

NO.: NNH-CV-14-6050848-S

ZHAOYIN WANG,  
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG AND  
ZHEJIANG BETA PHARMA CO., LTD.,  
Defendants.

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SUPERIOR COURT

J.D. OF NEW HAVEN  
AT NEW HAVEN

July 18, 2016

**MOTION FOR PERMISSION TO FILE**  
**THIRD PARTY COMPLAINT**

Pursuant to Connecticut General Statutes § 52-102a and Practice Book § 10-11, defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang ("Zhang") (collectively "Defendants") hereby move for permission, as third party plaintiffs, to serve a writ, summons and third party complaint upon Nanjing Allgen Pharma ("Nanjing") (which upon information and belief is a company organized under the laws of the People's Republic of China).<sup>1</sup> This Motion should be granted because filing the Third Party Complaint will not work an injustice on Nanjing or plaintiff Zhaoyin Wang, will not delay the trial, and will promote judicial economy through consolidated litigation of closely related, overlapping claims.

**I. Relevant facts**

Beta Pharma is a drug discovery company focusing on oncological drugs. Zhang is Beta Pharma's CEO and President. Plaintiff is a chemist who resides in Canada and/or China. Plaintiff alleges in his Complaint that he entered into an agreement with Defendants in 2010, pursuant to which he formed Beta Pharma Canada, Inc. ("BPC"), a Canadian corporation, which he alleges is owned 51% by him and 49% by Zhang.

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<sup>1</sup> Defendants attach hereto, as Exhibit 1, a copy of the proposed Third Party Complaint ("Prop. Comp.").

Comp. Count One ¶ 10-11. He alleges that Defendants did not honor their side of the BPC agreement by, inter alia, discontinuing funding for BPC. Id. ¶ 12. On that basis, he brings claims for breach of contract and various torts against each Defendant. As explained below, Defendants deny Plaintiff's allegations of wrongdoing, assert that Beta Pharma was actually promised an 80% interest in BPC (including its intellectual property), and have brought Counterclaims against Plaintiff based on the BPC transactions.

On March 29, 2016, Defendants filed a Motion to Disqualify Counsel [D.E. #183.00], asking the Court to disqualify Plaintiff's counsel in order to prevent Defendants' confidential and privileged information from being used against them. That motion is pending.

Recently, Defendants discovered important facts, previously unknown to them, regarding Plaintiff, BPC, and Nanjing. They learned that in 2012, Plaintiff founded Nanjing, another drug development company, and that at various times he transferred BPC's intellectual property to Nanjing – without Beta Pharma's knowledge or consent. In doing so, Plaintiff and Nanjing improperly deprived Defendants (via BPC) of valuable assets. This discovery had a large impact on Defendants' Counterclaims against Plaintiff, and motivated the present Motion.

On June 24, 2016, Defendants filed their Answer, Special Defenses, and Counterclaims (the "Answer") [D.E. #201.00]. They deny Plaintiff's allegations, and bring claims against him for breach of contract, torts, and statutory violations. In the Counterclaims, Defendants allege, inter alia: that in 2010, Plaintiff entered into an oral agreement with Beta Pharma under which Beta Pharma would have an 80% interest in

BPC, and Plaintiff would have a 20% interest; that Beta Pharma supplied funding for BPC; and that BPC and Plaintiff developed intellectual property and filed patents. Answer, Counterclaims ¶¶ 6-8. They allege that Plaintiff breached this contract and committed a variety of wrongs by, inter alia, freezing Defendants out of BPC, and improperly transferring BPC's assets to Nanjing without Defendants' knowledge, permission, or consent. Id. ¶¶ 9-16.

Defendants now propose to file six claims against Nanjing, all of which are closely related to their claims against Plaintiff and to Plaintiff's claims against them. As shown in the attached proposed Third Party Complaint, Defendants propose to file claims for conversion, statutory theft, violation of the Connecticut Unfair Trade Practices Act, tortious interference with business relations, unfair competition, and civil conspiracy, all based on Nanjing's collusion with Plaintiff.

## **II. Legal Argument**

### **A. Under the standard for this motion, Defendants should be granted permission to file the Third Party Complaint.**

"A defendant in any civil action may move the court for permission as a third-party plaintiff to serve a writ, summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." Conn. Gen. Stat. § 52-102a; Practice Book § 10-11. A number of decisions of the Superior Court have held that a third party complaint may extend beyond indemnification claims to "purportedly independent claims," because "one of the purposes of § 52-102a is to obviate the need for multiple actions arising from the same transaction." Starview Ventures v. Acadia Ins. Co., 2011 WL 1566990, at \*5 (Conn. Super. Ct. Apr. 5, 2011) (collecting cases), quoting Cambridge Mut. Fire Ins. Co. v.

Michaud, 2008 WL 4042805, at \*3 (Conn. Super. Ct. Aug. 9, 2008). The Court's authority to permit a third party complaint raising "independent claims" (not indemnification) stems from reading § 52-102a "in conjunction with the Practice Book rule for joinder of actions." Chen v. Celon, 2006 WL 1045987, at \*3 (Conn. Super. Ct. Mar. 6, 2006).

Thus, the Court should permit a third party complaint when its claims rely on the "same factual predicate" as the plaintiff's claims against the defendant. Starview Ventures, at \*5; see also Cambridge Mut. Fire Ins. Co., at \*3 (third party complaint permitted because it raised "similar and related issues" to those in the plaintiff's complaint); Chen, at \*3 (third party complaint permitted because its claims arose from the "same set of events" as the original complaint). The defendant, as third party plaintiff, may claim damages that exceed those that the plaintiff seeks from it where the claims "arise out of the same transaction complained of in in the original complaint." Middlesex Mut. Assur. Co. v. Black, 40 Conn. Supp. 63, 66 (1984).

A motion to implead may be filed at any time before trial. Practice Book § 10-11(a). This Court may grant permission to implead the third party if "it deems that the granting of the motion will not unduly delay the trial of the action or work an injustice upon the plaintiff or the party sought to be impleaded." Id.

The instant Motion for Permission should be granted because the pending claims and the proposed Third Party Complaint derive from the same facts, and because filing the Third Party Complaint will not work an injustice on any party.

**B The proposed claims against Nanjing arise out of the same transactions as Plaintiff's Complaint and the Counterclaims.**

The Third Party Complaint arises out of the same facts as Plaintiff's and Defendants' pending claims, so this Motion for Permission should be granted.

Like the original Complaint and the Counterclaims, the proposed Third Party Complaint arises out of the transactions between Plaintiff and Defendants that occurred from 2010 onward, which included the formation of BPC, the development of intellectual property by BPC, Beta Pharma's provision of money to BPC, and Plaintiff's use of BPC's intellectual property. In the original Complaint, Plaintiff alleges that Defendants did not carry out their obligations to him in connection with the BPC transactions. For example, he alleges that they discontinued funding for BPC. Complaint, Count One ¶ 12, Count Two ¶ 15. Likewise, in their Counterclaims, Defendants allege that Plaintiff failed to carry out his obligations to them in the same transactions. They allege that he did so, inter alia, by establishing Nanjing and transferring BPC's intellectual property to Nanjing without Defendants' knowledge, permission or consent. Answer, Counterclaims ¶ 13-16.

The proposed claims against Nanjing are closely linked to Plaintiff's claims and Defendants' Counterclaims. The Third Party Complaint specifically concerns Plaintiff's improper transfer of BPC's intellectual property to Nanjing without Beta Pharma or Zhang's knowledge, permission, or consent. Every proposed count alleges Plaintiff's involvement in this misconduct. These claims track some of the claims against Plaintiff in the Counterclaims. For example, Count Four of the proposed Third Party Complaint alleges that Nanjing interfered with Defendants' relationship with Plaintiff, while Count

Fourteen of the Counterclaims alleges that Plaintiff aided and abetted it in doing so. Prop. Comp. Count Four ¶ 2; Answer, Counterclaims Count Fourteen ¶ 4.

Thus, the present claims in this action and the proposed claims arise from the “same factual predicate” and the “same set of issues” – i.e., BPC, its intellectual property, and BPC-related transactions. The proposed Third Party Complaint will raise “similar and related issues” to the present pleadings, since the issues of Plaintiff’s establishment of Nanjing, relationship to Nanjing, and transfer of intellectual property to Nanjing, arise in both the existing claims and the proposed ones.

Because the proposed claims against Nanjing arise from the same transactions, it will economize the resources of the Court and the parties to consider the proposed claims in the present action rather than a separate action. Bringing the proposed claims in the present action will enable the parties to avoid unnecessary duplication in discovery and motion practice. For example, discovery for the Counterclaims and the Third Party Complaint will both concern Plaintiff’s improper transfer of BPC’s intellectual property to Nanjing. The present claims and the proposed claims constitute a convenient trial unit, such that it would waste the Court’s time and the parties’ resources to conduct two separate trials.

**C. Granting this motion will not delay the trial of this action or work an injustice on any party.**

Granting this Motion for Permission will not delay the trial in this case, nor will it work an injustice on any party.

First, the Third Party Complaint will lead to no delay. Trial has not been scheduled in this action, and there is no reason to believe that trial will be scheduled for

a date close to the present. The Court has not issued a Scheduling Order, so there are currently no deadlines for discovery or dispositive motions.

As noted above, Defendants filed a motion to disqualify Plaintiff's counsel, Jonathan Katz, because Lance Liu, Defendants' former lawyer, counseled Defendants on the issues in this case and then teamed up with Katz in this case. In doing so, Liu infected Katz and this case with a conflict of interest. While that motion is pending, the merits of this case should not be litigated to avoid the conflict from spreading further. When Defendants filed their Answer on June 24, 2016, they told Plaintiff that he should not file a response to that pleading until the disqualification motion is decided, and offered to extend the deadline for such a response until such a ruling is issued. In summary, granting this Motion will not delay the trial of this action at all, let alone delay it "unduly."

Additionally, no party will be prejudiced if Defendants serve the Third Party Complaint on Nanjing. Plaintiff will not be prejudiced because the Third Party Complaint would not change the claims that Plaintiff brings against Defendants or the Counterclaims that Defendants bring against Plaintiff. Nanjing will not be prejudiced because it will have sufficient time to complete pleading and discovery before trial, especially considering that Nanjing was established – and is likely controlled– by Plaintiff. The only remaining party named in the caption is Zhejiang Beta Pharma Co., Ltd., which has not appeared in this action or involved itself in any way, and therefore can suffer no prejudice. The Third Party Complaint will lead to no injustice.

### III. Conclusion

For all the foregoing reasons, Defendants respectfully request that the Court grant this Motion and permit them to file the Third Party Complaint, which will avoid duplicative discovery and litigation, and will prejudice no party.

DEFENDANTS BETA PHARMA, INC. AND  
DON ZHANG,

By:     /s/      
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by email this 18th day of July, 2016.

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jkatz@jacobsllaw.com

/s/  
Michael G. Caldwell (juris no. 421880)

# EXHIBIT 1



- a. Beta Pharma would provide funding to BPC, and would receive an 80% interest in the company, including an 80% interest in BPC's assets, profits, and intellectual property.
- b. Wang would be BPC's President, would be in charge of its operations and research efforts, and would receive a 20% interest in the company.

7. Subsequently, Beta Pharma wired in excess of \$320,000 to BPC to be used in connection with BPC's research and development efforts.

8. BPC and Wang have developed intellectual property and filed patents.

***Wang Improperly Changes the Parties' Interests in BPC***

9. After the parties entered the oral 80/20 Agreement, Wang told Beta Pharma he had changed the parties' interests in BPC, such that Beta Pharma's interest in BPC had been reduced from 80% to 49%, and Wang's interest in the company had been increased from 20% to 51%.

10. Wang unilaterally changed the parties' ownership interests in BPC without Beta Pharma's consent for his own financial gain, and to Beta Pharma's financial detriment.

***Wang Freezes Out Beta Pharma***

11. Despite Beta Pharma's ownership interest in BPC, Wang has failed to:
  - a. Provide Beta Pharma with any profits, income, or other pecuniary gains earned by BPC;
  - b. Provide Beta Pharma with any interest in intellectual property developed by BPC;

- c. Keep Beta Pharma apprised of BPC's business, operations, and/or activities;
- d. Provide Beta Pharma with any documentation reflecting BPC's intellectual property, assets, and/or liabilities.

12. Wang has completely frozen Beta Pharma out of BPC's business operations and business ventures.

***Wang Improperly Transfers BPC Assets to a Chinese Company***

13. In 2012, Wang established Nanjing Allgen Pharma to focus on preclinical work of several oncology therapeutic targets.

14. Upon information and belief, Nanjing Allgen Pharma ("Nanjing") is a Chinese company.

15. Wang has taken BPC's intellectual property to China for use in connection with other business ventures, including Nanjing.

16. Wang transferred BPC's intellectual property to Nanjing without Beta Pharma or Zhang's knowledge, permission, or consent. Some of those improper transfers occurred in April and July 2014.

**COUNT ONE – CONVERSION**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count One as if fully set forth herein.

17. As set forth more fully above, Nanjing has intentionally, and without authorization, assumed and exercised ownership and control over property belonging to Beta Pharma, to the exclusion of Beta Pharma, including (but not limited to) BPC's intellectual property.

18. Wang committed conversion when he intentionally, and without authorization, assumed and exercised ownership and control over property belonging to Beta Pharma, to the exclusion of Beta Pharma, including (but not limited to) BPC's intellectual property.

19. Nanjing aided and abetted Wang in committing conversion, for example, through the improper acquisition of BPC's intellectual property.

20. Beta Pharma has suffered damages because of Nanjing's wrongful conversion.

**COUNT TWO – STATUTORY THEFT (CONN. GEN. STAT. § 52-564)**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count Two as if fully set forth herein.

17. As more fully described above, Nanjing, for its own benefit or for the benefit of third parties, intentionally and wrongfully converted, misappropriated and/or stole property of BPC, including (but not limited to) intellectual property.

18. Nanjing has also aided and abetted Wang in committing conversion, for example, through the improper acquisition of BPC's intellectual property.

19. Nanjing's conduct was intended to deprive Beta Pharma of its rights in the property and to appropriate the same to itself.

20. Nanjing's actions have resulted in substantial damages to Beta Pharma. In addition to other damages, Nanjing's conduct warrants an award of treble damages.

21. Nanjing is therefore liable to Beta Pharma under Conn. Gen. Stat. § 52-564.

**COUNT THREE – CONN. UNFAIR TRADE PRACTICES ACT (“CUTPA”) (CONN. GEN. STAT. § 42-110a et seq.)**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count Three as if fully set forth herein.

17. At all times relevant, Nanjing was a “person” as defined in Connecticut General Statutes § 42-110a(3).

18. At all times relevant, Nanjing, individually and/or in concert with other individuals and/or entities, was engaged in trade or commerce as defined in Connecticut General Statutes § 42-110a(4).

19. By the foregoing described conduct, Nanjing, individually and/or in concert with other individuals and/or entities, has committed unfair and deceptive acts and practices in the conduct of trade or business in violation of Connecticut General Statutes § 42-110a and § 42-110b in that such actions, omissions, evasiveness and conduct were and are immoral, unethical, oppressive and unscrupulous.

20. Said conduct by Nanjing was and is intentional and willful.

21. Said conduct by Nanjing was and is carried out for the purpose of deceiving Beta Pharma.

22. Nanjing, individually and/or in concert with other individuals and/or entities, has engaged and continues to engage in conduct that is contrary to the honest practice in industrial and commercial matters. Said conduct was designed and taken intentionally to deceive Beta Pharma and deprive it of its property interests in BPC. Nanjing knew or should have known that said conduct would cause harm to the legitimate business interests of Beta Pharma.

23. Nanjing has also aided and abetted Wang in violating CUTPA, for example,

through the improper acquisition of BPC's intellectual property.

24. As a result of the foregoing prohibited conduct by Nanjing, Nanjing has violated CUTPA.

25. As a result of the foregoing prohibited conduct by Nanjing, Beta Pharma suffered and continues to suffer injury and ascertainable loss of money and property proximately caused by such prohibited acts.

26. If Nanjing is not enjoined from committing further unfair acts and/or practices violative of CUTPA, Beta Pharma will continue to suffer irreparable harm to its legitimate property interest in BPC, as well as its business including its good will, reputation and name, for which there is no adequate remedy at law.

27. By virtue of the foregoing, Beta Pharma is entitled to punitive damages pursuant to Connecticut General Statutes § 41-110g(a).

28. A copy of this Complaint has been mailed to the Attorney General of the State of Connecticut and the Commissioner of Consumer Protection pursuant to Connecticut General Statutes § 42-110g(c).

#### **COUNT FOUR – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count Four as if fully set forth herein.

17. Nanjing intentionally and tortiously interfered with the business relationships or expectancies of Beta Pharma with Wang and others in that: Beta Pharma had a business relationship with Wang (i.e., BPC); and Nanjing intentionally and improperly interfered with that relationship by, inter alia, obtaining BPC's intellectual property.

18. Wang aided and abetted Nanjing in committing those wrongful acts.

19. As a result of Nanjing's tortious interference with Beta Pharma's business relationships or expectancies of which Nanjing knew or should have known, Beta Pharma has suffered actual losses, including loss of benefits of its business relationship, and direct and consequential damages in an amount to be determined at trial, which includes, but is not limited to, attorney's fees, costs, and expenses associated with the litigation.

#### **COUNT FIVE – UNFAIR COMPETITION**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count Five as if fully set forth herein.

17. Nanjing has competed, and continues to actively and directly compete, against Beta Pharma by unfair and wrongful means that include, among other things, using BPC's assets and intellectual property to Beta Pharma's exclusion.

18. Nanjing's conduct was, and still is, willful, wanton and malicious, and committed with reckless and callous disregard for the rights of Beta Pharma and with the intent of crippling Beta Pharma's businesses.

19. Wang aided and abetted Nanjing in committing those wrongful acts.

20. As a result, Beta Pharma suffered, and continues to suffer, substantial damages.

#### **COUNT SIX – CIVIL CONSPIRACY**

1-16. Paragraphs 1-16 of the Allegations Common to all Counts are incorporated as Paragraphs 1-16 of Count Six as if fully set forth herein.

17. Wang and Nanjing combined to do the unlawful acts described in Counts One through Five above.

18. Nanjing acted pursuant to the scheme and in furtherance of its object when it engaged in the acts described in Counts One through Five above.

19. Nanjing's acts pursuant to the scheme and in furtherance of its object resulted in damage to Beta Pharma, including, but not limited to, substantial money damages.

### REQUEST FOR RELIEF

Defendants request that the Court grant them the following relief on their Third Party Complaint:

1. An order requiring Nanjing to account for and to pay over to Beta Pharma as money damages any and all gains and/or profit Nanjing has acquired by reason of Wang's or Nanjing's wrongful conduct.

2. An order requiring the return to counsel for Beta Pharma of all BPC business information, and all copies thereof, that are within Nanjing's possession, custody or control.

3. Compensatory damages.

4. Treble damages pursuant to General Statutes § 52-564.

5. Punitive damages pursuant General Statutes § 42-110g(a) and/or Connecticut common law.

6. Attorney's fees pursuant to General Statutes § 42-110g(d), and/or Connecticut common law.



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v.	:	J.D. OF NEW HAVEN
	:	AT NEW HAVEN
BETA PHARMA, INC., DON ZHANG AND	:	
ZHEJIANG BETA PHARMA CO., LTD.,	:	
Defendants.	:	_____, 2016

**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand is in excess of \$15,000.00, exclusive of interest and costs.

DEFENDANTS BETA PHARMA, INC., AND  
DON ZHANG,

By:  /s/

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