

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

STONEEAGLE SERVICES, INC.,

Plaintiff,

v.

**TALON TRANSACTION
TECHNOLOGIES, INC., a Texas
Corporation, TALON TRANSACTION
TECHNOLOGIES, INC., an Oklahoma
Corporation, NEXPAY, INC., and DAVID
GILLMAN,**

Defendants.

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Civil Action No. _____

**PLAINTIFF’S ORIGINAL COMPLAINT
AND REQUEST FOR PRELIMINARY INJUNCTION**

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

PARTIES, JURISDICTION, AND VENUE

1. StoneEagle is a Texas corporation with its principal place of business in Dallas County, Texas.

2. Defendant Talon Transaction Technologies, Inc., a Texas corporation, may be served through its registered agent, E.A. Bedford, at 15455 Dallas Parkway, Suite 525, Addison, Texas 75001, or wherever he may be found.

3. Defendant Talon Transaction Technologies, Inc., an Oklahoma corporation, is a non-resident, foreign corporation that does business in Texas, which may be served through its

registered agent, E.A. Bedford, at 15455 Dallas Parkway, Suite 525, Addison, Texas 75001, or wherever he may be found.

4. Defendant NexPay, a South Dakota corporation, is a non-resident, foreign corporation that does business in Texas, which may be served through its registered agent, E.A. Bedford, Sr., at 15455 N. Dallas Parkway, Suite 525, Addison, Texas 75001-4690.

5. Defendant David Gillman is an individual domiciled in Dallas, Texas and may be served with process at 15455 Dallas Parkway, Suite 600, Addison, Texas 75001, or wherever he may be found.

6. The Court has subject matter jurisdiction because this case arises under the laws of the United States. 28 U.S.C. § 1331. In addition, the Court has exclusive subject matter jurisdiction over this matter because this is an action for patent infringement and a declaration of inventorship arising under Title 35 of the United States Code. *See* 28 U.S.C. § 1338(a); 35 U.S.C. §§ 256, 271. The Court also has subject matter jurisdiction because this is an action for unfair competition under the Lanham Act, joined with substantial and related actions for patent and trademark infringement. 28 U.S.C. § 1338(b). Finally, the Court has supplemental jurisdiction over the state law claims in this matter. 28 U.S.C. § 1367.

DISCLOSURE OF RELATED LITIGATION

7. The parties were involved in related litigation in the case styled *StoneEagle Services, Inc. v. David Gillman, et al.*, Civil Action No. 3:11-CV-2408-P, in the United States District Court for the Northern District of Texas, Dallas Division before the Honorable Judge Jorge Solis (the “Related Case”). On March 26, 2014, the Federal Circuit issued an opinion in an appeal of the related case ordering that the case be dismissed because there was no federal subject matter jurisdiction at the time StoneEagle filed the case. The District Court dismissed the Related Case by Order dated August 29, 2014.

8. On July 13, 2013, T3-TX filed *Talon Transaction Technologies, Inc. v. Robert Allen, Philip Bogner, Brent Allen, Jeffrey Brown, Richard Maxwell, Erika Evans, Oscar Contreras, Zach Ballard, Lynette Lillis, StoneEagle Services, Inc., and VPay, Inc.*, Civil Action No. 4:12-cv-00440, in the Eastern District of Texas, Sherman Division (the “First Database Case”). T3-TX non-suited the First Database Case and on February 27, 2013, NexPay and T3-TX filed *Talon Transaction Technologies, Inc. and NexPay, Inc. v. StoneEagle Services, Inc., VPay, Inc., Robert Mark Allen, Phillip Andrew Bogner, Jeffrey Warren Brown, Richard Alan Maxwell, John Does (1-7), and Jane Does (1-7)*, Civil Action No. 3:13-cv-00902-D, in the United States District Court for the Northern District of Texas, Dallas Division before the Honorable Judge Jorge Solis (the “Second Database Case”). NexPay and T3-TX filed claims for various violations of the Computer Fraud and Abuse Act, but also a claim for misappropriation of trade secrets whereby it claimed ownership of the provider database and other purported trade secrets.

FACTS

9. **StoneEagle Conceived a Medical Payment System Based on Its Auto Payments System.** In 2002, StoneEagle 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, StoneEagle filed an application for a patent for the Warranty Payments System. The application remains pending.

10. In late 2005, StoneEagle’s current Chairman and Chief Executive Officer, Robert M. Allen, began looking for applications for his virtual payment technology in other industries

and conceived of a new invention: an application of the Auto Payments System to the healthcare industry that would operate as a proprietary medical benefits payment processing system and accompanying technology (the “Medical Payment System”). In the spring 2006, Allen met with Gillman about building out and marketing the Medical Payment System.

11. **The Parties Reach Agreements to Protect StoneEagle’s Rights in the Medical Payment System.** On or about May 1, 2006, StoneEagle 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. A true and correct copy of the Non-Disclosure Agreement is attached hereto as Exhibit A.

12. On or about June 29, 2006, StoneEagle granted a license to use StoneEagle’s technology to Gillman’s Texas company, T3-TX (the “License”). A true and correct copy of the License is attached as Exhibit B. The enunciated business purpose of T3-TX was to market the technology covered by the License. The License specifically provides that “[StoneEagle] is the owner of the subject Technology,” *i.e.*, the Medical Payment System and any related technology, among other things. The definition of “Technology” expressly includes all “improvements” to the technology. At the time of the License, Defendants did not possess the ability to create or process virtual payments.

13. T3-TX agreed that the License provides that it is binding upon all successors and assigns of T3-TX, and that the parties’ successors or assigns must execute any instrument required to that end.

14. In August 2008, StoneEagle and T3-OK formed VPay Assist, Inc. (later changed to VPay, Inc.) (“VPay”). StoneEagle and T3-OK each owned 50% of VPay.

15. **StoneEagle Continues Development on the Medical Payment System.** After signing the License, StoneEagle, T3, and Gillman conducted an extensive trial and error process

to effectuate Allen's invention. Despite Gillman's involvement, Allen 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.

16. The Medical Payment System 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 delivery of the primary account number to the payee by secured transmission. The payee's contact information and payment preferences are contained in a database (the "Provider Database") developed using StoneEagle/VPay's resources and funds. The Medical Payment System includes both StoneEagle's patented process and the trade secrets needed to effectuate the process.

17. **StoneEagle Patents the Medical Payment System.** On December 5, 2006, Allen applied for a United States Patent via patent application number 11/566,930 (the "Application") to protect his rights in the Medical Payment System. In the Application, Allen listed himself as its sole inventor. Allen sent Gillman and Vince Valentine 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. Vince Valentine provided some of the drawings used in the Application. 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.

18. In July 2010, after T3-OK failed to make requested capital contributions to VPay and reimburse StoneEagle for StoneEagle's significant capital contributions to VPay, Gillman requested that StoneEagle buy out T3-OK's interest in VPay, thus making VPay a wholly owned and wholly controlled subsidiary of StoneEagle. On July 15, 2010, Gillman, T3-TX, and T3-OK

entered an Agreement (the “Patent Release”) whereby StoneEagle 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 StoneEagle 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 C. The release bars Defendants from asserting any inventorship or ownership interest in the Medical Payment System and the Patent.

19. 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 D. The Patent protects the Medical Payment System (absent StoneEagle’s confidential information and trade secrets). Allen is the sole inventor of the invention covered by the Patent and is listed as the inventor therein. StoneEagle is the owner by assignment of all right, title, and interest in and to the Patent, and is listed as the assignee therein.

20. **Defendants Received the Rights to Use the “VPay” and “VCard” Marks.** On July 27, 2010, StoneEagle and T3-TX (through Gillman) entered a Service Mark Agreement, whereby StoneEagle licensed the following service marks to T3-TX: (a) VPay;¹ and (b) VCard.²

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.”

A true and correct copy of the Service Mark Agreement is attached as Exhibit E. The “VPay” and “VCard” marks are StoneEagle’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.

21. **Gillman Created a Controversy Regarding Inventorship, Ownership, and Enforceability of Patent.** On or about August 31, 2011, Allen and other representatives from StoneEagle met with representatives from a potential investor for StoneEagle’s business, which is built on the value of the Medical Payment System (which includes the Patent and the intellectual property rights associated with it, and StoneEagle’s confidential information and trade secrets). StoneEagle invited Gillman to the meeting to introduce the potential investor to Gillman, as the representative of the license holder in the technology. When StoneEagle’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 implying that he was both the inventor and owner of the Patent. Having breached the Patent Release and destroyed further negotiations of the potential investment into StoneEagle by creating an actual controversy as to the enforceability of StoneEagle’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 StoneEagle’s representatives present.

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.”

22. In the Related Case, Gillman admitted that he was not an inventor but continues to make other claims of inventorship. As recently as late 2013, Gillman and NexPay held themselves out in marketing materials and at trade shows as the “inventors of virtual payment technology for healthcare.”

23. **Defendants Are Caught Setting Up a Competing Product.** With their suspicions aroused by Gillman’s conduct in the August 31st meeting, StoneEagle began investigating Gillman’s motives in September 2011. Upon investigation, StoneEagle discovered that Defendants were working on setting up a competing product that infringed on the Patent.

24. **The Court in the Related Case Entered a Preliminary Injunction Against Defendants.** After StoneEagle learned of Defendants’ plan to set up a competing business, StoneEagle filed the Related Case and sought injunctive relief on September 16, 2011. The Court entered a preliminary injunction on October 14, 2011, and clarified it on February 19, 2013, prohibiting Defendants from using certain trade secrets.

25. **StoneEagle Terminates the License and Service Mark Agreements.** StoneEagle terminated the License on October 17, 2011. Termination of the License terminated the Service Mark Agreement. A true and correct copy of the Notice of Termination is attached as Exhibit F.

26. **Defendants Begin Processing Payments for Their Competing Company with AIMS.** Despite the preliminary injunction and the termination of the License and Service Mark Agreement, Defendants continued to setup a competing product that infringed on the Patent. To facilitate those efforts, Defendants set up a new company: NexPay.

27. 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 StoneEagle/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 StoneEagle’s patented payment advice was and is completely unauthorized, and Defendants have paid StoneEagle no royalty for its use.

28. Further, 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.

29. In the February 1, 2012, e-mail, Vincent Valentine, as “Programmer” for Defendant T3, forwarded to Johnson an e-mail titled “VPay File Processed – AIM9071212.” The forwarded e-mail was from the “IT Group” at “VPay” at StoneEagle/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’ use of StoneEagle’s patented VPay process, as well as their use of the registered “VPay” service mark, were wholly unauthorized, and occurred over three months after the License and the Service Mark Agreement terminated.

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

31. **Defendants Shut Off All VPay Processing and Switched VPay Customers to Defendants’ NexPay and QuicRemit.** On March 22, 2012, Defendants began processing

virtual payments using the product names “NexPay” and “QuicRemit.” Defendants replaced StoneEagle/VPay’s functions using third parties including Comdata Network, Inc., Regions Bank, ECHO Health, Inc., HP Enterprise Services, and WEXBank. The NexPay product uses and infringes upon StoneEagle’s patented Medical Payment System.

32. Defendants use a payment advice that is substantially identical to StoneEagle’s patented payment advice, except for the replacement of the “VPay” logo with “NexPay” or “QuicRemit.” A “QuicRemit” instruction sheet included the product name “QuicRemit” on the virtual card image, but still has “VPay®” everywhere else, uses the “VCard” mark, and even includes StoneEagle’s address and customer service phone number as if they were QuicRemit’s. Defendants essentially cut-and-pasted a VPay for their own use, but failed to scrub all references to VPay/StoneEagle in the copied document. Defendants told at least one purchaser that VPay had changed its name to QuicRemit.

33. On information and belief, Defendants and NexPay deliberately used the federal registration symbol ® with the “VPay” mark on the QuicRemit/VPay Instruction Sheet with the intent to deceive or mislead the public. 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 StoneEagle’s “VPay” and “VCard” marks are causing actual confusion in the marketplace between Defendants’ competing “QuicRemit” and “NexPay” products and StoneEagle’s “VPay” product.

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

COUNT ONE: DECLARATORY JUDGMENT

35. 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, ownership, and

enforceability of the Patent, as demonstrated in part by Gillman's behavior at the meeting and Defendants' continued marketing of themselves as the "inventors of virtual payment technology for healthcare," which has caused, and will continue to cause, uncertainty, insecurity, and controversy regarding the inventorship, ownership, and enforceability issues.

36. The controversy is sufficiently immediate and real to warrant the issuance of a declaratory judgment because Defendants are currently disparaging the inventorship, enforceability, and ownership of the Patent, which has already prevented StoneEagle from attracting investors or potential purchasers to its business and has impeded its value, and continues to do so. An actual controversy exists between StoneEagle 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.

37. 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.

38. StoneEagle requests that the Court declare that:

- a. StoneEagle 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;

- f. T3-OK is not an owner of the Patent, in whole or in part; and
- g. NexPay is not an owner of the Patent, in whole or in part.

COUNT TWO: BREACH OF CONTRACT — PATENT RELEASE

39. StoneEagle hereby realleges all of the allegations in the above paragraphs.

40. The Patent Release obligates Defendants T3-TX, T3-OK, and Gillman to refrain from challenging the validity or enforceability of the Patent or assist others in doing so. The Patent Release is enforceable. The limitations and requirements in the Patent Release are reasonable and are no more restrictive than is necessary to protect the legitimate interest StoneEagle has in protecting its rights, title, and interest in the Patent, which was developed by StoneEagle at considerable time and expense.

41. As discussed in detail above, Defendants T3-TX, T3-OK, and Gillman breached the Patent Release. Defendants T3-TX, T3-OK, and Gillman conduct has caused and continues to cause StoneEagle damages. Accordingly, StoneEagle seeks actual damages from T3-TX, T3-OK, and Gillman in excess of the jurisdictional minimum of this Court.

COUNT THREE: PATENT INFRINGEMENT

42. StoneEagle hereby incorporates all of the allegations in the paragraphs above.

43. StoneEagle 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.

44. 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 or have induced others to infringe the Patent, including but not limited to ECHO Health, Inc., Comdata Network, Inc. a/k/a Comdata Corporation, Regions Financial Corporation, HP Enterprise Services, WEXBank, James Valentine, Vincent Valentine, Jennifer Lewis, and/or Tom Davis.

45. 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, StoneEagle has suffered and will continue to suffer damages in an amount to be proven at trial. Because Defendants willfully infringed the Patent, StoneEagle should be awarded treble damages and its reasonable attorneys’ fees.

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

46. StoneEagle hereby realleges all of the allegations in the above paragraphs.

47. The “VPay” and “VCard” marks are StoneEagle’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 StoneEagle'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.

48. Also, there is a likelihood of confusion between StoneEagle'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 StoneEagle's VPay product and Defendants are servicing clients which formerly were StoneEagle's clients;
- e. Defendants' stated intent was to replicate the Medical Payment System and offer it in the marketplace by cutting out StoneEagle 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 StoneEagle 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.

49. 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.

50. Defendants' use of StoneEagle'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 StoneEagle's Medical Payment System. Specifically,

StoneEagle'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 StoneEagle 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 StoneEagle's "VPay" product.

51. 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 StoneEagle'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.

52. Defendants' conduct has, and will continue to, result in the unlawful misappropriation of StoneEagle's valuable good will. Defendants have unjustly benefited from substantial development efforts undertaken by StoneEagle to develop that good will. Defendants should be required to pay as damages a reasonable royalty for their use of StoneEagle's goodwill 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 StoneEagle's reasonable attorneys' fees.

COUNT FIVE: COUNTERFEITING UNDER THE LANHAM ACT

53. StoneEagle hereby realleges all of the allegations in the above paragraphs.

54. Defendants have engaged in counterfeiting of StoneEagle'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 StoneEagle 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 SIX: UNFAIR COMPETITION UNDER FEDERAL AND TEXAS LAW

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

56. StoneEagle is the owner of the Patent that protects the Medical Payment System. StoneEagle 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.

57. In derogation of StoneEagle's rights, Defendants have intentionally used StoneEagle's Patent and "VPay" and "VCard" marks to unfairly compete with StoneEagle. Defendants have informed one or more purchasers that VPay changed its name to QuicRemit. 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. Defendants' uses of StoneEagle's "VPay" and "VCard" marks are confusingly similar to StoneEagle's product, are identical to StoneEagle'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 StoneEagle, 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 StoneEagle's valuable goodwill.

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

59. The conduct of Defendants has caused and continues to cause economic damage to StoneEagle, 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 StoneEagle's Patent and disgorgement of Defendants' profits. In addition, because Defendants acted willfully, StoneEagle should be awarded punitive or treble damages and reasonable attorneys' fees.

REQUEST FOR PERMANENT INJUNCTION

60. With regard to StoneEagle's patent infringement claims, StoneEagle has been irreparably harmed by Defendants' infringement of the Patent and will continue to be harmed by said infringement. StoneEagle 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, StoneEagle seeks a permanent injunction prohibiting Defendants from infringing on the Patent.

61. With regard to StoneEagle's trademark infringement claims, Defendants' conduct has caused StoneEagle irreparable damage by whittling away at the value of StoneEagle's VPay and VCard service marks. Unless Defendants' infringement is enjoined, StoneEagle will continue to be irreparably harmed in that manner. Because of the unique and fanciful nature of

StoneEagle's marks, StoneEagle lacks an adequate remedy at law for the damage Defendants are causing to StoneEagle's marks. Public policy favors the defense of service mark rights such as StoneEagle'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. StoneEagle 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.

ATTORNEYS' FEES

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

DEMAND FOR JURY TRIAL

63. StoneEagle requests a trial by jury of all issues so triable.

WHEREFORE, StoneEagle 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 commercially using the "VPay" and "VCard" marks and the infringing "NexPay" and "QuicRemit" marks; and
 - b. 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. StoneEagle 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;
 - f. T3-OK is not an owner of the Patent, in whole or in part; and
 - g. NexPay is not an owner of the Patent, in whole or in part;
- 3. awarding StoneEagle damages in an amount to be proven at trial;
 - 4. awarding StoneEagle any punitive, exemplary, or treble damages as authorized by law;
 - 5. awarding StoneEagle its costs in this action (including all disbursements) and its reasonable and necessary attorneys' fees;
 - 6. awarding StoneEagle pre- and post-judgment interest on all applicable amounts awarded at the applicable rate; and
 - 7. granting StoneEagle such other and further relief as the Court may find just and equitable.

Respectfully submitted,

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