

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 06-CIV-22005-ALTONAGA/TURNOFF

VALOIS OF AMERICA, INC.,  
a Connecticut corporation,

Plaintiff,

v.

ALL AMERICAN CONTAINERS, INC.  
a Florida corporation,

Defendant.

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**DEFENDANT'S ANSWER, DEFENSES, AND  
AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT**

Defendant All American Containers, Inc. ("All American"), by and through undersigned counsel, hereby responds to the correspondingly numbered paragraphs of the First Amended Complaint of Plaintiff Valois of America, Inc. ("Valois") as follows:

1. All American admits that this action purports to seek to recover monies allegedly owed by All American for nasal pumps and actuators designed, manufactured, and sold by Valois. All American further admits that Valois agreed to provide pumps and actuators to All American, and that All American in turn would sell them to Ivax Corporation ("Ivax") for use in connection with a generic nasal spray. All American further admits that Valois and Ivax did not reach an agreement on a

long-term exclusive supply contract. All American denies the remaining allegations of Paragraph 1.

2. All American is without knowledge of the allegations contained in Paragraph 2 concerning the corporate structure of Valois and thus denies same.

3. Admitted.

4. Admitted for jurisdictional purposes only.

5. Admitted for jurisdictional purposes only.

6. Admitted.

7. All American is without knowledge of the allegations contained in Paragraph 7 and thus denies same.

8. All American is without knowledge of the allegations contained in Paragraph 8 and thus denies same.

9. All American is without knowledge of the allegations contained in Paragraph 9 and thus denies same.

10. All American admits that it submitted purchase orders to Valois on or about November 24, 2003, but denies the remaining allegations of this Paragraph.

11. All American admits that it re-sold the pumps and actuators it had purchased from Valois to Ivax for use in a generic nasal spray. All American denies the remaining allegations of Paragraph 11.

12. All American admits that each shipment of pumps and actuators was accompanied by a document entitled "Valois of America, Inc. Standard Terms and Conditions of Sale." All American avers that the referenced document speaks for

itself and, to the extent of any inconsistency between the referenced document and the allegations of Paragraph 12, All American denies those allegations.

13. All American admits that beginning in or around December 2003, Valois and Ivax began negotiations for a five-year exclusive purchase and supply agreement for pumps and actuators. All American further admits that it was to receive discounted pricing on the pumps and actuators, contingent upon certain volume targets. All American denies the remaining allegations of Paragraph 13.

14. All American is without knowledge of the allegations concerning what Ivax could or could not do, and thus denies same. All American admits that Valois continued to ship pumps and actuators to All American during the negotiations between Ivax and Valois, and that these pumps and actuators were then re-sold to Ivax. All American is without knowledge as to what "writing" Valois is referring in its allegation that it "confirmed in writing receipt of the purchase orders," and thus denies these allegations.

15. All American admits that each time Valois shipped pumps and actuators to All American, Valois included an invoice for the pumps and actuators. All American denies the remaining allegations of Paragraph 15.

16. All American admits that it accepted Valois' shipments of pumps and actuators, and that it resold to pumps and actuators to Ivax. All American denies the remaining allegations of Paragraph 16.

17. All American admits that it paid for the pumps and actuators that it received from Valois at the rate of \$625.00 per thousand for pumps and \$225.00 per

thousand for actuators. All American denies the remaining allegations of Paragraph 17.

18. All American admits that Valois continued to ship pumps and actuators to it, and that All American continued to pay for these products at the rate of \$625.00 per thousand for pumps and \$225.00 per thousand for actuators. All American denies the remaining allegations of Paragraph 18.

19. All American admits that the negotiations in connection with a long-term supply agreement, which negotiations included All American, extended past June 2004 without an agreement or agreements being executed.

20. Admitted.

21. Denied.

#### COUNT I

22. All American repeats and realleges its answers to Paragraphs 1 through 21 as if fully set forth herein.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

All American denies that Valois is entitled to any of the relief sought in the "WHEREFORE" clause.

## COUNT II

27. All American repeats and realleges its answers to Paragraphs 1 through 21 as if fully set forth herein.

28. Admitted.

29. Denied.

30. Denied.

31. Denied.

All American denies that Valois is entitled to any of the relief sought in the "WHEREFORE" clause.

All American denies any allegations contained in the First Amended Complaint not specifically admitted herein.

### DEFENSES AND AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a claim upon which relief may be granted.

#### SECOND AFFIRMATIVE DEFENSE

Valois' claim for breach of contract fails because the parties never entered into an enforceable contract. The parties did not intend to be bound unless the price of the products at issue was fixed or agreed, which it was not. Consequently, there was no meeting of the minds on said price, which is a critical term of any purported contract.

### THIRD AFFIRMATIVE DEFENSE

Valois' attempt to collect what it considers to be the contract price for the products at issue fails because said price is not a reasonable price for the products at the time of delivery.

### FOURTH AFFIRMATIVE DEFENSE

Valois' attempt to collect what it considers to be the contract price for the products at issue fails because Valois did not fix said price in good faith.

### FIFTH AFFIRMATIVE DEFENSE

Valois' equitable claim for unjust enrichment is barred because Valois has unclean hands based on its conduct in connection with the contract negotiations involving Valois, All American, and Ivax Corporation.

### SIXTH AFFIRMATIVE DEFENSE

Valois' claims are barred by the doctrine of estoppel because Valois continued to ship the products at issue after being informed that All American did not agree to pay what Valois contends in this lawsuit to be the contract price for said products. Further, All American reasonably relied upon Valois' conduct of (1) continuing to ship said products, and (2) not seeking adequate assurances concerning All American's payment of what Valois contends in this lawsuit to be the contract price for said products.

### SEVENTH AFFIRMATIVE DEFENSE

Valois' claims are barred by the doctrine of waiver because Valois (1) knowingly and voluntarily continued to ship the products at issue after becoming

fully aware that All American did not agree to pay what Valois contends in this lawsuit to be the contract price for said products, and (2) knowingly and voluntarily decided not to seek adequate assurances concerning All American's payment of what Valois contends in this lawsuit to be the contract price for said products.

**EIGHTH AFFIRMATIVE DEFENSE**

Valois' claims are barred by the statute of frauds.

**NINTH AFFIRMATIVE DEFENSE**

Valois' claims are barred because Valois has failed to join Ivax Corporation, which is an indispensable party to Valois' claims.

**TENTH AFFIRMATIVE DEFENSE**

Valois' claims are barred because it suffered no damages, which is a necessary element of its cause(s) of action.

WHEREFORE, Defendant All American demands judgment in its favor against Plaintiff Valois, together with costs and such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Defendant All American demands a jury for any issues so triable.

Respectfully submitted,

MURAI WALD BIONDO MORENO &  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Answer, Defenses, and Affirmative Defenses was electronically filed with the Clerk of Court on this 24th day of November, 2006, using CM/ECF, which will send a Notice of Filing to Natalie J. Carlos, Esq., Co-counsel for Valois, Adorno & Yoss LLP, 2525 Ponce de Leon Boulevard, Suite 400, Miami, FL 33134. I FURTHER CERTIFY that a true copy of the foregoing is being served by email and U.S. Mail to Ellen Robbins, Esq., Co-counsel for Valois, Sidley Austin LLP, One South Dearborn Street, Chicago, IL 60603.

s/ Allen P. Pegg