

NORTH CAROLINA
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 03733

POLYTEC, INC.)
)
 Plaintiff,)
)
 vs.)
)
 RANDALL F. ANDREWS, ALCHEM)
 INCORPORATED, INDUSTRIAL AND)
 AGRICULTURAL CHEMICALS)
 INCORPORATED, BRENNTAG)
 SOUTHEAST, INC, PURE WATER)
 TECHNOLOGIES, LLC, DENISE K.)
 WOLCOTT and ROBERT WOLCOTT,)
)
 Defendants.)

NOTICE OF DESIGNATION OF ACTION
AS MANDATORY COMPLEX
BUSINESS CASE UNDER
N.C. GEN. STAT. § 7A-45.4

Pursuant to N.C. Gen. Stat. § 7A-45.4, Defendant Brenntag Southeast, Inc. (“Brenntag”) hereby designates the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, Brenntag, through counsel, hereby certifies that this action meets the following criteria for designation as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- _____ (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- _____ (2) Securities law.
- _____ (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- x (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- _____ (5) Intellectual property law.
- _____ (6) The Internet, electronic commerce, and biotechnology.

The following is a brief explanation of why this action falls within the category of N.C. Gen. Stat. 7A-45.4(a) checked above, as well as additional information that may be helpful to the

Court in determining whether the Business Court should retain jurisdiction of this matter:

1. This case is based on the alleged breach by Defendants Randall F. Andrews (“Andrews”), Alchem Incorporated (“Alchem”) and Industrial and Agricultural Chemicals Incorporated (“IAC”) (collectively, the “Andrews Defendants”) of a covenant not to compete contained in a settlement agreement and stock redemption agreement entered into between those parties and Plaintiff Polytec, Inc. (“Polytec”). Andrews is the former president and 50% shareholder in Polytec, and the agreement at issue arose out of a prior shareholder derivative suit against Andrews.

2. But Polytec has expanded the scope of its action beyond just the Andrews Defendants, asserting claims for tortious interference with contract, tortious interference with prospective economic advantage, civil conspiracy and unfair and deceptive trade practices against Brenntag – a competitor of Polytec’s in the chemical business – and others, none of whom were parties to the prior litigation or the agreement at issue.

3. By this suit, Polytec seeks to recover damages from Brenntag and the other Defendants and/or to enjoin Brenntag and the other Defendants from future competition, based on the agreement between Polytec and its former president, Andrews. Specifically, Polytec claims, inter alia, that Brenntag, its competitor, is liable to it in damages and/or subject to permanent injunction to the extent that Brenntag has allegedly been supplied materials by (i) the Andrews Defendants, who were parties to the agreement with Polytec, and/or (ii) Defendant Pure Water Technologies, LLC, a third-party entity with which Polytec does not even claim to have any non-compete agreement.

4. The resolution of this case involves several material issues of state unfair competition law including, inter alia, the enforceability and/or applicability of the non-compete

agreement in question to the challenged business transactions; the extent to which a non-compete can bind parties not in privity with the plaintiff, including the plaintiff's competitors in the marketplace; and the extent to which the justification of legitimate market competition provides a defense to claims of tortious interference.

5. The North Carolina Business Court regularly hears and decides matters involving issues similar to those likely to be the focus of this dispute. See, e.g., Covenant Equip. Corp. v. Forklift Pro, Inc., 2008 NCBC 10 (N.C. Super. Ct. 2008) (involving claims for, among other things, breach of a restrictive covenant, tortious interference with contract, civil conspiracy, unfair/deceptive trade practices); Better Bus. Forms & Prods. v. Craver, 2007 NCBC 34 (N.C. Super. Ct. 2007) (involving claims for, among other things, breach of a restrictive covenant, tortious interference with contract, punitive damages, unfair/deceptive trade practices and injunctive relief); Digital Recorders, Inc. v. McFarland, 2007 NCBC 23 (N.C. Super. Ct. 2007) (denying injunctive relief to enforce covenant not to compete and involving claims for, among other things, tortious interference with contract, breach of contract and unfair and deceptive trade practices).

6. The Complaint in this case was filed on October 9, 2009 and served on Brenntag on October 19, 2009, so this Notice of Designation is timely pursuant to N.C. Gen. Stat. § 7A-45.4(d)(3).

A copy of all pleadings listed in N.C. R. Civ. P. 7(a) that have been filed to date in this action are attached hereto as Appendix A for the convenience of the Court. For the foregoing reasons, Brenntag designates this action as a mandatory complex business case, which should be adjudicated in the North Carolina Business Court.

Respectfully submitted this 13th day of November, 2009.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

By: _____

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ATTORNEYS FOR DEFENDANT BRENN TAG
SOUTHEAST, INC.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Notice of Designation has been served on all parties by regular mail, addressed as follows, with email copies provided to counsel of record:

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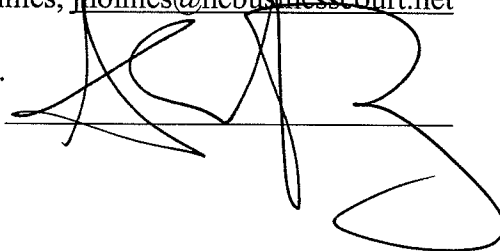
Defendant Pure Water Technologies, LLC
c/o Denise K. Wolcott, Registered Agent
Defendant Denise K. Wolcott
Defendant Robert Wolcott
3105 Sides Road
Rockwell, NC 28138

This is to further certify that the foregoing Notice of Designation has been served on the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Business Court by email directed as follows:

Hon. Sarah Parker, Chief Justice
North Carolina Supreme Court
Attn: David Hoke, David.F.Hoke@nccourts.org

Hon. Ben F. Tennille, Chief Judge
North Carolina Business Court
Attn: Julie Holmes, jholmes@ncbusinesscourt.net

This the 13th day of November, 2009.

A handwritten signature in black ink, appearing to be 'J. Holmes', written over a horizontal line. The signature is stylized and somewhat cursive.

APPENDIX A

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-CVS-_____

POLYTEC, INC.


Plaintiff,

vs.

RANDALL F. ANDREWS; ALCHEM
INCORPORATED; INDUSTRIAL &
AGRICULTURAL CHEMICALS,
INCORPORATED; BRENNTAG
SOUTHEAST, INC.; PURE WATER
TECHNOLOGIES, LLC; DENISE K.
WOLCOTT and ROBERT WOLCOTT,

Defendants.

9CV 03733

BY 
IREDELL COUNTY, C.S.C.
2009 OCT -9 AM 10:11
FILED

COMPLAINT
(Jury Trial Demanded)

COMES NOW, Plaintiff Polytec, Inc., complaining of the Defendants and alleges and says as follows:

PARTIES AND JURISDICTION

1. Polytec, Inc. ("Polytec") is a corporation organized and existing under the laws of the State of North Carolina and has its place of business and principal office at 191 Barley Park Lane, Mooresville, Iredell County, North Carolina.
2. Upon information and belief, Defendant Randall F. Andrews ("Andrews"), is a citizen and resident of Robeson County, North Carolina.
3. Alchem Incorporated ("Alchem") is a corporation organized and existing under the laws of the State of North Carolina. Andrews is the registered agent for service of process upon Alchem.

4. Upon information and belief, Industrial and Agricultural Chemicals, Incorporated (“IAC”) is a corporation organized and existing under the laws of the State of North Carolina. Andrews is the registered agent for service of process upon IAC.

5. Upon information and belief, Brenntag Southeast, Inc. (“Brenntag”), is a corporation organized and existing under the laws of the State of North Carolina and having an office and principal place of business in Durham County, North Carolina. CT Corporation System is the registered agent for service of process upon Brenntag.

6. Upon information and belief, Pure Water Technologies, LLC (“Pure Water”), is a North Carolina limited liability company. Denise K. Wolcott is the registered agent for service of process upon Pure Water.

7. Upon information and belief, Denise K. Wolcott (“D. Wolcott”), is a citizen and resident of Rockwell, Rowan County, North Carolina. At all times relevant hereto, Wolcott was an employee of Alchem or IAC and was the manager for Pure Water.

8. Upon information and belief, Robert Wolcott (“R. Wolcott” or, with D. Wolcott, the “Wolcotts”), is a citizen and resident of Rockwell, Rowan County, North Carolina. At all times relevant hereto, Wolcott was an employee of Alchem or IAC and Pure Water.

NATURE OF THIS ACTION

9. Paragraphs 1 through 8 above are incorporated herein by reference.

10. By this Complaint, Polytec seeks (1) to enforce against Andrews, IAC and Alchem a covenant not to compete (“Non-Competition Covenant”) contained in a settlement agreement and stock redemption agreement between Polytec and Andrews, IAC and Alchem (the “Settlement Agreement”), and also seeks to enjoin Co-Defendants, Brenntag, Pure Water and the Wolcotts from assisting Andrews, Alchem and IAC from violating the Non-Competition Covenant.

11. By this Complaint, Polytec also seeks the following additional relief:
 - a. Equitable tolling of the applicable term of the Non-Competition Covenant from the date of the last breach of that Covenant by Defendants Andrews, IAC and/or Alchem;
 - b. Permanent injunctive relief preventing Andrews, IAC and Alchem from violating the Non-Competition Covenant, directly or indirectly through Brenntag, Pure Water and/or the Wolcotts during the term of the Non-Competition Covenant as equitably tolled;
 - c. Damages from Andrews, IAC and/or Alchem resulting from their breaches of contract and unfair and deceptive trade practices including, but not limited to, recovery from and full forfeiture by Andrews of monies paid to Andrews for redemption of his stock, including damages up to three and half million dollars (\$3,500,000.00);
 - d. Claims against Brenntag, Pure Water and the Wolcotts for Tortious Interference with Contract; and
 - e. Claims against the Defendants for Tortious Interference with Prospective Economic Advantage and Civil Conspiracy.

BACKGROUND INFORMATION

Creation and Initial Operation of Polytec

12. Paragraphs 1 through 11 above are incorporated herein by reference.
13. Polytec was incorporated on or about August 22, 1994.
14. Polytec is primarily engaged in the distribution of chemicals and equipment used for clarification and purification of water.

15. Immediately after the incorporation of Polytec, Jack Harmon became the owner of five hundred (500) shares of Polytec stock, which at the time represented fifty percent (50%) of the outstanding stock of Polytec.

16. Immediately after the incorporation of Polytec, Andrews became an owner of five hundred (500) shares of Polytec stock, which at the time represented fifty percent (50%) of the outstanding shares of Polytec.

17. Andrews was the President and an officer of Polytec from the date of Polytec's incorporation until on or about October 31, 2006 when Polytec purchased and Andrews sold all of Andrews' stock in Polytec.

18. Andrews was at no time a full-time employee of Polytec.

19. While a shareholder of Polytec and serving as an officer and President of Polytec, Andrews had an ownership interest in and operated and worked for Alchem and/or IAC.

20. IAC and Alchem are in the chemical business and are competitors of Polytec.

Prior Lawsuit (Iredell County Case No.: 05-CVS-2406) and Settlement Agreement

21. On or about September 21, 2005, Jack W. Harmon, derivatively and in the right of Polytec, Inc., commenced a shareholders derivative action against Andrews in Iredell County Superior Court, Case No. 05-CVS-2406 entitled *Jack W. Harmon, derivatively in the right of Polytec, Inc. and individually, v. Randall F. Andrews* (hereinafter referred to as "Shareholder Derivative Lawsuit".)

22. The nature of the Shareholder Derivative Lawsuit filed against Andrews included, but was not limited to, claims against Andrews resulting from his conversion of Polytec's and Harmon's property, damages resulting from Andrews' constructive fraud and unfair and deceptive trade practices and preliminary and permanent injunctive relief against Andrews

preventing Andrews from stripping Polytec of its assets and converting valuable corporate assets of Polytec for his own individual use and benefit.

23. The Shareholder Derivative Lawsuit also included the following claims against Andrews:

- a. Shareholder's derivative action against Andrews for breach of fiduciary duties of good faith, loyalty and due care;
- b. Breach of fiduciary duties and constructive fraud;
- c. Unfair and deceptive trade practices;
- d. Conversion;
- e. Inspection and copying of Polytec records in possession, custody and control of Andrews; and
- f. Requests for preliminary and permanent injunctive relief.

24. Allegations supporting the claims against Andrews filed in the Shareholder Derivative Lawsuit included, but were not limited to, the following:

- a. On or about April 18, 2002, Andrews wrote a check to himself from Polytec in the amount of one hundred and seventy-one thousand thirty-one dollars and twenty cents (\$171,031.20) without obtaining Board approval for the issuance of the Polytec check and without obtaining Harmon's approval to issue the check;
- b. On or about December 31, 2002, Andrews instructed Paychecks, the company handling Polytec's payroll, to issue a check to the Internal Revenue Service on behalf of Andrews in the amount of one hundred eight thousand, six hundred twenty-two dollars (\$108,622.00) without obtaining Board approval for the issuance of the Polytec check and without obtaining Harmon's approval to issue the check;

- c. Harmon did not learn that Andrews unilaterally and without authorization took two hundred seventy-nine thousand, six hundred fifty-three dollars and twenty cents (\$279,653.20) from Polytec during calendar year 2002 until January 2003;
- d. On or about March 3, 2003, Andrews wrote himself a check from Polytec for thirty thousand dollars (\$30,000.00) and designated this as a loan in Polytec's General Ledger. The thirty thousand dollar (\$30,000.00) loan was not approved by Harmon;
- e. On March 31, 2004, Andrews unilaterally paid himself an additional two hundred twenty-two thousand, six hundred one dollars and eighty cents (\$222,601.80) from Polytec. Andrews directed his wife to write and Andrews' wife wrote a check from Polytec's account to Andrews in the amount of \$222,601.80. Andrews did not obtain Board approval nor did he notify or inform Harmon that he was having his wife to write him a check in the amount of \$222,601.80;
- f. In addition to the check for two-hundred and twenty-two thousand, six-hundred one dollars and eighty cents (\$222,601.80), on or about April 7, 2004, Andrews also instructed Polytec to pay the Internal Revenue Service sixty-six thousand, seven hundred and ninety-six dollars and forty cents (\$66,796.40) on behalf of Andrews. Andrews did not obtain approval from the Polytec board or from Harmon to approve the payment of sixty-six thousand, seven hundred ninety-six dollars and forty cents (\$66,796.40) by Polytec to the Internal Revenue Service on behalf of Andrews;
- g. Andrews removed from Polytec, by way of five separate checks made payable to Andrews and/or the Internal Revenue Service for and on behalf of Andrews, an amount equal to approximately seven hundred ninety-five thousand dollars (\$795,000.00), plus unapproved loans in an amount equal to approximately eighty

thousand dollars (\$80,000.00) without Board approval and without approval or knowledge of Harmon;

h. Despite repeated requests by Harmon to audit Polytec's books, Andrews refused to allow Harmon to audit the books of Polytec;

i. Andrews threatened employees of Polytec that unless they purchased chemicals from his company, Alchem, that they would be terminated;

j. Andrews also demanded that Polytec utilize other products and services provided by Alchem and/or Andrews' other company, IAC;

k. While attending sales meetings at Polytec and learning of Polytec's plans concerning the sale of chemicals, Andrews, through his other company, Alchem, directly and indirectly competed against Polytec and solicited customers of Polytec on behalf of Alchem; and

l. Specific allegations were made in the Shareholder Derivative Lawsuit concerning calcium hydroxide, which is also known as "lime slurry".

25. On September 28, 2004, an order for Preliminary Injunction was entered against Randall Andrews in the Shareholder Derivative Lawsuit. A true, accurate and genuine copy of the Preliminary Injunction entered against Andrews in the Shareholder Derivative Lawsuit is marked as Exhibit "A" and attached hereto.

26. After protracted litigation, Harmon, Polytec, Andrews, Alchem and IAC entered into the Settlement Agreement on October 31, 2006.

27. Alchem and IAC were joined in the Settlement Agreement solely for the purposes of being a party to the non-competition and non-solicitation portions of the Settlement Agreement and acknowledging that Andrews had an ownership and controlling interest in Alchem and IAC. The agreement of Alchem and IAC to be subject to the terms of the non-

competition and non-solicitation provisions of the Settlement Agreement was consideration for Polytec's agreement to the terms of the Settlement Agreement.

28. A true, accurate and genuine copy of the Settlement Agreement, dated October 31, 2006 entered into between Harmon, Polytec, Andrews, IAC and Alchem is marked as Exhibit "B", and attached hereto.

29. Under the terms of Settlement Agreement, Polytec purchased and Andrews sold, all of Andrews' stock in Polytec for three million, five hundred thousand dollars (\$3,500,000.00), which amount was paid to Andrews by Polytec.

30. In exchange for redemption by Polytec of Andrews' stock in Polytec for three million, five hundred thousand dollars (\$3,500,000.00), Andrews, IAC and Alchem entered into the Settlement Agreement that included, among other things, the Non-Competition Covenant.

31. The Non-Competition Covenant is set forth in Paragraph 5(a) of the Settlement Agreement.

32. The Non-Competition Covenant provides in part that for a period of three (3) years after the Closing Date (October 31, 2006), Andrews shall not, without the express written consent of Polytec, own, manage, operate, control or acquire an equity interest in (excepting ownership in any entity which is publicly traded), or be a partner, principle, director, officer, employee of, or in any other material capacity, engage, participate, or become affiliated or connected in any material business relationship with any Competing Business which competes with the business of Polytec.

33. The definition of "Competing Business" is specifically set forth in Paragraph 5(a) of the Settlement Agreement and is defined as follows:

For purposes herein, "Competing Business" shall mean the providing and selling of any of the following chemical products to municipal and industrial wastewater

treatment facilities for wastewater treatment purposes (other than sales to Polytec):

- i) water soluble polymer, and water soluble polymer blends with aluminum sulfate, aluminum chloride, ferric sulfate, ferric chloride, and aluminum chlorohydrate,
- ii) nutrients for bacteria in wastewater that include sources of nitrogen, phosphorus, BOD or carbon, including all products that are carbon sources that will enhance the denitrification of wastewater,
- iii) products to mask odors,
- iv) products to increase inorganic nutrients in wastewater such as copper, manganese, iron, magnesium, cobalt and molybdenum, and
- v) defoamers.

It is agreed that Andrews may sell calcium or magnesium products, other than those used for the neutralizing potable water. Andrews shall be permitted to sell calcium hydroxide for wastewater use only to customers other than the existing customers of Polytec on the effective date hereof. In addition, Alchem agrees that it shall not manufacture alkalinity products for potable water or for wastewater application through a manufacturing method that uses a Porta Batcher.

34. Paragraph 5(b) includes a non-solicitation covenant pursuant to which Andrews agreed not to solicit any employees of Polytec for a period of three years from the Closing Date.

35. Pursuant to Paragraph 5(c) of the Settlement Agreement, IAC and Alchem acknowledged as signators and parties to the Settlement Agreement that they are entities that are related, either directly or indirectly, to Andrews and the non-competition and non-solicitation provisions of the Agreement shall be binding upon them to the same full force and effect as they are binding upon Andrews.

36. On or about October 31, 2006, Polytec, in accordance with the terms of the Settlement Agreement, purchased all of Andrews' stock in Polytec for three million, five hundred thousand dollars (\$3,500,000.00). A true, accurate and genuine copy of the Closing

Statement evidencing the redemption purchased and/or payment of Andrews' stock in Polytec is marked as Exhibit "C" and attached hereto.

37. On October 31, 2006, the effective date of the Settlement Agreement, the City of Monroe and Nestle were existing customers of Polytec.

Violation of Settlement Agreement

38. In July 2008, Polytec suspected that Andrews, IAC and/or Alchem were violating the Non-Competition Covenant by selling calcium hydroxide/lime slurry to one of Polytec's existing customers, Smithfield Foods, located in Tarheel, North Carolina, by partnering or engaging in a business relationship with Co-Defendant Brenntag.

39. Upon learning of the sales to Smithfield Foods, Polytec notified Andrews, IAC, Alchem and Brenntag that such actions were in violation of the Non-Competition Covenant contained in the Settlement Agreement.

40. By letter dated July 21, 2008, Polytec, through its attorneys, sent a letter to Andrews, IAC and/or Alchem demanding that they immediately cease and desist any attempts, directly or indirectly, through Brenntag to sell calcium hydroxide to Polytec customers, including Smithfield Foods.

41. Upon information and belief and based upon an August 15, 2008 letter, Andrews, IAC and Alchem authorized its attorneys to address the concerns raised by Polytec in the July 21, 2008 letter.

42. The August 15, 2008 letter from Andrews' attorney in response to Polytec's July 21, 2008 letter states in part as follows:

"As to the first matter concerning the allegation of the sale of calcium hydroxide products to Smithfield Foods, your client (Polytec) can be assured that neither Randall Andrews, individually, IAC or AI (Alchem) has attempted to or intends to sell calcium hydroxide products to Smithfield Foods or to Brenntag in contravention of the Settlement Agreement. At no relevant time have Randall

Andrews, individually, IAC or AI engaged or partnered, or intended to engage or partner, in any business relationship with Brenntag with respect to Smithfield Foods. Further, to that end, neither Randall Andrews, individually, IAC or AI have or intend to deliver any calcium hydroxide products to Smithfield Foods.”

43. Andrews, also through his attorney, denied having any involvement, ownership interest or affiliation in any manner whatsoever with Pure Water Technologies, LLC.

44. Polytec believed the statements and representations made by and on behalf of Andrews, IAC and Alchem set forth in the August 15, 2008 letter.

45. A true and accurate copy of the August 15, 2008 letter authorized by Andrews, IAC and Alchem in response to Polytec’s claim and concerns relating to the sale of calcium hydroxide/lime slurry through a partnership or business relationship with Brenntag is marked as Exhibit “D” and attached hereto.

The City of Monroe

46. On or about May 6, 2009, Polytec’s existing customer, the City of Monroe, North Carolina, requested bids to supply the City of Monroe with calcium hydroxide/lime slurry for its waste water treatment plant.

47. At the time the City of Monroe submitted for public bid its solicitation for the supply of calcium hydroxide for use in its waste water treatment plants, Polytec was the current supplier of calcium hydroxide to the City of Monroe.

48. At the time the City of Monroe submitted for public bid its solicitation for the supply of calcium hydroxide for use in its waste water treatment plants, Polytec had been supplying calcium hydroxide to the City of Monroe at the price of \$.05 per pound.

49. In response to the City of Monroe’s request for bid, Alchem and IAC submitted a bid to supply calcium hydroxide/lime slurry to the City of Monroe.

50. When the City of Monroe discovered that Andrews, Alchem and IAC had entered into a Settlement Agreement with Polytec that included a Non-Competition Covenant as part of Andrews' sale of his stock to Polytec, Alchem and IAC immediately withdrew their bid to supply calcium hydroxide to the City of Monroe.

51. The City of Monroe then awarded the contract to supply calcium hydroxide to the City of Monroe's waster water treatment facility to Brenntag for \$.0499 per pound.

52. Brenntag did not produce the calcium hydroxide it supplied to the City of Monroe pursuant to its contract.

53. Instead, Andrews and Alchem entered into a business relationship and/or partnership with Brenntag to use Brenntag as a third-party conduit to supply calcium hydroxide to the City of Monroe.

54. Alchem supplied its calcium hydroxide to Brenntag which in turn sold the calcium hydroxide to the City of Monroe.

55. Marked as Exhibit "E" and attached hereto is a true, accurate and genuine photograph of Alchem's truck delivering calcium hydroxide to the City of Monroe on July 11, 2009 for and on behalf of Brenntag.

56. The City of Monroe confronted Brenntag when it learned that Brenntag was supplying the City of Monroe with calcium hydroxide from Andrews and Alchem. In response, Brenntag informed the City of Monroe that it had inadvertently ordered the calcium hydroxide from Alchem by mistake but that it would no longer purchase its calcium hydroxide from Alchem.

57. The City of Monroe asked Brenntag to accurately complete its chemical tracking sheet for all future shipments of calcium hydroxide.

58. The next shipment of calcium hydroxide delivered to the City of Monroe from Brenntag came from Alchem's facility but was delivered on a different truck.

59. Brenntag, when filling out the City of Monroe's chemical tracking sheet, used a post office box in Rockwell, North Carolina ("P.O. Box 118, Rockwell, North Carolina 28138") as the plant address for the facility from which it obtained the calcium hydroxide.

60. The post office box used by Brenntag on the City of Monroe chemical tracking sheet is the post office box for Pure Water.

61. Pure Water is a limited liability company formed by two employees of Alchem, Denise K. Wolcott and her husband, Robert Wolcott. A third employee of Alchem, Trent Tidwell, also works for Pure Water.

62. Pure Water does not manufacture calcium hydroxide.

63. The calcium hydroxide supplied to the City of Monroe by Brenntag was coming from Alchem.

64. In an attempt to further cover up the fact that Alchem was supplying the City of Monroe with calcium hydroxide, Andrews and Alchem sold the calcium hydroxide to Pure Water, who then sold it to Brenntag who then delivered it to the City of Monroe.

65. Brenntag is obtaining calcium hydroxide or has received calcium hydroxide from Alchem and has delivered it to the City of Monroe.

66. Pure Water and/or the Wolcotts have obtained calcium hydroxide from Alchem, sold it to Brenntag, who in turn sold and delivered it to the City of Monroe.

67. Andrews, Alchem and IAC are using third party "straw men" Brenntag and Pure Water and/or the Wolcotts to indirectly sell calcium hydroxide to the City of the Monroe in violation of the Non-Competition Covenant contained in the Settlement Agreement.

68. Upon learning further information concerning the relationship between Andrews, Alchem, IAC, Pure Water and Brenntag, the City of Monroe discontinued its relationship with Brenntag and began purchasing lime slurry from Polytec as it previously had done.

69. Brenntag knew that it was a violation of the Non-Competition Covenant by Andrews, Alchem and/or IAC for Brenntag to supply to the City of Monroe calcium hydroxide obtained from Andrews, Alchem and/or IAC.

70. Pure Water and the Wolcotts knew that it was a violation of the Non-Competition Covenant by Andrews, Alchem and/or IAC for Pure Water or the Wolcotts to supply to the City of Monroe calcium hydroxide obtained from Andrews, Alchem and/or IAC.

71. Polytec lost at least \$4500.00 in profit during the time in which Brenntag supplied to the City of Monroe calcium hydroxide obtained from Andrews, Alchem and/or IAC.

Nestle

72. Nestle Frozen Food Company ("Nestle") was an existing customer of Polytec on October 31, 2006, the effective date of the Settlement Agreement.

73. Upon information and belief, in or around July 2008, Brenntag began marketing sales of calcium hydroxide and other waste treatment products to Nestle, an existing customer of Polytec, located in Gaffney, South Carolina.

74. In the course of Brenntag's marketing efforts to Nestle, Brenntag used Trent Tidwell, an employee of Pure Water and Alchem, to act as Brenntag's agent to review and assess Nestle's facility and product needs.

75. Upon information and belief, Andrews, Alchem and/or IAC agreed to provide Brenntag with equipment, chemicals and expertise to be used in Brenntag's business proposals to Nestle and otherwise assist Brenntag with such proposals.

76. Upon information and belief, Brenntag conducted equipment and chemical trials for Nestle with the assistance of Andrews, Alchem and/or IAC, beginning in July 2008.

77. In February 2009, Nestle executed an equipment loan agreement with Polytec wherein Nestle agreed to allow Polytec to perform certain upgrades to their calcium hydroxide chemical feed systems and Polytec would loan certain equipment to Nestle for use in its waste water treatment activities (the "Equipment").

78. Upon information and belief, Brenntag, with the assistance of Andrews, Alchem and/or IAC, performed another series of equipment and chemical trials for Nestle in late February 2009 at or around the same time that Nestle executed the equipment loan agreement.

79. Nestle cancelled the equipment loan agreement approximately 2 weeks after its execution and requested a new proposal from Polytec for an outright purchase of the Equipment described in the equipment loan agreement. Nestle subsequently requested a proposal that would include Polytec's installation of the Equipment and allow for Nestle's outright ownership of the Equipment within one year of installation.

80. Upon information and belief, Brenntag, with the assistance of Andrews, Alchem and/or IAC, offered Nestle outright ownership of certain calcium hydroxide chemical feed and storage equipment at the end of one year in exchange for agreeing to provide Brenntag with business related to purchase of calcium hydroxide, polymers and other products and allowing Brenntag to install the equipment.

81. Upon information and belief, Andrews, Alchem and/or IAC agreed to provide Brenntag with any equipment or chemicals that were included in Brenntag's proposal to Nestle.

82. On or about July 6, 2009, Nestle notified Polytec that it would be purchasing all of its calcium hydroxide and polymers from Brenntag and that it would no longer be purchasing calcium hydroxide and polymers from Polytec.

83. Nestle informed Polytec that Brenntag furnished calcium hydroxide chemical feed and storage equipment to Nestle for use with the calcium hydroxide as part of the calcium hydroxide program. Nestle also informed Polytec that it would own the calcium hydroxide chemical feed and storage equipment supplied by Brenntag within one (1) year.

84. Upon information and belief, the calcium hydroxide chemical feed and storage equipment supplied to Nestle by Brenntag came from Alchem.

85. Upon information and belief, Alchem and Brenntag collaborated in developing and designing Nestle's new calcium hydroxide program for Nestle's waste water treatment plan.

86. Upon information and belief, Andrews, Alchem and/or IAC has a business relationship with Brenntag and is supplying calcium hydroxide, polymers and other products to Brenntag for sale to Nestle.

87. Upon information and belief, Andrews, Alchem and/or IAC has a business relationship with Pure Water and/or the Wolcotts and is supplying calcium hydroxide to Pure Water and/or the Wolcotts who in turn is supplying that calcium hydroxide to Brenntag for sale to Nestle.

88. On August 10, 2009, a private investigator, Tom Rose, performed surveillance at the Alchem facility in Rockwell, North Carolina and witnessed a truck and trailer depart the Alchem facility at approximately 9:54 a.m. "Paul M. Bost" appeared on the doors of the truck (the "Bost Truck").

89. Also on August 10, 2009, Paul Schroll, another private investigator working in conjunction with Tom Rose performed surveillance at the Nestle facility in Gaffney, SC. At approximately 11:35 a.m., Mr. Schroll witnessed the same Bost Truck previously seen departing from the Alchem facility by Mr. Rose arrive at the Nestle facility.

90. After apparently delivering a load of certain materials from Alchem to Nestle, the Bost Truck exited the Nestle facility at approximately 1:18 p.m. and returned to the Alchem facility at approximately 3:02 p.m.

91. Upon information and belief, Alchem, Brenntag, Pure Water and/or the Wolcotts have been providing supplying calcium hydroxide to Nestle, directly or indirectly, for at least two (2) months.

92. During the same two (2) month period in which Alchem, Brenntag, Pure Water and/or the Wolcotts have been supplying, directly or indirectly, calcium hydroxide to Nestle, Nestle has not purchased from Polytec any of the products it was previously purchasing.

93. As a result of the actions of Alchem, Brenntag, Pure Water and/or the Wolcotts related to Nestle, Polytec has suffered lost sales.

94. Brenntag knew that it was a violation of the Non-Competition Covenant by Andrews, Alchem and/or IAC to supply to the Nestle facility in Gaffney, South Carolina calcium hydroxide obtained from Andrews, Alchem and/or IAC or to otherwise assist Brenntag in its competition with Polytec.

95. Pure Water and the Wolcotts knew that it was a violation of the Non-Competition Covenant by Andrews, Alchem and/or IAC to supply to the Nestle facility in Gaffney, South Carolina calcium hydroxide obtained from Andrews, Alchem and/or IAC or to otherwise assist Pure Water and the Wolcotts in their competition with Polytec.

96. Polytec has satisfied all conditions precedent to the Settlement Agreement.

FIRST CAUSE OF ACTION
(Breach of Contract/Breach of Covenant Not To Compete)

97. Paragraphs 1 through 96 above are incorporated herein by reference.

98. The Settlement Agreement constitutes a valid and binding agreement between Polytec and Andrews, IAC and Alchem.

99. Under the terms of the Settlement Agreement, Andrews, IAC and Alchem had obligations not to own, manage, operate, control or acquire an equity interest in (excepting ownership in any entity which is publicly traded), or be a partner, principle, director, officer, employee of, or in any other material capacity, engage, participate, or become affiliated or connected in any material business relationship with any Competing Business which competes with the business of Polytec.

100. By directly supplying or indirectly supplying through a business relationship with Brenntag and/or Pure Water calcium hydroxide to Smithfield Foods, the City of Monroe, Nestle or any other existing client of Polytec, Andrews, IAC and/or Alchem has breached the Settlement Agreement.

101. The Non-Competition Covenant contained in the Settlement Agreement is reasonable and valid.

102. The actions of Andrews, IAC and/or Alchem described herein constitute breaches of the Settlement Agreement.

103. The actions of Andrews, IAC and or Alchem in breaching the Settlement Agreement, including the routing of sales to existing customers of Polytec to Brenntag, either directly or indirectly through Pure Water and/or the Wolcotts, constitute malicious breaches of the Settlement Agreement.

104. As a result of the breaches of the Settlement Agreement by Andrews, IAC and Alchem, Polytec has been damaged in the loss of sales, profits and goodwill it would have otherwise realized from business opportunities with the City of Monroe, Nestle and other existing customers of Polytec.

105. Polytec is entitled to damages for the lost sales and profits from existing customers resulting from the breaches of the Settlement Agreement by Andrews, Alchem and IAC.

106. In the alternative to the permanent injunction/equitable tolling claim for relief requested below, Polytec is entitled to damages in the amount of three million five hundred thousand dollars (\$3.5 million) or some portion thereof as a result of the breaches of the Settlement Agreement by Andrews, IAC and Alchem.

SECOND CAUSE OF ACTION
(Tortious Interference with Contractual Relations)

107. Paragraphs 1 through 106 above are incorporated herein by reference.

108. The Settlement Agreement is a valid and enforceable contract between Polytec and Andrews, IAC and Alchem pursuant to which Polytec had contractual rights concerning, among other things, a prohibition against direct or indirect competition by Andrews, IAC or Alchem

109. Brenntag, Pure Water and/or the Wolcotts had knowledge of the Settlement Agreement and the obligations of Andrews, IAC or Alchem thereunder, including the obligations related to the Non-Competition Covenant.

110. Brenntag, Pure Water and/or the Wolcotts intentionally induced Andrews, IAC or Alchem not to perform the Non-Competition Covenant obligations under the Settlement Agreement.

111. Neither Brenntag, Pure Water nor the Wolcotts had justification for inducing Andrews, IAC or Alchem to breach the Settlement Agreement.

112. The actions of Brenntag, Pure Water and/or the Wolcotts were malicious and designed to deprive Polytec of its bargained-for contractual rights with Andrews, Alchem and IAC.

113. As a result of the actions of Brenntag, Pure Water and/or the Wolcotts as alleged herein, Polytec has suffered damages in an amount exceeding \$10,000.00.

THIRD CAUSE OF ACTION
(Tortious Interference with Prospective Economic Advantage)

114. Paragraphs 1 through 113 above are incorporated herein by reference.

115. At the time that the Defendants began supplying materials, directly or indirectly, to the City of Monroe and Nestle, the City of Monroe and Nestle were existing customers of Polytec.

116. The Defendants knew that the City of Monroe and Nestle were existing customers of Polytec.

117. Andrews, IAC and Alchem knew of the materials prices that Polytec used in providing materials to the City of Monroe and Nestle.

118. Pure Water, the Wolcotts and Brenntag have concealed the nature of their relationships with Andrews, IAC and Alchem from the City of Monroe and Nestle.

119. The actions of the Defendants were without justification.

120. The actions of the Defendants were malicious and unlawful and designed to gain an advantage at the expense of Polytec.

121. As a result of the Defendants' actions, the City of Monroe was induced to refrain from entering into or continuing a contract with Polytec for calcium hydroxide.

122. As a result of the Defendants' actions, Nestle was induced to refrain from entering into or continuing a contract with Polytec for wastewater purification materials.

123. But for the actions of the Defendants, the City of Monroe would have entered into or continued a contract with Polytec for the supply of calcium hydroxide and Polytec has been damaged as a result.

124. But for the actions of the Defendants, Nestle would have entered into or continued a contract with Polytec for the supply of wastewater materials, and Polytec has been damaged as a result.

FOURTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

125. Paragraphs 1 through 124 above are incorporated herein by reference.

126. Defendants' actions described herein were unethical and unscrupulous.

127. Defendants' actions described herein had the tendency to deceive and did deceive Polytec and existing customers of Polytec who would not have done business with Defendants had they known the true nature of the business relationships between Brenntag, Pure Water and/or the Wolcotts and Andrews, Alchem and IAC.

128. Defendants' unfair and deceptive actions described herein occurred in the course of or otherwise affected commerce.

129. Defendants' unfair and deceptive actions described herein proximately caused injury to Polytec, including damages in excess of \$10,000.00.

130. Pursuant to N.C. Gen. Stat. § 75-16, the damages proximately caused by Defendants' unfair and deceptive actions should be trebled.

131. Because Defendants have acted willfully and maliciously to usurp business opportunities of Polytec and have refused to resolve this matter in a reasonable fashion, Polytec's attorneys' fees should be taxed as court costs against Defendants pursuant to N.C. Gen. Stat. § 75-16.1.

FIFTH CAUSE OF ACTION
(Civil Conspiracy)

132. Paragraphs 1 through 131 above are incorporated herein by reference.

133. Upon information and belief, Defendants Andrews, IAC, Alchem, Brenntag, the Wolcotts and Pure Water agreed to and executed a common scheme to usurp business opportunities and compete illegally with Polytec.

134. Upon information and belief, some or all of the Defendants have executed this common scheme to usurp other business opportunities, including business opportunities with Nestle, from Polytec by using Polytec's confidential business information and in direct contravention of the Settlement Agreement.

135. The acts of the Defendants in carrying out their common scheme were unlawful.

136. As a result of the common scheme agreed to and executed by the Defendants, Polytec has been injured in an amount in excess of \$10,000.00.

SIXTH CAUSE OF ACTION
(Equitable Tolling and Permanent Injunction)

137. Paragraphs 1 through 136 above are incorporated herein by reference.

138. Defendants Andrews, IAC and Alchem are subject to the terms of the non-competition and non-solicitation provisions included in the Settlement Agreement and explained herein.

139. As described above, Defendants Andrews, IAC and Alchem have violated the terms of the Non-Competition Covenant of the Settlement Agreement by selling, directly and indirectly, calcium hydroxide to existing customers of Polytec during the term of the Non-Competition Covenant.

140. As described above, Defendants Brenntag, Pure Water and the Wolcotts have willingly and knowingly assisted Defendants Andrews, IAC and Alchem with their breaches of the Non-Competition Covenant.

141. Defendants' actions in violation of or in assisting with a violation of the Non-Competition Covenant have resulted in irreparable injury, loss, and damage to Plaintiff, including loss of profits, loss of business opportunities, and loss of goodwill, above and beyond the known and quantifiable damages alleged herein.

142. Plaintiffs have demanded that Defendants cease and desist from their conduct, but they have failed and/or refused to do the same.

143. By violating the Non-Competition Covenant, Defendants Andrews, IAC and Alchem have acted inequitably.

144. Plaintiff will not obtain the benefit of the Non-Competition Covenant so long as Defendants continue to violate the Non-Competition Covenant or assist the violation of the Non-Competition Covenant.

145. As a result, the term of the Non-Competition Covenant should be equitably tolled from such time as the commencement of the most recent violation of the same by Defendants Andrews, IAC or Alchem and shall resume again for the duration of the restrictive period only upon Defendants Andrews, IAC and Alchem's cessation of any and all violations of the Non-Competition Covenant, including, without limitation, supplying materials to Nestle.

146. Upon resumption of the equitably tolled term of the Non-Competition Covenant, Defendants shall be permanently enjoined from violating or assisting with the violation of the Non-Competition Covenant for the remainder of such term of the Non-Competition Covenant consistent with the equitable tolling of such term as permitted by the Court.

WHEREFORE, the Plaintiff, Polytec, Inc. respectfully requests the following relief from this Court:

1. For an award in excess of \$10,000 against Defendants based on the claims for relief asserted herein against each of them;
2. That the damages awarded to Plaintiffs for Defendants' unfair and deceptive trade practices be trebled pursuant to N.C. Gen. Stat. § 75-16;
3. That Plaintiff's attorneys' fees be taxed as court costs against Defendants pursuant to N.C. Gen. Stat. § 75-16.1 or as otherwise allowed by law;
4. For an order temporarily, preliminarily and permanently enjoining the Defendants from violating or assisting with the violation of the Non-Competition Covenant of the Settlement Agreement;
5. That the term of the Non-Competition Covenant of the Settlement Agreement be equitably tolled from such time as the commencement of the last violation of the same by Defendants Andrews, IAC or Alchem and shall re-commence for the remainder of the term only upon Defendants Andrews, IAC and Alchem's cessation of any and all violations of the Non-Competition Covenant, including, without limitation, providing materials to Nestle;
6. For a trial by jury on all issues so triable;
7. That all costs of this action be charged against Defendants; and
8. For any such further relief as the Court deems just and proper.

THIS the 8th day of October, 2009.

JOHNSTON, ALLISON & HORD, P.A.



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