

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
CASE NO. 1:12-CV-1146

HONGDA CHEMICAL USA, LLC, and)
HONGDA GROUP LIMITED, LLC,)

Plaintiffs,)

v.)

SHANGYU SUNFIT CHEMICAL)
COMPANY, LTD. and YMS)
AGRICULTURE INTERNATIONAL)
CORP.,)

Defendants.)

and)

SHANGYU SUNFIT CHEMICAL)
COMPANY, LTD.,)

Third-Party Plaintiff,)

v.)

GARY DAVID MCKNIGHT;)
RAYMOND P. PERKINS; WEI XU;)
ECO AGRO RESOURCES LLC;)
VASTO CHEMICAL COMPANY, INC.;)
and KADI RESOURCES LLC,)

Third-Party Defendants.)

**SECOND AMENDED
COUNTERCLAIMS AND AMENDED
THIRD-PARTY COMPLAINT**

(Jury Trial Demanded)

Defendant Shangyu Sunfit Chemical Company, Ltd. hereby amends and substitutes its Amended Counterclaims and Third-Party Complaint filed on March 2, 2015 with its Second Amended Counterclaims and Amended Third-Party Complaint as follows.

AMENDED COUNTERCLAIMS

Defendant Shangyu Sunfit Chemical Company, Ltd. (“Defendant” or “Sunfit”), by and through the undersigned counsel, for its Counterclaims against Hongda Chemical USA, LLC (“Hongda Chem”) and Hongda Group Limited, LLC (“Hongda Group,” referred to herein at times collectively with Hongda Chem as “Hongda”), alleges as follows:

1. This is an action to recover not less than \$5,770,050, plus interest from date of breach, wrongfully retained by Hongda despite the contractual obligation to forward these funds to Sunfit pursuant to a written agreement between these parties executed in September, 2011 (the “Agency Contract”).
2. A true and correct copy of the Agency Contract is annexed hereto as Exhibit 1 and incorporated herein by reference.
3. Pursuant to the Agency Contract, Hongda was appointed agent for Sunfit with respect to sales of a certain Sunfit chemical product in the United States and, upon receiving payment for the products sold in the United States, Hongda was to take a three percent (3%) commission and remit the balance of the funds paid to Sunfit within ninety (90) days from the date shipment.

4. Since August of 2012, Hongda has defaulted in the payment of material sums due under the Agency Contract.

5. Specifically, no payment has been received from Hongda since August, 2012, despite the fact that Hongda has been paid by the ultimate consumers of the Sunfit product; past due payments from Hongda under the Contract have now accumulated to an aggregate in the principal sum of \$5,770,050, plus interest since date of breach.

6. As set forth herein, Sunfit seeks recovery of this amount under alternative theories of breach of contract, fraud, conversion and violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”). Moreover, in addition to compensatory damages, Sunfit seeks treble and punitive damages under UDTPA, as well as a recovery of attorneys’ fees and the imposition of a constructive trust over the funds currently being held by Hongda pending the outcome of this litigation.

Jurisdiction and Venue

7. This is a civil action for damages and other equitable relief. The matter in controversy exceeds the sum of \$75,000, exclusive of interest, costs, and attorneys’ fees.

8. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b), because it is a judicial district in which Hongda resides and the substantial part of the events or omissions giving rise to the claims herein occurred in this district..

Parties

9. Counterclaiming Defendant Sunfit is a Chinese corporation, with its principal place of business located in Hongzhou Bay, Zhejiang Province China.

10. On information and belief, Hongda Group is a North Carolina limited liability company, with its principal place of business located at 7800 Airport Center Dr., Suite 401, Greensboro, NC 27409.

11. On information and belief, Hongda Chem is a North Carolina limited liability company, with its principal place of business located at 7800 Airport Center Dr., Suite 401, Greensboro, NC 27409. Hongda Chem is the alter ego of Hongda Group and has no independent basis for existence than as a “front” for Hongda Group.

Factual Background And First Claim for Relief (Breach of Contract)

12. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth fully herein.

13. Sunfit is a manufacturer specialized in the research, production and trade of fertilizer additives, pharmaceutical intermediates and food additives, including N-(n-Butyl) thiophosphoric Triamide (“NBPT”).

14. The purpose of the Agency Contract was to establish contractual terms under which Hongda would take delivery of quantities of Sunfit's NBPT and deliver it for sale in the United States to end consumers.

15. The relationship between Sunfit and Hongda followed its intended contractual course from September 2011 until August 2012, at which point Hongda began improperly retaining all of the proceeds of the sales of NBPT delivered by Sunfit.

16. When Sunfit questioned Hongda about its failure to remit required payments per the Agency Contract, Hongda representatives falsely misrepresented to Sunfit they had no funds to remit because Hongda was not being paid by the ultimate consumer, Albemarle Corporation ("Albemarle").

17. A representative of Sunfit next contacted Albemarle to determine why payments were not being made, but was informed that, to the contrary, payments were remitted to Hongda as required.

18. Sunfit relayed this to Hongda and, in response, Hongda admitted to being paid by Albemarle, but falsely asserted that Sunfit's limited contact with Albemarle to ascertain payment status was an attempt by Sunfit to make direct sales in the United States in violation of the Agency Contract. Hongda has continually used such false assertion of "breach" as a pretext for its refusal to remit to Sunfit funds that Hongda owes to Sunfit based upon sales of Sunfit's NBPT per the Agency Contract.

19. Sunfit has not only performed in complete compliance with the Agency Contract, but it went so far as to repeatedly agree to assist Hongda in satisfying Hongda's delinquent contractual obligations.

20. Finally, having determined that Hongda was not acting in good faith, Sunfit, through counsel, sent a final demand that unless Hongda remitted to Sunfit all amounts currently owed to Sunfit per the Agency Contract, then \$5,408,325.00, by October 26, 2012, Sunfit would terminate the Agency Contract. In response, Hongda ignored this demand, and filed this lawsuit on October 26, 2012, continuing to falsely allege "breach" by Sunfit..

21. Because of Hongda's failure to timely remit the amounts due on Sunfit's completed sales of NBPT, Sunfit will also lose the nine percent (9%) export tax refund paid by the Chinese government where proceeds are repatriated on a timely basis.

22. The Agency Contract was a valid agreement between the parties.

23. Sunfit has complied fully with its obligations under the Agency Contract and has fulfilled each of the purchase orders received from Hongda during the period the Agency Contract was in effect.

24. Hongda materially breached the Agency Contract by failing to pay for sixteen shipments supplied by Sunfit based on orders received from Hongda.

25. Specifically, annexed hereto collectively as Exhibit 2 are true and correct copies of sixteen of the numerous purchase orders received by Sunfit from Hongda during the period that the Agency Contract was in effect.

26. Annexed hereto collectively as Exhibit 3 are true and correct copies of sixteen invoices related to the purchase orders annexed as Exhibit 2.

27. Each of these shipments was made by Sunfit and Hongda has received payment from Albemarle for each of the invoices included in Exhibit 3.

28. Hongda has failed to remit to Sunfit any portion of the payments by Albemarle relating to the invoices included in Exhibit 3.

29. Hongda was required under the Agency Contract to remit payment relating to the sixteen invoices included in Exhibit 3 within 90 days of delivery of the NBPT referenced in said invoices.

30. Sunfit has been damaged by Hongda's breach and is entitled to recover from Hongda an amount to be proven at trial, but not less than \$5,770,050, plus interest from the date of breach.

31. Moreover, allowing Hongda to retain the proceeds of sales of Sunfit's NBPT would result in Hongda's unjust enrichment and, given that Hongda owed a fiduciary duty under the Agency Contract to remit these funds to Sunfit, a constructive trust should be imposed over these funds.

Second Claim for Relief
(Conversion)

32. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

33. Hongda's refusal to remit the funds received upon the sale of Sunfit's NBPT pursuant to the terms of the Agency Contract, and then again after the repeated demands by Sunfit, resulted in Hongda's unauthorized assumption and exercise of the right of ownership over personal property belonging to Sunfit, to the exclusion of Sunfit's rights.

34. Sunfit has been damaged by Hongda's conversion and is entitled to recover from Hongda an amount to be proven at trial, but not less than \$5,770,050.

35. Moreover, allowing Hongda to retain the proceeds of sales of Sunfit's NBPT would result in Hongda's unjust enrichment. Due to Hongda's special duty under the Agency Contract to remit these funds to Sunfit and to use these funds for no other purpose, a constructive trust should be imposed over these funds by the Court to protect the funds during the pendency of this action. In the event that Hongda has commingled the funds, or any officer, employee, agent, attorney, contractor or affiliate of Hongda has diverted or attempted to divert the funds for any purpose other than payment to Sunfit, Sunfit prays the Court that such person(s) or entity(ies) be ordered to immediately disgorge themselves of these funds and remit payment promptly to Sunfit.

As and for a Third Cause of Action
(Violation of UDTPA)

36. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

37. Prior to entering into the Agency Contract, Hongda and its principals, Gary David McKnight (McKnight”), Raymond P. Perkins (“Perkins”) and Wei Xu (“Xu”), entities used by these individuals including Eco Agro Resources LLC, Vasto Chemical Company, Inc. (“Vasto”), KaDi Resources LLC and other, as yet unnamed, conspirators (collectively with Hongda, the “Hongda Affiliates”), conspired to create a competing venture in violation of both its agreements with Sunfit and with Albemarle Corporation and to improperly retain fraudulently transferred funds belonging to Sunfit.

38. More specifically, at some point in time prior to September 2011, the Hongda Affiliates decided to create a new entity or entities through which they would manufacture NBPT in China, then secretly ship this NBPT to the United States and sell it through such entities in violation of the Agency Contract and related agreement with Sunfit and Albemarle Corporation.

39. As an example, e-mail between Perkins and McKnight include discussions as early as July 3, 2012 wherein these individuals discuss how to obtain NBPT from manufacturers other than Sunfit in China and covertly sell it in the United States without Sunfit’s knowledge by using Vasto to import NBPT to the United States, then, after

bypassing the usual public paperwork required for importing goods, Vasto would sell the NBPT to Hongda in a non-public domestic transaction and Hongda in turn would sell to its North American customers having bypassed the exclusivity obligations of the Agency Contract.

40. Hongda's deception was first revealed through a September 21, 2011 e-mail from Perkins to McKnight and Xu sent after Perkins heard that Sunfit wanted the obligation of exclusivity in the Agency Contract to be reciprocal – In other words, Hongda would not be permitted to bring NBPT into North America unless they purchased it from Sunfit. On learning of this change to the draft agreement, Perkins wrote to McKnight and Xu and emphatically suggested that someone had leaked their secret plans.

41. Worse yet, the Hongda Affiliates devised a scheme whereby they would induce Sunfit to manufacture and ship NBPT to Hongda, which would in turn sell this NBPT to Albemarle and, rather than pay Sunfit for this NBPT on the terms agreed, the Hongda Affiliates would fraudulently transfer the proceeds from these sales out of Hongda and then improperly invest the proceeds of these sales into the scheme, essentially using Sunfit's funds to build this new, competing distribution system for the sale of NBPT from China to the United States.

42. By virtue of Hongda's repeated requests for additional deliveries of NBPT from Sunfit, knowing it had no intention of remitting the proceeds of the sales of this NBPT,

and Hongda's refusal to remit the proceeds of Sunfit's NBPT sales to Sunfit as required by the Agency Contract as agent for Sunfit, but instead use these proceeds to create a competing enterprise, Hongda has committed unfair or deceptive acts and/or practices in or affecting commerce. Hongda's unlawful actions occurred within this judicial district.

43. Once Sunfit realized that Hongda had defrauded it and did not intend to pay over the many millions of dollars collected on Sunfit's behalf, it sent a demand letter threatening the present litigation absent payment. Within minutes of the deadline established by Sunfit for payment of these funds, Hongda sued Sunfit claiming falsely that there was no obligation to pay over Sunfit's money because Sunfit had been selling NBPT into the North American market in violation of the Agency Contract.

44. Thereafter, once this litigation commenced, Perkins sent a December 20, 2012 e-mail where he set out the basic structure through which the Hongda affiliates would begin to operate now that they had taken everything they could from Sunfit; they would organize a new entity, which ultimately became Eco Agro on December 31, 2012, and this new entity would take over the sale of NBPT in North America on behalf of the Hongda Affiliates.

45. In response, one of the recipients of this e-mail suggested that the plan for Eco Agro had been accelerated, on information and belief due to the filing of the present litigation.

46. Sunfit has been damaged by Hongda's unfair and/or deceptive practices and is entitled to recover from Hongda an amount to be proven at trial, but not less than \$5,770,050, plus interest, trebled pursuant to the UDTPA, as well as attorneys' fees incurred in this action pursuant to the UDTPA.

47. Moreover, allowing Hongda to retain the proceeds of sales of Sunfit's NBPT would result in Hongda's unjust enrichment and, given that Hongda owed a special duty of trust under the Agency Contract to remit these funds to Sunfit, a constructive trust should be imposed over these funds by the Court to protect the funds during the pendency of this action. In the event that Hongda has commingled the funds, or any officer, employee, agent, attorney, contractor or affiliate of Hongda has diverted or attempted to divert the funds from any purpose other than payment to Sunfit, Sunfit prays the Court that such person or entity be ordered to immediately disgorge themselves of these funds and remit payment promptly to Sunfit.

As and for a Fourth Cause of Action
(Quantum Meruit)

48. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

49. Sunfit provided Hongda goods for which it has not been paid.

50. The goods provided by Sunfit to Hongda have a reasonable and fair value as set forth per the terms of the Agency Contract. Per the terms of the Agency Contract, based

upon the amounts of NBPT that Sunfit supplied to Hongda for which it has not been paid, Sunfit is owed not less than \$5,770,050, plus interest.

51. At the time Sunfit provided the goods, Sunfit reasonably expected to be paid therefor.

52. Hongda voluntarily and knowingly accepted the NBPT from Hongda with full knowledge and reason to know that Sunfit expected to be paid in full for the goods.

53. Hongda is liable to Sunfit in *quantum meruit* for the reasonable value of the goods provided by Sunfit and for which Sunfit has not been paid, as set forth above, plus interest and attorneys' fees as allowed by law.

As and for a Fifth Cause of Action
(Violation of Uniform Fraudulent Transfer Act – G.S. § 39-23.1, et seq.)

54. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

55. Each of the Hongda Affiliates is an insider and/or corporate affiliate of Hongda.

56. At the time when it was negotiating the Agency Contract, Hongda intended to improperly retain and use some or all of the revenues that were intended to be delivered to Sunfit upon a sale of NBPT, notwithstanding the obligation to remit these revenues to Sunfit.

57. The purpose of this improper retention and use was to fund the a new category of business by Hongda and its then, to-be-formed affiliate, Eco Agro Resources LLC (“Eco

Agro”) whereby Hongda and Eco Agro would source NBPT from a Chinese manufacturer other than Sunfit in violation of the Agency Agreement and sell this NBPT in North America at substantially higher margins than were expected to be earned under the Agency Contract.

58. On information and belief, a portion of the revenues due to be remitted to Sunfit were used to finance the establishment of this new Chinese manufacturer, some were taken by Hongda’s principals, McKnight and Xu, and some were paid to affiliates of Hongda, Eco Agro Resources LLC, Vasto Chemical Company, Inc., KaDi Resources LLC and other, as yet unnamed, conspirators.

59. Each of the Hongda Affiliates was acting as an agent of the others in furtherance of this conspiracy to defraud Sunfit.

60. Each of the transfers made by Hongda of the revenues from the Agency Contract were fraudulent transfers in that they were each made with intent to hinder, delay, or defraud Sunfit and without receiving a reasonably equivalent value in exchange for the transfer.

61. Each of these transfers by Hongda was made at a time when Hongda did not have remaining assets sufficient to pay the amounts owed to Sunfit.

62. Each of the transfers made by Hongda was intentionally made knowing that Hongda intended to incur debts beyond Hongda’s ability to pay as they became due.

63. The Hongda Affiliates retained control over the funds even after they were improperly transferred until such time as they were paid to third parties in furtherance of Hongda's secret new business.

64. The Hongda Affiliates devised the claims asserted by Hongda in this matter as a means to further conceal their fraud.

65. As a result of the transfers at issue Hongda became insolvent.

66. As a further result of these transfers, Sunfit has been damaged and is entitled to Avoidance of the transfers by and among the Hongda Affiliates to the extent necessary to satisfy Sunfit's claims against Hongda in an amount to be proven at trial, but not less than \$5,770,050, plus interest, as well as attachment, injunction or other provisional remedies as circumstances may require, against the assets transferred or other property of Hongda.

WHEREFORE, Sunfit requests that the Complaint in this matter be dismissed and that a judgment be entered on the Counterclaims which grants the following relief:

A. An award of compensatory and consequential damages against Hongda in the amount of not less than \$5,770,050, plus prejudgment interest;

B. Treble damages and attorneys' fees against Hongda as provided for by the UDTPA;

C. An award of punitive damages against Hongda in an amount to be determined;

D. Provisional relief including, without limitation, avoiding the transfers made by Hongda and imposing a constructive trust over all amounts received from the sale of Sunfit's NBPT in an amount of up to \$5,770,050 and disgorgement of any and all proceeds of Sunfit's funds that have been unlawfully disbursed by Hongda, its employees, officers, directors, agents, attorneys, affiliates, contractors or any other person or entity acting for or on its behalf; and

E. Awarding Sunfit its costs and disbursements of this action, including reasonable attorneys' fees, and such other and further relief that the Court deems just and proper.

AMENDED THIRD-PARTY COMPLAINT

Sunfit by and through counsel, alleges as its Third-Party Complaint against Gary David McKnight ("McKnight"), Raymond P. Perkins ("Perkins"), Wei Xu ("Xu"), Eco Agro Resources LLC ("Eco Agro"), Vasto Chemical Company, Inc. ("Vasto") and KaDi Resources LLC ("KaDi") (collectively, "Third-Party Defendants"), as follows:

1. This is an action to recover not less than \$5,770,050, plus interest from date of breach, wrongfully retained by Hongda as described in the annexed Counterclaims in connection with a written agreement between Sunfit and Hongda executed in September, 2011 (the "Agency Contract").

2. More specifically, the Third-Party Defendants aided, abetted and were, in many cases, the recipients of the fraudulent transfers described in the fifth counterclaim above. The Third-Party Defendants are necessary parties in that, as beneficiaries of the fraud alleged in the Counterclaims, and given that all of the Hongda assets have been siphoned off to the Third-Party Defendants or their designees, recovery from Hongda under the Counterclaims would ultimately be a pyric victory.

3. Pursuant to the Agency Contract, Hongda was appointed agent for Sunfit with respect to sales of a certain Sunfit chemical product in the United States and, upon receiving payment for the products sold in the United States, Hongda was to take a three percent (3%) commission and remit the balance of the funds paid to Sunfit within ninety (90) days from the date shipment.

4. Since August of 2012, Hongda has defaulted in the payment of material sums due under the Agency Contract.

5. Specifically, no payment has been received from Hongda since August, 2012, despite the fact that Hongda has been paid by the ultimate consumers of the Sunfit product; past due payments from Hongda under the Contract have now accumulated to an aggregate in the principal sum of \$5,770,050, plus interest since date of breach.

6. As set forth in the Counterclaims, Sunfit seeks recovery of this amount from Hongda under alternative theories of breach of contract, fraud, conversion, quantum meruit,

violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”) and violation of the Uniform Fraudulent Transfer Act – G.S. § 39-23.1, *et seq.* In this Third-Party Complaint, Sunfit seeks to recover from the Third-Party Defendants under the same facts as those alleged in the Counterclaims, but under alternative theories of violation of UDTPA and violation of the Uniform Fraudulent Transfer Act – G.S. § 39-23.1, *et seq.* As in the Counterclaims, in addition to compensatory damages, Sunfit seeks treble and punitive damages under UDTPA, as well as a recovery of attorneys’ fees and the imposition of provisional remedies including avoidance of transfers by Honda to the Third-Party Defendants, a constructive trust over the funds currently being held by these parties pending the outcome of this litigation and other relief as deemed appropriate.

Jurisdiction and Venue

7. This is a civil action for damages and other equitable relief. The matter in controversy exceeds the sum of \$75,000, exclusive of interest, costs, and attorneys’ fees.

8. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events or omissions giving rise to the claims herein occurred in this district.

The Parties

9. Third-Party Plaintiff Sunfit is a Chinese corporation, with its principal place of business located in Hongzhou Bay, Zhejiang Province China.

10. Third-Party Defendant McKnight is the President and Chief Executive Officer of Hongda, managing member of the Third Party Defendant entities and upon information and belief is a citizen and resident of High Point, Guilford County, North Carolina.

11. Third-Party Defendant Perkins is an Officer of Hongda, managing member of Eco Agro the Third Party Defendant entities and upon information and belief is a citizen and resident of Bakersville, Mitchell County, North Carolina.

12. Third-Party Defendant Xu is an Officer of Hongda, and upon information and belief is a citizen and resident of the State of Texas. Upon information and belief, Xu regularly transacts business in the State of North Carolina within this Judicial District.

13. Upon information and belief, Eco Agro is a domestic limited liability corporation organized and existing under the laws of the State of North Carolina with its principal place of business in High Point, Guilford County, North Carolina.

14. Upon information and belief, Vasto is a Delaware limited liability corporation with its principal place of business in High Point, Guilford County, North Carolina.

15. Upon information and belief, KaDi is a domestic limited liability corporation organized and existing under the laws of the State of North Carolina with its principal place of business in High Point, Guilford County, North Carolina.

As and For a First Cause of Action

(Violation of UDTPA)

16. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

17. The allegations stated in the foregoing Counterclaims are reasserted here and incorporated by reference as if set forth here in full.

18. In particular, the allegations set forth in the foregoing Third Counterclaim are restated here.

19. McKnight, Perkins and Xu, entities used by these individuals including Eco Agro, Vasto, KaDi and other, as yet unnamed, conspirators served as the vehicle by and through which Hongda was able to commit the violations of the UDTPA as set forth above.

20. As such, the Third-Party Defendants are liable for the same violations of UDTPA as Hongda as co-conspirators or abettors.

21. Sunfit has been damaged by the Hongda Affiliates' unfair and/or deceptive practices and is entitled to recover from the Hongda Affiliates, jointly and severally, an amount to be proven at trial, but not less than \$5,770,050, plus interest, trebled pursuant to the UDTPA, as well as attorneys' fees incurred in this action pursuant to the UDTPA.

22. Moreover, allowing the Hongda Affiliates to retain the proceeds of sales of Sunfit's NBPT would result in the Hongda Affiliates' unjust enrichment and, given that Hongda owed a special duty of trust under the Agency Contract to remit these funds to

Sunfit, a constructive trust should be imposed over these funds by the Court to protect the funds during the pendency of this action. In the event that the Hongda Affiliates have commingled the funds, or any officer, employee, agent, attorney, contractor or affiliate of Hongda has diverted or attempted to divert the funds from any purpose other than payment to Sunfit, Sunfit prays the Court that such person or entity be ordered to immediately disgorge themselves of these funds and remit payment promptly to Sunfit.

As and for a Second Cause of Action
(Violation of Uniform Fraudulent Transfer Act – G.S. § 39-23.1, et seq.)

23. Sunfit realleges and incorporates by reference the preceding paragraphs as if set forth here in full.

24. The allegations stated in the foregoing Counterclaims are reasserted here and incorporated by reference as if set forth here in full.

25. In particular, the allegations set forth in the foregoing Fifth Counterclaim are restated here.

26. On information and belief, McKnight, Perkins and Xu, entities used by these individuals including Eco Agro, Vasto, KaDi and other, as yet unnamed, conspirators were the recipients of the fraudulent transfers referenced in the foregoing Fifth Counterclaim.

27. As a further result of these transfers, Sunfit has been damaged and is entitled to Avoidance of the transfers by and among the Hongda Affiliates to the extent necessary to satisfy Sunfit's claims against Hongda in an amount to be proven at trial, but not less than

\$5,770,050, plus interest, as well as attachment, injunction or other provisional remedies as circumstances may require, against the assets transferred or other property of Hongda.

WHEREFORE, Third-Party Plaintiff Sunfit requests that judgment be entered on the Third-Party Complaint which grants the following relief:

A. An award of compensatory and consequential damages jointly and severally in the amount of not less than \$5,770,050, plus prejudgment interest;

B. Treble damages and attorneys' fees as provided for by the UDTPA;

C. An award of punitive damages against Hongda in an amount to be determined;

D. Provisional relief including, without limitation, avoiding the transfers made by Hongda and imposing a constructive trust over all amounts received from the sale of Sunfit's NBPT in an amount of up to \$5,770,050 and disgorgement of any and all proceeds of Sunfit's funds that have been unlawfully disbursed by Hongda, its employees, officers, directors, agents, attorneys, affiliates, contractors or any other person or entity acting for or on its behalf; and

E. Awarding Sunfit its costs and disbursements of this action, including reasonable attorneys' fees, and such other and further relief that the Court deems just and proper.

This the 4th day of March, 2015.

/s/ D. Beth Langley
D. Beth Langley

N.C. State Bar No. 19117
blangley@hagandavis.com

HAGAN DAVIS MANGUM
BARRETT & LANGLEY PLLC
300 N. Greene Street, Suite 200
Greensboro, NC 27401
Telephone: (336) 232-0650
Facsimile: (336) 232-0651

/s/ Michael T. Conway
Michael T. Conway, Esq.
N.Y. State Bar No. 2844025
Michael.Conway@leclairryan.com
Nicole A. Sullivan, Esq.
N.Y. State Bar No. 4013348
Nicole.Sullivan@leclairryan.com
Attorneys for Shangyu Sunfit Chemical
Company, Ltd.

LECLAIRRYAN, a Professional Corporation
885 Third Avenue, Sixteenth Floor
New York, New York 10022
Telephone: (212) 430-8032
Facsimile: (212) 430-8062

JURY DEMAND

Shangyu Sunfit Chemical Company, Ltd. hereby demands a jury trial as to all issues so triable.

This the 4th day of March, 2015.

/s/ D. Beth Langley
D. Beth Langley
N.C. State Bar No. 19117
blangley@hagandavis.com

HAGAN DAVIS MANGUM
BARRETT & LANGLEY PLLC
300 N. Greene Street, Suite 200
Greensboro, NC 27401
Telephone: (336) 232-0650
Facsimile: (336) 232-0651

/s/ Michael T. Conway
Michael T. Conway, Esq.
N.Y. State Bar No.
Michael.Conway@leclairryan.com
Nicole A. Sullivan, Esq.
N.Y. State Bar No.
Nicole.Sullivan@leclairryan.com

Attorneys for Shangyu Sunfit Chemical
Company, Ltd.

LECLAIRRYAN, a Professional Corporation
885 Third Avenue, Sixteenth Floor
New York, New York 10022
Telephone: (212) 430-8032
Facsimile: (212) 430-8062

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Second Amended Counterclaims and Amended Third-Party Complaint was duly served pursuant to Rule 5 of the Federal Rules of Civil Procedure via electronic filing via the CM/ECF system to:

Peter A. Santos, Esq.
James C. Smith, Esq.
Matthew S. DeAntonio, Esq.
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202

Scott F. Wyatt, Esq.
Wyatt Early Harris Wheeler LLP
P.O. Drawer 2086
High Point, NC 27261-2086

This the 4th day of March, 2015.

/s/ D. Beth Langley
D. Beth Langley