

**IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI**

<b>THE CURATORS OF THE</b>	)	
<b>UNIVERSITY OF MISSOURI,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 09BA-CV02314</b>
	)	
	)	
<b>GALEN SUPPES, WILLIAM R. SUTTERLIN,</b>	)	<b>JURY TRIAL DEMAND</b>
<b>RENEWABLE ALTERNATIVES, LLC; and</b>	)	
<b>HOMELAND TECHNOLOGIES, LLC,</b>	)	
<b>Defendants.</b>	)	

**DEFENDANTS GALEN SUPPES' AND HOMELAND TECHNOLOGIES, LLC's  
COUNTERCLAIM FOR DAMAGES**

COMES NOW Defendants, Galen Suppes and Homeland Technologies, LLC, by and through their counsel, and for his cause of action against Plaintiff hereby states and alleges as follows:

1. Defendant, Galen Suppes, is a United States citizen, and a resident of Boone County, Missouri. He had been continuously employed, full-time, by the Curators of the University of Missouri, College of Engineering, Department of Chemical Engineering, University of Missouri-Columbia since 2001. He presently resides at 4008 Day Flower Court, Columbia, MO 65203.
2. Defendant Homeland Technologies, LLC (hereinafter "HT") is a Missouri Limited Liability Company registered with the State of Missouri and licensed to do business in the State of Missouri.
3. Under Revised Missouri Statute ' 172.010 et. seq. (RSMo 2004) and pursuant to sections 9(a) and 9(b) of Article IX of the Missouri Constitution, the University of Missouri, an institution of higher education, was incorporated and created as a body politic to be known by the name "The Curators of the University of Missouri.@ The government of the University of

Missouri, thereof, is vested in the Curators of the University of Missouri (hereinafter AUniversity@) which maintains and operates a campus in the City of Columbia, Boone County, Missouri where Defendant Suppes worked and was employed at all times relevant herein. Pursuant to RSMo. ' 172.020, Plaintiff University has the Apower to sue and be sued, complain and defend in all courts.@

4. Plaintiff Mike Nichols is, and at all times relevant herein was Vice-President for Economic Research and Development, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Defendant Suppes' contractual rights at the University of Missouri-Columbia. He may be served at: 321 University Hall, University of Missouri, Columbia, MO 65212.

5. Plaintiff Scott Uhlmann is, and at all times relevant herein was a technology licensing specialist with OTSP and later with TMIR and currently Director of Intellectual Property Administration, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Defendant Suppes' contractual rights at the University of Missouri-Columbia. He may be served at: 425 McReynolds Hall, University of Missouri, Columbia, MO 65212.

6. Plaintiff Wayne McDaniel is, and at all times relevant herein was a technology licensing specialist with OTSP and later with TMIR and currently Senior Licensing and Business Development Associate, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Defendant Suppes' contractual rights at the University of Missouri-Columbia. He may be served at: W1019 Lafferre Hall, University of Missouri, Columbia, MO 65212

7. The elements of the Missouri tort for tortious interference of a business or

employment expectancy are substantial evidence of (a) a valid business or employment expectancy, (b) Defendants' knowledge of the relationship giving rise to the expectancy, (c) loss of that expectancy as a direct result of Defendants' intentional interference, (d) an absence of justification for the Defendants' actions, and (e) damages sustained by the Plaintiff as a result. *Nazeri v. Missouri Valley College*, 860 S. W.2d 303,316 (Mo Banc 1993).

8. The claims in this action arise out of the acts that are alleged to be undertaken and injuries that are alleged to be suffered in Boone County, Missouri.

9. On or about January 2, 2008, Defendant Suppes filed a grievance alleging multiple violations of Plaintiff University=s Collected Rules and Regulations by certain UM System Administrators.

10. On or about January 28, 2009 Defendant Suppes' administrative remedies were exhausted when Plaintiff University, after terminating Defendant Suppes' grievance hearing one day prior to its scheduled hearing date, caused to be filed in Federal District Court for the Western District of Missouri a complaint against all Defendants. Said complaint was dismissed for lack of subject matter jurisdiction.

11. All conditions precedent to the institution of this counterclaim have been fulfilled.

12. The conduct and actions taken against Defendants Suppes and HT were performed by Plaintiff University=s employees, for which Defendant University should be held vicariously liable. Alternatively, to the extent that employees of Plaintiff University engaged in the conduct at issue, Plaintiff University knew or should have known about the hostile and abusive work environment, and Plaintiff University failed and continues to fail to take prompt or appropriate remedial or corrective action in response to the retaliation and hostile work environment. Plaintiff University's employees were, with authority, promulgating and enforcing

the official policy of the University as to the controversy in issue.

13. Defendant Suppes' job performance met legitimate expectations of Plaintiff University and he at all times acted in a manner that was in accordance with the Plaintiff University's Collected Rules and Regulations.

### **COUNT I: BREACH OF CONTRACT**

COMES NOW Defendant Suppes and for Count I of his cause of action states as follows:

14. Defendant Suppes re-alleges and repeats the allegations set forth in paragraphs 1 to 13 and incorporates them herein as if fully set forth.

15. Defendant Suppes' employment as a tenure-track faculty member with a regular appointment is an enforceable contract. The terms of said as contained in the appointment letter stated, inter alia, A that his appointment will be subject to all rules, orders and regulations of the Board of Curators, ...@

16. Pursuant to Plaintiff University's Collected Rules & Regulations, including but not limited to Sections 100.020, 300.010, 310.010, 370.015 (prior to January 2009) and 330.080, Plaintiff University and it agents had the duty to follow its own rules and consider the factors it listed as a basis for honoring Defendant Suppes' academic freedom, to provide a prompt and efficient procedure for fair and equitable resolution of grievances, to treat Defendant Suppes on the basis of his performance, and to provide a positive work and learning environment free from intimidation and harassment.

17. Plaintiff University, in causing Defendant Suppes' grievance to be terminated by filing a lawsuit against Defendant Suppes, violated its own Collected Rules and Regulations as contained in Section 370.015 and thereby breached its employment contract with Defendant.

18. Plaintiff University in not allowing an administrative decision and remedy of the

each of the alleged rule violations by Plaintiff as contained in his grievance, breached its employment contract with Defendant Suppes as to each of the alleged rule violations. (A copy of Defendant Suppes' grievance, labeled as Exhibit A, is attached to the counterclaim and hereby incorporated by reference into this count.)

19. As a consequence, Defendant Suppes was thereby damaged in the following ways:

a. He lost such potential income and royalties in the amount of eight thousand five hundred twenty four and 00/100 dollars (\$8,524.00).

b. He lost his professional reputation and potential for future commercialization opportunities and as a result of said consequential losses suffered a loss of potential future earnings with a present value of one million eight hundred thousand and 00/100 dollars (\$1,800,000.00).

c. His laboratory and research program lost such potential income and royalties in the amount of two hundred forty thousand and 00/100 dollars (\$240,000.00.)

d. His laboratory and research program lost its potential for royalties, future research funding and commercialization opportunities and as a result of said consequential losses suffered a loss of potential future earnings with a present value of nine million five hundred sixty thousand and 00/100 dollars (\$9,560,000.00).

WHEREFORE, Plaintiff prays for judgment against Plaintiff University for the following: his actual, incidental and consequential damages in an amount not less than eleven million six hundred eight thousand and five hundred twenty-four and 00/100 dollars (\$11,608,524.00), plus cost of suit; and for such other and further relief as this Court deems just and proper.

## **COUNT II: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

COMES NOW Defendant Suppes and for Count II of his cause of action states as follows:

20. Defendant re-alleges and repeats the allegations set forth in paragraphs 1 to 19 and by reference make them a part of this claim.

21. As a result of the employer-employee relationship between Defendant Suppes and Plaintiff University, the terms of Defendant's employment contract with Plaintiff University, the expressed and implied promises made in connection with said employment contract and decisions, and the acts, conduct and communications resulting in said promises, Plaintiff University promised to act in good faith toward and deal fairly with Defendant Suppes, which requires, among other things, that:

a. Each party act in good faith toward the other concerning all matters associated with the terms of Defendant=s contract as a tenured professor, his rights as a member of the Faculty, and their duties and obligations under Sections 300.010, 310.010, 370.015, 330.080 and 100.020 of the Collected Rules and Regulations;

b. Each party act in fairness toward the other concerning all matters associated with the terms of Defendant=s contract as a tenured professor, his rights as a member of the Faculty, and their duties and obligations under Sections 300.010, 310.010, 370.015, 330.080 and 100.020 of the Collected Rules and Regulations;

c. Each party would comply with its representations and promises concerning all matters associated with the terms of Defendant=s contract as a tenured professor, his rights as a member of the Faculty, and their duties and obligations under Sections 300.010, 310.010, 370.015, 330.080 and 100.020 of the Collected Rules and Regulations;

and

d. Plaintiff University would give Defendant Suppes' interests the same consideration it gives its own.

22. Defendant University=s refusal to perform under the terms of Defendant Suppes' contract and its own Collected Rules and Regulations, heretobefore mentioned, was wrongful, in bad faith, and in violation of its duties.

23. Defendant University=s breach of the covenant of good faith and fair dealing caused Defendant Suppes to suffer damages and injury.

24. As a direct result and proximate cause of Defendant University=s breach of the covenant of good faith and fair dealing, Defendant Suppes suffered reputational harm and loss of business and professional opportunity, in an amount yet to be determined, but in excess of three hundred thousand dollars (\$300,000.00).

WHEREFORE, Plaintiff prays for judgment against Plaintiff University for an amount which includes Defendant Suppes' actual costs and lost royalties, loss of professional reputation harm, and such other and further relief as the Court deems just and proper.

**COUNT III: TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**  
**(as to Defendants Nichols, Uhlmann and McDaniel)**

COMES NOW Defendants Galen Suppes and Homeland Technologies, LLC and for Count III of its cause of action states as follows:

25. Defendants re-allege and repeat the allegations set forth in paragraphs 1-24 and incorporates them herein as if fully set forth.

26. Defendants had a valid business expectancy that business opportunities with Plaintiff University and other third parties resulting from its patents, inventions and intellectual property would be honored and promoted by these individual Plaintiffs

27. The individual Plaintiffs knew of Defendant's valid business relationship with Plaintiff University and other third parties (e.g. Synergy, MSMC, MRDF).

28. The conduct and intentional interference of the individual Plaintiffs with Defendant's valid business relationship with the University and other third parties were unjustified, malicious and done in bad faith.

29. As a result of these individual plaintiffs conduct, Defendants have suffered and will continue to suffer lost income, lost business opportunities and other damages.

30. By reason of the actions described herein the individual Plaintiffs are liable to these Defendants, jointly and severally, for punitive damages. See e.g. *Kimzey v. Wal-Mart Stores, Inc.* 107 F.3d 568 (8th Cir. 1997), *In re Estate of Latimer*, 913 S.E. 2d 51 (Mo App W.D. 1995).

WHEREFORE, Defendants respectfully prays for judgment against Plaintiffs Nichols, Uhlmann and McDaniel for a sum of money to compensate it for the loss and damage to its business relationships, and punitive damages in an amount set fourth below, and any other appropriate relief necessary to make Defendants whole, and such other legal and equitable relief as this Court deems just and proper.

**COUNT IV: PUNITIVE DAMAGES**  
**(as to Count III)**

31. Defendants Galen Suppes and Homeland Technologies, LLC re-alleges and repeats the allegations set forth in paragraphs 26 to 30 and by reference make them a part of this claim.

32. The Individual Plaintiffs' actions against Defendants were taken with malice, wantonly, willfully, outrageously or with reckless indifference or disregard to Defendants' rights. The individual Plaintiffs participated in the tortious interference with Defendants'

business expectancy.

33. Pursuant to Missouri Rule of Civil Procedure 55.19 Defendants' request for punitive damages is based upon the Individual Plaintiffs' actions in violation of the University's Rules and Regulations and in violations of state law, in that said actions were wanton, willful, outrageous and in reckless disregard to Defendants' rights.

34. A submissible case for punitive damages is made when the elements for tortious interference are satisfied. *Downey v. McKee*, Mo App WD65927 (01/23/2007), quoting *Kerr Constr. Paving Co. v. Khazin*, 961 S.E.2d 75, 82 (Mo. App W.D. 1997), *Boyer v. Grandview Manor Care Ctr, Inc.*, 759 S.W.2d 230, 235 (Mo App W.D. 1980).

35. As a direct result of the Individual Plaintiffs' tortious interference with Defendants' business expectancy, Defendants are entitled to five hundred thousand dollars (\$500,000.00) on Count III.

WHEREFORE, Defendant HT prays judgment against the individual Plaintiffs for punitive damages, and for any other and further orders in an amount as this court deems fair, reasonable and just.

Respectfully Submitted,  
Johnston & Smith, LLC

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<b>GALEN SUPPES, WILLIAM R. SUTTERLIN,</b>	)	<b>JURY TRIAL DEMAND</b>
<b>RENEWABLE ALTERNATIVES, LLC; and</b>	)	
<b>HOMELAND TECHNOLOGIES, LLC,</b>	)	
<b>Defendants.</b>	)	

**MOTION BY SEPARATE DEFENDANTS GALEN SUPPES AND HOMELAND TECHNOLOGIES, LLC FOR JOINDER OF MIKE NICHOLS, SCOTT UHLMANN AND WAYNE McDANIEL AS CO-PLAINTIFFS BECAUSE OF COUNTERCLAIM**

Separate Defendants Galen Suppes and Homeland Technologies, LLC move the court to enter its order pursuant to Missouri Rule of Civil Procedure 55.32(g) bringing in Mike Nichols, Scott Uhlmann, and Wayne McDaniel as additional plaintiffs on Defendants’ counterclaim and to direct that a summons be issued and served upon each of them and requiring each of them to admit, answer or join in the Defendants’ counterclaim in this cause of action. In support of his motion Defendants state that:

1. The petition in this cause is brought by Plaintiff University against these Defendants for the purpose of judgment against them for preliminary and permanent injunctive and declaratory relief, and ostensibly for damages, together with attorney fees and costs for which execution may issue.
2. On June 15<sup>th</sup>, 2009, Defendants Suppes and Homeland Technologies, LLC filed a responsive pleading and counterclaim in the above-styled cause of action.
3. Said counterclaim includes and contains claims and averments seeking to join Mike Nichols, Scott Uhlmann, and Wayne McDaniel, in their official and individual capacities,

as co-plaintiffs to the original action brought by Plaintiff University because in these person's absence complete relief cannot be accorded among those already parties.

4. The presence of Mike Nichols, Scott Uhlmann, and Wayne McDaniel as co-plaintiffs on these Defendants' counterclaim is required under Rules 52.04 and 52.05 in that Defendants' right to relief arises out of the same transactions, occurrences and there are questions of law or fact common to all of them that will arise in this action.

5. Co-Plaintiff Mike Nichols was not named as an individual plaintiff, in his official and individual capacity, in the above-titled action despite the fact that he was the Director of Technology, Management and Industrial Relations was a participant in the business relationships between Defendants and the Missouri Soybean Merchandising Council ("MSMC"), the Mid-America Research and Development Foundation ("MRDF") and Senergy Chemical Corporation (Senergy").

6. Co-Plaintiff Scott Uhlmann was not named as an individual plaintiff, in his official and individual capacity, in the above-titled action despite the fact that he was a technology licensing specialist with OTSP and later with TMIR and he was a participant in the business relationships between Defendants and the Missouri Soybean Merchandising Council ("MSMC"), the Mid-America Research and Development Foundation ("MRDF") and Senergy Chemical Corporation (Senergy").

7. Co-Plaintiff Wayne McDaniel was not named as an individual plaintiff, in his official and individual capacity, in the above-titled action despite the fact that he was technology licensing specialist with OTSP and later with TMIR and he was a participant in the business relationships between Defendants and the Missouri Soybean Merchandising Council ("MSMC"), the Mid-America Research and Development Foundation ("MRDF") and Senergy Chemical

Corporation (Senergy”).

8. Mike Nichols resides and works in Boone County in the State of Missouri; so that jurisdiction of said Mike Nichols can be obtained.

9. Scott Uhlmann resides and works in Boone County in the State of Missouri; so that jurisdiction of said Scott Uhlmann can be obtained.

10. Wayne McDaniel resides and works in Boone County in the State of Missouri; so that jurisdiction of said Wayne McDaniel can be obtained.

WHEREFORE, Defendants Suppes and Homeland Technologies, LLC pray for an order joining the three named persons, in their individual and official capacities, as co-plaintiffs in the above-titled action because of these Defendants’ counterclaim.

JOHNSTON & SMITH, LLC

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*Attorney for Defendant Galen Suppes*

**PROOF OF SERVICE**

The undersigned certifies that a photocopy of this instrument was served upon Russell S. Jones, Sr., Richard Stitt, and Joshua M. McCaig, attorneys for Plaintiff, and Dean Cooper, Attorney for Defendants William R. Sutterlin and Renewal Alternatives, LLC by hand delivery [ ], by facsimile [ ], or by U.S. Mail, postage prepaid [ ], directed to their last known address on the 15th day of June 2009.

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George S. Smith, Mo Bar # 53019

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<b>HOMELAND TECHNOLOGIES, LLC,</b>	)	
<b>Defendants.</b>	)	

**ORDER JOINING MIKE NICHOLS, SCOTT UHLMANN AND WAYNE McDANIEL AS  
CO-PLAINTIFFS BECAUSE OF COUNTERCLAIM**

Upon hearing the motion of Separate Defendant Galen Suppes for an order bringing in Mike Nichols, Scott Uhlmann, and Wayne McDaniel as additional co-Plaintiffs because of the counterclaim asserted by separate Defendant Galen Suppes.

IT IS HEREBY ORDERED that Mike Nichols, Scott Uhlmann, and Wayne McDaniel be brought in as co-Plaintiffs, that a summons be served upon each of them, and that they admit, answer, or join in separate Defendant Galen Suppes' counterclaim.

Dated: \_\_\_\_\_  
Judge \_\_\_\_\_