

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

**STONEEAGLE SERVICES, INC. and  
VPAY, INC.,**

**Plaintiffs,**

**v.**

**THOMAS GLENN DAVIS, STORED  
VALUE PAYMENTS, LLC, and  
JENNIFER LYNN LEWIS,**

**Defendants.**

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**Civil Action No.** \_\_\_\_\_

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs **STONEEAGLE SERVICES, INC.** (“SES”) and **VPAY, INC.** (“VPay”) hereby complain of Defendants Thomas Glenn Davis, Stored Value Payments, LLC (“SVP”), and Jennifer Lynn Lewis (collectively, “Defendants”).

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff SES is a Texas corporation with its principal place of business in Dallas County, Texas.
2. Plaintiff VPay is a Texas corporation with its principal place of business in Dallas County, Texas
3. Defendant Thomas Glenn Davis is an individual residing in McKinney, Texas. Defendant Davis may be served with process at 1705 Savannah Drive, McKinney, Texas 75070, 15455 Dallas Parkway, Suite 525, Addison, Texas, or wherever he may be found.
4. Defendant Stored Value Payments, LLC is a Texas limited liability company with its principal place of business in Addison, Texas. Defendant SVP may be served with process through its registered agent, Keith Carmichael, 310 Congress, Suite 1000, Austin, TX 78701.

5. Defendant Jennifer Lynn Lewis is an individual residing in Murphy, Texas. Defendant Lewis may be served with process at 829 Cold Springs Court, Murphy, Texas 75094, 15455 Dallas Parkway, Suite 525, Addison, Texas, or wherever she may be found.

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. 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.

7. Defendants are residents of Texas. They conduct business in Dallas, Texas. The events giving rise to this litigation occurred, in part, from Defendants' transaction of business in Dallas, Texas. Thus, this Court has both specific and general jurisdiction over Defendants.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), (c) as to SES's claims against Defendants because all or a substantial part of the events giving rise to this action occurred within this district and division.

#### **DISCLOSURE OF RELATED LAWSUITS**

9. This case is related to the following pending lawsuits: (a) *StoneEagle Services, Inc. v. David Gillman, et al.*, Civil Action No. 3:11-CV-2408-P, in the Northern District of Texas, Dallas Division; and (b) *StoneEagle Services, Inc., et al., v. Jim Valentine, et al.*, Civil Action No. 3:12-CV-01687-N, in the Northern District of Texas, Dallas Division.

#### **FACTS**

10. **SES Conceived of 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.

11. 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 Warranty 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, David 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.

12. 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.

13. 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.

14. Specifically, the Medical Payment System includes the following processes: (a) requesting, directing, enabling, or facilitating the acquisition of payment data (such as payee name, payment amount, payee address, and payee tax identification number) and related payment advice, explanation of benefit, or explanation of payment data from an insurance company, a third-party administrator (“TPA”) or other payor of healthcare claims and reporting such payment data, directly or indirectly, to a program manager, card processor, financial institution or other entity that facilitates the issuance of a virtual stored value card to make a payment for healthcare goods or services; (b) enabling or facilitating the determination of whether a provider of healthcare goods or services should be paid with a virtual stored value card in lieu of some other medium of payment, such as a check or electronic funds transfer; (c) requesting, directing, enabling, or facilitating the acquisition of the primary account number, expiration date and card security code for a virtual stored value card from a program manager, processor, financial institution or other entity that provides such card data to make a payment for healthcare goods or services; (d) requesting, directing, enabling, or facilitating the transfer of funds to a financial institution for the purpose of loading or funding a virtual stored value card to make a payment for healthcare goods or services; (e) utilizing the Provider Database that contains the historical compilation of payment information (including fax numbers) and

preferences of health care providers; and (f) requesting, directing, enabling, or facilitating the unloading of funds associated with a virtual stored value card account and the transfer or re-allocation of such funds for another purpose, such as to fund a check or electronic funds transfer or to return the funds to the funding party.

15. In addition, the Medical Payment System utilizes the following proprietary software belonging to SES: (a) loader programs customized to each different TPA such that the TPA's proprietary file formats containing payment data can be converted to a standard file format and loaded into a database; (b) document replicating software that creates exact copies of the TPA's payment documents from the TPA's data loaded into a database; (c) imaging programs that create electronic payments from the payment documents; (d) payment optimization programs that provide for a provider database that includes payment preference information for each different provider that allows a specific and preferred type of payment to be transmitted to the provider; (e) banking communication software that requests from the depository bank the balance of accounts on which payments are going to be drawn to confirm that funds are available prior to distributing payments; (f) payment batching programs that allow payments to be administered by the TPA such that certain payments may be held out waiting for further funding, sent by express mail, or re-routed back to the TPA; (g) creating a data stream communicated to print outsourcer for the purpose of printing checks and other mailed output; and (h) customer service software that allows for customer service representatives to interact with providers of healthcare to answer questions and perform tasks such as changing the payment type for the provider and issuing a new form of payment, or reissuing payments that have been lost or otherwise unaccounted for.

16. 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.

17. **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 years.

18. 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.

19. 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.

20. 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.

21. 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.

22. **Gillman and His Companies 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 1.

23. 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.

24. 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.

25. 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, Talon Transaction Technologies, Inc., a Texas corporation ("T3-TX") (the "2006 Licensing Agreement"). A true and correct copy of the 2006 Licensing Agreement is attached as Exhibit 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.

26. 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.

27. 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.

28. In August 2008, SES and Talon Transaction Technologies, Inc., an Oklahoma corporation ("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.

29. T3-TX and T3-OK are referred to herein collectively as "T3."

30. **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 3.

31. 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 4.

32. 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.

33. **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.

34. 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 5 and 6.

35. 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. After these agreements were entered, VPay and SES provided the Valentines with further access to the Trade Secrets and Confidential Information.

36. **T3 Engages Lewis, Davis, and SVP.** In furtherance of SES’s and VPay’s business, T3 engaged other agents including Lewis, Davis, and SVP. T3 engaged Davis and his company, SVP, to act as marketing and customer support representatives for VPay. T3 also

engaged Lewis to interface with VPay clients.<sup>1</sup> Lewis, Davis, and SVP were responsible for developing marketing programs for VPay, soliciting clients on behalf of VPay, connecting the clients to the VPay process, and providing customer support services, among other things.

37. In these roles, Defendants were acting as agents for T3 — who were acting on behalf of VPay in the context of the confidential business relationship between the parties — and were bound by the Mutual Non-Disclosure Agreement and 2006 Licensing Agreements applicable to T3. As agents of T3, Defendants were exposed in confidence to the inner workings (including the Trade Secrets and Confidential Information) of SES and VPay as part of the confidential relationship between SES/VPay, T3, Gillman, and the Valentines. Defendants thereby became part of that confidential relationship with attendant duties to maintain the inner workings (including the Trade Secrets and Confidential Information) of SES and VPay in confidence and good faith. Defendants knew of the confidential context in which they were exposed to the inner workings (including the Trade Secrets and Confidential Information) of SES and VPay.

38. Defendants were exposed to the inner workings of SES and VPay — including the Trade Secrets and Confidential Information — such that Defendants developed a full understanding of how Plaintiffs do what they do in order to generate substantial revenue. SES and VPay would have never disclosed the Trade Secrets to Defendants, but for their duties to maintain the Trade Secrets and Confidential Information in confidence and good faith as T3's agents in the context of the confidential business relationship that existed between the parties, which is the same context in which the Trade Secrets and Confidential Information were disclosed to Defendants as T3's agents. Defendants also acquired the Trade Secrets and Confidential Information as T3's agents through T3, Gillman, and the Valentines in the context

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<sup>1</sup> Lewis was on SES's payroll, but SVP paid her salary. In March 2011, Lewis left SVP and went to work directly for T3.

of the confidential business relationship between the parties, with the same attendant duties to maintain the Trade Secrets and Confidential Information in confidence and good faith. Defendants knew of the confidential business relationship between the parties (which they had become a part of as T3's agents), and knew that T3, Gillman, and the Valentines were prohibited under the Mutual Non-Disclosure Agreement, 2006 Licensing Agreement, Confidentiality Agreements, and the IC Agreements from using or disclosing the Trade Secrets and Confidential Information for their own personal benefit outside the parties' confidential business relationship. Defendants also knew that they were prohibited in the same way as T3 and its agents, and knew or should have known or were on notice that any disclosure made to Defendants by any third party outside of a confidential relationship to which Defendants were parties would have been a mistake, a breach of that third parties' duty to Plaintiffs not to disclose the secret, or a result of improper acquisition or discovery by the third party.

39. **SES Patents the Medical Payment System.** 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.

40. On September 7, 2010, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,792,686 B2 (the "Patent") entitled "Medical Benefits Payment System." A true and correct copy of the Patent is attached as Exhibit 7. On January 1, 2013, the United States Patent and Trademark Office issued Reissued Patent Number US RE43,904 E adding claims 7-26 to the Patent (the "Reissued Patent"). A true and correct copy of the Reissued Patent is attached as Exhibit 8.

41. The subject matter protected under the Patent and Reissued Patent is the Medical Payment System (absent the Trade Secrets and Confidential Information). Allen is the sole inventor of the invention covered by the Patent and Reissued 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 Reissued Patent, and is listed as the assignee therein.<sup>2</sup>

**42. T3-TX and Gillman 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,<sup>3</sup> and (b) VCard.<sup>4</sup> A true and correct copy of the Service Mark Agreement is attached as Exhibit 9. 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.

**43. Defendants are Caught Using Plaintiffs’ Trade Secrets and Confidential Information to Compete with SES and Destroy SES’s Competitive Edge.** In August 2011, Gillman began making claims that he authored or wrote the Patent. With their suspicions aroused by Gillman’s conduct, Plaintiffs began investigating Gillman’s motives in September 2011. Upon investigation, Plaintiffs discovered that Gillman — in collaboration with T3, the Valentines, and Defendants — was working on setting up a competing product that was virtually identical to VPay utilizing the Trade Secrets and Confidential Information. Specifically, SES learned: (a) Defendants, T3, Gillman, and the Valentines participated in discussions regarding

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<sup>2</sup> On May 25, 2012, the United State Patent and Trademark Office issued an Office Action confirming the patentability of original claims 1-6.

<sup>3</sup> 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.”

<sup>4</sup> 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.”

features and processes necessary to launch the competing product; (b) Davis and SVP contacted ECHO Health (“ECHO”) (VPay’s largest customer) about switching its business from VPay to the competing product; (c) Davis and SVP prepared certain back-end and support functions necessary to accommodate ECHO’s business in preparation for their switch to the competing product; (d) Davis and SVP participated in discussions about how to set up the post-funded model used by SES/VPay; (e) Davis and SVP concealed their knowledge about the competing product from SES/VPay, despite being directly asked about it on at least one occasion; (f) Defendants, T3, and Gillman had discussions with NxSystems, Inc. (“NxS”) (a global payment solutions network provider) and TxVia about performing some of the processing services that SES currently provides for T3; (g) T3, Davis and SVP worked with Greg McReynolds to design a website and marketing materials for the competing product; (h) on or about May 13, 2011, Lewis shared flow charts on SES/VPay’s process with NxS that Lewis admitted were “confidential;” (i) T3, Gillman, Davis and SVP had discussions with several banks including First California Bank (“FCB”) and Amegy Bank about performing some of the back-end functions currently performed by SES/VPay; (j) on June 6, 2011, Lewis shared detailed information on SES/VPay’s transactions and volumes with Amegy Bank; (k) on or about June 18, 2011, Defendants gave a Power Point presentation for NxS and FCB that disclosed VPay’s capabilities and processes; (l) starting in July 2011, Defendants participated in weekly status meetings with T3, Gillman, the Valentines, and others about progress made towards launching the competing product; (m) on or about July 1, 2011, T3 and Defendants participated in a demonstration by NxS; (n) on August 8, 2011, T3, Gillman, the Valentines, and Defendants participated in the selection of the name NexPay for the competing product; (o) on August 26, 2011, Lewis prepared a checklist of various tests that the competing company needed to run in order to integrate their product with TxVia and NxS; (p) on or about September 4, 2011, Lewis

shared detailed information on SES/VPay's rejections, loads, and dollar amounts with FCB; (q) on or about September 9, 2011, Lewis prepared a list of clients that VPay currently does business with, which she sought to poach from VPay and divert to the competing product; (r) on September 9, 2011, Lewis delivered the list of clients to FCB; (s) on or about September 9, 2011, Davis and SVP were involved in discussions that resulted in the preparation and disclosure of a list of clients that the conspirators sought to poach from VPay; (t) T3 and Gillman setup NexPay as an entity to operate and market the competing product; (u) the competing product processed over \$800,000.00 in payments for Administrative Insurance Management Services, Inc. (an entity which liquidates insurance companies for the State of Texas, and a former client of SES/VPay); (v) T3 and Defendants met with VPay's clients — including ECHO, among others — and persuaded them to use the competing product as their exclusive provider of virtual payments; (w) T3, Gillman, the Valentines, and Defendants aided the competing product in processing tens of millions in virtual payments for other former clients of VPay including ECHO Health, Inc. through Comdata Networks, Inc. and Regions Financial Corporation; (x) T3, Gillman, the Valentines, and Defendants disclosed the Trade Secrets and Confidential Information to employees of Regions Financial Corporation and Hewlett Packard Enterprise Services ("HPES") in, among other instances, a July 2012 planning meeting; (y) T3, Gillman, the Valentines, and Defendants setup a competing virtual card product with Regions Bank and HPES; (z) T3, Gillman, the Valentines, and Defendants knew the competing product is virtually identical to VPay, except for a changed name (NexPay or QuicRemit) and logo; (aa) T3, Gillman, and Defendants created an arrangement for ECHO to send out payments under a private label brand called QuicRemit; (ab) T3, Gillman, the Valentines, and NexPay told VPay's clients that they had merely changed VPay's name; and (ac) T3, Gillman, the Valentines, and NexPay



sent faxes to medical services provider that had information referencing VPay, even though the product was sent by NexPay or QuicRemit.

44. These actions demonstrated unequivocally that Defendants were colluding with Gillman, T3, and the Valentines 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' interaction, confidential relationship, and agreements with SES and VPay — Defendants could not and would not have the necessary information and expertise to start this competing enterprise.

45. The risk of Defendants disclosing the Trade Secrets and Confidential Information to third-parties is certain. Therefore, Defendants must be restrained and enjoined from further discussions and collaboration with Gillman, T3, the Valentines, NxSystems, FCB, TxVia, Regions Financial Corporation, Comdata Networks, Inc., ECHO Health, Inc., 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 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.

46. **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.

47. **Defendants Begin Processing Payments for the 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, Gillman and T3 — in collaboration with the Valentines and Defendants — set up a new company: NexPay, Inc. (“NexPay”).

48. From at least December 14, 2011, through February 4, 2012, Defendants through NexPay assisted with the processing of over \$900,000 in payments for AIMS (a former client of SES/VPay) and hundreds of millions in payments for ECHO Health, Inc. and other former VPay clients. The competing product used the 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 and Reissued Patent), except that the name “VPay” has been replaced with “NexPay.” The competing company's use of SES's patented payment advice was and is completely unauthorized, and they have paid SES no royalty for its use.

49. In addition, Defendants completed many of the above described actions using e-mail addresses with the name “VPay” in the address or while holding themselves out as agents for VPay.

50. Defendants' conduct in marketing the 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 were responsible for marketing for VPay and subsequently for NexPay. In this role, they had direct control over the marks and names used and the public appearance of the product. Defendants used Plaintiffs' marks with the intent to, among other things, deceive purchasers in the marketplace regarding that misrepresentation.

**51. The Competing Company Shut Off All VPay Processing and Switched VPay Customers to Defendants' Competing NexPay and QuicRemit Products.** On March 22, 2012, the competing company began processing virtual payments using the product names "NexPay" and "QuicRemit." Defendants replaced SES/VPay's functions using third parties including Comdata Network, Inc., HPES, and Regions Financial Corporation. The NexPay and QuicRemit processes the competing company is selling in the marketplace use and infringe upon SES's patented Medical Payment System.

52. The payment advice the competing company is 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, the competing company told at least one purchaser that VPay had changed its name to QuicRemit.

53. The NexPay product marketed by Defendants is custom-tailored for processing virtual payments in the medical services industry and has no substantial non-infringing use. Even if there were such a use, Defendants are using NexPay to directly compete with VPay for the same customers, in the same industry, with the exact same use.

54. Lewis is listed as an authorized user on the Regions' bank accounts used to process payments for the competing product. Lewis and Davis are using NexPay e-mail addresses to market and process payments for the competing product. Lewis is listed as the Customer Service Manager for NexPay and Davis is listed as the Chief Sales Officer for NexPay.

55. 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.

56. **T3 and Gillman Are Preliminarily Enjoined.** On February 19, 2013, Judge Jorge A. Solis clarified his October 14, 2011, preliminary injunction to prohibit "Gillman, [T3], and their respective agents, servants, employees, attorneys, and all persons in active concert or participation with them," from using the Trade Secrets and Confidential Information. Judge Solis also held that in the event that any third parties — including Defendants — "acted or are poised to act in concert or participation with the enjoined parties" SES may bring the "aiders and abettors" to his attention to determine if they should be specifically enjoined.

57. Despite this preliminary injunction, counsel for Defendants stated they are unable to comply with the injunction because they "have not seen any evidence that any step of the processes enumerated by the court's order were 1<sup>st</sup> developed by [SES]."

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

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

59. Plaintiffs hereby reallege all of the allegations in the above paragraphs.

60. Defendants received SES/VPay's Trade Secrets and Confidential Information in confidence as T3's agents participating in the confidential business relationship between the parties. Defendants knew that the Trade Secrets and Confidential information were confidential and were disclosed to them in confidence in the context of the parties' confidential business relationship. Therefore, Defendants are under duties to maintain the secrecy of the Trade Secrets and Confidential Information and refrain from using them other than in the context of the parties' confidential business relationship. During the course of their confidential relationship with VPay, Defendants acquired SES's and VPay's Trade Secrets and Confidential Information. In the alternative, Defendants acquired the Trade Secrets and Confidential Information through improper means from T3, Gillman, or the Valentines because they possessed contractual agreements that prohibited them from using the Trade Secrets and Confidential Information to setup a competing business. Defendants knew about T3's, Gillman's, and the Valentines' contractual agreements with SES/VPay.

61. Alternatively, Defendants acquired the Trade Secrets and Confidential Information from a third party when Defendants knew or should have known, or were on notice, that any disclosure made to Defendants by any third party outside of a confidential relationship to which Defendants were parties would have been a mistake, a breach of that third parties' duty to Plaintiffs not to disclose the secret, or a result of improper acquisition or discovery by the third party.

62. The Trade Secrets and Confidential Information were developed at considerable expense to SES, provide SES and VPay 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 and VPay's business, are rigorously safeguarded by SES and VPay, and were provided to Defendants under circumstances that implied an agreement to maintain the confidentiality of the Trade Secrets and Confidential Information while utilizing same for a limited purpose. The unauthorized use of SES's and VPay's Trade Secrets and Confidential Information by Defendants violates SES's and VPay's rights to protect the Trade Secrets and Confidential Information and to preserve the business advantages they thereby gain.

63. SES and VPay took steps designed to maintain the confidentiality of the Trade Secrets and Confidential Information. After obtaining SES's and VPay's Trade Secrets and Confidential Information, Defendants misappropriated the Trade Secrets and Confidential Information and caused damages to SES and VPay in excess of the minimum jurisdictional limits of this Court, for which SES and VPay seek a recovery.

**COUNT TWO: CONSPIRACY TO MISAPPROPRIATE TRADE SECRETS AND  
CONFIDENTIAL INFORMATION**

64. Plaintiffs hereby reallege all of the allegations in the above paragraphs.

65. Defendants received SES/VPay's Trade Secrets and Confidential Information in confidence as part of the confidential business relationship between the parties. Alternatively, Defendants acquired the Trade Secrets and Confidential Information from a third party when Defendants knew or should have known, or were on notice, that any disclosure made to Defendants by any third party outside of a confidential relationship to which Defendants were parties would have been a mistake, a breach of that third parties' duty to Plaintiffs not to disclose the secret, or a result of improper acquisition or discovery by the third party.

66. Defendants knew that the Trade Secrets and Confidential information were confidential and were disclosed to them in confidence in the context of the parties' confidential business relationship. Therefore, Defendants are under duties to maintain the secrecy of the

Trade Secrets and Confidential Information and refrain from using them other than in the context of the parties' confidential business relationship. During the course of their confidential relationship with VPay, Defendants agreed to join with each other and other persons with a confidential relationship with SES/VPay to use the Trade Secrets and Confidential Information acquired through their relationship with SES/VPay for their own personal gain by creating the competing company. Defendants acquired the Trade Secrets and Confidential Information, replicated the Trade Secrets and Confidential Information for incorporation into their own competing product, solicited third parties including FCB, Amegy Bank, Four Oaks Bank, TxVia, Inc., Regions Financial Corporation, ECHO Health, Inc., Comdata Networks, Inc., and NxSystems to replace the functions performed by SES/VPay, contacted SES/VPay customers about moving their business to the competing company, concealed the misappropriators' actions from SES/VPay, and committed other overt acts in furtherance of the conspiracy.

67. Accordingly, Plaintiffs seek actual damages from Defendants in excess of the jurisdictional minimum of this Court.

### **COUNT THREE: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

68. Plaintiffs hereby reallege all of the allegations in the above paragraphs.

69. Defendants knew that T3, Gillman, Jim Valentine, or Vincent Valentine owed contractual and common law fiduciary duties to SES/VPay because of their business relationship with SES/VPay. Defendants intended to assist or encourage T3, Gillman, Jim Valentine, or Vincent Valentine in the breach of their fiduciary duties by using the Trade Secrets and Confidential Information to setup a competing business. Defendants committed several actions in furtherance of the breach of fiduciary duties by soliciting third parties including FCB, Amegy Bank, Four Oaks Bank, TxVia, Regions Financial Corporation, Comdata Networks, Inc., ECHO Health, Inc., and NxSystems to replace the functions performed by SES/VPay, contacting

SES/VPay customers about moving their business to the competing company, concealing the actions of the misappropriators from SES/VPay, and other acts that aided and abetted the misappropriation. Defendants' assistance or encouragement was a substantial factor in causing the misappropriation of the Trade Secrets and Confidential Information.

70. Alternatively, Defendants T3, Gillman, Jim Valentine, or Vincent Valentine breached their fiduciary duties by using the Trade Secrets and Confidential Information to setup a competing company. Defendants provided substantial assistance to T3, Gillman, Jim Valentine, or Vincent Valentine in the breach of the fiduciary duties through the actions described above. Defendants' conduct was a breach of the confidential relationship they owed to SES/VPay. Defendants' conduct was a substantial factor in causing the breach of the fiduciary duties.

71. Also, Defendants knew or should have known, or were on notice, that any disclosure made to them by any third party outside of a confidential relationship to which Defendants were parties would have been a mistake, a breach of that third parties' duty to Plaintiffs not to disclose the secret, or a result of improper acquisition or discovery by the third party.

72. Accordingly, Plaintiffs seek actual damages from Defendants in excess of the jurisdictional minimum of this Court.

#### **COUNT FOUR: PATENT INFRINGEMENT**

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

74. SES is the owner by assignment of all right, title, and interest in and to the Patent and Reissued Patent, is listed as the assignee therein, and has the full and exclusive right to bring suit to enforce the Patent and Reissued Patent. Defendants have infringed and continue to



infringe on the Patent and Reissued 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 or Reissued Patent;
- (b) inducing infringement of one or more claims of the Patent or Reissued 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 Reissued 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 or Reissued 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 or Reissued Patent during the term of the Patent or Reissued Patent, and not for a non-commercial use or retail sale of the resulting product for which there is an adequate remedy.

75. 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 or Reissued Patent. Defendants provide those services under the product names “NexPay” and “QuicRemit.” Further, Defendants are actively inducing others to infringe the Patent or Reissued Patent, including but not limited to Echo Health, Inc., Comdata Networks, Inc. a/k/a Comdata Corporation, Regions Financial Corporation, James Valentine, and Vincent Valentine.

76. The actions of Defendants are willful, deliberate, and wholly unauthorized. Each Defendant has knowledge of the Patent or Reissued 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 or Reissued Patent, SES should be awarded treble damages and its reasonable attorneys' fees.

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

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

78. 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.

79. 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. The competing company’s stated intent was to replicate the Medical Payment System and offer it in the marketplace by cutting out SES from the process, and the competing company — through their agents, Defendants, T3, Gillman, and the Valentines — 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.

80. 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.

81. Further, the competing company’s 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 the competing company’s 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.

82. In addition, in connection with “NexPay” and “QuicRemit,” the competing company has 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, the competing company has 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 the competing company. Defendants' conduct constitutes palming off.

83. 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 SIX: COUNTERFEITING UNDER THE LANHAM ACT**

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

85. 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 the competing company's "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 SEVEN: UNFAIR COMPETITION UNDER FEDERAL AND TEXAS LAW**

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

87. 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.

88. In derogation of SES's rights, Defendants have intentionally used SES's Patent or Reissued 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.

89. 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 or Reissued Patent, the Trade Secrets and Confidential Information, and the "VPay" and "VCard" marks.

90. 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 or Reissued 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 PRELIMINARY INJUNCTION**

91. Plaintiffs will seek a preliminary injunction through a separately filed motion.

#### **REQUEST FOR PERMANENT INJUNCTION**

92. Plaintiffs incorporate all of the allegations in the paragraphs above as if set forth fully herein.

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

94. As described above, Defendants were bound as agents to the confidentiality provisions in the Non-Disclosure Agreement with Gillman and the 2006 Licensing Agreement with T3-TX. Both agreements stated that a violation of the confidentiality of the Trade Secrets and Confidential Information would cause irreparable injury to Plaintiffs for which there is no adequate remedy at law and consented to enforcement of the confidentiality provisions by permanent injunction.

95. The above facts regarding Defendants' recent actions and communications reflect that Defendants have engaged or are about to engage in violations of the confidentiality agreements regarding the Trade Secrets and Confidential Information. Further, Defendants' use of the Trade Secrets and Confidential Information violates the confidential business relationship between Defendants and Plaintiffs. Violation of those agreements will cause Plaintiffs to suffer an irreparable injury by destroying the market edge that Plaintiffs enjoy as a result of the inherent value of the Trade Secrets and Confidential Information remaining confidential.

96. The irreparable injury threatened to Plaintiffs 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 Gillman, T3, NexPay, and the Valentines show that disclosure of that information is either imminent or has already occurred, and is threatened to continue to occur.

97. Plaintiffs 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 Plaintiffs enjoy 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.

98. The above facts reflect that Plaintiffs have a substantial likelihood of success on the merits of the case, in part because Defendants have either violated or threatened to violate the confidentiality agreements and confidential business relationship regarding the Trade Secrets and Confidential Information. The use of that information by Defendants in this manner violates the permitted uses under the confidential business relationship and confidentiality agreements, to the irreparable detriment of Plaintiffs' market position and reputation. The facts also show that Plaintiffs have a substantial likelihood of success on the merits of its claim, because Defendants breached common law duties not to disclose the Trade Secrets and Confidential Information. The facts stated herein will support Plaintiffs' actual success on the merits of this case.

99. Additionally, the substantial and irreparable injury that Plaintiffs face from breach of the confidential business relationship and confidentiality agreements far outweighs the injury

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

100. Finally, injunctive relief would not adversely affect public policy or the public interest because Plaintiffs 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 Plaintiffs injunctive relief, because public policy and public interest favor the enforcement of contracts and disfavor breaches of contract and the pillaging of Plaintiffs' rightfully-held trade secrets.

101. 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



Defendants' wrongful actions in commercially using the "VPay" and "VCard" marks and the infringing "NexPay" and "QuicRemit" marks.

102. With regard to SES's patent infringement claims, SES has been irreparably harmed by Defendants' infringement of the Patent or Reissued 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 or Reissued 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 or Reissued Patent.

#### **DEMAND FOR JURY TRIAL**

103. Plaintiffs request a trial by jury of all issues so triable.

**WHEREFORE**, Plaintiffs request that Defendants Thomas Glenn Davis, Stored Value Payments, LLC, and Jennifer Lynn Lewis be cited to appear and answer herein, and 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 use of Plaintiffs' Trade Secrets and Confidential Information;
  - 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 or Reissued Patent;
2. awarding Plaintiffs damages in the form of disgorgement of revenues;

3. awarding Plaintiffs any punitive, exemplary, or treble damages as authorized by law;
4. awarding Plaintiffs their costs in this action (including all disbursements) and its reasonable and necessary attorneys' fees to the extent allowed under the law;
5. awarding Plaintiffs pre- and post-judgment interest on all applicable amounts awarded at the applicable rate; and
6. granting Plaintiffs such other and further relief as the Court may find just and equitable.

Dated: February 26, 2013

Respectfully submitted,

**BELL NUNNALLY & MARTIN LLP**

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