

ORLEANS PARISH 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

**SECOND AMENDED AND SUPPLEMENTAL PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, come plaintiffs, Active Solutions, L.L.C. ("Active Solutions") and Southern Electronics Supply, Inc. ("Southern Electronics") (collectively, "Plaintiffs"), who respectfully file this Second Amended and Supplemental Petition for Damages by supplementing and amending their entire original Petition filed on April 20, 2007 and First Amended and Supplemental Petition filed on April 30, 2007, as follows:

**PARTIES - PLAINTIFFS**

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.

**PARTIES - DEFENDANTS**

3.

Defendant, Dell Inc. ("Dell"), 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. ("Welch") is a Vice President in the Legal Department at Dell, Inc., is Dell's General Corporate Counsel and Assistant Secretary, and has also served as

10/3/07

Director, General Corporate Counsel and Assistant Secretary at Dell, and is a resident of Round Rock, Texas.

5.

Defendant, Steve Reneker ("Reneker") was Business Development Manager for Public Safety & Criminal Justice for Dell, Inc. from December 2003 to September 2005, dates relevant herein, and is a resident of Riverside, California.

6.

Defendant, Imagine Software, L.L.C. ("Imagine"), is a domestic limited liability company domiciled in Slidell, Louisiana.

7.

Defendant, Imagine GIS, L.L.C. ("Imagine GIS," together with Imagine, "the Imagine Defendants"), is a domestic limited liability company domiciled in New Orleans, Louisiana.

8.

Defendant, NetMethods, L.L.C. ("NetMethods"), is a domestic limited liability company domiciled in New Orleans, Louisiana.

9.

Defendant, Method Investments, L.L.C. ("Method Investments"), is a domestic limited liability company domiciled in New Orleans, Louisiana.

10.

Defendant, Ciber, Inc. ("Ciber," together with SAIC and ACS below, "the Ciber Defendants"), is a foreign corporation licensed to do and doing business in Louisiana with its principal office in Greenwood Village, Colorado.

11.

Defendant Veracent, L.L.C. ("Veracent"), is a domestic limited liability company domiciled in New Orleans, Louisiana.

12.

Defendant, Science Applications International Corporation (“SAIC,” together with Ciber above and ACS below, “the Ciber Defendants”), is a foreign corporation licensed to do and doing business in Louisiana with its principal office in San Diego, California.

13.

Defendant, Affiliated Computer Services, Inc. (“ACS,” together with Ciber and SAIC above, “the Ciber Defendants”), is a foreign corporation licensed to do and doing business in Louisiana with its principal office in Dallas, Texas.

14.

Defendant the City of New Orleans (the “City”) is a public authority and a Louisiana political entity, authorized to sue and be sued in the District Courts of the State of Louisiana.

15.

Defendant C. Ray Nagin (“Mayor Nagin”) has been the Mayor of New Orleans since May of 2002 and throughout that time was responsible for the formation of and has overseen the City’s Mayor’s Office of Technology (“MOT”), the department in the City that oversaw the bidding process and the execution of and had the ultimate responsibility to abide by and monitor the contract with Plaintiffs as set forth more fully herein; upon information and belief was associated with the Imagine Defendants; and is a resident of New Orleans, Louisiana.

16.

Defendant Gregory Meffert (“Meffert”) was the Chief Technology Officer (“CTO”) for the City’s MOT from the years 2002 to 2006, was the Deputy Mayor for that period of time, upon information and belief was also associated with the Imagine Defendants, and is a resident of New Orleans, Louisiana.

17.

Defendant Mark Kurt (“Kurt”) assumed the position of CTO from Meffert in 2006, was an owner of the Imagine Defendants until taking over as CTO, was also a principal in NetMethods and Method Investments, and is a resident of New Orleans, Louisiana.

18.

Defendant Mark St. Pierre ("St. Pierre") worked for the City's MOT from at least 2003 through sometime in 2007, was also a principal of the Imagine Defendants, is the former President and CEO and the current Manager of NetMethods, is the Registered Agent and Manager for Method Investments and the Manager of Veracent, and is a resident of Belle Chasse, Louisiana.

19.

Defendant Christopher Drake ("Drake") was the City's MOT Operations Manager from at least 2003 through sometime in 2007, was also a principal of the Imagine Defendants, is associated as Wireless Project Manager with NetMethods, and is a resident of Mandeville, Louisiana.

20.

All defendants to this matter are liable jointly and *in solido* to Plaintiffs for all damages alleged herein.

#### **JURISDICTION AND VENUE**

21.

This Court has the legal power to hear and determine this matter pursuant to Louisiana Constitution Article V, §16, because the value of the claims asserted herein, exclusive of interest, court costs, attorneys' fees or penalties, exceeds the amount required to confer jurisdiction with this Court.

22.

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

#### **GENERAL ALLEGATIONS**

##### **PLAINTIFFS' CONTRACT WITH THE CITY OF NEW ORLEANS**

23.

On July 26, 2003, there was a shootout at a car wash in New Orleans. A camera that had been installed at the car wash by its owner brilliantly captured the shooters in perfect clarity on videotape. Following that event, Mayor Nagin announced his desire for a city wide camera system and announced that New Orleans was going to issue a Request for Proposal to the private sector to provide such a system.

24.

Over the next year, Plaintiffs collaborated to develop said system. The result of the collaboration between Active Solutions and Southern Electronics, after extensive research and testing, was a prototype self-contained camera system, networking and wireless gear and software with communications capability, designed to protect against the harsh weather conditions in New Orleans, which could be installed on already-existing power poles, connect to the New Orleans power grid and provide realtime live coverage of the immediate areas where the cameras were placed to the local district police stations (the "System"). The System was the first of its kind.

25.

Plaintiffs undertook extensive efforts to create their System to cover the hot crime areas in the City, and to that end, negotiated with Entergy over light pole access and to ensure that its System could connect to the City's power grid, and negotiated with building owners for rooftop access for equipment placement. Plaintiffs also developed a process of telephone number assignment that allowed telephone company demarks to be installed on poles. This process allowed for the high speed wired data service to be possible, and was the first of its kind.

26.

In November 2003, Plaintiffs set up a pilot program and demonstrated the System for the City. Within two days, Plaintiffs set up and connected six cameras in the City's First District, which enabled wireless video communications to be sent to police stations. Plaintiffs' System was the first system designed to provide high speed, high resolution images over a wireless network intended for metro scale deployment.

27.

After viewing Plaintiffs' prototype, and based on the System and its capabilities, the MOT wrote and issued a Request for Proposal ("RFP") in February 2004 called the City Wide Surveillance Camera Project.

28.

Thirteen companies submitted bids for this RFP in a competitive bidding process.

29.

Plaintiffs were selected as the winning responsive bidder and received the contract to install the cameras, which Mayor Nagin signed on or about July 19, 2004 (the "Contract").

30.

The Contract with Plaintiffs specified that Plaintiffs would provide certain surveillance technology, including camera equipment as set forth in further detail herein to the City. Although the MOT would not allow development costs to be entered as a line item on the Contract, the City negotiated the payment terms of the Contract to include an amortization of the costs of the extensive research, testing and development of the System's technology over the course of the Contract.

31.

In accordance with that amortization schedule, the Contract specified that a minimum of two hundred forty (240) cameras would be purchased by the City during the term of the Contract.

32.

Additionally, pursuant to the Contract, the City agreed not to disclose Plaintiffs' technology to anyone before January 2010. Section 7(c) of the Contract reads: "[t]he Contractor will specifically identify and mark any equipment, information, drawing, system, or other product or service it renders or provides hereunder it holds proprietary. Except as required by law, and otherwise as below provided, the City will not disclose such identified and marked material or information to any unauthorized person before January 1, 2010."

33.

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

34.

Plaintiffs' System was originally deployed to support surveillance cameras and later expanded to support mobile network access for police and other city workers. Plaintiffs' System incorporated a design for the infrastructure to accommodate deployment throughout the entire City of New Orleans.

35.

Plaintiffs' hard work and extensive effort on multiple fronts worked. Live coverage of high crime areas was accomplished, crime spiraled down to new lows, and the System became a celebrated breakthrough in municipal crime fighting and technological advancement in the United States.

36.

As a result of the successful utilization of Plaintiffs' System, New Orleans was for the first time recognized as being a leader in crime fighting efforts by media throughout the United States. Furthermore, many in the technology industry proclaimed the System developed by Plaintiffs to be a major breakthrough in new technology.

37.

The bidding process, the Contract negotiation process and ultimately the Contract itself were overseen by representatives of Mayor Nagin's MOT, including St. Pierre and Drake, who operated under the supervision of CTOs Meffert and later Kurt.

38.

Shortly after executing the Contract with the City, St. Pierre and Drake approached Plaintiffs and communicated very clearly that they wanted their own private companies, the Imagine Defendants, to be employed as subcontractors under the Contract with Plaintiffs. Drake quoted the then CTO, Meffert as saying "This is the largest technology contract in the City and we [the Imagine Defendants/NetMethods/Veracent] don't have a piece of it." Plaintiffs declined to subcontract to the Imagine Defendants and ignored the comment about getting a piece of the Contract.

39.

Upon information and belief, throughout the existence of the Imagine Defendants, defendants Mayor C. Ray Nagin, Gregory Meffert, Mark Kurt, Mark St. Pierre and Christopher Drake (collectively, the "City Employee Defendants") have all been associated with the Imagine Defendants in either an ownership, managing, consulting or supervisory role.

40.

Defendant NetMethods was formed in August of 2004 by St. Pierre and Drake, after Plaintiffs refused to subcontract camera work back to the City Employee Defendants through the Imagine Defendants. NetMethods was formed in order to compete with Plaintiffs.

41.

Defendant Veracent was formed in January of 2006 by St. Pierre, also after Plaintiffs refused to subcontract camera work back to the City Employee Defendants through the Imagine Defendants.

42.

Despite the Contract requiring only City approvals for Plaintiffs' work, it is now common knowledge that throughout Mayor Nagin's tenure, it has been common practice for the CTO and the MOT to hire an outside contractor for the City's technology work through the Louisiana Office of State Purchasing and then require that contractor to subcontract the work back to companies owned or managed by the City Employee Defendants, including the Imagine Defendants, NetMethods, and/or Veracent.

43.

Over the course of the Contract, the outside contractors hired by the MOT were Ciber, SAIC, and ACS, together, the "Ciber Defendants".

44.

The Ciber Defendants, and through them the Imagine Defendants and/or NetMethods, companies which were owned or managed at one point or another by each of the City Employee Defendants, were in charge of the pace of Plaintiffs' installation and deployment of the System and its associated equipment and were ultimately responsible for directing Plaintiffs' efforts, namely, telling them when and in which districts to deploy the Plaintiffs' System.

45.

Plaintiffs would be paid under the terms of the Contract only with the approval of the Ciber Defendants, the Imagine Defendants and/or NetMethods, the final two of which are the same companies which were owned or managed at one point or another by each of the City Employee Defendants.



46.

After Plaintiffs rejected the City Employee Defendants' efforts to have the Imagine Defendants become subcontractors to Plaintiffs in the Contract and after ignoring Drake's comment regarding not having a piece of the Contract, the City Employee Defendants and their companies, now the Imagine Defendants, NetMethods and Veracent, set out to destroy Plaintiffs. The City, the Ciber Defendants, the City Employee Defendants and their companies stopped authorizing Plaintiffs' work, failed to order cameras and failed to authorize payment for cameras such that the Contract minimums could not be maintained and the extensive research, testing and development costs were not covered.

47.

Further, through the knowledge of the City's MOT's employees Drake and St. Pierre, the companies with which they were associated (the Imagine Defendants, NetMethods and Veracent) also had all of Plaintiffs' price schedules and the proprietary System design with full access to all of its components and technology.

#### **PLAINTIFFS' EXPERIENCE WITH DELL**

48.

Shortly before entering into the Contract with the City on July 8, 2004, Plaintiffs were approached by defendants Dell, Welch and Reneker (hereinafter the "Dell Defendants") to discuss Plaintiffs' System.

49.

The first meeting between the Dell Defendants and the Plaintiffs occurred at the City's own MOT office located at 1515 Poydras Street in New Orleans, Louisiana. Both Drake and St. Pierre from the City's MOT were present at that meeting.

50.

While Plaintiffs were obviously flattered and economically excited about the idea of partnering with Dell to take their System national and indeed perhaps international, Plaintiffs were concerned about maintaining the confidentiality of their elaborately designed System. After

Plaintiffs expressed this concern, Dell agreed to sign a Non Disclosure Agreement (“NDA”), and forwarded letters of intent to the Plaintiffs which provided the Plaintiffs with great comfort.

51.

In letters to both Active Solutions (dated August 6, 2004) and Southern Electronics (dated August 21, 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**” (emphasis added).

52.

Reneker specifically informed plaintiffs that the NDA would prohibit Dell from taking the System that Plaintiffs had developed.

53.

On July 20, 2004, Brian C. Fitzpatrick, President of Active Solutions, signed a Standard NDA drafted by defendant, Dell. This NDA subsequently was signed by Welch, an officer of defendant Dell, who, upon information and belief, was the Dell corporate officer in charge of signing and authorizing Dell NDAs, at least those of this nature and for this geographical region and, as such, would have known when Dell entered into other agreements that violated its NDAs with Plaintiffs.

54.

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

55.

These NDAs were duplicates of one another, each containing the same terms and provisions, and the effective date of both was August 1, 2004.

56.

The parties entered into these NDAs for the express purpose of protecting Confidential Information. Once the NDAs were executed, the Plaintiffs agreed to meet and discuss the specifics of their System, including how it worked, what benefits it could provide for future technological

advance in other cities throughout the United States and the world, and Plaintiffs' price points, all in anticipation of becoming the crime camera provider for Dell and its Public Safety and Criminal Justice Sector, throughout the United States and the world.

57.

After signing the Dell NDAs, Plaintiffs' representatives met in New Orleans with Reneker, the Dell Defendants' representative. The City's MOT employees Drake and St. Pierre were in attendance at all meetings between Dell and Plaintiffs in New Orleans.

58.

Plaintiffs were at ease in disclosing the many particulars of their System to Dell and the City employees because of the NDAs signed with Dell and the confidentiality provisions in the Contract with the City.

59.

Reneker told the Plaintiffs that the Dell Defendants were interested in selling the camera systems, networking and wireless gear and software throughout the United States and the world. Dell offered to sell Plaintiffs' System through Dell's established municipal sales force, state purchasing contracts and regional purchasing alliances to get the System into new markets quickly and efficiently.

60.

The Dell Defendants wished to provide a pricing and marketing plan for the System, and proposed that Plaintiffs provide the System using Dell branded servers instead of the Hewlett Packard servers that had been used.

61.

As a result of the meetings with Dell, the Dell Defendants and the City's MOT employees Drake and St. Pierre obtained all of Plaintiffs' price schedules and the proprietary System design with full access to all of its components and technology.

62.

At these meetings and in communications with the Dell Defendants and the City's MOT employees, Active Solutions and Southern Electronics discussed, in detail, including providing

specifications for, the products and infrastructure of their System, which could be placed on existing telephone poles and/or street lights and be remotely monitored in the City and elsewhere throughout the United States and the world.

63.

In addition, Plaintiffs' representatives described the manner in which the camera sites could be used as wireless access points and be utilized in any number of ways in the City and elsewhere throughout the United States and the world.

64.

The discussions described above occurred privately between the Dell Defendants, the City's MOT employees and Plaintiffs, and the matters discussed therein constituted Confidential Information as contemplated by the NDAs with Dell, the confidentiality provisions contained in Plaintiffs' Contract with the City of New Orleans, and verbal promises of confidentiality.

65.

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."

66.

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."

67.

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.”

68.

The Dell Defendants had no experience with designing, manufacturing, installing or monitoring crime camera network cameras in the City or elsewhere throughout the United States and the world before or at the time they signed the NDAs with the Plaintiffs, nor did they have any experience whatsoever with the products and infrastructure of combined camera systems as described by Plaintiffs to Dell.

69.

In February of 2007, just two years and seven months into the term of the Dell NDAs with Plaintiffs, the City’s CTO, Kurt, stated that the City was purchasing additional cameras from Dell.

70.

At the time of the signing of the Contract with the City and the NDAs with the Dell Defendants, Plaintiffs’ System was considered by the industry to be the only product available in the world which could provide its capabilities.

71.

The System is still recognized as a cutting edge product in the industry.

72.

Upon information and belief, Reneker intentionally induced the Plaintiffs to sign the NDAs with the intent to never follow through on the Dell Defendants’ offer to partner with Plaintiffs to market their System to the City and elsewhere throughout the United States and the world. Instead, Dell took the confidential information and conspired with Veracent (the company which is managed by MOT employee St. Pierre) to manufacture a copy of Plaintiffs’ System and resell it in the City and elsewhere throughout the United States and the world.

## **CITY EMPLOYEE DEFENDANTS TAKE PLAINTIFFS' SYSTEM AND THEIR WORK**

73.

The Imagine Defendants, NetMethods and Veracent were created to privately capitalize financially on new technology being developed and sold to the City of New Orleans and were owned or managed at one point or another by one or more of the City Employee Defendants.

74.

All of the City Employee Defendants and their companies gained confidential information regarding Plaintiffs' System in the context of either working with Plaintiffs under the City's Contract or because of their presence during Plaintiffs' communications with Dell.

75.

After Plaintiffs rejected the City Employee Defendants' efforts to have the Imagine Defendants become subcontractors to Plaintiffs in the Contract and after ignoring Drake's comment regarding not having a piece of the Contract, the City Employee Defendants and their companies, now the Imagine Defendants, NetMethods and Veracent, set out to destroy Plaintiffs.

76.

Instead of terminating the Contract pursuant to its own terms, the City, along with the Ciber Defendants, the City Employee Defendants and their companies stopped authorizing Plaintiffs' work, failed to order cameras and failed to authorize payment for cameras such that the Contract minimums could not be maintained and the extensive research, testing and development costs were not covered.

77.

Even more egregiously, these City Employee Defendants and their companies took Plaintiffs' confidential information which they had learned in the context of their employment with the City and went into direct competition with Plaintiffs.

78.

In 2006, Ciber, at CTO Meffert's, CTO Kurt's and thus the City's MOT's request, subcontracted the deployment of cameras manufactured by Veracent and purchased from Dell into the City's crime camera system. The MOT had full knowledge that Plaintiffs' Contract was in place for the deployment of cameras and that the Contract minimums had not yet been met.

79.

The Imagine Defendants and/or NetMethods, companies which were owned or managed at one point or another by each of the City Employee Defendants, installed the Veracent/Dell camera systems ordered by Kurt and Meffert in the City as directed by the City, the City Employee Defendants, the Ciber Defendants, Veracent, the Imagine Defendants and/or NetMethods in direct competition with Plaintiffs.

80.

Veracent/Dell planned to deploy a system design just like Plaintiffs' while alleging that they did not copy Plaintiffs' System. Except for Veracent/Dell using different (lesser quality) components, the system design and implementation are substantially similar to that of the Confidential Information making up Plaintiffs' System as described to the Dell Defendants and the City Employee Defendants by Plaintiffs. Instead of using the proven technologies and Plaintiffs' original specifications, Veracent/Dell employ a fiberglass housing, a residential grade surge strip and an Axis camera whose specifications state "Not designed for continuous duty."

81.

Because the City Employee Defendants also managed the deployment of the cameras that they and their companies manufactured, they maximized their personal profit by accepting their companies' substandard product as meeting the City's needs, despite having determined, pursuant to the RFP process, that Plaintiffs' System was the best product.

82.

Between 2004 and 2007, Plaintiffs received broken promise after broken promise about how and when the City would order more cameras and would pay for the ones which had been installed by Plaintiffs. Month after month the very City Employee Defendants who were secretly conspiring and competing with Plaintiffs through their private companies were causing severe damage to Plaintiffs and economically choking them by not ordering cameras and not paying for those which had been already ordered and installed.

83.

During this same time period, the City and the City Employee Defendants methodically withheld information regarding the City's future plans for the Contract, would not review lower cost options offered by the Plaintiffs, and eventually complained that the Plaintiffs' System was much more expensive than their own companies' alternative.

84.

In the fall of 2006, then CTO for the City, Kurt, stated that the cameras used for the City Wide Surveillance Camera Project were being purchased through Dell and installed by NetMethods. At a City of New Orleans Public Works meeting in February of 2007, just two years and seven months into the term of the Dell NDAs with Plaintiffs, Kurt stated that the City was purchasing additional cameras from Dell to be installed by NetMethods or Veracent.

85.

The Dell Defendants, through their dealings with the City, the City Employee Defendants, the Ciber Defendants, NetMethods, the Imagine Defendants, and Veracent (collectively the "Non-Dell Defendants"), who are implementing the systems, plans and designs developed by Plaintiffs in the City and elsewhere throughout the United States and the world, have breached their agreement with Plaintiffs and have caused, and will continue to cause, irreparable harm to Active Solutions and Southern Electronics.

86.

The Non-Dell Defendants had no prior experience with designing, manufacturing, installing or monitoring cameras in the City or elsewhere throughout the United States and the world before or at the time that Plaintiffs were awarded the Contract, nor did they have any experience whatsoever with the products and infrastructure of combined camera systems.

87.

The Non-Dell Defendants had no prior experience with designing, manufacturing, installing or monitoring cameras in the City or elsewhere throughout the United States and the world before or at the time that Plaintiffs signed the NDAs with the Dell Defendants, nor did they have any experience whatsoever with the products and infrastructure of combined camera systems.



## **PLAINTIFFS' BATON ROUGE EXPERIENCE**

88.

In the fall of 2004, after the national press touting New Orleans' crime camera system, Plaintiffs were in discussions with authorities in Baton Rouge to handle the installation of a wireless surveillance system similar to that System Plaintiffs had designed for use in New Orleans. Drake was a part of those initial Baton Rouge discussions in his capacity as a city official with the New Orleans' MOT.

89.

Plaintiffs were purposely shut out of further meetings with and demonstrations to the Baton Rouge officials by the City's MOT and the City Employee Defendants. Plaintiffs were told by Drake and other City Employee Defendants that the City and the MOT were acting on Plaintiffs' behalf to assist in promoting New Orleans' based technology companies and that Plaintiffs would be brought in when the Baton Rouge officials were ready to make a final decision.

90.

Plaintiffs' suspicions as to the veracity of Drake and other City Employee Defendants' comments regarding the Baton Rouge discussions were aroused when Plaintiffs found that Drake and other City Employee Defendants had demonstrated the Plaintiffs' System at work in the Sixth District of New Orleans to Baton Rouge officials.

91.

Plaintiffs followed up with Baton Rouge city officials to see whether a decision had been made. A Baton Rouge official told a Plaintiffs' representative that Baton Rouge was going to use the "guys that did the system in New Orleans," according to what Baton Rouge had been told by the New Orleans' MOT. That official was surprised to find that it was Plaintiffs which had the New Orleans' Contract, not the City Employee Defendants and their companies.

92.

Almost immediately after Plaintiffs' followup discussion with the Baton Rouge city officials, St. Pierre told Plaintiffs "not to interfere in Baton Rouge" and to "stay out of Baton Rouge if you know what's good for you."

93.

The installation of the Baton Rouge system was awarded to the Imagine Defendants and/or NetMethods, companies which were owned or managed at one point or another by each of the City Employee Defendants who had expressly agreed to keep Plaintiffs' System confidential.

94.

The System developed by the Plaintiffs and improperly copied and utilized by the defendants in the City and elsewhere throughout the United States and the world, without Plaintiffs' permission or knowledge, is worth many millions of dollars.

**FIRST CAUSE OF ACTION - BREACH OF CONTRACT**  
(PLAINTIFFS' CONTRACT WITH DELL)

95.

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

96.

As set forth above, the Dell Defendants entered into NDAs with the Plaintiffs wherein they consented not to divulge any Confidential Information in order to keep Plaintiffs' System confidential.

97.

Through their dealings with the Non-Dell Defendants to implement, in the City and elsewhere throughout the United States and the world, the confidential systems, plans and designs developed by the Plaintiffs and the subject of the NDAs, the Dell Defendants have breached their obligation to Plaintiffs not to disclose those systems, plans and designs.

98.

By not acting to prevent Dell's violation of these NDAs, and by authorizing Dell to enter into contracts in the City and elsewhere throughout the United States and the world, in direct prohibition of the terms of the NDAs with Plaintiffs, Dell's Welch and Reneker breached the NDAs between the Dell Defendants and Plaintiffs.

99.

The breach of the NDAs has proximately caused extensive damages to Plaintiffs.

100.

Based on the Confidential Information they received from Plaintiffs, the Dell Defendants have aggressively marketed a competing system via their state contracts, regional purchasing alliances and Federal General Services Administration contracts.

101.

Based on the Confidential Information they received from Plaintiffs, the Dell Defendants now sell cameras to the City.

102.

The Dell Defendants are liable for their breach of contract for the following, non-exclusive list of damages:

- a. The startup costs associated with the anticipation of further business with the Dell Defendants, as contemplated by communications by and between the Dell Defendants and Plaintiffs, as exemplified by meetings with and letters from Reneker to the Plaintiffs, on which Plaintiffs relied to expect that they would be working in partnership with Dell on future matters concerning the products and infrastructure of combined camera systems as described by Plaintiffs to the Dell Defendants;
- b. The loss of present business and contracts as a result of the Dell Defendants' breach, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the Dell Defendants' breach.

103.

In addition, the Dell Defendants breached the contract in bad faith such that they are liable to the Plaintiffs for all damages, foreseeable or not, that are a direct consequence of their breach.

**SECOND CAUSE OF ACTION - TORTIOUS INTERFERENCE**  
**(PLAINTIFFS' CONTRACT WITH DELL)**

104.

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

105.

The Standard NDA that was drafted by the Dell Defendants contains a paragraph titled “Governing Law” which reads: “This agreement is made under and will be construed according to, the laws of the State of Texas.”

106.

Under Texas law, the elements of tortious interference with an existing contract are: (1) that a contract subject to interference exists; (2) that the alleged act of interference was willful and intentional; (3) that the willful and intentional act proximately caused damage; and (4) that actual damage or loss occurred. *See, e.g., ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex.1997); *New York Life Ins. Co. v. Miller*, 114 S.W.3d 114, 125 (Tex.App.-Austin 2003, no pet.).

107.

The NDAs at issue constitute a contract between Dell and Plaintiffs. Subject to Section 6 of those NDAs, the Dell Defendants had an obligation to abide by the provisions of the NDA and protect any Confidential Information relative to their dealings with the Plaintiffs for at least three (3) years from the date of disclosure.

108.

The Dell Defendants were fully aware of, and willfully and intentionally interfered with the terms and conditions of the NDA in sharing Confidential Information provided to them by Plaintiffs.

109.

There was no justification for the Dell Defendants to breach the NDAs by sharing Confidential Information provided to them by Plaintiffs.

110.

By not acting to prevent Dell’s violation of these NDAs, and by authorizing Dell to enter into contracts in the City and elsewhere throughout the United States and the world, in direct contradiction with the terms of the NDAs with Plaintiffs, defendants Welch and Reneker tortiously interfered in the NDA between the Dell Defendants and Plaintiffs.

111.

The Dell Defendants and the Non-Dell Defendants willfully and intentionally interfered with the terms and conditions of the NDA in sharing Confidential Information.

112.

The Dell Defendants had no experience with designing, manufacturing, installing or monitoring crime camera network cameras in the City or elsewhere throughout the United States and the world before or at the time they signed the NDAs with the Plaintiffs, nor did they have any experience whatsoever with the products and infrastructure of combined camera systems as described by Plaintiffs to Dell.

113.

Based on the confidential information they received from Plaintiffs, the Dell Defendants are selling cameras used for the City Wide Surveillance Project to the City, and have aggressively marketed this competing system via their state contracts and regional purchasing alliances.

114.

The willful and intentional acts of the Dell Defendants and the Non-Dell Defendants in sharing Confidential Information proximately caused actual damage to the Plaintiffs in the form of lost revenues and lost business both in the City and elsewhere throughout the United States and the world.

115.

The Dell Defendants are liable for their tortious interference for the following, non-exclusive list of damages:

- a. The startup costs associated with the anticipation of further business with the Dell Defendants, as contemplated by communications by and between the Dell Defendants and Plaintiffs, as exemplified by meetings with and letters from Reneker to the Plaintiffs, on which Plaintiffs relied to expect that they would be working in partnership with Dell on future matters concerning the products and infrastructure of combined camera systems as described by Plaintiffs to the Dell Defendants;

- b. The loss of present business and contracts as a result of the Dell Defendants' tortious interference, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the Dell Defendants' tortious interference.

**THIRD CAUSE OF ACTION - UNFAIR TRADE PRACTICES**  
(DELL DEFENDANTS)

116.

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

117.

The Standard NDA that was drafted by the Dell Defendants contains a paragraph titled "Governing Law" which reads: "This agreement is made under and will be construed according to, the laws of the State of Texas."

118.

Texas law prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Texas Business and Commerce Code Chapter 17, "Deceptive Trade Practices," § 17.46, *et seq.*

119.

The Dell Defendants have collaborated to engage in unfair and deceptive trade practices for the purpose and with the effect of revealing Confidential Information provided by Plaintiffs and conspiring with Non-Dell Defendants to manipulate the crime surveillance product, system, planning and design market in the City and elsewhere throughout the United States and the world.

120.

The Dell Defendants, together with the Non-Dell Defendants, through their actions, have engaged in unfair trade practices in an attempt to disrupt and impair the business dealings of the Plaintiffs.

121.

The Dell Defendants knew that the information they received from Plaintiffs during the term of and under the conditions of the NDAs was highly confidential. They knew that the NDAs had

confidentiality clauses. They knew the details of Plaintiffs' pricing structure. They knew of their proposal to partner with Plaintiffs in marketing the System throughout the United States and the world.

122.

As a direct consequence of the unlawful trade practices employed by all the Dell Defendants, Plaintiffs have been and continue to be damaged, including loss of revenues, not only in the City but elsewhere throughout the United States and the world, especially in those locales where Dell maintains state purchasing agreements, regional purchasing alliances and Federal General Services Administration contracts.

123.

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

124.

Specifically, Plaintiffs request an injunction against the Dell Defendants, pursuant to Section 14 of the NDAs between Dell and Plaintiffs, preventing Dell from selling any cameras or other equipment, the design of which are incorporated within the Confidential Information provided by Plaintiffs.

125.

Additionally, the Dell Defendants are liable for their deceptive trade practices for the following, non-exclusive list of damages:

- a. The startup costs associated with the anticipation of further business with the Dell Defendants, as contemplated by communications by and between the Dell Defendants and Plaintiffs, as exemplified by meetings with and letters from Reneker to the Plaintiffs, on which Plaintiffs relied to expect that they would be working in partnership with Dell on future matters concerning the products and infrastructure of combined camera systems as described by Plaintiffs to the Dell Defendants;

- b. The loss of present business and contracts as a result of the Dell Defendants' deceptive trade practices, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the Dell Defendants' deceptive trade practices.

**FOURTH CAUSE OF ACTION -  
PROMISSORY ESTOPPEL/DETRIMENTAL RELIANCE  
(DELL DEFENDANTS ONLY)**

126.

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

127.

The letter that accompanied the NDAs sent by the Dell Defendants contains the following language: "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**" (emphasis added)."

128.

Plaintiffs relied on this communication from the Dell Defendants to Plaintiffs' detriment, in that they provided their System and its design, specifications and technology to Dell, who then turned around to partner with Veracent in manufacturing a copy of the Plaintiffs' System and its technology and selling it in the City and elsewhere throughout the United States and the world.

129.

The Dell Defendants should be estopped from manufacturing a copy of the Plaintiffs' System and its technology and selling it in the City and elsewhere throughout the United States and the world.

130.

The Dell Defendants should be estopped from partnering with any entity to assist in growing that entity's business through the manufacture and sale of Plaintiffs' System and its technology.



131.

The Dell Defendants specifically should be estopped from partnering with Veracent to assist in growing their business through the manufacture and sale of Plaintiffs' System and its technology.

132.

The Dell Defendants are liable under common law theories of promissory estoppel/detrimental reliance for the following, non-exclusive damage:

- a. The loss of the value of the business and contracts that Plaintiffs' would have undertaken with the Dell Defendants if the Dell Defendants had followed through with their promise to partner with Plaintiffs.

**FIFTH CAUSE OF ACTION - EXEMPLARY DAMAGES  
(DELL DEFENDANTS ONLY)**

133.

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

134.

The Standard NDA that was drafted by the Dell Defendants contains a paragraph titled "Governing Law" which reads: "This agreement is made under and will be construed according to, the laws of the State of Texas."

135.

Texas law provides for the recovery of exemplary damages in a situation such as here, where the Dell Defendants acted with malice or gross negligence.

136.

Texas law also provides for the recovery of exemplary damages in cases of tortious interference.

137.

Plaintiffs have been damaged as a result of the Dell Defendants' malicious and grossly negligent breach of the NDAs and the Dell Defendants are therefore liable unto Plaintiffs for exemplary damages in an amount to be determined at trial pursuant to the Texas Civil Practice & Remedies Code Section 41.003.

138.

Plaintiffs have also been damaged as a result of the defendants Welch and Reneker's tortious interference with the NDAs and are therefore liable unto Plaintiffs for exemplary damages in an amount to be determined at trial pursuant to the Texas tortious interference law.

**SIXTH CAUSE OF ACTION - BREACH OF CONTRACT  
(PLAINTIFFS' CONTRACT WITH THE CITY)**

139.

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

140.

The City entered into a Contract with Plaintiffs which specified that a minimum of two hundred and forty (240) cameras would be purchased from and installed by Plaintiffs. Plaintiffs' Contract with the City also contemplated that Plaintiffs would be paid costs associated with the research, testing and development of the System.

141.

Plaintiffs' Contract with the City contained a confidentiality clause, Section 7(c), which reads: "[t]he Contractor will specifically identify and mark any equipment, information, drawing, system, or other product or service it renders or provides hereunder it holds proprietary. Except as required by law, and otherwise as below provided, the City will not disclose such identified and marked material or information to any unauthorized person before January 1, 2010."

142.

Plaintiffs were prevented, by delay in scheduling by the City and the City Employee Defendants and by refusing to timely pay Plaintiffs in accordance with the Contract, from installing the minimum number of cameras guaranteed by the Contract, causing damage to Plaintiffs.

143.

Because of the failure of the City to pay Plaintiffs for each of the minimum number of cameras guaranteed by the Contract, Plaintiffs were never paid the built in costs they were promised associated with the research, testing and development of the System, causing damage to Plaintiffs.

144.

Because of their primary commitment to the City Contract, Plaintiffs chose not to undergo other business opportunities.

145.

The City and the City Employee Defendants breached the Contract by sharing information about the system with companies that they each were associated with at one point or another, causing damage to Plaintiffs.

146.

In addition, the City and the City Employee Defendants breached the contract in bad faith such that they are liable to the Plaintiffs for all damages, foreseeable or not, that are a direct consequence of their breach.

147.

Finally, the City and the City Employee Defendants are liable for their breach of contract for the following, non-exclusive list of damages:

- a. The startup costs associated with the development of the System, as contemplated by the Contract minimums;
- b. The loss of present business and contracts as a result of the City and the City Employee Defendants' breach of contract, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the City and the City Employee Defendants' breach of contract.

**SEVENTH CAUSE OF ACTION - TORTIOUS INTERFERENCE  
(PLAINTIFFS' CONTRACT WITH THE CITY)**

148.

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

149.

Subject to the Contract, the City had an obligation to abide by the confidentiality provisions of the Contract.

150.

Subject to the Contract, the City Employee Defendants, who oversaw the Contract, had an obligation to abide by the confidentiality provisions of the Contract.

151.

The City and the City Employee Defendants breached the Contract by sharing confidential information regarding the System provided to them by Plaintiffs, and did so without justification.

152.

By not acting to prevent the City's violation of the confidentiality provisions in the Contract, the City and the City Employee Defendants tortiously interfered in the Contract between the City and Plaintiffs.

153.

By authorizing the City to enter into contracts in competition with the Contract, while knowing that the Contract minimum had not been met, the City and the City Employee Defendants tortiously interfered in the Contract between the City and Plaintiffs.

154.

The City and the City Employee Defendants willfully and intentionally interfered with the terms and conditions of the Contract in sharing Confidential Information.

155.

The willful and intentional acts of the City and the City Employee Defendants Nagin, Meffert, Kurt, St. Pierre and Drake in sharing Confidential Information proximately caused actual damage to the Plaintiffs in the form of lost revenues and lost business both in the City and elsewhere throughout the United States and the world.

156.

The City and the City Employee Defendants are liable for their tortious interference for the following, non-exclusive list of damages:

- a. The startup costs associated with the development of the System, as contemplated by the Contract minimums;

- b. The loss of present business and contracts as a result of the City and the City Employee Defendants' tortious interference, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the City and the City Employee Defendants' tortious interference.

**EIGHTH CAUSE OF ACTION -  
PROMISSORY ESTOPPEL/DETRIMENTAL RELIANCE  
(PLAINTIFFS' CONTRACT WITH THE CITY)**

157.

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

158.

The City entered into a Contract with Plaintiffs which specified that a minimum of two hundred and forty (240) cameras would be purchased from and installed by Plaintiffs.

159.

Plaintiffs were prevented, by delay in scheduling by the City and the City Employee Defendants and by refusing to timely pay Plaintiffs in accordance with the Contract, from installing the minimum number of cameras guaranteed by the Contract, causing damage to Plaintiffs.

160.

Because of their primary commitment to the City Contract, and in reliance on the Contract minimums, Plaintiffs chose not to undertake other business opportunities.

161.

The City and the City Employee Defendants are liable under theories of promissory estoppel/detrimental reliance for the following, non-exclusive list of damages:

- a. The loss of present business and contracts as, specifically but not limited to the failure of the City to abide by its Contract minimums;
- b. The loss of additional business opportunities Plaintiffs' could have undertaken.

**NINTH CAUSE OF ACTION - UNFAIR TRADE PRACTICES  
(NON-DELL DEFENDANTS)**

162.

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

163.

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.

164.

The Non-Dell Defendants have collaborated amongst themselves and with the Dell Defendants to engage in unfair and deceptive trade practices for the purpose and with the effect of manipulating Plaintiffs' crime surveillance product, system, planning and design in the City and elsewhere throughout the United States and the world.

165.

The Non-Dell Defendants, through their actions, have engaged in unfair trade practices in an attempt to disrupt and impair the business dealings of the Plaintiffs.

166.

The Non-Dell Defendants employed unfair trade practices in that they were all exposed to the System while getting paid by the City of New Orleans to manage the Contract and copied the System to the detriment of Plaintiffs.

167.

The Ciber Defendants, and through them the Imagine Defendants and/or NetMethods, companies which were owned or managed at one point or another by each of the City Employee Defendants, employed unfair trade practices by directing Plaintiffs' efforts in such a way that it was impossible for Plaintiffs to execute their Contract.

168.

As employees of the MOT, the City Employee Defendants had a fiduciary duty to manage and implement a known contract with specific minimums and employed unfair trade practices in partnering with Dell to intentionally interfere with that Contract.

169.

The Non-Dell Defendants knew that the information they received from Plaintiffs during the term of and under the conditions of the Contract was highly confidential. They knew that both the Contract and the NDAs with Dell had confidentiality clauses. They knew the details of Plaintiffs' pricing structure. They knew of the proposal by Dell to partner with Plaintiffs in marketing the System throughout the United States and the world based on their attendance at meetings between the Dell Defendants and Plaintiffs. The Non-Dell Defendants employed unfair trade practices by interfering with Plaintiffs' ability to move forward with Dell and by deliberately and intentionally delaying implementation and payments under the City Contract in order to economically choke Plaintiffs so that these defendants could profit through their private entities.

170.

In Baton Rouge, the Non-Dell Defendants employed unfair trade practices by representing themselves as the same people that designed the New Orleans' System, despite that being false.

171.

As a direct consequence of the unlawful trade practices employed by all of the defendants, Plaintiffs have been and continue to be damaged, including loss of revenues, not only in the City but elsewhere throughout the United States and the world, especially in those locales where Dell maintains state purchasing agreements, regional purchasing alliances and Federal General Services Administration contracts.

172.

The Non-Dell Defendants are liable for their unfair trade practices for the following, non-exclusive list of damages:

- a. The startup costs associated with the development of the System, as contemplated by the Contract minimums;
- b. The loss of present business and contracts as a result of the Non-Dell Defendants' unfair trade practices, specifically but not limited to the sale of cameras to the City;
- c. The loss of future business and contracts as a result of the Non-Dell Defendants' unfair trade practices.

## **TENTH CAUSE OF ACTION - CIVIL CONSPIRACY**

173.

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

174.

As described more fully herein, the defendants knowingly acted in concert to share Confidential Information in breach of the NDAs with Dell and in breach of the Contract with the City.

175.

The defendants acted as described herein according to a commonly understood and accepted plan of action, all for the purposes of making revenue by copying Plaintiffs' System and selling it in the City and elsewhere throughout the United States and the world.

176.

There was a meeting of the minds between and among the defendants to commit the unlawful acts alleged herein. The conspiracy to commit these unlawful, overt acts, proximately caused and continue to cause damages to Plaintiffs as set forth herein.

177.

As a result of the conduct of the defendants, Plaintiffs have suffered injury to their business and property and have incurred actual damages and losses in an amount to be proven at trial.

178.

All of the defendants are liable for their civil conspiracy for the following, non-exclusive list of damages:

- a. The startup costs associated with the development of the System, as contemplated by the Contract minimums;
- b. The startup costs associated with the anticipation of further business with the Dell Defendants;
- c. The loss of present business and contracts as a result of the defendants' civil conspiracy, specifically but not limited to the sale of cameras to the City;



- d. The loss of future business and contracts as a result of the defendants' civil conspiracy.

#### **ELEVENTH CAUSE OF ACTION - UNJUST ENRICHMENT**

179.

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

180.

In the alternative to all of the Causes of Action set forth above, Plaintiffs assert that the Dell Defendants and the Non-Dell Defendants have been unjustly enriched by the breach of the NDAs with Dell.

181.

Plaintiffs assert that the Dell Defendants and the Non-Dell Defendants have been unjustly enriched by the breach of the Contract with the City.

182.

Without the Confidential Information provided to the Dell Defendants and to the Non-Dell Defendants by Plaintiffs, the Dell Defendants and the Non-Dell Defendants would have been unable to copy and implement the systems, plans and designs developed by the Plaintiffs which are currently being implemented in the City and elsewhere throughout the United States and the world and would thus not have been paid for said implementation.

183.

The willful and intentional acts of the defendants resulting in their unjust enrichment has proximately caused actual damage to the Plaintiffs in the form of lost revenues and lost business both in the City and elsewhere throughout the United States and the world.

184.

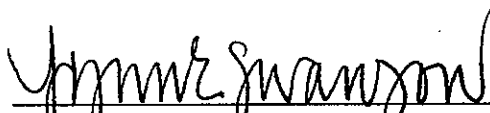
All of the defendants are liable for their unjust enrichment for the following, non-exclusive list of damages:

- a. The startup costs associated with the development of the System, as contemplated by the Contract minimums;

- b. The startup costs associated with the anticipation of further business with the Dell Defendants;
- c. The loss of present business and contracts as a result of the defendants' unjust enrichment, specifically but not limited to defendants' sale of cameras to the City;
- d. The loss of future business and contracts as a result of the defendants' unjust enrichment.

**WHEREFORE**, plaintiffs Active Solutions and Southern Electronics 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 GIS, L.L.C.; NetMethods, L.L.C.; Method Investments, L.L.C.; Ciber, Inc.; Veracent, L.L.C.; Science Applications International Corporation; Affiliated Computer Services, Inc.; the City of New Orleans; C. Ray Nagin; Gregory Meffert; Mark Kurt; Mark St. Pierre and Christopher Drake, declaring the defendants to be liable and indebted unto Plaintiffs, jointly and *in solido*, for all damages as are just and reasonable under the circumstances, as well as for judicial interest from the date of judicial demand and exemplary damages for the Dell Defendants' malicious and grossly negligent breach of and tortious interference with the NDAs. 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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