SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

---X

NYMP ACQUISITION, LLC as acquirer of substantially all of the assets of NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

-against-

PETTWAY DIGITAL LLC,
"JOHN DOE NO. 1 through JOHN DOE NO. 5," the name of said defendants being fictitious and unknown to plaintiff, persons intended being as described herein,

Defendants.

---X

Index No.
Dated Filed: ____________

SUMMONS

Plaintiff designates Nassau County as the place of trial

Plaintiff's place of business:

393 Jericho Tpke
Suite 104
Mineola, NY 11501

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: East Meadow, New York
January 31, 2013

CERTILMAN BALIN ADLER & HYMAN, LLP

By: ______________________
Anthony W. Cummings, Esq.
Attorneys for Plaintiff
90 Merrick Avenue - 9th Floor
East Meadow, New York 11554
(516) 296-7000

Defendants' Addresses:
PETTWAY DIGITAL LLC,
775 Brooklyn Avenue
Baldwin, New York 11510

"JOHN DOE NO. 1 through JOHN DOE NO. 5,"
775 Brooklyn Avenue
Baldwin, New York 11510

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

---X Index No.:

NYMP ACQUISITION, LLC as acquirer of
substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

-against-

VERIFIED COMPLAINT

PETTWAY DIGITAL LLC and
"JOHN DOE NO. 1 through JOHN DOE NO. 5,"
the name of said defendants being
fictitious and unknown to plaintiff, persons
intended being as described herein,

Defendants.

---X

Plaintiff, NYMP ACQUISITION, LLC, as acquirer of substantially all of the assets of New York Merchants Protective Co., Inc. ("Plaintiff") by its attorneys, Certilman Balin Adler & Hyman, LLP, as and for verified complaint ("Complaint") against the defendants PETTWAY DIGITAL LLC, and "JOHN DOE NO. 1 through JOHN DOE NO. 5," sets forth as follows:

THE PARTIES

1. Plaintiff is a domestic limited liability company existing under the laws of the State of New York with offices located in Nassau County, State of New York.

2. Defendant PETTWAY DIGITAL LLC is a domestic business corporation existing under the laws of the State of New York with offices located in Nassau County, State of New York.

3. Defendant "JOHN DOE NO. 1 through JOHN DOE NO. 5," the name of

said defendants being fictitious and unknown to plaintiff, persons intended being as described herein, are upon information and belief, individuals residing in or transacting business in the State of New York.

NATURE OF THE ACTION

4. This action concerns the deliberate, willful malicious conduct of the defendants to unlawfully solicit, sign up, speak with, confer with, advertise to, poach, steal, compromise or otherwise communicate with customers of the Plaintiff and to otherwise unfairly compete with, interfere with, usurp, divert and misappropriate business opportunities belonging to the plaintiff.

5. On February 24, 2012 plaintiff acquired certain of the assets of New York Merchants Protective Co., Inc. (referred to sometimes hereinafter as "NYMP"), a domestic business corporation existing under the laws of the State of New York, engaged in the business of providing security alarm, fire alarm, and life-safety alarm monitoring as well as other related services within the State of New York.

6. The assets acquired by plaintiff included accounts, customer lists, contracts and certain intangible assets used in the regular course of NYMP's business (the "Confidential and Trade Secret Information") along with furniture and inventory.

7. This is a cause of action for the inappropriate and unlawful access and use of plaintiff's Confidential and Trade Secret Information giving rise to claims against the defendants for unfair competition (the First Cause of Action); prima facie tort (the Second Cause of Action); conversion, unjust enrichment, misappropriation (the Third Cause of Action); declaratory judgment and permanent injunction against conspiracy,

interference with economic advantage (the Fourth Cause of Action); and for a declaratory judgment and permanent injunction against disparagement (the Fifth Cause of Action).

<u>AS AND FOR A FIRST CAUSE OF ACTION</u>
(Unfair Competition)

8. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

9. Upon information and belief, Defendant PETTWAY DIGITAL LLC and one or more of the defendants "JOHN DOE NO. 1 through JOHN DOE NO. 5," entered into an agreement whereby for an agreed upon sum, certain of plaintiff's Confidential and Trade Secret Information, which was unlawfully in the possession of one or more of the defendants "JOHN DOE NO. 1 through JOHN DOE NO. 5," was turned over to defendant PETTWAY DIGITAL LLC.

10. One or more of the defendants "JOHN DOE NO. 1 through JOHN DOE NO. 5," unlawfully acquired plaintiff's Confidential and Trade Secret Information in their position as former employees of plaintiff or in collusion with former employees of plaintiff.

11. Defendant PETTWAY DIGITAL LLC with the assistance, cooperation and aid of defendants "JOHN DOE NO. 1 through JOHN DOE NO. 5 has solicited both directly and indirectly accounts owed by plaintiff in violation of non compete agreement between plaintiff and one or more of the Defendants "JOHN DOE NO. 1 through JOHN DOE NO. 5," and/or in violation of common law.

12. As a direct result of the actionable conduct of defendants as aforesaid, which constitutes unfair competition, plaintiff seeks judgment for compensatory damages to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Prima Facie Tort)

13. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

14. The aforesaid conduct of the defendants was burdensome, harsh and wrongful conduct, with a lack of probity and fair dealing in the affairs of the company to the prejudice of plaintiff.

15. Defendants' conduct was a departure from the standards of fair dealing, and a violation of fair play on which every participant in commerce is entitled to rely.

16. That defendants intentionally acted in a manner designed to harm the plaintiff.

17. That defendants intended that the false statements made to third parties would cause harm to the plaintiff or that said defendants knew with certainty that the false statement to third parties would cause harm to the plaintiff.

18. That the aforesaid defendants' complained of conduct was a cause of Plaintiff's harm and that defendants' conduct was not justifiable under all the circumstances.

19. As a direct result of the actionable conduct of defendants, plaintiff seeks judgment for compensatory and punitive damages to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Conversion, Unjust Enrichment, Misappropriation)

20. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

21. The individual defendant used their position as a member, shareholder, employee or former employee of various companies or corporations, including the named corporate defendant herein and plaintiff, to perform acts of conversion, misappropriation of assets and resources, and mismanagement of while in partnership or a joint venture with other defendants as follows.

22. Resources of the plaintiff including its proprietary customer list, branding, marketing plan and concepts (intellectual property), were used to benefit defendants without fair compensation to plaintiff and in a manner that constitutes unfair competition and unjust enrichment.

23. Business opportunities owned by the plaintiff including the right to make sales to individuals and businesses on the customer lists owed by the Plaintiff, were diverted to defendants without compensation to the Plaintiff.

24. The Plaintiff business opportunities were used to complete projects and sales that benefited defendants without compensation at the expense and to the detriment of Plaintiff.

25. Resources of the plaintiff were used to perform sales and market development (including plaintiff's intellectual property), as well as to conduct less than arms-length business transactions with entities such as defendants without

compensation at the expense and detriment to plaintiff.

26. The individual defendants used their position as a partner or member of the partnership or joint venture with corporate defendant to take concepts, plans and ideas from the plaintiff, supply the same to the corporate defendant, without fair compensation to Plaintiff and in unfair competition.

27. Ideas, concepts and marketing strategies improperly converted and used include but is not limited to the proprietary customer list, branding and marketing concept and others, and other intellectual property solely and exclusively owned by plaintiff.

28. As a direct result of the actionable conduct of defendants, Plaintiff seeks judgment for compensatory and punitive damages to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction against Conspiracy, Interference with Economic Advantage)

29. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

30. Upon information and belief the individual defendants and shareholders, members, agents, servants and/or employees of and/or others at various times met, joined together, planned, and conspired to intimidate, harass, annoy, alarm and otherwise harm plaintiff, for the purpose of frustrating plaintiff in its ability to conduct the business of the Plaintiff and to compete unfairly against plaintiff.

31. All of the named defendants agreed or understood that the purpose of their meetings and agreements was as described heretofore, understood that both their

purpose and their methods of achieving this purpose were unlawful and would result in injury to plaintiffs and others and agreed and understood that each would act in concert with the others to achieve this purpose.

32. Defendants, and shareholders, members, agents, servants and/or employees of defendants and/or others were aware of the existence and terms of various agreements and business opportunities available to plaintiff.

33. The individual defendants, individually and/or with their cohorts, intentionally undertook to interfere with plaintiff's ability to perform and take advantage of certain business opportunities by withholding information, delaying decision making and infringing or diluting plaintiff's intellectual property.

34. The complained of conduct was undertaken maliciously and the conspiracies at issue here have caused plaintiff monetary damages and other injury as set forth.

35. Defendants repeatedly conducted themselves in a manner to undermine the success of plaintiff. The above stated conduct exceeds all bounds usually tolerated by decent society.

36. The defendants' extreme and outrageous conduct intentionally or recklessly causes severe financial harm to plaintiff.

37. Said conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

38. By reason of the conspiratorial and outrageous conduct charged to the

defendants, plaintiff seeks judgment for compensatory and punitive damages to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction Against Disparagement)

39. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

40. The individual defendants have made false and disparaging statements regarding the plaintiff and its business.

41. Said statements sere made to induce a breach of contract by third parties.

42. The plaintiff has no adequate remedy at law, or otherwise, for the harm and damage done or threatened to be done by the defendants because once the unique reputation they enjoy is destroyed, which intention of defendants is evidenced by the defendants' prior false statements, plaintiff's standing in the relevant community is lost or forfeited.

43. Any false statements maintained by the defendants serve to interfere with the plaintiff or its servants, agents and/or employees in the conduct of their said business and in the quiet and undisturbed pursuit of their future business endeavors.

44. Irreparable harm, damage, and injury will follow and be done to the plaintiff unless the acts and conduct of the defendants above complained of are enjoined because plaintiff's standing in the subject business community will be lost and their good reputation in the local community irreparable harmed.

45. By reason of the foregoing plaintiff prays that defendants be permanently

enjoined from continuing his defamatory statements and campaign of intimidation regarding the plaintiff.

WHEREFORE, Plaintiff demands judgment

1. On the First Cause of Action for unfair competition for compensatory damages to be determined at trial;

2. On the On the Second Cause of Action for prima facie tort for compensatory and punitive damages to be determined at trial;

3. On the Third Cause of Action for conversion and misappropriation for compensatory and punitive damages to be determined at trial;

4. On the Fourth Cause of Action a declaratory judgment

(a) that defendants have engaged in a civil conspiracy to inflict injury upon the plaintiff and to unfairly compete against it by unlawfully using its intellectual property, and therefore are jointly and severally liable for all damages without allocation, apportionment, or limitation of liability,

(b) that the defendants and each of them, be adjudged and decreed jointly and severally to be constructive trustees of any and all monies, funds, assets, facilities, property, manufacturing received and acquired by them as a result of acts committed in bad faith, and that said defendants be required and directed to make full and complete restitution and restoration of said properties, manufacturing and profits to Plaintiff and

(c) a permanent injunction issue to enjoin and restrain the defendant, from interfering with the plaintiff or its servants, agents and/or employees in the conduct of their said business

(d) an award for compensatory and punitive damages to be determined at trial to penalize defendants for their intentional and malicious acts of misconduct;

5. On the Fifth Cause of Action a declaratory judgment

(a) setting forth the parties respective legal rights, relations and duties under the premises, to wit, that defendants made false statements to third parties to disparage intervention plaintiff and to induce breach of contract,

(b) that defendants conspired to induce the breach of contracts at issue,

(c) an injunction that defendants be permanently enjoined from continuing his defamatory statements and campaign of intimidation regarding the Plaintiff;

(d) an award for compensatory and punitive damages to be determined at trial to penalize defendants for their intentional and malicious acts of misconduct;

6. Together with costs, interest, and disbursements, and such other and further relief as this Court may deem just and proper.

Dated: East Meadow, New York
January 31, 2013

CERTILMAN BALIN ADLER & HYMAN, LLP

By: ______________________

Anthony W. Cummings, Esq.
Attorneys for Plaintiff
90 Merrick Avenue – 9th Floor
East Meadow, New York 11554
(516) 296-7000

VERIFICATION

STATE OF New Jersey)
) ss.:
COUNTY OF Essex)

JOHN HOPKINS, being duly sworn, deposes and says:

1. I am an officer of the Plaintiff in the within action.

2. I have read the foregoing **COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. This verification is made by me because the above party is a limited liability company and I am an officer thereof. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, papers, and documents maintained by the limited liability company.

John Hopkins

Sworn to before me this
31st day of January, 2013.

Susan Stankiewicz
NOTARY PUBLIC

SUSAN STANKIEWICZ
NOTARY PUBLIC OF NEW JERSEY
ID# 2185821
COMMISSION EXP. FEB. 15, 2016

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NYMP ACQUISITION, LLC as acquirer of substantially all of the assets of NEW YORK MERCHANTS PROTECTIVE CO., INC.,
Plaintiff,

-against -

PETTWAY DIGITAL LLC, "JOHN DOE NO. 1 through JOHN DOE NO. 5",
Defendants,

SUMMONS AND VERIFIED COMPLAINT

CERTILMAN BALIN ADLER & HYMAN, LLP
Attorney(s) for *Plaintiff*

Office and Post Office Address, Telephone

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NEW YORK 11554
(516) 296-7000
FAX (516) 296-7111

To

Attorney(s) for

To the best of the undersigned's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the within documents and contentions contained herein are not frivolous as defined in 22 NYCRR 130-1.1-a.

Dated: ....

....

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a *(certified) true copy of a*
duly entered in the office of tbe clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy
will be presented for settlement to the HON. one of the judges of the
within named Court, at
on at M.

Dated,

Yours, etc.

CERTILMAN BALIN ADLER & HYMAN, LLP

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