

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STONEEAGLE SERVICES, INC.,

Plaintiff,

v.

DAVID GILLMAN, et al.,

Defendants.

§
§
§
§
§
§
§
§
§

Civil Action No. 3:11-CV-2408-P-BD

PLAINTIFF’S SECOND AMENDED COMPLAINT

Plaintiff **STONEEAGLE SERVICES, INC.** (“SES”) hereby complains of Defendants David Gillman (“Gillman”), Talon Transaction Technologies, Inc., a Texas corporation (“T3-TX”), Talon Transaction Technologies, Inc., an Oklahoma corporation (“T3-OK”), and NexPay, Inc., a South Dakota corporation (“NexPay”) (collectively, “Defendants”).

PARTIES, JURISDICTION, AND VENUE

1. SES is a Texas corporation with its principal place of business in Dallas County, Texas.
2. Gillman has previously appeared.
3. T3-TX has previously appeared.
4. T3-OK has previously appeared.
5. NexPay has previously appeared.
6. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States. In addition, the Court has exclusive subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a) because this is an action for patent infringement and a declaration of inventorship arising under Title 35 of the United States Code. The Court also has subject matter jurisdiction under 28 U.S.C. § 1338(b)

because this is an action for unfair competition under the Lanham Act, joined with substantial and related actions for patent and trademark infringement. Finally, the Court has supplemental jurisdiction over the state law claims in this matter pursuant to 28 U.S.C. § 1367.

FACTS

7. **SES Conceived a Medical Payment System Based on SES's Auto Payments System.** SES has long been involved in developing and implementing inventions for the virtual payment systems industry. In 2002, SES began developing a system involved in making a virtual payment through a secured delivery method in the automotive industry, *i.e.*, a method of facilitating warranty payments of automotive-related benefits on behalf of a payor comprising the step of electronically transmitting a stored-value card account payment of the authorized benefit amount concurrently with an explanation of payment (the "Warranty Payments System"). In 2003, SES filed an application for a patent for the Warranty Payments System. The application remains pending.

8. While SES was using the Warranty Payments System to do business in the automotive sector of the virtual payment systems industry, the inventor of that system and SES's current Chairman and Chief Executive Officer, Robert M. Allen ("Allen"), conceived of a new invention: an application of the Auto Payments System to the medical sector that would operate as a proprietary medical benefits payment processing system and accompanying technology (the "Medical Payment System"). Later, at the patent application stage, Allen consulted, among others, Gillman, an individual with knowledge of the medical industry. Allen, however, maintained intellectual domination over, and conceived of the Medical Payment System, both in its development and in its final form as it was put into practice. Gillman participated in consultations after conception to assist Allen with the patent application process and preparation.

9. The Medical Payment System that Allen conceived is comprised of acquiring a primary account number, such as a credit card or debit card number, and merging that account number with an explanation of benefits from a medical benefits payor. The Medical Payment System then facilitates the secured delivery of the primary account number to the payee by secured transmission. The payee's contact information is contained in a database (the "Provider Database") developed through the use of SES/VPay's resources and at SES/VPay's expense.

10. The Medical Payment System also contains various specifically-designed fraud prevention measures and value-based limitations to ensure proper payment of claims. The system then reconciles the primary account numbers with the explanation of benefits in order to identify any unused funds that are subject to return to the payor for redistribution or escheatment. In addition to these features, the system also includes specialized funding mechanisms, transaction identification and routing mechanisms, and software systems that can be tailored to specific account requirements that are unique to individual clients.

11. Combined, the Medical Payment System is a portion of SES's business, which includes SES's pre-funded payment system, post-funded payment system, funds acquisition systems, and all other payment processing systems developed, maintained or operated by SES, including SES's integration of payment processes into a single authorization or issuing platform.

12. **SES Protects its Trade Secrets and Confidential Information.** The systems, processes, information (including the Provider Database), intellectual property, and technology described above or associated with the above-described systems comprise the proprietary and confidential trade secrets of SES (collectively referred to herein as the "Trade Secrets and Confidential Information"). The Trade Secrets and Confidential Information associated with the Medical Payment System were developed by SES at considerable financial cost and near all-

encompassing use of SES's time, facilities, staff, IT, and other resources over a period of nine (9) years.

13. SES utilizes the Trade Secrets and Confidential Information in its business, and in doing so, derives a competitive advantage over its peers in the industry of virtual payment processing. SES rigorously guards the secrecy and proprietary nature of the Trade Secrets and Confidential Information through standard and systematic use of mandatory non-disclosure agreements for all employees, agents and contractors that are granted access to the Trade Secrets and Confidential Information.

14. SES further utilizes a licensing agreement and non-circumvention agreements in its business relationships to protect the Trade Secrets and Confidential Information. SES's employees, prospective strategic partners, a license holder and multiple contractors are also required to adhere to strict corporate security standards, privacy protocols and internet policies, and are required to acknowledge same in writing as a condition of initial employment, and from time-to-time, as a condition to continued employment.

15. SES also safeguards the Trade Secrets and Confidential Information by utilizing secure computer systems and a secure office facility that is monitored by full time security personnel, 24-hour video surveillance, and electronically controlled magnetic locks with individualized access codes. SES also utilizes for its own protection, and the protection of others, the stringent privacy and confidentiality requirements imposed upon SES by PCI Certification and SAS 70, Level II Certification and the updated versions thereof as released from time to time. These certifications, which are required by many payors, demonstrate SES's compliance with stringent industry-based standards for security, privacy, and accounting protocols.

16. As a result of these efforts and others, the Trade Secrets and Confidential Information are not known outside of SES's business, are not generally known by the public, are known by SES's employees on a limited basis, and are not readily discoverable by outside examination as there is no physical product that results from the services provided pursuant to the Trade Secrets and Confidential Information. As a result of SES's diligence in safe-guarding the Trade Secrets and Confidential Information, the Trade Secrets and Confidential Information are not subject to easy duplication.

17. **Gillman and T3-TX Agree to Confidentiality and Non-Disclosure Provisions.** On or about May 1, 2006, SES entered a Mutual Non-Disclosure Agreement (the "Non-Disclosure Agreement") with Gillman, the company he represented at that time (Gillman Software Systems), and its affiliates and subsidiaries (collectively, "Gillman and his Companies"). The Non-Disclosure Agreement gave Gillman and his Companies access to the Trade Secrets and Confidential Information to further explore a prospective business relationship between Gillman and his Companies and SES. A true and correct copy of the Non-Disclosure Agreement is attached hereto as Exhibit A-1, which is attached to the Affidavit of Robert Allen, a true and correct copy of which is attached hereto as Exhibit A.

18. The Non-Disclosure Agreement includes confidentiality and non-disclosure provisions regarding the Trade Secrets and Confidential Information. For instance, Gillman and his Companies and SES agreed that, without SES's prior written approval, Gillman and his Companies would not: (1) disclose, publish, or disseminate the Trade Secrets and Confidential Information to anyone (other than Gillman and his Companies' authorized employees with a demonstrable need to know and binding, written, confidentiality obligations regarding the Trade Secrets and Confidential Information); or (2) authorize anyone else to disclose the Trade Secrets and Confidential Information to others.

19. Gillman and his Companies and SES also agreed that any use by Gillman and his Companies of the Trade Secrets and Confidential Information for purposes other than those of mutual interest as set forth in the Non-Disclosure Agreement were prohibited unless mutually agreed to in writing by SES and Gillman and his Companies. Gillman and his Companies and SES further agreed that: (1) any unauthorized use or disclosure of the Trade Secrets and Confidential Information could constitute unfair competition; (2) that violation of the confidentiality provisions of the Non-Disclosure Agreement concerning the Trade Secrets and Confidential Information would cause “irreparable injury for which there is no adequate remedy at law,” entitling the non-breaching party to “immediate injunctive relief prohibiting such violation”; and (3) that such acts of unfair competition were prohibited even after the Non-Disclosure Agreement’s term had otherwise expired. Finally, Gillman and his Companies agreed to submit to the laws and Courts of the State of Texas in any dispute arising under the Non-Disclosure Agreement.

20. On or about June 29, 2006, SES granted a license to use certain of its Trade Secrets and Confidential Information to Gillman’s now-defunct Texas company, T3-TX (the “2006 Licensing Agreement”). A true and correct copy of the 2006 Licensing Agreement is attached as Exhibit A-2. The enunciated business purpose of T3-TX was to market and utilize the certain Trade Secrets and Confidential Information covered by the 2006 Licensing Agreement.

21. The 2006 Licensing Agreement: (1) broadly defined all confidential and proprietary information to include the Trade Secrets and Confidential Information; (2) obligated the parties to perpetually maintain the Trade Secrets and Confidential Information in the strictest confidentiality; (3) acknowledged that breach of that confidentiality would leave the non-breaching party without an adequate remedy at law; and (4) expressly consented to the

enforcement of the confidentiality provisions by the non-breaching party through a temporary or permanent injunction, as well as damages.

22. Furthermore, SES and T3-TX agreed that the 2006 Licensing Agreement provides that it is binding upon all successors and assigns of SES and T3-TX, and that the parties' successors or assigns must execute any instrument required to that end. Importantly, the 2006 Licensing Agreement specifically provides that "SES is the owner of the subject Technology," *i.e.*, the Medical Payment System, the related Trade Secrets and Confidential Information, and any related technology, among other things.

23. In August 2008, SES and T3-OK formed VPay Assist, Inc. (later changed to VPay, Inc.) ("VPay") to expand customer base and market share. Ownership in VPay was originally split 50/50 between SES and T3-OK.

24. **T3-OK Agreed to Confidentiality and Non-Disclosure Provisions.** The Texas Secretary of State forfeited T3-TX's existence on May 30, 2008, pursuant to Texas Tax Code Section 171.309, because T3-TX failed to pay its franchise taxes (the "Tax Forfeiture"). A true and correct copy of the Tax Forfeiture is attached hereto as Exhibit A-3.

25. The following month, on June 19, 2008, T3-OK was formed. Gillman is T3-OK's President, or was at all relevant times. On January 1, 2010, T3-OK and a third party, SWG Investments, Ltd., signed a Marketing Agreement with regard to the Trade Secrets and Confidential Information. T3-OK's address was listed as 111 West Spring Valley Road, Suite 220, Richardson, Texas 75081 on that Marketing Agreement. A true and correct copy of the Marketing Agreement is attached hereto as Exhibit A-4.

26. The Marketing Agreement contains a Mutual Confidentiality, Non-Disclosure, Non-Circumvention Agreement entered between SES, SWG Investments, Ltd., and T3-OK, through its President, David Gillman (the "Three-Party Non-Disclosure Agreement"). As in the

Marketing Agreement, the Three-Party Non-Disclosure Agreement lists T3-OK's address as 111 West Spring Valley Road, Suite 220, Richardson, Texas 750814 (*sic*). As in the confidentiality and non-disclosure agreements entered by Gillman and T3-TX, the Three-Party Non-Disclosure Agreement binds T3-OK to hold the Trade Secrets and Confidential Information in the strictest confidence and prevent disclosure to all unauthorized third parties.

27. **The Valentines Agreed to Confidentiality Provisions.** Vincent and Jim Valentine (the "Valentines") had been working hand-in-hand with SES's programmers to refine SES's product offerings. In that role, SES disclosed certain aspects of the Trade Secrets and Confidential Information to the Valentines in confidence, and the Valentines knew or should have known that the information was confidential and that they were obligated to maintain it in confidence. As a result, the Valentines were under a duty to keep the Trade Secrets and Confidential Information in the strictest confidence and not to use that information for their own benefit. The Valentines also obtained access to the Trade Secrets and Confidential Information while working for Defendants and were, thus, bound to keep the information confidential as Defendants' agents.

28. In November 2009, SES/VPay formally retained the Valentines as independent contractors and had them execute identical Independent Contractor Agreements (the "IC Agreements") and Confidential Disclosure Agreements (the "Confidentiality Agreements") with VPay. True and correct copies of the executed IC Agreements and Confidential Agreements are attached hereto as Exhibits A-6 and A-7.

29. In the IC Agreements, the Valentines expressly acknowledged the following: (1) T3-OK and/or T3-TX had a vested interest in and a strategic alliance with VPay; (2) VPay and T3-OK and/or T3-TX are bound by security and confidentiality restrictions imposed by SES; (3) the Valentines are bound by all SES corporate security policies and restrictions; (4) the

Valentines are bound by all SES employee handbook policies and restrictions; and (5) the Valentines are bound by the Confidentiality Agreements. Further, the Valentines agreed to the following, among other things: (1) the Valentines would not use the Trade Secrets and Confidential Information for any purpose outside the performance of their duties to VPay; (2) the Valentines would not disclose the Trade Secrets and Confidential Information except in the performance of their duties for VPay; (3) the Valentines, in perpetuity, would not use the Trade Secrets and Confidential Information and would prevent the disclosure of same; and (4) any misappropriation, unauthorized use, or unauthorized disclosure of the Trade Secrets and Confidential Information by the Valentines would cause irreparable harm to VPay, and by extension, SES.

30. After these agreements were entered, VPay (and by extension, SES) provided the Valentines with further access to the Trade Secrets and Confidential Information. Having received the Trade Secrets and Confidential Information while under common law duties and subsequent contractual duties, Defendants colluded with the Valentines to breach their respective obligations, began utilizing the Trade Secrets and Confidential Information for their own gain and that of others, and began disclosing the information to others in such a manner as to risk SES's and VPay's substantial investment in the Trade Secrets and Confidential Information and the competitive advantage derived from that information.

31. **SES Patents the Medical Payment System.** In the years following entry of the confidentiality agreements with Defendants, SES further expanded the scope of, and refined, its Trade Secrets and Confidential Information. Eventually, Allen applied for a United States Patent on December 5, 2006, via patent application number 11/566,930 (the "Application") to protect his rights in that invention. In the Application, Allen listed himself as its sole inventor. Allen sent Gillman one or more drafts of the Application while Allen was preparing it. Gillman only

slightly revised the Application on December 4, 2006, the day before it was filed. Despite the fact that Allen was always listed as the sole inventor on the application, Gillman never once objected or claimed that he was also an inventor of the Medical Payment System prior to the Application's filing.

32. In July 2010, after T3-OK failed to make requested capital contributions to VPay and reimburse SES for SES's significant capital contributions to VPay, Gillman requested that SES buy out T3-OK's interest in VPay, thus making VPay a wholly owned and wholly controlled subsidiary of SES. On July 15, 2010, Gillman, T3-TX, and T3-OK entered an Agreement (the "Patent Release") whereby, among other things, SES refunded Gillman and T3-OK the minimal expenses paid by them, and Defendants:

- "Release[d] any and all claims to any right, title, or interest in the . . . Patent Pending [for the Medical Payment System]";
- "Agree[d] not to challenge or assist others in challenging the, the validity or enforceability of the . . . Patent Pending [for the Medical Payment System]; and
- Assigned and transferred to SES any right, title, or interest that Defendants may have had in the Patent Pending [for the Medical Payment System].

A true and correct copy of the Patent Release is attached hereto as Exhibit A-5. The release bars Defendants from asserting any inventorship or ownership interest in the Medical Payment System and the Patent.

33. On September 7, 2010, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,792,686 B2 entitled "Medical Benefits Payment System," which was reissued on January 1, 2013, as United States Patent Number US RE43,904 E (the "Patent"). A true and correct copy of the Patent is attached as Exhibit B. The Patent protects the invention called the Medical Payment System (absent the Trade Secrets and Confidential Information). Allen is the sole inventor of the invention covered by the Patent and

is listed as the inventor therein. SES is the owner by assignment of all right, title, and interest in and to the Patent, and is listed as the assignee therein.

34. **Defendants Received the Rights to Use the “VPay” and “VCard” Marks.** On July 27, 2010, SES and T3-TX (through Gillman) entered a Service Mark Agreement, whereby SES licensed, *inter alia*, the following service marks to T3-TX: (a) VPay;¹ and (b) VCard.² A true and correct copy of the Service Mark Agreement is attached as Exhibit C. The “VPay” and “VCard” marks are SES’s registered service marks. The marks are inherently distinctive. The “VPay” and “VCard” marks are also protectable due to their acquired secondary meaning (*i.e.*, because they have become distinctive of VPay’s goods in commerce) as signifying processing of virtual payments in the healthcare industry. Also, the marks are fanciful in that “VPay” and “VCard” are coined terms that identify the product facilitated by the Medical Payment System.

35. **Gillman Created a Controversy Regarding Inventorship, Ownership, and Enforceability of Patent.** On or about August 31, 2011, Allen and other representatives from SES were meeting with representatives from a potential investor for SES’s business, which is built on the value of the Medical Payment System, the Patent and the intellectual property rights associated with it, and the Trade Secrets and Confidential Information. SES invited Gillman to the meeting to introduce the potential investor to Gillman, as the representative of the license holder in the technology. When SES’s Patent and the value of the Patent became the subject of discussion, and after hearing that the potential investors associated a great deal of value to the Patent, Gillman suddenly and falsely claimed that it is his patent, that he wrote the Patent, that it is on his computer, and that he “authored” or “wrote” it, or words to that effect. Having

¹ Registered with the United States Patent and Trademark Office on May 20, 2008, at RN: 3,432,014 as an “electronic process of insurance claims and payment data.”

² Registered with the United States Patent and Trademark Office on August 24, 2010, at RN: 3,839,239 as an “electronic process of insurance claims and payment data.”

breached the Patent Release and destroyed further negotiations of the potential investment into SES by creating an actual controversy as to the enforceability of SES's highly valuable Patent and related intellectual property rights, Gillman threw down his business cards and left the meeting. Later, Gillman met directly with the investors without SES's representatives present.

36. Defendants are Caught Using Plaintiff's Trade Secrets and Confidential Information to Compete with SES and Destroy SES's Competitive Edge. With their suspicions aroused by Gillman's conduct in the August 31st meeting, Plaintiff began investigating Gillman's motives in September 2011. Upon investigation, Plaintiff discovered that Defendants were working on setting up a competing product that was virtually identical to VPay utilizing the Trade Secrets and Confidential Information. Specifically, SES learned: (1) in April 2011, Defendants (and the Valentines) approached Rhonda Wallace with NxSystems, Inc. ("NxSystems"), a global payment solutions network provider, for a meeting; (2) later in April, Defendants participated in discussions regarding funding from Administrative Insurance Management Services, Inc. ("AIMS") (an entity which liquidates insurance companies for the State of Texas, and a former client of SES/VPay) that would be a great "first push" (a distribution of payments away from SES's platform) through NxSystems; (3) in June 2011, Defendants participated in a discussion regarding voting on new product and domain names, including VCard, SVP, PromptPay Payment, etc., presumably to compete with VPay; (4) later in June, discussions were had regarding engaging a temporary staffing agency and expanding customer support capabilities (which is a function currently provided by VPay); (5) on or about July 1, 2011, Defendants participated in a demo by NxSystems; (6) on or about July 5, 2011, Defendants participated in discussions regarding First California Bank, presumably a replacement for SES's and VPay's current banking relationship; (7) that same day, Jim Valentine moved certain servers known to contain SES's and VPay's proprietary virtual card numbers from

SES to CoreXchange, a Dallas-based co-location facility (upon notice from SES and VPay that T3-OK would be violating SAS 70, Level II requirements, T3-OK returned a server purportedly returning SES's and VPay's data); (8) on July 29, 2011, Vince Valentine e-mailed Cindy Fink at cfink@fcbank.com (with a copy to Defendants) regarding the second ACH test and processing the test file through the Fed NACHA test system and requested the results; (9) that same day, Fink informed the Defendants that the test had "passed"; (10) Jim Valentine responded "Good work. One more piece to the puzzle"; (11) Gillman responded, "WoooooHooooo!!!!"; (12) that same day, the Defendants participated in e-mail discussions regarding great strides Jim Valentine made regarding the customer user interface; and (13) the same day, the Defendants participated in discussions regarding a mid-August launch date and a meeting between NxSystems, First California Bank, TxVia, Inc. (a processing company that performs similar functions to SES), and T3-OK. A true and correct copy of the e-mails referenced in the previous sentence is attached hereto as Exhibit A-8.

37. These actions demonstrated unequivocally that Defendants and the Valentines were colluding in an attempt to set up a competing company utilizing information and expertise that could have only come from one source — SES/VPay. Without the benefits of the Trade Secrets and Confidential Information — the source of which, and exposure to which, came through the Defendants' and the Valentines' interaction with SES and VPay — Defendants could not and would not have the necessary information and expertise to start this competing enterprise.

38. The risk of Defendants disclosing the Trade Secrets and Confidential Information to third-parties is certain. Therefore, Defendants had to be restrained and enjoined from further discussions and collaboration with the Valentines, NxSystems, FCB, TxVia, and any other third party, or else SES and VPay would forever lose the competitive advantage they secured by

closely guarding the Trade Secrets and Confidential Information and would be harmed irreparably. SES would be left with no adequate remedy at law pursuant to their confidentiality agreements with Defendants and because damages would be difficult to quantify and recover, making any legal remedy illusory. By losing its competitive edge, SES would suffer a far greater hardship than Defendants and the interloping third parties, who would only be denied of trade secrets and confidential information that do not belong to them. And, public policy and public interest would be furthered by granting SES injunctive relief, because public policy and public interest favor the enforcement of contracts and disfavor breaches of contract and the misappropriation of SES's rightfully-held trade secrets.

39. **The Court Entered a Preliminary Injunction Against Defendants.** After SES learned of Defendants' plan to misappropriate SES's Trade Secrets and Confidential Information to set up a competing business, SES filed suit in this matter and sought intervening injunctive relief. *See* Pl.'s Verified Original Compl., etc. (filed September 16, 2011) [Docket No. 2]. On October 14, 2011, the Court entered a preliminary injunction [Docket No. 16] prohibiting Defendants from: (1) using, disclosing, or otherwise capitalizing upon SES's Trade Secrets and Confidential Information other than as permitted in the License; and (2) collaborating with the Valentines and any third party regarding the use or disclosure of SES's Trade Secrets and Confidential Information to set up a competing business based on converting paper-based insurance claim settlements to virtual, electronic settlements. On February 19, 2013, the Court clarified the preliminary injunction to prohibit Defendants from: (1) "using any materials or processes — tangible or intangible — first developed by [SES] for the purposes of directly or indirectly" performing six identified processes; and (2) using eight software programs to the extent that such software was first developed by SES [Docket No. 246].

40. **SES Terminates the License and Service Mark Agreements.** After this lawsuit was filed, SES terminated the 2006 Licensing Agreement on October 17, 2011. Termination of the 2006 Licensing Agreement terminated the Service Mark Agreement. A true and correct copy of the Notice of Termination is attached as Exhibit D.

41. **Defendants Begin Processing Payments for Their Competing Company.** Despite the preliminary injunction and the termination of the 2006 Licensing Agreement and Service Mark Agreement, Defendants continued to use SES's Trade Secrets and Confidential Information and trademarks to setup a competing company to process and distribute virtual payments in the healthcare industry. To facilitate those efforts, Defendants set up a new company: NexPay.

42. From at least December 14, 2011, through February 4, 2012, Defendants and/or NexPay processed over \$900,000 in payments for AIMS (a former client of SES/VPay) using the product name "NexPay" instead of "VPay," the registered service mark for the product that the Medical Payment System facilitates. The payment advice for the NexPay product is substantially identical to the payment advice for the VPay product (which is covered by the Patent), except that the name "VPay" has been replaced with "NexPay." Defendants' use of SES's patented payment advice was and is completely unauthorized, and Defendants have paid SES no royalty for its use.

43. Further, according to documents produced by AIMS in this case, on at least December 14, 2011, December 16, 2011, December 20, 2011, December 21, 2011, February 1, 2012, and February 4, 2012, the Valentines used their @t3vpay.com e-mail addresses on behalf of Defendants to communicate with the President and Chief Executive Officer of AIMS, Jean Johnson, regarding the funds to be processed.

44. In the February 1, 2012 e-mail, Vincent Valentine, as “Programmer” for Defendant T3, forwarded Ms. Johnson an e-mail titled “VPay File Processed – AIM9071212.” The forwarded e-mail was from the “IT Group” at “VPay” at SES/VPay’s address (“111 W. Spring Valley Road. Ste. 220, Richardson, Texas 75081”) and stated that a \$1,546,046.56 AIMS payment file had been loaded “into VPay’s system.” Defendants’ and NexPay’s uses of SES’s patented VPay process, as well as their uses of the registered “VPay” service mark, were wholly unauthorized, and occurred over three months after the 2006 Licensing Agreement and the Service Mark Agreement terminated.

45. Defendants’ conduct in marketing their competing “NexPay” product and using SES’s “VPay” mark actually confused AIMS as to whether the “NexPay” product Defendants sold AIMS was actually SES’s “VPay” product. Defendants used Plaintiff’s marks with the intent to, among other things, deceive purchasers in the marketplace regarding that misrepresentation.

46. **Defendants Shut Off All VPay Processing and Switched VPay Customers to Defendants’ Competing NexPay and QuicRemit Products.** On March 22, 2012, Defendants began processing virtual payments using the product names “NexPay” and “QuicRemit.” Defendants replaced SES/VPay’s functions using third parties including Comdata Network, Inc. and Regions Bank. The NexPay and QuicRemit processes Defendants are selling in the marketplace use and infringe upon SES’s patented Medical Payment System.

47. The payment advice Defendants are using for “NexPay” and “QuicRemit” is substantially identical to SES’s patented payment advice, except for the replacement of “VPay” logo with “NexPay” or “QuicRemit.” Indeed, a “QuicRemit” instruction sheet that SES received from a purchaser whom Defendants had switched to QuicRemit includes the product name “QuicRemit” on the virtual card image, but still has “VPay®” everywhere else, uses the “VCard”

mark, and even includes SES's address and customer service phone number as if they were QuicRemit's. In addition, Defendants told at least one purchaser that VPay had changed its name to QuicRemit.

48. On information and belief, Defendants and NexPay deliberately used the federal registration symbol, ®, in conjunction with the "VPay" mark on the QuicRemit/VPay Instruction Sheet with the intent to deceive or mislead the public. Thus, the QuicRemit/VPay Instruction Sheet demonstrates that: (1) Defendants' "QuicRemit" payment advice and instruction sheets are replicated versions of those patented by VPay; and (2) Defendants' use of SES's "VPay" and "VCard" marks are causing actual confusion in the marketplace between Defendants' competing "QuicRemit" and "NexPay" products and SES's "VPay" product.

49. All conditions precedent to this action have occurred or have been waived or excused.

COUNT ONE: DECLARATORY JUDGMENT

50. SES hereby realleges all of the allegations in the above paragraphs.

51. The above facts show that there is a substantial and actual controversy between the parties in that they assert adverse legal interests regarding the inventorship and enforceability of the Patent, as demonstrated in part by Gillman's behavior at the Meeting, which has caused, and will continue to cause, uncertainty, insecurity, and controversy regarding the inventorship, ownership, and enforceability issues.

52. The controversy is sufficiently immediate and real to warrant the issuance of a declaratory judgment because Gillman is currently disparaging the inventorship, enforceability, and ownership of the Patent, which has already prevented SES from attracting investors or potential purchasers to its business and has impeded its value, and continues to do so. An actual controversy exists between SES and Gillman within the meaning of 28 U.S.C. § 2201. This

Court is vested with the power to declare the rights, status and other legal relations of the parties to this action with reference to the inventorship, enforceability, and ownership issues raised by Gillman and noted in this Complaint to clarify and settle those issues.

53. Gillman is not an inventor or owner of the Patent or its subject matter, and he and the other Defendants have expressly released and waived any contention to the contrary by entering the Patent Release and/or by not objecting to Allen's designation as sole inventor on the draft application for the Patent.

54. Pursuant to 28 U.S.C. § 2201, SES requests that the Court declare that:

- a. SES is the owner of the Patent;
- b. Allen is the sole inventor of the subject matter reflected in the Patent;
- c. Gillman is not the sole or joint inventor of the subject matter reflected in the Patent, in whole or in part;
- d. Gillman is not an owner of the Patent, in whole or in part;
- e. T3-TX is not an owner of the Patent, in whole or in part; and
- f. T3-OK is not an owner of the Patent, in whole or in part.

**COUNT TWO: MISAPPROPRIATION OF TRADE SECRETS AND
CONFIDENTIAL INFORMATION**

55. SES hereby realleges all of the allegations in the above paragraphs.

56. During their association with SES, Defendants acquired SES's Trade Secrets and Confidential Information. The Trade Secrets and Confidential Information were developed at considerable expense to SES, provide SES with a competitive advantage in the marketplace, and are unique and not subject to easy duplication. In addition, the Trade Secrets and Confidential Information are highly sensitive, are not generally known outside of SES's business, are rigorously safeguarded by SES, and were provided to Defendants under express agreements to maintain the confidentiality of the Trade Secrets and Confidential Information while utilizing

same for a limited purpose. The unauthorized use of SES's Trade Secrets and Confidential Information by Defendants violates SES's rights to protect the Trade Secrets and Confidential Information and to preserve the business advantages it gains thereby.

57. SES took steps designed to maintain the confidentiality of the Trade Secrets and Confidential Information, and Defendants acknowledged the confidentiality of the information in the Non-Disclosure Agreement, the 2006 Licensing Agreement, and the Three-Party Non-Disclosure Agreement, respectively. After obtaining SES's Trade Secrets and Confidential Information, Defendants, by their actions described above, violated the Non-Disclosure Agreement, the 2006 Licensing Agreement, and the Three-Party Non-Disclosure Agreement. Defendants, by their actions, have misappropriated and stolen SES's Trade Secrets and Confidential Information, and caused damages to SES in excess of the minimum jurisdictional limits of this Court, for which SES seeks a recovery.

COUNT THREE: BREACH OF CONTRACT — CONFIDENTIALITY

58. SES hereby realleges all of the allegations in the above paragraphs.

59. The Non-Disclosure Agreement, the 2006 Licensing Agreement, and the Three-Party Non-Disclosure Agreement obligate Defendants to maintain the Trade Secrets and Confidential Information in the strictest confidence and to utilize the information solely in the performance of their duties as independent contractors. The Non-Disclosure Agreement, the 2006 Licensing Agreement, and the Three-Party Non-Disclosure Agreement are enforceable and were enforceable at the time they were made. The limitations and requirements in the Non-Disclosure Agreement, the 2006 Licensing Agreement, and the Three-Party Non-Disclosure Agreement are reasonable and are no more restrictive than is necessary to protect the legitimate interest SES has in protecting the Trade Secrets and Confidential Information, all of which was developed by SES at considerable time and expense.

60. As discussed in detail above, Defendants breached the Non-Disclosure Agreement, the 2006 Licensing Agreement, the Three-Party Non-Disclosure Agreement, and SES's security policies. Defendants' conduct has caused and will continue to cause SES damages. Accordingly, SES seeks actual damages from Defendants in excess of the jurisdictional minimum of this Court.

COUNT FOUR: BREACH OF CONTRACT — PATENT

61. SES hereby realleges all of the allegations in the above paragraphs.

62. The Patent Release obligates Defendants to refrain from challenging the validity or enforceability of the Patent or assist others in doing so. The Patent Release is enforceable and was enforceable at the time it was made. The limitations and requirements in the Patent Release are reasonable and are no more restrictive than is necessary to protect the legitimate interest SES has in protecting its rights, title, and interest in the Patent, which was developed by SES at considerable time and expense.

63. As discussed in detail above, Gillman breached the Patent Release. Gillman's conduct has caused and continues to cause SES damages. Accordingly, SES seeks actual damages from Gillman in excess of the jurisdictional minimum of this Court.

COUNT FIVE: PATENT INFRINGEMENT

64. SES hereby incorporates all of the allegations in the paragraphs above.

65. SES is the owner by assignment of all right, title, and interest in and to the Patent, is listed as the assignee therein, and has the full and exclusive right to bring suit to enforce the Patent. Defendants have infringed and continue to infringe on the Patent in violation of 35 U.S.C. § 271 by performing, without authority, one or more of the following acts:

- a. making, using, offering to sell and selling within the United States the invention of one or more claims of the Patent;
- b. inducing infringement of one or more claims of the Patent;

- c. offering to sell or selling within the United States an apparatus for use in practicing the medical benefit payment process covered by the Patent or a material part of that process knowing the same to be especially made or especially adapted for use in infringement of the patent and not a staple article or commodity of commerce suitable for substantial non-infringing use (*i.e.*, contributing the infringement of one or more claims of the Patent); and
- d. offering to sell, selling, or using within the United States one or more products (including but not limited to the “NexPay” and “QuicRemit” products) which are made by the Medical Payment System covered under the Patent during the term of the Patent, and not for a non-commercial use or retail sale of the resulting product for which there is an adequate remedy.

66. Specifically, Defendants are providing to others a product made by the patented Medical Payment System and comprising a method of facilitating payment of health care benefits through electronically transmitting a stored-value card concurrently with an explanation of benefits — the same Medical Payment System process covered by the Patent. Defendants provide those services under the product names “NexPay” and “QuicRemit.” Further, Defendants are actively inducing others to infringe the Patent, including but not limited to Echo Health, Inc., Comdata Network, Inc. a/k/a Comdata Corporation, Regions Financial Corporation, James Valentine, Vincent Valentine, Jennifer Lewis, and/or Tom Davis.

67. The actions of Defendants are willful, deliberate, and wholly unauthorized. Each Defendant has knowledge of the Patent and has not ceased their infringing activities. As a result of the acts of Defendants, SES has suffered and will continue to suffer damages in an amount to be proven at trial. Because Defendants willfully infringed the Patent, SES should be awarded treble damages and its reasonable attorneys’ fees.

**COUNT SIX: SERVICE MARK INFRINGEMENT UNDER
FEDERAL AND TEXAS LAW**

68. SES hereby realleges all of the allegations in the above paragraphs.

69. The “VPay” and “VCard” marks are SES’s registered, protected, fanciful service marks that have obtained a secondary meaning signifying the Medical Payment Process. Defendants have engaged in the unauthorized use of those marks without SES’s permission. Defendants have used the “VPay” and “VCard” marks in connection with their “QuicRemit” and “NexPay” products. The use of the “VPay” and “VCard” marks by Defendants have caused actual confusion in the marketplace on the part of purchasers.

70. Also, there is a likelihood of confusion between SES’s protectable “VPay” and “VCard” marks and the “NexPay” and “QuicRemit” marks of Defendants because:

- a. They are both service marks;
- b. The “VPay” and “NexPay” marks are both fanciful terms that use “Pay” in a two syllable coined term with the same cadence and syllabic stresses;
- c. The products and services represented by the marks are identical in that they are the Medical Payment System and an unauthorized replication of the Medical Payment System;
- d. The sellers and purchasers of the services represented by the marks are substantially identical in that Defendants formerly marketed SES’s VPay product and Defendants are servicing clients which formerly were SES’s clients;
- e. Defendants’ stated intent was to replicate the Medical Payment System and offer it in the marketplace by cutting out SES from the process, and Defendants have already indicated to purchasers in the marketplace that their product is VPay under another name;
- f. Purchasers in the marketplace have suffered actual confusion between the marks; and
- g. Other than changing the name of the product and replacing SES with third parties in the process, there were substantially no changes made to the product or services that would not otherwise be required as a normal part of operating the Medical Payment System.

71. As a result, the consuming public has been and will be confused as to the source of the “NexPay” and “QuicRemit” products based on the actions of Defendants in the market.

72. Further, Defendants' use of SES's "VPay" and "VCard" marks have caused an actual loss of distinctiveness and a possibility that the "VPay" and "VCard" marks will lose their ability to serve as unique identifiers of SES's Medical Payment System. Specifically, SES's inclusion of the "VPay" mark on NexPay and QuicRemit communications and materials actually confused purchasers as to whether the "VPay" mark distinctively represents the Medical Payment System offered by SES as "VPay." The purchasers' confusion shows that Defendants' use of that mark in conjunction with "NexPay" may have caused it to lose its ability to serve as a unique identifier of SES's "VPay" product.

73. In addition, in connection with "NexPay" and "QuicRemit," Defendants have used the "VPay" and "VCard" marks in "NexPay" and "QuicRemit" materials and have told one or more customers that "QuicRemit" is the new name for VPay. Thus, Defendants have used SES's "VPay" and "VCard" marks in connection with their "QuicRemit" and "NexPay" marks to falsely designate the origin of those marks and the services they represent and falsely or misleadingly describe or represent facts regarding those marks and the services they represent. That conduct is likely to cause confusion, mistake or deception as to the affiliation, connection or association of the "VPay" and "VCard" marks with the "QuicRemit" and "NexPay" marks. That conduct is also likely to cause confusion as to the origin, sponsorship or approval of the services represented by those marks and the commercial activities of Defendants. Defendants' conduct constitutes palming off.

74. Defendants' conduct has, and will continue to, result in the unlawful misappropriation of SES's valuable good will. Defendants have unjustly benefited from substantial development efforts undertaken by SES to develop that good will. Defendants should be required to pay as damages a reasonable royalty for their use of SES's good will and disgorgement of Defendants' profits. Given the circumstances of this case and the intentional,

willful, deliberate, or fraudulent conduct of Defendants, the Court should also award treble damages and SES's reasonable attorneys' fees.

COUNT SEVEN: COUNTERFEITING UNDER THE LANHAM ACT

75. SES hereby realleges all of the allegations in the above paragraphs.

76. Defendants have engaged in counterfeiting regarding SES's registered "VPay" and "VCard" marks by using identical marks (or spurious marks that are substantially indistinguishable from those marks) in connection with the sale or distribution of their "QuicRemit" and "NexPay" products and services. Defendants have also engaged in the counterfeit use of the "VPay" and "VCard" marks by falsely associating them with "QuicRemit" and "NexPay" products. Accordingly, Defendants should be held liable to SES for statutory damages. Since Defendants' conduct is malicious, fraudulent, deliberate, or willful, they should also be liable for statutory damages and reasonable attorneys' fees.

COUNT EIGHT: UNFAIR COMPETITION UNDER FEDERAL AND TEXAS LAW

77. SES hereby realleges all of the allegations in the above paragraphs.

78. SES is the owner of the Trade Secrets and Confidential Information. SES is also the owner of the patent which protects the Medical Payment System. SES also owns the "VPay" and "VCard" service marks which are protectable as fanciful, registered marks with a secondary meaning as representing the service facilitated by the Medical Payment System and the virtual card payment option within that system.

79. In derogation of SES's rights, Defendants have intentionally used SES's Patent, Trade Secrets and Confidential Information, and "VPay" and "VCard" marks to unfairly compete with SES. Specifically, Defendants have informed one or more purchasers that VPay changed its name to QuicRemit. Further, Defendants used their knowledge regarding the Trade Secrets and Confidential Information to copy the Medical Payment System and publish, sell,

market and/or license the same without SES's authorization. Furthermore, Defendants have used the "VPay" and "VCard" marks as part of their efforts to copy and publish, sell, otherwise market and/or license the Medical Payment System. Defendant's uses of SES's "VPay" and "VCard" marks are confusingly similar to SES's product, are identical to SES's "VPay" and "VCard" marks, are calculated to cause confusion, mistake and deception in the marketplace, and have caused actual confusion in the marketplace already. Defendants have thus engaged in unfair trade practices and unfair competition against SES, both actionable under Section 43 of the Lanham Act, 15 U.S.C. § 1125. Defendants' actions resulted in and continue to result in the unlawful appropriation of SES's valuable goodwill.

80. In addition, because Defendants have committed the independent torts of statutory fraud (for misusing the federal registration symbol, ®), misappropriation of trade secrets, palming off, Defendants have engaged in unfair competition under Texas common law. Defendants have unjustly benefited from the Patent, the Trade Secrets and Confidential Information, and the "VPay" and "VCard" marks.

81. The conduct of Defendants has caused and continues to cause economic damage to SES, including loss of income wrongfully derived by Defendants due to their acts of infringement and unfair competition. Defendants should be required to pay as damages a reasonable royalty for their use of SES's Trade Secrets and Confidential Information, marks, and Patent and disgorgement of Defendants' profits. In addition, because Defendants acted willfully, SES should be awarded punitive or treble damages and reasonable attorneys' fees.

REQUEST FOR PERMANENT INJUNCTION

82. SES incorporates all of the allegations in the paragraphs above as if set forth fully herein.

83. The above facts establish that the Trade Secrets and Confidential Information are actual trade secrets that are valuable assets of SES protected by the law.

84. In the Non-Disclosure Agreement, Gillman agreed that his violation of the confidentiality of the Trade Secrets and Confidential Information would constitute unfair competition and cause irreparable injury to SES for which there is no adequate remedy at law. In that same Non-Disclosure Agreement, Gillman entitled SES to injunctive relief prohibiting Gilman's violation of the non-disclosure agreement regarding the Trade Secrets and Confidential Information. Thus, injunctive relief is appropriate as to Gillman by his own consent.

85. In the 2006 Licensing Agreement, T3-TX acknowledged that breach of the confidentiality regarding the Trade Secrets and Confidential Information that it took SES over nine years to develop would leave SES without an adequate remedy at law, and expressly consented to SES's enforcement of the confidentiality provisions therein by permanent injunction. Thus, injunctive relief is appropriate as to T3-TX by its own consent.

86. Additionally T3-OK agreed in the Three-Party Non-Disclosure Agreement to hold the Trade Secrets and Confidential Information in confidence. T3-OK broke that promise.

87. The above facts regarding Defendants' recent actions and communications reflect that Defendants have engaged or are about to engage in violations of their respective non-disclosure and confidentiality agreements regarding the Trade Secrets and Confidential Information. Violation of those agreements will cause SES to suffer an irreparable injury by destroying the market edge that SES enjoys as a result of the inherent value of the Trade Secrets and Confidential Information remaining confidential.

88. The irreparable injury threatened to SES cannot be prevented or fully rectified by a final judgment following trial because after that time the inherent value of the Trade Secrets and Confidential Information — their confidential nature — will still be in danger of being lost

through disclosure absent a permanent injunction. Indeed, Defendants' actions in collusion with the Valentines show that disclosure of that information in violation of Defendants' agreements is either imminent or has already occurred, and is threatened to continue to occur despite the Court's preliminary injunction. Gillman's continued claims regarding the alleged weakness of the Patent and SES's rights related thereto have caused confusion and uncertainty in potential buyers, will cause irreparable harm to the Patent and those rights by clouding title to them, and will be difficult or impossible to quantify in terms of damages.

89. SES will have no adequate remedy at law for this injury because any legal remedy would be illusory in that any such remedy could not restore the market edge that SES enjoys as a result of the inherent value of the confidentiality agreements protecting the Trade Secrets and Confidential Information. Moreover, damages would be difficult or impossible to assess as to the unknown third parties that Defendants may be disclosing the Trade Secrets or Confidential Information to, or are preparing to disclose that confidential information to in the immediate future.

90. The above facts reflect that SES has a substantial likelihood of success on the merits of the case, in part because Defendants have either violated or threatened to violate the confidentiality and non-disclosure provisions agreed to regarding the Trade Secrets and Confidential Information. The use of that information by Defendants in this manner violates the permitted uses under their agreements, to the irreparable detriment of SES's market position and reputation. Moreover, the above facts show that SES has a substantial likelihood of success on the merits of its declaratory judgment action because Defendants waived and/or released their right to challenge inventorship, ownership, or enforceability regarding the patented subject matter and the Patent, respectively. The facts also show that SES has a substantial likelihood of success on the merits of its breach of contract claims, because Defendants breached clear

provisions barring their disclosure of the Trade Secrets and Confidential Information and their challenge to the validity or enforceability of the Patent. The facts stated herein will support SES's actual success on the merits of this case.

91. Additionally, the substantial and irreparable injury that SES faces from breach of the confidentiality agreements far outweighs the injury that Defendants would sustain as a result of injunctive relief because breach of the confidentiality agreements would destroy SES's business, which SES is attempting to operate in good faith, whereas injunctive relief would at most prevent Defendants from continuing to operate in violation of the confidentiality agreements and at the expense of SES's Trade Secrets and Confidential Information. Ultimately, Defendants' claims effect SES's business reputation, the damage to which is difficult or impossible to quantify. By losing its competitive edge, SES would suffer a far greater hardship than Defendant and the interloping third parties, who would only be denied the Trade Secrets and Confidential Information they seek to use to SES's injury.

92. Finally, injunctive relief would not adversely affect public policy or the public interest because SES would continue to operate the business and provide its valuable services to the public. And, public policy and public interest would be furthered by granting SES injunctive relief, because public policy and public interest favor the enforcement of contracts and disfavor breaches of contract and the pillaging of SES's rightfully-held trade secrets.

93. NexPay was formed by Gillman and could only have obtained its knowledge of the Trade Secrets and Confidential Information through him and the personnel from T3-TX and T3-OK (including the Valentines) who also work with NexPay. Thus, SES is entitled to a permanent injunction prohibiting Defendants from performing virtual payment processing in the healthcare industry.

94. With regard to SES's trademark infringement claims, Defendants' conduct has caused SES irreparable damage by whittling away at the value of SES's VPay and VCard service marks. Unless Defendants' infringement is enjoined, SES will continue to be irreparably harmed in that manner. Because of the unique and fanciful nature of SES's marks, SES lacks an adequate remedy at law for the damage Defendants are causing to SES's marks. Public policy favors the defense of service mark rights such as SES's rights in the "VPay" and "VCard" marks, and defense of such rights is in the public interest. Thus, a permanent injunction prohibiting Defendants from further infringing upon the "VPay" and "VCard" marks would not adversely affect public policy or the public interest. SES therefore seeks a permanent injunction enjoining Defendant's wrongful actions in commercially using the "VPay" and "VCard" marks and the infringing "NexPay" and "QuicRemit" marks.

95. With regard to SES's patent infringement claims, SES has been irreparably harmed by Defendants' infringement of the Patent and will continue to be harmed by said infringement. SES lacks an adequate remedy at law for this infringement to prevent future infringement as Defendants will continue to infringe the Patent unless enjoined by this Court. Public policy and the public interest favor the enforcement and protection of patent rights. Therefore, pursuant to 35 U.S.C. § 283, SES seeks a permanent injunction prohibiting Defendants from infringing on the Patent.

ATTORNEYS' FEES

96. Because SES seeks to enforce the terms of written contracts between the parties, SES is entitled to recover its attorneys' fees and expenses as permitted under Texas law. TEX. CIV. PRAC. & REM. CODE § 38.001, *et seq.* (Vernon 2008). In addition, SES is entitled to attorneys' fees and expenses under the Non-Disclosure Agreement and 2006 Licensing Agreement.

DEMAND FOR JURY TRIAL

97. SES requests a trial by jury of all issues so triable.

WHEREFORE, SES requests that, on final trial, the Court:

1. enter a permanent injunction:
 - a. prohibiting Defendants, as well as their officers, agents, servants, employees, attorneys, and those in active concert or participation with them, from engaging in any and all activities that involve processing or distributing virtual payments in the health care industry;
 - b. prohibiting Defendants, as well as their officers, agents, servants, employees, attorneys, and those in active concert or participation with them, from commercially using the “VPay” and “VCard” marks and the infringing “NexPay” and “QuicRemit” marks; and
 - c. prohibiting Defendants, as well as their officers, agents, servants, employees, attorneys, and those in active concert or participation with them, from further infringement of the Patent;
2. finding and declaring that:
 - a. SES is the owner of the Patent;
 - b. Allen is the inventor of the subject matter reflected in the Patent;
 - c. Gillman is not the sole or joint inventor of the subject matter reflected in the Patent, in whole or in part;
 - d. Gillman is not an owner of the Patent, in whole or in part;
 - e. T3-TX is not an owner of the Patent, in whole or in part; and
 - f. T3-OK is not an owner of the Patent, in whole or in part;
3. awarding SES damages in an amount to be proven at trial;
4. awarding SES any punitive, exemplary, or treble damages as authorized by law;
5. awarding SES its costs in this action (including all disbursements) and its reasonable and necessary attorneys’ fees;
6. awarding SES pre- and post-judgment interest on all applicable amounts awarded at the applicable rate; and

7. granting SES such other and further relief as the Court may find just and equitable.

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

By: /s/ Beverly A. Whitley

Christopher B. Trowbridge
Texas Bar No. 24008182
christophert@bellnunnally.com
Beverly A. Whitley
beverlyw@bellnunnally.com
Texas Bar No. 21374500
Craig J. Cox
craigc@bellnunnally.com
Texas Bar No. 00790519
R. Heath Cheek
heathc@bellnunnally.com
Texas Bar No. 24053141
Ross A. Williams
Texas Bar No. 24066296
rossw@bellnunnally.com

1400 One McKinney Plaza
3232 McKinney Avenue
Dallas, Texas 75204-2429
Telephone: (214) 740-1400
Telecopier: (214) 740-1499

**ATTORNEYS FOR PLAINTIFF
STONEAGLE SERVICES, INC.**

