

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.	:	July 22, 2015

**OBJECTION TO PLAINTIFFS' MOTION TO DISMISS  
DEFENDANT ROBERT BOSCO'S COUNTERCLAIM**

Pursuant to Practice Book §10-30, the Defendant, Robert Bosco, Jr., objects to the Plaintiffs' Motion to Dismiss Counts One through Four of his Counterclaim.

**I. INTRODUCTION**

As a threshold matter, contrary to the Counterclaim Defendants assertions, there has been no prior action or lawsuit between the parties that was dismissed *with prejudice*. The Court (Roraback, J.) dismissed a prior action between Mr. Bosco and other parties not on the merits of the case, but rather, based on a forum selection clause contained in an agreement. The Plaintiffs have chosen to bring this lawsuit in Connecticut despite that clause and the prior ruling of the Court, and Mr. Bosco should not be prejudiced from defending himself in this forum. Mr. Bosco has sufficiently pleaded valid Counterclaims and the Court should deny the NUCAP parties' Motion to Dismiss Counts One through Four of the Counterclaim.

**II. THE PARTIES**

Defendant Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut. Counterclaim at ¶1. NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in

Toronto, Ontario, Canada. Id. at ¶2. On information and belief, NUCAP US Inc. (collectively with NUCAP Industries the “NUCAP Parties”) was formerly known as Anstro Manufacturing, Inc., a wholly-owned subsidiary of NUCAP. Id. at ¶16.

### III. STATEMENT OF FACTS

Mr. Bosco was the Co-Manager and 50% owner of Eyelet Tech, LLC (“Eyelet Tech” or “ETNC”), a Connecticut limited liability company. Id. at ¶4. 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. Id. at ¶5. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico. Id. at ¶6.

On November 19, 2009, Mr. Bosco and his co-owner sold Eyelet Tech to NUCAP and ETNC pursuant to an Asset Purchase Agreement. Id. at ¶7. Under the terms of the Asset Purchase Agreement (“APA”), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech. Id. at ¶8. As part of the sale transaction, Mr. Bosco entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP, made effective on November 19, 2009 (the “Non-Competition Agreement”). Id. at ¶9.

Under Section 3 of the Non-Competition Agreement, Mr. Bosco agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009. Id. at ¶10. These restrictions expire on November 19, 2014, or became void in the event of a default by the Plaintiffs of their obligations under the APA or the Non-Competition Agreement. Id. at ¶10. As

consideration for the restrictions imposed upon Mr. Bosco set forth in the Non-Competition Agreement, ETNC agreed that it would pay Mr. Bosco 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. Id. at ¶13.

Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed the obligation of ETNC to duly and punctually make the Covenant Payments to Mr. Bosco. Id. at ¶14.

As part of the sale transaction in November 2009, Mr. Bosco also entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro"). Id. at ¶16. On January 23, 2012, Mr. Bosco's employment with Anstro ceased and Mr. Bosco entered into negotiations with NUCAP to set the terms of his separation from Anstro. Id. at ¶17. On May 31, 2012, Mr. Bosco and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Mr. Bosco's separation from Anstro. Id. at ¶18.

In Section 7(b) of the Separation Agreement, NUCAP and Mr. Bosco expressly ratified the parties' obligations to each other under the Non-Competition Agreement. Id. at ¶19. 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. Id. at ¶20. 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). The provision for attorneys' fees did not exist in the Non-Competition Agreement, but was included in the Separation Agreement as new consideration between the parties, and represents a significant modification to the parties' obligations and understandings of the Non-Competition Agreement.

ETNC made the Covenant Payments to Mr. Bosco on the first, second and third anniversaries of the closing (Id. at ¶22), but has not made the payments due on the fourth or the fifth anniversary.

On or about November 11, 2013, Mr. Bosco received a letter from NUCAP, the stated 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." Id. at ¶23. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that Mr. Bosco had met with people to explore business opportunities and had attended the 2013 SAE Brake Colloquium. Id. at ¶24.

Mr. Bosco denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement. Id. at ¶25.

On November 18, 2013, Mr. Bosco 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). Id. at ¶26.

NUCAP admitted to Mr. Bosco that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC’s business caused by Mr. Bosco’s alleged actions. Id. at ¶27.

The Defendants, in bad faith and with reckless disregard for Mr. Bosco’s rights under the Non-Competition Agreement and Separation Agreement, declared that Mr. Bosco was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due. Id. at ¶28. Mr. Bosco performed all of his obligations under the Non-Competition Agreement and Separation Agreement. Id. at ¶29. The Plaintiffs deliberately refused and have continued to refuse to make the Covenant Payments due to Mr. Bosco under the terms of the Non-Competition Agreement and have violated the terms of the Separation Agreement. Id. at ¶30.

#### IV. ARGUMENT

##### A. Applicable Law

Pursuant to Practice Book §10-30, a motion to dismiss shall be used to assert “(1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process.” See Practice Book §10-30; see also Zizka v. Water Pollution Control Authority, 195 Conn. 682, 687 (1985). “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 (2011).

“[I]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Citations omitted; internal quotation marks omitted.) Cottman Transmission Sys. v. Hocap Corp., 71 Conn. App. 632, 637 (2002); Dime Savings Bank of Wallingford v. Arpaia, 55 Conn. App. 180, 183 (1999); Commission on Human Rights & Opportunities v. Human Rights Referee, 66 Conn. App. 196, 199 (2001); Lawrence Brunoli, Inc. v. Branford, 247 Conn. 407, 410-11 (1999). “The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone . . .” (Footnote omitted; internal quotation marks omitted; citation omitted.) Barde v. Board of Trustees, 207 Conn. 59, 62 (1988); see Malasky v. Metal Products Corp., 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997); Andrews v. Leddy, 2010 Conn. Super. LEXIS 455 (Conn. Super. Ct. Mar. 3, 2010).

Where a party filing a motion to dismiss seeks to have the Court consider facts not pled in the Complaint, or where the party disputes any factual allegations, the party must file a memorandum of law **and** supporting affidavit(s). C.N. Flagg and Co., Inc. v. Reaction Thermal Systems, Inc., 1994 Conn. Super LEXIS 2405 (September 28, 1994, Gray, J.); Boyd v. Payne, 18 Conn. L. Trib., p. 29 (1990). In the absence of such an affidavit, all facts are admitted, and the motion must be decided solely on these facts. Bard v. Board of Trustees, 207 Conn. 59, 62 (1988).

"Generally, a court with jurisdiction over a case has not only the right, but also the duty, to exercise that jurisdiction, and to render a decision in a case before it." Second Injury Fund of the State Treasurer v. Lupachino, 45 Conn. App. 324, 351 (1997); relying on 20 Am. Jur. 2d, Courts § 61, pp. 377-78 (1995).

**B. The Plaintiffs Did Not File An Affidavit In Support Of Their Motion To Dismiss, Therefore The Court Must Disregard Those Portions Of The Motion And Memorandum Of Law.**

The Plaintiffs spend the majority, if not all of their argument focusing on Agreements and facts which are not alleged in the Counterclaim. There are no exhibits to the Counterclaim, therefore those Agreements are not part of the Counterclaim itself. See P.B. § 10-29. See Rizzitelli v. Thompson, 2010 WL 3341516 (Conn. Super. Ct. 2010)(documents attached to complaint could be considered, not documents attached to motion); C.N. Flagg & Co. v. Reaction Thermal Sys., 1994 Conn. Super. LEXIS 2405 (Conn. Super. Ct. Sept. 14, 1994)("A supporting document filed with a memorandum of law. . . must be in affidavit form"). In the absence of an affidavit attesting to the Non-Competition Agreement and its terms, the Court must disregard it. Id. In the absence of those facts and documents, the Court is bound by the allegations in the Counterclaim.

Based on the allegations in the Counterclaim, the Plaintiffs' Motion to Dismiss must be denied.

**C. This Is Not The Same Action As The One Previously Dismissed.**

The Court (Roraback, J.) dismissed a prior action, without prejudice, between Mr. Bosco and other parties. The Court did not dismiss the case on the merits, but rather, dismiss the case on the basis of a forum selection clause. The Plaintiffs have chosen, despite the existence of the prior ruling and that clause, to commence the present action. The prior ruling dismissing a previous action is not binding on this Court and the facts in this case are distinct from the prior case. Therefore, the Plaintiffs' Motion to Dismiss should be denied.

First, there are different parties to this action. In the prior action, the Defendants were NUCAP Industries Inc. and EYELET TECH NUCAP CORP. In the present action, the Plaintiffs are NUCAP Industries, Inc. and NUCAP US, Inc.

Second, the claims are not identical. The present Counterclaims make specific reference to the Separation Agreement as the basis for the Counterclaims. The Separation Agreement also provides that the proper forum is Connecticut. Counterclaim ¶21. The Separation Agreement provides that it is applicable in any action to enforce a parties' rights under the Separation Agreement itself, and/or other Agreements such as the Confidentiality and Intellectual Property Agreement at issue in the present litigation. *Id.* at ¶¶18 through 21. The Plaintiffs have placed these issues in controversy and Mr. Bosco should not be prejudiced or prevented from litigating those issues.

**D. The Counterclaim Defendants Have Placed The Non-Competition Agreement At Issue In The Present Litigation.**

The Plaintiffs, despite their protestations to the contrary, have placed the Non-Competition Agreement at issue in the present litigation. The Counterclaim alleges that Mr. Bosco was prohibited from working with 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. *Id.* There is no express provision in the Non-Competition Agreement or any Agreement between the parties that would prohibit Bosco from working with Preferred. *Id.* at ¶11(c). The Plaintiffs are suing Mr. Bosco for his alleged activities with Preferred, a company he was not prohibited from working with by the express terms of the Non-Competition Agreement.

The Plaintiffs further claim they are suing in the present case to enforce a Confidentiality and Intellectual Property Agreement, an Agreement that was confirmed and ratified in the Separation Agreement. *Id.* at ¶19. The Plaintiffs are predicated any claims under the Confidentiality and Intellectual Property Agreement as breaches arising out of or completely intermingled with claims involving a breach of the Non-Competition Agreement. The Complaint itself alleges in Paragraph 36 that Mr. Bosco was required to sign a Non-Competition Agreement. The Plaintiffs have already averred that any alleged damages they suffered from an alleged breach of the Non-Competition Agreement are predicated on the facts and the outcome of this litigation. In the attached discovery responses, when Mr. Bosco inquired as part of discovery in the New York litigation what proof NUCAP possessed that would establish Bosco violated the Non-Competition Agreement, NUCAP referred to the ongoing controversy before this

Court. Mr. Bosco propounded the following Interrogatory in seeking to determine what was the factual basis for NUCAP's claims Mr. Bosco violated the Non-Competition Agreement:

State with particularity the basis for the Plaintiffs' allegations in Paragraph 50 of the Complaint that "Preferred is now developing Products that would directly compete with Plaintiffs in certain key business lines, such as drag reduction technology, caliper hardware, and noise insulator shims" and identify the factual basis for this allegation, including but not limited to identifying all documents and witnesses related to those allegations."

The Plaintiffs responded

"Subject to, and without waiving, the general objections, Plaintiffs refer Mr. Bosco to the allegations in the Complaint filed against Mr. Bosco and Preferred in state court in New Haven, Connecticut." See attached Affidavit and **Exhibit A**.

The Plaintiffs have placed the issues arising from the Non-Competition Agreement in controversy here in Superior Court in Waterbury and Mr. Bosco should not be prejudiced or precluded from making claims and or defenses based on the provisions of that Agreement. The Seventh Special Defense alleges the Plaintiffs' claims are barred by their own breach of contract. The Plaintiffs did not request Mr. Bosco revise this Special Defense. The Plaintiffs chose to file a Motion to Strike and as such waived the ability to request such a revision. P.B. §§ 10-6 and 10-7. Mr. Bosco, therefore, has the right to present the defense alleged, namely that the NUCAP parties breached their contract with Mr. Bosco – including any claim that the NUCAP parties breached the Non-Competition Agreement and thereby relieved Mr. Bosco from any liability as set forth in the Complaint.

The fact that there is a case pending in New York involving similar claims and similar parties does not deprive this Court of jurisdiction. "The pendency of a prior action between the same parties and to the same ends is grounds for dismissal only

where the actions are pending in the same jurisdiction. The pendency of an action in one state is not a ground for abatement of a later action in another state." (Emphasis added). Travelers Cas. & Sur. Co. of Am. v. Caridj, 144 Conn. App. 793, 804 (2013); Sauter v. Sauter, 4 Conn. App. 581, 584 (1985).

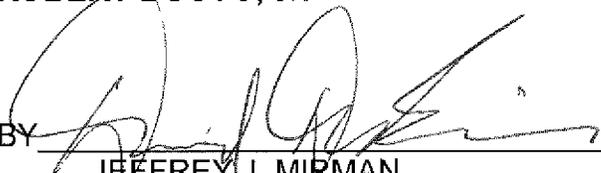
The Plaintiffs have placed the Non-Competition Agreement and the facts surrounding any alleged breach of the Agreement at issue and therefore the prior ruling and the forum selection clause are not dispositive grounds to dismiss the counterclaims. The Plaintiffs' Motion to Dismiss should be denied.

**V. CONCLUSION**

For all the foregoing reasons, Mr. Bosco requests that the Court deny the Plaintiffs' Motion to Dismiss Counts One through Four of his Counterclaim.

**THE DEFENDANT,**

**ROBERT BOSCO, Jr.**

BY 

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

**CERTIFICATION**

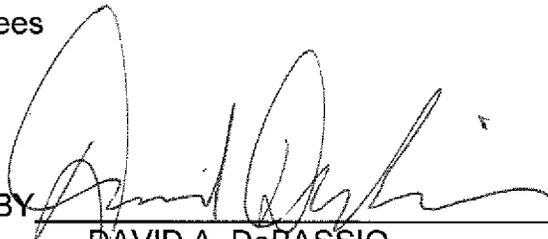
I hereby certify that on the 22<sup>nd</sup> day of July, 2014 I mailed a copy of the foregoing to:

Stephen W. Aronson  
Nicole H. Najam  
ROBINSON & COLE LLP  
280 Trumbull Street  
Hartford, CT 06103  
[saronson@rc.com](mailto:saronson@rc.com)  
[nnajam@rc.com](mailto:nnajam@rc.com)

Lawrence H. Pockers  
(Pro Hac Vice)  
Harry M. Byrne  
(Pro Hac Vice)  
DUANE MORRIS LLP  
30 South 17th Street  
Philadelphia, PA 19103  
[LHPockers@duanemorris.com](mailto:LHPockers@duanemorris.com)  
[HMByrne@duanemorris.com](mailto:HMByrne@duanemorris.com)

Stephen J. Curley, Esq.  
Brody Wilkinson, P.C.  
2507 Post Road  
Southport, CT 06890

Gene S. Winter  
Benjamin J. Lehberger  
St. Onge, Steward, Johnston, & Rees  
986 Bedford Street  
Stamford, CT 06905

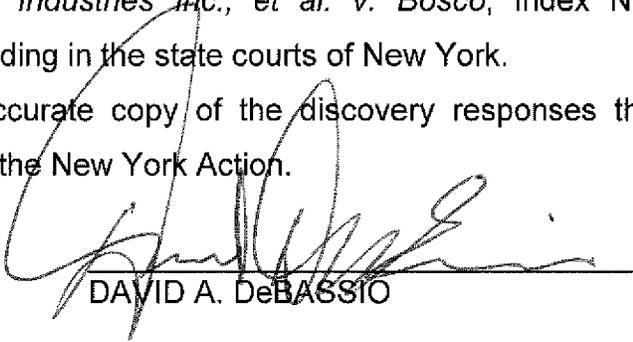
BY   
\_\_\_\_\_  
DAVID A. DeBASSIO

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.	:	July 22, 2015

**AFFIDAVIT IN SUPPORT OF DEFENDANT BOSCO'S  
OBJECTION TO MOTION TO DISMISS HIS COUNTERCLAIMS**

I, DAVID A. DeBASSIO, being duly sworn, depose and say:

1. I am over the age of eighteen years and believe in the obligation of an oath.
2. I am an attorney in the law firm of Hinckley, Allen & Snyder, LLP and have been so associated since 2013.
3. I have represented the Defendant Mr. Robert in the pending action, as well as in a lawsuit captioned *Nucap Industries Inc., et al. v. Bosco*, Index No. 651968/2014 (the "New York Action") pending in the state courts of New York.
4. Attached is a true and accurate copy of the discovery responses the NUCAP parties provided to Mr. Bosco in the New York Action.

  
 DAVID A. DeBASSIO

STATE OF CONNECTICUT            )  
   )  
 COUNTY OF HARTFORD            )        ss:   Hartford

Subscribed and sworn to before me this 29<sup>th</sup> day of July, 2015.

  
 \_\_\_\_\_  
 Commissioner of the Superior Court  
 Notary Public/ My Comm. Expires:  
 Thomas J. Farrer



## GENERAL OBJECTIONS

1. Plaintiffs object to the Definitions section of the Interrogatories to the extent that it seeks to impose requirements different from and/or in addition to those required by the CPLR or Rules of the Commercial Division.
2. Plaintiffs object to the Interrogatories because they exceed the number permitted by the Rules of the Commercial Division.
3. Plaintiffs object to the Interrogatories to the extent that they seek documents protected by the attorney client privilege, attorney work product doctrine, or any other applicable privilege or evidentiary limitation.
4. Plaintiffs object to the Interrogatories to the extent they seek confidential business, proprietary, or other protected information of Plaintiffs or third parties for whom Plaintiffs have an obligation to protect such information.
5. Plaintiffs object to the Interrogatories to the extent that they are not limited to a reasonable time period.
6. In providing answers to the Interrogatories, Plaintiffs do not in any way waive or intend to waive, but rather intend to preserve and are preserving: (i) all objections as to competency, relevancy, materiality, and admissibility; (ii) all rights to object on any ground to the use of any of the responses herein or documents in the preliminary injunction proceeding and any subsequent proceedings, including a trial or any other action; (iii) all objections as to vagueness and ambiguity; and (iv) all rights to object on any ground to other discovery requests including or relating to the Interrogatories.
7. These answers and objections are based upon information now known. Plaintiffs reserve their right to amend, modify, or supplement the objections or answers stated therein.

## INTERROGATORIES

1. Identify the name, address, and position of the person responding to these Interrogatories.

### ANSWER:

Plaintiffs object to the extent this Interrogatory seeks information protected from disclosure by the attorney-client privilege. Subject to, and without waiving, the general and specific objections, Morli Shemesh, who at the time was General Counsel of NUCAP, and Montu Khokhar, Chief Operating Officer of NUCAP, provided the information used by counsel to respond to these Interrogatories.

2. Identify all persons with whom you consulted in preparing responses to these Interrogatories.

### ANSWER:

Plaintiffs object to the extent this Interrogatory seeks information protected from disclosure by the attorney-client privilege. Subject to, and without waiving, the general and specific objections, Plaintiffs incorporate by reference their answer to Interrogatory No. 1. By way of further answer, Bill Murray.

3. Identify each person with knowledge or whom you believe has knowledge of any facts relevant to any of the issues, claims, or defenses in this action, including a detailed description of the facts known or believed to be known by each such person.

### ANSWER:

Subject to, and without waiving, the general objections, Plaintiff answers that the following persons are likely to have knowledge of facts relevant to the issues, claims, or defenses in this action (description of the facts known or believed to be known by each such person in parentheses):

- Ray Arbesman (Mr. Arbesman knows, among other things: the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; the payments made to Mr. Bosco pursuant to the Non-Competition Agreement; the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing; Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information

from Mr. Bosco concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and Mr. Bosco's refusal to provide specifics about his activities there or on behalf of others in the industry; the decision to exercise Eyelet Tech's contractual right to suspend further payments to Mr. Bosco pursuant to the Non-Competition Agreement; and the subsequent activities Mr. Bosco has engaged in with Bosch and, upon information and belief, others in violation of the terms of the Non-Competition Agreement.)

- David Weichenberg (Mr. Weichenberg knows, among other things: the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; the payments made to Mr. Bosco pursuant to the Non-Competition Agreement; the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing; Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information from Mr. Bosco concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and Mr. Bosco's refusal to provide specifics about his activities there or on behalf of others in the industry; the decision to exercise Eyelet Tech's contractual right to suspend further payments to Mr. Bosco pursuant to the Non-Competition Agreement; and the subsequent activities Mr. Bosco has engaged in with Bosch and, upon information and belief, others in violation of the terms of the Non-Competition Agreement.)
- John Diniz (Mr. Diniz knows, among other things: the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; the payments made to Mr. Bosco pursuant to the Non-Competition Agreement; the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing; Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information from Mr. Bosco concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and Mr. Bosco's refusal to provide specifics about his activities there or on behalf of others in the industry; the decision to exercise Eyelet Tech's contractual right to suspend further payments to Mr. Bosco pursuant to the Non-Competition Agreement; and the subsequent activities Mr. Bosco has engaged in with Bosch and, upon information and belief, others in violation of the terms of the Non-Competition Agreement.)
- Montu Khokhar (Mr. Khokhar knows, among other things: the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; the payments made to Mr. Bosco pursuant to the Non-Competition Agreement; the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing; Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information from Mr. Bosco concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and Mr. Bosco's refusal to provide specifics about his activities there or on behalf of others in the industry; the decision to exercise Eyelet Tech's contractual right to suspend further payments to Mr. Bosco pursuant to the Non-Competition Agreement; and the subsequent activities Mr. Bosco has engaged in with Bosch and, upon information and belief, others in violation of the terms of the Non-Competition Agreement.)

- Morli Shemesh (Ms. Shemesh knows, among other things: the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; the payments made to Mr. Bosco pursuant to the Non-Competition Agreement; the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing; Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information from Mr. Bosco concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and Mr. Bosco's refusal to provide specifics about his activities there or on behalf of others in the industry; the decision to exercise Eyelet Tech's contractual right to suspend further payments to Mr. Bosco pursuant to the Non-Competition Agreement; and the subsequent activities Mr. Bosco has engaged in with Bosch and, upon information and belief, others in violation of the terms of the Non-Competition Agreement.)
- Scott Allen (Mr. Allen knows, among other things, the history of the relationship between NUCAP and its affiliates, on the one hand, and Robert Bosco, on the other hand; and the payments made to Mr. Bosco pursuant to the Non-Competition Agreement.)
- John Bennett (Mr. Bennett is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Chris Thornton (Mr. Thornton is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Joe Bocchicio (Mr. Bocchicio is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Mark Chiavarello (Mr. Chiavarello is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Bob Verango (Mr. Verango is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Bob Wilkes (Mr. Wilkes is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Alan Cleveland (Mr. Cleveland is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Brian Knox (Mr. Knox is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Eric Denys (Mr. Denys is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)

- Peter Morse (Mr. Morse is believed to know, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Bill Murray (Mr. Murray knows, among other things, about Mr. Bosco's activities in violation of the provisions of the Non-Competition Agreement, including his discussions with Bosch.)
- Neisha Bacchus (Ms. Bacchus knows the circumstances surrounding Mr. Bosco's termination of employment from Anstro Manufacturing)
- Robert Bosco (Mr. Bosco knows, among other things: the history of the relationship between him and NUCAP and its affiliates; the payments made to him pursuant to the Non-Competition Agreement; the circumstances surrounding his termination of employment from Anstro Manufacturing; his activities at the SAE Brake Colloquium in the Fall of 2013; Plaintiffs' efforts to obtain information from him concerning his activities at the SAE Brake Colloquium in the Fall of 2013 and his refusal to provide specifics about his activities there or on behalf of others in the industry; Eyelet Tech's exercise of its contractual right to suspend further payments to him pursuant to the Non-Competition Agreement; and the subsequent activities he has engaged in with Bosch and others in violation of the terms of the Non-Competition Agreement.)
- Carl Dambrauskas (Mr. Dambrauskas knows, among other things: the communications he has had with Mr. Bosco concerning Mr. Bosco's activities – whether behalf of Preferred or otherwise – since Mr. Bosco's termination of employment with Anstro Manufacturing; and Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013.)
- Thomas Reynolds (Mr. Reynolds knows, among other things: the communications he has had with Mr. Bosco concerning Mr. Bosco's activities – whether behalf of Preferred or otherwise – since Mr. Bosco's termination of employment with Anstro Manufacturing; and Mr. Bosco's activities at the SAE Brake Colloquium in the Fall of 2013.)

4. Identify all facts you intend to rely on to establish Eyelet LLC had a large customer base with clients located throughout the United States, Canada and Mexico, as alleged in Paragraph 20 of the Complaint.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs intend to rely on communications by Mr. Bosco and Mr. Allen to NUCAP in the lead-up to the acquisition of Eyelet LLC and Plaintiffs' observations and records following the acquisition reflecting what became Eyelet Tech's customer base.

5. Describe with particularity all the facts and circumstances related to Bosco's termination as alleged in paragraph 41 of the Complaint.

**ANSWER:**

Subject to, and without waiving, the general objections, Bosco was terminated for cause based on, among other things, a physical altercation he had with a contractor, his brother. Bosco's termination is subject to a Confidential Separation Agreement and General Release Agreement between the parties.

6. State with particularity the basis for Plaintiffs' allegations in Paragraph 48 of the Complaint that "Plaintiffs learned in October 2013 that Bosco has been secretly meeting with customers, clients, and competitors of NUCAP to explore business opportunities involving the design, manufacture, and sale of brake pad components" and identify the factual basis for this allegation, including but not limited to identifying any and all documents and witnesses relating to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs answer that the factual basis for the allegations in Paragraph 48 of the Complaint comes from discussions that various representatives of NUCAP, including but not limited to Bill Murray and Montu Khokhar, have had with various participants in the industry including, but not limited to, John Bennett at Trelleborg, Brian Knox at Wolverine, and Eric Denys at MSC. By way of example, Mr. Bennett told Mr. Murray that shortly after Mr. Bosco's termination of employment with Anstro, Mr. Bosco tried to pressure the supplier Trelleborg to supply material to Preferred. The information also comes directly from Mr. Bosco, who, among other things, sent a text message to Bill Murray in October 2013 offering to "leave this industry forever" if Nucap paid him the remainder of the \$400,000 which he claims was and is due to him, and who admitted in correspondence to various representatives of NUCAP that he had had discussions with Meneta during the restricted period about a possible job at Meneta, and that he had attended the SAE Brake Colloquium to engage with individuals in the industry.

7. State with particularity the basis for Plaintiffs' allegations in Paragraph 50 of the Complaint that "Preferred is now developing products that would directly compete with

Plaintiffs in certain key business lines, such as drag reduction technology, caliper hardware, and noise insulator shims” and identify the factual basis for this allegation, including but not limited to identifying all documents and witnesses related to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs refer Mr. Bosco to the allegations in the Complaint filed against Mr. Bosco and Preferred in state court in New Haven, Connecticut.

8. State with particularity the basis for Plaintiffs’ allegations in Paragraph 51 of the Complaint that “[a]t the SAE Brake Colloquium, Bosco had several meetings with clients and customers of Plaintiffs in which he attempted to solicit business from those persons and/or entities,” and identify the factual basis for this allegation, including but not limited to identifying all documents and witnesses related to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, the basis for the allegations in Paragraph 51 of the Complaint are the observations made by various NUCAP representatives, including Montu Khokhar, that Mr. Bosco was in attendance at the SAE Brake Colloquium; was at the booth for Preferred Automotive/Preferred Tool; had several conversations with customers and suppliers, including but not limited to John Bennett, at Trelleborg. The information also comes directly from Mr. Bosco, who admitted that he met with clients of NUCAP at the SAE Brake Colloquium.

9. State with particularity the basis for Plaintiffs’ allegations in Paragraph 52 of the Complaint that “Bosco additionally attended meetings with the Preferred team at the Colloquium, during which Bosco, on information and belief, discussed strategies for the sale, manufacture, design, and marketing of brake products and technologies on behalf of Preferred,” and identify the factual basis for this allegation, including but not limited to identifying all documents and witnesses related to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs incorporate their Answer to Interrogatory Nos. 7 and 8.

10. State with particularity the basis for Plaintiffs' allegations in Paragraph 55 of the Complaint that "many of Plaintiff's customers reported back to NUCAP that they had been solicited by Bosco, confirming Plaintiffs' own observations regarding the true nature of Bosco's conduct," and identify the factual basis for this allegation, including but not limited to identifying all customers who claim to have been solicited by Bosco and all documents and witnesses related to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs respond as follows: Plaintiffs learned that Mr. Bosco had been in contact with Alan Cleveland at Federal Mogul and Bob Wilkes at Bosch, and that Mr. Bosco also visited Meneta. Mr. Bosco also told Bill Murray that he had been in contact with customers.

11. State with particularity the basis for Plaintiffs' allegations in Paragraph 57 of the Complaint that "Plaintiffs wrote to Bosco and provided him with an opportunity to explain his activities," and identify the factual basis for this allegation, including but not limited to identifying all documents and witnesses related to these allegations.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs refer Mr. Bosco to the November 11, 2013 letter directed to him from Montu Khokhar at NUCAP, a copy of which is being produced by Plaintiffs. Plaintiffs further refer Mr. Bosco to, and incorporate by reference, their Answer to Interrogatory No. 3.

12. Identify all actual or prospective customers of Plaintiffs' (and their representatives, employees, or agents) with whom you allege Bosco has communicated or

contacted, since January 1, 2012, for any sales or business purpose. For each such person or entity, please include:

- a. The identity of the actual/prospective customer involved;
- b. A description of the alleged circumstances of each such communication or contact;
- c. The actual or approximate dates of each such communication or contact;
- d. The identities of all individuals who participated in the communication or contact; and
- e. A detailed description of the substance of the communication.

**ANSWER:**

Plaintiffs object to this Interrogatory because it seeks information within Bosco's possession and control. Plaintiffs further object to this Interrogatory as overbroad, unduly burdensome, and requesting information that Mr. Bosco himself has refused to produce or provide in this litigation.

By way of further response, Plaintiffs answer that Mr. Bosco has communicated with the following customers of Plaintiffs since January 1, 2012: Bosch Brake Components, Federal Mogul, Meneta, Trelleborg, and potentially others.

13. Identify all actual or prospective customers of Plaintiffs' (and their representatives, employees, or agents) with whom you discussed anything about Mr. Bosco since January 1, 2012. For each such person or entity, please include:

- a. The identity of the actual/prospective customer involved;
- b. A description of the alleged circumstances of each such communication or contact;
- c. The actual or approximate dates of each such communication or contact;

d. The identities of all individuals who participated in the communication or contact; and

e. A detailed description of the substance of the communication.

**ANSWER:**

Plaintiffs object to this Interrogatory as overbroad, unduly burdensome, and neither material nor necessary to the claims or defenses in this action. Plaintiffs object to this Interrogatory to the extent it seeks information protected by the attorney-client and/or work product privileges.

Subject to, and without waiving, the general and specific objections, Plaintiffs incorporate by reference their answers to Interrogatory Nos. 10 and 12.

14. Set forth, and explain the amount and computation for each separate category of damages Plaintiffs seek to recover in this litigation and identify all documents or other evidentiary material upon which the computation is based.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs answer as follows: Plaintiffs seek compensatory damages for the payments made to Bosco pursuant to the Non-Competition Agreement in the period during which Bosco violated the terms of the Non-Competition Agreement (an amount which, upon information and belief, and subject to further discovery, ranges between \$200,000-\$600,000); Plaintiffs seek compensatory damages for lost profits associated with lost business and/or lost business opportunities caused by Bosco's wrongful conduct, in an amount not presently known; Plaintiffs seek compensatory damages for breach of fiduciary duty in an amount not presently known; Plaintiffs seek punitive damages against Bosco; and Plaintiffs seek reimbursement of their attorneys' fees and costs, in an amount not presently known because Plaintiffs have yet to incur all of those fees and costs. In terms of the documents/evidentiary material upon which the computations are based, Plaintiffs refer Mr. Bosco to the Non-Competition Agreement; the correspondence with Mr. Bosco surrounding Plaintiffs' discovery that Mr. Bosco was violating the terms of the Non-Competition Agreement; and such further documents that may emerge in discovery once Mr. Bosco produces responsive documents.

15. Describe with particularity, including but not limited to identifying any and all documents and witnesses relating to your answer, the actions which Bosco undertook to compete

with the Plaintiffs' business and identify how Bosco's actions competed with, affected, impacted and/or harmed Plaintiffs' business.

**ANSWER:**

Subject to, and without waiving, the general objections, Plaintiffs refer Mr. Bosco to their answers to Interrogatory Nos. 6, 7, 8 and 10.

16. Describe with particularity any investigation the Plaintiffs undertook relating to Bosco's alleged breach of the Non-Competition Agreement and identify the results of such investigation and any and all individuals and documents relating to such investigation.

**ANSWER:**

Plaintiffs object to this Interrogatory because, including subparts, this Interrogatory is the twenty sixth (26th) Interrogatory and exceeds the number permitted by the Rules of the Commercial Division.

17. Identify all persons who you expect to call as witnesses at trial or any hearing in the matter and state with specificity the facts and opinions to which each witness will testify.

**ANSWER:**

Plaintiffs object to this Interrogatory because, including subparts, this Interrogatory is the twenty seventh (27th) Interrogatory and exceeds the number permitted by the Rules of the Commercial Division.

18. Identify all persons who you expect to call as an expert witness at trial or any hearing in this matter and state with specificity the facts and opinions to which each expert witness will testify.

**ANSWER:**

Plaintiffs object to this Interrogatory because, including subparts, this Interrogatory is the twenty eighth (28th) Interrogatory and exceeds the number permitted by the Rules of the Commercial Division.

Date: March 3, 2015  
Philadelphia, Pennsylvania

**DUANE MORRIS LLP**

*/s/ Lawrence H. Pockers*

---

Kathrine A. Gehring  
1540 Broadway  
New York, New York 10036  
Tel: 212.692.1000  
Fax: 212.692.1020

Of Counsel

**DUANE MORRIS LLP**

Lawrence H. Pockers  
*(Pro Hac Vice)*  
Harry M. Byrne  
*(Pro Hac Vice)*  
30 South 17th Street  
Philadelphia, PA 19103  
Telephone: 215.979.1000  
Fax: 215.979.1020  
LHPockers@duanemorris.com  
HMByrne@duanemorris.com

*Attorneys for Plaintiffs*

