/or selling services/products, to
27 customers throughout the United States, which products embody the patented method(s) set forth
28 in the '064 patent. All Defendants have infringed against Claims 1-5 in Patent '064. All

1 Defendants continue to engage in this infringing activity and, based upon information and belief,
2 will continue to do so unless enjoined by this Court.

3 21. The Defendants' infringement of the '064 patent has irreparably damaged
4 Plaintiff, and will cause added injury and loss unless enjoined by this Court.

5 22. The Defendants' infringement of the '064 patent has been, and continues to be
6 willful and deliberate.

7 **THIRD CLAIM**

8 Misappropriation of Trade Secrets, Uniform Trade Secrets Act, Civil Code § 3426, *et seq.*

9 (Against All Defendants)

10 23. All of the allegations in the foregoing paragraphs are re-alleged and incorporated
11 herein by this reference.

12 24. Plaintiff at all relevant times possessed trade secrets including but not limited to
13 confidential products and services, methods of operations, pricing, customer lists, as well as form
14 and label content (hereafter "Confidential Information").

15 25. The Confidential Information of Plaintiff is not generally known to the public or
16 to Plaintiff's competitors; Defendants Barrera and Erenas were both privy to this information
17 during their employment with Plaintiff.

18 26. Plaintiff's Confidential Information was created and compiled through years of
19 extensive research and development.

20 27. Plaintiff's Confidential Information has great economic value and gives Plaintiff a
21 competitive advantage over its competitors. Plaintiff has invested heavily to develop its
22 Confidential Information.

23 28. Plaintiff, at all times, took reasonable appropriate and adequate steps to protect its
24 trade secrets from misappropriation and public disclosure.

25 29. Defendant Barrera was employed by Plaintiff from approximately June 30, 2010
26 to June 6, 2012. As part of Defendant Barrera's position with Plaintiff as Operation Technician,
27 Defendant Barrera gained knowledge of Plaintiff's trade secrets including Confidential
28 Information. Defendant Barrera was aware that such information was confidential and valuable

1 to Plaintiff. Defendant Barrera signed a Confidentiality Agreement acknowledging that he
2 understood that Confidential Information was protected and specifically agreed to keep such
3 information confidential after he left work at Plaintiff.

4 30. Shortly after Defendant Barrera left Plaintiff, Defendant Barrera began to work
5 for Defendant Acqua. On information and belief, Defendant Acqua was aware that Defendant
6 Barrera possessed Confidential Information, including but not limited to confidential products
7 and services, pricing, customer lists, as well as form and label content. On information and
8 belief, Defendant Acqua, with assistance from Defendant Barrera began to utilize Plaintiff's
9 Confidential Information.

10 31. Defendant Erenas was employed by Plaintiff from approximately March 28, 2011
11 to March 26, 2013. As part of Defendant Erenas's position within Plaintiff as Technician,
12 Defendant Erenas gained knowledge of Plaintiff's trade secrets including Confidential
13 Information. Defendant Erenas was aware that such information was confidential and valuable to
14 Plaintiff. Defendant Erenas signed a Confidentiality Agreement acknowledging that he
15 understood that Confidential Information was protected and specifically agreed to keep such
16 information confidential after he left work at Plaintiff.

17 32. Shortly after Defendant Erenas left Plaintiff, Defendant Erenas began to work for
18 Defendant Acqua. On information and belief, Defendant Acqua was aware that Defendant
19 Erenas possessed Confidential Information, including but not limited to confidential products
20 and services, pricing, customer lists, as well as form and label content. On information and
21 belief, Defendant Acqua, with assistance from Defendant Erenas, began to utilize Plaintiff's
22 Confidential Information.

23 33. Upon information and belief, Defendants misappropriated Plaintiff's trade secrets,
24 including but not limited to confidential products and services, pricing, customer lists, as well as
25 form and label content, as herein alleged. Upon information and belief, Defendant Acqua hired
26 Defendant Erenas and Defendant Barrera with knowledge that they possessed trade secrets.
27 Defendants Erenas and Defendant Barrera disclosed trade secrets to Defendant Acqua.

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1 34. Plaintiff has suffered actual losses within the meaning of Civil Code § 3426.3(a)
2 as a direct and proximate result of Defendants' misappropriation of Plaintiff's trade secrets.

3 35. In the alternative, Plaintiff is entitled to a reasonable royalty within the meaning
4 of Civil Code § 3426.3(b) for Defendants' wrongful use of Plaintiff's trade secrets.

5 36. Upon information and belief, Defendants' misappropriation of Plaintiff's trade
6 secrets has been willful and malicious with the meaning of Civil Code §§ 3426.3(c) and 3426.4.

7 37. Therefore, in addition to Plaintiff's actual damages and Defendants' unjust
8 enrichment (as alleged above), Plaintiff is entitled to awards of: exemplary damages in an
9 amount not exceeding twice Plaintiff's recovery under Civil Code §§ 3426.3(a) and 3426.3(b),
10 according to proof at trial; and Plaintiff's attorneys' fees under Civil Code § 3426.4.

11 **FOURTH CLAIM**

12 Breach of Confidentiality Agreement

13 (Against Defendants Erenas and Barrera)

14 38. All of the allegations in the foregoing paragraphs are re-alleged and incorporated
15 herein by this reference.

16 39. On or about June 30, 2010 Barrera entered into an Employees Invention and
17 Secrecy Agreement with Plaintiff ("Confidentiality Agreement"), attached hereto as Exhibit C.
18 Barrera promised to abide by the terms of the Confidentiality Agreement, including to not
19 disclose information which is secret and confidential to Plaintiff. In paragraph 3 of the
20 Confidentiality Agreement, Barrera agreed not to "(a) disclose to any third party, (b) use, or (c)
21 publish any information which is secret and confidential to Company." The Confidentiality
22 Agreement defined confidential information to include "knowledge and data relating to
23 processes, machines, compounds and compositions, formulas, business plans, and marketing and
24 sales information originated, owned, controlled or possessed by Company."

25 40. Upon information and belief, Barrera breached his contractual obligations to
26 Plaintiff by, for example, misappropriating Plaintiff's Confidential Information as defined by the
27 Confidentiality Agreement, and subsequently disclosing that confidential information to Acqua.

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1 41. In exchange for signing the Confidentiality Agreement, Plaintiff agreed to
2 employee Barrera. Plaintiff has fully performed its obligations to Barrera under the
3 Confidentiality Agreement to the extent those obligations have not been excused by Barrera's
4 breaches thereof.

5 42. On or about March 28, 2011 Erenas entered into a Confidentiality Agreement
6 with Plaintiff, attached hereto as Exhibit D. Erenas promised to abide by the terms of this
7 Agreement, including to not disclose information which is secret and confidential to Plaintiff. In
8 paragraph 3 of the Confidentiality Agreement, Erenas agreed to not to "(a) disclose to any third
9 party, (b) use, or (c) publish any information which is secret and confidential to Company." The
10 Confidentiality Agreement defined confidential information to include "knowledge and data
11 relating to processes, machines, compounds and compositions, formulas, business plans, and
12 marketing and sales information originated, owned, controlled or possessed by Company."

13 43. Upon information and belief, Erenas breached his contractual obligations to
14 Plaintiff by, for example, misappropriating Plaintiff's Confidential Information, and
15 subsequently disclosing the Confidential Information to Acqua.

16 44. In exchange for signing the Confidentiality Agreement, Plaintiff agreed to
17 employee Erenas. Plaintiff has fully performed its obligations to Erenas under the Employees
18 Invention and Secrecy Agreement to the extent those obligations have not been excused by
19 Erenas' breaches thereof.

20 45. As a direct and proximate result of Erenas' and Barrera's breaches of the
21 Employees Invention and Secrecy Agreement(s), and the facts herein alleged, Plaintiff has
22 incurred damages according to proof. Such damages include, but are not limited to, unjust
23 enrichment.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays as follows:

26 46. On the First Claim against all Defendants, for judgment that all Defendants have
27 infringed the '573 patent;

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1 47. For judgment that Defendants' infringement of the '573 patent is, and has been,
2 willful and deliberate.

3 48. For temporary and permanent injunctive relief to enjoin all Defendants and those
4 in participation with or acting in concert with all Defendants from further infringement of the
5 '573 patent;

6 49. For an award of damages pursuant to 35 U.S.C. § 287 to compensate Plaintiff for
7 Defendants' infringement of the '573 patent;

8 50. For an award of treble damages pursuant to 35 U.S.C. § 284 by reasons of
9 Defendants' willful infringement of the '573 patent;

10 51. For an award of attorneys' fees, costs, and expenses incurred by Plaintiff pursuant
11 to 35 U.S.C. §§ 284 and 285, due to the exceptional circumstances presented by Defendants'
12 willful infringement of the '573 patent;

13 52. For interest, including prejudgment interest, as permitted by law, pursuant to 35
14 U.S.C. § 284;

15 53. On the Second Claim against all Defendants, for judgment that all Defendants
16 have infringed the '064 patent;

17 54. For judgment that Defendants' infringement of the '064 patent is, and has been,
18 willful and deliberate.

19 55. For permanent injunctive relief to enjoin all Defendants and those in participation
20 with or acting in concert with all Defendants from further infringement of the '064 patent;

21 56. For an award of damages pursuant to 35 U.S.C. § 287 to compensate Plaintiff for
22 Defendants' infringement of the '064 patent;

23 57. For an award of treble damages pursuant to 35 U.S.C. § 284 by reasons of
24 Defendants' willful infringement of the '064 patent;

25 58. For an award of attorneys' fees, costs, and expenses incurred by Plaintiff pursuant
26 to 35 U.S.C. §§ 284 and 285, due to the exceptional circumstances presented by Defendants'
27 willful infringement of the '064 patent;

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1 59. For interest, including prejudgment interest, as permitted by law, pursuant to 35
2 U.S.C. § 284;

3 60. On the Third Claim against all Defendants, for judgment that all Defendants
4 misappropriated Plaintiff's trade secrets in violation of California Civil Code § 3426, *et seq.*;

5 61. For an award of Plaintiff's actual losses within the meaning of California Civil
6 Code § 3426.3(a) suffered as a direct and proximate result of Defendants' misappropriation of
7 Plaintiff's trade secrets;

8 62. For an award of all Defendants' unjust enrichment within the meaning of
9 California Civil Code § 3426(a) obtained as a direct and proximate result of their
10 misappropriation of Plaintiff's trade secrets;

11 63. For an award, in the alternative, of reasonable royalty within the meaning of
12 California Civil Code § 3426(b) for Defendant's use of Plaintiff's trade secrets;

13 64. For an award of exemplary damages against Defendants in an amount not
14 exceeding twice Plaintiff's recovery under California Civil Code §§ 3426.3(a) and 3426.3(b),
15 according to proof at trial;

16 65. On the Fourth Claim against Defendants Erenas and Barrera, for all damages
17 proximately caused by their respective breaches of the Employees Invention and Secrecy
18 Agreement(s), including but not limited all other losses proximately caused by Erenas' and
19 Barrera's breach or which, in the ordinary course of things, would be likely to result from such
20 breaches such as Plaintiff's lost profits;

21 66. For such other and further relief as this Court may deem just and equitable

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DEMAND FOR JURY TRIAL

67. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury for all issues which are so triable.

Date: September 25, 2014

SUTTON HAGUE LAW CORPORATION



By _____

S. BRETT SUTTON
Attorneys for Plaintiff
Deerpoint Group, Inc.

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