substantial losses or created a significant risk of substantial loss to other persons". 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii).

In the instant case, Defendants violations involving fraud and deceit were numerous and ongoing. Further, Defendants' actions were extreme departures from the securities laws and created a significant risk of substantial loss to investors who purchased Garcis stock based on Defendants' fraudulent behavior. *See also SEC v. Rosenfeld*, 2001 WL 118612 (S.D.N.Y. Jan. 9, 2001). Accordingly, the Court will grant Plaintiff's motion with regard to civil penalties and impose upon each Defendant a $100,000 penalty.

The Court being fully advised,

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment on: (1) Violation of the Anti-fraud provisions of the 1933 Securities Act and the 1934 Exchange Act; (2) Violation of the Registration Provisions of Section 5, (3) Violation of the Credit Extension Provisions of Section 7(f) and Regulation X promulgated thereunder; and (4) Violations of the Section 13(d) of the Securities Act and Section 16 of the Exchange Act. [Dkt. 212].

IT IS FURTHER ORDERED granting Plaintiff's Motion for Injunctive Relief. Defendants Poirier, Palm and Vincent are permanently enjoined from committing future violations of (1) Section 17(a) and 5(c) of the '33 Act; (2) Sections 7(f) and 10(b) of the '34 Act; (3) Rule 10b–5 promulgated under the '34 Act; and (4) Regulation X and Section 7(f) of the '34 Act.

IT IS FURTHER ORDERED granting Plaintiff's Motion for disgorgement of profits and payment of Prejudgment interest in the amount of $2,660,161.

IT IS FURTHER ORDERED granting Plaintiff's Motion for civil penalties. Poirier, Palm and Vincent are each ordered to pay $100,000.

IT IS FURTHER ORDERED that the clerk shall enter final judgment as to Defendants Poirier, Palm and Vincent.

U.S.A. NUTRASOURCE, INC., et al., Plaintiff(s),

v.

CNA INSURANCE COMPANY, et al., Defendant(s).

No. C–00–4536 PJH.

United States District Court, N.D. California.

Feb. 5, 2001.

Insureds brought action in state court against commercial general liability (CGL) insurers, alleging breach of contract, breach of implied covenant of good faith and fair dealing, coverage by estoppel, fraud, negligent misrepresentation, and declaratory relief. Insurers removed action. On insurers' motion to dismiss and motion to strike, the District Court, Hamilton, J., held that: (1) technical defect in summons did not justify dismissal, absent prejudice to insurers; (2) underlying action against insureds for various "advertising injuries," including infringement, was at least partly for "damages," and therefore was potentially covered by liability policy ; (3) insureds stated claim for breach of duty to defend; (4) insureds failed to state claim for breach of duty to indemnify; and (5) insureds stated claims for estoppel, fraud, and negligent misrepresentation.

Motions granted in part, and denied in part.

source, Inc. ("Nutrasource"), Herbsmart, Natural Sourcing Solutions, Inc., and Larry W. Martinez. Defendants are CCC and CNA Insurance Company ("CNA").

According to the complaint, the facts are generally as follows. Plaintiffs purchased a commercial general liability insurance policy from defendants for the period of March 1, 1999, through March 1, 2000. Said policy included liability coverage for claims arising from alleged advertising injuries, including trademark infringement, copyright infringement, misappropriation of style of doing business, etc.

On or about June 15, 1999, Amrion, Inc. ("Amrion") filed a complaint for trademark infringement, copyright infringement, and misappropriation of style of doing business, among other claims, in the United States District Court for the Northern District of California. Immediately thereafter, plaintiffs provided defendants a copy of the complaint filed in the *Amrion* action, as well as other extrinsic facts regarding the claim, and requested that defendants provide them with a defense and indemnification under the terms of their insurance policy.

On September 27, 1999, defendants advised plaintiffs that there was no potential coverage under the insurance policy. Accordingly, defendants refused to provide a defense or indemnity for plaintiffs with regard to the *Amrion* action. Thereafter, plaintiffs retained the law firm of Ropers, Majeski to represent their interests.

However, on February 8, 2000, defendants sent a letter to plaintiffs in which defendants changed their position, accepting their duty to defend and agreeing to pay Ropers, Majeski's prior fees and future fees in connection with the defense of the action.

Notwithstanding the representations made in the February 8, 2000, letter, defendants never paid for plaintiffs' defense costs and failed to actively participate in settlement negotiations for the case. Plaintiffs did, however, ultimately settle the case, sometime in October of 2000.

Around the same time that the *Amrion* action settled, plaintiffs filed the present action against defendants in state court, alleging (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) coverage by estoppel; (4) fraud; (5) negligent misrepresentation; and (6) declaratory relief. Thereafter, defendants removed the action to this court.

CCC now moves to dismiss the action and to strike plaintiffs claims for punitive damages. CCC also now moves to dismiss the action against CNA.

DISCUSSION

I. Motion to Dismiss Pursuant to Rules 12(b)(4) and 12(b)(5)

A. Legal Standard

Federal Rules of Civil Procedure 12(b)(4) and 12(b)(5) ("Rules 12(b)(4) and 12(b)(5)") permit a defendant to challenge the form of summons and the method of service attempted by plaintiff, respectively.

B. CCC's Motion to Dismiss CNA Pursuant to Rules 12(b)(4) and 12(b)(5)

[1] CCC contends that CNA is not a corporation, but rather is a federally registered service mark/tradename used for business and promotional purposes by CCC and other insuring entities. Accordingly, because plaintiffs' summons designated CNA as a corporate entity rather than a tradename, it is defective and dismissal is warranted.

[2] Dismissals for defects in the form of summons are generally disfavored. Such defects are considered "technical" and hence are not a ground for dismissal unless the defendant demonstrates actual prejudice. *See Chan v. Society Expedi-*