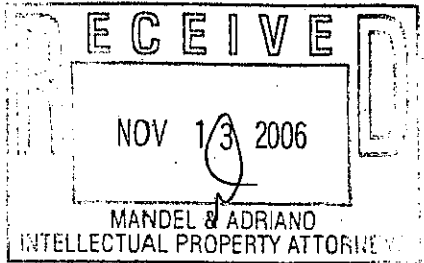


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13 Attorneys for Defendant  
IDEXX LABORATORIES, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

17 CYNTEGRA, INC.,  
18 Plaintiff,  
19  
20 v.  
21 IDEXX LABORATORIES, INC.,  
22 Defendant.

CASE NO: CV06-4170-DSF(CTx)  
DEFENDANT IDEXX  
LABORATORIES, INC.'S ANSWER  
TO FIRST AMENDED COMPLAINT

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1 In response to Plaintiff's First Amended Complaint, IDEXX Laboratories,  
2 Inc. ("IDEXX"):

3 1. Answering paragraph 1, admits that Plaintiff purports to bring an  
4 action under the antitrust laws and the state laws of California; admits in part that it  
5 manufactures and sells diagnostic products for the detection of selected animal  
6 disease causing agents, using a biological sample taken from an animal in a  
7 veterinary clinic, but that it also sells a variety of other products; and denies the  
8 remaining allegations of paragraph 1.

9 2. States that it is without knowledge sufficient to form a belief as to the  
10 truth or falsity of the allegations of paragraph 2, and therefore denies them.

11 3. Admits the allegations of paragraph 3.

12 4. Answering paragraph 4, admits that the First Amended Complaint  
13 purports to bring an action under the Sherman and Clayton Acts and under state  
14 law.

15 5. Answering paragraph 5, admits that it transacts business in the Central  
16 District of California; and denies the remaining allegations.

17 6. Answering paragraph 6, admits that it has produced and sold and does  
18 produce and sell animal diagnostic tests in the United States; and denies the  
19 remaining allegations.

20 7. Admits the allegations of paragraph 7.

21 8. States that the allegations of paragraph 8 constitute legal contentions  
22 and/or conclusions to which no response is required.

23 9. Denies the allegations of paragraph 9.

24 10. Denies the allegations of paragraph 10.

25 11. Denies the allegations of paragraph 11.

26 12. States that it is without knowledge sufficient to form a belief as to the  
27 truth or falsity of the allegations of paragraph 12, and therefore denies them.

28

- 1           13. States that it is without knowledge sufficient to form a belief as to the  
2 truth or falsity of the allegations of paragraph 13, and therefore denies them.
- 3           14. Denies the allegations of paragraph 14.
- 4           15. States that it is without knowledge sufficient to form a belief as to the  
5 truth or falsity of the allegations of paragraph 15, and therefore denies them.
- 6           16. States that it is without knowledge sufficient to form a belief as to the  
7 truth or falsity of the allegation of paragraph 16 that Cyntegra holds an exclusive  
8 license from the University of Florida, to the diagnostic uses of the canine influenza  
9 A virus, and therefore denies this allegation; states that it is without knowledge  
10 sufficient to form a belief as to the truth or falsity of the allegation of paragraph 16  
11 that the canine influenza A virus was discovered by Dr. Crawford, and therefore  
12 denies this allegation; and denies the remaining allegations.
- 13           17. States that it is without knowledge sufficient to form a belief as to the  
14 truth or falsity of the allegations of paragraph 17, and therefore denies them.
- 15           18. States that it is without knowledge sufficient to form a belief as to the  
16 truth or falsity of the allegations of paragraph 18, and therefore denies them.
- 17           19. States that it is without knowledge sufficient to form a belief as to the  
18 truth or falsity of the allegations of paragraph 19, and therefore denies them.
- 19           20. States that it is without knowledge sufficient to form a belief as to the  
20 truth or falsity of the allegations of paragraph 20, and therefore denies them.
- 21           21. States that it is without knowledge sufficient to form a belief as to the  
22 truth or falsity of the allegations of paragraph 21, and therefore denies them.
- 23           22. States that it is without knowledge sufficient to form a belief as to the  
24 truth or falsity of the allegations of paragraph 22, and therefore denies them.
- 25           23. States that it is without knowledge sufficient to form a belief as to the  
26 truth or falsity of the allegations of paragraph 23, and therefore denies them.
- 27           24. Denies the allegations of paragraph 24.
- 28           25. Denies the allegations of paragraph 25.

- 1           26.   Denies the allegations of paragraph 26.
- 2           27.   Denies the allegations of paragraph 27.
- 3           28.   Denies the allegations of paragraph 28.
- 4           29.   Denies the allegations of paragraph 29.
- 5           30.   States that it is without knowledge sufficient to form a belief as to the  
6 truth or falsity of the allegations of paragraph 30, and therefore denies them.
- 7           31.   Answering paragraph 31, denies that it has engaged in any  
8 exclusionary or unlawful practices.
- 9           32.   Denies the allegations of paragraph 32.
- 10          33.   Denies the allegations of paragraph 33.
- 11          34.   Denies the allegations of paragraph 34.
- 12          35.   Admits the allegations of paragraph 35.
- 13          36.   States that the email message identified in paragraph 36 speaks for  
14 itself and no response is necessary.
- 15          37.   States that it is without knowledge sufficient to form a belief as to the  
16 truth or falsity of the allegations of paragraph 37, and therefore denies them.
- 17          38.   Denies the allegations of paragraph 38.
- 18          39.   Denies the allegations of paragraph 39.
- 19          40.   Denies the allegations of paragraph 40.
- 20          41.   Denies the allegations of paragraph 41.
- 21          42.   Answering paragraph 42, admits that it has a license to U.S. Patent No.  
22 5,118,602, which is exclusive in part; states that the patents and disclosures  
23 identified in paragraph 42 speak for themselves and no response is necessary; **id**  
24 states that it is without knowledge sufficient to form a belief as to the truth or **sity**  
25 of the remaining allegations of paragraph 42, and therefore denies them.
- 26          43.   Denies the allegations of paragraph 43.
- 27          44.   States that it is without knowledge sufficient to form a belief as to  
28 truth or falsity of the allegations of paragraph 44, and therefore denies them.

1           45. Answering paragraph 45, states that it is without knowledge sufficient  
2 to form a belief as to the truth or falsity of the allegation that substantially all of the  
3 veterinary clinics in the United States have at least one IDEXX animal diagnostic  
4 product sold to the clinic by an IDEXX distributor and therefore denies this  
5 allegation; and denies the remaining allegations.

6           46. Denies the allegations of paragraph 46.

7           47. Denies the allegations of paragraph 47.

8           48. States that it is without knowledge sufficient to form a belief as to the  
9 truth or falsity of the allegations of paragraph 48, and therefore denies them.

10          49. Denies the allegations of paragraph 49.

11          50. Denies the allegations of paragraph 50.

12          51. Denies the allegations of paragraph 51.

13          52. Denies the allegations of paragraph 52.

14          53. Answering paragraph 53, admits that it has been selling animal  
15 diagnostic products since 1985; and denies the remaining allegations.

16          54. Denies the allegations of paragraph 54.

17          55. Denies the allegations of paragraph 55.

18          56. Denies the allegations of paragraph 56.

19          57. Denies the allegations of paragraph 57.

20          58. Denies the allegations of paragraph 58.

21          59. States that the opinions of the District Court and the Second Circuit,  
22 discussed in paragraph 59, speak for themselves and therefore no response is  
23 necessary; states that Plaintiff has mischaracterized both opinions; and states that  
24 IDEXX's victories in the District Court of Connecticut and in the Second Circuit  
25 are legal precedents which support its current distribution policies and practices.

26          60. States that it is without knowledge sufficient to form a belief as to the  
27 truth or falsity of the allegations of paragraph 60, and therefore denies them.  
28

1           61. States that it is without knowledge sufficient to form a belief as to the  
2 truth or falsity of the allegations of paragraph 61, and therefore denies them.

3           62. Denies the allegations of paragraph 62.

4           63. Denies the allegations of paragraph 63.

5           64. Denies the allegations of paragraph 64.

6           65. Denies the allegations of paragraph 65.

7           66. Denies the allegations of paragraph 66.

8           67. Denies the allegations of paragraph 67.

9           68. Denies the allegations of paragraph 68.

10          69. Denies the allegations of paragraph 69.

11          70. Denies the allegations of paragraph 70.

12          71. Denies the allegations of paragraph 71.

13          72. Repeats the responses set forth in paragraphs 1 through 71 of this  
14 Answer, and incorporates them herein by reference.

15          73. Denies the allegations of paragraph 73.

16          74. Denies the allegations of paragraph 74.

17          75. Denies the allegations of paragraph 75.

18          76. Denies the allegations of paragraph 76.

19          77. Denies the allegations of paragraph 77.

20          78. Denies the allegations of paragraph 78.

21          79. Denies the allegations of paragraph 79.

22          80. Repeats the responses set forth in paragraphs 1 through 79 of this  
23 Answer, and incorporates them herein by reference.

24          81. Denies the allegations of paragraph 81.

25          82. Denies the allegations of paragraph 82.

26          83. Denies the allegations of paragraph 83.

27          84. Denies the allegations of paragraph 84.

28          85. Denies the allegations of paragraph 85.

1 86. Denies the allegations of paragraph 86.

2 87. Repeats the responses set forth in paragraphs 1 through 86 of this  
3 Answer, and incorporates them herein by reference.

4 88. Denies the allegations of paragraph 88.

5 89. Denies the allegations of paragraph 89.

6 90. Denies the allegations of paragraph 90.

7 91. Denies the allegations of paragraph 91.

8 92. Denies the allegations of paragraph 92.

9 93. Denies the allegations of paragraph 93.

10 94. Denies the allegations of paragraph 94.

11 95. Denies the allegations of paragraph 95.

12 96. Repeats the responses set forth in paragraphs 1 through 95 of this  
13 Answer, and incorporates them herein by reference.

14 97. Denies the allegations of paragraph 97.

15 98. Denies the allegations of paragraph 98.

16 99. Denies the allegations of paragraph 99.

17 100. Repeats the responses set forth in paragraphs 1 through 99 of this  
18 Answer, and incorporates them herein by reference.

19 101. Denies the allegations of paragraph 101.

20 102. States that it is without knowledge sufficient to form a belief as to **the**  
21 truth or falsity of the allegations of paragraph 102, and therefore denies them

22 103. Denies the allegations of paragraph 103.

23 104. Denies the allegations of paragraph 104.

24 105. Denies the allegations of paragraph 105.

25 106. Denies the allegations of paragraph 106.

26 107. Denies the allegations of paragraph 107.

27 108. Denies the allegations of paragraph 108.

28 109. Denies the allegations of paragraph 109.

1 110. Denies the allegations of paragraph 110.

2 111. Denies the allegations of paragraph 111.

3 112. Denies the allegations of paragraph 112.

4 113. Repeats the responses set forth in paragraphs 1 through 112 of this  
5 Answer, and incorporates them herein by reference.

6 114. Denies the allegations of paragraph 114.

7 115. Denies the allegations of paragraph 115.

8 116. Denies the allegations of paragraph 116.

9 117. Repeats the responses set forth in paragraphs 1 through 116 of this  
10 Answer, and incorporates them herein by reference.

11 118. Denies the allegations of paragraph 118.

12 119. Denies the allegations of paragraph 119.

13 120. Denies the allegations of paragraph 120.

14 121. Denies the allegations of paragraph 121.

15 122. Denies the allegations of paragraph 122.

16 123. Denies the allegations of paragraph 123.

17 124. Denies the allegations of paragraph 124.

18 125. Denies the allegations of paragraph 125.

19 126. Repeats the responses set forth in paragraphs 1 through 125 of this  
20 Answer, and incorporates them herein by reference.

21 127. Denies the allegations of paragraph 127.

22 128. Denies the allegations of paragraph 128.

23 129. Denies the allegations of paragraph 129.

24 130. Denies the allegations of paragraph 130.

25 131. Denies the allegations of paragraph 131.

26 Denies that Plaintiff is entitled to any of the relief sought in the First  
27 Amended Complaint.

28



1 Except as expressly admitted elsewhere in this Answer, denies each and  
2 every allegation in the First Amended Complaint.

3 **AFFIRMATIVE DEFENSES**

4 IDEXX asserts the following affirmative defenses without assuming the  
5 burden of proof of any such defense that would otherwise rest with Plaintiff:

6 **FIRST AFFIRMATIVE DEFENSE**

7 The First Amended Complaint, and each count alleged therein, fails to state a  
8 claim upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 All claims alleged and relief sought in the First Amended Complaint are  
11 barred, in whole or in part, by the doctrine of unclean hands.

12 **THIRD AFFIRMATIVE DEFENSE**

13 To the extent that Defendant engaged in any of the conduct alleged in the  
14 First Amended Complaint, its conduct was reasonable, justified, excused,  
15 privileged and/or in pursuit of lawful and legitimate business interests.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 The First Amended Complaint is barred on the ground that the alleged  
18 conduct was, either in whole or in part, procompetitive in nature, and will promote,  
19 encourage, and increase competition. Accordingly, Defendant's conduct was  
20 reasonable, justified, and privileged.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 All claims alleged and relief sought in the First Amended Complaint are  
23 barred, in whole or in part, because if Defendant does possess monopoly power, as  
24 alleged, it was at all times and is now lawfully acquired and maintained.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 The injuries and damages alleged by Plaintiff do not constitute legally  
27 cognizable antitrust injuries.  
28

1                                    **SEVENTH AFFIRMATIVE DEFENSE**

2                    The injuries alleged by Plaintiff are not irreparable and do not justify  
3 extraordinary relief in any form whatsoever.

4                                    **EIGHTH AFFIRMATIVE DEFENSE**

5                    The damages allegedly suffered by Plaintiff were not caused in fact by any  
6 conduct or act of Defendant.

7                                    **NINTH AFFIRMATIVE DEFENSE**

8                    The damages allegedly suffered by Plaintiff were not proximately caused by  
9 any conduct or act of Defendant.

10                                  **TENTH AFFIRMATIVE DEFENSE**

11                   Any loss or damage allegedly suffered by Plaintiff was proximately caused  
12 by Plaintiff's decisions and business judgments in connection with the matters  
13 alleged in the Complaint and not by Defendant's alleged conduct or actions.

14                                  **ELEVENTH AFFIRMATIVE DEFENSE**

15                   Plaintiff's alleged damages, if any, are speculative and impossible to  
16 ascertain.

17                                  **TWELFTH AFFIRMATIVE DEFENSE**

18                   The claims alleged and relief sought in the First Amended Complaint are  
19 barred, in whole or in part, because Plaintiff failed to mitigate its alleged damages.

20  
21                   IDEXX hereby gives notice that it intends to rely upon any other defenses that  
22 may become available or appear during discovery proceedings in this case and  
23 hereby reserves the right to amend this Answer to assert any such defense.  
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**WHEREFORE**, Defendant respectfully requests:

- (a) That Plaintiff take nothing by reason of this action;
- (b) That Defendant recover its costs and attorneys' fees; and
- (c) For such other and further relief as this Court deems just and proper.

Dated: November 8, 2006

McDERMOTT WILL & EMERY LLP

By: Robert Mallory<sup>es</sup>  
Robert Mallory  
Craig Seebald  
William Diaz  
Attorneys for Defendant  
IDEXX LABORATORIES, INC.

ORC 398164-1.059715.0016

1 PROOF OF SERVICE BY MAIL  
2 CCP §1013a CCP Revised 1/1/88  
3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the  
5 age of 18 and not a party to the within action; my business address is 2049 Century Park East,  
6 34th Floor, Los Angeles, California 90067-3208.

7 On November 8, 2006, I served the foregoing documents described as  
8 **DEFENDANT IDEXX LABORATORIES, INC.'S ANSWER TO FIRST AMENDED**  
9 **COMPLAINT** on the interested parties of record in the action by:

10  placing true copies thereof enclosed in sealed envelopes addressed as stated below.

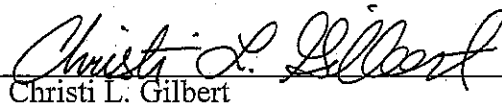
11 SaraLynn Mandel, Esq.  
12 Mandel & Adriano  
13 55 South Lake Avenue  
14 Suite 710  
15 Pasadena, CA 91101  
16 Tel: (626) 395-7801  
17 Fax: (626) 395-0694

18  **BY MAIL**

19  I am readily familiar with the firm's practice of collection and processing  
20 correspondence for mailing. Under that practice it would be deposited with the U.S.  
21 Postal Service on that same day with postage thereon fully prepaid at Firm City, Firm  
22 State in the ordinary course of business. I am aware that on motion of party served,  
23 service is presumed invalid if postal cancellation date or postage meter date is more  
24 than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the  
26 above is true and correct.

27 Executed on November 8, 2006, at Los Angeles, California.

28   
Christi L. Gilbert

MCDERMOTT WILL & EMERY LLP.  
ATTORNEYS AT LAW  
CHICAGO