

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., ET AL.,	:	J.D. WATERBURY
Plaintiffs,	:	
	:	
VS.	:	AT WATERBURY
	:	
PREFERRED TOOL AND DIE, INC., ET AL.,	:	
Defendants.	:	JUNE 22, 2015

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF
THEIR PARTIAL MOTION TO DISMISS COUNTS I TO IV OF
DEFENDANT ROBERT A. BOSCO JR.’S COUNTERCLAIMS**

Pursuant to Practice Book Sections 10-30, Plaintiffs, Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), respectfully file this Memorandum of Law in Support of their Partial Motion to Dismiss Counts I to IV of Defendant Robert A. Bosco, Jr.’s Counterclaims.

I. INTRODUCTION

Plaintiffs bring this Partial Motion to Dismiss Counts I to IV of Bosco’s Counterclaims on the grounds of improper venue. Counts I to IV of Bosco’s Counterclaims *are the same exact claims* that this Court (Judge Roraback), in a separate lawsuit, previously dismissed on the basis of improper venue. *See* Ex. A, Memorandum of Decision re: Motion to Dismiss, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.) (hereinafter the “Prior Connecticut Lawsuit”); *see also* Ex. B, Complaint in the Prior Connecticut Lawsuit. When Bosco sought reconsideration, the Court denied that motion as well and reaffirmed its prior decision that any of Bosco’s contract-based claims against NUCAP would need to be litigated in New York, consistent with the forum selection clause. *See* Ex. C, Order on Reconsideration, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.).

Bosco's Counterclaims are also identical to the counterclaims he has brought in a separate lawsuit Plaintiffs have brought against Bosco in New York (the "New York Lawsuit"). *See* Ex. D, Bosco's Counterclaims in the New York Lawsuit. Counts I to IV of Bosco's Counterclaims in this case are identical to the claims he brought in the since-dismissed Prior Connecticut Lawsuit. *Cf.* Ex. E, Counterclaims at ¶¶ 11-30 to Ex. D, Prior Connecticut Complaint at ¶¶ 12-31 (presenting identical and unchanged factual allegations). Bosco's Counterclaims at Counts I to IV should likewise be dismissed for the same reasons.¹

Like the claims in the Prior Connecticut Lawsuit, Counts I to IV of the Counterclaims should be dismissed on the basis of a mandatory and enforceable forum selection clause contained in the Confidentiality, Non-Competition, and Non-Solicitation Agreement ("Non-Competition Agreement") between the parties. The forum selection clause clearly and unambiguously provides that "any litigation arising out of or relating to this Agreement [*i.e.*, the Non-Competition Agreement] shall be filed and pursued exclusively in the State or Federal courts in the County of New York, New York, and the parties hereto consent to the jurisdiction and venue in such courts." *See* Ex. F, Non-Competition Agreement § 6.

Counts I to IV of Bosco's Counterclaims are based on the Non-Competition Agreement and seek to recover monetary damages through enforcement of the Non-Competition Agreement. *See* Ex. E, Counterclaim at ¶¶ 28, 31 (alleging that NUCAP failed to make the required payments to Bosco under the Agreement and that NUCAP's conduct breached the Non-Competition Agreement). Thus, as Judge Roraback has already done, this Court should enforce the forum selection clause that the parties negotiated at arm's length and dismiss Counts I to IV with prejudice.

¹ Plaintiffs will also be separately filing a Motion for Summary Judgment on *res judicata* and claim preclusion grounds.

Lastly, the Court should additionally exercise its inherent power to sanction Bosco now, without requiring formal motions practice on sanctions, so as to immediately reprimand Bosco for bringing the identical claims that this Court has already dismissed with prejudice.

II. BACKGROUND

This is an action for misappropriation of trade secrets that Plaintiffs have filed against Preferred and Bosco, a former employee of Plaintiffs. *See* Ex. G, Complaint. Through their Complaint, Plaintiffs have alleged that, among other things, (1) Preferred has benefitted (without authorization) from the trade secrets, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's brake shims; and (2) Preferred obtained NUCAP's confidential and proprietary information through Bosco, a former employee and executive of NUCAP, as well as others.

Aside from Bosco's common law and statutory legal obligations to Plaintiffs, Bosco had separately signed a Confidentiality, Non-Competition, and Non-Solicitation Agreement ("Non-Competition Agreement"). *See* Ex. F, Non-Competition Agreement. Bosco entered into the Non-Competition Agreement in connection with the \$5 million sale of Bosco's business, Eyelet LLC, to NUCAP in 2009. The Non-Competition Agreement prohibited Bosco from, among other things, competing with the business being sold to Eyelet Tech or soliciting any of the former clients of Eyelet LLC for a period of five years from the date of the closing of the sale transaction (or longer if he violated the terms of the Non-Competition Agreement, pursuant to a tolling provision). The Non-Competition Agreement further provided that, so long as Bosco complied with the terms of the restrictive covenants to which he freely agreed, he would receive compensation in the amount of \$1 million, payable over five years in equal installments of \$200,000.00 (the "Covenant Payments").

Bosco received \$600,000 toward the Covenant Payments before Plaintiffs discovered facts strongly suggesting that Bosco had breached the restrictive covenants in the Non-Competition Agreement. When Bosco refused to adequately respond to inquiries regarding his activities, Plaintiffs ceased making the Covenant Payments. After the parties were unable to resolve their dispute over Bosco's activities and the Covenant Payments, Bosco filed suit in this Court against NUCAP and Eyelet Tech in April 2014. *See* Ex. B, Complaint in the Prior Connecticut Lawsuit. That complaint had four counts: (1) Breach of Contract; (2) Breach of the Guaranty; (3) Breach of the Covenant of Good Faith and Fair Dealing; and (4) Unfair Competition and Trade Practices under Con. Gen. Stat. § 42-110b. Those claims are the exact same ones that Bosco is asserting now as Counts I to IV of his Counterclaims against Plaintiffs in this action. *See* Ex. E.

The Non-Competition Agreement contained a forum selection clause that required any disputes relating to the Non-Competition Agreement be litigated in New York. *See* Ex. F at ¶ 6. As Bosco's action was, by his own admission, an action relating to the Non-Competition Agreement, it should have been filed in New York and NUCAP filed a motion to dismiss on that basis. Judge Roraback agreed and dismissed Bosco's lawsuit, concluding that the forum selection clause in the Non-Competition Agreement required any disputes relating to the Non-Competition Agreement be litigated in New York. *See* Ex. A, Memorandum of Decision re: Motion to Dismiss, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.).

Consistent with the parties' agreement to litigate disputes arising out of the Agreement in New York, NUCAP filed suit in New York to enforce the terms of the Agreement and asserted that Bosco had breached the Agreement through various competitive activities (the "New York

Lawsuit”). Bosco filed an Amended Answer and Counterclaims in New York on December 11, 2014, asserting counterclaims for breach of contract (Count One), breach of a guarantee (Count Two), breach of the covenant of good faith and fair dealing (Count Three), and violations of the Connecticut Unfair Trade Practices Act (Count Four). *See* Ex. D, Amended Answer and Counterclaims in New York Lawsuit. Those counterclaims are also identical to those Bosco is now asserting here. Thus, Bosco has now brought the *same claims* three separate times – once in the Prior Connecticut Lawsuit which has since been dismissed; once in the New York Lawsuit; and now, inexplicably, again in this action.

Bosco’s counterclaims at Counts I to IV have nothing to do with the trade secret allegations Plaintiffs raised in their Complaint. Instead, Counts I to IV exclusively concern Bosco’s allegations relating to the Non-Competition Agreement.

Given Judge Roraback’s prior order and the clear application of the forum selection clause, Plaintiffs requested that Bosco withdraw Counts I – IV. *See* Ex. H, Emails from H. Byrne to D. DeBassio. Bosco refused. Instead, Bosco has forced Plaintiffs to file a motion that—in sum and substance—is identical to the motion that NUCAP filed in the original Connecticut action and which Judge Roraback granted. Bosco’s actions will require that this Court, again, decide the same exact issue that it has already decided in NUCAP’s favor, just nine months’ ago. Bosco’s refusal to withdraw Counts I – IV comes despite the fact that these same claims are pending in the New York Lawsuit and Bosco has a full opportunity to litigate them there—as he is currently doing.

III. ARGUMENT

A. Judge Roraback Previously Dismissed in The Prior Connecticut Lawsuit The Same Claims That Bosco Is Currently Asserting in Counts I – IV.

There is no substantive difference between Counts I to IV of Bosco’s Counterclaims and the claims Judge Roraback previously dismissed with prejudice in the Prior Connecticut Lawsuit. As in the original Connecticut action, Bosco is again asserting claims against NUCAP for: breach of contract (Count One); breach of a guarantee (Count Two); breach of the covenant of good faith and fair dealing (Count Three); and violations of the Connecticut Unfair Trade Practices Act (Count Four). Those four claims exclusively derive from NUCAP’s alleged breach of the Non-Competition Agreement for failure to make the Covenant Payments; there is nothing in Counts I to IV that even tangentially relates to the trade secret claims in Plaintiff’s Complaint.

Judge Roraback found that those same claims were brought to enforce the Non-Competition Agreement, that the forum selection clause in the Non-Competition Agreement was valid, and that the clause precluded Bosco from bringing those claims in Connecticut . *See Ex. A*, at 9-10. As a result, Judge Roraback granted NUCAP’s motion to dismiss for improper venue and concluded that Bosco’s claims had been filed in the wrong place, as the parties had contractually agreed to litigate all disputes relating to the Non-Competition Agreement in New York. *Id.* When Bosco sought reconsideration of the Court’s Order, Judge Roraback denied reconsideration and reaffirmed his prior decision that Bosco’s claims were not properly filed in Connecticut. *See Ex. C.*

B. Counts I – IV Should Be Dismissed Pursuant to the Valid and Binding Forum Selection Clause – For the Same Reasons Bosco’s Identical Claims Were Dismissed in the Prior Connecticut Lawsuit.

In addition to Judge Roraback’s decision, the plan language of the Non-Competition Agreement and fundamental Connecticut law requires that Counts I – IV of Bosco’s Counterclaims be dismissed. The forum selection clause requires that the claims be litigated in New York. And in fact, Bosco is currently asserting these very same claims against Plaintiffs in the New York Lawsuit.

Connecticut courts regularly recognize and enforce valid forum selection clauses. *See Phoenix Leasing v. Kosinski*, 47 Conn. App. 650, 655 (Conn. App. 1998) (noting “Connecticut law is clear” that courts will uphold forum selection clauses). Especially in commercial transactions, the law recognizes that the parties “may agree in advance to submit to the jurisdiction of a given court.” *United States Trust Co. v. Bohart*, 197 Conn. 34, 42, 495 A.2d 1034 (1985); *United Demolition & Reclamation Statewide Restoration Co. v. Alchem Env’tl. Servs.*, 2010 Conn. Super. LEXIS 2742, at *6 (Conn. Super. Ct. Oct. 22, 2010). Forum selection clauses are “presumptively valid” and the burden rests with the party challenging the enforcement of the clause to show why the parties should not be held to their bargain to litigate their dispute in the forum mutually agreed upon in their contract. *See Post Rd. Furniture Group, Inc. v. Landmark Merchant Solutions, LLC*, 2004 Conn. Super. LEXIS 3406, at *13 (Conn. Super. Ct. Nov. 18, 2004). Except in cases of fraud or overreaching, courts will enforce forum selection clauses. *General Electric Capital Corp. v. Metz Family Enterprises, LLC*, 141 Conn. App. 412, 423 (Conn. App. 2012).

Connecticut courts have developed a two part test to determine whether a forum selection clause should be enforced. *Bongo Int’l, LLC v. Bernstein*, 2013 Conn. Super. LEXIS 2942, at *7 (Conn. Super. Ct. Dec. 19, 2013). “First, the court must look to contract formation itself to

ascertain whether the clause was the product of fraud or deception or whether the bargaining power of the parties was so out of balance that the clause should not be enforced.” *Id.* In making this determination, the court should consider “whether the provision is contained in an adhesion or take or leave it contract which the party was compelled to accept without argument or discussion.” *Id.* The second factor requires the consideration of whether, irrespective of fraud, “enforcement of the clause would cause such inconvenience to [a party] that the otherwise valid contractual provision should not be enforced.” *Id.*

The United States Supreme Court has recently considered these same factors and reaffirmed the judicial deference afforded to forum selection clauses. The Supreme Court made clear that a valid forum selection clause “represents the parties’ agreement as to the most proper forum [and] the enforcement of valid forum selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system.” *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 581 (2013). Thus, the Court held that forum selection clauses should be enforced unless “extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer.” *Id.*

None of these extraordinary factors are present here. Both Plaintiffs and Bosco are sophisticated parties who were represented by counsel during the negotiation of the Non-Competition Agreement and who reasonably could be expected to have understood the effect of the forum selection clause. The Non-Competition Agreement was not imposed on Bosco, who possessed significant bargaining power with respect to the Non-Competition Agreement, a document executed in conjunction with the sale of Bosco’s business, Eyelet LLC, to NUCAP for \$5 million dollars. Indeed, Bosco received additional consideration as part of the Non-Competition Agreement. *See* Ex. F, Non-Competition Agreement at § 4(a). It is these payments,

the Covenant Payments, and NUCAP's alleged wrongful withholding of those payments that are the focus of Counts I to IV of the Counterclaims.

Counts I – IV of Bosco's Counterclaims are all based on Plaintiffs' alleged failure to make the Payments under Section 4(b) of the Non-Competition Agreement. The forum selection clause in the Non-Competition Agreement squarely applies, as it provides that "any litigation arising out of or relating to this Agreement [i.e., the Non-Competition Agreement] shall be filed and pursued exclusively in the State or Federal courts in the County of New York, New York, and the parties hereto consent to the jurisdiction and venue in such courts." *See* Ex. F, Non-Competition Agreement § 6.

Indeed, these very same claims are currently pending in the New York Lawsuit. This is not a case where Bosco will be deprived of his ability to litigate Counts I – IV in the event the Court grants this motion—he is already asserting those claims against NUCAP in the New York Lawsuit.

C. Bosco's Counterclaims Do Not Concern the Separation Agreement.

It is anticipated that Bosco will argue that the forum selection clause in the Separation Agreement – which states that "all actions or proceedings arising out of or relating to this Agreement will be litigated exclusively" in the state or federal courts of Connecticut, *see* Ex. I, Separation Agreement § 18 – should apply. Bosco's own Counterclaim makes clear, however, that this is not an action to enforce the Separation Agreement and there is no valid basis on which the forum selection clause in the Separation Agreement could apply.

Any interpretation of the Separation Agreement as encompassing or superseding the Non-Competition Agreement, including Section 6, would be inconsistent with the plain language of the Separation Agreement. *See Royal Bank of Scot., PLC v. Lexham Farmington I, LLC*, 2011 Conn. Super. LEXIS 510, at *10 (Conn. Super. Ct. Mar. 3, 2011). Through the Separation

proceeded on a general breach of contract theory, the limited exception to the forum selection clause for equitable claims was inapplicable. *Id.* at 427.

Royal Bank is similar, where the parties' loan agreement required that all disputes relating to the loan agreement be resolved in the courts of New York, except as to actions against property securing the loan. *Royal Bank of Scot., PLC v. Lexham Farmington I, LLC*, 2011 Conn. Super. LEXIS 510, *10 (Conn. Super. Ct. Mar. 3, 2011). Those property claims were to be brought exclusively in Connecticut. *Id.* The *Royal Bank* court harmonized the two provisions and construed them according to their plain language—holding that all disputes under the loan agreement generally would be resolved in New York, with the exception that actions against the property were to be brought in Connecticut. *Id.*

The same reasoning applies here. Reading the Non-Compete Agreement and Separation Agreement together, the plain language of both documents provides for two differing but consistent outcomes for dispute resolution: (1) disputes arising out of or relating to the Non-Competition Agreement will be resolved in New York; while (2) disputes arising out of or relating to the Separation Agreement will be resolved in Connecticut. The parties did not agree anywhere that disputes for *all agreements* would be resolved in Connecticut, as Bosco appears to claim. By its terms, Section 18 of the Separation Agreement applies only to disputes arising out of “*this Agreement*,” *i.e.*, the Separation Agreement. As Bosco's claims against Plaintiffs unequivocally concern the Non-Competition Agreement, the terms of the Separation Agreement are irrelevant and inapplicable here. On the contrary, Section 6 of the Non-Competition Agreement applies with full force and requires that Counts I to IV be dismissed. *See* Ex. F, Non-Competition Agreement § 6.

D. This Court Should Impose Sanctions on Bosco and His Counsel.

Trial courts in Connecticut have the inherent authority to impose sanctions against an attorney and his client for bad faith and harassing litigation conduct, even in the absence of a violation of a specific rule or court order. *Millbrook Owners Ass'n v. Hamilton Std.*, 257 Conn. 1, 9-10 (Conn. 2001). Based on the facts and circumstances set forth in this Motion, this Court should exercise that power now and sanction Bosco and his counsel for their complete disregard of Judge Roraback's prior order by filing identical claims to those that have already been dismissed by this Court.

This is not a case where Plaintiffs are seeking dismissal of Counts I to IV for some substantive or tactical advantage—these claims exist in the New York Lawsuit and Plaintiffs do not dispute Bosco's ability to bring and litigate those claims there. Instead, Plaintiffs' only concern is Bosco's decision to file the exact same set of claims again in this Court, knowing that Judge Roraback has already dismissed those claims for improper venue and that Bosco is currently litigating the exact same claims in the New York Lawsuit. This conduct is harassing and this Court should impose sanctions to deter and punish Bosco and his counsel.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court dismiss Counts I – IV of Bosco's Counterclaims with prejudice and sanction Bosco and his counsel for filing the identical claims in this case that have already been dismissed in the Prior Connecticut Lawsuit.

PLAINTIFFS,
NUCAP INDUSTRIES, INC. and NUCAP US,
INC.

By /s/Nicole H. Najam

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	:	
VS.	:	AT WATERBURY
	:	
PREFERRED TOOL AND DIE, INC., ET AL.,	:	
Defendants.	:	JUNE 22, 2015

[PROPOSED] ORDER

On this _____ day of _____, 2015, upon consideration of the Plaintiffs’ Motion to Dismiss, it is hereby **ORDERED** that the Motion is **GRANTED**. Counts One, Two, Three, and Four of Defendant Bosco’s Counterclaims are hereby **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that Defendant Bosco and his counsel are hereby **SANCTIONED** and shall reimburse Plaintiffs for the cost and expense incurred in connection with the filing of Plaintiffs’ Partial Motion to Dismiss.

BY THE COURT:

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 22nd day of June, 2015 to all counsel and self-represented parties of record, as follows:

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EXHIBIT A

NO. UWY-CV-14-6023433-S

ROBERT BOSCO, JR.

VS.

EYELET TECH NUCAP
CORP., ET AL.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

OCTOBER 10, 2014

**MEMORANDUM OF DECISION RE:
MOTION TO DISMISS (#104)**

FACTS

On April 11, 2014, the plaintiff, Robert Bosco, Jr., commenced this action by service of process on the defendants, Eyelet Tech NUCAP Corporation (ETNC) and NUCAP Industries, Inc. (NUCAP). In his four count complaint, the plaintiff alleges the following facts. The plaintiff is an individual residing in Wolcott, Connecticut. NUCAP is an Ontario corporation with a principal place of business in Toronto, Ontario, Canada. ETNC, a wholly owned subsidiary of NUCAP, is a corporation organized under the laws of the state of Delaware, with a principal place of business in Connecticut and is registered as a foreign corporation conducting business in Connecticut.

The plaintiff was a co-manager and 50 percent owner of Eyelet Tech, LLC (Eyelet Tech), a Connecticut limited liability company. On November 19, 2009, the plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement, wherein ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech. As part of the sale transaction, the plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement (Non-Competition Agreement) with ETNC and NUCAP, which was also executed and

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STATE OF CONNECTICUT
SUPERIOR COURT

made effective on November 19, 2009. The restrictions under the Non-Competition Agreement were effective for five years and would expire on November 19, 2014, or would become void in the event of a default by the defendants of their obligation under the Asset Purchase Agreement or the Non-Competition Agreement between the parties. As consideration for these restrictions in the Non-Competition Agreement, ETNC agreed that it would pay the plaintiff the gross amount of \$1,000,000 in five equal annual installments (Covenant Payments).

The plaintiff, as part of the sale transaction in November of 2009, entered into an employment agreement with Anstro Manufacturing, Inc. (Anstro), another wholly owned subsidiary of NUCAP. On January 23, 2012, the plaintiff's employment with Anstro ceased. The plaintiff entered into negotiations with NUCAP, and, on May 31, 2012, entered into a Confidential Separation Agreement and General Release (Separation Agreement), which set forth the terms of the plaintiff's separation from Anstro. Under section 7 (b) of the Separation Agreement, NUCAP and the plaintiff ratified the parties' obligations to each other under the Non-Competition Agreement. Additionally, section 15 of the Separation Agreement provided that, in the event of breach of any party's obligations under that agreement or any of the agreements referenced in the Separation Agreement, the non-breaching party had the right to recover attorney's fees and costs. Section 17 of the Separation Agreement set forth the choice of law for that agreement, which stated that Connecticut law would govern the enforcement of the Separation Agreement. Section 18 of the Separation Agreement provided that all actions or proceedings arising out of or related to the Separation Agreement would be litigated exclusively in Connecticut courts.

On November 11, 2013, the plaintiff received a letter from NUCAP, inquiring about certain actions of the plaintiff that may have been in violation of the Non-Competition Agreement. The plaintiff denied these allegations. Subsequently, on November 18, 2013, the plaintiff received notice from NUCAP that it had deemed him to be in violation of the Non-Competition Agreement. The defendants, based on these alleged violations, refused and continue to refuse to make Covenant Payments to the plaintiff. The plaintiff further alleges that he has fulfilled and continues to comply with his obligations to the defendants under the Non-Competition Agreement.

In counts one through four of the complaint, the plaintiff alleges breach of contract, breach of the guaranty against NUCAP, breach of the covenant of good faith and fair dealing against NUCAP and ETNC, and violations of General Statutes § 42-110b et seq., the Connecticut Unfair Trade Practices Act (CUTPA), against NUCAP and ETNC, respectively.

On June 16, 2014, the defendants filed a motion to dismiss the plaintiff's complaint, accompanied by a memorandum of law in support. On August 6, 2014, the plaintiff filed an objection to the motion to dismiss, accompanied by affidavits and exhibits. Thereafter, on August 7, 2014, the defendants objected to the plaintiff's untimely objection. The plaintiff responded on August 8, 2014, with a memorandum. The court heard oral argument on the matter on August 11, 2014.

DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Dayner v.*

Archdiocese of Hartford, 301 Conn. 759, 774, 23 A.3d 1192 (2011). "The grounds which may be asserted in [a motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process." *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985), citing Practice Book § 143, which is now § 10-30 (a).

The defendants argue that the court should dismiss the plaintiff's complaint for improper venue. Specifically, the defendants argue that because the allegations in the complaint relate only to alleged violations of the Non-Competition Agreement, and pursuant to the forum selection clause contained in the Non-Competition Agreement, New York, rather than Connecticut, is the proper venue. Therefore, the defendants conclude, this court does not have jurisdiction. In objection, the plaintiff argues that Connecticut is the proper venue because the Separation Agreement between the parties, which ratified and incorporated the Non-Competition Agreement, contained a forum selection clause indicating jurisdiction in Connecticut.¹

"While improper venue may be raised by a motion to dismiss . . . the claim does not go to subject matter jurisdiction, but rather it is a claim that the court, which otherwise has personal jurisdiction over the defendant, should decline to exercise it under the circumstances." (Internal quotation marks omitted.) *General Electric Capital Corp. v. Metz Family Enterprises, LLC*,

¹ The defendants argue that the court should not consider the plaintiff's objection to the present motion because the objection was not filed within thirty days, pursuant to Practice Book § 10-31. Section 10-31 (a) provides in relevant part: "Any adverse party shall have thirty days from the filing of the motion to dismiss to respond to the motion to dismiss . . ." "Despite the language of Practice Book § 10-31 [a], most courts have exercised discretion to address the merits of a motion to dismiss and to waive the . . . requirement when an opposing memorandum was untimely." (Internal quotation marks omitted.) *Prenderville v. Sinclair*, Superior Court, judicial district of Middlesex, Docket No. CV-13-6010439-S (May 16, 2014, *Marcus, J.*).

In the present case, the defendants filed their motion to dismiss on June 16, 2014. The plaintiff's objection was filed on August 6, 2014, which is more than thirty days after the filing of the motion to dismiss. This court, using its discretion, will consider the untimely objection and address the merits of the motion to dismiss.

Superior Court, judicial district of Litchfield, Docket No. CV-11-6004605-S (September 8, 2011, *Pickard, J.*) (52 Conn. L. Rptr. 386, 390). "A forum selection clause is a contractual provision agreed to by private parties that constitutes the parties' agreement as to the place of the action where the parties will bring any litigation related to the contract. Restatement (Second) of Conflict of Laws § 80 (1971)." (Internal quotation marks omitted.) *Western Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 146 Conn. App. 169, 202, 78 A.3d 167, cert. granted, 310 Conn. 955, 81 A.3d 1182 (2013).

"Historically, courts viewed forum selection clauses as improper attempts by the parties to oust jurisdiction from a court that otherwise had the authority to hear an action." *Reiner, Reiner & Bendett, P.C. v. Cadle Co.*, 278 Conn. 92, 100-101, 897 A.2d 58 (2006). "In more recent years, however, courts have concluded that forum selection clauses do not oust courts of their jurisdiction, but they have been willing to enforce such contract clauses as long as they were reasonable by declining to exercise jurisdiction over an action in certain circumstances." *Id.*, 101. The Connecticut Supreme Court has recognized the enforceability of forum selection clauses and has approved of the proposition that forum selection clauses may be used as a means of arguing that a court should not exercise jurisdiction when the clause provides for jurisdiction in another forum. *Id.*, 103; see also, *United States Trust Co. v. Bohart*, 197 Conn. 34, 42, 495 A.2d 1034 (1985). "Connecticut case law is clear that the courts will uphold an agreement of the parties to submit to the jurisdiction of a particular tribunal." (Internal quotation marks omitted.) *Friedman v. Jamison Business Systems, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-01-0343518-S (February 25, 2002, *White, J.*) (31 Conn. L. Rptr. 473, 473). In Connecticut, the general rule is that "parties to a contract may agree in advance to submit to the jurisdiction of a given court. . . . Absent a showing of fraud or overreaching, such forum clauses will be enforced

by the courts." (Internal quotation marks omitted.) *Phoenix Leasing, Inc. v. Kosinski*, 47 Conn. App. 650, 654, 707 A.2d 314 (1998). Thus, "[e]ven when minimum contacts with the forum state are lacking, personal jurisdiction can be conferred on a court by consent of the parties. . . . One such manner of consent is by way of a forum selection clause." (Citation omitted; internal quotation marks omitted.) *Lincoln Imports Ltd., Inc. v. Vinny's Garden Center, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-12-6031851-S (April 24, 2013, *Mullins, J.*).

"Judges of the Superior Court have adopted a two-part analysis to determine whether a forum selection clause should be enforced. First, the court must look to contract formation itself to ascertain whether the clause was the product of fraud or deception or whether the bargaining power of the parties was so out of balance that the clause should not be enforced. . . . This step allows, inter alia, consideration [of] whether the provision is contained in an adhesion or take or leave it contract which the party was compelled to accept without argument, or discussion. . . . Second, the court considers whether, even if there existed no fraud, deception, or significantly uneven bargaining power, enforcement of the clause would cause such inconvenience to the party bringing suit that the otherwise valid contractual provision should not be enforced." (Citation omitted; internal quotation marks omitted.) *BKJRT, Inc. v. Sovereign Bank*, Superior Court, judicial district of New London, Docket No. CV-10-6005148-S (January 26, 2011, *Martin, J.*).

In the present case, applying the first part of the two-part analysis referenced above, the parties do not dispute that both the Non-Competition Agreement and the Separation Agreement were negotiated at arm's length by sophisticated parties. Additionally, the parties do not dispute the content of the particular forum selection clauses contained in each agreement. Rather, the parties disagree as to which forum selection clause controls this particular dispute.

The Non-Competition Agreement provides in section 6: "Choice of Law and Forum. This

Agreement shall be construed in accordance with and governed by Connecticut law without reference to the conflicts or choice of law principles thereof. Any litigation arising out of or relating to this Agreement shall be filed and pursued exclusively in the State or Federal courts in the County of New York, New York, and the parties hereto consent to the jurisdiction of and venue in such courts."

Section 18 of the Separation Agreement provides: "Consent to Jurisdiction. Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the United States District Court for the District of Connecticut or the Connecticut Superior Court, and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement will be litigated exclusively in such courts. Each of the parties agrees not to commence any legal proceeding related to this Agreement except in such courts. Each of the parties irrevocably waives any objection which he or it may now or hereafter have to the venue of any such proceeding in any such court and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum."

In his complaint, the plaintiff pursues various causes of action for alleged violations of the Non-Competition Agreement. There is no allegation that the defendants violated specific provisions of the Separation Agreement. In support of his position that section 18 of the Separation Agreement controls the forum selection of this lawsuit, however, the plaintiff directs the court to section 7 (b) of the Separation Agreement, which provides, in relevant part: "[The plaintiff] hereby ratifies and confirms that he is obligated to comply with certain continuing obligations contained in [the Non-Competition Agreement] by and among [the plaintiff and the defendants] dated as of November 19, 2009, which is incorporated herein by reference." This

language, the plaintiff suggests, allows the court to infer that the parties intended the Separation Agreement to supersede provisions of the Non-Competition Agreement. This court, however, will not make that inference as the plain and unambiguous language of section 7 (b) indicates only that the plaintiff is still obligated to comply with the provisions of the Non-Competition Agreement. There is no indication that the parties intended that by "incorporating by reference" the Non-Competition Agreement into the Separation Agreement, that all of the provisions contained within the Non-Competition Agreement were superseded by the Separation Agreement. The heading under which section 7 (b) is located also indicates that the inclusion of this language was merely to confirm and ratify the continued obligations found in other agreements between the parties. Under Connecticut law, incorporation by reference must be clear and unequivocal; *Halling v. Jetseal, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-01-0446481-S (June 5, 2001, *Devlin, J.*) (29 Conn. L. Rptr. 699, 700), citing *Randolph Construction Co. v. Kings East Corp.*, 165 Conn. 269, 275, 334 A.2d 464 (1973); and, here, it is not clear and unequivocal that any provision of the Non-Competition Agreement is superseded or altered by its incorporation into the Separation Agreement.

In paragraph 7 of the facts the plaintiff asserts the court must accept in his objection to the motion to dismiss, the plaintiff states that "[t]he parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements – the Non-Competition Agreement, the [Asset Purchase Agreement] and the Separation Agreement (Section 17) – and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18)." This argument is misleading. Sections 17 and 18 of the Separation Agreement do not state "all Agreements" would be governed by Connecticut law and brought in Connecticut courts. Rather, sections 17 and 18 provide that

"this Agreement" would be governed and interpreted by Connecticut law, and any actions or proceeding arising out of or relating to "this Agreement" would be litigated in Connecticut courts, referring to the Separation Agreement. "[W]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [Connecticut courts] accord the language employed in the contract a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract. . . . Where the language is unambiguous, we must give the contract effect according to its terms." (Citations omitted; internal quotation marks omitted.) *Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC*, 125 Conn. App. 678, 690, 10 A.3d 61 (2010). Therefore, this court concludes that the use of the language "this Agreement" in sections 17 and 18 of the Separation Agreement is unambiguous and only refers to the Separation Agreement.

Applying the second part of the two-part analysis referenced above, this court concludes that enforcement of the forum selection clause in the Non-Competition Agreement would not cause such inconvenience to the party bringing suit that the otherwise valid contractual provision should not be enforced. The plaintiff lives in Connecticut. Although Connecticut courts would likely be more convenient for the plaintiff, jurisdiction in New York would not be sufficiently inconvenient to override the contractual provisions to which the parties agreed.

Because the plaintiff's cause of action is brought pursuant to alleged violations of the Non-Competition Agreement, and not for violations of the Separation Agreement, the Non-Competition Agreement controls the present litigation. Additionally, the Separation Agreement does not indicate that it supersedes all previous agreements of the parties. It only indicates that the obligations under other agreements, including the Non-Competition Agreement,

are ratified and confirmed, and therefore continue. This court concludes that the present matter was brought in an improper venue, pursuant to the forum selection clause of the Non-Competition Agreement.

CONCLUSION

For the foregoing reasons, the court grants the defendants' motion to dismiss for improper venue.

RORABACK, J.

RORABACK, J.

EXHIBIT B

RETURN DATE: May 13, 2014 : SUPERIOR COURT
:
ROBERT BOSCO, Jr. : J.D. OF WATERBURY
:
VS. : AT WATERBURY
:
EYELET TECH NUCAP CORP. and :
NUCAP INDUSTRIES INC. : APRIL 9, 2014

COMPLAINT

COUNT ONE: BREACH OF CONTRACT

1. Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.
2. Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.
3. Defendant Eyelet Tech NUCAP Corp. ("ETNC") is a corporation organized under the laws of the state of Delaware, with a principal place of business in the state of Connecticut and is registered as a foreign corporation conducting business in the state of Connecticut.
4. ETNC is a wholly owned subsidiary of NUCAP.
5. Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC ("Eyelet Tech"), a Connecticut limited liability company.
6. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.
7. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.

8. On November 19, 2009, Plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement.

9. Under the terms of the Asset Purchase Agreement ("APA"), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.

10. As part of the sale transaction, Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP, which was also executed and made effective on November 19, 2009 (the "Non-Competition Agreement"). A copy of the Confidentiality, Non-Competition and Non-Solicitation Agreement is attached as Exhibit A.

11. Under Section 3 of the Non-Competition Agreement, Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009.

12. Under the terms of the Non-Competition Agreement, Plaintiff agreed that he would not:

- a. engage in the "Business" (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);
- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;

- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and
- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

13. Under the terms of the Non-Competition Agreement, these restrictions expire on November 19, 2014 or become void in the event of a default by the Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

14. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;
- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

15. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Plaintiff.

16. Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

17. Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro").

18. On January 23, 2012, Plaintiff's employment with Anstro ceased and Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

19. On May 31, 2012, Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Plaintiff's separation from Anstro. The Separation Agreement is attached as Exhibit B.

20. Under Section 7(b) of the Separation Agreement, NUCAP and Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

21. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

22. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

23. ETNC made the Covenant Payments to the Plaintiff on the first, second and third anniversaries of the closing.

24. On or about November 11, 2013, Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be

construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009.”

25. NUCAP alleged that it understood “from its monitoring of [Mr. Bosco’s] behavior” that the Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

26. Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

27. On November 18, 2013, Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium (“your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements”); (2) spoke to NUCAP’s customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

28. NUCAP admitted to the Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC’s business caused by the Plaintiff’s alleged actions.

29. The Defendants, in bad faith and with reckless disregard for the Plaintiff’s rights under the Non-Competition Agreement, declared that the Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

30. Plaintiff performed all of his obligations under the Non-Competition Agreement.

31. The Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Plaintiff under the terms of the Non-Competition Agreement.

32. The foregoing conduct of the Defendant ETNC constitutes a breach of the Non-Competition Agreement.

33. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

34. Pursuant to Section 15 of the Separation Agreement, the Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Defendant NUCAP guaranteed the Covenant Payments of ETNC.

37. The Defendant NUCAP has failed to pay ETNC's obligations under the Non-Competition Agreement and is liable to the Plaintiff for damages caused by ETNC's failure to make the Covenant Payments when due.

38. The Plaintiff has been damaged by the actions of the Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (AGAINST NUCAP AND ETNC)

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Plaintiff and Defendants are parties to the Non-Competition Agreement.

41. Plaintiff has not breached the Non-Competition Agreement.

42. Defendants are required to make the annual Covenant Payments to the Plaintiff.

43. Defendants unilateral termination of the Non-Competition Agreement without cause was improper and in reckless disregard of the rights of the Plaintiff.

44. In terminating Non-Competition Agreement without cause, the Defendants have acted in bad faith and/or reckless disregard for the rights of the Plaintiff under the Agreement.

45. By virtue of the foregoing, the Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Plaintiff seeks to recover from Defendants such exemplary or punitive damages as are allowed by law.

COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER CON.

GEN. STAT. §42-110b, et seq. (against NUCAP AND ETNC)

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Plaintiff, the Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Plaintiff's employment, and Plaintiff's performance of the terms of the agreements, including but not limited to the Non-Competition Agreement, without fully compensating the Plaintiff for those benefits.

50. By engaging in the acts alleged above, Defendants have engaged in conduct that:
(a) is offensive to public policy, governing statutes for consumer protection, common law

principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Defendants have committed such acts in the conduct of trade or commerce.

52. Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, et seq.

54. The actions described above by Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Defendants alleged above, Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(c), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Robert Bosco, Jr. demands judgment granting him:

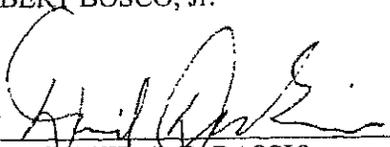
1. actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Defendants breaches and violations of law;
2. exemplary or punitive damages;
3. damages pursuant to the CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;
4. pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
5. reasonable attorneys' fees and costs incurred in the investigation, enforcement, and litigation of this action; and
6. such other and further relief to which Plaintiff is justly entitled.

Dated: Hartford, Connecticut this 9th day of April, 2014

THE PLAINTIFF,

ROBERT BOSCO, Jr.

BY



DAVID A. DeBASSIO
HINCKLEY, ALLEN & SNYDER LLP
20 Church Street
Hartford, CT 06103
T: (860) 725-6200
F: (860) 278-2768
Juris No. 428858

RETURN DATE: May 13, 2014 : SUPERIOR COURT
ROBERT BOSCO, Jr. : J.D. OF WATERBURY
VS. : AT WATERBURY
EYELET TECH NUCAP CORP, and : APRIL 9, 2014
NUCAP INDUSTRIES INC.

STATEMENT OF AMOUNT IN DEMAND

The amount in demand in the above-captioned action is greater than FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.

PLAINTIFF

BY 

DAVID A. DeBASSIO
HINCKLEY, ALLEN & SNYDER LLP
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Hartford, CT 06103
T: (860) 725-6200
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EXHIBIT C

DOCKET NO: UWYCV146023433S

BOSCO, JR, ROBERT
V.
EYELET TECH NUCAP CORP. Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

ORDER 434448

11/14/2014

ORDER

ORDER REGARDING:
10/17/2014 118.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

The motion to dismiss was predicated exclusively on the claim that the operative contract between the parties contained a forum selection provision which dictated that any dispute arising in connection with that contract be litigated in the state of New York. In the Court's memorandum of decision dated October 10, 2014, the Court found that contract to be the governing agreement, found the forum selection clause provision to be valid and proceeded to undertake the inquiry required by law to determine whether the provision should be enforced. A constituent component of that inquiry as set forth more fully in that decision is whether "enforcement of the clause would cause such inconvenience to the party bringing suit that the otherwise valid contractual provision should not be enforced", and the Court concluded in its decision that inconvenience to the plaintiff of a degree required to invalidate the forum selection clause had not been established.

Plaintiff has not submitted any law to support its position that a forum non conveniens claim may be asserted as a basis upon which to maintain that a court should retain jurisdiction of a particular proceeding. In the absence of any precedent to support this position, the Court finds no reason to grant the pending motion. Even were the Court to conclude that such an argument was grounded in established law, the Court concludes in applying the four prong test of *Durkin v. Intevac*, 258 Conn. 454, 466 (2001) that there is no reason to compel the retention of jurisdiction of this case in Connecticut. The motion to reargue is therefore denied.

Judicial Notice (JDNO) was sent regarding this order.

434448

Judge: ANDREW W RORABACK

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NUCAP INDUSTRIES INC. and EYELET TECH :
NUCAP CORP., :

Plaintiffs, :

-against- :

ROBERT BOSCO, JR., :

Defendant. :

-----X

AMENDED ANSWER
WITH COUNTERCLAIMS

Index No. 651968 / 2014

Defendant, Robert Bosco, Jr., by and through his attorneys, Hinckley, Allen & Snyder, LLP, hereby respectfully submits his Amended Answer and Affirmative Defenses to the Complaint by the Plaintiffs, NUCAP Industries Inc. and Eyelet Tech NUCAP Corp. (collectively, "Nucap" or "Plaintiffs") and asserts the following Counterclaims.

INTRODUCTION

1. Denied.
2. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2 and therefore leaves the Plaintiffs to their proof.
3. Admitted.
4. The Defendant admits that he sold his share of Eyelet LLC to NUCAP and entered into a Confidentiality, Non-Competition and Non-solicitation Agreement. Insofar as Paragraph 4 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.
5. Insofar as Paragraph 5 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

6. Bosco admits that he received certain payments from the Plaintiffs and that the Plaintiffs refused to tender the remaining payments due the Defendant pursuant to the parties Agreements. As for the remainder of the factual allegations in Paragraph 6, Defendants denies the allegations. Furthermore, to the extent Paragraph 6 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

7. Paragraph 7 contains legal conclusions for which no response is required. To the extent any response is required the allegations of Paragraph 7 are denied.

THE PARTIES

8. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8.

9. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 9.

10. Admitted.

JURISDICTION AND VENUE

11. Denied.

12. Denied.

FACTUAL BACKGROUND

(Plaintiff's Business)

13. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 13.

14. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 14.

15. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 15.

16. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 16.

17. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 17 and therefore leaves the Plaintiffs to their proof.

18. Admitted.

19. Admitted.

20. Defendant admits that Eyelet LLC had clients located in the United States, Canada and Mexico; as for the remainder of the allegations the Defendant lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore leaves the Plaintiffs to their proof.

21. Denied. Insofar as Paragraph 21 implicates a written agreement, the terms of the Agreements speak for themselves.

22. Denied. Insofar as Paragraph 22 implicates a written agreement, the terms of the Agreements speak for themselves.

23. Denied. Insofar as Paragraph 23 references a written agreement, the terms of the Agreements speak for themselves.

24. Denied. Insofar as Paragraph 24 references a written agreement, the terms of the Agreements speak for themselves.

25. Denied. Insofar as Paragraph 25 references a written agreement, the terms of the Agreements speak for themselves.

26. Denied. Insofar as Paragraph 26 implicates a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 26 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

27. Denied. Insofar as Paragraph 27 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 27 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

28. Denied. Insofar as Paragraph 28 references a written agreement, the terms of the Agreements speak for themselves.

29. Denied. Insofar as Paragraph 29 references a written agreement, the terms of the Agreements speak for themselves.

30. Denied. Insofar as Paragraph 30 references a written agreement, the terms of the Agreements speak for themselves.

31. Denied. Insofar as Paragraph 31 references a written agreement, the terms of the Agreements speak for themselves.

32. Denied. Furthermore, to the extent Paragraph 6 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

33. Denied. Insofar as Paragraph 33 references a written agreement, the terms of the Agreements speak for themselves.

34. Denied. Insofar as Paragraph 34 references a written agreement, the terms of the Agreements speak for themselves.

35. Denied. Insofar as Paragraph 35 references a written agreement, the terms of the Agreements speak for themselves.

36. Denied. Additionally, to the extent Paragraph 36 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 36 references a written agreement, the terms of the Agreements speak for themselves.

37. Denied. Insofar as Paragraph 37 references a written agreement, the terms of the Agreements speak for themselves.

38. Admitted.

39. Insofar as Paragraph 39 references a written agreement, the terms of the Agreements speak for themselves.

40. Denied. Additionally, to the extent Paragraph 40 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 40 references a written agreement, the terms of the Agreements speak for themselves.

41. Denied.

42. Denied. Insofar as Paragraph 42 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 42 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

43. To the extent Paragraph 43 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 43 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

44. Insofar as Paragraph 44 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

45. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 45.

46. Insofar as Paragraph 46 references a written agreement, the terms of the Agreements speak for themselves. Defendant admits he received certain payments from the Plaintiffs.

47. Defendant admits he received certain payments from the Defendants. Insofar as Paragraph 47 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

48. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 48.

49. Denied.

50. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 50.

51. Denied.

52. Denied.

53. Denied. Furthermore, to the extent Paragraph 53 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 53 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

54. Denied.

55. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 55. Defendant denies that he engaged in any illicit activities.

56. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 56. Furthermore, to the extent Paragraph 56 contains

legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

57. Defendant admits that the Plaintiffs contacted him..

58. Denied.

59. Defendant admit the Plaintiffs refused to make any further Covenant Payments that were due Defendant. Defendant denied that he breached the Non-Competition Agreement and further asserts that NUCAP remains obligated to make the remaining Covenant Payments that are due. As for the remainder of the allegations, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 59.

60. Denied. Furthermore, to the extent Paragraph 60 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

61. Denied. Furthermore, to the extent Paragraph 61 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

62. Denied. Furthermore, to the extent Paragraph 62 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

63. Denied. Furthermore, to the extent Paragraph 63 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 63 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

COUNT I
(Breach of Contract)

64. Paragraph 64 is a paragraph of incorporation to which no response is required. To the extent a response is required, Defendant incorporates by reference herein his responses to Paragraphs 1 – 63.

65. The Defendant admits that the Plaintiff and Defendant are parties to the referenced Agreement. The remainder of Paragraph 65 contains legal conclusion to which no response is required.

66. Denied. Moreover, Paragraph 66 contains legal conclusion to which no response is required. Insofar as Paragraph 66 references a written agreement, the terms of the Agreements speak for themselves.

67. Denied. Moreover, Paragraph 67 contains legal conclusion to which no response is required.

68. Denied. Moreover, Paragraph 68 contains legal conclusion to which no response is required.

69. Denied. Moreover, Paragraph 69 contains legal conclusion to which no response is required.

70. Denied. Moreover, Paragraph 70 contains legal conclusion to which no response is required.

COUNT II
(Breach of Fiduciary Duty)

71. Paragraph 71 is a paragraph of incorporation to which no response is required. To the extent a response is required Defendant incorporates by reference herein his responses to Paragraphs 1- 70.

72. Denied. Moreover, Paragraph 72 contains legal conclusion to which no response is required.

73. Denied. Moreover, Paragraph 73 contains legal conclusion to which no response is required.

74. Denied. Moreover, Paragraph 74 contains legal conclusion to which no response is required.

75. Denied. Moreover, Paragraph 75 contains legal conclusion to which no response is required.

76. Denied. Moreover, Paragraph 76 contains legal conclusion to which no response is required.

AS AND FOR HIS FIRST AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

AS AND FOR HIS SECOND AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' damages, if any, were caused in whole or in part by other parties for which Defendant bears no responsibility.

AS AND FOR HIS THIRD AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' claims are barred by the doctrine of waiver.

AS AND FOR HIS FOURTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' claims are barred by the non-occurrence of conditions precedent and/or subsequent.

AS AND FOR HIS FIFTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

The alleged damages, if any, of the Plaintiff were proximately caused by actions unrelated and remote to any action or inaction of Defendant.

AS AND FOR HIS SIXTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' damages, if any, were caused in whole or in part by its own actions and the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to Plaintiffs bears to the culpable conduct of Defendant.

AS AND FOR HIS SEVENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' claims are barred by the doctrine of unclean hands.

AS AND FOR HIS EIGHTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' claims are barred by their own material breach of contract.

AS AND FOR HIS NINETH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES

Plaintiffs' claims are barred insofar as Defendant is not a person subject to the personal or subject matter jurisdiction of the Court.

AS AND FOR HIS TENTH AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES:

Plaintiffs' claims are barred insofar as there is another action pending between the same parties for the same cause of action in another court.

WHEREFORE, Defendant, Robert Bosco, Jr., respectfully demands judgment in this action as follows:

1. Dismissing Plaintiffs' Complaint in its entirety; and,
2. For the costs and disbursements of this action and such other, further or different relief as the Court may deem just and proper.

COUNTERCLAIMS

COUNT ONE: BREACH OF CONTRACT

1. Counterclaim-Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.

2. Counterclaim-Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.

3. Counterclaim-Defendant Eyelet Tech NUCAP Corp. ("ETNC") is a corporation organized under the laws of the state of Delaware, with a principal place of business in the state of Connecticut and is registered as a foreign corporation conducting business in the state of Connecticut.

4. ETNC is a wholly owned subsidiary of NUCAP.

5. Counterclaim-Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC (“Eyelet Tech”), a Connecticut limited liability company.

6. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.

7. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.

8. On November 19, 2009, Counterclaim-Plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement.

9. Under the terms of the Asset Purchase Agreement (“APA”), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.

10. As part of the sale transaction, Counterclaim-Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP, which was also executed and made effective on November 19, 2009 (the “Non-Competition Agreement”). A copy of the Confidentiality, Non-Competition and Non-Solicitation Agreement is attached as Exhibit A.

11. Under Section 3 of the Non-Competition Agreement, Counterclaim-Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009.

12. Under the terms of the Non-Competition Agreement, Counterclaim-Plaintiff agreed that he would not:

- a. engage in the “Business” (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);

- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;
- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and
- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

13. Under the terms of the Non-Competition Agreement, these restrictions expire on November 19, 2014 or become void in the event of a default by the Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

14. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Counterclaim-Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;

- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

15. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Counterclaim-Plaintiff.

16. Counterclaim-Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

17. Counterclaim-Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro").

18. On January 23, 2012, Counterclaim-Plaintiff's employment with Anstro ceased and Counterclaim-Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

19. On May 31, 2012, Counterclaim-Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Counterclaim-Plaintiff's separation from Anstro. The Separation Agreement is attached as Exhibit B.

20. Under Section 7(b) of the Separation Agreement, NUCAP and Counterclaim-Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

21. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

22. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

23. ETNC made the Covenant Payments to the Counterclaim-Plaintiff on the first, second and third anniversaries of the closing.

24. On or about November 11, 2013, Counterclaim-Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009."

25. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that the Counterclaim-Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

26. Counterclaim-Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

27. On November 18, 2013, Counterclaim-Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium ("your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements"); (2) spoke to NUCAP's customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

28. NUCAP admitted to the Counterclaim-Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC's business caused by the Counterclaim-Plaintiff's alleged actions.

29. The Counterclaim-Defendants, in bad faith and with reckless disregard for the Counterclaim-Plaintiff's rights under the Non-Competition Agreement, declared that the Counterclaim-Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

30. Counterclaim-Plaintiff performed all of his obligations under the Non-Competition Agreement.

31. The Counterclaim-Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Counterclaim-Plaintiff under the terms of the Non-Competition Agreement.

32. The foregoing conduct of the Counterclaim-Defendant ETNC constitutes a breach of the Non-Competition Agreement.

33. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

34. Pursuant to Section 15 of the Separation Agreement, the Counterclaim-Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Counterclaim-Defendant NUCAP guaranteed the Covenant Payments of ETNC.

37. The Counterclaim-Defendant NUCAP has failed to pay ETNC's obligations under the Non-Competition Agreement and is liable to the Counterclaim-Plaintiff for damages caused by ETNC's failure to make the Covenant Payments when due.

38. The Counterclaim-Plaintiff has been damaged by the actions of the Counterclaim-Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (against NUCAP and ETNC)

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Counterclaim-Plaintiff and Counterclaim-Defendants are parties to the Non-Competition Agreement.

41. Counterclaim-Plaintiff has not breached the Non-Competition Agreement.

42. Counterclaim-Defendants are required to make the annual Covenant Payments to the Counterclaim-Plaintiff.

43. Counterclaim-Defendants unilateral termination of the Non-Competition Agreement without cause was improper and in reckless disregard of the rights of the Counterclaim-Plaintiff.

44. In terminating Non-Competition Agreement without cause, the Counterclaim-Defendants have acted in bad faith and/or reckless disregard for the rights of the Counterclaim-Plaintiff under the Agreement.

45. By virtue of the foregoing, the Counterclaim-Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Counterclaim-Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Counterclaim-Plaintiff seeks to recover from Counterclaim-Defendants such exemplary or punitive damages as are allowed by law.

COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER
CON. GEN. STAT. §42-110b, *et seq.* (against NUCAP and ETNC)

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Counterclaim-Plaintiff, the Counterclaim-Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Counterclaim-Plaintiff's employment, and Counterclaim-Plaintiff's performance of the

terms of the agreements, including but not limited to the Non-Competition Agreement, without fully compensating the Counterclaim-Plaintiff for those benefits.

50. By engaging in the acts alleged above, Counterclaim-Defendants have engaged in conduct that: (a) is offensive to public policy, governing statutes for consumer protection, common law principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Counterclaim-Defendants have committed such acts in the conduct of trade or commerce.

52. Counterclaim-Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Counterclaim-Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, et seq.

54. The actions described above by Counterclaim-Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Counterclaim-Defendants alleged above, Counterclaim-Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(c), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaim-Plaintiff Robert Bosco, Jr. demands judgment granting him:

1. Actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Counterclaim Defendants breaches and violations of law;
2. Exemplary or punitive damages;
3. Damages pursuant to the CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;
4. Pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
5. Reasonable attorneys' fees and costs incurred in the investigation, enforcement, and litigation of this action; and
6. Such other and further relief to which Counterclaim-Plaintiff is justly entitled.

Dated: December 11, 2014
Hartford, Connecticut

HINCKLEY, ALLEN & SNYDER LLP



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TO:

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*Counsel for Plaintiffs
Nucap Industries Inc. and
Eyelet Tech Nucap Corp.*

EXHIBIT E

UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES, INC. et al.	:	JUDICIAL DISTRICT
	:	OF WATERBURY
Plaintiffs,	:	
v.	:	
	:	AT WATERBURY
PREFERRED TOOL AND DIE, INC., et al.,	:	
	:	
Defendants.	:	MAY 21, 2015

ANSWER, SPECIAL DEFENSES AND COUNTERCLAIM

Defendant, Robert Bosco, Jr. ("Defendant"), by and through his attorneys, Hinckley, Allen & Snyder, LLP, hereby submits his Answer, Special Defenses to the Complaint by the Plaintiffs, NUCAP Industries Inc. and NUCAP US, Inc. (collectively, "Nucap" or "Plaintiffs") and asserts the following Counterclaims.

INTRODUCTION

1. Denied.
2. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2 and therefore leaves the Plaintiffs to their proof.
3. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 3 and therefore leaves the Plaintiffs to their proof.
4. Defendant admits that he left his position with NUCAP. As to the remainder of the allegations, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 and therefore leaves the Plaintiffs to their proof.
5. Denied.
6. Denied.

THE PARTIES

7. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 7.

8. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8.

9. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 9.

10. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 10.

11. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 11.

12. Admitted.

13. Defendant Bosco admits that he was previously employed by Anstro Manufacturing, Inc., but denies that he was employed by Nucap US.

JURISDICTION AND VENUE

14. Denied.

15. Denied.

FACTUAL BACKGROUND

Plaintiff's Business

16. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 16.

17. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 17

18. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 18.

19. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 19.

20. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 20.

21. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 21.

22. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 22.

23. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 23.

24. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 24.

The Science Behind How Brakes Work

25. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 25 and therefore leaves the Plaintiffs to their proof.

26. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 26 and therefore leaves the Plaintiffs to their proof.

27. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 27 and therefore leaves the Plaintiffs to their proof.

28. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 28 and therefore leaves the Plaintiffs to their proof.

29. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 29 and therefore leaves the Plaintiffs to their proof.

30. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 30 and therefore leaves the Plaintiffs to their proof.

31. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 31 and therefore leaves the Plaintiffs to their proof.

NUCAP'S Considerable Efforts to Protect its Trade Secret, Confidential and Proprietary Information

32. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 32 and therefore leaves the Plaintiffs to their proof.

33. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 33 and therefore leaves the Plaintiffs to their proof.

34. Bosco admits he signed Confidentiality and Intellectual Property Agreement with Anstro Manufacturing Inc. Insofar as the allegations of Paragraph 34 implicate a written agreement, the agreement speaks for itself.

35. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 35 and therefore leaves the Plaintiffs to their proof.

36. Bosco admits he signed other agreements with NUCAP, the terms of which speak for themselves. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 36 and therefore leaves the Plaintiffs to their proof.

37. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 37 and therefore leaves the Plaintiffs to their proof.

38. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 38 and therefore leaves the Plaintiffs to their proof.

39. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 39 and therefore leaves the Plaintiffs to their proof.

40. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 40 and therefore leaves the Plaintiffs to their proof.

Bosco's History at NUCAP

41. Defendant Bosco admits that he was previously employed by Anstro Manufacturing, Inc, but denies that he was employed by Nucap US.

42. Defendant admits that he held the title of General Manager at NUCAP while employed by Anstro Manufacturing, Inc. Bosco denies the remainder of the allegations of Paragraph 42.

43. Defendant denies that he had supervisory authority "over all employees, projects, and products at Nucap US."

44. Defendant denies the allegations of Paragraph 44 to the extent they assert that the Defendant's job function was outside the scope of his title as General Manager.

45. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 45 and therefore leaves the Plaintiffs to their proof.

46. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 46 and therefore leaves the Plaintiffs to their proof.

47. The Defendant denies he was employed by Nucap US and, for the remainder of the allegations lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 47 and therefore leaves the Plaintiffs to their proof.

48. Denied.

49. Denied. Insofar as Paragraph 49 implicates a written agreement, the terms of the Agreement speak for themselves.

Bosco's Termination and Subsequent Affiliation with Preferred

50. Denied.

51. Denied.

52. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 52 and therefore leaves the Plaintiffs to their proof.

53. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 53 and therefore leaves the Plaintiffs to their proof.

54. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 54 and therefore leaves the Plaintiffs to their proof.

55. To the extent Paragraph 55 alleges Bosco was affiliated with Preferred, those allegations are denied. As for the remainder of the allegations in Paragraph 55, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 55 and therefore leaves the Plaintiffs to their proof.

56. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 56 and therefore leaves the Plaintiffs to their proof.

57. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 57 and therefore leaves the Plaintiffs to their proof.

58. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 58 and therefore leaves the Plaintiffs to their proof.

59. The Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 59.

60. Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 60 to the extent as response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the same as they are not addressed to Defendant Bosco.

61. Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 61 to the extent a response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the same as they are not addressed to Defendant Bosco.

Preferred Productions Nearly Identical to NUCAP's Products Appear on the Market

62. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 62 about what the Plaintiffs might have believed and therefore leaves the Plaintiffs to their proof. Defendant admits only that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 62 to the extent a response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the allegations as they are not addressed to Defendant Bosco.

63. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 64 and therefore leaves the Plaintiffs to their proof.

64. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 64 and therefore leaves the Plaintiffs to their proof.

65. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 65 and therefore leaves the Plaintiffs to their proof.

66. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 66 and therefore leaves the Plaintiffs to their proof.

67. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 67 and therefore leaves the Plaintiffs to their proof.

68. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 68 and therefore leaves the Plaintiffs to their proof.

69. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 69 and therefore leaves the Plaintiffs to their proof.

70. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 70 and therefore leaves the Plaintiffs to their proof.

71. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 71 and therefore leaves the Plaintiffs to their proof.

72. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 72 and therefore leaves the Plaintiffs to their proof.

73. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 73 and therefore leaves the Plaintiffs to their proof.

74. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 74 and therefore leaves the Plaintiffs to their proof.

**COUNT I – THREATENED AND/OR ACTUAL MISAPPROPRIATION OF
TRADE SECRETS PURSUANT TO THE CONNECTICUT UNIFORM TRADE
SECRETS ACT, CONN. GEN. STAT. §§ 35-50 TO 35-58.**

75. The Defendant incorporates its responses from all previous paragraphs as if set forth fully herein.

76. Denied.

77. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 77 and therefore leaves the Plaintiffs to their proof.

78. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 78 and therefore leaves the Plaintiffs to their proof.

79. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 79 and therefore leaves the Plaintiffs to their proof. As for the allegation that Bosco was affiliated with Preferred, that allegation is denied.

80. Denied.

81. Denied.

82. Denied.

COUNT II – BREACH OF CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT

83. The Defendant incorporates its responses from all previous paragraphs as if set forth fully herein.

84. Bosco admits he signed a Confidentiality and Intellectual Property Agreement with Anstro Manufacturing Inc. Insofar as Paragraph 84 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 86 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

SPECIAL DEFENSES AS TO ALL COUNTS

FIRST SPECIAL DEFENSE:

Plaintiffs' Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

SECOND SPECIAL DEFENSE:

Plaintiffs' damages, if any, were caused in whole or in part by other parties for which Defendant bears no responsibility.

THIRD SPECIAL DEFENSE:

Plaintiffs' claims are barred by the doctrine of waiver.

FOURTH SPECIAL DEFENSE:

Plaintiffs' claims are barred by the doctrine of laches.

FIFTH SPECIAL DEFENSE:

Plaintiffs' claims are barred by the doctrine of unclean hands.

SIXTH SPECIAL DEFENSE:

Plaintiffs' damages, if any, were caused in whole or in part by their own actions and the amount of damages otherwise recoverable must be diminished in the proportion which the culpable conduct attributable to Plaintiffs bears to the culpable conduct of Defendant.

SEVENTH SPECIAL DEFENSE:

Plaintiffs' claims are barred by their own material breach of contract.

EIGHTH SPECIAL DEFENSE:

Plaintiffs' claims are barred by the prior pending action doctrine insofar as there is another action pending between the same parties for the same cause of action in another court.

COUNTERCLAIMS

COUNT ONE: BREACH OF CONTRACT

1. Counterclaim-Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.

2. Counterclaim-Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.

3. On information and belief, the Counterclaim-Defendant NUCAP US Inc. is the successor to Anstro Manufacturing, Inc.

4. Counterclaim-Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC ("Eyelet Tech"), a Connecticut limited liability company.

5. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.

6. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.

7. On November 19, 2009, Counterclaim-Plaintiff and his co-owner sold Eyelet Tech to NUCAP and Eyelet Tech NUCAP Corp. ("ETNC"), pursuant to an Asset Purchase Agreement.

8. Under the terms of the Asset Purchase Agreement ("APA"), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.

9. As part of the sale transaction, Counterclaim-Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP,

which was also executed and made effective on November 19, 2009 (the "Non-Competition Agreement").

10. Under Section 3 of the Non-Competition Agreement, Counterclaim-Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009. Accordingly, the period of any restrictive covenant expired no later than November 19, 2014.

11. Under the terms of the Non-Competition Agreement, Counterclaim-Plaintiff agreed that he would not:

- a. engage in the "Business" (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);
- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;
- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and

- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

12. Under the terms of the Non-Competition Agreement, these restrictions expired on November 19, 2014 or sooner became void in the event of a default by the Counterclaim-Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

13. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Counterclaim-Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;
- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

14. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Counterclaim-Plaintiff.

15. Counterclaim-Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

16. Counterclaim-Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro"). On information and belief, Anstro is now the Counterclaim Defendant Nucap US.

17. On January 23, 2012, Counterclaim-Plaintiff's employment with Anstro ceased and Counterclaim-Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

18. On May 31, 2012, Counterclaim-Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Counterclaim-Plaintiff's separation from Anstro.

19. Under Section 7(b) of the Separation Agreement, NUCAP and Counterclaim-Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

20. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

21. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

22. Certain Covenant Payments were made on behalf of the Counterclaim Defendants to the Counterclaim-Plaintiff on the first, second and third anniversaries of the closing, in the total amount of \$600,000.

23. On or about November 11, 2013, Counterclaim-Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009."

24. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that the Counterclaim-Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

25. Counterclaim-Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

26. On November 18, 2013, Counterclaim-Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium ("your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements"); (2) spoke to NUCAP's customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

27. NUCAP admitted to the Counterclaim-Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC's business caused by the alleged actions by Counterclaim-Plaintiff.

28. The Counterclaim-Defendants, in bad faith and with reckless disregard for the Counterclaim-Plaintiff's rights under the Non-Competition Agreement, declared that the Counterclaim-Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

29. Counterclaim-Plaintiff performed all of his obligations under the Non-Competition Agreement.

30. The Counterclaim-Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Counterclaim-Plaintiff under the terms of the Non-Competition Agreement.

31. The foregoing conduct of the Counterclaim-Defendants constitutes a breach of the Non-Competition Agreement and Separation Agreement.

32. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

33. Pursuant to Section 15 of the Separation Agreement, the Counterclaim-Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Counterclaim-Defendant NUCAP guaranteed payment of the Covenant Payments.

37. The Counterclaim-Defendant NUCAP has failed to pay the obligations under the Non-Competition Agreement and is liable to the Counterclaim-Plaintiff for damages caused by the Counterclaim Defendants failure to make the Covenant Payments when due.

38. The Counterclaim-Plaintiff has been damaged by the actions of the Counterclaim-Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (against all Counterclaim-Defendants)

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Counterclaim-Plaintiff and Counterclaim-Defendants are parties to the Non-Competition Agreement and Separation Agreement.

41. Counterclaim-Plaintiff has not breached the Non-Competition Agreement or the Separation Agreement.

42. Counterclaim-Defendants are required to make the annual Covenant Payments to the Counterclaim-Plaintiff.

43. Counterclaim-Defendants unilateral termination of the Non-Competition Agreement and failure to fulfill their obligations under the Separation Agreement without cause was improper and in reckless disregard of the rights of the Counterclaim-Plaintiff.

44. In terminating Non-Competition Agreement without cause and failing to fulfill their obligations under the Separation Agreement, the Counterclaim-Defendants have acted in bad faith and/or reckless disregard for the rights of the Counterclaim-Plaintiff under the Agreements.

45. By virtue of the foregoing, the Counterclaim-Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Counterclaim-Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Counterclaim-Plaintiff seeks to recover from Counterclaim-Defendants such exemplary or punitive damages as are allowed by law.

**COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER
CON. GEN. STAT. §42-110h, et seq. (against all Counterclaim-Defendants)**

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Counterclaim-Plaintiff, the Counterclaim-Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Counterclaim-Plaintiff's employment, and Counterclaim-Plaintiff's performance of the terms of the agreements, including but not limited to the Non-Competition Agreement and Separation Agreement, without fully compensating the Counterclaim-Plaintiff for those benefits.

50. By engaging in the acts alleged above, Counterclaim-Defendants have engaged in conduct that: (a) is offensive to public policy, governing statutes for consumer protection, common law principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Counterclaim-Defendants have committed such acts in the conduct of trade or commerce.

52. Counterclaim-Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Counterclaim-Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, *et seq.*

54. The actions described above by Counterclaim-Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Counterclaim-Defendants alleged above, Counterclaim-Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(e), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.

COUNT FIVE: TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY
(against all Counterclaim-Defendants)

57. Paragraphs 1 through 56 of Count Four are hereby incorporated by reference and made paragraphs 1 through 56 of Count Five as if fully set forth herein.

58. Since the termination of Mr. Bosco's employment with NUCAP, Counterclaim-Defendants have willfully and maliciously made misrepresentations about Mr. Bosco to individuals working in the brake industry with whom Counterclaim-Defendants are aware Mr. Bosco could seek employment.

59. As a direct result, Counterclaim-Plaintiff has been unable to gain employment in positions for which he is otherwise qualified, due to the interference by the Counterclaim-Defendants.

60. If not for NUCAP's conduct in interfering with Counterclaim-Plaintiff's employment opportunities, Counterclaim-Plaintiff would have been able to enter into an agreement for gainful employment.

61. As a direct result of NUCAP's conduct, Counterclaim-Plaintiff has been deprived of opportunities he would otherwise have had.

62. As a result, Counterclaim-Plaintiff has suffered damage to his reputation, in addition to economic loss in not being able to earn a salary in the interim.

COUNT SIX: ABUSE OF PROCESS (against all Counterclaim-Defendants)

63. Paragraphs 1 through 62 of Count Five are hereby incorporated by reference and made paragraphs 1 through 62 of Count Six as if fully set forth herein.

64. Counterclaim- Defendants have instituted this legal action primarily for an improper purpose for which the legal system was not designed.

65. Counterclaim-Defendants have instituted this and the other pending action primarily as an attempt to intimidate or coerce Counterclaim-Plaintiff to forfeit his legal rights to the Covenant Payments and/or deter him from seeking future employment in the brake parts industry.

66. As a result, the Counterclaim-Plaintiff has suffered damages.

WHEREFORE, the Counterclaim-Plaintiff Robert Bosco, Jr. seeks judgment granting

him;

As to All Counts

1. Actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Counterclaim Defendants breaches and violations of law;
2. Attorney's fees pursuant to Conn. Gen. Stat. §35-54;
3. Pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
4. Attorneys' fees and costs; and
5. Such other and further relief to which Counterclaim-Plaintiff is justly entitled.

As to Counts Three, Four, Five, and Six:

6. Exemplary or punitive damages;

As to Count Four:

7. Damages pursuant to CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;

THE DEFENDANT/COUNTERCLAIM-
PLAINTIFF

ROBERT BOSCO, JR.

By 

Jeffrey J. Mirman
David A. DeBassio
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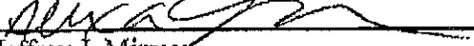
UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES, INC. et al.	:	JUDICIAL DISTRICT
	:	OF WATERBURY
Plaintiffs,	:	
v.	:	
	:	AT WATERBURY
PREFERRED TOOL AND DIE, INC., et al.,	:	
	:	
Defendants.	:	MAY 21, 2015

STATEMENT OF AMOUNT IN DEMAND

The amount of damages claimed in this action is more than Fifteen Thousand and 00/100 (\$15,000.00) Dollars exclusive of interest and costs.

THE DEFENDANT/COUNTERCLAIM-
PLAINTIFF

ROBERT BOSCO, JR.

By 
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 David A. DeBassio
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 ddebassio@hinckleyallen.com
 His Attorneys

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent this 21st day of May, 2015, via electronic mail to the following:

Stephen J. Curley, Esq.
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Southport, CT 06890

Gene S. Winter
Benjamin J. Lehberger
St. Onge, Steward, Johnston, & Rees
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280 Trumbull Street
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Harry M. Byrne
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103


Alexa T. Millinger

EXHIBIT F

EXECUTION COPY

Confidentiality, Non-Competition, and Non-Solicitation Agreement

THIS CONFIDENTIALITY, NON-COMPETITION AND NON-SOLICITATION AGREEMENT ("Agreement") is made effective as of November 19, 2009 (the "Effective Date") by and among Eyelet Tech Nucap Corp., a Delaware corporation (the "Company"), located at 1 Frost Bridge Road, Watertown, Connecticut, Robert R. Bosco ("Bosco"), residing at 13 Executive Hill Road, Wolcott, Connecticut 06716, and NUCAP Industries Inc., an Ontario corporation ("NUCAP"), located at 3370 Pharmacy Avenue, Toronto, Ontario MIW 3K4, solely with respect to Sections 8 and 9 (c) – (h) of this Agreement.

RECITALS

A. The Company and Bosco are parties to an Asset Purchase Agreement ("APA") executed the 19th day of November, 2009, by and among the Company, Eyelet Tech LLC, a Connecticut limited liability company (the "Seller"), Scott R. Allen, Bosco, and NUCAP, pursuant to which the Company is purchasing the Purchased Assets, including but not limited to Purchased Intellectual Property, Confidential Information (as defined herein) and Trade Secrets (as defined herein) of the Seller and all goodwill and other intangible assets associated with the Business (as defined herein), including the goodwill associated with the Purchased Intellectual Property and the name and mark "Eyelet Tech." Capitalized terms in this Agreement which are not defined in this Agreement have the meaning defined in the APA.

B. The Seller is engaged in the business of making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles (collectively, "Vehicles") and providing stamping and machining services ("Services") for such components (the "Business"). The Seller currently has Customers (as defined herein) throughout the Territory (as defined herein) and competes throughout the Territory with firms providing products or services similar or comparable to, and competitive with, those of the Business.

C. Bosco owns 50% of the Seller, and is a Co-Manager of the Seller. Bosco acknowledges that (i) the Company intends to use the Purchased Assets to engage in the business of developing, manufacturing, selling, marketing, distributing, and supporting components of brake systems for Vehicles and providing Services, which is substantially similar to the Business engaged in by the Seller before the Closing; (ii) the Seller currently engages in the Business throughout the Territory (as defined herein); (iii) the long-term Customer relationships developed by the Seller required a significant investment of time, effort and expense, and Bosco has had substantial responsibility for developing and maintaining such relationships; (iv) Bosco has had full access to the Purchased Intellectual Property and other Confidential Information and Trade Secrets being acquired through the purchase of the Purchased Assets; and (v) the restrictions set forth herein are a material inducement for the Company to enter into the APA and to make payments to Bosco as set forth in Section 4 of this Agreement.

D. In view of the foregoing, Bosco recognizes and acknowledges that it is reasonable and necessary that the Company, in all fairness, requires certain protection in order (among other things) (i) to ensure that Bosco does not misappropriate or misuse any Purchased Intellectual Property and other Confidential Information and Trade Secrets being acquired through the purchase of the Purchased Assets, cause injury to the Company's Customer

relationships, or take any other action which could result in a loss of goodwill developed for and on behalf of the Seller at its expense and acquired by the Company, and (ii) more generally, to prevent Bosco from being positioned to provide other persons engaged in the Business with an unfair competitive advantage over the Company.

NOW THEREFORE, in consideration of the above and of the mutual covenants and agreements hereinafter set forth, Bosco and the Company agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Affiliate" shall mean with respect to any specific Person, any other Person which directly, or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified Person. The terms "controls" and "controlled by" mean with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

(b) "Confidential Information" means all information and facts relating to the business and affairs of the Seller and its Customers and suppliers that are confidential or proprietary and were created by, furnished to, or available to Bosco, whether or not such information or facts: (i) are reduced to writing; (ii) were created or originated by an employee of consultant to the Seller, or (iii) are designated or marked as "confidential" or "proprietary" or some other designation or marking, and shall include, but is not limited to, all confidential information of the Seller that is not commonly known by or generally available to the public, regardless of the form or medium in which it is or was created, stored, reflected or preserved, including, but not limited to, Trade Secret Information (as defined herein).

(c) "Customers" shall mean (i) customers of the Seller to whom the Seller sold products or provided services at any time during the three year period before the Closing; and (ii) prospective customers of the Seller that Bosco solicited or had material contact with, or about whom Bosco had access to Confidential Information, at any time during the two year period before the Closing.

(d) "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a trust, a joint venture, an unincorporated organization and any other business entity .

(e) "Restricted Period" shall mean the five year period after the Closing, provided, however, that the running of the Restricted Period shall be tolled during any period of time during which Bosco violates any of the provisions of Section 3.

(f) "Territory" shall mean Connecticut; all other States in the United States in which Customers are located as of the Closing Date; all other States in the United States; Canada; and Mexico.

(g) "Trade Secret Information" of the Seller shall mean all information, regardless of the form or medium in which it is or was created, stored, reflected or preserved, that is not commonly known by or generally available to the public and that: (i) derives or creates economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Seller's Trade Secret Information includes, but is not limited to: (A) the design of brake components developed or sold by the Seller, and the design of machines and dies developed, sold or utilized by the Seller; (B) information in the Seller's databases; (C) information relating to the costs and terms of purchase of supplies purchased by the Seller, and the prices, discounts, and terms of sale of goods and services sold by the Seller; (D) all computer programs or enhancements to computer programs worked on or created by an employee of the Seller or under license to the Seller; (E) performance information relating to the Seller's goods, services or employees; (F) financial or other business information with respect to the Seller; (G) lists of the Seller's Customers and prospects; (H) personal, financial and other business information regarding Customers or prospects; (I) any information disclosed to the Seller by a third party which the Seller has agreed, or is otherwise obligated, to treat as confidential or proprietary; and (J) all personal, financial, or other information concerning the Seller's employees.

2. Restrictions Relating to Confidential Information and Company Property.

(a) All Confidential Information purchased from the Seller shall be deemed the exclusive property of the Company and its Affiliates and shall at all times be regarded, treated and protected as such as provided in this Agreement. Bosco shall not, directly or indirectly, use, copy, reproduce or otherwise duplicate, record, abstract or disclose any Confidential Information except that, if Bosco becomes an employee of the Company or an Affiliate of the Company, then he may use or disclose such information as may be required for the proper performance of his duties for and on behalf of the Company or such Affiliate, and in accordance with the Company's or Affiliate's policies and procedures relating thereto.

(b) Bosco's obligations under this Section 2 will continue for thirty years after the Closing, provided that such obligations will not apply if and to the extent Bosco demonstrates that: (i) such Confidential Information is or becomes generally available to the public and such public availability is not the result, directly or indirectly, of any fault of, or improper taking, use or disclosure by, or breach of this Agreement by, Bosco or anyone working in concert or participation with him; or (ii) Bosco obtains the Confidential Information properly, from a source that was free to disclose it, and under circumstances such that Bosco neither knew nor had reason to know that such Confidential Information had been acquired, used or disclosed improperly.

3. Restrictive Covenants.

(a) Bosco shall not, during the Restricted Period, directly or indirectly, as a shareholder, member, partner, employee, director, officer, consultant, agent, lender, service provider or in any other capacity, on his own behalf or for or on behalf of any other Person:

(i) engage in the Business in the Territory;

(ii) provide any executive, managerial, supervisory, sales, marketing, financial analysis, research/development, or customer-related services to assist any competitor in competing in the Territory, directly or indirectly, against the Company with respect to the Business; or

(iii) provide any executive, managerial, supervisory, sales, marketing, financial analysis, research/development or customer-related services, relating to, or in competition against the Company with respect to, the Business, for or on behalf of any of the following companies (including their parent companies and any subsidiaries and other Affiliates), each of which is a major competitor with respect to the Business which could benefit greatly if it were able to obtain the benefit of or use the Confidential Information and/or to divert goodwill acquired by the Company: Capital Tool Ltd., Util Industries SpA, Util China, Util Mexico, Yamamoto, Wolverine Division of Eagle-Picher, Material Sciences Corp, Trelleborg Rubore, and Precision Resources Inc.

For purposes of this Section 3(a), engaging in the Business in the Territory, and competing with respect to the Business in the Territory, include, without limitation, selling brake components to any individual or entity located outside the Territory if such purchaser is selling brake components or brakes that incorporate such components to customers which are either located, or sell brakes, in the Territory.

(b) Bosco shall not, during the Restricted Period, directly or indirectly, as a shareholder, member, partner, employee, director, officer, consultant, agent, lender, service provider or in any other capacity, on his own behalf or for or on behalf of any other person, firm, corporation or entity:

(i) solicit, divert, or take away, or attempt to solicit, divert or take away, from the Company the business of any of the Customers or any of the Company's suppliers which have sold goods or services to the Seller ("Suppliers") for the purpose of selling or providing to any such Customer, or purchasing from any such Supplier, any product, program or service which is within the scope of the Business (or which product, program or service is a substitute therefor or competes therewith);

(ii) cause or attempt to cause any of the Customers or Suppliers to terminate or reduce their existing relationships with the Company or its Affiliates;

(iii) provide any competitive products, programs or services within the scope of the Business to any Customers in competition against the Company or its Affiliates;

(iv) solicit, persuade or induce, or attempt to solicit, persuade or induce, any employee of the Seller ("Seller Employee") who becomes an employee of the Company or any of its Affiliates, or any independent contractor who provided services to Seller ("Seller Contractor") and either becomes an employee of or provides services to the Company or any of its Affiliates (such Seller Employee or Seller Contractor, a "Protected Person") to leave the employ of or to cease providing services to the Company or an Affiliate of the Company, or to work for or provide services to any competitor of the Company; or

(v) for a period of one year after any Protected Person ceases employment with or providing services to the Company or any of its Affiliates for any reason, solicit, persuade or induce, or attempt to solicit, persuade or induce such Protected Person to work for or provide services to any competitor of the Company.

(c) Bosco's acting on behalf of the Seller to collect Account Receivables in accordance with Section 1.9 of the APA and the restrictions on such collection activity set forth in Section 1.9 will not constitute a violation of Section 3 of this Agreement.

4. Payments by the Company.

(a) In consideration for the promises made by Bosco in Sections 2 and 3 of this Agreement, the Company shall pay to Bosco the gross amount of \$1,000,000 (the "Covenant Payments"), payable in five equal annual installments, as follows: (i) \$200,000 within five business days after the first anniversary of the Closing; (ii) \$200,000 within five business days after the second anniversary of the Closing; (iii) \$200,000 within five business days after the third anniversary of the Closing; (iv) \$200,000 within five business days after the fourth anniversary of the Closing; and (v) \$200,000 within five business days after the fifth anniversary of the Closing. If Bosco dies before all Covenant Payments are made to him, then any remaining payments will be made to his estate.

(b) Notwithstanding the foregoing:

(i) if Bosco violates Section 3 of this Agreement at any time during the Restricted Period, then, in addition to any other legal or equitable remedies the Company may have with respect to such violation, the Company will no longer have any obligation to make any Covenant Payment(s) owed to him after such violation; and

(ii) Bosco authorizes the Company to offset from any Covenant Payment any obligation that he currently owes to the Company pursuant to the APA (an "Offset"), provided, however, the Company may only deduct an Offset from a Covenant Payment after it has delivered a written notice to Bosco, which specifies the amount and basis of such unpaid APA obligation and provides at least ten business days to cure such non-payment, and Bosco fails to timely cure such non-payment. Bosco acknowledges that he has reviewed this Offset provision with an attorney, that he understands both the extent of his personal obligations under the APA and this Offset provision, and that he has knowingly and voluntarily agreed to this Offset provision.

5. Acknowledgements. Bosco represents that the information set forth in the Recitals is accurate, and agree that the restrictions contained in Section 3, both separately and in total, are reasonable and enforceable in view of, among other things, (a) the Company's legitimate interests in protecting its Confidential Information, goodwill and Customer relationships purchased from Seller, (b) the narrow range of the activities prohibited, (c) the Confidential Information to which Bosco has had access, which Bosco agrees has a useful competitive life of more than five years, and (d) the substantial payments to Bosco as a 50% owner of the Seller, as set forth in the APA, and as a party to this Agreement, as set forth in Section 4 of this Agreement, which are such that the restrictions should not impose any undue

hardship on him. Nothing in Section 3 shall prevent Bosco from performing the normal duties and responsibilities of an employee to the extent and for the time that Bosco is employed by the Company or an Affiliate of the Company.

6. Choice of Law and Forum. This Agreement shall be construed in accordance with and governed by Connecticut law without reference to the conflicts or choice of law principles thereof. Any litigation arising out of or relating to this Agreement shall be filed and pursued exclusively in the State or Federal courts in the County of New York, New York, and the parties hereto consent to the jurisdiction of and venue in such courts.

7. Injunctive Relief. In the event of a breach or threatened breach of any of Bosco's duties or obligations under the terms or provisions of Sections 2 or 3 hereof, the Company shall be entitled, in addition to any other legal or equitable remedies it may have (including any right to damages and right to repayment of Covenant Payments pursuant to Section 4(b), to temporary, preliminary and permanent injunctive relief restraining such breach or threatened breach. Bosco hereby expressly acknowledges that the harm which might result to the Company as a result of his noncompliance with any of the provisions of Sections 2 or 3 would be irreparable.

8. Guarantee.

(a) NUCAP hereby guarantees that the Company will duly and punctually make Covenant Payments to Bosco pursuant to Section 4(a) of this Agreement. This guarantee shall be continuing, unconditional (except for the condition that Bosco must fully comply with Sections 2 and 3 of this Agreement to be entitled to any Covenant Payments (the "Covenant Compliance Condition")) and irrevocable, and a fresh cause of action shall be deemed to arise in respect of each failure of the Company to make a Covenant Payment when due. Without limiting the generality of the foregoing, the obligations of NUCAP hereunder shall not be released, discharged, impaired or in any way affected by the bankruptcy, insolvency, dissolution, amalgamation, winding-up or reorganization of the Company or by any other act or proceeding in relation to the Company or this Agreement whereby the Company might otherwise be released or exonerated (except for (i) any Offset authorized by Section 4(b)(ii), and (ii) Bosco's failure to comply with the Covenant Compliance Condition), and NUCAP hereby waives any right to require Bosco to exercise or exhaust any action or recourse against the Company before requiring performance by NUCAP pursuant to this guarantee.

(b) Notwithstanding any provision of this Section 8 to the contrary, this guarantee does not apply to any Covenant Payment to the extent that the Company is authorized not to make such Covenant Payment, in whole or part, to Bosco pursuant to Section 4(b) of this Agreement.

9. Miscellaneous.

(a) Each Affiliate of the Company is a third party beneficiary of this Agreement with respect to (among other things) such Affiliate's Confidential Information, goodwill and Customer relationships which were purchased the Company from the Seller and assigned to such Affiliate, and each such Affiliate has the full right and power to enforce rights, interests and obligations under this Agreement without limitation or other restriction.

(b) This Agreement and the rights hereunder shall be freely assignable by the Company. This Agreement shall inure to the benefit of, and be binding upon, any other entity which shall succeed to the Company's business. Neither this Agreement nor any rights hereunder shall be assigned by Bosco, and any such attempted or purported assignment shall be null and void.

(c) No modification or amendment of any of the provisions of this Agreement shall be effective unless made in writing and duly executed by all parties hereto. The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.

(d) All notices and other communications required or permitted to be given hereunder or by reason of this Agreement shall be in writing and shall be deemed to have been properly given (a) when delivered in person to the party to whom such notice is directed; or (b) three (3) days after being deposited in the United States mail, return receipt requested, postage prepaid, to such party's address as shown on page 1 of this Agreement, or as such party may designate thereafter by notice in accordance with this Section.

(e) Whenever possible, each provision, or subpart thereof, of this Agreement shall be interpreted so as to be valid and enforceable under applicable law. If any provisions, or any subparts thereof, of this Agreement shall be prohibited or invalid under applicable law, they shall be modified and, to the maximum extent permissible under applicable law, enforced. Specifically, if any of the restrictions contained in Section 3 are determined by any court of competent jurisdiction to be unenforceable by reason of their extending for too long a period of time or over too great a geographical area, or their being too extensive in any other respect, then Section 3 shall be interpreted to extend only over the maximum period of time and the maximum geographical area, and to apply to the maximum extent in all other respects, as to which it may be enforceable in accordance with applicable law, all as determined by such court in such action.

(f) No delay or failure of either party to exercise any right under this Agreement, and no partial or single exercise of any right, shall constitute a waiver of that or any other right unless expressly so provided in a writing signed by such party, and no such waiver shall operate or be construed as the waiver of the same or of another breach on a prior or subsequent occasion.

(g) This Agreement may be executed in counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all counterparts hereof taken together shall constitute but a single instrument. Signatures provided by facsimile or in portable document format (a/k/a pdf) shall be as binding as original signatures.

(h) There are no oral or other verbal understandings or agreements which in any way change the terms, covenants, or conditions herein set forth.

(i) The Company may disclose this Agreement in whole or in part, to any person or entity, including without limitation one that is considering employing or engaging in a business relationship with, Bosco.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

EYELET TECH NUCAP CORP.

By: _____
Name: David Weichenberg
Title: President

Robert R. Bosco

NUCAP INDUSTRIES INC. (solely with respect to Sections 8 and 9 (c) - (h) of this Agreement)

By: _____
Name: David Weichenberg
Title: President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

EYELET TECH NUCAP CORP.

By: _____
Name: David Weichenberg
Title: President


Robert R. Bosco

NUCAP INDUSTRIES INC. (solely with respect to Sections 8 and 9 (c) - (h) of this Agreement)

By: _____
Name: David Weichenberg
Title: President

EXHIBIT G

RETURN DATE: AUGUST 19, 2014	:	SUPERIOR COURT
NUCAP INDUSTRIES INC.;	:	
and	:	
NUCAP US INC., as successor to ANSTRO MANUFACTURING, INC.;	:	
VS.	:	J.D. OF NEW HAVEN
PREFERRED TOOL AND DIE, INC.;	:	AT NEW HAVEN
and	:	
PREFERRED AUTOMOTIVE COMPONENTS, a division of PREFERRED TOOL AND DIE;	:	
and	:	
ROBERT A. BOSCO, JR.	:	JULY 21, 2014

COMPLAINT

Plaintiffs Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), bring this Complaint against Defendants, Preferred Tool and Die, Inc., Preferred Automotive Components, a division of Preferred Tool and Die (collectively “Preferred”), and Robert A. Bosco, Jr. (“Bosco”) (collectively, “Defendants”), and state as follows:

INTRODUCTION

1. Through this action, Plaintiffs seek to remedy the unauthorized and unlawful use of their valuable trade secrets by Defendants, who upon information and belief have capitalized on the access that Bosco had to Plaintiffs’ trade secrets as a former employee of Nucap US. Upon information and belief, Preferred has used Plaintiffs’ trade secret information in the course of establishing a competing business for the sale of brake component parts.

Bosco's actions, upon information and belief, have been accomplished through the violation of the Confidentiality and Intellectual Property Agreement that he signed, and which NUCAP seeks to enforce.

2. NUCAP is a global leader in the design, development, manufacturing, marketing, and sale of brake components.

3. Plaintiffs have invested considerable time and resources in the development of their product lines and maintain reasonable efforts to protect all manners of information regarding the design, development, manufacturing and marketing of their products. The aforementioned information is proprietary and confidential to Plaintiffs and derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons (including Preferred) who can obtain economic value from its disclosure or use.

4. Until recently, Preferred had not been a competitor of NUCAP in the market for "shims" (thin layers of rubber or metal that fit between the brake pads and the rotors and function primarily to reduce brake noise), "caliper hardware" (the hardware associated with calipers, which operate to slow the car's wheels by pressing against the rotors), and similar brake component parts—that is, until Bosco left his position working for Nucap US and became associated with Preferred.

5. The timing of Preferred's entry into the marketplace for shims, caliper hardware and other competitive products, upon information and belief, is not coincidental. Upon information and belief, it is part of a concerted plan by Preferred to steal NUCAP's trade secrets, confidential information, and intellectual property, to unfairly compete with Plaintiffs and create product lines using NUCAP's proprietary, confidential and trade secret information.

6. The access and use of this information is providing and has provided Preferred with an unfair advantage that Preferred would not have without access to NUCAP's proprietary, confidential and trade secret information.

THE PARTIES

7. Plaintiff Nucap Industries is an Ontario, Canada corporation with a principal place of business located at 3370 Pharmacy Avenue, Toronto, Ontario, MIW 3K4, Canada.

8. Plaintiff Nucap US is a Delaware corporation with a principal place of business at 238 Wolcott Road, Wolcott, Connecticut.

9. Nucap US is the successor to Anstro Manufacturing, Inc.

10. Defendant Preferred Tool and Die is a Connecticut corporation with a principal place of business at 30 Forest Parkway, Shelton, CT 06484-6122.

11. Defendant Preferred Automotive Components is, upon information and belief, a division of Defendant Preferred Tool and Die.

12. Defendant Robert Bosco is an individual who, upon information and belief, resides at 13 Executive Hill Road, Wolcott, Connecticut.

13. Bosco was previously employed by Nucap US.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Defendants because Defendants conduct business in this State, reside in this State, breached duties owed to Plaintiffs in this State, and because a substantial part of the events and omissions giving rise to this action took place in this State.

15. Venue is proper in this District because Bosco is a resident of this Judicial District and a substantial part of the transactions and events giving rise to this action took place in this Judicial District.

FACTUAL BACKGROUND

Plaintiffs' Business

16. NUCAP is a global leader in brake components and specializes in the manufacture and design of all lines of brake products.
17. Nucap US is the successor to Anstro Manufacturing, Inc. and is a wholly owned subsidiary of Nucap Industries.
18. Like Nucap Industries, Nucap US is similarly engaged in the business of manufacturing, designing, and selling all lines of brake products.
19. The product portfolio for NUCAP ranges from high quality brake pad backing plates, shims, attaching hardware, abutment hardware, and springs used in cars, buses, trucks, motorcycles, aviation and trains.
20. NUCAP is a noise, vibration, harshness ("NVH") leader through the innovations developed at its state of the art research and development center.
21. NUCAP invests significant resources in the development, design, and marketing for all of its products.
22. Because brakes and brake pads are vital to the safety of a vehicle, NUCAP invests heavily in the research and development of the brake system, including all component parts in the brake system.
23. Through its research and development efforts, NUCAP has become an industry leader in brake components and prides itself on the company's ability to manufacture and develop new and innovative product lines.
24. All of Plaintiffs' strategic efforts to develop and grow their business lines are confidential to those outside of Plaintiffs' core business team.

The Science Behind How Brakes Work

25. As set forth above, brake shims are thin layers of rubber or metal that fit between the brake pads and the rotors and function primarily to reduce brake noise. Without shims, the individual components of the brake would cause significant vibration and noise.

26. High quality brake shims are multilayered with varying grades of dampening materials. Engineers tune these layers to get the best NVH qualities for that specific brake system. If the shim is not making contact with the brake pad, it will not do its job.

27. The science behind designing, developing, and manufacturing optimally-performing brake shims is highly technical, involves significant trial and error over the course of many years, and requires special equipment for testing which is not generally known by those outside of this very narrow industry. Put simply, a company (even one connected to the automotive industry) could not just one day decide to enter the market for the design, development and manufacturing of brake shims and thereafter, within a few months, have an optimally-performing product(s) ready to market.

28. Similarly, the science behind developing caliper hardware – the hardware associated with calipers, which allows the brake pads to slide effectively within the caliper in order to press against the rotor to slow or stop the vehicle– also is highly technical, involves significant trial and error over the course of many years, and requires special equipment for testing which is not generally known by those outside of this very narrow industry. As with brake shims, a recent entrant into the market for the design, development and marketing of caliper hardware would not be in a position to quickly “go to market” with a competitive and optimally-performing product(s).

29. Brake shims and caliper hardware are key products for Plaintiffs, which help to differentiate NUCAP from its competitors.

30. Through rigorous design, testing and other processes developed over numerous years, NUCAP has become a market leader in the design, development and manufacturing of brake shims and caliper hardware that its competitors (notwithstanding their best efforts) have been unable to replicate.

31. The formulas, processes, materials, standard operating procedures, and methods used by Plaintiffs in the design, development, manufacturing and marketing of its shims and caliper hardware are trade secrets of NUCAP. Only certain and properly cleared NUCAP employees had access to the totality of this information. Bosco was one such employee.

NUCAP's Considerable Efforts to Protect its Trade Secret, Confidential and Proprietary Information

32. NUCAP goes to considerable lengths to protect its trade secrets, confidential and other proprietary information.

33. For example, NUCAP and its affiliates require certain employees (depending on the degree to which those employees have access to NUCAP's trade secret, confidential and proprietary information) to execute Confidentiality and Intellectual Property Agreements. These Agreements provide, among other things, that the employees will not use, disclose, copy or reproduce any information owned, possessed or controlled by NUCAP and/or its affiliates, including but not limited to all information related to developments, inventions, product designs, drawings and specifications, business concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, and files and information relating to customer needs.

34. Bosco signed a Confidentiality and Intellectual Property Agreement with Anstro Manufacturing, Inc., now known as Nucap US, on September 2, 2011. See Exhibit "A" attached.

35. NUCAP also requires all employees, from the CEO of the company on down, to agree to and abide by NUCAP's Code of Ethics and Business Conduct ("Code of Ethics"), which requires as a condition of employment, among other things, that employees may not disclose confidential corporate information to anyone outside of NUCAP. The Code of Ethics further states that, even within NUCAP, confidential corporate information should be discussed only with those who have a need to know the information, and that each employee's obligation to safeguard confidential corporate information continues even after the employee leaves NUCAP. All NUCAP employees, including Bosco, have an absolute obligation to comply with the Code of Ethics as a condition of employment with NUCAP.

36. In addition to securing the agreements of its employees to abide by Confidentiality and Intellectual Property Agreements and its Code of Ethics, NUCAP also requires certain employees, depending on their level of access to NUCAP's trade secret, confidential and proprietary information – including Bosco – to execute additional agreements (employment and/or non-competition agreements) providing that those employees will keep all such information in strict confidence and, both during and upon leaving the employ of NUCAP, providing that they will not disclose any such information to any third party.

37. NUCAP also takes a number of other steps to prevent its trade secret and other proprietary information from being disclosed.

38. For example, NUCAP limits access to its proprietary databases and information relating to its developments, inventions, product designs, drawings and specifications, business

concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, and/or files and information relating to customer needs to a certain subset of employees and, even within that subset, employees are only provided with access to the portions of the databases and information that they need to perform their job duties.

39. NUCAP also takes many other measures to protect its trade secrets and other proprietary information, including but not limited to password protecting its computers, limiting access to electronic data on a "need to know" basis (*i.e.*, only engineers and persons with appropriate and necessary clearance have access to engineering files), limiting remote access to data, maintaining security at its facilities, marking certain documents and data as "confidential" or with similar markings, and cultivating a culture where trade secrets and proprietary information belonging to the company is viewed as one of the NUCAP's most significant assets, and the protection of the company's trade secrets and proprietary information is an organizational imperative.

40. All of the steps that NUCAP takes are more than reasonable to maintain the secrecy of its trade secret, confidential and proprietary information.

Bosco's History at NUCAP

41. Bosco began working for Nucap US in 2009, in connection with NUCAP's purchase of the business and operations of a company called Eyelet Tech LLC, an entity that was at the time wholly owned by Bosco and a business partner.

42. Bosco's official title at Nucap US was General Manager but, in actuality, he functioned in a role more similar to an executive or high level officer of the company. Bosco had access to all aspects of the business of Nucap US and was responsible for the day-to-day

supervisory management of the United States operations of Nucap US, a subsidiary of Toronto-based NUCAP.

43. Bosco had supervisory authority over all employees, projects, and products at Nucap US and NUCAP's central office in Toronto entrusted Bosco with substantial authority to run the United States operations for Nucap US.

44. Bosco was the point person for all business dealings and strategy discussions among NUCAP and Nucap US. Put differently, despite his nominal title as General Manager, Bosco had the type of access at Nucap US typically seen in high level executives.

45. Given Bosco's senior role at Nucap US, Bosco was entrusted with trade secret, confidential and proprietary information belonging to NUCAP.

46. The information included details and confidential knowledge of, among other things: (1) supplier contracts; (2) customer contracts; (3) pricing and costing; (4) tools design; (5) parts design; and (6) production rates.

47. Additionally, during Bosco's tenure at Nucap US, he worked closely with and had supervisory authority over employees in both the sales and product development departments.

48. Bosco had access to some of Plaintiffs' most valuable trade secrets and proprietary data, including detailed information regarding NUCAP's design, development, manufacturing, marketing, and sales of shims and caliper hardware.

49. All of these materials were strictly confidential to Plaintiffs and Bosco was made aware (through the various agreements that he signed, NUCAP's Code of Ethics, and otherwise) that the materials were considered trade secret, confidential and proprietary.

Bosco's Termination and Subsequent Affiliation with Preferred

50. Bosco was terminated for cause by Nucap US on January 23, 2012.

51. Following his termination, upon information and belief, at some point Bosco became affiliated with Preferred.

52. Until recently, Preferred was not a competitor of NUCAP.

53. Rather, Preferred was a manufacturing company in the medical and electrical fields, with some involvement in consumer goods.

54. Within the last year, Preferred has decided to expand its business model and attempt to enter the market for the manufacture and design of automotive parts, in competition with NUCAP.

55. Preferred's decision to compete with NUCAP, not so coincidentally in NUCAP's view, comes after or around the same time when Bosco first became affiliated with Preferred.

56. When Preferred first hired away two former NUCAP engineers and product development employees—Carl Dambrauskas and Tom Reynolds—NUCAP sent reminder letters to Preferred, Dambrauskas, and Reynolds in July 2012 informing them of their obligations to NUCAP, specifically with respect to the use or disclosure of NUCAP confidential, trade secret, or proprietary information.

57. While NUCAP had suspicions about Preferred's activities in the aftermath of Preferred's hiring of Dambrauskas and Reynolds, NUCAP did not rush to judgment (or to the courts, for that matter) concerning whether Preferred had actually misappropriated or was threatening to misappropriate NUCAP's trade secrets.

58. The true purpose of Preferred's actions, however, began to come to light in or around October 2013.

59. More specifically, on or about October 6-7, 2013, NUCAP learned that Bosco registered and attended the SAE Brake Colloquium – an annual industry gathering of automotive

and commercial vehicle brake application engineers, researchers and academics involved in all aspects of braking and brake systems – in Jacksonville, Florida. Bosco appeared at the Preferred booth at the convention, and, upon information and belief, was acting as a representative of Preferred.

60. As stated in greater detail below, Preferred and Bosco were displaying “new” products from Preferred that possessed striking similarities with current NUCAP products.

61. Bosco additionally attended meetings with the Preferred team at the Colloquium, during which Bosco, upon information and belief, discussed strategies for the sale, manufacture, design, and marketing of brake products and technologies on behalf of Preferred.

Preferred Products Nearly Identical to NUCAP’s Products Appear on the Market

62. Bosco’s activities at the SAE Brake Colloquium in October 2013 represented the first indication to NUCAP that Bosco and/or Preferred may be preparing to enter the market for designing, developing, manufacturing and/or marketing products competitive with those of NUCAP.

63. In or around Spring 2014, NUCAP learned that Preferred was targeting NUCAP customers with its brand new product line.

64. More specifically, NUCAP obtained a copy of a packet that Preferred sent to one of NUCAP’s customers pitching Preferred’s new product line. *See Exhibit “B”* attached (the name and identifying information of the customer is redacted because NUCAP considers its customer list and identifying information regarding the contact persons of its customers to be its trade secrets, and to protect the customer’s privacy interests).

65. The Preferred “pitch” was made by Carl Dambrauskas – the former Senior Design Engineer of Nucap US who left Nucap US on March 2, 2012, approximately one month after

Bosco left the company, and who (according to his signature block) is the "Director, Business Development" for "Preferred Automotive Components". See Exhibit "B".

66. The letter from Dambrauskas states:

You may not recognize the company name on the letterhead, but I hope it will become familiar quickly, Preferred Automotive Components, a subsidiary of Preferred Tool and Die, invites you to explore the engineering samples and brochures included in this packet.

Id.

67. In the letter, Dambrauskas touted his experience on behalf of Anstro

Manufacturing (now Nucap US):

As you may know, I've spent nearly 12 years as a product engineer at Anstro Mfg where I was responsible for the launch of all new products, along with providing engineering support to the sales team. Today I have assumed the role of Director of Business Development for Preferred Automotive Components.

Id.

68. The letter from Preferred (under Dambrauskas' signature) also hinted at information relating to NUCAP that Preferred offered to "share" with the customer:

We believe that Preferred Automotive Components can offer [CUSTOMER NAME REDACTED] products, service and a **mutually beneficial exchange of information** that you **may not be getting from your current suppliers**.

Id. (emphasis added).

69. Preferred further highlighted in the letter that its "product portfolio" included shims (for now) and could be expected to include caliper hardware as well, *i.e.*, the very products for which NUCAP is known:

We look forward to discussing ways that Preferred's innovative approach to shim insulators can help [CUSTOMER NAME REDACTED]. As we progress, you can expect PAC to become a supplier of Caliper Hardware kits as well.

Id.

70. Attached to the letter was a product brochure, drawings, material data sheets and samples for shims being offered by Preferred.

71. An analysis of the Preferred product brochure, drawings, material data sheets and samples reveals striking similarities between the "new" Preferred products and current NUCAP products. (Because of these similarities, NUCAP is not attaching the materials attached to the letter to this Complaint so as not to waive any argument that NUCAP has unwittingly disclosed its own trade secret information encompassed within the Preferred materials.)

72. Upon information and belief, the shims that Preferred is offering for sale have been copied, derived from, and/or inspired by NUCAP's design, development and manufacturing of its own brake shims.

73. Given the difficulty that any new competitor would have in being able to quickly "go to market" with competitive products based on the amount and degree of testing, trial and error and other "normal" steps in the design/development/manufacturing process for these highly technical components, and the fact that Preferred's product offerings are strikingly similar to NUCAP's own product offerings, NUCAP believes it is certain and asserts, upon information and belief, that Preferred has benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's brake shims.

74. NUCAP further asserts, upon information and belief, that Preferred's highlighting of its apparently-soon-to-be-released caliber hardware reflects that Preferred has also benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's caliber hardware.

**COUNT I- THREATENED AND/OR ACTUAL MISAPPROPRIATION OF TRADE
SECRETS PURSUANT TO THE CONNECTICUT UNIFORM TRADE SECRETS ACT,
CONN. GEN. STAT. §§ 35-50 TO 35-58**

All Defendants

75. Plaintiffs incorporate the allegations of all previous paragraphs by reference.

76. Bosco acquired access to and knowledge of NUCAP's trade secrets by virtue of his senior role with Nucap US.

77. NUCAP's trade secrets are not available to the general public, could not originate with another party, were compiled at substantial expense to NUCAP, and derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons (including Preferred) who can obtain economic value from its disclosure or use.

78. NUCAP takes substantial and reasonable measures to protect the secrecy of its trade secrets.

79. By virtue of his senior role at NUCAP, Bosco had intimate knowledge of NUCAP's design, development, manufacturing and marketing of NUCAP's brake shims and caliper hardware. Based on Bosco's known affiliation with Preferred; the fact that Preferred was never a competitor of NUCAP; and the fact that Preferred is now suddenly marketing competitive shims and caliper hardware, NUCAP believes and avers, upon information and belief, that Defendants are using and/or are threatening to use the trade secret information of NUCAP in the design, development, manufacturing and marketing of competitive products, without NUCAP's express or implied consent.

80. Defendants' conduct has been willful and malicious and undertaken with reckless indifference to NUCAP's rights.

81. By virtue of Defendants' actual and/or threatened misappropriation of trade secrets, NUCAP is suffering and/or is at risk of suffering immediate and irreparable harm.

82. As a result of the foregoing conduct, NUCAP has suffered damages in an amount to be proven at trial.

COUNT II – BREACH OF CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT

Defendant Bosco

83. Plaintiffs incorporate the allegations of all previous paragraphs by reference.

84. Defendant Bosco entered into a valid, binding and enforceable contract with Plaintiffs, the Confidentiality and Intellectual Property Agreement. See Exhibit "A".

85. The Confidentiality and Intellectual Property Agreement was supported by adequate consideration and Plaintiffs have satisfied all conditions precedent, if any.

86. Upon information and belief, Defendant Bosco breached the terms of the Confidentiality and Intellectual Property Agreement by, among other things, disclosing "Confidential Information" (as that term is defined in the Confidentiality and Intellectual Property Agreement) to Defendant Preferred without authorization.

87. By virtue of Defendant Bosco's breach, NUCAP is suffering and/or is at risk of suffering immediate and irreparable harm.

88. As a result of the foregoing conduct, NUCAP has suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief against Defendants as follows:

- a. For an injunction prohibiting Defendants from engaging in any activities that have caused, will cause and/or are threatening to cause irreparable harm to Plaintiffs;
- b. For compensatory damages in an amount to be proven at trial;
- c. For punitive damages in an amount to be proven at trial, based on Defendants' actual and/or threatened misappropriation of trade secrets;
- d. For attorneys' fees and costs incurred in connection with this action; and
- e. For such other and further relief as the Court may deem equitable and proper.

PLAINTIFFS,
NUCAP INDUSTRIES INC.
and NUCAP US INC.

By /s/Stephen W. Aronson

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Attorneys for Plaintiffs

RETURN DATE: JULY 18, 2014	:	SUPERIOR COURT
NUCAP INDUSTRIES INC.;	:	
and	:	
NUCAP US INC., as successor to ANSTRO MANUFACTURING;	:	
VS.	:	J.D. NEW HAVEN
PREFERRED TOOL AND DIE, INC.;	:	AT NEW HAVEN
and	:	
PREFERRED AUTOMOTIVE COMPONENTS, a division of PREFERRED TOOL AND DIE	:	
and	:	
ROBERT A. BOSCO, JR.	:	JULY 21, 2014

STATEMENT OF AMOUNT IN DEMAND

The amount in demand in the this action is greater than FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.

PLAINTIFFS,
NUCAP INDUSTRIES INC.
and NUCAP US INC.

By /s/Stephen W. Aronson
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Attorneys for Plaintiffs

Exhibit A

CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT

As a condition of your employment, or continued employment, with Anstro Manufacturing, Inc., a wholly owned subsidiary of NUCAP Industries Inc. (the "Company") you agree as follows:

CONFIDENTIAL INFORMATION

For the purposes of this Agreement, "Confidential Information" means all information owned, possessed or controlled by the Company and/or its affiliates including, without limitation, all information related to developments, inventions, product designs, drawings and specifications, business concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, files and information relating to customer needs, howsoever received by you from, through or relating to the Company and/or its affiliates and in whatever form (whether oral, written, machine readable or otherwise), which pertains to the Company and/or its affiliates; provided, however, that the phrase "Confidential Information" shall not include information which:

- (a) was in the public domain prior to the date of receipt by you;
- (b) is properly within your legitimate possession prior to its disclosure hereunder, and without any obligation of confidence attaching thereto; or
- (c) becomes part of the public domain by publication or otherwise, not due to any unauthorized act or omission on your part.

You acknowledge that the Company has a legitimate and continuing proprietary interest in the protection of its Confidential Information. Consequently, you agree not to make any unauthorized use, publication, or disclosure, during or subsequent to employment by the Company, of any Confidential Information, generated or acquired by you during the course of employment with the Company, except to the extent that the disclosure of such Confidential Information is necessary to fulfill your responsibilities as an employee of the Company. Your obligations in respect of the Company's Confidential Information shall survive the termination of employment, for any reason. The use, publication or disclosure of the Confidential Information for any matter unrelated to your responsibilities as an employee may only be authorized by the global Executive Team.

Other than for internal purposes, you further covenant and agree not to copy, make notes of, draw, photocopy, take photographs, or in any other manner reproduce or cause reproductions to be made of any Confidential Information, including but not limited to plans, specifications, formula, instructions or any other documents relating to the manufacturing process, research and development or of any other aspect of the business of the Company.

You acknowledge that the Confidential Information is the sole property of the Company and you further recognize the value to the Company of the Confidential Information.

Nothing contained herein shall be construed as obliging the Company to disclose to you any Confidential Information related to the business.

INTELLECTUAL PROPERTY

For the purposes of this Agreement, "Developments" means any discovery, invention, design, improvement, concept, design, specification, creation, development, treatment, computer program, method, process, apparatus, specimen, formula, formulation, product, hardware or firmware, any drawing, report, memorandum, article, letter, notebook and any other work of authorship and ideas (whether or not patentable or copyrightable) and legally recognized proprietary rights (including, but not limited to, patents, copyrights, trademarks, topographies, know-how and trade secrets), and all records and copies of records relating to the foregoing, that:

- (a) Result or derive from your employment with the Company or from your knowledge or use of Confidential Information;
- (b) Are conceived or made by you (individually or in collaboration with others) in the course of your employment;
- (c) Result from or derive from the use or application of the resources of the Company; or
- (d) Relate to the business operations of actual or demonstrably anticipated research and development by the Company.

For the purposes of this Agreement, "Intellectual Property Rights" means all worldwide intellectual and industrial property rights in connection with the Developments including, without limitation:

- (a) Patents, inventions, discoveries and improvements;
- (b) Ideas, whether patentable or not;
- (c) Copyrights;
- (d) Trademarks;
- (e) Trade secrets;
- (f) Industrial and artistic designs; and
- (g) Proprietary, possessory and ownership rights and interests of all kinds whatsoever;

including, without limitation, the right to apply for registration or protection of any of the foregoing.

All rights, titles and interests in or to the Developments shall vest and are owned exclusively by the Company immediately on its creation and regardless of the stage of its completion. You irrevocably grant, transfer and assign to the Company all of your rights, title and interest, if any, in any and all Developments, including rights to translation and

reproductions in all forms or formats and all Intellectual Property Rights thereto, if any and you agree that the Company may copyright said materials in the Company's name and secure renewal, reissues and extensions of such copyrights for such periods of time as the law may permit.

At all times hereafter, you agree to promptly disclose to the Company all Developments, to execute separate written transfers or assignments to the Company at the Company's request, and to assist the Company in obtaining any Intellectual Property Rights in Canada, the United States and in any other countries, on any Developments granted, transferred or assigned to the Company that the Company, in its sole direction, seeks to register. You also agree to sign all documents, and do all things necessary to obtain such Intellectual Property Rights, to further assign them to the Company, and to reasonably protect the Company against infringement by other parties at the Company's expense with the Company's prior written approval.

You shall keep complete, accurate and authentic information and records on all Developments in the manner and form reasonably requested. Such information and records, and all copies thereof, shall be the property of the Company as to any Developments assigned to the Company. On request, you agree to promptly surrender such information and records. All these materials will be Confidential Information upon their creation.

You hereby irrevocably waive, in favour of the Company, its successors, assigns and nominees, all moral rights arising under any applicable copyright legislation as amended (or any successor legislation of similar effect) or similar legislation in any applicable jurisdiction, or at common law, to the full extent that such rights may be waived in each respective jurisdiction, that you may have now or in the future with respect to the Developments.

ADDITIONAL TERMS

The terms, obligations, and covenants of this Agreement shall be binding on you for the duration of your employment with the Company. You acknowledge that monetary damages alone will not adequately compensate the Company for breach of any of the covenants and agreements herein and, therefore, you agree that in the event of the breach or threatened breach of any such covenant or agreement, in addition to all other remedies available to the Company, the Company shall be entitled to injunctive relief compelling specific performance of, or other compliance with, the terms hereof. Should such action become necessary to enforce the terms of this Agreement, you agree that the Company is entitled to recover from you the legal costs associated with this litigation.

If any provision of the Agreement shall be determined to be invalid or otherwise unenforceable by any court of competent jurisdiction, the validity and enforceability of the other provisions of this Agreement shall not be affected thereby.

This Agreement constitutes the entire Agreement and understanding between the Company and you concerning the subject matter hereof. No modification, amendment,

termination, or waiver of this Agreement shall be binding unless in writing and signed by a duly authorized officer of the Company. Failure of the Company to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, and conditions.

This Agreement shall be binding upon you irrespective of the duration of your retention by the Company or the amount of your compensation. Your obligations under this Agreement shall survive the termination of your employment with the Company irrespective of the reason for such termination and shall not in any way be modified, altered, or otherwise affected by such termination.

Please confirm your agreement with the foregoing by signing and returning one copy of this letter to the undersigned.

ANSTRO MANUFACTURING, INC.

Per: _____

Name:

Title:

Accepted and agreed as of the 2 day of Sept, 2011.

Craig McFarlane
Witness

Robert R. Basco
Print Name: Robert R. Basco

Exhibit B

Carl Dambrauskas
30 Forest Parkway
Shelton, CT 06484
April 24, 2013



Dear [REDACTED]

You may not recognize the company name on the letterhead, but I hope it will become familiar quickly. Preferred Automotive Components, a subsidiary of Preferred Tool and Die, invites you to explore the engineering samples and brochures included in this packet.

As you may know, I've spent nearly 12 years as a product engineer at Anstro Mfg where I was responsible for the launch of all new products, along with providing engineering support to the sales team. Today I have assumed the role of Director of Business Development for Preferred Automotive Components.

We believe that Preferred Automotive Components can offer [REDACTED] products, service and a mutually beneficial exchange of information that you may not be getting from your current suppliers.

We look forward to discussing ways that Preferred's innovative approach to shim insulators can help [REDACTED]. As we progress, you can expect PAC to become a supplier of Caliper Hardware kits as well.

Please feel free to review the samples and brochure included in this packet. I look forward to hearing from you in the future. I have attached my card with my contact info.

Sincerely,

A handwritten signature in cursive script that reads "Carl Dambrauskas".

Carl Dambrauskas
Director, Business Development



EXHIBIT H

Byrne, Harry M.

From: Byrne, Harry M.
Sent: Wednesday, June 17, 2015 5:29 PM
To: 'DeBassio, David A.'
Cc: Lehberger, Benjamin J. (blehberger@ssjr.com); Winter, Gene S. (gwinter@ssjr.com); 'William J. Britt' (WBritt@brodywilk.com); Stephen J. Curley <scurley@earthlink.net> (scurley@earthlink.net); Mirman, Jeffrey J.; Millinger, Alexa T.; Pockers, Lawrence H.; Najam, Nicole H. (NNajam@rc.com)
Subject: RE: Nucap v. Preferred - Bosco Counterclaims

Dave,

Apologies on the meet and confer times in New York, just slipped my mind. We're available tomorrow afternoon or Friday before 3:30. Let me know what works. You additionally still owe us a written response to our letter and an answer on Bosco's text messages, please let me know and send the written response over before our call.

On the Counterclaims in this case, we need to know sooner than the end of the week so that we can formulate our response to the Counterclaims before the Monday filing deadline. Please let me know by no later than tomorrow at noon. This is basically a legal strategy decision and one that you could make more or less immediately. Thanks.

Harry

Harry M. Byrne
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1136
F: +1 215 689 4925

HMByrne@duanemorris.com
www.duanemorris.com

From: DeBassio, David A. [<mailto:ddebassio@hinckleyallen.com>]
Sent: Wednesday, June 17, 2015 4:55 PM
To: Byrne, Harry M.
Cc: Lehberger, Benjamin J. (blehberger@ssjr.com); Winter, Gene S. (gwinter@ssjr.com); 'William J. Britt' (WBritt@brodywilk.com); Stephen J. Curley <scurley@earthlink.net> (scurley@earthlink.net); Mirman, Jeffrey J.; Millinger, Alexa T.; Pockers, Lawrence H.; Najam, Nicole H. (NNajam@rc.com)
Subject: RE: Nucap v. Preferred - Bosco Counterclaims

Harry,

As we discussed last Wednesday (6/10), I am still waiting for you to provide potential times for our meet and confer in the New York action to discuss Mr. Bosco's issues with Nucap's discovery responses. You will have Mr. Bosco's response to your inquiry below by the end of the week.

Regards,

Dave

From: Byrne, Harry M. [<mailto:HMByrne@duanemorris.com>]
Sent: Monday, June 15, 2015 12:00 PM
To: DeBassio, David A.
Cc: Lehberger, Benjamin J. (blehberger@ssjr.com); Winter, Gene S. (gwinter@ssjr.com); 'William J. Britt' (WBritt@brodywillk.com); Stephen J. Curley <scurley@earthlink.net> (scurley@earthlink.net); Mirman, Jeffrey J.; Millinger, Alexa T.; Pockers, Lawrence H.; Najam, Nicole H. (NNajam@rc.com)
Subject: Nucap v. Preferred - Bosco Counterclaims

Dave,

I'm writing in regard to Bosco's Counterclaims in the Preferred action in Connecticut. After reviewing the Counterclaims, Counts One through Count Four of the Counterclaims are the same exact claims that Mr. Bosco filed in the original Connecticut action in Waterbury (No. UWY-CV-14-6023433-S) and which were dismissed by Judge Roraback. Counts One through Four are also the exact same claims that Mr. Bosco has filed in New York and which are currently being litigated in that action.

Given both the prior dismissal in Connecticut and the existence of the same claims in New York, there is no good faith basis for Mr. Bosco to file these same claims again as counterclaims against Plaintiffs in the Preferred action and the claims at Counts One to Four should be immediately withdrawn. If you intend to proceed with these claims in the Preferred action, you are leaving us with no choice but to seek sanctions for the needless time and expense of re-litigating claims that have already been dismissed with prejudice by Judge Roraback.

Please let us know your position by no later than the close of business on Wednesday, June 17, 2015. Thanks.

Harry

Harry M. Byrne
Associate

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4106
P: +1 215 979 1136
F: +1 215 689 4925

HMByrne@duanemorris.com
www.duanemorris.com

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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EXHIBIT I

CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE

This Confidential Separation Agreement and General Release ("Agreement") between Robert R. Bosco, Jr., 24 Cedar Point, Wolcott, Connecticut 06716 ("Executive"), and NUCAP Industries Inc., with a principal place of business at 3370 Pharmacy Avenue, Toronto, Canada M1W 3K4 ("Nucap"), sets forth the terms and conditions of the end of Executive's employment with Nucap and any benefits to be provided to Executive in connection with Executive's separation from Nucap, end of service, and/or termination of employment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Executive and Nucap agree to the following terms and conditions:

1. **Consideration.** In consideration of the execution of this Agreement and provided that Executive is in full compliance with all of the terms and conditions of this Agreement, and further provided that Executive executes and does not revoke this Agreement as provided below in paragraph 26, Nucap will, notwithstanding the previous termination of Executive's employment with Nucap for cause as of January 23, 2012 ("Separation Date"), pay to Executive severance pay in the form of salary continuation in the amount of Ninety-Three Thousand Seven Hundred and Fifty Dollars (\$93,750.00), which amount is equal to four and one-half months of Executive's base salary. This severance pay will be paid in equal monthly installments over that period of time until such severance payments terminate. This severance payment will be subject to withholdings and will be reported on an IRS Form W-2. Executive's withholdings will be based on the most-recent IRS Form W-4 on file with Nucap.

2. **Last Day of Work.** As of the Separation Date, Executive has ceased to be employed by Nucap and each and every parent, subsidiary, or affiliate of Nucap in any capacity. Executive acknowledges that, as of the Separation Date, Executive is no longer a member of any and all committees, boards, task forces, and associations of or on behalf of Nucap (as well as any and all of Nucap's parents, subsidiaries, and affiliates, including, without limitation, Anstro Manufacturing, Inc.). Executive agrees to execute promptly upon request by Nucap any documents necessary to effectuate the provisions of this paragraph 2.

3. **Health Benefits/COBRA.** After Executive's Separation Date, but within the applicable statutory time period, Executive was offered the opportunity to continue his group health benefits coverage by paying and complying with the provisions of COBRA without any contribution, subsidy, reimbursement or assistance from Nucap. Executive acknowledges that the rates and levels of contribution are subject to change and that Nucap has the right to amend, modify or cancel its benefit plans at any time.

4. **No Consideration Absent Execution of this Agreement.** Executive agrees that he would not receive the benefit set forth in paragraph 1 of this Agreement except for executing and abiding by the terms of this Agreement.

5. **General Release of All Claims.**

- a. *General Release of All Claims.* In consideration of the severance pay described in paragraph 1, Executive hereby freely, knowingly and voluntarily releases and fully discharges Nucap and its parents, subsidiaries, affiliates, successors, assigns,

predecessors, and present or former directors, officers, agents, shareholders, fiduciaries, plan administrators, executives, family members, attorneys, and representatives (all of the foregoing are collectively, the "Released Parties") of and from any and all claims, demands, causes of action, and rights, known and unknown, whether in contract, tort or otherwise, including those arising from or relating to Executive's employment or service with or separation of employment or service with Nucap.

- b. *General Release of Employment Claims.* Without limiting the foregoing, Executive specifically releases and fully discharges the Released Parties of and from any and all claims, demands, causes of action, and rights, including but not limited to: any alleged violation of federal, state or local laws prohibiting discrimination on the basis of sex, race, age, disability, national origin, color, religion, veteran status, marital status, sexual orientation, and specifically including all claims under the federal Age Discrimination in Employment Act or 1967 (ADEA), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Americans with Disabilities Act of 1990 (ADA), the Equal Pay Act of 1963, Executive Order No. 11246, and the Rehabilitation Act of 1973; any other federal, state or local civil or human rights laws including the Connecticut Fair Employment Practices Act; any public policy, contract, tort or common law obligation, including but not limited to breach of express or implied contract or of an implied covenant of good faith and fair dealing, and negligent or intentional infliction of emotional distress; any claim for wages or other compensation under any federal or state wage payment laws, including the Fair Labor Standards Act and the Connecticut Wage Payment Laws, and their implementing regulations; any claim for compensation, bonus, incentive pay, vacation pay, sick pay or other payments or benefits; and any obligation for costs, fees or other expenses.
- c. *General Release of All Other Known and Unknown Claims.* Without limiting the foregoing, Executive specifically releases and fully discharges the Released Parties of and from any and all claims, demands, causes of action, and rights, known and unknown, whether in contract, tort or otherwise, relating in any way to Executive's dealings with Nucap, Anstro Manufacturing, Inc., or any of their affiliates or subsidiaries.

6. **Covenant Not to Sue; No Claims Exist.** Executive has not and will not commence any action, lawsuit, or other legal proceeding against the Released Parties, or any of them, or file any complaint with any federal, state, or local agency against the Released Parties, or any of them, relating to any claim arising before execution of this Agreement; except that Executive may file a claim for unemployment compensation benefits and may challenge in court the knowing and voluntary nature of Executive's waiver of any claim Executive may have, if any, under the Age Discrimination in Employment Act (ADEA). To the extent that Executive has pending any other action, lawsuit, or legal proceeding against the Released Parties, or any of them, relating to any claim arising before the execution of this Agreement, Executive agrees that such action, lawsuit, or other legal proceeding will be immediately withdrawn with prejudice. If Executive is ever joined as a party to any action, lawsuit or other proceeding against the Released Parties, or any of them, except where prohibited by statute or other law, Executive will not be entitled to recover,

and hereby expressly waives and disclaims Executive's right to recover, any relief or amounts, including costs and attorney's fees.

7. Confirmation and Ratification of Continuing Obligations contained in Employment Agreements, Employment Covenants, and Leases.

- a. *Employment Agreement.* Executive hereby ratifies and confirms that he is obligated to comply with certain continuing obligations contained in an Employment Agreement between Executive and Anstro Manufacturing, Inc. dated as of November 19, 2009, which agreement has been assigned to Nucap, and which is incorporated herein by reference. Executive confirms that he has received a copy of the Employment Agreement.
- b. *Confidentiality, Non-Competition, and Non-Solicitation Agreement.* Executive hereby ratifies and confirms that he is obligated to comply with certain continuing obligations contained in a Confidentiality, Non-Competition, and Non-Solicitation Agreement by and among Executive, Eyelet Tech Nucap Corp., and NUCAP Industries Inc. dated as of November 19, 2009, which is incorporated herein by reference. Executive confirms that he has received a copy of the Confidentiality, Non-Competition, and Non-Solicitation Agreement.
- c. *Confidentiality and Intellectual Property Agreement.* Executive hereby ratifies and confirms that he is obligated to comply with certain continuing obligations contained in a Confidentiality and Intellectual Property Agreement between Executive and Anstro Manufacturing, Inc. a wholly owned subsidiary of NUCAP Industries Inc. signed by Executive on September 2, 2011. Executive confirms that he has received a copy of the Confidentiality and Intellectual Property Agreement.
- d. *Watertown Lease.* Executive hereby agrees that he will take no action to interfere with a certain Indenture of Lease between Frost Bridge Realty, LLC and Eyelet Tech Nucap Corp. dated November 13, 2009, as amended or extended from time to time, for certain premises known as 1 Frost Bridge Road, Watertown, Connecticut, and more particularly described in that lease. Furthermore, Executive agrees that Nucap has the right to take reasonable measures limit his access to the premises, in accordance with or as permitted under the lease agreement.

8. No Access to Premises. Executive agrees that Nucap has informed him that he is not allowed and is prohibited from entering onto any of Nucap's premises. Executive further agrees that he has been notified that nobody, except a duly authorized officer of Nucap at its head office in Toronto, has any authority to grant Executive access to any of Nucap's premises, and any such permission for access must be in writing. Executive further agrees that he has been warned that if he is found on any of Nucap's premises, his presence will be regarded as a trespass and Nucap will pursue all available remedies for such violation.

9. **Reminder.** Executive is reminded that he must not engage in unwanted or unwelcome contact with any of Nucap's employees or independent contractors.

10. **Return of Property; Certification.** Executive represents that Executive has delivered to Nucap all Nucap property in Executive's possession, custody or control. Nucap property may include keys, access cards, credit cards, cell phones, pagers, notebook computers, printers, software, portable storage media, electronically stored information concerning Nucap, tools, furniture, any vehicles, notebooks, customer information, customer lists, business costs, pricing and sales information, marketing materials, brochures, engineering drawings, information about Nucap's executives, notes, e-mails, business reports, sales strategy reports, manuals, internal communications, non-public reports and similar items, Executive passwords, and all copies and summaries of such property whether in written, mechanical, electromagnetic, analog, digital or any other format or medium. Executive agrees to execute the certification attached hereto as Exhibit 1 signifying that he has reviewed the materials in his possession, custody, and control and performed a due and diligent search for any property of Nucap and that he has returned to Nucap any and all such property.

11. **Non-Disparagement; Testimony.** Executive will not knowingly take any action or make any statements, written or oral, which would disparage or defame the goodwill, reputation, image or commercial interest of Nucap or any of its affiliated companies, or any of their current or former directors, officers, executives, attorneys or agents. Notwithstanding the foregoing, nothing in this Separation Agreement is intended to prevent Executive from providing testimony in response to a valid subpoena, court order, regulatory request, or other judicial, administrative or legal process, or otherwise as required by law. Executive agrees to notify Nucap in writing as promptly as practicable after receiving any request for testimony or information in response to a subpoena, court order, regulatory request or other judicial, administrative or legal process, or otherwise as required by law, at least ten (10) days prior to providing such testimony or information (or, if such notice is not possible under the circumstances, with as much prior notice as is possible).

12. **Non-Publication.** Executive will not, except with the written consent of an officer of Nucap and the person or persons involved, (a) publish any book or article about, or disclose in any public forum, or discuss with any media or third party, Executive's personal experiences or those of others pertaining to the Released Parties or any of them; or (b) take, sell, offer to sell, distribute or offer to distribute any photograph, image, likeness or other representation (including but not limited to audio, video or digital recordings) of the Released Parties or any of them, or of any tangible personal property belonging to the Released Parties or any of them. Executive may, without revealing any confidential or proprietary information or trade secrets, generally list his accomplishments for Nucap on resumes and employment applications, and generally may discuss such accomplishments in job interviews, and other similar settings for the purposes of obtaining employment.

13. **Cooperation.** After the Separation Date, Executive agrees to cooperate with Nucap, its parent, subsidiaries, and affiliates, at any level, any of their officers, directors, shareholders, or executives, and any of their attorneys: (a) concerning any requests for information about the business of Nucap or its subsidiaries or affiliates or Executive's involvement and participation therein; (b) in connection with any investigation or review by Nucap or any federal, state or local

regulatory, quasi-regulatory or self-governing authority as any such investigation or review relates to events or occurrences that transpired while Executive was associated with Nucap; (c) in connection with any claim, lawsuit, or administrative or court proceeding that relates to information or knowledge possessed by Executive; and (d) with respect to transition and succession matters. Executive's cooperation will include, but not be limited to (taking into account Executive's personal and professional obligations, including those to any new Nucap or position), being available to meet and speak with officers or executives of Nucap and/or Nucap's counsel at reasonable times and locations, executing accurate and truthful documents, and taking such other actions as may reasonably be requested by Nucap and/or Nucap's counsel to effectuate the foregoing. Executive will be entitled to reimbursement, upon receipt by Nucap of suitable documentation, for reasonable and necessary travel and other expenses which Executive may incur at the specific request of Nucap and as approved by Nucap in advance and in accordance with its policies and procedures established from time to time.

14. **Confidentiality of Agreement.** Executive agrees that the terms of this Agreement (other than the fact of Executive's separation of employment from Nucap) are confidential and that Executive may not disclose any of such terms to any other person other than to his attorney, financial or tax advisor, accountant or spouse; provided, however, that Executive agrees to inform each such person of these confidentiality obligations and that Executive shall be responsible for any breach of confidentiality by any such person.

15. **Remedies; Attorney's Fees.** In the event of a breach of any of any party's obligations under this Agreement or any of the agreements referenced in this Agreement, the non-breaching party has the right to commence an action or proceeding seeking appropriate legal or equitable relief and recovery of its attorney's fees and costs incurred in the investigation, enforcement, and litigation of any such action or proceeding on account of such breach. All of that party's remedies for the breach of this Agreement will be cumulative and the pursuit of any one remedy will not be deemed to exclude any other remedies.

16. **Successors.** Executive and Nucap agree that this Agreement will bind and inure to the benefit of the heirs, personal representatives, executors, administrators, successors, and assigns of Executive and Nucap.

17. **Governing Law; Interpretation.** This Agreement will be governed and interpreted by the law of the State of Connecticut without regard to its conflict of law provisions. Should any provisions of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to become legal and enforceable, excluding the general release language, such provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect.

18. **Consent to Jurisdiction.** Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the United States District Court for the District of Connecticut or the Connecticut Superior Court, and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement will be litigated exclusively in such courts. Each of the parties agrees not to commence any legal proceeding related to this Agreement except in such courts. Each of the parties irrevocably waives any objection which he or it may now or hereafter have to the venue of any such proceeding in any such court and further irrevocably and unconditionally

waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

19. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior representations, understandings, and agreements of the parties. Executive acknowledges that he has not relied on any representations, promises or agreements of any kind in connection with Executive's decision to accept this Agreement. This Agreement may not be modified, altered, amended or changed except upon express written consent of all parties where specific reference is made to this Agreement.

20. **Not a Precedent.** This Agreement is not intended to establish and should not be interpreted as establishing a practice or policy of Nucap in connection with the separation or termination of employment of any Executive.

21. **No Admission of Wrongdoing.** Neither the negotiation, undertaking or signing of this Agreement constitutes or operates as an acknowledgment or admission of liability by Nucap or that Nucap has violated or failed to comply with any provision of federal or state constitutions, statutes, laws or regulations, or municipal ordinances or regulations.

22. **No Claim for Compensation.** Executive acknowledges and represents that he has received all compensation, including all salary, wages, bonuses, overtime pay, awards and all other forms of compensation that is, was, or may be due to him from Nucap.

23. **No Claim for Benefits.** Executive acknowledges and represents that he has received all non-monetary benefits, including all leaves of absence, reinstatements, insurance coverage, and any other benefits or rights to benefits, and that he was not denied any requested leaves and was restored to his prior position following any such leave.

24. **No Workplace Injuries.** Executive acknowledges and represents that he has not had, and does not have, any personal injuries or workplace injuries arising from his employment with Nucap that would be covered by workers' compensation.

25. **Construction; Review by Counsel.** Each party agrees that this Agreement has been negotiated by the parties and that neither party will be regarded as the drafter. Each party agrees that, by signing below, they understand the meaning and significance of this Agreement, its terms and any consequences for any breach, and they each acknowledges that they have entered into this Agreement freely, knowingly, and voluntarily after consultations with their counsel or after being given an opportunity to review this Agreement with counsel.

26. **Waiver of Age Discrimination Claims.** Executive understands and agrees that, under the Older Workers Benefit Protection Act, a release or waiver of a charge filed with the U.S. Equal Employment Opportunity Commission alleging age discrimination may not be considered knowing and voluntary unless:

- a. the waiver is part of an agreement between the charging party and the Nucap that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

- b. the waiver specifically refers to rights or claims that may arise under the Age Discrimination in Employment Act;
- c. the charging party does not waive rights or claims that may arise after the date the waiver is executed;
- d. the charging party waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;
- e. the charging party is advised in writing to consult with an attorney prior to executing the agreement; and,
- f. the charging party is given a reasonable period of time within which to consider the settlement agreement.

Executive agrees that subparagraphs (a) through (f) have been satisfied by this Agreement. Executive further agrees that, consistent with subparagraph (f) above, he has been provided in excess of twenty-one (21) days after receiving this Agreement in which to consider the terms of this Agreement and he agrees that he has had a reasonable period of time in which to consider this Agreement. This Agreement will not become effective and enforceable for a period of seven (7) days after all parties have signed this Agreement and that, during this period, the Agreement may be revoked by Executive. To be effective, the revocation must be made by Executive, in writing, and delivered to: Jonathan Kielb, Vice President, General Counsel, NUCAP Industries Inc., 3370 Pharmacy Avenue, Toronto, ON, Canada M1W 3K4. The parties also agree that any changes, whether material or otherwise, made to this Agreement do not restart or affect in any manner the running of the original 21-day period.

27. Executive's Notices and Representations. Executive represents and agrees:

- a. that he has read this Agreement and understands and agrees with all of the terms and conditions of this Agreement;
- b. that he enters into this Agreement freely, knowingly and voluntarily;
- c. that he has been advised by Nucap to consult with an attorney of his choice prior to executing this Agreement, and that either he has done so or that he decided not to do so; and
- d. that, by signing this Agreement, he waives any right to bring or maintain a lawsuit or make any other legal claims against the Released Parties as described in this Agreement.

28. Duplicate Originals. This Agreement may be executed by the parties in duplicate so that each party may hold a duplicate original.

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE CAREFULLY READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT, ENTER INTO THIS AGREEMENT KNOWINGLY, VOLUNTARILY, AND OF THEIR OWN FREE WILL,

UNDERSTAND ITS TERMS AND THEIR SIGNIFICANCE, AND INTEND TO ABIDE BY ITS PROVISIONS WITHOUT EXCEPTION.

EXECUTIVE

By *Robert R. Bosco*

Name Robert R. Bosco, Jr.

Date 5/31/12

Witness *Denise Lagasse*

Name Denise Lagasse

Date 5/31/12

Witness *Angela Serrano*

Name Angela Serrano

Date 5/31/12

NUCAP INDUSTRIES INC

By *Ray Arbesman*

Title Chairman

Name Ray Arbesman

Date June 5/12

Witness ~~*Jonathan A. Kiebb*~~ *Jonathan A. Kiebb*

Name Jonathan A. Kiebb

Date June 5/12

EXHIBIT 1

[Date]

Ray Arbesman, Chairman
NUCAP Industries Inc.
3370 Pharmacy Avenue
Toronto, ON, Canada M1W 3K4

Re: Company Property

Dear Ray:

I hereby certify that I have returned all Confidential Information and property belonging to Nucap within my possession, custody, and control. I further certify that I have made a due and diligent search of my home, any other locations where I have conducted business for Nucap, and my computer and other electronic devices; and I have not found and am not aware of any Confidential Information or Nucap property at any of those locations or on any of those devices.

The foregoing certification, made under penalty of perjury, is true and correct to the best of my knowledge and belief.


Robert R. Bosco, Jr.

5/31/12

Date