

1 Kenneth C. Brooks (SBN: 167792)  
2 LAW OFFICES OF KENNETH C. BROOKS  
3 16 Corning Ave., Suite 136  
4 Milpitas, CA 95035  
5 Telephone: (408) 368-7997

6 Attorney for Plaintiff,  
7 Silicon Valley Optics Technology, Inc.

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **ALAMEDA COUNTY**  
10 **UNLIMITED CIVIL JURISDICTION**

11  
12 SILICON VALLEY OPTICS TECHNOLOGY,  
13 INC., a California Corporation,

14 *Plaintiff,*

15 v.

16 LUMICON INTERNATIONAL, LLC, a  
17 California business entity; DEBORAH NEVEUX,  
18 an individual; and DOES 1 through 10, inclusive,

19 *Defendants.*

Case No. HG16842987

THIRD AMENDED COMPLAINT

20  
21  
22 **PARTIES**

23 1. The plaintiff, SILICON VALLEY OPTICS TECHNOLOGY, INC. (hereinafter  
24 “SVOT”), is a corporation organized and existing under the laws of the State of California  
25 registered with the Secretary of State as entity number C2430821 with its principle place of business  
26 in Alameda County.  
27

1 2. Defendant LUMICON INTERNATIONAL, LLC (LUMICON) is, and at all times relevant  
2 herein, purports to be a limited liability company organized and existing under the laws of the State  
3 of California, registered with the Secretary of State and entity number 201226810103 and conducted  
4 business with Plaintiff in Alameda County.

5 3. Defendant DEBORAH NEVEUX (“NEVEUX”) is an individual whom SVOT is informed  
6 and believes resides in Ventura County, California.

7 4. The true names and/or capacities, whether individual, corporate, associate or otherwise, of  
8 Defendants and Does 1 through 10, inclusive, are unknown to SVOT at this time, and who therefore  
9 sue Defendants by such fictitious names, SVOTs are informed and believe and thereupon alleges  
10 that each of the Defendants fictitiously named herein as a DOE is legally responsible, negligently or  
11 in some other actionable manner, for the events and happenings hereinafter referred to, and thereby  
12 proximately and legally caused the injuries and damages to SVOT as hereinafter alleged, the SVOT  
13 will ask leave of court to amend this Complaint to insert the true names and/or capacities of such  
14 fictitiously named Defendants when the same have been ascertained.

15 5. At all times mentioned herein, Defendants and DOES were the agent, employee and  
16 representative of each other, and in doing the things hereinafter alleged, was acting within the  
17 course and scope of such agency, service and representation, and directed, aided and abetted,  
18 authorized or ratified each and every act and conduct hereinafter alleged.

19 6. At all times mentioned herein, Defendants were the co-tortfeasor of each of the other  
20 Defendants in doing the things hereinafter alleged.

21 **VENUE**

22 7. The transactions giving rise to the causes of actions in the complaint occurred in Alameda  
23 County and SVOT is physically present in Alameda County. Further, the written contracts at issue  
24 herein were to be performed in the County of Alameda and more particularly at SVOT’s principle  
25 place of business. Accordingly, this court is the proper venue.  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ALTER EGO ALLEGATIONS**

8. Plaintiff is informed and believes and thereon alleges that LUMICON and DOES 1 through 10, (hereinafter occasionally collectively referred to as the “ALTER EGO ENTITIES”), and each of them, were at all times relevant the *alter ego* corporations of individual defendants NEUVEUX:

(a) Plaintiff is informed and believes and thereon allege that said individual defendant(s), at all times herein mentioned, dominated, influenced and controlled each of the ALTER EGO ENTITIES and the officers thereof as well as the business, property, and affairs of each of said corporations.

(b) Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, there existed and now exists a unity of interest and ownership between said individual defendant(s) and each of the ALTER EGO ENTITIES; the individuality and separateness of said individual defendant(s) and each of the ALTER EGO ENTITIES have ceased.

(c) Plaintiff is informed and believes and thereon alleges that, at all times since the incorporation of each, each and every one of the ALTER EGO ENTITIES has been and now is a mere shell and naked framework which said individual defendant(s) used as a conduit for the conduct of their personal business, property and affairs.

(d) Plaintiff is informed and believe and thereon allege that, at all times herein mentioned, each of the ALTER EGO ENTITIES was created and continued pursuant to a fraudulent plan, scheme and device conceived and operated by said individual defendant(s), whereby the assets, income, revenue and profits of each of the ALTER EGO ENTITIES were diverted by said individual defendant(s) to themselves.

(e) Plaintiff is informed and believe and thereon alleges that, at all times herein mentioned, each of the ALTER EGO ENTITIES was organized by said individual defendants as a device to avoid individual liability and for the purpose of substituting financially irresponsible entities in the place and stead of said individual defendant(s), and accordingly, each of the ALTER EGO

1 ENTITIES was operated with capitalization totally inadequate for the business in which said  
2 corporation was engaged.

### 3 **FACTUAL ALLEGATIONS**

4 9. SVOT is a manufacturer of optical components, such as lens filters, with a manufacturing  
5 plant in Fremont, California.

6 10. SVOT is informed and believes and thereon alleges that LUMICON is a distributor and  
7 reseller of optical components.

8 11. In late 2014 / early 2015, Deborah NEVEUX, an authorized representative of  
9 LUMICON, suggested to officers of SVOT that SVOT should begin as soon as possible  
10 preparations to manufacture various goods which LUMICON desired to order from SVOT, said  
11 orders to be valued in excess of one million United States dollars every 12 to 15 months. Further,  
12 NEVEUX stated that it was desired for SVOT to be the exclusive manufacturer of goods that would  
13 bear the LUMICON trademark.

14 12. During negotiations between LUMICON and SVOT, NEVEUX conveyed a sense of  
15 urgency on the part of SVOT needing to be prepared to commence manufacturing of the goods on  
16 behalf of LUMICON. In turn, this caused SVOT to commence preparation for the impending orders  
17 for goods from LUMICON that resulted in SVOT purchasing new equipment and hiring additional  
18 engineers and technicians for its Research and Development Group to manufacture the goods which  
19 LUMICON would be ordering. Further, given the large quantities of goods that LUMICON desired  
20 for SVOT to manufacture, SVOT provided a substantial discount premised upon manufacturing  
21 efficiencies, economies of scale, and the resulting lower per-unit fixed costs naturally attendant to  
22 large orders.

23 13. In accordance with these verbal statements, LUMICON placed a series of written  
24 Blanket Purchase Orders (BPOs) as follows.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

| PO Date      | PO #   | Amount              | Quantity      |
|--------------|--------|---------------------|---------------|
| 4/21/2015    | 100657 | \$120,000.00        | 2,000         |
| 5/8/2015     | 100658 | \$24,000.00         | 4,000         |
| 5/8/2015     | 100659 | \$24,000.00         | 4,000         |
| 6/8/2015     | 100773 | \$120,000.00        | 2,000         |
| 7/6/2015     | 100779 | \$56,000.00         | 2,000         |
| 7/8/2015     | 100781 | \$120,000.00        | 2,000         |
| 8/5/2015     | 100804 | \$4,000.00          | 4,000         |
| 11/25/2015   | 100835 | \$60,000.00         | 1,000         |
| 11/20/2015   | 100830 | \$8,330.00          | 1,000         |
| 11/23/2015   | 100831 | \$8,330.00          | 1,000         |
| 11/25/2015   | 100841 | \$8,330.00          | 1,000         |
| 11/27/2015   | 100846 | \$7,000.00          | 1,000         |
| 2/26/2016    | 100866 | \$12,000.00         | 2,000         |
|              |        |                     |               |
|              |        |                     |               |
| <b>Total</b> |        | <b>\$591,990.00</b> | <b>27,000</b> |

These orders are attached hereto as Exhibit A. By their own terms, each written BPO committed "Lumicon to complete BPO within 12 to 15 months". Thus, the BPOs committed LUMICON to

1 complete its purchasing of the 27,000 units no later than July 2016 (for the first order) to February  
2 2017 for the last order.

3 14. In furtherance of the "BPOs" mentioned above, LUMICON also placed written  
4 "Release Purchase Orders" (RPOs) that authorized SVOT to "release" (i.e., actually ship) a small  
5 percentage of the goods ordered pursuant the BPOs. These RPOs are summarized as follows and  
6 attached hereto as Exhibit B:

7  
8 SVOT shipped and LUMICON has received all units requested in these RPOs.

9

| PO #      | Date       | Quantity | Amount      |
|-----------|------------|----------|-------------|
| 100657-R1 | 4/21/2015  | 50       | \$ 2,650.00 |
| 100657-R2 | 4/21/2015  | 150      | \$ 9,000.00 |
| 100658-R1 | 5/8/2015   | 200      | \$1,000.00  |
| 100658-R1 | 5/8/2015   | 200      | \$1,400.00  |
| 100659-R1 | 5/8/2015   | 100      | \$ 500.00   |
| 100659-R1 | 5/8/2015   | 100      | \$ 700.00   |
| 100659-R2 | 8/5/2015   | 100      | \$500.00    |
| 100659-R2 | 8/5/2015   | 100      | \$700.00    |
| 100773-R1 | 6/8/2015   | 100      | \$6,000.00  |
| 100779-R1 | 7/6/2015   | 150      | \$4,200.00  |
| 100781-R1 | 7/8/2015   | 100      | \$6,000.00  |
| 100804-R1 | 8/5/2015   | 200      | \$1,000.00  |
| 100804-R1 | 8/5/2015   | 200      | \$1,400.00  |
| 100841-R1 | 11/25/2015 | 100      | \$ 833.00   |
| 100845-R1 | 11/27/2015 | 100      | \$500.00    |
| 100845-R1 | 11/27/2015 | 100      | \$700.00    |
| 100831-R1 | 11/23/2015 | 50       | \$416.50    |
| 100835-R1 | 11/24/2015 | 100      | \$6,000.00  |
| 100846-R1 | 11/27/2015 | 100      | \$700.00    |
| 100866-R1 | 2/29/2016  | 100      | \$500.00    |
| 100866-R1 | 2/26/2016  | 100      | \$700.00    |
|           | TOTAL      | 2500     | \$45,399.50 |

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 15. LUMICON has paid \$5,650 to date for the goods shipped and received.  
27  
28

1 **CAUSE OF ACTION**

2 **FIRST CAUSE OF ACTION**  
3 **BREACH OF WRITTEN CONTRACT**  
4 **(Against All Defendants)**

5 16. SVOT re-alleges and incorporates by reference every allegation contained in paragraphs  
6 1-15 of this Complaint as though set forth herein.

7 17. LUMICON has breached its contracts with SVOT in two ways. First, it has not ordered  
8 all of the 27,000 units it promised to order as per the Blanket Purchase Orders. Second, of the 2,500  
9 units it has ordered totaling \$45,399.50, the amount of \$ 39,749.50 remains unpaid.

10 18. Plaintiff SVOT has been damaged in amount greater than \$631,739.50.

11 19. SVOT has fulfilled the above orders and shipped to LUMICON every item ordered on  
12 every invoice, and SVOT has performed all conditions, covenants, and promises required by it on its  
13 part in accordance with the terms and conditions of the contract.

14 20. Defendants are liable to plaintiff SVOT for LUMICON's breach of contract.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for the damages and relief set forth below:  
17

- 18  
19 1. Compensatory damages according to proof, but in an amount of at least \$631.739.50;  
20 2. Costs of suit; and  
21 3. For such other relief as the Court may deem just and proper.  
22  
23

24 Date: December 12, 2017

LAW OFFICES OF KENNETH C. BROOKS

25  
26 \_\_\_\_\_  
By: Kenneth C. Brooks  
Attorney for Plaintiff  
27  
28