

DOCKET NO. UWY-CV-14-6026552-S : SUPERIOR COURT  
NUCAP INDUSTRIES INC., ET AL. : J.D. WATERBURY  
VS. : AT WATERBURY  
PREFERRED TOOL AND DIE, INC., ET AL. : SEPTEMBER 2, 2015

**AFFIDAVIT OF NICOLE H. NAJAM IN SUPPORT OF  
PLAINTIFFS' MOTION TO DISMISS**

1. I am associate with the law firm of Robinson & Cole LLP, and in that capacity represent the counsel for Plaintiffs NUCAP Industries Inc. and Nucap US Inc. in this action.

2. This affidavit is made in support of the Plaintiffs' Motion to Dismiss in accordance with Practice Book Section 10-30(c) and is based upon my personal knowledge of the facts of this matter and the authenticity documents referenced in Paragraph 3 to 9 below.

3. Attached hereto as Exhibit A is a true and correct copy of the 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.), dated October 10, 2014.

4. Attached hereto as Exhibit B is a true and correct copy of the Complaint of Plaintiff Robert Bosco in *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury.

5. Attached hereto as Exhibit C is a true and correct copy of the Order denying Robert Bosco's Motion for Reconsideration of the Court's October 10, 2014 Order 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.), dated November 14, 2014.

6. Attached hereto as Exhibit D is a true and correct copy of the Amended Answer and Counterclaims of Robert Bosco, Jr. in the matter of *Nucap Industries, Inc. et al. v. Robert Bosco, Jr, Supreme Court of New York, County of New York, Index No. 651968/2014.*

7. Attached hereto as Exhibit F is a true and correct copy of the Confidentiality, Non-Competition, and Non-Solicitation Agreement executed by Bosco, NUCAP Industries Inc. and Eyelet Tech Nucap Corp. on November 19, 2009, a copy of which was attached as Exhibit A to the Complaint of Plaintiff Robert Bosco in *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury.

8. Attached hereto as Exhibit H is a true and correct copy of email correspondence between counsel for NUCAP, Harry M. Byrne, and counsel for Bosco, David A. DeBassio, regarding NUCAP's request for Bosco to withdraw Counts I to IV of his Counterclaims.

9. Attached hereto as Exhibit I is a true and correct copy of the Confidential Separation Agreement and General Release executed by Bosco and NUCAP Industries Inc. on May 31, 2012 and June 5, 2012, respectively, a copy of which was attached as Exhibit B to the Complaint of Plaintiff Robert Bosco in *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury..

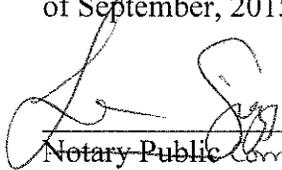
10. Pursuant to Practice Book § 10-30, the Court may consider these documents as they explain relevant and necessary facts that are not apparent from the face of the record. *See* Practice Book § 10-30; *Cavanaugh v. Sherberg*, 2012 Conn. Super. LEXIS 361 (Conn. Super. Ct. Feb. 2, 2012) (court may consider facts and documents attested to in attorney affidavit, including supplemental affidavits); *Ungerland v. Morgan Stanley & Co.*, 2010 Conn. Super. LEXIS 5599 (Conn. Super. Ct. 2010) (granting motion to dismiss and relying on documents attached to attorney affidavit).

11. For the reasons set forth in the accompanying Reply Brief, as well as the previously filed Motion and Memorandum of Law, Plaintiffs respectfully request the Court dismiss Counts One to Four of Defendant Bosco's Counterclaims.

12. Plaintiffs additionally request the Court impose sanctions on Bosco and his counsel for the waste of judicial resources and time in litigating the viability of Counts One to Four of Defendant Bosco's Counterclaims.

By   
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Sworn to before me this 2 day  
of September, 2015.

  
Notary Public Commissioner of the Superior Court  
My commission expires: \_\_\_\_\_

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 2nd day of September, 2015 to all counsel and self-represented parties of record, as follows:

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# EXHIBIT A

NO. UWY-CV-14-6023433-S

SUPERIOR COURT

ROBERT BOSCO, JR.

J.D. OF WATERBURY

VS.

AT WATERBURY

EYELET TECH NUCAP  
CORP., ET AL.

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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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.<sup>1</sup>

"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*,

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<sup>1</sup> 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.

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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

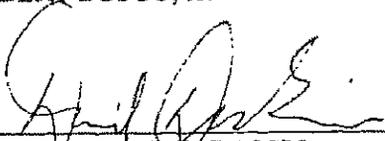
WHEREFORE, the Plaintiff Robert Bosco, Jr. demands judgment granting him:

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 9<sup>th</sup> day of April, 2014

THE PLAINTIFF,

ROBERT BOSCO, Jr.

BY 

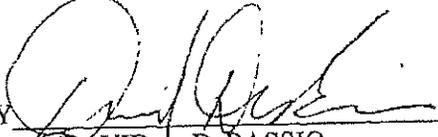
DAVID A. DeBASSIO  
HINCKLEY, ALLEN & SNYDER LLP  
20 Church Street  
Hartford, CT 06103  
T: (860) 725-6200  
F: (860) 278-2768  
Juris No. 428858

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  
20 Church Street  
Hartford, CT 06103  
T: (860) 725-6200  
F: (860) 278-2768  
Juris No. 428858

# **EXHIBIT C**

DOCKET NO: UWYCV146023433S

SUPERIOR COURT

ORDER 434448

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

JUDICIAL DISTRICT OF WATERBURY  
AT WATERBURY

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

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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-Pitche, 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.

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



Nick R. Valenta  
Attorney for Defendant  
*Robert Bosco, Jr.*  
20 Church Street  
Hartford, CT 06103  
(860) 725-6200

TO:

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Lawrence H. Pockers (*pro hac vice* pending)  
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30 South 17th Street  
Philadelphia, Pennsylvania 19103  
Tel: 215.979.1000  
Fax: 215.979.1020

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

# **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 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](mailto:HMByrne@duanemorris.com)  
[www.duanemorris.com](http://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](mailto:blehberger@ssjr.com)); Winter, Gene S. ([gwinter@ssjr.com](mailto:gwinter@ssjr.com)); 'William J. Britt' ([WBritt@brodywilk.com](mailto:WBritt@brodywilk.com)); Stephen J. Curley <[scurley@earthlink.net](mailto:scurley@earthlink.net)> ([scurley@earthlink.net](mailto:scurley@earthlink.net)); Mirman, Jeffrey J.; Millinger, Alexa T.; Pockers, Lawrence H.; Najam, Nicole H. ([NNajam@rc.com](mailto: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

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30 South 17th Street  
Philadelphia, PA 19103-4196  
P: +1 215 979 1136  
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[www.duanemorris.com](http://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,

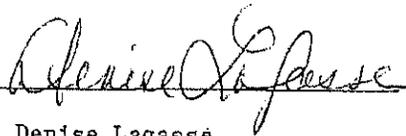
UNDERSTAND ITS TERMS AND THEIR SIGNIFICANCE, AND INTEND TO ABIDE BY ITS PROVISIONS WITHOUT EXCEPTION.

EXECUTIVE

By 

Name Robert R. Bosco, Jr.

Date 5/31/12

Witness 

Name Denise Lagassé

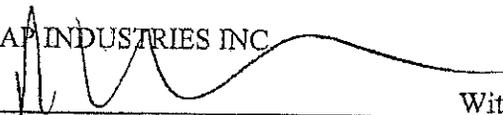
Date 5/31/12

Witness 

Name Angela Serrano

Date 5/31/12

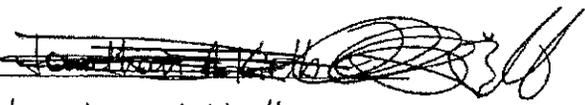
NUCAP INDUSTRIES INC

By 

Title Chairman

Name Ray Arbesman

Date June 5/12

Witness 

Name Jonathan A. Kiebb

Date June 5/12

EXHIBIT 1

[Date]

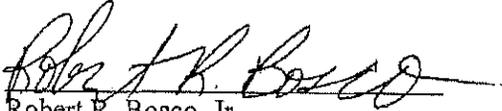
Ray Arbesman, Chairman  
NUCAP Industries Inc.  
3370 Pharmacy Avenue  
Toronto, ON, Canada M1W 3K4

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