

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA**

CASE NUMBER: 2015-CA-009180

SISCON, INC., a Colorado corporation,

Plaintiff,

v.

C&P TRADING AND SALES, INC. d/b/a
C&P ADDITIVES, a Florida corporation,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff, SISCON, INC., sues Defendant, C&P TRADING AND SALES, INC. d/b/a

C&P ADDITIVES (“Defendant”), and alleges the following:

JURISDICTION, VENUE & PARTIES

1. This is an action for damages that exceed \$15,000.00, exclusive of interest, costs, and attorney’s fees.

2. Plaintiff, SISCON, INC., is a Colorado corporation with its principal place of business in Windsor, Colorado.

3. Defendant, C&P TRADING AND SALES, INC. d/b/a C&P ADDITIVES (“C&P”), is a Florida corporation with its principle place of business in Palm Beach County, Florida.

4. Venue is proper in Palm Beach County, Florida, pursuant to Section 47.011 Florida Statutes, because Defendant resides in Palm Beach County, Florida; the causes of action accrued in Palm Beach County, Florida; and the amount in dispute exceeds \$15,000.00.

FACTUAL ALLEGATIONS

5. Plaintiff is in the business of providing consulting services, such as customer recruitment, product development, and competitive strategies, to the meat industry.

6. Defendant is in the business of developing and supplying ingredients and additives to the food industry. In particular, Defendant develops and markets transglutaminase (“TG”) enzymes – a food additive used to bond together meats, fish, and dairy products.

7. In June of 2012, Peter Thiele (“Thiele”), the president of Defendant, met Plaintiff’s President, Gary Sisney (“Sisney”), at the International Food Technology Show in Las Vegas, Nevada. Impressed by Sisney’s experience and industry connections, Thiele expressed interest in working with Plaintiff to sell Defendant’s TG enzyme products.

8. On or about October 16, 2012, Sisney and Thiele had a meeting in Brea, California to discuss terms for their relationship and finalize an agreement (the “Agreement”). Plaintiff agreed to assist Defendant with acquiring new customers to purchase TG enzyme products. In return, Defendant agreed to pay Plaintiff a commission for each kilogram of TG enzyme purchased by companies brought in by Plaintiff. The parties agreed that the commission would be the difference between: (1) the price per kilogram of the TG enzyme Plaintiff sold, and (2) the cost per kilogram of the TG enzyme. Defendant also agreed to pay Plaintiff’s travel expenses when visiting potential customers, which would then be deducted from Plaintiff’s commissions.

9. On October 19, 2012, Defendant sent Plaintiff an email confirming their Agreement and outlining the terms. And on June 23, 2014, Defendant’s employee sent Plaintiff an email confirming that Plaintiff’s cost per kilogram of TG was \$35.00. [These emails are attached as **Composite Exhibit A.**]

10. Consequently, Plaintiff's commission would be the difference between \$35.00 and the amount that Plaintiff's customers paid for each kilogram of TG enzyme, multiplied by the number of kilograms purchased.¹

11. After finalizing the Agreement, Plaintiff began traveling throughout the United States and Canada to meet with potential customers for Defendant. From October of 2012 to June of 2014, Plaintiff found five separate customers for Defendant.

12. When Plaintiff's customers would order the TG enzyme, Defendant would bill the customer for the total purchase price and any shipping costs. Plaintiff would then prepare an invoice billing Defendant for its commission.

13. After Defendant received payment from the customer, Defendant would pay Plaintiff its earned commissions.

14. The parties proceeded under this arrangement for over two years. Throughout that time, Plaintiff generated almost \$800,000 in sales for Defendant. And for each sale prior to October of 2014, Defendant paid Plaintiff its commissions per the terms of the Agreement.

15. From October of 2014 to February of 2015, Plaintiff sold almost 10,000 kilograms of TG enzyme product. For all of these orders, Defendant billed for, and received payment directly from, the customer.

16. Defendant, nevertheless, has failed to pay Plaintiff's commissions for these orders. As the chart below indicates, Defendant currently owes Plaintiff \$98,980 in commissions (the "Unpaid Commissions") for orders from October of 2014 to February of 2015.

¹ For example, using the numbers from the June 23, 2014 email, if one of Plaintiff's customers purchased 1000 kilograms of TG enzyme for \$42.00 a kilogram, then Plaintiff's commission would be \$7,000.00 $((\$42.00 - \$35.00) \times 1000)$.

Company	Quantity	Rate	Cost	Commission
Wanchese	1538	\$45	\$ 69,210	\$ 15,380
Wanchese	924	\$45	\$ 41,580	\$ 9,240
Clearwater	35	\$51	\$ 1,785	\$ 560
Wanchese	1300	\$45	\$ 58,500	\$ 13,000
Clearwater	175	\$51	\$ 8,925	\$ 2,800
Wanchese	300	\$45	\$ 13,500	\$ 3,000
Wanchese	3500	\$45	\$157,500	\$ 35,000
Wanchese	2000	\$45	\$ 90,000	\$ 20,000
Total Commissions Owed:				\$ 98,980

17. Furthermore, Plaintiff recently learned that Defendant may have been underpaying Plaintiff for past commissions.

18. In their July 23, 2014 email, Defendant told Plaintiffs that they charged customers \$42.00 per kilogram for TG. When Plaintiff did not receive the Unpaid Commissions, Sisney inquired as to whether Defendant had been paid for the orders. In response, Defendant sent Plaintiff their customer invoices for Plaintiff's sales (the "Customer Invoices"). In addition to confirming that Defendant had been paid for the orders and, thus, Plaintiff was owed its commissions, the Customer Invoices also indicated that Defendant had been charging customers \$45.00 per kilogram of TG enzyme, not \$42.00, as Defendant had represented to Plaintiff. [Defendant's Customer Invoices stamped "Paid" are attached as **Composite Exhibit B.**]

19. Accordingly, due to Defendant's duplicitous misrepresentations, Plaintiff's invoices for the Unpaid Commissions indicated a commission that was less than the true amount owed. Plaintiff's invoices to Defendant, which incorrectly total \$69,566.00, are listed below (the "Overdue Invoices"):

- i. Invoice No. 314: 1538 kilograms sold on 10/2/14;
- ii. Invoice No. 320: 210 kilograms sold on 1/19/15 and 1/29/15;

- iii. Invoice No. 315: 924 kilograms sold on 1/19/15;²
- iv. Invoice No. 317: 1300 kilograms sold on 1/26/15;
- v. Invoice No. 318: 300 kilograms sold on 2/2/15;
- vi. Invoice No. 319: 3500 kilograms sold on 2/12/15; and
- vii. Invoice No. 316: 2000 kilograms sold on 2/17/15.³

20. Understandably concerned about the status of the Unpaid Commissions, Sisney addressed the issue with Thiele while attending a trade fair in Boston on or about March 15, 2015. In response, Thiele assured Sisney that Defendant would disburse the Unpaid Commissions.

21. A week later, on March 24, 2015, Sisney emailed Defendant to follow up on when Plaintiff would receive the Unpaid Commissions.

22. Over the course of the following week, Plaintiff emailed Defendant numerous times to inquire about the Unpaid Commissions. Finally, on March 31, 2015, Defendant responded with the following email, confirming that the commission check was owed, but offering no answer as to when it would be mailed to Plaintiff:

Our office is closed until further notice, last week the suite next to us got flooded overnight therefore our office has major damages, also Peter is out of town, so at the moment I do not have an answer as to when your check will be mailed.

23. Since March 31, 2014, not only has Plaintiff not received the Unpaid Commissions, but Defendant has cut-off all communications with Plaintiff.

24. All conditions precedent to the filing of this action have been performed or waived.

² Invoice 315 shows a total of 1200 kilograms sold. A credit was given to the customer for 276 kilograms since some product was replaced. Plaintiff therefore billed for the difference, a total of 924 kilograms.

³ The Overdue Invoices totaled \$70,294.00. The parties, however, attended a trade fair on March 15, 2015, so Plaintiff deducted travel expenses of \$728.00

COUNT I
Breach of Contract

25. Plaintiff realleges, incorporates, and asserts by reference the allegations in Paragraphs 1 through 24, as if fully set forth herein.

26. This is an action by Plaintiff against Defendant for breach of contract.

27. In October of 2012, Plaintiff and Defendant entered into the Agreement.

28. Defendant materially breached Agreement by outright refusing to disburse the Unpaid Commissions.

29. As a direct and proximate result of Defendant's breaches, Plaintiff has suffered damages.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, interest, costs, and all other relief the Court deems just and proper.

COUNT II
Breach Of Implied-In-Fact Contract

30. Plaintiff realleges, incorporates, and asserts by reference the allegations in Paragraphs 1 through 24, as if fully set forth herein..

31. This is an action by Plaintiff against Defendant for breach of an implied-in-fact contract, and is pled in the alternative to Count I.

32. Plaintiff and Defendant entered into an agreement in which some or all of the terms are inferred from the parties' conduct and the surrounding circumstances, including, *inter alia*, certain emails, oral statements, and the parties' previous transactions.

33. The assent of Plaintiff and Defendant is derived from these facts and circumstances, including the parties' course of dealing and performance.

34. Defendant breached the parties' implied agreement by failing to disburse the Unpaid Commissions.

35. As a result of Defendant's breaches of the parties' implied agreement, Plaintiff has suffered damages.

36. WHEREFORE, Plaintiff demands judgment against Defendant for damages, interest, costs, and all other relief the Court deems just and proper.

COUNT III
Promissory Estoppel

37. Plaintiff realleges, incorporates, and asserts by reference the allegations in Paragraphs 1 through 24 as if fully set forth herein.

38. This is an action for promissory estoppel against Defendant and is pled in the alternative to Count I for breach of contract.

39. Defendant promised, *inter alia*, to pay a commission for every kilogram of TG enzyme sold by Plaintiff.

40. Defendant reasonably should have expected these promises to induce reliance in the form of action or forbearance on the part of Plaintiff.

41. Plaintiff reasonably relied on Defendant's representations and promises, which induced Plaintiff to market and sell Defendant's TG enzyme products.

42. Injustice can be avoided only by enforcement of these promises against Defendant.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, interest, costs, and all other relief the Court deems just and proper.

COUNT IV
Unjust Enrichment

43. Plaintiff realleges, incorporates, and asserts by reference the allegations in Paragraphs 1 through 24 as if fully set forth herein.

44. This is an action for unjust enrichment against Defendant and is pled in the alternative to Count I for breach of contract.

45. Plaintiff conferred benefits on Defendant and Defendant has knowledge thereof. Specifically, Plaintiff generated significant revenue for Defendant and expanded its' client base by selling Defendant's products.

46. Defendant voluntarily accepted and retained the benefits conferred.

47. The circumstances render Defendant's retention of the benefits inequitable unless Defendant pays Plaintiff the value of the benefits.

48. Defendant has been unjustly enriched at the expense of Plaintiff.

49. Plaintiff is entitled to damages as a result of Defendant's unjust enrichment.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, interest, costs, and all other relief the Court deems appropriate.

Demand for Jury Trial

Plaintiff demands trial by jury on all issues so triable.

Dated: October 9, 2015

MORGAN & MORGAN, P.A.
Business Trial Group

*/s/ William B. Lewis*_____

William B. Lewis

Florida Bar No. 064936

Arletys Rodriguez

Florida Bar No. 0112714

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ARodriguez@forthepeople.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of October, 2015, I electronically filed the foregoing with the Clerk of the Court by using the Court's E-portal filing system, which will serve a notice of the electronic filing to: Ronald Andersen Hurst, Jr., Esq., The Hurst Law Group, P.L., 3900 Woodlake Blvd., Suite 211, Greenacres, FL 33463; (rahurst@hurstlawgroup.com).

/s/ William B. Lewis
Attorney

COMPOSITE
EXHIBIT A

Arlety Rodriguez x5434

Subject: FW: Agreement

From: Peter Thiele <peter.thiele@cp-additives.com>

Subject: Agreement

Date: October 19, 2012 at 1:43:57 PM PDT

To: "garysisney@aol.com" <garysisney@aol.com>, Katherine Silver <katherine@cp-additives.com>

Gary

I would like to confirm the follow.

Each week , when we travel together, or you alone , to made test and visit clients for C&P, we will pay the cost (flight, car Hotel, amount for food) and 1000\$ for your work.

The clients what you bring, will be protected as your clients.

When sales resulting from the demonstrations through Gary, the cost will be gradually offset against commissions. In which grade, we will find a solution.

This agreement is guilty for the next 3-6 month.

We hope , that we can catch sales for over 1000 kg monthly, that you can pay you cost and salary by yourself.

(You will get this in better English)

All the best

Mit freundlichem Gruss

Peter Thiele

Aletys Rodriguez x5434

Subject: FW: Commission check

From: Katherine Silva <katherine@cp-additives.com>

Subject: Commission check

Date: June 23, 2014 at 2:45:01 PM PDT

To: Gary Sisney <gary@sisconinc.com>

The customer pays \$42 per kg, your price is \$35., so the difference is \$7.

COMPOSITE
EXHIBIT B

C&P Trading and Sales , Inc.

C&P Trading and Sales , Inc. DBA C&P Additive
 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No
10/02/2014	2317
Terms	Due Date
Due on receipt	10/02/2014

To
 Sam Daniel
 Wanchese Fish Company
 Corporate/Marketing Office
 2000 Northgate Commerce
 Suffolk, VA 23435

PAID

Balance Due	Enclosed
\$0.00	

X Please detach top portion and return with your payment. X

Ship Date	Ship Via	Tracking No
09/29/2014	Estes Express	012-0639547

Date	Activity	Quantity	Rate	Amount
10/02/2014	Transglutaminase, TGA	1538	45.00	69,210.00
10/02/2014	Freight	1	507.54	507.54
Total				\$69,717.54
Payment				\$69,717.54
Balance Due				\$0.00

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 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No.
01/19/2015	2477
Terms	Due Date
Due on receipt	01/19/2015

Sam Daniel
 Wanchese Fish Company
 Corporate/Marketing Office
 2000 Northgate Commerce
 Suffolk, VA 23435

PAID

Balance Due	Enclosed
\$0.00	

Please detach top portion and return with your payment.

Ship Date	Ship Via
01/16/2015	Ground, truck

Date	Quantity	Rate	Amount	
01/19/2015	Transglutaminase, TGA	1200	45.00	54,000.00
01/19/2015	Freight	1	514.23	514.23
Total				\$54,514.23
Payment				\$54,514.23
Balance Due				\$0.00

C&P Trading and Sales , Inc.

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 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No.
01/26/2015	2489
Terms	Due Date
Due on receipt	01/26/2015

Bill To
Sam Daniel Wanchese Fish Company Corporate/Marketing Office 2000 Northgate Commerce Suffolk, VA 23435

PAID

Balance Due	Enclosed
\$0.00	

Please detach top portion and return with your payment.

Ship Date	Ship Via
01/23/2014	Ground truck

Date	Description	Quantity	Rate	Amount
01/26/2015	Transglutaminase, Product A	1300	45.00	58,500.00
01/26/2015	Freight	1	557.00	557.00
01/26/2015	Note: 52 cases with 25 kg each			
Total				\$59,057.00
Payment				\$59,057.00
BALANCE DUE				

C&P Trading and Sales , Inc.

C&P Trading and Sales , Inc. DBA C&P Additive
 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No.
02/02/2015	2498
Terms	Due Date
Due on receipt	02/02/2015

Bill To

Sam Daniel
 Wanchese Fish Company
 Corporate/Marketing Office
 2000 Northgate Commerce
 Suffolk, VA 23435

PAID

Balance Due	Enclosure
\$0.00	

Please detach top portion and return with your payment. X

Ship Date	Ship Via
01/29/2015	R&L

Date	Description	Qty	Rate	Amount
02/02/2015	Transglutaminase, TGA	300	45.00	13,500.00
02/02/2015	Note: Free delivery authorized by Mr. Thiele			
Total				\$13,500.00
Payment				\$13,500.00
Balance Due				\$0.00

C&P Trading and Sales , Inc.

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 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No.
02/12/2015	2508
Terms	Due Date
Due on receipt	02/12/2015

Sam Daniel
 Wanchese Fish Company
 Corporate/Marketing Office
 2000 Northgate Commerce
 Suffolk, VA 23435

PAID

Balance Due	Enclosed
\$0.00	

Please detach top portion and return with your payment.

Ship Date	Ship Via	Tracking No.
02/10/2015	Ground/ Airwaysfreight	3567828

Date	Quantity	Rate	Amount	
02/12/2015	Transglutaminase, Product A	3500	45.00	157,500.00
Total			\$157,500.00	
Payment			\$157,500.00	
Balance Due			\$0.00	

C&P Trading and Sales , Inc.

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 950 Peninsula Corporate Circle Ste 3018
 Boca Raton, FL 33487

(561)995-7071
 office@cp-additives.com
 www.cp-additives.com

Invoice

Date	Invoice No
02/17/2015	2511
Terms	Due Date
Due on receipt	02/17/2015

Bill To
Sam Daniel Wanchese Fish Company Corporate/Marketing Office 2000 Northgate Commerce Suffolk, VA 23435

PAID

Balance Due	Enclosed
\$0.00	

Please detach top portion and return with your payment.

Ship Date	Ship Via	Tracking No
02/12/2015	ESTES	012-0657270

Date	Activity	Quantity	Rate	Amount
02/17/2015	Transglutaminase Product A	2000	45.00	90,000.00
02/17/2015	Freight for 5.5 tons	5500	0.10	550.00
Total				\$90,550.00
Payment				\$90,550.00
Balance Due				\$0.00