

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

TB FOOD USA, LLC, a  
Delaware Limited Liability  
Company,

Plaintiff,

v.

CASE NO. 2:17-cv-9-FtM-29NPM

AMERICAN MARICULTURE, INC.,  
a Florida Corporation,  
AMERICAN PENAEID, INC., a  
Florida Corporation, and  
ROBIN PEARL,

Defendants.

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AMERICAN MARICULTURE, INC.,  
a Florida Corporation,

Third-Party Plaintiff,

v.

PB LEGACY, INC. a Texas  
Corporation,

Third-Party Defendant.

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**VERDICT FORM**

**COUNT I: TB FOOD'S BREACH OF CONTRACT CLAIMS AGAINST AMI**

We the jury find:

1. TB Food USA, LLC (TB Food) has proven by a preponderance of the evidence its claim that American Mariculture, Inc. (AMI) breached the Nondisclosure Agreement (NDA).

Yes \_\_\_\_\_

No \_\_\_\_\_

2. TB Food has proven by a preponderance of the evidence its claim that AMI breached the Grow-Out Agreement (GOA).

Yes \_\_\_\_\_

No \_\_\_\_\_

3. AMI has proven by a preponderance of the evidence that the Grow-Out Agreement was modified by the handwritten document.

Yes \_\_\_\_\_

No \_\_\_\_\_

If you answered YES to either Question 1 or Question 2, and YES to Question 3, continue with Questions 4 through Question 13 to consider the affirmative defenses relating to the breach of contract claim. If you answered YES to either Question 1 or Question 2, and NO to Question 3, continue with Questions 9 through Question 11 to consider some of the affirmative defenses relating to the breach of contract claim. If you answered NO to both Question 1 and Question 2, your verdict is for AMI on this claim and you should skip Questions 4 through Question 13 and proceed to Question 14.

4. AMI has proven by a preponderance of the evidence that the modification terminated the contractual obligations under the Nondisclosure Agreement and the Grow-Out Agreement.

Yes \_\_\_\_\_ No \_\_\_\_\_

5. AMI has proven by a preponderance of the evidence that the modification constituted an accord and satisfaction.

Yes \_\_\_\_\_ No \_\_\_\_\_

6. AMI has proven by a preponderance of the evidence that the modification constituted a novation.

Yes \_\_\_\_\_ No \_\_\_\_\_

7. AMI has proven by a preponderance of the evidence that the modification constituted a release.

Yes \_\_\_\_\_ No \_\_\_\_\_

8. AMI has proven by a preponderance of the evidence that the modification constituted a waiver of the Primo rights at issue.

Yes \_\_\_\_\_ No \_\_\_\_\_

9. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to whether the handwritten document terminated the Nondisclosure Agreement and the Grow-Out Agreement.

Yes \_\_\_\_\_ No \_\_\_\_\_

10. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to whether the handwritten document gave AMI the right to the shrimp left at its facility after April. 30, 2016.

Yes \_\_\_\_\_ No \_\_\_\_\_

11. AMI has proven by a preponderance of the evidence that the breach of contract claim is barred by the *in pari delicto* defense.

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to any of Questions 4 through Question 11 is YES, your verdict is for AMI on this claim, and you will proceed to Question 14. If your answer to each of Question 4 through Question 11 that you were required to consider is NO, your verdict is for TB Food on this claim, and you will proceed to Question 12 and Question 13.

12. TB Food has proven by a preponderance of the evidence that it suffered the following damages due to the breach of contract(s) found above:

Compensatory Damages: \$ \_\_\_\_\_

Lost Profits: \$ \_\_\_\_\_

Other Special Damages: \$ \_\_\_\_\_

13. AMI has proven by a preponderance of the evidence that

TB Food failed to mitigate its damages, thereby reducing the above damages by the following amounts:

Compensatory Damages: \$ \_\_\_\_\_

Lost Profits: \$ \_\_\_\_\_

Other Special Damages: \$ \_\_\_\_\_

COUNT II: TB FOOD'S DEFAMATION CLAIM AGAINST AMI, API, AND ROBIN PEARL

We the jury find:

14. TB Food has proven by a preponderance of the evidence its defamation claim against AMI.

Yes \_\_\_\_\_ No \_\_\_\_\_

15. TB Food has proven by a preponderance of the evidence its defamation claim against API.

Yes \_\_\_\_\_ No \_\_\_\_\_

16. TB Food has proven by a preponderance of the evidence its defamation claim against Robin Pearl.

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES to any of Questions 14 through Question 16, continue to Question 17 to consider the affirmative defense relating to the defamation claim. If you answered NO to each of

Questions 14 through Question 16, your verdict is for the defendants on this claim and you should skip Questions 17 through Question 19.

If you answered Question 3 YES, you will answer Question 17. If you answered Question 3 NO, skip Question 17 and proceed to Question 18.

**17. Defendants have proven by a preponderance of the evidence that the modification constituted a release.**

**Yes** \_\_\_\_\_

**No** \_\_\_\_\_

If your answer to Question 17 is YES, your verdict is for the defendants on this claim, and you should skip Question 18 and proceed to Question 19. If you have skipped Question 17 or your answer to Question 17 is NO, your verdict is for TB Food on this claim, and you should proceed to Question 18.

**18. TB Food has proven by a preponderance of the evidence that it suffered injury to its business or reputation in the past or to be experienced in the future in the following amount:**

**Compensatory Damages: \$** \_\_\_\_\_

**Count IV: TB FOOD's FEDERAL TRADE SECRET CLAIM AGAINST AMI, API, AND ROBIN PEARL**

We the jury find:

19. TB Food has proven by a preponderance of the evidence its federal misappropriation of a trade secret claim against AMI.

Yes \_\_\_\_\_ No \_\_\_\_\_

20. TB Food has proven by a preponderance of the evidence its federal misappropriation of a trade secret claim against API.

Yes \_\_\_\_\_ No \_\_\_\_\_

21. TB Food has proven by a preponderance of the evidence its federal misappropriation of a trade secret claim against Robin Pearl.

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES to any of Question 19 through Question 21, continue with Questions 22 through Question 26 to consider the affirmative defenses relating to the federal trade secrets claim. If you answered NO to each of Question 19 through Question 21, your verdict is for AMI on this claim, and you should skip Questions 22 to Question 30 and proceed to Question 31.

If you answered Question 3 YES, you will answer Questions 22 through Question 24. If you answered Question 3 NO, skip Question 22 through Question 24 and proceed to Question 25 through Question 26.

22. Defendants have proven by a preponderance of the evidence that the modification constituted a release.

Yes \_\_\_\_\_

No \_\_\_\_\_

23. Defendants have proven by a preponderance of the evidence that the modification constituted a waiver.

Yes \_\_\_\_\_

No \_\_\_\_\_

24. Defendants have proven by a preponderance of the evidence that the modification constituted a novation.

Yes \_\_\_\_\_

No \_\_\_\_\_

25. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to whether it consented to AMI's possession and use of the shrimp.

Yes \_\_\_\_\_

No \_\_\_\_\_

26. AMI has proven by a preponderance of the evidence that the breach of contract claim is barred by the *in pari delicto* defense.



Yes \_\_\_\_\_

No \_\_\_\_\_

If you answered any of Questions 22 through Question 26 that you were required to consider YES, your verdict is for AMI on this claim, and you will proceed to Question 31. If your answer to each of Question 22 through Question 26 that you were required to consider is NO, your verdict is for TB Food on this claim, and you will proceed to Questions 27 through Question 30.

27. TB Food has proven by a preponderance of the evidence that it suffered the following damages due to the federal trade secret violation:

Compensatory Damages: \$ \_\_\_\_\_

28. Defendants has proven by a preponderance of the evidence that TB Food failed to mitigate its damages, thereby reducing the above damages by the following amounts:

Compensatory Damages: \$ \_\_\_\_\_

29. TB Foods has proven by a preponderance of the evidence that one or more Defendants willfully and maliciously misappropriated one or more of Primo's trade secrets?

Robin Pearl: Yes \_\_\_\_\_ No \_\_\_\_\_

AMI: Yes \_\_\_\_\_ No \_\_\_\_\_

API: Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES for any Defendant in Question 29, proceed to Question 30. If you answered NO for all Defendants, proceed to Question 31.

30. What amount of exemplary damages do you award?

Exemplary Damages: \$ \_\_\_\_\_

COUNT V: TB FOOD'S FLORIDA TRADE SECRET CLAIM AGAINST AMI, API, AND ROBIN PEARL

We the jury find:

31. TB Food has proven by a preponderance of the evidence its Florida misappropriation of a trade secret claim against AMI.

Yes \_\_\_\_\_ No \_\_\_\_\_

32. TB Food has proven by a preponderance of the evidence its Florida misappropriation of a trade secret claim against API.

Yes \_\_\_\_\_ No \_\_\_\_\_

33. TB Food has proven by a preponderance of the evidence its Florida misappropriation of a trade secret claim against Robin Pearl.

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES to any of Question 31 through Question 33, continue with Questions 34 through Question 38 to consider the

affirmative defenses relating to the Florida trade secrets claim. If you answered NO to each of Question 31 through Question 33, your verdict is for defendants on this claim, and you should skip Questions 34 through Question 40 and proceed to Question 41.

If you answered Question 3 YES, you will answer Question 34 through Question 36. If you answered Question 3 NO, skip Question 34 through Question 36 and proceed to Question 37 through Question 38.

**34. Defendants have proven by a preponderance of the evidence that the modification constituted a release.**

Yes \_\_\_\_\_

No \_\_\_\_\_

**35. Defendants have proven by a preponderance of the evidence that the modification constituted a waiver.**

Yes \_\_\_\_\_

No \_\_\_\_\_

**36. Defendants have proven by a preponderance of the evidence that the modification constituted a novation.**

Yes \_\_\_\_\_

No \_\_\_\_\_

**37. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to**

whether it consented to AMI's possession and use of the shrimp.

Yes \_\_\_\_\_

No \_\_\_\_\_

38. AMI has proven by a preponderance of the evidence that the breach of contract claim is barred by the *in pari delicto* defense.

Yes \_\_\_\_\_

No \_\_\_\_\_

If your answer any of Questions 34 through Question 38 is YES, your verdict is for defendants on this claim, and you will proceed to Question 41. If your answer to each of Question 34 through Question 38 that you were required to consider is NO, your verdict is for TB Food on this claim, and you will proceed to Question 39 through Question 40.

39. TB Food has proven by a preponderance of the evidence that it suffered the following damages due to the Florida trade secret violation:

Compensatory Damages: \$ \_\_\_\_\_

Exemplary Damages: \$ \_\_\_\_\_

40. Defendants has proven by a preponderance of the evidence that TB Food failed to mitigate its damages, thereby reducing the above damages by the following amounts:

Compensatory Damages: \$ \_\_\_\_\_

Exemplary Damages: \$ \_\_\_\_\_

**COUNT VI: TB FOOD'S FEDERAL FALSE ADVERTISING CLAIM AGAINST  
AMI, API AND ROBIN PEARL**

We the jury find:

41. TB Food has proven by a preponderance of the evidence  
its federal false advertising claim against AMI.

Yes \_\_\_\_\_ No \_\_\_\_\_

42. TB Food has proven by a preponderance of the evidence  
its federal false advertising claim against API.

Yes \_\_\_\_\_ No \_\_\_\_\_

43. TB Food has proven by a preponderance of the evidence  
its federal false advertising claim against Robin Pearl.

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES to any of Question 41 through Question 43,  
continue with Questions 44 through Question 48 to consider the  
affirmative defenses relating to the federal false advertising  
claim. If you answered NO to each of Question 41 through Question  
43, your verdict is for defendants on this claim, and you should  
skip Questions 44 through Question 48 and proceed to Question 51.

If you answered Question 3 YES, you will answer Question 44 through Question 46. If you answered Question 3 NO, skip Question 44 through Question 46 and proceed to Question 47 through Question 48.

44. Defendants have proven by a preponderance of the evidence that the modification constituted a release.

Yes \_\_\_\_\_

No \_\_\_\_\_

45. Defendants have proven by a preponderance of the evidence that the modification constituted a waiver.

Yes \_\_\_\_\_

No \_\_\_\_\_

46. Defendants have proven by a preponderance of the evidence that the modification constituted a novation.

Yes \_\_\_\_\_

No \_\_\_\_\_

47. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to whether it consented to AMI's possession and use of the shrimp.

Yes \_\_\_\_\_

No \_\_\_\_\_

48. AMI has proven by a preponderance of the evidence that the breach of contract claim is barred by the *in pari delicto* defense.

Yes \_\_\_\_\_

No \_\_\_\_\_

If your answer to any of Questions 44 through Question 48 that you were required to consider is YES, your verdict is for defendants on this claim, and you will proceed to Question 51. If your answer to each of Questions 44 through Question 48 that you were required to answer is NO, your verdict is for TB Food on this claim, and you will proceed to Question 49 through Question 50.

49. TB Food has proven by a preponderance of the evidence that it suffered the following damages due to the federal false advertising violation:

Compensatory Damages: \$ \_\_\_\_\_

Exemplary Damages: \$ \_\_\_\_\_

50. Defendants has proven by a preponderance of the evidence that TB Food failed to mitigate its damages, thereby reducing the above damages by the following amounts:

Compensatory Damages: \$ \_\_\_\_\_

Exemplary Damages: \$ \_\_\_\_\_

**COUNT VII AND VIII: TB FOOD'S UNFAIR COMPETITION CLAIMS  
AGAINST AMI, API AND ROBIN PEARL**

We the jury find:

51. TB Food has proven by a preponderance of the evidence  
its unfair competition claims against AMI.

Yes \_\_\_\_\_ No \_\_\_\_\_

52. TB Food has proven by a preponderance of the evidence  
its unfair competition claims against API.

Yes \_\_\_\_\_ No \_\_\_\_\_

53. TB Food has proven by a preponderance of the evidence  
its unfair competition claims against Robin Pearl.

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered YES to any of Question 51 through Question 53, continue with Questions 54 through Question 58 to consider the affirmative defenses relating to the federal and state unfair competition claims. If you answered NO to each of Question 51 through Question 53, your verdict is for AMI on this claim, and you should skip Questions 54 to Question 58 and proceed to Question 61.

If you answered Question 3 YES, you will answer Question 54 through Question 56. If you answered Question 3 NO, skip Question 54



through Question 56 and proceed to Questions 57 through Question 58.

54. Defendants have proven by a preponderance of the evidence that the modification constituted a release.

Yes \_\_\_\_\_

No \_\_\_\_\_

55. Defendants have proven by a preponderance of the evidence that the modification constituted a waiver.

Yes \_\_\_\_\_

No \_\_\_\_\_

56. Defendants have proven by a preponderance of the evidence that the modification constituted a novation.

Yes \_\_\_\_\_

No \_\_\_\_\_

57. AMI has proven by a preponderance of the evidence that TB Food is equitably estopped from bringing its claim because of the change of positions by Primo relating to whether it consented to AMI's possession and use of the shrimp.

Yes \_\_\_\_\_

No \_\_\_\_\_

58. AMI has proven by a preponderance of the evidence that the breach of contract claim is barred by the *in pari delicto* defense.

Yes \_\_\_\_\_

No \_\_\_\_\_

If your answer to any of Questions 54 through Question 58 that you were required to consider is YES, your verdict is for defendants on this claim, and you will proceed to Question 61. If your answer to each of Question 54 through Question 58 that you were required to answer is NO, your verdict is for TB Food on this claim, and you will proceed to Question 61.

**59. TB Food has proven by a preponderance of the evidence that it suffered the following damages due to the federal unfair competition violation:**

**Compensatory Damages: \$ \_\_\_\_\_**

**Exemplary Damages: \$ \_\_\_\_\_**

**60. Defendants has proven by a preponderance of the evidence that TB Food failed to mitigate its damages, thereby reducing the above damages by the following amounts:**

**Compensatory Damages: \$ \_\_\_\_\_**

**Exemplary Damages: \$ \_\_\_\_\_**

**THIRD-PARTY PLAINTIFF AMI'S BREACH OF CONTRACT CLAIM AGAINST PB LEGACY, INC.**

We the jury find:

**61. AMI has proven by a preponderance of the evidence that PB Legacy, Inc. breached the Grow-Out Agreement as originally entered or as modified by the handwritten document.**

**Yes \_\_\_\_\_**

**No \_\_\_\_\_**

If you answered Questions 61 is NO, your verdict is for PB Legacy on this claim, and you should go to the last page, sign and date the document, and return this form to the Court. If you answered YES to Question 61, go to Questions 62 through Question 65.

**62. PB Legacy has proven by a preponderance of the evidence that AMI waived its right to require PB Legacy to perform under the GOA?**

**Yes \_\_\_\_\_**

**No \_\_\_\_\_**

**63. PB Legacy has proven by a preponderance of the evidence that AMI is equitably estopped from asserting its claim.**

**Yes \_\_\_\_\_**

**No \_\_\_\_\_**

**64. PB Legacy has proven by a preponderance of the evidence that AMI ratified PB Legacy's conduct.**

**Yes \_\_\_\_\_**

**No \_\_\_\_\_**

**65. PB Legacy has proven by a preponderance of the evidence that AMI and PB Legacy entered into an accord and satisfaction.**

**Yes \_\_\_\_\_**

**No \_\_\_\_\_**

If you answered any of Questions 62 through Question 65 YES, your verdict is for PB Legacy on this claim. Go to the last page, sign and date the document, and return this form to the Court. If you answered all of Questions 62 through Question 65 NO, your verdict is for AMI on its third-party claim, and you will proceed to Question 66.

**66. AMI has proven by a preponderance of the evidence that it suffered the following damages due to the breach of contract.**

**Compensatory Damages: \$ \_\_\_\_\_**

SO SAY WE ALL.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JURY FOREPERSON