DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Phone: (720) 865-8301 **Plaintiffs:** DAVID SCHANIN and ANTHONY ANZELMO v. **Defendant:** HYDRACONNECT SALES, LLC.	DATE FILED: July 20, 2015 7:14 PM FILING ID: 11635B30FBB59 CASE NUMBER: 2014CV34303 ▲ **COURT USE ONLY** ▲ Case Number: 2014 CV 34303 Division: 259
Attorney for Defendant: Philip W. Bledsoe, #33606 1515 Wynkoop, Suite 600 Denver, Colorado 80202 Phone Number: 303-572-9300 Fax # - 303-572-7883 pbledsoe@polsinelli.com	
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	

THIS MATTER is before the Court following a three-day trial to the Court. The Court having considered the evidence and the arguments of the parties issues the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. David Schanin and Anthony Anzelmo were each fifty percent owners (members) of HydraConnect LLC ("the Company").

2. HydraConnect LLC was in the business generally of manufacturing and selling high-end audio equipment for uses such as home theater systems in residential and commercial uses.

3. In April of 2013, Sean Greer was hired as an independent contractor with the essential role of being National Sales Manager.

4. Beginning in late 2013, Plaintiffs undertook efforts to attract a buyer for HydraConnect LLC. Those efforts included the retention of a company to market the HydraConnect business.

5. While there were expressions of interest from a number of companies, none of those expressions of interest matured into a letter of intent or an actual offer to purchase the Company. In approximately May of 2014, the Plaintiffs abandoned further efforts to market the Company and indicated they intended to close the business.

6. In response to that announcement, Mr. Greer began discussions with Plaintiffs concerning the possible acquisition of the Company and/or its assets. As part of those discussions, the parties exchanged several proposals and frameworks for discussing a possible acquisition.

7. During the course of negotiations, Plaintiffs represented that there were little to no problems in the field concerning returns with products that had been sold.

8. Those representations were false, and Plaintiffs knew they were false or were made without knowledge whether the representation was true or false and were made with the intent for Defendant to rely on the representations.

9. These representations were material to Defendant's decision to enter into any agreement, and Defendant relied on those representations.

10. Defendant's reliance was reasonable.

11. Ultimately, Mr. Greer formed HydraConnect Sales, LLC for the purpose of acquiring the membership interests of HydraConnect LLC. The transaction was documented in a Membership Interest Purchase Agreement ("Agreement") dated effective July 7, 2014 for the sale and purchase of the two membership interests of HydraConnect.

12. Under Section 1.1 of the Agreement, the sale of the Membership Agreement included all assets and intellectual property as set out in Exhibits D and E of the Agreement.

13. Under Section 3.2 of the Agreement, Plaintiffs agreed to palletize and ship equipment from North Carolina.

14. Under Section 3.4 of the Agreement, the members agreed to provide the company free and clear of all accounts payable and all other debts as of the closing date with an exception noted in Section 3.1.

15. In August 2014, Defendant paid Plaintiffs a total of $25,000 toward the agreed purchase price.

16. Under Section 13.5 of the Agreement Plaintiffs promised that no representation or warranty was untrue or omitted a material fact to make any representation or warranty not misleading.

17. In Section 13.8 of the Agreement, Plaintiffs represented that HydraConnect complied with "all applicable laws, including, without limitation, occupational, safety and health, trade practices, competition and pricing, product warranties, ellipse and product advertising."

18. In Section 13.10 of the Agreement, Plaintiffs represented that HydraConnect had "obtained and maintained in full force and effect all licenses and permits required to operate the Company's (HydraConnect LLC's) business in the ordinary course of business."

19. Plaintiffs had prior knowledge of the need to secure either membership or a complete license because of prior communications between Plaintiffs and Dolby, HDBaseT Alliance and HDMI.

20. Plaintiffs failed to disclose these prior communications, which were material and intended to create a false impression of the actual facts.

21. Plaintiffs had prior knowledge of the need for proper certification because of prior communications between Plaintiffs and testing laboratories.

22. Plaintiffs failed to disclose these prior communications, which were material and intended to create a false impression of the actual facts.

23. The representations in Sections 13.5, 13.8 and 13.10 of the Agreement were false, Plaintiffs knew they were false or did not know whether they were true or false and were made with the intent that Defendant would rely on those representations.

24. The representations set out in 13.5, 13.8 and 13.10 of the Agreement (the contract representations), were material to Defendant's decision to enter into the Agreement.

25. The Defendant relied on the contract representations in entering into the Agreement.

26. Defendant's reliance on the contract representations was reasonable.

27. Plaintiffs did not convey all of the assets and intellectual property of the Company as required by Section 1.1 of the Agreement in that:

a) All software engineering documents as described in Agreement Exhibit D (e) and (f) were not conveyed.

b) All documentation, manuals, installation guides and driver software for existing products as per Agreement Exhibit D (i) were not conveyed.

c) All email backups and accounts as per Agreement Exhibit D (k) were not conveyed.

d) All engineering documents for the existing and products in development as per Agreement Exhibit D (n) were not conveyed.

e) All technology as per Agreement Exhibit E was not conveyed.

28. The Company was not conveyed free and clear of all accounts payable and all other debts as of closing as required by Section 3.4 of the Agreement in that there were several accounts payables that were still outstanding and that the Company had debts because the Company was obligated to make membership and royalty payments to certain licensors including HDMI, HDBaseT Alliance and Dolby.

29. Plaintiffs did not comply with Section 3.2 of the Agreement in that they did not palletize and ship the equipment from North Carolina.

30. The Company did not comply with applicable laws as per Section 13.8 of the Agreement in that FCC and other governmental certifications for all products had not been done.

31. The Company had not maintained licenses as required by Section 13.10 of the Agreement in that the Company did not maintain membership and/or proper licenses with HDMI, HDBaseT Alliance or Dolby.

32. The costs of repairing and addressing RMA costs from field failures has greatly exceeded the amount represented by Plaintiffs approximately $117,000 to date.

33. Defendant HydraConnect incurred damage as a result of Plaintiffs' breach of contract and fraudulent inducement.

34. The losses caused by Plaintiffs' actions are categorized below.

Item	Damage Cost
Costs to address FCC and other needed certifications	$52,350.00
HDBaseT Bad Design - Recall	$850,000.00
HDBaseT Bad Design - Redesign	$53,000.00
HDBaseT Alliance Membership	$47,500.00
Lack of "Build and Maintain Documentation"	$375,000.00
DAM Recall (RMA)	$117,000.00
Bad Debt - Payments not made to vendors by transfer date - Premier	$1.00
Bad Debt - Payments not made to vendors by transfer date - MDS	$15,540.00
Bad Debt - Payments not made to vendors by transfer date - CEPD	$1,320.00
Bad Debt - Payments not made to vendors by transfer date - Safety Label	$79.66
David Schanin Amex Payment Using HydraConnect Account after closing	$5,847.80
Bad Debts - Write Offs	$1,500.00
Home Synthisys credits not disclosed	$1,188.00
Post-Closing agreed adjustment	$6,210.56

Billed for Premier Manufacturing Credit	$3,622.86
HDMI Alliance Membership	$78,800.00
Cost of Refinancing equipment from North Carolina	$3,039.00
TOTAL	$1,611,998.88

35. There is no evidence that Plaintiff David Schanin presented the stop payment check to Wells Fargo.

36. Defendant stopped payment on the check to Plaintiff David Schanin because of a then present dispute concerning the Agreement.

37. At the time, Defendant stopped payment to Plaintiff David Schanin as there were sufficient funds in the Defendant's bank account to cover that payment and any other outstanding checks.

CONCLUSIONS OF LAW

38. Plaintiffs entered into a contract with Defendant where Plaintiffs agreed to convey all of the interests of HydraConnect LLC to Defendant. (the Agreement)

39. The Agreement also called for Plaintiffs to undertake certain obligations as set out in Section 3.2 (palletize and ship equipment) and Section 3.4 (provided the Company free and clear of all accounts payable and all other debts) and also to represent and warrant certain facts as set out in Section 13.8 (Compliance with Law) and Section 13.10 (Licenses and Permits).

40. Plaintiffs breached their Agreement in that they failed to convey all of the assets as required (see Findings of Fact 27), failed to perform their promised obligations (see Findings of Fact 28 and 29) and breached their representations and warranties (see Findings of Fact 30 and 31).

41. Plaintiffs' breaches were material.

42. Plaintiffs had a duty to disclosure any untrue representations and also had a duty to disclose any material fact necessary to make any statements made not misleading.

43. The Defendant's reliance on Plaintiffs' representations was reasonable.

44. Because of Plaintiffs' prior breach, Defendant is excused from further performance of the Agreement, and for that same reason, is not liable on Plaintiffs' contract claim against Defendant.

45. Plaintiffs were not entitled to recover the penalty damages under C.R.S. § 13-21-109 for at least three reasons:

a) Under C.R.S. § 13-21-109(2)(b)(I)&(V) in that the account contained sufficient funds and the check was induced by fraud

b) Under C.R.S. § 13-21-109(7) there was a dispute relating to the money, merchandise, property or other things of value obtained by the maker

c) There is no evidence that the stop payment check was ever presented to the bank; and

d) Section 15.4.2 of the Agreement bars any form of consequential or punitive damages.

46. Defendant was fraudulent induced to enter into the Agreement in that the representations concerning problems in the field on return of product were false or made without knowledge of their truth or falsity, the representations were material, the representations were made with an intent for Defendant to rely, Defendant did so rely. Defendant's reliance was reasonable and that reliance caused damage to the Defendant.

47. Defendant was fraudulently induced to enter into the Agreement in that the contract representations of Sections 13.5, 13.8 and 13.10 were false, or made without knowledge of their truth or falsity, the representations were material, were made with an intent for Defendant to rely, Defendant did so rely, Defendant's reliance was reasonable and that reliance caused damage to the Defendant.

48. The damages caused by Plaintiffs' fraudulent inducement are:

a) Costs of obtaining necessary FCC and other certificates	$ 52,350.00
b) Costs of obtaining necessary HDBaseT Alliance membership	$ 47,500.00
c) DAM Recall (RMA) to date	$117,000.00
d) HDMI Alliance Membership	$ 78,800.00
e) Cost of addressing Dolby license issues.	$_____
Total	$295,650.00

49. The damages caused by Plaintiffs' breach of contract are:

a) Costs of obtaining necessary FCC and other certificates	$ 52,350.00
b) Costs of obtaining necessary HDBaseT Alliance membership	$ 47,500.00
c) HDMI Alliance Membership	$ 78,800.00

d) HDBaseT Recall	$850,000.00
e) HDBaseT Redesign	$ 53,000.00
f) Lack of build and maintain documentation	$375,000.00
g) HydraConnect account post-closing payment made to Amex for David Schanin	$ 5,847.00
h) Bad debt write-off	$ 1,500.00
i) Home Synthisys credit	$ 1,188.00
j) Post-closing agreed adjustment	$ 6,210.00
k) Billed Premier Credit	$ 3,623.00
l) Cost of retrieving equipment from North Carolina	$ 3,039.00
Total	$1,478,057.00

50. Because Defendant was fraudulently induced into the contract, Defendant's affirmative defense to Plaintiffs' contract claim is sustained.

51. Pursuant to Section 15.1 of the Agreement, Defendant is entitled to its costs and attorney's fees and shall submit such motion pursuant to C.R.C.P. 121 § 1-22.

DATED: July ___, 2015.

BY THE COURT:

_____

District Court Judge

DISTRICT COURT, CITY & COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street Denver, CO 80202 | Phone: (720) 865-8301	DATE FILED: July 21, 2015 10:23 AM FILING ID: 5A4289558B059 CASE NUMBER: 2014CV34303
Plaintiffs: DAVID SCHANIN and ANTHONY ANZELMO v. **Defendant: HYDRACONNECT SALES, LLC**	▲ COURT USE ONLY ▲
Attorney for Plaintiffs: Stuart Pack, #6779 SPENCER FANE BRITT & BROWNE LLP 1700 Lincoln Street, Suite 2000 Denver, Colorado 80203 Telephone: 303-839-3800 | Fax: 303-839-3838 Email: spack@spencerfane.com	**Case No.** 2014CV34303 Div/Ctrm.: 259

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on the Verified Second Amended Complaint filed by Plaintiffs David Schanin ("Schanin") and Anthony Anzelmo ("Anzelmo") (collectively referred to herein as "Plaintiffs"). Plaintiffs assert three claims: 1) Breach of Contract; 2) Statutory Damages for Check Not Paid upon Presentment; and 3) Declaratory Judgment and Decree against Defendant HydraConnect Sales, LLC ("Sales"). Sales filed counterclaims against Plaintiffs for: 1) Breach of Contract; and 2) Fraud.

A bench trial was held beginning on July 27, 2015. Based upon the stipulated facts, the testimony of the witnesses, and the exhibits admitted into evidence, the Court now makes the following findings of fact and conclusions of law based upon a preponderance of the evidence.

I. FINDINGS OF FACT

1. From the date of its creation until its acquisition by Sales, Plaintiffs owned 100% of the membership interests in HydraConnect, a Colorado limited liability company.

2. HydraConnect is in the business of manufacturing and selling "high-end" components of audio-visual (A/V) systems installed in private homes and commercial establishments

3. Plaintiffs founded HydraConnect, LLC ("HC") in January 2011.

4. Plaintiffs have a total of over 80 years of computer and control systems hardware and software design and development experience. Each founder provided $10,000 in seed money to HC. Schanin subsequently personally funded the company's operations with an additional $250,000 investment.

5. HC's goal was to change the way A/V distribution equipment operated. Three generations of products were developed over the four years of Plaintiffs' ownership and operation of HC. HC's product line focused on automated control and distribution of A/V data streams and was designed to integrate with operations of a home or business facility. HC's switch product line functions as a switchboard connecting sources to displays such as TVs.

6. HC's product line has two families. The first being switches and a second called "Extenders." The standard interconnect technology used between A/V devices is called HDMI. HDMI is a very high speed digital communications standard. HDMI interconnect is viable only up to about 20 feet or so. To address this limitation, a second standard technology, referred to as HDBaseT, was developed by a third-party and permits HDMI signals to be extended up to 330 feet. HC's products utilized HDBaseT in two products lines: 1) switches to directly drive HDMI signals 330 feet to TVs; and 2) a stand-alone Extender which extends HDMI signals up to 330 feet.

7. HC and Plaintiffs spent the first 15 months of operation in product development. Initial product shipments began in March 2012. Second generation products began shipment in December 2012.

8. Third generation product line shipments began in January 2014. Introduction of the third generation product dramatically increased sales to an annualized amount of more than $3.7 million.

9. HC was profitable. Gross margins were within industry norms at 34%. Warranty claims were also within industry norms at 2 to 4%. HC was issued two patents for its pioneering work in the A/V distribution field. Both patents were developed by Plaintiffs, assigned to HC, and subsequently transferred to Sales. HC received numerous awards, positive reviews in the trade press, and excellent dealer feedback.

10. Until April 2013, HC's staff consisted of three individuals. Anzelmo, who was located in North Carolina, was focused on software development and second tier software field support. Schanin, located in Denver, Colorado, provided all hardware development engineering and performed all operational aspects of the company including manufacturing, sales, accounting, inventory management, purchasing, and field support. Schanin's wife, Suzan Schanin, handled all manufacturing of switch products out of HC's facility operated in the basement of Schanin's home in Denver,

Colorado. Assembly of a typical switch took about an hour and then each switch was extensively tested before shipment.

11. By April 2013, sales had reached a cumulative $750,000. HC's business had grown to the point where Schanin could no longer effectively manage the sales operation and continue to run the remainder of the operation of the company. Sean Greer ("Greer") was hired as HC's National Sales Manager and managed and directed the sales operation of HC. He was hired as an independent contractor salesman and was paid on a commission basis. The trajectory of sales changed little following Greer's hire until January 2014 when the third generation product line was introduced. Sales growth then accelerated.

12. Periodically, Plaintiffs would be contacted by other companies interested in purchasing or investing in HC, but no serious negotiations resulted. However, on September 4, 2013, HC hired a consultant, Tim Dailey, to assist in obtaining financing to maintain and expand HC's operations. No viable investor was located. Greer was aware of this effort and in May 2014, he offered to present information on HC to a potential investor.

13. By June 2014, HC was doing very well and was generating over $320,000 in monthly revenue. Sales were increasing and would support a profitable, viable business, but Plaintiffs decided they were no longer interested in continuing to operate the business, which often required 10 – 12 hour workdays, six days a week. Plaintiffs wanted to ensure that there was ongoing support for dealers who had purchased HC products and sales representatives that had invested significant time and effort to promote and sell HC products. Plaintiffs also wanted to offer Greer an operate opportunity to operate a successful business and become financially successful.

14. Plaintiff and Greer entered into negotiations in June 2014 for the sale of HC to Greer. Greer formed Sales to accept and hold the Membership Interests in HC.

15. Before entering into the sale, Greer was provided with full access to HC's business and sales records and spent several days at Schanin's home working with Suzan Schanin being trained on the manufacture of HC's products, building each of HC's products, and receiving written instruction manuals for the assembly of each HC product. Greer had been the National Sales Manager for more than a year and had extensive knowledge of HC's operations and workings.

16. Because of Greer's weak financial condition, a deal was negotiated that would require no upfront cash payments from Greer to HC and all subsequent payments would be generate from Sales cash flow.

17. Plaintiffs and Sales entered into a Membership Interest Purchase Agreement dated effective July 7, 2014, for the sale and purchase of 100% of the Membership Interests in HydraConnect ("Agreement"). The parties' obligations under the Agreement were to be performed, in substantial part, in Denver, Colorado.

18. Under Section 1.1 of the Agreement, the sale of the Membership Interests included all Assets and Intellectual Property as set out in Exhibit D of the Agreement.

19. Under Section 2.1 of the Agreement, HS paid each of the Plaintiffs $10 on July 7, 204

20. Pursuant to Section 2.2 and Exhibit B of the Agreement, Sales agreed to pay Plaintiffs a total of $141,686.76, secured by the Membership Interests in HC, plus late fees, court costs, and attorney's fees as set forth in the Agreement.

21. Pursuant to Section 2.2 of the Agreement the $141,686.76 was to be paid within 60 days of the closing on the transaction in two payments. The first payment was a good faith partial payment of no less than 15% of the gross revenue for the 30 day period following the closing and was due 30 days after closing. The second payment for the balance was due 60 days after the closing.

22. Under Section 2.3 of the Agreement, Sales agreed to pay Plaintiffs a quarterly royalty as set forth in Exhibits C and E of the Agreement. All royalty payments are to be made on a calendar quarterly basis, within 30 days of the end of the fiscal quarter, and are to be accompanied by a report ("Royalty Report") on the number of units sold that are subject to royalty payment under the Agreement. Upon reasonable notice, Plaintiffs have the right, at their own expense, to audit HydraConnect to validate the Royalty Report.

23. Under Section 3.2 of the Agreement, Plaintiffs agreed to palletize and ship equipment stored in North Carolina using HC's UPS shipping account or other shipping method provided and paid for by Sales.

24. Under Section 3.4 of the Agreement, Plaintiffs agreed to provide the Company free and clear of all accounts payable and all other debts as of the Closing Date.

25. Under Section 9.1, Plaintiffs agreed to migrate the software source code and bug tracking system for the HC products to the cloud (a non-local storage system). In addition, Plaintiffs agreed to provide a copy of all existing software source code and bug tracking databases on the closing date as a zip file transfer from Plaintiffs to Sales.

26. Under Section 9.2, each Plaintiff agreed to provide up to 30 hours of technical support during the 45 day period immediately following the closing.

27. Under Section 10, Sales granted Plaintiffs a security interest in the Membership Interests of HC and agreed to execute and deliver such documents as were necessary to perfect and maintain the security interest as a first priority lien on the Membership Interests of HC. Sales agreed that upon any breach of its obligations under Section 2.2 of the Agreement, Plaintiffs had the right to foreclose on the Membership Interests and take any and all actions permitted a secured lender under the Uniform Commercial Code in effect in the State of Colorado.

28. Under Section 13.8, Plaintiffs represented that HC was in compliance with all applicable laws, including, without limitation, those applicable to environmental, occupational safety and health, trade practices, competition and pricing, and product warranties.

29. Under Section 13.10, Plaintiffs represented that HC had obtained and maintained in full force and effect all Licenses and Permits required to operate HC's business in the ordinary course of business. Licenses and Permits were defined to mean all governmental licenses, permits, franchises, certificates, approvals, and authorizations that relate directly or indirectly to, or necessary for, the conduct of HC's business.

30. Under Section 15.1, Plaintiffs agreed to indemnify, defend, and hold Sales harmless from and against any and all out-of-pocket losses, liabilities, damages, obligations, claims, encumbrances, penalties, costs, assessments or expenses (including expenses of investigation and defense, and reasonable fees and expenses of counsel, of any nature whatsoever (collectively, the "Losses" and individually a "Loss") arising from or in connection with, or otherwise with respect to any breach of any representation, warranty, covenant, or agreement of Plaintiffs contained in the Agreement (15.1.1) and any liability or obligation of any nature of Plaintiffs relating to the operation of HC or its business arising out of transactions entered into or events occurring prior to the closing (15.1.2).

31. Under Section 15.2, Sales agreed to indemnify, defend, and hold Plaintiffs harmless, from and against any Loss sustained, suffered or incurred arising from or in connection with, or otherwise with respect to any breach of any representation, warranty, covenant or agreement of Sales contained in the Agreement (15.2.1), and any liability or obligation of any nature of HC or relating to the operation of the business arising out of transactions entered into or events occurring after the closing 15.2.2).

32. Under Section 15.4.1, the representations and warranties of Plaintiffs and Sales contained in the Agreement and the rights to pursue indemnification under the Agreement survive the closing for a period of one year at which time such representations and warranties automatically expire.

33. Under Section 15.4.2, a Loss does not include any lost profits, consequential or punitive damages, even if the other party has been advised of the possibility of such Loss or damage.

34. All HC products were sold with a five year warranty. However, Plaintiffs did not assume any on-going warranty obligation in the Agreement. Instead, Plaintiffs agreed to transfer $12,239 of free products from HC's inventory to Sales. This credit covered any responsibility Plaintiffs might have for any future warranty claims.

35. In August, 2014, Sales paid Plaintiffs a total of $25,000, $12,500 to each of the Plaintiffs, toward the agreed purchase price. These payments were at least two

weeks late. HS did not provide any documentation that these payments represented 15% of the gross revenue for the 30 day period following the closing.

36. On September 6, 2014, Greer e-mailed Plaintiffs acknowledging that the balance due under the Agreement was $116,686.76. Greer stated that he would mail certified letters with payments of $38,343.38 to each of the Plaintiffs for a total of $76,686.76, postmarked on September 6, 2014. Greer stated that he was holding back $40,000 of the total balance remaining on the Agreement and said this amount would be retained until Plaintiffs were compliant with Section 3.4 of the Agreement by paying all bills owed to HC vendors, including Momentum Data Systems and Premier Manufacturer, which currently showed open debts incurred prior to July 7, 2014.

37. On September 6, 2014, Sales issued check numbers 769 and 770, each in the amount of $38,343.38, drawn on its Wells Fargo checking account purporting to constitute payments by Sales under the Agreement for the benefit of Plaintiffs David Schanin and Anthony Anzelmo, respectively. Plaintiffs received these checks in due course.

38. Plaintiffs perfected their Security Interest in their Membership Interests by filing a UCC Financing Statement with the Colorado Secretary of State's office on September 8, 2014.

39. On September 8, 2014, Schanin's counsel, David Brown, informed Greer that he had inadvertently sent Greer a draft of a letter intended for Schanin setting forth possible courses of action being considered. The draft letter stated that Plaintiffs had filed a Financing Statement with the Colorado Secretary of State's office to perfect their security interest in the Membership Interests of HC in accordance with the Agreement. Also, the letter indicated that Plaintiffs objected to Greer's hold back of $40,000 of the purchase price and said that Greer had no right to hold back $40,000 of the purchase price, but only had the right to seek indemnification from Plaintiffs for any unpaid bills to vendors, pursuant to Section 15.1 of the Agreement, and that Plaintiffs would pay these obligations.

40. Greer issues issued an order to stop payment on both checks on or around September 8, 2014. After communicating with Anzelmo, Greer rescinded the stop payment order on the check to Anzelmo, but not to Schanin. Greer told Anzelmo that Schanin's check would remain stopped until Greer was sure no legal action was pending.

41. Anzelmo received a payment of $38,343.88 from Sales in September 2014. The total amount Anzelmo has received from Sales is $53,843.88. Sales owes Anzelmo $20,000 of his share of the $141,686.76 due under the Agreement.

42. Schanin has received payment of only $12,500 from Sales. Sales owes Schanin $58,343.38 of his share of the $141,686.76 due under the Agreement.

43. Sales paid Plaintiffs a total of $68,843.88 under the Agreement.

44. Schanin received Sales' check, endorsed it, filled out a deposit slip, gave it to his wife, Suzan Schanin, and asked her to deposit the check in his account at Wells Fargo bank.

45. On September 9, 2014, Suzan Schanin took Sales' check to a branch office of the Wells Fargo bank and presented it to a bank teller for deposit. The bank teller refused to accept the check for deposit and indicated that Suzan Schanin should talk to the maker of the check.

46. Anzelmo received payment on the check sent to him. Schanin has not received payment on the check he received.

47. Plaintiffs paid all debt and bills owed by HC that were known to Plaintiffs and Sales and were on HC's books at the time of the closing. The Agreement states that there were no accounts payables at the time of the closing.

48. After the closing, Plaintiffs and Sales became aware of several unpaid bills and invoices for goods or services incurred prior to the closing.

49. Momentum Data Services ("MDS"), an HC vendor, failed to submit two invoices for services provided before the closing. The invoices were submitted on August 14, 2014 and totaled $15,229.20. Schanin mailed a check to MDS for the full amount on August 26, 2014. The check was deposited by MDS on September 2, 12014. Anzelmo informed Greer of the payment and provided copies of the cancelled check showing payment on September 22, 2014.

50. On August 28, 2014, Premier Manufacturing ("Premier") acknowledged to Schanin that it had previously issued duplicate credit memos and submitted the details explaining its error to him. On September 2, 2014, Schanin paid Premier $13,313.50 which paid the account off in full. Deposit of this check in Premier's account was delayed because one of Premier's employees was out of town.

51. Anzelmo informed Greer of the payment to Premier and provided a copy of the cancelled check showing payment on September 22, 2014.

52. Despite Sales' knowledge that Plaintiffs' paid in full the invoices discovered after the closing from MDS and Premier, Sales has continued to hold back all of the $40,000 Sales stated it would retain until these bills were paid.

53. In November 2014, Schanin was contacted by an HC vendor, Safety Labels Solutions, Inc. ("Safety Labels"), about an invoice dated May 13, 2014 for $79.66 that was unpaid. Schanin had not received the invoice previously and the bill was not reflected in HC's books at the time of the closing. After the situation was reviewed by Safety Labels, Schanin was informed that Safety Labels had contacted Greer on July 22, 2014 and again on September 22, 2014 requesting payment. When Safety Labels contacted Sales again on October 27, 2014, Sales paid the invoice. Neither Greer nor Sales informed Plaintiffs about the invoice or requested that Plaintiffs pay it.

54. Pursuant to their indemnity obligation under Section 15.1 of the Agreement, Plaintiffs promptly paid all unpaid invoices from MDS and Premier in 2014 that became known after the closing. The only exception was an invoice owed to HC vendor Safety Labels in the amount of $79.66 that was sent to Greer after the closing and never forwarded to Plaintiffs to be paid. Sales eventually paid the invoice. Plaintiffs acknowledge that the Safety Labels invoice was payable under Section 15.1 of the Agreement, but Sales never informed Plaintiffs of this bill or gave them the opportunity to pay it.

55. In August 2014, a month after the closing, Colorado Electronic Product Design ("CEPD") performed work necessary for the design of a new Sales product, the HMA-16X16BT. CEPD's work was done with Greer's knowledge and consent. In September 2014, Plaintiffs and Greer conducted a review of CEPD's design. CEPD sent a bill for its work in the amount of $2,200 to Schanin, as the former owner of HC. Schanin paid CEPD's bill. Greer promised to reimburse Schanin for this expense but never has.

56. Exhibit B to the Agreement lists the amount of accounts and credit card receivables. There is no provision in the Agreement assigning Plaintiffs any responsibility for Bad Debts. Plaintiffs did not agree to assist in collecting these receivables or pay Sales for any of the receivables that were not collected. Nonetheless, Schanin did assist Sales in trying to collect past due receivables.

57. After the closing, Plaintiffs and Defendant discovered a credit to a customer, Home Synthesis, of $1,188 that each of them had missed in reviewing HC's books and records. Plaintiffs and Defendant agreed to split the total credit. Each would be responsible for paying $594 toward this credit. Plaintiffs acknowledge that they owe Sales $594 for this undiscovered credit.

58. After the closing, $1,362 in charges for UPS delivery services was erroneously charged by Sales to Schanin's HC American Express credit card account.

59. To prevent these erroneous charges, Schanin subsequently closed the HC American Express account but erroneously used HC's Wells Fargo account in lieu of his own account to pay off the $5,847.80 account balance. After the closing, $5,847.80 of charges on HC's American Express account were received for charges made prior to the closing.

60. Plaintiffs has not paid HC a total of $5,052.49 for commissions for all sales representatives, including Greer, for sales commissions earned from June 1 - July 6, 2014.

61. Sales has not paid Plaintiffs any of the quarterly royalty payments required under Section 2.3 of the Agreement nor has Sales provided Plaintiffs with the quarterly Royalty Report setting out the number of units sold that are subject to royalty payment as set forth in Exhibits C and E of the Agreement. Nor have Plaintiffs been permitted to audit HydraConnect to validate the Royalty Report and the royalties due to them. The

accrual-based Sales financial statements and records do not include any accrued liability items for royalties Sales owes to Plaintiffs.

62. Plaintiffs have provided and offered to provide Sales with the up to thirty (30) hours each of technical support during the 45 day period immediately following the closing as required by Section 9.2 of the Agreement. Plaintiffs have not refused to provide Sales with technical support when requested to do so. Sales has either failed to request technical support or has refused Plaintiffs' offers of assistance and support. As a result, Sales has used only a small portion of the 60 total hours of support available under the Agreement.

63. Plaintiffs provided Sales with support and assistance for no charge after the 45 day period set out in the Agreement.

64. Plaintiffs migrated HC's software source code and bug tracking system to the cloud (an off-site based storage facility) as required by Section 9.1 of the Agreement. Plaintiffs also provided copies of all existing source code and bug tracking databases within days of the closing as a zip file transfer from Plaintiffs to Sales.

65. Plaintiffs did not withhold from Sales any existing files or documentation that existed on the date of closing or that Plaintiffs were required under the Agreement to provide to Sales.

66. Pursuant to paragraph e of Exhibit D of the Agreement, Plaintiffs began the process of generating documentation to provide guidance for modifying, supporting, and building HC software - one for the HM products and one for the HS products. However, this process was terminated and further progress prevented by Sales' decision to deny Plaintiffs access to necessary databases and information stored on the cloud.

67. Prior to the filing of this lawsuit, Plaintiffs provided Sales with any documentation and information Sales felt had been omitted from the transfer. Sales did not advise Plaintiffs that any other documentation or information was missing until after the filing of this lawsuit.

68. Plaintiffs provided Sales with all hardware design schematics for all released products. These schematics were fully accurate and complete. Production of HC's products could not happen unless they were. A very small number of component part numbers may have been changed during production from those listed on the schematics, but that documentation was managed by Premier, not HC. Schematics for the new HMA-16X16BT product were incomplete because Sales shut down the project before completion and manufacture of the product began.

69. Plaintiffs provided Sales with layout "Gerbers" and all required design files for every released HC product. These files were fully accurate and complete. Production of HC's products could not happen unless they were. Gerbers are sophisticated "pictures" of each of the many layers of a circuit card showing all of the connections and parts placements. In accordance with industry standard practice,

Gerbers only were produced and reviewed during the design process for HC's products, not complete release packages.

70. Plaintiffs provided Sales with all existing software build and maintain documentation including 26 documents and files delivered on July 7, 2014 which were revised on July 21, 2014 in accordance with Sales' request. Design details and step-by-step build and deploy information were included in extensive files delivered to Sales, including more than 500 source codes, 72,000 lines of code, and 20,000 lines of detailed commentary. Plaintiffs began work on additional documentation to update and explain existing documents, but could not transfer and load this documentation to the cloud because Sales revoked and blocked Plaintiffs' access to Sales' cloud storage account.

71. Plaintiffs had HC's products extensively tested. HC's products complied with all U.S. (Federal Communications Commission ("FCC")) emission standards and all other governmental and industry regulations and standards. This included Canada, the Common Market, Australia, and New Zealand. HC Products also complied with the CE, NMI, and EMC designations and safety testing.

72. Neither the FCC nor any other governmental or industry organization has claimed that HC's products failed to meet all their requirements and all other governmental and industry regulations and standards.

73. None of HC's products in production at the time of the closing of the transfer require additional testing to meet all emission requirements of the FCC or any other governmental or industry regulation or standard.

74. To the extent that Sales now claims that HC's products in production at the time of the closing of the transaction need further testing to comply with governmental or industry regulation, Sales knew of these facts before or shortly after the closing of the transaction and has taken no steps to have the alleged "unauthorized" products tested and has continued to manufacture and sell these products without the additional testing Sales now claims is necessary.

75. Regardless of whether HC's products are used in residential or commercial environments, no listing or approval by Underwriters' Laboratories ("UL") or any other Nationally Recognized Testing Laboratory ("NRTL") is required by the Occupational and Health Administration ("OSHA") for any of HC's products.

76. None of the industry manufacturers whose products compete with HC's products has an UL listing or approval for their products which are similar to and compete with HC's products.

77. The HDBaseT board in HC's products does not generate an HDMI signal – they are generated by the component purchased from Momentum Data Systems ("MDS"). As a result, all of HC's products are covered under the HDMI/HDCP license of MDS. HC, Plaintiffs, and Sales were not and are not required to obtain their own separate HMDI/HDCP license.

78. Prior to the closing of the transaction effective July 7, 2014, HC was not required to become a member of the HDBaseT Alliance in order to use HDBaseT technology in HC's products. Alliance membership at that time was focused on joining a marketing organization for use of the Alliance's logo and claims of interoperability of products between different manufacturers.

79. HC did not become a member of the Alliance because Plaintiffs were not interested in using the Alliance logo, were not concerned with interoperability of HC's products with those of other manufacturers, and felt the cost of membership was too high for the benefits it conferred.

80. If the Alliance were to demand payment of past royalties for the time when Plaintiffs owned HC, based upon HC's sales data through July 2014, such royalties would be less than $100.

81. The Alliance has made no documented demand for payment of back membership fees from 2012 until July 7, 2014. Sales is responsible obtaining and paying for Alliance membership from July 7, 2014 forward.

82. There is no proof that the design of the HDBaseT Board is defective or that the DC to DC converter permits voltage to "spike" from 24 volts to 37 volts and damage the board and cause the unit to fail.

83. There is no risk that the capacitors on the HDBaseT board will "explode" and cause damage to the unit or anything or anyone else.

84. Sales' proposed "solution" of adding a phantom load to the HDBaseT card will overload the DC to DC power supplies in the unit and cause field failures, not reduce or prevent them.

85. Even if the design were defective, there is no proof that Plaintiffs knew of the problem or that an unusually high number of field failures had occurred prior to the closing and Plaintiffs failed to disclose this information prior to the closing of the transaction.

86. Plaintiffs made no representations about the design of HC's products nor did Plaintiffs assume any liability under the Agreement for warranty claims occurring after the closing.

87. There is inadequate proof that the HDBaseT board needs to be recalled, redesigned, repaired or replaced, or the cost of doing so. There is inadequate proof of the number, severity, and cause of field failures of the HDBaseT board that would justify recalling the product and repairing or replacing the units.

88. Plaintiffs have no obligation or liability under the Agreement to pay the cost of recalling, repairing, replacing, or redesigning the HDBaseT boards.

89. Plaintiffs' design was reviewed and approved by Valens Semiconductor, the designer and manufacturer of HDBaseT technology.

90. Redesign of the HDBaseT board is needed only if Sales wishes to obtain HDBaseT certification which is now required for HDBaseT Alliance membership.

91. Sales' estimate of the cost to repair or replace an HDBaseT board is inadequately proven and excessive.

92. There is inadequate proof that the Digital Audio Matrix ("DAM") boards will fail in the field in the future and need to be recalled, repaired, or replaced.

93. Problems that existed during the design and testing phases of the DAM board were resolved before manufacturing began. None of these boards were sold to anyone in the field.

94. Based upon Plaintiffs' well-documented Return Material Authorization ("RMA") and field failure records, there were minimal problems with the DAM boards at the time of the transfer, and very few were returned from customers in the field while Plaintiffs were the owners of HC.

95. Sales' RMA and field failure records are poorly documented and contain little or no detail or specifics as to the customer, serial number, nature, or cause of the problem experienced, or what was done to fix the problem.

96. Sales' records report a sharp and rapid increase in the number of units experiencing problems once Sales' took over from HC as compared to the number and frequency of problems experienced by customers while Plaintiffs owned HC.

97. There is no evidence that Plaintiffs knew and failed to disclose to Sales problems with the DAM board that existed at or before the time of the closing of the transaction.

98. Plaintiffs made no representations about the design of HC's products, including the DAM board. Plaintiffs did not assume any liability under the Agreement for warranty claims occurring after the closing.

99. Plaintiffs have no obligation or liability under the Agreement to pay the cost of recalling, repairing, replacing, or redesigning the DAM board.

100. Sales' estimate of the cost to recall, repair, or replace the DAM board is inadequately proven and excessive.

101. The design and production of the DAM board has remained unchanged since it was finalized, tested and approved by Premier Manufacturing.

102. Plaintiffs did not refuse to palletize the North Carolina equipment as they were required to do under Section 3.2 of the Agreement. Greer decided not to use

UPS' shipping services because they were too expensive. Greer told Anzelmo he would contact Anzelmo with alternative packaging and shipping arrangements, but Greer never did.

103. There is no evidence that HC or Plaintiffs failed to pay any taxes HC owed to any governmental body or agency or failed to file proper identification and reporting forms with any governmental body or agency. up to and through the date of the closing.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court reaches the following Conclusions of Law.

1. ***Sales breached its obligations to Plaintiffs in the Agreement in the following ways:***

(a) Sales breached Section 2.2 of the Agreement by not timely paying Plaintiffs the entire agreed amount of $141, 686.76 within 60 days of the closing of the transaction.

(i) Sales initial payments totaling $25,000 were at least two weeks late and did not provide Plaintiffs with documentation establishing that the amount was at least 15% of HC's gross revenue during the 30 days after the closing;

(ii) Sales' paid Plaintiffs a total of $63,343.43. Anzelmo received $50,843.38 and Schanin received $12,500.

(iii) Sales owes Plaintiffs a total of $78,343.38 of the agreed $141,686.76. Sales owes Schanin $58,343.38 and owes Anzelmo $20,000 of this total amount.

(b) Sales wrongfully and unjustifiably stopped payment on the check made payable to Schanin in the amount of $38,343.38 in violation of C.R.S. § 13-21-109 (1), (6).

(i) Suzan Schanin properly presented this check to the Wells Fargo bank, the bank on which the check was drawn, but deposit and payment on the check was refused due to the stop payment order placed on the check by Greer.

(ii) At the time Sales stopped payment on the check, Sales acknowledged that this amount was due to Schanin under the Agreement. There was no dispute as to this payment within the meaning of C.R.S. § 13-21-109 (1), (6) relating to the money or value obtained by Sales represented by this payment.

(iii) Although there may have been a dispute regarding unpaid accounts payable at the time the payment on the check was stopped, that dispute had nothing to do with HC's value at the time the parties entered into the Agreement. The check on which the stop payment order was issued was to pay half of an amount Sales did not dispute it owed Plaintiffs.

(iv) Sales authorized payment of the check to Anzelmo, even though Sales continued to claim that several accounts payable were still outstanding. Sales stopped payment on the check delivered to Schanin as a tactic to try to forestall Plaintiffs from filing suit for Sales' failure to pay the full purchase price. Consequently, at the time the payment on the check was stopped, there was no "dispute" for purposes of C.R.S. §13-21-109(1), (6). *See* Suncor *Energy (USA), Inc. v. Aspen Petroleum Products, Inc.,* 05 CV 4843, 2006 WL 3877839, at *3 (Colo. Dist. Ct. May 21, 2006).

(v) Sales is liable to Schanin for attorney fees and court costs pursuant to C.R.S. § 13-21-109 (1), (6).

(c) Sales breached Section 2.2 of the Agreement by holding back payment of $40,000 of the agreed purchase price under the Agreement over a dispute concerning unpaid accounts payable.

(i) Sales had no right under the Agreement to withhold payment of the agreed purchase price because of Plaintiffs alleged non-compliance with Section 3.4 of the Agreement that required Plaintiffs to deliver HC free and clear of all accounts payable and debts. Sales' proper remedy was to demand indemnification by Plaintiffs under Sections 15.1 and 15.4.1 of the Agreement.

(ii) Although it was discovered after the closing that, through no fault of Plaintiffs, HC had accounts payable and was not free of debt at the time of the closing. Plaintiffs fulfilled their indemnity obligation to Sales under Section 15.1 by paying accounts payable promptly and fully, with no damage to Sales.

(iii) The only account payable that Plaintiffs did not pay was a $79.66 bill owed to Safety Labels. Sales did not inform Plaintiffs about this invoice or give them an opportunity to pay it. Sales paid Safety Labels, and Plaintiffs must reimburse Sales for this amount.

(iv) Sales breached Section 2.2 of the Agreement by continuing to hold back $40,000 of the purchase price, even though all but the Safety Labels invoice was paid in full by Plaintiffs.

(d) Sales breached Section 2.3 of the Agreement by not paying Plaintiffs the quarterly royalties required and set out in Exhibit C of the Agreement.

(i) Sales failed to provide Plaintiffs with Quarterly Reports of the number of unit sold subject to royalty payments.

(ii) Sales failed to permit Plaintiffs to audit HC for validation of the Quarterly Report.

(e) Pursuant to Section 15.2 of the Agreement, Sales must indemnify Plaintiffs for all Losses, as defined in Section 15.1 of the Agreement, that Plaintiffs have sustained arising out of Sales' foregoing breaches of the Agreement including reasonable fees and expenses of counsel in connection with this lawsuit in an amount to be proven by Plaintiffs post-trial.

(f) Sales breached its promise to Schanin to reimburse him for a payment to Colorado Electronic Products Design of $2,200 for work performed, with Greer's knowledge and consent, on behalf of Sales in connection with the design of a new product.

(g) Sales breached its promise to split the total cost of a credit of $1,188 discovered after the closing owed to a customer, Home Synthesis. Both Plaintiffs and Sales missed this credit in reviewing HC's books and records prior to the closing. Plaintiffs owe Sales $594 for this undiscovered credit.

(h) Plaintiffs owe HC $5,052.49 for sales commissions earned by HC's sales representatives, including Greer, from June 1 through July 6, 2014.

(i) Plaintiffs owe HC $5,847.80 for the erroneously charged balance payoff of HC's American Express Card to HC's Wells Fargo account card before the closing, but received after the closing.

(j) Plaintiffs owe Sales $2,313.39 for adjustment to the valuation of inventory of DAM boards discovered after the closing.

(k) HC owes Plaintiffs $1,362 for UPS bills erroneously charged to and paid by Plaintiffs after the closing.

(l) Plaintiffs are entitled to a credit of $5,767 from Sales for the value of an HM-16X16BT unit used by HC's sales representatives but not returned to Plaintiffs.

(m) Sales failed to prove any of its counterclaims by a preponderance of the evidence and all of its counterclaims are dismissed with prejudice. Specifically, Sales failed to prove the following:

(i) Plaintiffs fraudulently induced Greer and Sales to enter into the Agreement by not disclosing or misrepresenting material information about HC prior to the parties entering into the Agreement.

(A) Greer had been the National Sales Manager for HC for more than a year before entering into the Agreement and was fully cognizant of the HC's business and operations.

(B) Greer was given full access to all of HC's business and financial records before entering into the Agreement.

(C) Greer was trained to manufacture each of the HC's products and actually built each of HC's products before entering into the Agreement.

(ii) Plaintiffs refused to palletize and ship equipment stored in North Carolina using HC's UPS shipping account or other shipping method provided and paid for by Sales.

(A) The evidence supports a finding that Greer decided not to use UPS' shipping services because they were too expensive. Greer failed to provide Plaintiffs with alternative packing and shipping arrangements.

(iii) Plaintiffs refused to provide Sales with technical support. When requested to do so as required by section 9.2 of the Agreement.

(A) The preponderance of the evidence is that sales either fail to request technical support or refuse plaintiffs' offers of assistance and support.

(B) Sales used only a small portion of the 60 total hours of support available to it under the Agreement.

(iv) Plaintiffs did not provide Sales with all files and documentation that existed on the date of closing as required under Section 9.1 of the Agreement.

(A) The evidence indicates that Plaintiffs migrated all such documentation that it had at the time of the closing and that any failure to migrate such information was due to Sales cutting off Plaintiff's access to its database and cloud storage account.

(B) Plaintiffs began the process of generating documentation to provide guidance for modifying and building HC software, but this process was terminated and further progress prevented by Sales' decision to deny Plaintiffs access to necessary databases and information stored on the cloud.

(C) Plaintiffs promptly provided documentation to Sales upon request.

(D) Sales did not advise Plaintiffs that any documentation or information was missing until after the filing of this lawsuit.

(E) Plaintiff provided Sales with all schematics for all released products. These schematics were fully accurate and complete. Only the schematics for the new HMA-16X16 BT product were incomplete because Sales shut down the project before completion and manufacture of the product began.

(F) Plaintiff provided Sales with layout and design files for all released products that were fully accurate and complete.

(G) Plaintiffs provided Sales with all existing build and maintain documentation and delivered extensive documents and files on July 7 and 21, 2014.

(H) Plaintiffs began work on additional documentation to updated and explain existing documents, but could not transfer and load this documentation to the cloud because Sales revoked their access to Sales' cloud storage account.

(v) Plaintiffs misrepresented that HC was in compliance with all applicable laws, including, without limitation, those applicable to environmental, occupational safety and health, trade practices, competition and pricing, and product warranties.

(A) The evidence established that Plaintiffs conducted extensive safety testing on all HC products.

(vi) Plaintiffs had not obtained and maintained all Licenses and Permits required to operate HC's business, including all governmental licenses, permits, certificates, approvals, and authorizations necessary for the conduct of HC's business.

(A) The evidence indicated that Plaintiffs had HC's products extensively tested. HC's products met all emission requirements and other governmental and industry regulation and standards in the US, Canada, Common Market, Australia, and New Zealand as well as the CE, NMI, and EMC designations and safety testing.

(B) The evidence suggests that none of HC's products in production of the time of the closing of the transfer required additional testing to meet any emission requirement of the FCC or any other governmental or industry regulation or standard.

(vii) Plaintiffs failed to obtain approval of HC's products by a Nationally Recognize Testing Laboratory as required by the Occupational and Safety and Health Administration ("OSHA").

(A) The evidence established that no such listing or approval is required by OSHA for use in either residential or commercial environments. None of the other industry manufacturers which compete with HC's products have such a listing or approval.

(viii) Plaintiffs failed to obtain an HDMI/HDCP license for HC's products.

(A) The evidence established that HC's products are covered under the HDMI/HDCP license of Momentum Data Systems, and HC is not required to obtain its own, separate HDMI/HDCP license.

(ix) Plaintiffs failed to purchase a membership in the HDBaseT Alliance and pay the required royalties for use of HDBaseT technology in HC's products.

(A) Up to the date of the closing, membership in the HDBaseT Alliance was not required in order to use HDBaseT technology in HC's products.

(B) Sometime after the closing, the HDBaseT Alliance changed its policy and rules and required membership in the HDBaseT Alliance in order to use HDBaseT technology in HC's products. In November 2014, Sales was informed that it had to become a member of the HDBaseT Alliance.

(C) Sales failed to prove that the HDBaseT Alliance is requiring HC to pay back membership fees and royalties up to July 7, 2014 or the amounts thereof.

(D) Sales is responsible for the cost of Alliance membership and the payment of any royalties after July 7, 2014.

(x) The design of the HDBaseT board is bad.

(A) The DC to DC converter of the board doesn't spike to 37 volts as Sales claims. Plaintiffs had shipped more than 500 units up to the time of the closing without any capacitor failures.

(B) Sales' claim of poor design is based on the data sheet for the wrong part.

(C) The capacitors on the board cannot explode and cause any damage. At most, all or one of the channels in the unit will fail and stop working.

(D) There is no proof that Plaintiffs knew of any problems with the HDBaseT board it was selling at the time of the closing that it should have disclosed to Sales.

(E) Plaintiffs made no representation regarding the design of the HDBaseT board.

(F) Plaintiffs did not assume any responsibility for warranty claims in the Agreement.

(xi) The HDBaseT Board must be redesigned.

(A) Design of the board was reviewed and approved by two outside, third party vendors: Valens Semiconductor and Premier Manufacturing.

(B) The only potential revision to the design might be to change the capacitors to ones with higher voltage rating. Higher voltage capacitors that fit on the board are available at negligible additional cost.

(C) Sales' proposal to add a phantom load to the board is detrimental and will overload the board and cause field failures.

(D) Redesign of the board is only needed if Sales seeks HDBaseT certification. HDBaseT certification is Sales' responsibility and is not an obligation of Plaintiffs under the Agreement.

(E) Sales failed to prove by a preponderance of the evidence the need for a redesign of the HDBaseT board or the cost of doing so. Its cost estimate is inadequately proven and excessive.

(xii) The Digital Audio Matrix ("DAM") Board needs to be recalled and replaced

(A) There is inadequate proof that the DAM boards in the field have failed in the past or will fail in the future.

(B) The DAM boards sold to customers did not have the problems that existed during the design and testing phases and were resolved before manufacturing began.

(C) Plaintiffs' Return Material Authorization ("RMA") and field failure records indicate that there were minimal problems with the DAM boards at the time of transfer and that very few were returned from customers in the field while Plaintiffs were the owners of HC. Consequently, there is no evidence that Plaintiffs knew and failed to disclose to Sales problems with the DAM boards that existed at or before the time of the closing of the transaction.

(D) Sales' records report a sharp and rapid increase in the number of units experiencing problems once Sales took over from HC as compared to the number and frequency of problems experienced by customers while Plaintiffs owned HC. The evidence suggests that this increase in problems may result from a difference in Sales' assembly and/or he parts used in Sales' products.

(E) Plaintiffs made no representations about the design of HC's products, including the DAM board, in the Agreement and did not assume any liability for warranty claims occurring after the closing. Plaintiffs have no obligation or liability under the Agreement to pay the cost of recalling, repairing, replacing, or redesigning the DAM board.

(F) Sales failed to prove the need for a recall, replacement, or redesign of the DAM board or the cost of doing so. Its cost estimate is inadequately proven and excessive.

(G) The design and production of the DAM board has remained unchanged since it was finalized, tested, and approved by Premier Manufacturing while Plaintiffs were the owners of HC.

(xiii) Plaintiffs refused to palletize and ship North Carolina equipment to Sales

(A) Greer decided not to use UPS shipping services because they were too expensive. Greer told Anzelmo he would contact Anzelmo with alternative packaging and shipping arrangements, but Greer never did.

(xiv) Plaintiffs failed to pay taxes HC owed and file necessary tax forms.

(A) Sales did not provide any evidence that Plaintiffs failed to pay any taxes HC owed to any governmental body or agency or failed to y file proper identification and reporting forms to any governmental body agency up to and through the date of closing.

2. ***Section 15.4.3 of the Agreement is an enforceable liquidated damages provision.***

(a) Section 15.4.3 of the Agreement is an enforceable liquidated damages provision because it satisfies the following three elements: (1) the anticipated damages in case of breach were difficult to ascertain at the time the contract was entered into; (2) the parties mutually intended to liquidate damages in advance; and (3) the stated liquidated damages amount is reasonable and proportionate to the presumed injury. Yerton v. Bowden, 762 P.2d 786, 788 (Colo. App. 1988). The 20% cap applies to the amount actually paid by Sales to Plaintiffs, rather than the entire purchase price because of the use of the past-tense term "amount paid" in the Section 15.4.3 applies because all of Defendant's claims are essentially for alleged breaches of representations or warranties.

3. ***The first Yerton element is satisfied because the provision applies to a breach by any party, and it would have been especially difficult to predict the amount of damages that could result from innumerable possible future breaches by Plaintiffs or Defendant. Secondly, it is more reasonable to conclude that this provision, establishing a 20% cap on damages for either party, was intended to liquidate damages, rather than to penalize either party. The third element is satisfied because Sales: 1) retained all royalties; 2) continued to sell allegedly "FCC unauthorized" products, even though this was brought to its attention shortly before (or at most within days) of entering into the Agreement; and 3) continued to holdback $40,000 for bills that Plaintiffs paid in full in 2014 promptly after they were brought to Plaintiffs' attention.***

4. ***Sales' damages on its counterclaims, if any were awardable, would be limited to 20 % of the $ 63,343.43 Sales actually paid to Plaintiffs, that is, $12,668.69.***

5. ***Plaintiffs perfected their Security Interest in their Membership Interests by filing a UCC Financing Statement with the Colorado Secretary of State's office on September 8, 2014.***

6. ***Sales must provide Plaintiffs with quarterly Royalty Reports beginning with the quarter ending September 30, 2014 and continuing to the present and permit Plaintiffs to audit HC for validation of the Royalty reports, including the right to review the design and implementation of any of Sales' new products to determine whether the new products are subject to royalties.***

7. ***Sales must continue to provide Plaintiffs with quarterly Royalty Reports in the future and permit Plaintiffs to audit HC Sales and HC for validation of the Royalty reports in the future, including the right to***

review the design and implication implementation of any of Sales' new products to determine whether the new products are subject to royalties.

8. ***Sales is required to pay Plaintiffs the full amount of all royalties owed for the quarter beginning September 30, 2014, and for each subsequent quarter.***

9. ***This Court finds that Sales breached its obligations under Sections 2.2 and 2.3 of the Agreement.***

10. ***This Court finds that Plaintiffs conduct does not excuse Sales' breach and lack of performance under the Agreement.***

11. ***This Court finds that Plaintiffs have the right under the Agreement to foreclose on their Membership Interests in HC.***

12. ***This Court finds that Plaintiffs have the right under the Agreement to take any and all actions permitted a secured lender under the Uniform Commercial Code in effect in the State of Colorado.***

Dated this ____ of _____, 2015.

BY THE COURT:

_____
District Court Judge