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ORLEANS PARISH CIVIL DISTRICT COURT
CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO.: 2007 - 3665

SECTION "15"

DIVISION: "B"

ACTIVE SOLUTIONS, L.L.C. AND
SOUTHERN ELECTRONICS SUPPLY, INC.

versus

DELL, INC., THOMAS H. WELCH, JR., AND STEVE RENEKER

FILED: _____

DEPUTY CLERK

FIRST AMENDED AND SUPPLEMENTAL PETITION

NOW INTO COURT, through undersigned counsel, come plaintiffs, Active Solutions, L.L.C. ("Active Solutions") and Southern Electronics Supply, Inc. ("Southern Electronics"), who respectfully file this First Amended and Supplemental Petition, by supplementing and amending their entire original Petition for Damages filed on April 20, 2007, as follows:

1.

Active Solutions, L.L.C. is a domestic limited liability company domiciled in New Orleans, Louisiana.

2.

Southern Electronics Supply, Inc. is a domestic corporation domiciled in New Orleans, Louisiana.

3.

Defendant, Dell Inc. ("Dell"), on information and belief, is a foreign corporation licensed to do and doing business in the State of Louisiana with its principal place of business located in Austin, Texas.

4.

Defendant, Thomas H. Welch, Jr., on information and belief, is a Vice President in the Legal Department of Dell, Inc., and a resident of Round Rock, Texas.

4/30/07

5.

Defendant, Steve Reneker, on information and belief, is “Business Development Manager, Public Safety & Criminal Justice, Dell State and Local Government,” for Dell, Inc., and a resident of Round Rock, Texas.

6

Defendant, Imagine Software, L.L.C., on information and belief, is a domestic limited liability company domiciled in Slidell, Louisiana.

7

Defendant, Imagine Consulting, L.L.C., on information and belief, is a domestic limited liability company domiciled in Metairie, Louisiana.

8.

Defendant, Imagine GIS, L.L.C., on information and belief, is a domestic limited liability company domiciled in New Orleans, Louisiana.

9.

Defendant, NetMethods, L.L.C., on information and belief, is a domestic limited liability company domiciled in New Orleans, Louisiana.

10.

Defendant, Method Investments, L.L.C., on information and belief, is a domestic limited liability company domiciled in New Orleans, Louisiana.

11.

Defendant, Ciber, Inc. (“Ciber”), on information and belief, is a foreign corporation licensed to do and doing business in Louisiana with its principal office in Greenwood Village, Colorado.

12.

Defendant Veracent, L.L.C. (“Veracent”), on information and belief, is a domestic limited liability company domiciled in New Orleans, Louisiana.

13.

Venue is proper in this Court under Article 42 of the Louisiana Code of Civil Procedure.

14.

On or about July 19, 2004, Southern Electronics finalized a contract ("Contract") between itself and the City of New Orleans ("City") to provide surveillance equipment, technology and design as well as installation of the same, pursuant to the City Wide Surveillance Camera Project.

15.

Southern Electronics was awarded the Contract after a February 2004 Request for Proposal bid process.

16.

Active Solutions was subcontracted by Southern Electronics - and specifically referenced in the proposal - to provide project engineering and system integration and was primarily responsible for the overall system design and performance.

17.

Shortly after entering into the Contract with the City, Southern Electronics and Active Solutions were approached by defendant Dell.

18.

In letters to both Southern Electronics (dated August 21, 2004) and Active Solutions (dated August 6, 2004), Steve Reneker, an officer of defendant Dell and on behalf of Dell, expressed great interest in the plaintiffs' systems stating, "I look forward to expanding Dell's Public Safety and Criminal Justice vertical and working on future opportunities in partnership with [Southern Electronics Supply / Active Solutions], to assist in growing your business."

19.

On July 20, 2004, Brian C. Fitzpatrick, President of Active Solutions, L.L.C., signed a Standard Non-Disclosure Agreement drafted by defendant, Dell. This Non-Disclosure Agreement was subsequently signed by Thomas H. Welch, Jr., an officer of defendant Dell.

20.

On July 21, 2004, Ignace A. Perrin, III, President of Southern Electronics Supply, signed a Standard Non-Disclosure Agreement drafted by defendant, Dell. This Non-Disclosure Agreement was subsequently signed by Thomas H. Welch, Jr., an officer of defendant Dell.

21.

These Non-Disclosure Agreements (“NDAs”) were duplicates of one another, each containing the same terms and provisions and the effective date of both being August 1, 2004.

22.

The parties entered into these NDAs for the express purpose of protecting Confidential Information.

23.

Section 4A of the NDA, titled “Confidential Information,” defines Confidential Information as “product and roadmap information, marketing plans, financial/pricing information, customer and vendor related data, services/support and other business information including, but not limited to software, strategies, plans, techniques, drawings, designs, specifications, technical or know-how data, research and development, ideas, inventions, patent disclosures that may be disclosed between the parties whether in written, oral, electronic, website-based, or other form. This agreement also includes Confidential Information acquired during any facilities tours.”

24.

Section 6 of the NDA, titled “Protection Period and Return of Information,” states that “[u]nless the parties otherwise agree in writing, a Recipient’s duty to protect Confidential Information expires three (3) years from the date of disclosure.”

25.

Section 14 of the NDA, titled “Remedies,” states that “each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party may be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity.”

26.

Dell had nothing to do with installing cameras in the City of New Orleans before or at the time they signed the NDAs with the plaintiffs.

27.

Representatives of Southern Electronics and Active Solutions met and communicated with

representatives of Dell in anticipation of becoming the provider for Dell's Public Safety Sector, not only for the City of New Orleans, but nationwide.

28.

At these meetings and in communications with Dell, Southern Electronics and Active Solutions discussed, in detail, the products and infrastructure of combined camera systems that could be placed on existing telephone poles and/or street lamps and remotely monitored.

29.

In addition, plaintiffs' representatives described the manner in which the camera sites could be used as wireless access points and utilized in any number of ways.

30.

The discussions described above occurred privately and the matters discussed therein constituted Confidential Information as contemplated by the NDAs.

31.

In February of 2007, then Chief Technology Officer for the City of New Orleans, Mark Kurt, at a public works meeting, stated that the cameras used for the City Wide Surveillance Camera Project were being purchased through Dell.

32.

Defendants NetMethods, L.L.C., Method Investments, L.L.C. (collectively, "NetMethods") and Imagine Software, L.L.C., Imagine Consulting, L.L.C., and Imagine GIS, L.L.C. (collectively, "Imagine") contract with the City of New Orleans through defendant Ciber.

33.

Defendant Veracent sells their equipment directly to defendant Dell who then sells that same equipment for use through various contracts.

34.

Defendant Dell, through its dealings with NetMethods, Imagine, Ciber and Veracent in implementing the systems, plans and designs developed by plaintiffs, has breached its agreement with plaintiffs and has caused, and will continue to cause, irreparable harm to Southern Electronics and Active Solutions.

35.

The systems, plans and designs developed by the plaintiffs and improperly utilized by the defendants, without the plaintiffs' permission or knowledge, are worth millions of dollars and have the potential to be worth millions more.

FIRST CAUSE OF ACTION - BREACH OF CONTRACT

36.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

37.

As set forth above, Dell, Thomas H. Welch, Jr. and Steve Reneker entered into an agreement with the plaintiffs wherein they consented not to divulge any Confidential Information.

38.

Through its dealings with NetMethods, Imagine, Ciber and Veracent to implement the confidential systems, plans and designs developed by the plaintiffs, Dell has breached its obligation to plaintiffs.

39.

Dell is liable for its breach of contract for the following, non-exclusive list of damages:

- a. The start up costs associated with the anticipation of further business with Dell, as contemplated by the letters from Steve Reneker to the plaintiffs;
- b. The loss of future business and contracts as a result of Dell's breach.

40.

In addition and/or in the alternative, defendants breached the contract in bad faith so that they are liable to the plaintiffs for all damages, foreseeable or not, that are a direct consequence of its breach.

SECOND CAUSE OF ACTION - UNFAIR TRADE PRACTICES

41.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

42.

The Louisiana Unfair Trade Practices and Consumer Protection Law, L.S.A.-R.S. 51:1401, *et seq.*, prohibits unfair or deceptive methods, acts or practices in trade or commerce.

43.

Defendants Dell, NetMethods, Imagine, Ciber and Veracent have engaged in unfair and deceptive trade practices for the purpose and with the effect of manipulating the crime surveillance product, system, planning and design market in New Orleans and elsewhere. As a direct consequence of such unlawful trade practices by the defendants, plaintiffs have been and continue to be damaged, including loss of revenues, not only in New Orleans, but elsewhere throughout the United States and the world.

44.

Defendants Dell, NetMethods, Imagine, Ciber and Veracent, through their actions, have engaged in unfair trade practices in an attempt to disrupt and impair the business dealings of the plaintiffs.

45.

An injunction prohibiting defendants from engaging in further unfair and unlawful trade practices is appropriate under the circumstances.

THIRD CAUSE OF ACTION - UNJUST ENRICHMENT

46.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

47.

Plaintiffs assert that the defendants Dell, NetMethods, Imagine, Ciber and Veracent have been unjustly enriched by their breach of contract.

48.

Without the Confidential Information provided to Dell by the plaintiffs, defendants Dell, NetMethods, Imagine, Ciber and Veracent would have been unable to implement the systems, plans and designs developed by the plaintiffs and currently being implemented in the City and nationwide

and would thus not have been paid for said implementation.

FOURTH CAUSE OF ACTION - TORTIOUS INTERFERENCE

49.

Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

50.

Subject to Section 6 of the NDAs, Dell had an obligation to abide by the provisions of the NDA and protect any Confidential Information relative to its dealings with the plaintiffs for at least three (3) years from the date of disclosure.

51.

Defendants, Thomas H. Welch, Jr., and Steve Reneker, were fully aware of, and willfully and intentionally interfered with, the terms and conditions of the NDA in sharing Confidential Information.

52.

There was no justification for defendants Thomas H. Welch, Jr. and Steve Reneker, to breach the NDAs.

53.

Defendants Dell, Thomas H. Welch, Jr., Steve Reneker, NetMethods, Imagine, Ciber and Veracent all willfully and intentionally interfered with the terms and conditions of the NDA in sharing Confidential Information.

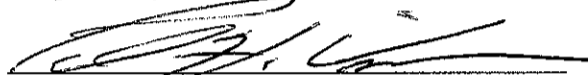
54.

The willful and intentional acts of defendants Dell, Thomas H. Welch, Jr., Steve Reneker, NetMethods and Imagine proximately caused actual damage to the plaintiffs in the form of lost revenues and lost business both in the City of New Orleans and elsewhere throughout the United States and the world.

WHEREFORE, plaintiffs Southern Electronics and Active Solutions pray that, after due proceedings be had, there be judgment rendered herein in their favor and against defendants Dell

Inc., Thomas H. Welch, Jr., Steve Reneker, Imagine Software, L.L.C., Imagine Consulting, L.L.C. Imagine GIS, L.L.C., NetMethods, L.L.C., Method Investments, L.L.C., Ciber, Inc. and Veracent, L.L.C. , declaring the defendants to be liable and indebted unto plaintiffs, jointly and solidarily, for all damages as are just and reasonable under the circumstances, as well as for judicial interest from the date of judicial demand. Plaintiffs further pray for all other and extra relief that may be just and reasonable under the circumstances of this matter.

Respectfully submitted,



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