

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

EMERY SMITH,

CASE NO. 15-CA-001620

Applicant,

-v-

EMCYTE CORP.,

Respondent.

**EMCYTE CORP.'S RESPONSE, ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIM TO EMERY SMITH'S AMENDED PETITION**

Respondent, EmCyte Corporation ("EmCyte") hereby files its Response, Answer, Affirmative Defenses and Counterclaims as to the Amended Petition filed by Emery Smith and in support alleges and states as follows:

RESPONSE AND ANSWER

1. Mr. Smith's paragraph 1 is admitted.
2. Mr. Smith's paragraph 2 is admitted.
3. Mr. Smith's paragraph 3 is denied to as the claim that Mr. Smith was an "inventor."
4. Mr. Smith's paragraph 4 is denied in that Mr. Smith was not an initial owner of EmCyte Corp.
5. Mr. Smith's paragraph 5 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
6. Mr. Smith's paragraph 6 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
7. Mr. Smith's paragraph 7 is denied.

8. Mr. Smith's paragraph 8 is denied.
9. Mr. Smith's paragraph 9 is denied.
10. Mr. Smith's paragraph 10 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
11. Mr. Smith's paragraph 11 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
12. Mr. Smith's paragraph 12 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
13. Mr. Smith's paragraph 13 is denied.
14. Mr. Smith's paragraph 14 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied, however no document was ever executed between Mr. Smith, Mr. Pennie or EmCyte which amended, superseded or replaced the Shareholders Agreement executed July 1, 2010.
15. Mr. Smith's paragraph 15 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
16. Mr. Smith's paragraph 16 is denied.
17. Mr. Smith's paragraph 17 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
18. Mr. Smith's paragraph 18 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.
19. Mr. Smith's paragraph 19 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

20. Mr. Smith's paragraph 20 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

21. Mr. Smith's paragraph 21 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

22. Mr. Smith's paragraph 22 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

23. Mr. Smith's paragraph 23 is admitted.

24. Mr. Smith's paragraph 24 is denied to the extent that the Shareholders Agreement of July 1, 2010 controls the corporate governance of EmCyte, Mr. Smith and Mr. Pennie.

25. Mr. Smith's paragraph 25 is denied to the extent that the Shareholders Agreement of July 1, 2010 controls the corporate governance of EmCyte, Mr. Smith and Mr. Pennie.

26. Mr. Smith's paragraph 26 is denied. Mr. Smith was invited to meetings but refused to attend.

27. Mr. Smith's paragraph 27 is denied to the extent that Mr. Smith was invited to meetings but refused to attend.

28. Mr. Smith's paragraph 28 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

29. Mr. Smith's paragraph 29 is denied.

30. Mr. Smith's paragraph 30 is denied.

31. Mr. Smith's paragraph 31 is denied.

32. Mr. Smith's paragraph 32 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

33. Mr. Smith's paragraph 33 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

34. Mr. Smith's paragraph 34 is denied.

35. Mr. Smith's paragraph 35 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

36. Mr. Smith's paragraph 36 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

37. Mr. Smith's paragraph 37 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

38. Mr. Smith's paragraph 38 is denied.

39. Mr. Smith's paragraph 39 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

40. Mr. Smith's paragraph 40 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

41. Mr. Smith's paragraph 41 is denied to the extent that it implies that any records beyond what was produced to Mr. Smith and his counsel were required.

42. Mr. Smith's paragraph 42 is admitted to the extent that Mr. Smith's pleading speaks for itself.

43. EmCyte admits that this Court has subject matter jurisdiction over the claims asserted in the Amended Petition, however EmCyte denies that the statutes referenced by Mr. Smith provide the sole or exclusive basis for jurisdiction.

COUNT I

44. Mr. Smith's paragraph 44 does not require a response by EmCyte.

45. Mr. Smith's paragraph 45 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

46. Mr. Smith's paragraph 46 is denied.

47. Mr. Smith's paragraph 47 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

48. Mr. Smith's paragraph 48 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

49. Mr. Smith's paragraph 49 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

50. Mr. Smith's paragraph 50 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

51. Mr. Smith's paragraph 51 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

52. Mr. Smith's paragraph 52 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

53. Mr. Smith's paragraph 53 is admitted to the extent that the referenced document speaks for itself, but otherwise any other inferences are denied.

54. Mr. Smith's paragraph 54 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

55. Mr. Smith's paragraph 55 is denied.

56. Mr. Smith's paragraph 56 is admitted only to the extent that the Statutes speak for themselves, but denied as to any other inference.

WHEREFORE, EmCyte prays for judgment in its favor and against Mr. Smith denying any of the relief requested by Mr. Smith, awarding EmCyte its costs, including a reasonable attorney's fee, and such other relief as this Court may equitably award.

COUNT II

57. Mr. Smith's paragraph 57 does not require a response from EmCyte.

58. Mr. Smith's paragraph 58 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

59. Mr. Smith's paragraph 54 is admitted to the extent that the Statute speaks for itself, but denied as to any other inference.

60. Mr. Smith's paragraph 60 is denied.

61. Mr. Smith's paragraph 61 is denied.

WHEREFORE, EmCyte prays for judgment in its favor and against Mr. Smith denying any of the relief requested by Mr. Smith, awarding EmCyte its costs, including a reasonable attorney's fee, and such other relief as this Court may equitably award.

COUNT III

62. Mr. Smith's paragraph 62 does not require a response by EmCyte.

63. Mr. Smith's paragraph 63 is denied.

64. Mr. Smith's paragraph 64 is denied.

WHEREFORE, EmCyte prays for judgment in its favor and against Mr. Smith denying any of the relief requested by Mr. Smith, awarding EmCyte its costs, including a reasonable attorney's fee, and such other relief as this Court may equitably award.

COUNT IV

65. Mr. Smith's paragraph 65 does not require a response by EmCyte.

66. Mr. Smith's paragraph 66 is denied.

67. Mr. Smith's paragraph 67 is denied.

WHEREFORE, EmCyte prays for judgment in its favor and against Mr. Smith denying any of the relief requested by Mr. Smith, awarding EmCyte its costs, including a reasonable attorney's fee, and such other relief as this Court may equitably award.

COUNT V

68. Mr. Smith's paragraph 68 does not require a response by EmCyte.

69. Mr. Smith's paragraph 69 is denied.

70. Mr. Smith's paragraph 70 is denied.

71. Mr. Smith's paragraph 71 is denied.

72. Mr. Smith's paragraph 72 is denied.

WHEREFORE, EmCyte prays for judgment in its favor and against Mr. Smith denying any of the relief requested by Mr. Smith, awarding EmCyte its costs, including a reasonable attorney's fee, and such other relief as this Court may equitably award.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

73. Applicant failed to comply with Fla. Stat. §607.1602.

SECOND AFFIRMATIVE DEFENSE

74. Applicant's demand for records exceeds the scope and parameters of Fla. Stat. §607.1602.

THIRD AFFIRMATIVE DEFENSE

75. Applicant's demand for records was not made in good faith.

FOURTH AFFIRMATIVE DEFENSE

76. Applicant's demand for records was not made for a proper purpose.

FIFTH AFFIRMATIVE DEFENSE

77. Applicant insufficiently described his purpose and the records applicable to such purpose. See Fla. Stat., §607.1602.

SIXTH AFFIRMATIVE DEFENSE

78. Applicant's demand for records seeks information that is not connected to a proper purpose.

SEVENTH AFFIRMATIVE DEFENSE

79. Applicant omits reference to EmCyte's response to Applicant's May 22, 2105 letter wherein EmCyte identified that Applicant was acting for an improper purpose.

EIGHTH AFFIRMATIVE DEFENSE

80. EmCyte reasonably refused inspection in good faith because it has reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded. See §607.1604.

NINETH AFFIRMATIVE DEFENSE

81. EmCyte is entitled to a civil penalty to be imposed against Applicant pursuant to Fla. Stat. §607.1602(7).

TENTH AFFIRMATIVE DEFENSE

82. EmCyte is entitled to rely upon the Shareholders Agreement executed with Applicant and which was subsequently ratified by him in writing on April 10, 2014. See Fla. Stat., §607.0732.

ELEVENTH AFFIRMATIVE DEFENSE

83. As to Count V, to the extent Petitioner is attempting to bring a derivative action on behalf of or for the benefit of EmCyte, such action is barred due to Petitioner's failure to comply with Fla. Stat. § 607.07401.

TWELTH AFFIRMATIVE DEFENSE

84. As to Count V, to the extent Petitioner is attempting to bring a derivative action on behalf of or for the benefit of EmCyte, **such claims are barred because Petitioner lacks standing.**

THIRTEENTH AFFIRMATIVE DEFENSE

85. As to Count V, to the extent Petitioner is attempting to bring individual or personal claims against EmCyte, such action is barred due to Petitioner's failure to allege that he has suffered any personal injury or sustained any personal damages.

FOURTEENTH AFFIRMATIVE DEFENSE

86. As to Count V, to the extent Petitioner is attempting to bring individual or personal claims against EmCyte, such claims are barred because Petitioner lacks standing.

FIFTEENTH AFFIRMATIVE DEFENSE

87. Petitioner's claims are barred, in whole or in part, by the doctrine of estoppel. Petitioner executed and later ratified the Shareholder Agreement which governs the rights and duties of the parties. Pennie reasonably relied on the Shareholder Agreement in conducting activities in his role as Chairman of EmCyte. Accordingly, Petitioner is estopped from disclaiming the enforceability of the Shareholder Agreement or asserting claims which are contrary to the terms of the Shareholder Agreement.

SIXTEENTH AFFIRMATIVE DEFENSE

88. By virtue of the filing of his action for a judicial dissolution, Mr. Smith is no longer a voting member in EmCyte for purposes of participating in corporate governance, management or business operations.

WHEREFORE, EmCyte requests that Applicant's Application be dismissed and that EmCyte be awarded with its costs, including reasonable attorney's fees and for other relief as this Court may equitably award.

RESPONDENTS' COUNTERCLAIMS

Pursuant to the Shareholders Agreement and applicable Florida Statutes, EmCyte hereby sues Applicant and in support alleges and states as follows:

GENERAL ALLEGATIONS

89. EmCyte Corporation is a Florida corporation that was formed on or around February 19, 2008 ("EmCyte").

90. A Shareholders Agreement was executed by and between Applicant, Patrick Pennie and EmCyte on or around July 1, 2010 (the "Shareholders Agreement"). See Attached Exhibit "A."

91. According to the terms of the executed Shareholders Agreement, voting stock was issued to Mr. Pennie (51 shares) and Applicant (49 shares). Mr. Pennie and Applicant each continued to own Fifty (50) shares of common, non-voting stock. Mr. Pennie was designated to be EmCyte's Chairman and Treasurer. Applicant was designated to be EmCyte's Chief Executive Officer and Secretary.

92. Mr. Pennie, in his capacity as Chairman, was authorized to execute "... any document ... and to take any other action that may be necessary or desirable in order to permit

the Corporation to do business (or facilitate the doing of business in any jurisdiction).” See §2.6 of Exhibit “A.”

93. Further, §5.1 of the Shareholders Agreement vested **sole** responsibility for EmCyte’s management in Mr. Pennie, as Chairman. As Chairman, Mr. Pennie was granted “... the fullest right, power, and authority to manage, direct, and control all of the business affairs of the Corporation, to transact business on its behalf, take any action on behalf of the Corporation believed by the Chairman to be in the best interests of the Corporation, to sign for it or on its behalf and to otherwise secure the Corporation. See §5.1 of Exhibit “A.”

94. Additionally, various actions were reserved to the Chairman’s authority in §5.2, including but not limited to the following:

- ii) the admission of an additional Shareholder, or any other sale of Stock of the corporation to another person or entity other than the then current shareholders; or the approval of disassociation or withdrawal of any Shareholder;
- iii) the sale, lease, exchange, or other disposal of all, or substantially all, of the assets of the corporation;
- vi) the authorization or issuance of additional stock or the transfer of Stock to a substitute or transferee Shareholder, as contemplated by the Agreement;
- x) the removal or addition of a personnel or entities.

See attached Exhibit “A.”

95. On April 10, 2014, Mr. Pennie and Applicant agreed in writing to “... continue to abide by the existing Shareholders Agreement between [them] and EmCyte without modification, amendment or supplement.” Applicant was individually represented by separate

counsel at the time that he communicated his agreement to abide by the Shareholders Agreement to Mr. Pennie. See attached Exhibit "B."

A) Applicant's Usurpation of EmCyte's Corporate Opportunities and Competition.

96. Ultra Intelligence Corporation, LLC is a Delaware limited liability company ("Ultra Intelligence") formed by or on behalf of Applicant on January 9, 2014. See Attached Exhibit "C."

97. Applicant caused Ultra Intelligence to become a member of a limited liability company known as Canine Regenerative Therapies, LLC ("CRT"). CRT was initially formed through a filing with the State of New Jersey on or around March 21, 2014. New Jersey subsequently expunged the formation of CRT.

98. CRT subsequently re-filed in Maryland and purports to be a Maryland limited liability company.

99. The role of Applicant and Ultra Intelligence in CRT was knowingly concealed and secreted from EmCyte and Mr. Pennie.

100. Applicant was an officer, director and shareholder in EmCyte during the time that he formed Ultra Intelligence and caused Ultra Intelligence to become a member of CRT.

101. Applicant was an officer, director and shareholder in EmCyte and a member of CRT, through his ownership of Ultra Intelligence, when CRT negotiated and ultimately entered into a Distribution Agreement with EmCyte. See Attached Exhibit "D."

102. The negotiation and ultimate execution of CRT's Distribution Agreement with EmCyte was done without EmCyte or Mr. Pennie being informed of, or even aware of Applicant's ownership interest in Ultra Intelligence or CRT.

103. CRT had not been properly formed as a limited liability company under the laws of New Jersey as of the time that it had executed the Distribution Agreement with EmCyte.

104. Without giving notice to EmCyte of CRT's improper formation under the law of New Jersey, Applicant secretly executed a letter agreement on behalf of EmCyte with CRT on March 5, 2015, to create a new Distribution Agreement between CRT, now formed in Maryland, and EmCyte. See Attached Exhibit "E." Applicant had no legal authority to execute the letter agreement. The letter agreement was not disclosed to Mr. Pennie or to EmCyte. The letter agreement was done for the benefit of Applicant individually and to the detriment of EmCyte.

105. By and through these actions, Applicant usurped EmCyte's corporate opportunities for his own benefit and breached his contractual and fiduciary obligations to EmCyte.

106. Applicant has also been determined to have usurped corporate opportunities for his individual benefit, and to the detriment of EmCyte, as well as breached his contractual and fiduciary obligations to EmCyte through his ownership or involvement in the entities known as LifeForm Healing Research, LLC, A2M Bio, Inc., Cytonics Biotech, LLC. And Cytonics Corporation. Applicant has knowingly concealed his ownership of, or participation in these entities from EmCyte and Mr. Pennie.

107. Applicant has also been determined to have usurped corporate opportunities for his individual benefit, and to the detriment of EmCyte, as well as breached his contractual and fiduciary obligations to EmCyte through his ownership or involvement in the entities known as Bio Healix Research, LLC and CELLF Cure, Inc. Applicant has knowingly concealed his ownership of, or participation in these entities from EmCyte and Mr. Pennie.

108. EmCyte responded to Applicant's May 22, 2015 letter by letter dated June 5, 2015. See Attached Exhibit "F." In its response letter, EmCyte informed Applicant of its good cause to not allow Applicant to have access to corporate records. Based upon Applicant's usurpation of corporate opportunities for his own benefit, his wrongful use of confidential trade information of EmCyte and other breaches of his contractual and fiduciary duties, EmCyte has just and sufficient cause to deny Applicant from being provided any further information.

109. On July 13, 2015, Applicant and his counsel were served with a letter terminating the purported distribution agreement that Applicant wrongfully caused to be executed by and between EmCyte and CRT. See Attached Exhibit "G."

B) Applicant's Breach of His Contractual and Fiduciary Duties.

110. During 2014 and 2015, Applicant engaged in a pattern of reckless and exorbitant spending that EmCyte was involuntarily forced to subsidize. While purporting to conduct business on behalf of a sister company, Gian Biologics, LLC, Applicant incurred expenses primarily for his personal benefit and entertainment that EmCyte had to pay totaling over \$200,000. See Attached Exhibit "H."

111. Gian Biologics, LLC ("Gian") is a Delaware limited liability company authorized to conduct business in Florida. Mr. Pennie and Applicant are the owners of Gian.

112. On November 3, 2014, Mr. Pennie sent a demand letter to Applicant concerning Applicant's exorbitant individual expenses. While living lavishly at EmCyte's expense, Applicant refused to even provide receipts or to account for his expenditures. See attached Exhibits "H" and "I."

113. Applicant also used Gian to distribute EmCyte products for which EmCyte has yet to receive payment. As of November 3, 2014, Gian, as a direct result of Applicant's actions,

owed EmCyte approximately \$291,000. Applicant has failed and refused to account for the EmCyte kits which have presumably been sold and distributed. See attached Exhibits "H" and "I."

114. In contravention of the Shareholders Agreement and his duties as an officer, director and shareholder of EmCyte, Applicant has engaged in a pattern of conduct and course of performance designed to undermine the Chairman of EmCyte and which resulted in Applicant causing financial jeopardy to EmCyte.

115. On or around April 30, 2015, a woman identifying herself as "Jill Lynch" presented herself at the EmCyte offices, along with another woman and a Fort Myers police officer. See attached Exhibit "J." Ms. Lynch represented to Mr. Pennie that she and the woman accompanying her were lawyers. The reason for the police officer's attendance was unexplained.

116. Ms. Lynch represented to Mr. Pennie that she was at the EmCyte offices on behalf of Applicant and Applicant had clearly provided her with confidential information belonging to EmCyte. However, it was ultimately confessed by Ms. Lynch that she was not licensed to practice law in Florida, and neither was her companion. Nevertheless, Ms. Lynch threatened legal action on behalf of Applicant against Mr. Pennie and EmCyte.

117. Upon information, Ms. Lynch is not a member of the Florida Bar Association. Ms. Lynch provided no Florida address and a telephone call to telephone number listed on her business card was not answered. The Florida Bar has no record of Ms. Lynch being a Florida lawyer.

118. Applicant's actions in sending Ms. Lynch and her team to EmCyte was intended to threaten, intimidate, and undermine Mr. Pennie's authority and to disrupt EmCyte's business.

COUNT I (ACCOUNTING)

119. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

120. Pursuant to the Shareholders Agreement, and by virtue of his obligations as a shareholder under the Florida Statutes, Applicant owed duties to EmCyte to not usurp EmCyte's corporate opportunities, to not engage or participate in competing or conflicting businesses to EmCyte and to not cause harm or damage to EmCyte. Applicant has violated his duties and has personally benefitted from such activities and caused damage to EmCyte.

121. The full extent of Applicant's benefit from his involvement in Ultra Intelligence, CRT, Healix, CELLF, or any other entities in which he owns an interest, as well as the detriment caused to EmCyte, requires Applicant to provide a full and complete accounting for his involvement in these entities.

122. Applicant owed a duty to EmCyte to conduct himself as a reasonable business person when committing EmCyte to pay his expenses. Applicant abused his authority and caused EmCyte to have to subsidize his lavish personal lifestyle. Applicant must provide a full and complete accounting for all of his activities, including documentation of work performed and expenses incurred, as to the expenses which he incurred purportedly on behalf of EmCyte.

123. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant directing Applicant to provide a full and complete accounting for all of his business activities involving Ultra Intelligence, CRT, Healix, CELLF, and all other entities in which he owns an interest or from which he receives compensation or benefits, and further for an accounting for all of his activities wherein he expended money and sought reimbursement from EmCyte, and for such other relief as this Court may equitably allow.

COUNT II (BREACH OF CONTRACT – DAMAGES)

124. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

125. Applicant breached the Shareholders Agreement by usurping EmCyte's corporate opportunities.

126. Applicant breached the Shareholders Agreement by owning interests in or participating in entities that were in competition with EmCyte.

127. Applicant breached the Shareholders Agreement by undermining the authority granted to EmCyte's Chairman in the Shareholders Agreement.

128. Applicant's actions have caused monetary damage to EmCyte.

129. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant determining that Applicant breached the Shareholders' Agreement and for all damages whatsoever which have or will result from Applicant's breach, plus pre-and post-judgment interest and costs, including a reasonable attorney's fee and for and for such other relief as this Court may equitably allow.

COUNT III (BREACH OF CONTRACT – INJUNCTION)

130. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

131. Applicant breached the Shareholders Agreement by usurping EmCyte's corporate opportunities.

132. Applicant breached the Shareholders Agreement by owning interests in or participating in entities that were in competition with EmCyte.

133. Applicant breached the Shareholders Agreement by undermining the authority granted to EmCyte's Chairman in the Shareholders Agreement.

134. Applicant has knowledge and is in possession of confidential trade information of EmCyte.

135. Applicant has engaged in a pattern of using EmCyte's confidential trade information for his personal benefit and to the detriment of EmCyte.

136. An award of damages to EmCyte will be insufficient to compensate EmCyte for the injuries and damages caused by Applicant.

137. Applicant must be enjoined from engaging in any activities wherein he is usurping EmCyte's corporate opportunities, competing with EmCyte, disrupting EmCyte's business or undermining or causing conflict in the marketplace concerning the Chairman's authority.

138. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant determining that Applicant breached the Shareholders' Agreement and his fiduciary duties owed to EmCyte and that EmCyte is entitled to a judgment enjoining Applicant from engaging in activities usurping the corporate opportunities of EmCyte, or competing with EmCyte, disrupting EmCyte's business, or undermining the Chairman's authority, or engaging in any activities that are contrary to the best interests of EmCyte, plus costs, including a reasonable attorney's fee and for and for such other relief as this Court may equitably allow.

COUNT IV (USURPATION OF CORPORATE OPPORTUNITIES)

139. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

140. Applicant owed EmCyte the duty to not usurp EmCyte's corporate opportunities pursuant to the Shareholders Agreement and the Florida Statutes governing shareholders.

141. Applicant knowingly and intentionally defrauded EmCyte by secretly taking an ownership interest in CRT, through his ownership of Ultra Intelligence, and then participating in CRT obtaining a distributorship from EmCyte.

142. Applicant perpetuated his knowing and intentional fraud upon EmCyte by secretly causing the letter agreement with CRT to be executed and entered into by and through his unauthorized signature on behalf of EmCyte.

143. Applicant participated in the CRT/Ultra Intelligence relationships for his own economic benefit, and to the knowing detriment of EmCyte.

144. Accordingly, Applicant breached the Shareholders Agreement by usurping EmCyte's corporate opportunities.

145. Applicant knowingly and intentionally defrauded EmCyte by secretly taking ownership interests in other entities that would have otherwise done business with EmCyte.

146. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant determining that Applicant breached the Shareholders' Agreement and his fiduciary duties owed to EmCyte by usurping EmCyte's corporate opportunities and for all damages whatsoever which have or will result from Applicant's breach, plus pre-and post-judgment interest and costs, including a reasonable attorney's fee and for and for such other relief as this Court may equitably allow.

COUNT V (BREACH OF FIDUCIARY DUTIES OF LOYALTY AND GOOD FAITH)

147. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

148. As an officer, director and shareholder in EmCyte, Applicant owed fiduciary duties of loyalty and good faith to EmCyte to not usurp EmCyte's corporate opportunities, or improperly derive personal benefits, or to consciously disregard the best interests of EmCyte, or to engage in willful misconduct.

149. Applicant breached his fiduciary duties by knowingly and intentionally defrauding EmCyte when he secretly took an ownership interest in CRT, through his ownership of Ultra Intelligence, and then participated in CRT obtaining a distributorship from EmCyte.

150. Applicant perpetuated his knowing and intentional fraud upon EmCyte by secretly causing the letter agreement with CRT to be executed and entered into by and through his unauthorized signature on behalf of EmCyte. The letter agreement resulted in CRT securing lucrative distribution rights from EmCyte.

151. Applicant participated in the CRT/Ultra Intelligence relationships for his own economic benefit, in disregard of the best interests of EmCyte and to the detriment of EmCyte.

152. Accordingly, Applicant breached his fiduciary duties of loyalty and good faith that he owes to EmCyte.

153. Applicant further breached his fiduciary duties to EmCyte by knowingly and intentionally defrauded EmCyte by secretly taking ownership interests in other entities that would have otherwise done business with EmCyte.

154. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant determining that Applicant breached the fiduciary duties of loyalty and good faith that he owes to EmCyte and for all damages whatsoever which have or will result from Applicant's breach, plus pre-and post-judgment interest and costs, including a reasonable attorney's fee and for and for such other relief as this Court may equitably allow.

**COUNT VI (BREACH OF THE
COVENANTS OF GOOD FAITH AND FAIR DEALING)**

155. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

156. Applicant owed a duty of good faith and fair dealing to EmCyte pursuant to the Shareholders Agreement and the Florida Statutes governing shareholders.

157. Applicant breached his duty of good faith and fair dealing by knowingly and intentionally defrauding EmCyte by secretly taking an ownership interest in CRT, through his ownership of Ultra Intelligence, and then participating in CRT obtaining a lucrative distributorship from EmCyte.

158. Applicant further breached his duty of good faith and fair dealing by his knowing and intentional fraud upon EmCyte resulting from his secretly causing the letter agreement with CRT to be executed and entered into by and through his unauthorized signature on behalf of EmCyte. The letter agreement resulted in CRT securing lucrative distribution rights from EmCyte.

159. Applicant breached his duty of good faith and fair dealing for his own economic benefit, and to the detriment of EmCyte.

160. Applicant further breached his duties of good faith and fair dealing owed to EmCyte by knowingly and intentionally defrauding EmCyte by his secretly taking ownership interests in other entities that would have otherwise done business with EmCyte, or with which EmCyte did business not knowing of Applicant's secret involvement.

161. WHEREFORE, Respondent-Counterclaimant prays for judgment in its favor and against Applicant determining that Applicant breached the covenants of good faith and fair dealing which he owes pursuant to the Shareholders' Agreement and as a shareholder in EmCyte

and for all damages whatsoever which have or will result from Applicant's breach, plus pre-and post-judgment interest and costs, including a reasonable attorney's fee and for and for such other relief as this Court may equitably allow.

COUNT VII (DAMAGES FOR MISAPPROPRIATION OF TRADE SECRETS

162. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

163. Applicant misappropriated the following proprietary information pursuant to Section 688.002, of the Florida Statutes: technical documents, designs, plans, and files; electronic copies of technical documents, plans and drawings; and electronic data related to manufacturing, inventory and pricing.

164. Each property described in the foregoing paragraph constitutes a trade secret because it derives independent economic value, actual or potential, from not being known to and readily ascertainable by proper means, by other persons who can obtain economic value from its use or disclosure; and, EmCyte has taken reasonable efforts to maintain its secrecy.

165. Applicant has either taken the trade secrets from the business premises of EmCyte or maintained copies or reproduced this information from EmCyte, without EmCyte's consent, for the purpose of using the information Applicant's personal benefit in a competitive manner against EmCyte or disclosing the information to a third party, including Ultra Intelligence and CRT, to usurp EmCyte's corporate opportunities or to obtain an unfair competitive advantage over EmCyte in order to take its business:

166. EmCyte has been damaged.

167. EmCyte is entitled to the return of its property and to prevent the unlawful use of the property by Applicant.

168. Applicant's actions as described above were and are willful and malicious.

WHEREFORE, EmCyte demands judgment against Applicant, for the return of the trade secrets, compensatory damages, double damages, royalties, costs, interest, including prejudgment interest, reasonable attorneys' fees and such other relief as is allowed under Sections 688.002, 688.004 and 688.005 of the Florida Statutes and such other and further relief as this Court deems just and proper.

COUNT VIII (TEMPORARY AND PERMANENT INJUNCTIVE RELIEF FOR MISAPPROPRIATION OF TRADE SECRETS)

169. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

170. This is an action for temporary and permanent injunctive relief to enjoin Applicant's misappropriation of trade secrets pursuant to Florida Statutes Section 688.003.

171. Applicant's misappropriation of EmCyte's trade secrets has caused and will cause EmCyte irreparable harm as EmCyte can only speculate as to the damages the Applicant's actions caused.

172. EmCyte has a clear legal right to its trade secrets and is likely to succeed on the merits of its claim for misappropriation under Sections 688.002 and 688.003 of the Florida Statutes.

173. EmCyte does not have an adequate remedy at law.

174. The entry of an injunction against Applicant would serve the public interest as it is clear that Florida has a public interest in protecting trade secrets.

WHEREFORE, EmCyte respectfully requests the issuance of a temporary injunction enjoining Applicant from Misappropriating or continuing to misappropriate EmCyte's trade secrets in violation of Florida Statutes, pending final disposition of this action by the Court; the

issuance of a permanent injunction enjoining Applicant from misappropriating or continuing to misappropriate EmCyte's trade secrets; in the alternative an injunction which conditions the Applicant's use of EmCyte's trade secrets upon payment of a reasonable royalty; a final judgment against Applicant for all costs and attorneys' fees pursuant to Section 688.005 of the Florida Statutes; and such other and further relief as the Court deems just and proper.

COUNT IX (DECLARATORY JUDGMENT)

175. Respondent-Counterclaimant references and incorporates paragraphs 89 through 118 herein.

176. This is an action to adjudicate the limitations as to Mr. Smith's shareholder rights in EmCyte subsequent to his filing of an action for judicial dissolution.

177. Upon the filing of his action for judicial dissolution, Mr. Smith triggered a limitation as to his rights as a shareholder in EmCyte.

178. From and after the filing of his judicial dissolution, Mr. Smith's shareholder rights are limited to being valued and then purchased by EmCyte or one of its other shareholders.

179. By filing this judicial dissolution, Mr. Smith has elected to limit rights as a shareholder to having his shares valued and then sold to EmCyte or one of its other shareholders and as a result, he waives any of his rights as a shareholder to participate in management, operations, voting or other instances of corporate governance of EmCyte.

180. After Mr. Smith's shares are valued by this Court, then any such value must be setoff by any and all claims existing in favor of EmCyte against Mr. Smith before the sale to EmCyte or one of its shareholders occurs.

181. EmCyte is entitled to an immediate declaration of this Court finding the rights of Mr. Smith's shares are limited to that of being valued and then sold to EmCyte or one of its other

shareholders for an amount that is subject to EmCyte's right of setoff for any and all claims existing against Mr. Smith, and that by virtue of electing to file this judicial dissolution, he has waived any of his rights as a shareholder to participate in EmCyte's management, operations, voting or other instances of corporate governance.

WHEREFORE, EmCyte prays for an immediate declaration of this Court in its favor and against Mr. Smith finding the rights of Mr. Smith as a shareholder are limited to that of being valued and sold to EmCyte for an amount that is subject to EmCyte's right of setoff for any and all claims existing against Mr. Smith, and that by electing to file this judicial dissolution, Mr. Smith has waived any rights as a shareholder to participate in EmCyte's management, operations, voting or other instances of corporate governance.; and such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed through the Court's E-portal filing system and notice will be served electronically to all counsel of record on this 9th day of October, 2015.

Respectfully Submitted,

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