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9 CYNTEGRA, INC.

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY _____

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 CYNTEGRA, INC., a California
14 Corporation,

15 Plaintiff,

16 v.

17 IDEXX LABORATORIES, INC., a
18 Delaware
19 Corporation

20 Defendant.

CASE NO: CVO6-4170
DSF (CTx) _____

FIRST AMENDED COMPLAINT
AND JURY DEMAND

JURY TRIAL DEMANDED

1 Believing that Cyntegra poses a threat to its illegal
2 monopoly, IDEXX has used its dominant market position and
3 exclusive dealing arrangements with distributors, to
4 prevent any sizable distributor from purchasing Cyntegra's
5 diagnostic products, thus preventing veterinarians from
6 acquiring Cyntegra's products. In addition, IDEXX has
7 misused patents it has licensed, by illegal tying of
8 certain unpatented diagnostic products for animal pathogens
9 to the sale of patented diagnostic products, in which IDEXX
10 has market power. Cyntegra has been injured by IDEXX's
11 anti-competitive and unfair practices, and seeks relief for
12 these injuries herein, for violations of Sections 1 and 2
13 of the Sherman Act, and Section 3 of the Clayton Act, as
14 well as for violations of California State Unfair
15 Competition and Tortious Business Interference Laws.
16 Veterinarians must pay monopoly prices, and have lost the
17 freedom to purchase animal diagnostic products that best
18 fit their needs. Consumers (animal owners) ultimately foot
19 the bill for the inflated prices charged by IDEXX. Society
20 is worse off for the lack of innovative products such as
21 those of Cyntegra, that can survive only in a truly
22 competitive environment. In the present case, Cyntegra's
23 innovative products include the means to efficiently detect
24 and monitor outbreaks of disease. This has implications
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1 for human health worldwide. IDEXX's conduct is
2 particularly egregious, in view of the growing concerns in
3 the United States regarding the spread of deadly influenza
4 A viruses, such as the "Avian flu."

5 PARTIES

6 2. Plaintiff, Cyntegra, Inc., is a California
7 corporation, having a principal place of business at 1205
8 Pacific Highway, No. 1805, San Diego, CA 92101.

10 3. Defendant, IDEXX Laboratories, Inc., is a Delaware
11 corporation, having a principal place of business at One
12 IDEXX Drive, Westbrook, Maine 04092.

13 JURISDICTION

14 Subject Matter Jurisdiction

15 4. Plaintiff brings this action and asserts claims
16 under the federal antitrust laws, the Sherman Antitrust Act
17 of 1980, codified at 15 U.S.C. § 1, 2 et seq. ("Sherman
18 Act"), and the Clayton Act of 1914, codified at 15
19 U.S.C.A. § 14, to recover damages for the injuries which it
20 has sustained to its business and punitive damages, and for
21 injunctive and other equitable relief pursuant to Sections
22 4 and 16 of the Clayton Act, codified at 15 U.S.C. §§
23 159a) and 26, and 28 U.S.C. §§ 1331 and 1337, to recover
24 damages for, and to restrain continuing violations by,
25 IDEXX Corporation of §§ 1 and 2 of the Sherman Act, 15
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1 U.S.C. § 1 and 2, and Section 3 of the Clayton Act,
2 codified at 15 U.S.C.A. § 14.

3 This Court has supplemental subject matter jurisdiction of
4 the pendent state law claims under 28 U.S.C. §1367.

5 VENUE

6 5. Venue is proper in this District, under 15 U.S.C. §§
7 15 and 22, and under 28 U.S.C. § 1391 (b) and (c),
8 because: defendant IDEXX transacts business and is found
9 within the Central District of California; (ii) and/or the
10 claims arose, at least in part in the Central District of
11 California.
12

13 INTERSTATE TRADE AND COMMERCE

14 6. For a number of years through the present, IDEXX
15 was, and continues to be, the predominant producer and
16 seller of animal diagnostic tests in the United States.
17

18 7. IDEXX has sold and shipped millions of dollars of
19 its animal diagnostic products throughout the United
20 States.
21

22 8. There has been a continuous and uninterrupted flow
23 in interstate commerce of defendant's animal diagnostic
24 products, throughout the United States.

25 9. Defendant's unlawful activities have been within the
26 flow of, and have substantially affected, interstate
27 commerce.
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RELEVANT MARKET

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2 10. The market relevant to this action is the market
3 for diagnostic tests for detecting the presence or absence
4 of animal disease, for use in veterinary clinics. The
5 relevant geographic market is the United States.

6 11. For several years prior to this action and
7 continuing to the present, IDEXX's share of the relevant
8 market, has been in excess of 75%.

NATURE OF THE CASE

CYNTEGRA'S INNOVATIVE DIAGNOSTIC PRODUCTS

12 12. Cyntegra has developed innovative animal
13 diagnostic products, that permit the rapid and sensitive
14 detection of one or more pre-selected target substances in
15 a single biological sample from an animal, using so-called
16 genomic or "molecular diagnostic methods." The diagnostic
17 products employ reagents, including nucleic acid "probes,"
18 that identify the presence and/or absence of the targets,
19 in a single biological sample taken from an animal. These
20 detected targets include substances, that, when present,
21 are associated with animal diseases, such as Lyme disease
22 and Parvo virus, feline HIV, and H5N1 Avian Influenza A
23 virus (animal "pathogens").

24 13. Cyntegra has also developed a patent pending system
25 for accumulating and reporting the results of use of its
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1 diagnostic products to provide a database, accessible by
2 government officials and health organizations, as well as
3 veterinarians, to track disease outbreaks, such as the
4 Avian flu, worldwide. Cyntegra's animal diagnostic products
5 include a "test kit" that consists of components, such as a
6 foam tipped swab, stabilized transport medium, test tubes
7 and reagents, that permit a veterinarian to take a small
8 biological sample from an animal, and safely store,
9 stabilize, and send the sample for analysis, for the
10 presence and/or absence of the pre-selected target
11 pathogen(s).
12

13
14 14. Cyntegra's molecular based diagnostic products
15 are considered, under certain conditions, to be equivalent,
16 and in other circumstances to be superior, to animal
17 diagnostic products that detect the presence of target
18 substances using antibodies, for example, the "SNAPTM" ELISA
19 tests for animal pathogens, that are sold by IDEXX. In
20 some situations, such as early on in infection by a
21 particular pathogen, molecular based diagnostics, such as
22 those developed and sold by Cyntegra, are recommended in
23 veterinary practice over antibody tests, because they
24 identify the "real time" presence or absence of the
25 pathogen, whereas antibody tests may only indicate a
26 previous exposure of the animal to the pathogen sometime in
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1 the past. Molecular based diagnostics are recommended in
2 veterinary practice, to confirm the validity of the results
3 of antibody based diagnostic tests, and vice versa,
4 (antibody based diagnostic tests are recommended to confirm
5 the results of molecular based diagnostic tests). In
6 addition, there is some data to suggest that molecular
7 based tests may have less "false positives" (indicating
8 presence of pathogen/disease where none exists) and "false
9 negatives" (indicating the absence of pathogen/disease
10 where it does exist, than antibody based tests.

12 15. Cyntegra has also developed a patent pending system
13 for efficient reporting of the results of diagnostic
14 testing obtained using Cyntegra's products, and providing a
15 database, accessible by government officials, including
16 health officials, as well as veterinarians, to track
17 disease outbreaks worldwide.

19 16. Moreover, Cyntegra holds the exclusive license from
20 the University of Florida, to the diagnostic uses of the
21 canine influenza A virus, a derivative strain of the
22 infamous Avian influenza A virus, the outbreaks of which
23 are the subject of daily reports by the media. The canine
24 influenza A virus was discovered by Dr. Crawford, at the
25 University of Florida, and is the subject of at least one
26 pending patent application, filed by the University of
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1 Florida. The University was approached by defendant IDEXX,
2 for a license to diagnostic uses of the canine influenza A
3 virus, but was informed that plaintiff Cyntegra, held the
4 exclusive license to diagnostic uses.

5 17. It is known that Avian influenza A can "jump" from
6 animals to humans, with often fatal results. The Avian
7 influenza A has also changed or "mutated" within different
8 animal species, into virulent forms ("strains") that can
9 reproduce in that animal species, for example in canines,
10 felines and equines. Therefore, it is of monumental
11 importance, that plaintiff's diagnostic products that are
12 able to identify different strains of a pathogen, e.g.
13 virus, as well as indicating the presence or absence of
14 virus, be available to veterinarians, and to governmental
15 agencies.
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18 18. Cyntegra's diagnostic products and the
19 database/reporting system can be readily adapted for use to
20 detect human disease by detecting multiple human disease
21 pathogens, including Avian influenza A virus. Cyntegra's
22 system can be used to permit mapping and monitoring of
23 outbreaks of disease in humans, worldwide.
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1 DEMAND WAS ESTABLISHED FOR CYNTEGRA'S DIAGNOSTIC PRODUCTS
2 IN THE MARKET

3 19. Cyntegra conducted a "pilot" study with veterinarian
4 clinics, as well as surveys of veterinarians at national
5 veterinary meetings, to determine whether there was
6 interest amongst veterinarians, in molecular based animal
7 diagnostic products. Veterinarians were almost uniformly
8 in favor of obtaining such a product, and directed
9 plaintiff to the major distributors of animal diagnostic
10 products serving veterinarians. These were, of course,
11 IDEXX distributors.
12

13 20. Cyntegra was able to make arrangements with various
14 technology, supply and fulfillment companies, to ensure
15 orders of its diagnostic products could be filled.
16 However, minimum quantities of items were required for any
17 of these companies to sell to or work with plaintiff.
18

19 21. Cyntegra was able to obtain orders for 500 canine
20 influenza A virus tests (the variant of Avian flu in dogs).
21 These tests provided a net profit to Cyntegra of only
22 approximately \$8500. An IDEXX distributor, ordered a
23 portion of these tests from Cyntegra, but it is Cyntegra's
24 understanding that this distributor did not approach IDEXX
25 for "permission" to sell Cyntegra's canine influenza A
26 tests.
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1 22. Cyntegra received enthusiastic responses from the
2 major distributors of veterinary diagnostic products.
3 Cyntegra obtained sizeable orders for its multiple animal
4 pathogen diagnostic tests from IDEXX distributors, Butler
5 Animal Health Supply (BAHS) ("Butler"), MWI Veterinary
6 Supply ("MWI"), and Columbus Serum Company ("CSC"). These
7 orders constituted implied purchase agreements for
8 Cyntegra's veterinary diagnostic products. Cyntegra
9 understood that the order amounts were determined by the
10 distributors assuming ten (10) Cyntegra diagnostic tests to
11 be sold to ten percent (10%) of the total veterinary
12 clinics served by the distributor, as follows: Butler
13 15,000 tests; MWI 10,000 tests; and CSC 3,000 tests.
14 These orders would have generated at least two million
15 dollars (\$2,000,000) in sales for Cyntegra, and required
16 purchase of sufficient volumes of test components from
17 suppliers, such that Cyntegra would have been able to meet
18 minimums required to cost effectively produce its
19 diagnostic tests.
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23 23. Cyntegra modified its product, as requested by these
24 IDEXX distributors, to meet their needs, and made other
25 preparations and expenditures, to fill the orders.
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THE STRUCTURE OF THE RELEVANT MARKET

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2 24. Defendant, IDEXX has long been and continues to be,
3 the dominant manufacturer and seller in the United States,
4 of animal diagnostic products for use in veterinary
5 clinics.

6 25. In the market for animal diagnostic products for use
7 in veterinary clinics, it is a practical requirement for a
8 manufacturer of such products, to attempt to sell to major
9 distributors of animal diagnostic products that have
10 relationships, or can establish relationships relatively
11 quickly, with large numbers of veterinary clinics
12 throughout the United States. This is because,
13 veterinarians typically are understaffed and overworked,
14 and do not have the time, money or inclination to confer,
15 or meet with individual manufacturers and sellers of animal
16 diagnostic products. Neither do veterinarians have the
17 resources, in terms of available staff, to carry out this
18 function on their behalf. Moreover, there is even less time
19 available for veterinarians and their staff to "surf the
20 internet" to research and order animal diagnostic products.
21 Veterinarians rely on the services of distributors who
22 represent manufacturers of animal diagnostic products, to
23 obtain their animal diagnostics products. Even if a
24 veterinarian becomes interested in a "new" diagnostic
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1 product, for example at a veterinary conference, the
2 veterinarian is either introduced to the product via a
3 distributor, or the veterinarian requests that the
4 exhibitor of the product at the conference contact the
5 veterinarian's "usual" distributor, typically an IDEXX
6 distributor.

7
8 26. Veterinarians are reluctant to "try" new veterinary
9 products that are not carried by the major animal
10 diagnostic products distributors, such as the IDEXX
11 distributors, Butler, MWI and CSC.

12 27. Additional factors causing animal diagnostic
13 products distributors to be the only realistic means of
14 reaching the end user veterinarians include the requirement
15 that minimum quantities of the diagnostics product be
16 ordered from a diagnostic product manufacturer, to support
17 the costs of manufacturing and promoting these products.
18 Obtaining orders from individual veterinary clinics, or
19 orders from distributors, who only serve a relatively small
20 number of veterinary clinics, will not generate enough
21 funds, quickly enough, to support the costs of filling
22 these orders. The expenses of creating an "in house" sales
23 force are prohibitive. This is particularly true for small
24 "start up" companies seeking to enter the veterinary
25 diagnostic products market, such as plaintiff, Cyntegra.
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1 28. Veterinarians have limited "shelf space" and money
2 for products and supplies. Once they are sold a product
3 that is provided by an IDEXX distributor, they are likely to
4 purchase additional products from that distributor. And,
5 once a veterinarian has purchased an IDEXX diagnostic
6 product, the veterinarian is unlikely to purchase another
7 company's diagnostic product for the same indication (same
8 pathogen), especially if this product is not offered by its
9 "regular" distributor. Thus, even if Cyntegra could
10 approach veterinarians directly, they would have to time
11 their approach when the veterinarian had "run out of
12 diagnostic product," and had not already reordered from
13 their "regular" distributor, typically IDEXX. Because it is
14 common practice to have diagnostic products sold on a
15 continuous refill schedule, so that a veterinarian clinic
16 does not "run out," the likelihood that a company selling a
17 "new" or "substitute" diagnostic product would happen to
18 contact a veterinarian at the "right time" is abysmally
19 small.
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23 29. Thus, to succeed in the market for animal diagnostic
24 products, it is necessary for plaintiff Cyntegra, or any
25 other competitor, to place its products with the major
26 animal diagnostic products distributors that sell to large
27 numbers of veterinarian clinics, IDEXX distributors.
28

1 30. It was an important part of Cyntegra's business
2 strategy to introduce its molecular based diagnostic
3 products as soon as possible into the market, because
4 aspects of the molecular based diagnostic technology were
5 not proprietary to Cyntegra. Various methods of
6 accomplishing molecular based diagnostic tests could be
7 employed, some more optimal than others. Thus, becoming
8 the "first to market" the technology, was a critical goal
9 for Cyntegra.
10

11 IDEXX'S UNLAWFUL PRACTICES

12 31. The following is not intended as an exhaustive
13 listing of IDEXX's misconduct, or as a complete list of its
14 unlawful acts, but is provided as examples of the types of
15 improper exclusionary, and otherwise unlawful practices,
16 that IDEXX has employed.
17

18 IDEXX SEEKS TO RESTRAIN COMPETITION FROM CYNTEGRA

19 32. Defendant, IDEXX was made aware of the implied
20 purchase agreements between Cyntegra and Butler, MWI and
21 CSC.
22

23 33. Fearing retribution by IDEXX, the IDEXX distributors
24 requested IDEXX's "permission" to carry Cyntegra's
25 products.
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1 34. IDEXX refused to grant permission, deeming
2 Cyntegra's products competitive with those of IDEXX and the
3 distributors cancelled their orders from Cyntegra.

4 35. Cyntegra contacted IDEXX and requested that IDEXX
5 permit its distributors to sell Cyntegra's diagnostic
6 products.
7

8 36. IDEXX emailed Cyntegra and stated "in our view, the
9 Cyntegra canine and feline diagnostics panels are
10 competitive products, and we have no intention of
11 instructing our distributors otherwise." (March 31, 2006,
12 email from Mr. Tony Caola, IDEXX to Simon Brodie, CEO,
13 Cyntegra, attached hereto as Exhibit G).
14

15 37. Cyntegra has been unable to use or return the
16 quantities of components that it had ordered for producing
17 its diagnostic tests, in response to the orders from IDEXX
18 distributors. These components were purchased early on by
19 Cyntegra in order to ensure that it could fulfill the
20 orders by the IDEXX distributors in a timely manner.
21
22 Cyntegra has also expended resources to obtain fulfillment
23 services, as well as the services of scientific personnel
24 for performing the tests.

25 38. IDEXX has created and maintained its monopoly in the
26 animal diagnostic products market by exploiting its market
27 power, to establish, maintain and extend barriers to entry
28

1 to competitors of IDEXX in the relevant market, including
2 preventing the major distributors of veterinary products in
3 the United States from purchasing competitors', including
4 Cyntegra's, products. These strategies have been employed
5 by IDEXX to keep veterinarians dependent on IDEXX, for all
6 or substantially all of their diagnostic products.
7

8 39. IDEXX has further established and maintained and
9 leveraged its monopoly position in the animal diagnostic
10 products market, by forcing veterinarians to purchase
11 unpatented FeLV diagnostic tests, by requiring the purchase
12 of non patented feline leukemia virus (FeLV) diagnostic
13 tests, with the purchase of patented feline acquired
14 immunodeficiency syndrome virus (FIV) diagnostic tests, in
15 an illegal tying scheme. IDEXX has market power in the
16 market for feline diagnostic tests, particularly FIV tests.
17

18 40. IDEXX has been slow to innovate in the area of
19 animal diagnostics, particularly with respect to its
20 diagnostic tests, where it has largely relied on antibody
21 based diagnostics for single animal disease pathogens.
22 IDEXX recognizes the desirability of using newer diagnostic
23 technology such as molecular based diagnostics, but has not
24 incorporated this technology to any significant extent in
25 its products.
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1 41. IDEXX's acts against Cyntegra were designed, at
2 least in part, to prevent Cyntegra from successfully
3 exercising its exclusive license from the University of
4 Florida to diagnostic uses of canine influenza A virus, a
5 license which IDEXX desired and had sought, and to allow
6 IDEXX to obtain the diagnostic rights by default, by
7 preventing Cyntegra from selling its products. These acts
8 by IDEXX were also intended to permit IDEXX to have time to
9 introduce its own molecular based diagnostic products in
10 the market, before Cyntegra.

12 42. U.S. Patent No. 5,118,602, entitled "Feline t-
13 lymphotropic lentivirus Assay," issued June 2, 1992,
14 claiming priority of U.S. Serial Number 07/089,700, filed
15 August 26, 1987, is assigned to the Regents of the
16 University of California, and exclusively licensed to IDEXX
17 (the "'602 patent"). The '602 patent's disclosure is
18 directed to a strain of virus associated with feline
19 acquired immunodeficiency syndrome, "the Petaluma strain,"
20 allegedly discovered by Dr. Pedersen et al. and reported in
21 1987.

24 43. IDEXX's illegal tying of the purchase of unpatented
25 FeLV diagnostic tests to the purchase of its patented FIV
26 diagnostic tests, has harmed Cyntegra, presented additional
27 barriers to entry into the market with respect to feline
28

1 diagnostic products, and has harmed competition in the
2 market for FeLV diagnostic products, in furtherance of
3 Defendant's wrongful monopoly.

4 44. Plaintiff's diagnostic products include molecular
5 based tests for feline leukemia (FeLV).

6 IDEXX'S EXCLUSIVE DEALING

7
8 45. In the United States, a handful of distributors
9 dominate the veterinary diagnostic product market,
10 specifically, IDEXX distributors. Substantially all of the
11 veterinarian clinics in the United States, have at least
12 one IDEXX animal diagnostic product sold to the clinic by
13 an IDEXX distributor.

14
15 46. IDEXX sells its animal diagnostic products to
16 distributors under an exclusive arrangement, in which the
17 distributor is permitted to sell IDEXX animal diagnostic
18 products if, and only if, the distributor agrees to refrain
19 from promoting or selling any product that IDEXX deems
20 "competitive" with an IDEXX product or service.

21
22 47. If a distributor does not adhere to the IDEXX
23 restrictions in its agreement with that distributor, IDEXX
24 will not sell its products to that distributor.

25 48. The IDEXX distributors rely on the variety of IDEXX
26 veterinary products sold to them by IDEXX to provide the
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1 "one stop shopping" attractive to veterinarians. Thus, they
2 cannot risk the withdrawal of IDEXX products.

3 49. Believing that Cyntegra's molecular based animal
4 diagnostics products and services pose a significant threat
5 to its illegal monopoly, IDEXX has used its dominant market
6 position to prevent the major distributors of animal
7 products in the US, the only feasible channel for reaching
8 veterinarians, from purchasing Cyntegra's animal diagnostic
9 products.
10

11 50. IDEXX has used its market power to force its
12 distributors to cancel implied purchase agreements for
13 substantial orders of molecular based diagnostic products
14 from Cyntegra. Not only has Cyntegra been harmed by IDEXX's
15 anti-competitive practices, but veterinarians, their
16 customers, animals, and the American public is being harmed
17 by IDEXX's actions. This is because IDEXX has prevented
18 the distribution to veterinarians of diagnostic technology,
19 for example technology that among other pathogens, detects
20 the variant of Avian influenza A virus that has infected an
21 animal or human, and is technology that IDEXX does not
22 currently offer.
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25 51. In addition, the major distributors who carry IDEXX
26 diagnostic products, can only sell, and the majority of
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1 veterinarians can only obtain, IDEXX FIV diagnostic tests
2 bundled with IDEXX FeLV diagnostic tests.

3 52. Given IDEXX's market share, there is no pro-
4 competitive justification for this arrangement, which merely
5 serves to prevent competition against IDEXX products, and is
6 thus intended to preserve IDEXX's monopoly.

7
8 IDEXX HAS RESTRAINED COMPETITION IN THE RELEVANT MARKET

9 53. IDEXX has been selling animal diagnostic products
10 since 1985, and has been and continues to be the dominant
11 seller in this market for many years, holding a greater
12 than 75% market share position.

13 54. IDEXX has long held and unlawfully maintained
14 monopoly power in the nationwide market for animal
15 diagnostic products, and has acted to maintain its monopoly
16 power. IDEXX's share of the relevant market is dominant,
17 persistent and increasing. IDEXX's share of the relevant
18 market is above 75% percent.

19
20 55. IDEXX's dominant market share is protected by
21 barriers to entry. Barriers to entry include the exclusive
22 dealing arrangements with the major distributors of animal
23 products in the United States, whereby the distributor is
24 not permitted to sell competing animal diagnostic products,
25 and continue to also carry IDEXX animal diagnostic
26 products, and also the tying of the purchase of patented
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1 diagnostic tests to the purchase of non patented diagnostic
2 tests.

3 56. The cost for a potential entrant into the relevant
4 market to generate enough orders from non-IDEXX
5 distributors, or from veterinarians, to support minimum
6 volumes required for producing animal diagnostic products
7 cost effectively, is prohibitive for a smaller company.
8

9 57. This substantial barrier has prevented effective
10 competition against IDEXX from any competing companies,
11 despite the expenditure of substantial dollars by these
12 companies. These companies have been unable to obtain
13 significant market share, and are now relegated to niche
14 markets, that cannot draw a significant percentage of
15 customers away from IDEXX. This barrier to entry prevents
16 competitors of IDEXX, such as plaintiff, CYNTEGRA, from
17 entering the market.
18

19 58. As a result of IDEXX's use of its monopoly power and
20 monopoly profits, there has been yearly increases in the
21 usage share of IDEXX's animal diagnostic products, and a
22 concomitant decrease in the share of IDEXX competitors in
23 the relevant market.
24

25 59. As revealed in the published opinions by the United
26 States District Court of Connecticut (CDC Technologies,
27 Inc. v. IDEXX Laboratories, Inc., 7 F.Supp. 2d 119 (D.
28

1 Conn. 1998) and CDC Technologies, Inc. v. IDEXX

2 Laboratories, Inc., 186 F.3d 74 (2d Cir. 1999)), although
3 the Courts found in favor of IDEXX, the Courts noted that
4 since at least 1993, IDEXX has been devising strategies to
5 "erect barriers to entry," and "to create an environment
6 hostile to competitive entry," for sales by other companies
7 of diagnostic products to veterinarians. The Courts also
8 noted that "IDEXX had a longstanding policy of denying a
9 distributor the right to market an IDEXX product if the
10 distributor offered a competing product from another
11 manufacturer," an "exclusive dealing" policy that was
12 "formalized in writing," between IDEXX and its distributors
13 in 1995. In the earlier decision by the Connecticut
14 District Court, affirmed by the 2d Circuit appellate Court,
15 the Court noted that the veterinary product distributors at
16 that time apparently did not "sell" products to
17 veterinarians, they only provided sales "leads. "

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19
20 60. Following the Court decisions in 1998 and 1999, the
21 plaintiff, CDC Technologies, Inc. was sold to another
22 company, for a relatively low sum. In addition, Zynocyte,
23 Ltd., a Glasgow, Scotland based company, that the District
24 Court identified, as an example of additional entrant into
25 the relevant market, disappeared from the United States,
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27

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1 soon after the decision, as a veterinary diagnostic product
2 manufacturer.

3 61. Plaintiff believes there are numerous additional
4 examples of competitors of defendant, and would be entrants
5 into the relevant market, that have "gone by the wayside,"
6 because they have been barred by IDEXX from selling to the
7 major distributors of animal diagnostic products, as a
8 result of IDEXX's exclusionary dealing policies.

9
10 THE ANTI-COMPETITIVE AND HARMFUL EFFECTS OF IDEXX'S
11 PRACTICES

12 62. As a result of IDEXX's anti-competitive practices,
13 IDEXX has had a direct, substantial and adverse effect on
14 competition, by monopolizing the market for diagnostic
15 products used by veterinarians; artificially creating
16 barriers to entry in the relevant market; foreclosing
17 competition and stifling innovation.

18
19 63. IDEXX's abuses of its monopoly power have harmed
20 Plaintiff, and other competitors in the relevant market, as
21 well as veterinarians and their clients, by, among other
22 things, causing veterinarians, and thus their clients, to
23 pay prices for IDEXX diagnostic test products, that have
24 been and continue to be higher, than the prices that would
25 have prevailed in a competitive market; depriving
26 veterinarians of a choice of diagnostic products; and
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1 depriving the relevant market of the benefits of
2 competition and innovation.

3 64. As a result of IDEXX's maintenance and expansion of
4 its monopoly power in the relevant market, buyers of
5 veterinary diagnostic products have been forced to pay
6 increasingly higher prices to IDEXX. These are prices that
7 are substantially above that which would prevail in a
8 competitive market, for an extended period of time, without
9 IDEXX losing an unacceptable amount of sales to
10 competitors.
11

12 65. Moreover, IDEXX's exclusive dealing agreements with
13 its distributors, allows IDEXX to leverage its monopoly in
14 veterinary diagnostic products, by conditioning the
15 availability of IDEXX products to these distributors, on
16 their agreement to offer IDEXX veterinary diagnostic
17 products exclusively, over competing products, or products
18 deemed by IDEXX to be competing, and not to promote the
19 existence, availability or advantages of other veterinary
20 diagnostic products used by veterinarians.
21

22 66. Thus, a substantial portion of the market for
23 diagnostic products used by veterinarians, has been
24 foreclosed from competition.
25

26 67. IDEXX has also leveraged its monopoly by
27 conditioning the availability of patented FIV products on
28

1 the purchase of non patented FeLV diagnostic products,
2 misuing the patents and illegally tying in violation of
3 Section 1 of the Sherman Act.

4 68. Neither Cyntegra, nor any other smaller competitor,
5 can offer sufficient incentives to an IDEXX distributor to
6 dislodge IDEXX.

7
8 69. Plaintiff Cyntegra, a product innovator, has been
9 effectively shut out by IDEXX, of the market for diagnostic
10 products used in veterinary clinics.

11 70. The cancellation of the orders constituting implied
12 purchase agreements, from Cyntegra by IDEXX distributors,
13 as a result of IDEXX's communications to these distributors
14 that Cyntegra's diagnostic products were competitive with
15 IDEXX diagnostic products, has caused direct and proximate
16 injury to Cyntegra. Cyntegra has been unreasonably
17 restrained from access to the nationwide market for
18 diagnostic products sold to veterinarians, thereby
19 depriving Cyntegra of past profits, future profits, the
20 costs of its efforts to enter the relevant market; loss of
21 additional investments; and sums spent to mitigate damages;
22 and other damages allowed by law.

23
24
25 71. Cyntegra's business relationships, for example with
26 other distributors, suppliers and fulfillment centers, have
27

28

1 been damaged by IDEXX, in an amount to be determined at
2 trial.

3 FIRST CLAIM FOR RELIEF

4 EXCLUSIVE DEALING

5 VIOLATION OF SHERMAN ACT, SECTION 1 and CLAYTON ACT,

6 SECTION 3

7
8 72. Plaintiff incorporates by reference and realleges
9 the averments of the foregoing paragraphs 1-71, as if fully
10 set forth herein.

11 73. IDEXX has entered into exclusive dealing
12 arrangements with distributors for sales of IDEXX animal
13 diagnostic products. These exclusive dealing contracts have
14 the purpose and the practical effect of forcing
15 distributors to purchase all of their animal diagnostic
16 products from a single seller -- IDEXX.

17
18 74. The effect of IDEXX's exclusive dealing arrangements
19 has effectively foreclosed a substantial number of
20 distributors from carrying animal diagnostic products of
21 competitors of IDEXX, and has foreclosed veterinarians from
22 purchasing competitive diagnostic products. Distributors
23 who would like to sell the animal diagnostic products of
24 other companies, such as Plaintiff, as evidenced by the
25 orders placed by IDEXX distributors from plaintiff prior to
26
27
28

1 their cancellation, have been precluded from doing so by
2 their exclusive agreements with IDEXX.

3 75. The actual and probable effect of IDEXX's exclusive
4 dealing arrangements has been to raise prices above the
5 competitive level, and substantially lessen competition in
6 the animal diagnostic product market. IDEXX possesses
7 monopoly power and has used, and continues to use,
8 exclusive dealing arrangements with major distributors of
9 diagnostic products, to raise barriers to entry and
10 foreclose actual and potential competition in the relevant
11 market.
12

13 76. In addition, IDEXX's exclusive dealing arrangements
14 lessen competition and entry of innovative products in the
15 relevant market. Virtually any diagnostic product that
16 IDEXX deems to be competitive, is foreclosed from the
17 market. This foreclosure by IDEXX includes diagnostic
18 products that are superior and/or innovative, with respect
19 to IDEXX diagnostic tests, such as the molecular diagnostic
20 tests of Plaintiff. Thus, IDEXX is able to leverage its
21 monopoly power in the relevant market via its exclusive
22 dealing arrangements to foreclose from the market any
23 product it deems competitive, and to provide IDEXX
24 additional time to obtain, adopt or copy innovation by
25 others.
26
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1 77. The above-described exclusive dealing arrangements
2 imposed by IDEXX, constitute contracts in unreasonable
3 restraint of trade in or affecting a substantial volume of
4 interstate commerce, in violation of Section 1 of the
5 Sherman Act, 15 U.S.C. §1, and Section 3 of the Clayton
6 Act.

7
8 78. There is no legitimate business justification for
9 IDEXX's exclusive dealing arrangements.

10 79. Plaintiff has been injured by reason of these acts
11 by IDEXX. IDEXX instructed its distributors to cancel
12 substantial orders with Plaintiff, under threat of
13 withdrawing IDEXX products from the distributors. The
14 precise amount of damages has not yet been ascertained.
15

16 SECOND CLAIM FOR RELIEF

17 FOR VIOLATIONS OF SECTION 2 OF THE SHERMAN ANTITRUST ACT 15

18 U.S.C. § 2 - MONOPOLIZATION OF TRADE

19 80. Plaintiff incorporates by reference and realleges
20 each of the foregoing paragraphs 1-79, as if fully set
21 forth herein, and further alleges as follows:
22

23 81. IDEXX has willfully maintained a monopoly in the
24 United States diagnostic products market, and has abused
25 its monopoly power in the relevant market, by, inter alia,
26 acting in the manner hereinbefore alleged, in violation of
27 Section 2 of the Sherman Act, 15 U.S.C. § 2.
28

1 82. IDEXX has acted with the specific intent to achieve,
2 maintain and exercise its monopoly power.

3 83. As a direct and proximate result of the violations
4 alleged herein, Plaintiff has been unable to, and will
5 continue to be unable to sell its diagnostics products to
6 veterinarians, who have demonstrated that they wish to
7 purchase such products of Plaintiff, and veterinarians and
8 their clients are damaged, by being unable to obtain
9 diagnostic products, at prices determined by free and open
10 competition, and will continue to be damaged, by their
11 purchases of diagnostic products at prices higher than they
12 would have otherwise paid, absent defendant's unlawful
13 conduct.
14
15

16 84. IDEXX possesses monopoly power in the market for
17 diagnostic products sold to and used by veterinarians.
18 Through the anticompetitive conduct described herein, IDEXX
19 has willfully maintained, and unless restrained by the
20 Court, will continue to willfully maintain that monopoly
21 power, by its anticompetitive and unreasonably exclusionary
22 conduct. IDEXX has acted with an intent to illegally
23 maintain its monopoly power in the market, and its illegal
24 conduct has enabled it to do so, in violation of Section 2
25 of the Sherman Act, 15 U.S.C. § 2.
26
27
28

1 85. Plaintiff has no adequate remedy at law and
2 defendant's unlawful conduct will continue unless enjoined.

3 86. Defendant's unlawful restraints of trade violate
4 Section 2 of the Sherman Act. Accordingly, Plaintiff seeks
5 three times their damages caused by defendant's violations
6 of Section 2 of the Sherman Act, and a permanent injunction
7 enjoining defendant's continuing violation of Section 2 of
8 the Sherman Act, 15 U.S.C § 2.
9

10 THIRD CLAIM FOR RELIEF

11 FOR VIOLATIONS OF SECTION 2 OF THE SHERMAN ANTITRUST ACT 15

12 U.S.C. § 2 - ATTEMPT TO MONOPOLIZE TRADE

13 87. Plaintiff incorporates by reference and realleges
14 each of the foregoing paragraphs 1-86, as if fully set
15 forth herein, and further alleges as follows:
16

17 88. IDEXX has acted with the specific intent to achieve,
18 maintain and exercise its monopoly power.

19 89. IDEXX's conduct, as averred, has raised and
20 continues to raise a dangerous probability of achieving
21 unlawful monopoly power.
22

23 90. IDEXX has attempted to acquire and misuse monopoly
24 power in the relevant market in violation of Section 2 of
25 the Sherman Act, 15 U.S.C. § 2.
26
27
28

1 91. IDEXX has acted with a specific and predatory intent
2 to destroy competition and control prices in the relevant
3 market.

4 92. As a direct and proximate result of the violations
5 alleged herein, Plaintiff has been unable to, and will
6 continue to be unable to sell its diagnostic products to
7 veterinarians, who have demonstrated that they wish to
8 purchase such products of Plaintiff, and veterinarians and
9 their clients are damaged by being unable to purchase
10 diagnostic products at prices determined by free and open
11 competition, and will continue to be damaged, by their
12 purchases of diagnostic products at prices higher than they
13 would have otherwise paid, absent defendant's unlawful
14 conduct.
15
16

17 93. Plaintiff has suffered injury by reason of these
18 acts, including IDEXX's attempt to acquire monopoly power
19 in the market for animal diagnostic products.
20

21 94. Plaintiff has no adequate remedy at law and
22 defendant's unlawful conduct will continue unless enjoined.

23 95. Defendant's unlawful restraints of trade violate
24 Section 2 of the Sherman Act. Accordingly, Plaintiff seeks
25 three times their damages caused by defendant's violations
26 of Section 2 of the Sherman Act, and a permanent injunction
27
28

1 enjoining defendant's continuing violation of Section 2 of
2 the Sherman Act, 15 U.S.C. § 2.

3 FOURTH CLAIM FOR RELIEF

4 CALIFORNIA STATE UNFAIR COMPETITION LAW

5 96. Plaintiff incorporates by reference and re-alleges
6 each of the foregoing paragraphs 1-95, as if fully set
7 forth herein, and further alleges as follows:

8 97. Defendant's actions, as alleged, constitute unfair
9 competition in violation of section §17200 et seq. of the
10 California Business and Professions Code, that provides,
11 *inter alia*, that unfair competition shall mean and include
12 any unlawful or fraudulent business act or practice.
13
14

15 98. Defendant will continue its unlawful and unfair
16 business practices, causing irreparable harm and continuing
17 harm to Plaintiff, for which Plaintiff has no adequate
18 legal remedy.

19 99. Unless Defendant's unlawful and unfair business
20 practices are enjoined, Plaintiff and competition will
21 continue to be harmed.
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FIFTH CLAIM FOR RELIEF

INTENTIONAL INTERFERENCE WITH BUSINESS CONTRACTUAL

RELATIONS UNDER CALIFORNIA STATE LAW

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3
4 100. Plaintiff incorporates by reference and re-alleges
5 each of the foregoing paragraphs 1-99, as if fully set
6 forth herein, and further alleges as follows:
7

8 101. Plaintiff had implied purchase agreements for orders
9 of substantial volumes of its veterinary diagnostic
10 products from the distributors Butler Animal Health Supply,
11 MWI Veterinary Supply and CSC.

12 102. Cyntegra and Butler Animal Health Supply ("Butler"),
13 Cyntegra and MWI Veterinary Supply ("MWI"), and Cyntegra
14 and CSC, entered into implied purchase agreements, by which
15 Cyntegra agreed to sell, and Butler, MWI and CSC agreed to
16 purchase substantial orders of diagnostic tests from
17 Cyntegra.
18

19 103. Defendant was, at all times relevant hereto, aware
20 of the implied purchase agreements between Cyntegra and
21 Butler, MWI and CSC.
22

23 104. Defendant has engaged in intentional acts designed
24 to induce a breach or disruption of the contractual
25 relationship between Cyntegra and Butler, MWI and CSC, to
26 deprive Cyntegra of the benefit of the bargain of the
27 Purchase Agreements, including without limitation,
28

1 defendant's threats to remove its' products from Butler,
2 MWI and CSC, if the distributors proceeded with the
3 purchase agreements with Cyntegra.

4 105. The actions of Defendant as described above, have
5 caused interference and disruption of Cyntegra's implied
6 contractual relationships with Butler, MWI and CSC, in that
7 Cyntegra has not received the benefits to be derived under
8 the Purchase Agreements, because Butler, MWI and CSC have
9 failed to proceed with performance of the purchase
10 agreements, because of Defendant's acts.

11
12 106. As a direct and proximate result of Defendant's
13 wrongful actions, as described above, Cyntegra has suffered
14 damages in an amount to be determined according to proof at
15 trial, but presently believed to be in excess of
16 \$2,000,000.

17
18 107. The actions described herein were intentional, done
19 with conscious disregard for the rights of Cyntegra, and
20 were fraudulent, malicious, and oppressive, and designed to
21 injure Cyntegra. Accordingly, Cyntegra is entitled to
22 punitive and exemplary damages in an amount sufficient to
23 punish Defendant for its wrongdoing, and to deter similar
24 conduct in the future, as well as actual damages for the
25 detriment caused by the conduct of Defendant.
26
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1 108. Defendant knew of the implied purchase agreements
2 between the distributors and Plaintiff.

3 109. Defendant wrongfully advised, counseled, instructed,
4 required, persuaded or otherwise induced Butler Animal
5 Health Supply, MWI Veterinary Supply and Columbus Serum
6 Company (CSC), to suspend and/or disrupt their implied
7 purchase agreements with Plaintiff.
8

9 110. Defendant's actions were intended to disrupt
10 Plaintiff's implied purchase agreements with the veterinary
11 products distributors, in furtherance of Defendant's goals
12 of maintaining its monopoly power in the veterinary
13 diagnostic product market, and obtaining the fruits of
14 Plaintiff's labors for itself.
15

16 111. Plaintiff has suffered and continues to suffer
17 damages proximately caused by Defendant's inducement of the
18 disruption of the implied purchase agreements between the
19 distributors and Plaintiff, in an amount to be proven at
20 the time of trial, but not less than \$2,000,000.
21

22 112. Further, Defendant's intentional, willful and
23 malicious conduct herein described was done with a
24 conscious disregard of Plaintiff's rights and with the
25 intent to vex, harass, annoy, and injure Plaintiff,
26 Accordingly, Plaintiff is entitled to punitive and
27 exemplary damages in an amount sufficient to punish
28

1 Defendant for its wrongdoing and to deter similar conduct
2 in the future, as well as actual damages for the detriment
3 caused by the conduct of Defendant, pursuant to Civil Code
4 § 3294.

5 SIXTH CLAIM FOR RELIEF

6 INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE UNDER

7 CALIFORNIA STATE LAW

8
9 113. Plaintiff incorporates by reference and re-alleges
10 each of the foregoing paragraphs 1-112, as if fully set
11 forth herein, and further alleges as follows:

12 114. Defendant's actions have disrupted Plaintiff's
13 implied purchase agreement by veterinary diagnostic product
14 distributors, including Butler Animal Health Supply, MWI
15 Veterinary Supply and CSC, interfering with Plaintiff's
16 prospective economic advantage with these, and other
17 veterinary diagnostic product distributors, veterinarians,
18 and potential veterinarian customers.

19
20 115. Defendant knew of Plaintiff's implied purchase
21 agreements with the veterinary product distributors, Butler
22 Animal Health Supply, MWI Veterinary Supply and Columbus
23 Serum Company, and of Plaintiff's ongoing efforts to obtain
24 distribution from other veterinary product distributors,
25 including those distributors that sell IDEXX veterinary
26 diagnostic products.
27
28

1 116. Plaintiff has suffered and is suffering damages,
2 proximately caused by Defendant's conduct in an amount to
3 be proven at the time of trial, but not less than
4 \$2,000,000.

5 SEVENTH CLAIM FOR RELIEF

6 ILLEGAL TYING-PER SE VIOLATION (SHERMAN ACT 15 U.S.C. §1)

7
8 117. Plaintiff incorporates by reference and re-alleges
9 each of the foregoing paragraphs 1-116, as if fully set
10 forth herein, and further alleges as follows:
11

12 118. The FeLV diagnostic test is a separate product from
13 the FIV diagnostic test, detecting distinct pathogens. The
14 tests are treated by other industry participants as
15 separate diagnostic products, and it is just as efficient
16 for IDEXX not to tie the purchase of these products
17 together, and to permit distributors to sell FeLV
18 diagnostic tests separately from FIV diagnostic tests.
19

20 119. IDEXX has tied and continues to tie the sale of FeLV
21 diagnostic tests to the separate diagnostic test for FIV,
22 for which it holds the exclusive rights to patents from the
23 University of California.
24

25 120. Defendant has conditioned the purchase of FeLV
26 diagnostic tests on the purchase of FIV diagnostic tests.

27 121. IDEXX has market power in the market for animal
28

1 diagnostic tests, and feline diagnostic tests, particularly
2 FIV.

3 122. The purpose and effect of Defendant's tying of the
4 purchase of the different feline diagnostic tests, is to
5 prevent choice of FeLV diagnostic tests on their merits,
6 and to foreclose competition from sellers of other FeLV
7 diagnostic tests from the major channel of distribution,
8 thereby restraining and harming competition in the market
9 for FeLV diagnostic products.
10

11 123. The Defendant's illegal tying has affected a not
12 insubstantial amount of interstate commerce in the
13 provision of animal diagnostic tests.
14

15 124. The Defendant's illegal tying harms Cyntegra, and
16 other companies, who can offer FeLV only at a higher cost,
17 that places them at a significant competitive disadvantage
18 compared to the bundled FeLV and FIV tests sold by
19 Defendant.
20

21 125. The Defendant's tying is per se unlawful under
22 section 1 of the Sherman Act.

23 EIGHTH CLAIM FOR RELIEF

24 ILLEGAL TYING-RULE OF REASON VIOLATION (SHERMAN ACT, 35

25 U.S.C. §1)

26 126. Plaintiff incorporates by reference and re-alleges
27 each of the foregoing paragraphs 1-125, as if fully set
28

1 forth herein, and further alleges as follows:

2 127. If the Defendant's tying is not per se unlawful, it
3 is unlawful under the rule of reason, in that the
4 anticompetitive consequences of Defendant's conduct
5 outweigh any pro-competitive effects thereof.

6 128. Veterinarians must order FIV diagnostic tests from
7 the major distributors, who are only permitted to carry
8 IDEXX products by IDEXX's exclusionary tactics, and cannot
9 obtain FeLV diagnostic tests from another company, without
10 paying more for the FeLV tests, and wasting the FeLV tests
11 that are bundled with the FIV tests sold by IDEXX, tests
12 for which they have already paid.

13 129. The Defendant's conduct harms Cyntegra and other
14 companies, that can offer FeLV diagnostic tests can do so
15 only at a high cost that places them at a significant
16 competitive disadvantage compared to the bundled FIV and
17 FeLV test package sold by IDEXX.

18 130. As a result of this restriction of competition,
19 veterinarians and consumers will pay higher prices to
20 obtain FeLV diagnostic tests, than they would in a freely
21 competitive market.

22 131. Defendant has market power in the market for FIV
23 diagnostic tests.
24

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff requests:

3 1. That the Court adjudge and decree that IDEXX (a)
4 unlawfully acted to maintain a monopoly, and (b) attempted
5 to monopolize, all in violation of Sections 1 and 2, of the
6 Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 3, of the
7 Clayton Act.
8

9 2. That the Court adjudge and decree that IDEXX
10 unlawfully acted to violate the California State unfair
11 competition and business interference laws.

12 3. That the Court grant a permanent injunction
13 enjoining defendant from continuing its violations of
14 Sections 1 and 2 of the Sherman Act, and Section 3 of the
15 Clayton Act.
16

17 4. That Plaintiff recover compensatory damages, and/or
18 punitive damages, as provided by law, determined to have
19 been sustained, including treble damages, and that judgment
20 be entered against Defendant in favor of the Plaintiff.
21

22 5. That Plaintiff recover its costs of this suit,
23 including attorneys' fees, as provided by law.

24 6. That the Court grant such further relief as to the
25 Court may seem just and proper.
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure as to all issues so triable as a matter of right.

Dated: September 26, 2006

By SaraLynn Mandel

SaraLynn Mandel, (SBN 115930)

MANDEL & ADRIANO

55 South Lake Avenue, Suite 710

Pasadena, CA 91101

Telephone: (626) 395-7801

Facsimile: (626) 395-0694

Lead Attorney for Plaintiff Cyttegra, Inc.

JURY DEMAND

Plaintiffs demand trial by jury for all triable issues.

VERIFICATION

I hereby state, under penalty of perjury, I have read this Complaint and that the information contained therein is true and accurate to the best of my knowledge.

Simon Brodie, CEO, Cyttegra, Inc.

DEMAND FOR JURY TRIAL

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Plaintiff demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure as to all issues so triable as a matter of right.

Dated: September 26, 2006

By _____

SaraLynn Mandel, (SBN 115930)

MANDEL & ADRIANO

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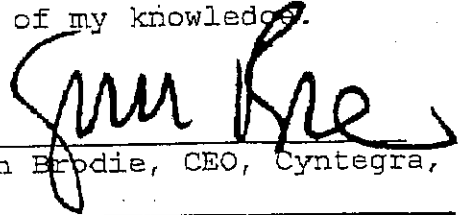
Lead Attorney for Plaintiff Cyttegra, Inc.

JURY DEMAND

Plaintiffs demand trial by jury for all triable issues.

VERIFICATION

I hereby state, under penalty of perjury, I have read this Complaint and that the information contained therein is true and accurate to the best of my knowledge.



Simon Brodie, CEO, Cyttegra, Inc.