

EXHIBIT B

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TMX FUNDING INC., A Delaware Corporation

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TMX FUNDING INC., A Delaware Corporation,

Plaintiff,

v.

IMPERO TECHNOLOGIES INC., A California Corporation,
CLARENCE NICHOLAS
STEIGELMAN, An Individual,
RONALD J. LESNIAK, An Individual,
DAVID LESNIAK, an Individual,
MITCHELL A. HEINLEIN, An Individual,
JOSEPH ZHANG, a.k.a.
XIANGCHOU ZHANG, An Individual,
MICHELLE DOVER, An Individual,

Defendants.

Case No. **C10-00202PVT**

**COMPLAINT FOR DAMAGES
AND PERMANENT
INJUNCTION:**

- 1. MISAPPROPRIATION OF TRADE SECRETS;**
- 2. BREACH OF DUTY OF LOYALTY;**
- 3. BREACH OF CONTRACT;**
- 4. CONVERSION - PERSONAL PROPERTY;**
- 5. UNFAIR COMPETITION;**
- 6. INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
- 7. CONSTRUCTIVE TRUST AND ACCOUNTING;**
- 8. VIOLATION OF PENAL CODE §502**

FAXED

1 Plaintiff TMX FUNDING, INC. (“TMX”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. Defendants Ronald Lesniak, David Lesniak, Clarence Nicholas
4 Steigelman, Mitchell Heinlein, Joseph/Xiangchou Zhang, and Michelle Dover (the
5 “Individual Defendants”) are former employees of Teledex LLC (“Teledex”) and,
6 on information and belief, are current employees and/or agents of Defendant
7 Impero Technologies, Inc. (“Impero”).

8 2. Pursuant to two lawful foreclosure sales of Teledex’s Collateral
9 (defined below at paragraph 24), which took place on December 18, 2009 and
10 January 13, 2010 respectively, TMX is the lawful and rightful owner of Teledex’s
11 intellectual property, trade secrets and certain of its other collateral and assets (as
12 more fully described below at paragraphs 33 and 35).

13 3. The Individual Defendants have unlawfully removed, erased and
14 otherwise misappropriated collateral, tangible and intangible property and trade
15 secrets belonging to TMX. The removal, theft and deletion of such property and
16 information has effectively crippled TMX’s ability to make use of the assets,
17 property and collateral that it lawfully acquired from Teledex.

18 4. The Individual Defendants have further misappropriated TMX’s
19 confidential trade secrets and proprietary information which included but is not
20 limited to proprietary data, software, programs, and customer and supplier
21 information and disclosed that information to Impero. The Defendants used that
22 information to identify, contact, do business with, and attempt to do business with
23 customers that Individual Defendants previously serviced at Teledex. Defendants
24 have further used that information to cripple and prevent TMX from making use of
25 the assets, property and collateral that it lawfully obtained from Teledex. This
26 complaint seeks an injunction and damages against such conduct, as well as the
27 other conduct alleged herein.

JURISDICTION AND VENUE

1
2 5. Jurisdiction is based on 28 U.S.C. §1332, in that this is a civil action
3 between citizens of different states, and in which the matter in controversy exceeds
4 the sum or value of \$75,000, exclusive of interest and costs.

5 6. Venue is proper in this district pursuant to 28 U.S.C § 1391(a) in that
6 all of the defendants are subject to personal jurisdiction in this district at the time
7 the action is commenced. Venue is also proper in this district because a substantial
8 part of the events giving rise to this action occurred in this judicial district.

9 7. Plaintiff TMX Funding, Inc. (“TMX”) is, and at all times herein
10 mentioned was, a corporation duly organized and existing under the laws of the
11 state of Delaware, with its principal place of business in the state of Colorado.

12 8. TMX is informed and believes, and based thereon alleges, that
13 Defendant Impero Technology, Inc. (“Impero”) is, and at all times mentioned
14 herein was, a corporation organized and existing under the laws of the state of
15 California, with its principal place of business in San Jose County, California.

16 9. TMX is informed and believes, and based thereon alleges, that
17 Defendant Clarence Nicholas Steigelman is, and at all times relevant was, an
18 individual domiciled in the state of California.

19 10. TMX is informed and believes, and based thereon alleges, that
20 Defendant Ronald J. Lesniak (“R. Lesniak”) is, and at all times relevant was, an
21 individual domiciled in the state of California.

22 11. TMX is informed and believes, and based thereon alleges, that
23 Defendant David Lesniak (“D. Lesniak”) is, and at all times relevant was, an
24 individual domiciled in the state of California.

25 12. TMX is informed and believes, and based thereon alleges, that
26 Defendant Joseph Zhang, who may also be known as Xiangchou Zhang (“Zhang”)
27 is, and at all times relevant was, an individual domiciled in the state of California.

28 13. TMX is informed and believes, and based thereon alleges, that

1 Defendant Mitchell A. Heinlein (“Heinlein”) is, and at all times relevant was, an
2 individual domiciled in the state of New York.

3 14. TMX is informed and believes, and based thereon alleges, that
4 Defendant Michelle Dover (“Dover”) is, and at all times relevant was, an individual
5 domiciled in the state of California.

6 15. Defendants Impero, Steigelman, R. Lesniak, D. Lesniak, Zhang,
7 Heinlein, and Dover are collectively referred to herein as “Defendants.”

8 16. Plaintiff is informed and believes, and based thereon alleges, that at all
9 times herein mentioned, Telecom Industries LLC (“Telecom”), was and is a limited
10 liability company organized and existing under the laws of the State of Delaware
11 and is authorized to do business in the State of California with its principal place of
12 business in San Jose, California.

13 17. Plaintiff is informed and believes, and based thereon alleges, that at all
14 times herein mentioned, TT Systems LLC (“TT Systems”) was and is a limited
15 liability company organized and existing under the laws of the State of Delaware
16 and is authorized to do business in the State of California with its principal place of
17 business in San Jose, California.

18 18. Plaintiff is informed and believes, and based thereon alleges, that at all
19 times herein mentioned, Teledex Corporation (“Teledex Corporation”), was and is a
20 corporation organized and existing under the laws of the State of California with its
21 principal place of business in San Jose, California.

22 19. Plaintiff is informed and believes, and based thereon alleges, that at all
23 times herein mentioned, Teledex LLC (“Teledex”), a subsidiary of Teledex
24 Corporation, was and is a limited liability corporation organized and existing under
25 the laws of the State of Delaware and is authorized to do business in the State of
26 California with its principal place of business in San Jose, California.

27

28

1 **FACTS COMMON TO ALL CLAIMS**

2 **TELEDEX'S BUSINESS OPERATIONS UP TO DECEMBER 2009.**

3 20. Teledex is and was at all times alleged herein, a leading designer and
4 manufacturer of guest room telecommunication solutions including wireless
5 broadband internet solutions, which are branded as ExpressNet and AirLink; analog
6 telephone systems, which are branded as Smart Phones; voice-over internet
7 protocol telephone systems ("VoIP"); an Intelligent Thermostat device; and various
8 accessories.

9 21. The Teledex products and services targeted the hospitality market,
10 ranging from the luxury hotel sector to large discount motel chains. Teledex was
11 the leading supplier of guest room telecommunication services and business
12 applications in the United States and the preferred vendor in each of the top 15
13 luxury hotel chains as well as leading discount chains.

14 22. Teledex provided user support associated with its products and
15 services. Teledex provided customer service and technological support services via
16 a 1-800 telephone number ("800 Line"). The 800 Line provides technical support
17 to customers and is manned 24-hours per day, 7-days a week.

18 **THE TELEDEX LOAN AND DEFAULT**

19 23. On December 7, 2009, Plaintiff TMX acquired a first priority secured
20 loan (the "Loan") in the approximate principal amount of \$58 million, among
21 General Electric Capital Corporation ("GECC") and Beltway Capital Partners, LLC
22 (together with GECC, the "Prior Lenders"), on the one hand, and Telecom, Teledex
23 LLC and TT Systems ("Borrowers") on the other hand. The Loan is evidenced by
24 an Amended and Restated Credit Agreement dated March 6, 2003 (the "Credit
25 Agreement").

26 24. Borrowers' indebtedness under the Credit Agreement was secured by,
27 among other things, property previously pledged in Security Documents that pre-
28 date the Credit Agreement. Those security agreements include, but are not limited

1 to the Security Agreement dated October 1, 1999, and the First Amendment to the
2 Security Agreement dated July 13, 2006. Those security agreements granted to
3 Plaintiff a security interest in substantially all of the assets of the Borrowers, in
4 favor of the lenders (the "Collateral") including *inter alia*: (a) all Accounts; (b) all
5 Chattel Paper; (c) all Documents; (d) all General Intangibles (including payment
6 intangibles and Software); (e) all Goods (including Inventory, Equipment and
7 Fixtures; (f) to the extent not included, all Proceeds, tort claims, insurance claims
8 and other rights to payments not otherwise included in the foregoing and products
9 of the foregoing and all accessories to, substitutions and replacements for, and rents
10 and profits of, each of the foregoing.

11 25. The Security Documents also include, among other things: (a) the
12 Patent Security Agreement dated October 1, 1999 that creates a security interest in
13 patents of Teledex LLC; (b) the Trademark Security Agreement dated October 1,
14 1999 that creates a security interest in the trademarks of the Borrowers; and (c)
15 Copyright Security Agreement dated June 7, 2006 that creates a security interest in
16 certain graphic designs of the Borrowers.

17 26. The original maturity date of the Loan was June 30, 2005. Over the
18 past four years, the Borrowers executed and delivered thirty-six separate
19 amendments and forbearance agreement. The thirty-sixth and final amendment and
20 forbearance agreement expired on December 7, 2009 at 5:00 p.m., Central Standard
21 Time.

22 **TMX ACQUIRES ALL RIGHTS, TITLE AND OWNERSHIP OF**
23 **TELEDEX'S ASSETS, PROPERTY AND INFORMATION**

24 27. On December 7, 2009 at 5:15 p.m., Central Standard Time, Prior
25 Lenders and TMX entered into an Assignment and Agency Transfer Agreement
26 whereby Prior Lenders sold and assigned to TMX for valuable consideration the
27 Loan and the Warrants (as defined in the Credit Agreement). TMX, therefore, is
28 the successor in interest to the Prior Lenders, retaining all of the rights and remedies

1 of Prior Lenders under the Loan Documents.

2 28. By reason of the Borrowers' failure to cure their defaults under the
3 Loan Documents, TMX exercised certain of its rights and remedies under the Loan
4 Documents, including filing an action in the Superior Court of the County of Santa
5 Clara ("Superior Court"), seeking the appointment of a receiver, issuance of a
6 temporary restraining order and injunction, and foreclosure of the Collateral on
7 December 8, 2009, *TMX Funding, Inc. v. Telecom Industries, LLC, et. al.*, (Santa
8 Clara Case No. 1-09-CV-158908).

9 29. Pursuant to an Order dated December 9, 2009, the Superior Court: (1)
10 appointed a receiver to preserve and safeguard the Collateral and to operate and
11 manage the Collateral and (2) issued a temporary restraining order (the
12 "Receivership Order" and the "TRO"), a true and correct copy of which is attached
13 hereto as Exhibit "A."

14 30. The TRO ordered *inter alia* that all agents, officers and employees of
15 Teledex may not:

16 a. Commit or permit any waste of the Receivership Estate's assets
17 or any part thereof, or suffer or commit or permit any act or any part thereof in
18 violation of law, or remove, transfer, encumber or otherwise dispose of any of the
19 Receivership Estate's assets or any part thereof;

20 b. Demand, collect, receive, discount or in any other way divert or
21 use any of the cash, Accounts, funds and other items which constitute the
22 Receivership Property;

23 c. Directly or indirectly interfere in any manner with the discharge
24 of the Receiver's duties under this Order or the Receiver's possession and
25 maintenance of the Receivership Estate;

26 d. Expend, disburse, transfer, assign, sell, convey, devise, pledge,
27 mortgage, create a security interest in, encumber, conceal or in any manner
28 whatsoever deal in or dispose of the whole or any part of the Receivership Estate's

1 assets without prior Court Order;

2 e. *Do any act which will, or would tend to, impair, defeat, divert,*
3 *prevent or prejudice the preservation of the Receivership Estate's assets.*

4 31. Defendants R. Lesniak, D. Lesniak, Steigelman, Zhang, Heinlein, and
5 Dover, and each of them, were subject to the TRO and expressly prohibited from
6 committing waste, diverting, interfering, transferring, or conveying any of the
7 Receivership Estate property or assets.

8 32. Pursuant to the Receivership Order, the court-appointed receiver took
9 immediate possession, custody and control of the Collateral and further took control
10 of management and business operations at Teledex to care for, preserve and
11 maintain the Collateral.

12 33. A duly noticed Article 9 public foreclosure sale of certain Collateral
13 took place on December 18, 2009 (the "First Foreclosure Sale"), pursuant to which
14 TMX bid on and acquired the following Collateral: (1) all Goods (including
15 Inventory, Equipment and Fixtures) wherever located in the world, including but
16 not limited to Malaysia, Hong Kong and the UK; (2) all URL addresses owned or
17 controlled by Teledex; (3) all trade names owned or controlled by Teledex; (4) all
18 schematics, designs and other technical information owned, licensed or controlled
19 by Teledex; (5) all telecommunication numbers, including all telephone numbers
20 and facsimile numbers issued to Teledex; (6) all accounting data and information,
21 but not including any accounting software license. TMX further bid on and
22 purchased Collateral of Telecom and TT Systems at the First Foreclosure Sale.
23 TMX purchased the foregoing Collateral at the First Foreclosure Sale for the
24 aggregate sum of \$10,100,000 (Ten million one hundred thousand dollars). True
25 and correct copies of the Memorandum of Public Disposition of Collateral and
26 UCC Transfer Statement pertaining to the First Foreclosure Sale is attached hereto
27 as Exhibits B and C respectively.

28 34. None of the Defendants appeared, bid, acquired, or purchased any

1 property at the First Foreclosure Sale.

2 35. A duly noticed Article 9 public foreclosure sale of certain Collateral
3 took place on January 13, 2010 at 4:00 p.m. (the "Second Foreclosure Sale")
4 pursuant to which TMX bid on and purchased the following Collateral: (a) All
5 accounts; (b) all chattel paper; (c) all documents; (d) all general intangibles
6 (including payment intangibles); (e) all instruments; (g) all supporting obligations
7 and letter of credit rights of Teledex, and (h) all other personal property of Teledex,
8 whether now owned or hereafter acquired or arising and regardless of where located
9 (the "Property"). TMX purchased the foregoing Collateral at the Second
10 Foreclosure Sale for the aggregate sum of \$3,000,000 (three million dollars). True
11 and correct copies of the Memorandum of Public Disposition of Collateral and
12 UCC Transfer Statement pertaining to the Second Foreclosure Sale is attached
13 hereto as Exhibits D and E respectively.

14 36. None of the Defendants appeared, bid, acquired, or purchased any
15 property at the Second Foreclosure Sale.

16 **THE INDIVIDUAL DEFENDANTS' EMPLOYMENT, DUTIES AND**
17 **OBLIGATIONS AT TELEDEX**

18 37. Plaintiff is informed and believes, and based thereon alleges, that
19 Defendant R. Lesniak was the Chief Executive Officer of Teledex. During his
20 employment with Teledex, Lesniak was directly charged with developing and
21 implementing the company policies and strategies and developing and maintaining
22 business on a day-to-day basis. As the highest ranking executive, Lesniak's
23 position was one of high trust and confidence.

24 38. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendant Steigelman worked as a sales manager for the Western sales region for
26 Teledex, including Western United States, Western Canada, and South America.
27 During his employment with Teledex, Steigelman was directly charged with
28 developing, on behalf of Teledex, a close business working relationship with its

1 current and prospective customers. In many instances, Steigelman was the primary
2 contact for such customers and, as such, his position was one of high trust and
3 confidence.

4 39. Plaintiff is informed and believes, and based thereon alleges, that
5 Defendant Heinlein worked as a sales manager for the Western sales region for
6 Teledex including Eastern United States. During his employment with Teledex,
7 Heinlein was directly charged with developing, on behalf of Teledex, a close
8 business working relationship with its current and prospective customers. In many
9 instances, Heinlein was the primary contact for such customers and, as such, his
10 position was one of high trust and confidence.

11 40. Plaintiff is informed and believes, and based thereon alleges, that
12 Defendant Zhang worked as vice president of engineering for Teledex. During his
13 employment with Teledex, Zhang was directly charged with developing, creating,
14 and trouble-shooting the technologies belonging to Teledex. Customer feedback
15 generated specific product offerings and innovations and such confidential feedback
16 was entrusted and confided in Zhang. As such, Zhang's position was one of high
17 trust and confidence.

18 41. Plaintiff is informed and believes, and based thereon alleges, that
19 Defendant Dover worked as a customer service manager at Teledex. During her
20 employment at Teledex, Dover was charged with gathering, tabulating, compiling,
21 and generating data regarding confidential and proprietary sales, shipping and
22 customer service feedback. As such, Dover was in a position of high trust and
23 confidence.

24 42. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendant D. Lesniak was a sales manager of the ExpressNet product. During his
26 employment with Teledex, D. Lesniak was directly charged with developing, on
27 behalf of Teledex, a close business working relationship with its current and
28 prospective customers. In many instances, D. Lesniak was the primary contact for

1 such customers and, as such, his position was one of high trust and confidence.

2 43. In order for the Individual Defendants to develop customers and
3 technologies and to carry out the aforementioned duties and responsibilities,
4 Teledex entrusted to them various highly confidential information, trade secrets,
5 and proprietary information, including but not limited to:

- 6 a. Its software, source codes, data , formulas, and other technical
7 information developed as proprietary and confidential products
8 and services;
- 9 b. Its business methods and marketing plans, such as
10 prospective customers and sales methods for attracting and
11 retaining customers;
- 12 c. Its product information, including, but not limited to, cost,
13 pricing, margin data and other financial information;
- 14 d. Customer lists;
- 15 e. Contact names and information at the various accounts;
- 16 f. Names and contact information of the person(s) with
17 purchasing authority and person(s) with influence over
18 purchasing decisions at the various accounts;
- 19 g. Customer profiles, including but not limited to, a record of all
20 of its previous transactions, feedback, and service history
21 with the various accounts;
- 22 h. Special buying and service needs, buying and service
23 patterns, agreements with customers, and buying preferences of
24 customers, including special terms, discounts, and accessories;
- 25 j. Login and password information to access the computer
26 network, servers, computer systems, and telephone systems.

27 (a-j collectively "Confidential Information").

28 44. All of the above-referenced Confidential Information relating to

1 Teledex's business methods, plans and strategies, including, but not limited to, the
 2 logins, passwords, highly confidential customer lists, profiles, and records was
 3 developed by Teledex at substantial effort and expense and was provided to the
 4 Individual Defendants during the course of their employment with Teledex, and it
 5 was and is confidential information, trade secrets and proprietary information not
 6 generally accessible to third parties.

7 45. Plaintiff is informed and believes and based thereon alleges that in
 8 connection with the Individual Defendants' respective employment with Teledex,
 9 each of them entered into a Proprietary Information and Employee Inventions
 10 Agreement, a true and correct copy of which is attached hereto as Exhibit "F," and
 11 a Confidential Information Policy and Agreement, a true and correct copy of which
 12 is attached hereto as Exhibit "G."

13 46. The Proprietary Information and Employee Inventions Agreement
 14 provides, in relevant part:

15 4. Definition of Proprietary Information

16 As used herein, the term "Proprietary Information" refers
 17 to any and all information of a confidential, proprietary,
 18 or secret nature which is or may be either applicable to, or
 19 related in any way to (i) the business, present or future, of
 20 the Company or any Subsidiary; (ii) the research and
 21 development...of the Company or any Subsidiary; (iii)
 22 the business of any customer of the Company or any
 23 Subsidiary. Proprietary Information includes, for
 24 example and without limitation, trade secrets (as defined
 25 by California Civil Code section 3426), processes,
 26 formulas, know-how, improvements, inventions,
 27 techniques, marketing plans and strategies, and
 28 information concerning customers or vendors. (Emphasis
 added)

5. Proprietary Information to be Kept in Confidence

Employee acknowledges that the Proprietary Information
 is a special, valuable and unique asset of the Company,
 and Employee agrees at all times during the period of
 his/her employment and thereafter to keep in confidence
 and trust all Proprietary Information... (Emphasis added)

8. Return of Materials at Termination

1 In the event of any termination of his/her employment,
2 whether or not for cause and whatever the reason,
3 Employee will promptly deliver to the Company, or any
4 Subsidiary designated by it, all documents, data, records
5 and other information pertaining to his/her employment,
6 and Employee shall not take with him/her any documents
7 or data, or any reproduction or excerpt of any documents
8 or data, containing or pertaining to any Proprietary
9 Information.

10 9. Disclosure to Company; Inventions as Sole
11 Property of the Company

12 Employee acknowledges and agrees that all Inventions
13 shall be the sole property of the Company...

14 11. Injunction

15 Employee agrees that it would be difficult to measure
16 damage to the Company from any breach by Employee of
17 the promises set forth in paragraphs 5, 6, 8 and 9 herein,
18 and that injury to the Company from any such breach
19 would be impossible to calculate, and that money
20 damages would therefore be an inadequate remedy for
21 any such breach. Accordingly, Employee agrees that if
22 he/she shall breach any provision of paragraphs 5, 6, 8
23 and 9, or any of them, the Company shall be entitled in
24 addition to all remedies it may have, to an injunction or
25 other appropriate orders to restrain any such breach by
26 Employee without showing or proving any actual damage
27 sustained by the Company. (Emphasis added)

28 47. The Confidential Information Policy and Agreement provides policies,
procedures and instructions to employees regarding the handling and treatment of
confidential and proprietary information with third party customers, vendors and
suppliers to prevent disclosure and dissemination of confidential, proprietary and
trade secret information.

48. Teledex required its employees and the Individual Defendants to sign
written agreements wherein employees agree that the referred to information is
confidential, proprietary, trade secret information and that such information may
only be sued in connection with his or her employment with Teledex and may not
be disclosed to third parties, except as specifically permitted and approved.

49. Plaintiff is informed and believes and based thereon alleges that
Teledex maintained computer login procedures that restrict, monitor and log access

1 to the above-referenced information.

2 50. Teledex maintained confidential login and password-protected access
3 to its computers, computer network, servers, and databases.

4 51. Teledex maintained confidential password-protected access to the 800
5 Line, incoming calls to the 800 Line, and data related to the 800 Line to only
6 certain, few, customer support, technology support and engineering professionals
7 charged with the responsibility of fielding support and service calls.

8 52. As employees, the Individual Defendants owed Teledex a duty of
9 undivided loyalty. The duty required the Individual Defendants to put forth their
10 best efforts and undivided work time to promote the business of Teledex, and not to
11 use their work at Teledex or its confidential, proprietary and trade secret
12 information for their own and others' benefit to the detriment of Teledex.

13 53. On or about December 13, 2009, R. Lesniak, as Teledex's Chief
14 Executive Officer provided Teledex's employees written notice of termination,
15 mass layoff and/or plant closure, including but not limited to, the Individual
16 Defendants and each of them.

17 54. On or about December 10, 2009, the court-appointed receiver notified
18 and requested that employees, including the Individual Defendants, return to work
19 on Monday, December 15, 2009 to maintain and preserve the business operations of
20 Teledex. The receiver offered employment for a term of five work days up to and
21 until December 19, 2009.

22 55. TMX is informed and believes and based thereon alleges that the
23 Individual Defendants did not work for the receiver following the receiver's
24 December 10, 2009 request.

25 56. TMX is informed and believes and based thereon alleges that the
26 Individual Defendants are now employed by Defendant Impero and are actively
27 attempting to do business and doing with numerous customers that they formerly
28 serviced at Teledex, using Plaintiff's confidential, proprietary trade secret

1 information, that they wrongfully took, stole, copied, deleted and/or accessed.

2 57. TMX is informed and believes and based thereon alleges that, prior to,
3 in connection with, and following their departure from Teledex, the Individual
4 Defendants, took, copied, removed, accessed and/or erased TMX's confidential,
5 proprietary and trade secret information for use at Impero.

6 58. TMX is informed believes and based thereon alleges that the
7 Defendants have continued to actively communicate with, and do business with,
8 and attempted to do business with the customers they formerly were assigned to
9 service while at Teledex by using confidential, proprietary and trade secret
10 information that they took, copied, removed, accessed, and/or erased from TMX.

11 59. TMX is informed believes and based thereon alleges that Defendants
12 have used Teledex's confidential, proprietary and trade secret information in
13 seeking to unlawfully obtain such customers' business and seeking to cripple TMX
14 from engaging in business with such customers.

15 **THEFT OF TANGIBLE AND INTANGIBLE PROPERTY IS DISCOVERED**
16 **FROM DECEMBER 2009 TO THE PRESENT**

17 60. During the time period from December 10, 2009 to December 19,
18 2009 the court-appointed receiver determined that three laptop computers and two
19 tower computers were stolen from Teledex's offices in San Jose, California.

20 61. TMX is informed and believes and based thereon alleges that prior to
21 or immediately following the appointment of the receiver, hard files, hardware,
22 servers, and computer and internet access cards were stolen from Teledex's offices
23 in San Jose, California.

24 62. TMX is informed and believes and based thereon alleges that
25 Defendants used confidential and proprietary information to obtain unauthorized
26 access to Teledex servers and computer networks and copied, misappropriated,
27 removed, overwrote, removed, and erased confidential, proprietary and trade secret
28 information as recently as January 1, 2010. Defendants' conduct is and was in

1 violation of *inter alia*, the TRO and the Proprietary Information and Employee
2 Inventions Agreement.

3 63. TMX is informed and believes and based thereon alleges that
4 Defendants removed, took, removed, and/or erased confidential, proprietary and
5 trade secret information that belongs to TMX such that the information is now in
6 the sole possession of Defendants and not in the possession or custody of TMX.

7 64. TMX is informed and believes and based thereon alleges that
8 Defendant Impero knows that the Individual Defendants signed and were obligated
9 to comply with the Proprietary Information and Employee Inventions Agreement.

10 65. TMX is informed and believes and based thereon alleges that it is
11 Defendant Impero's practice and policy to hire employees of its competitors with
12 the expectation that the new employees will be able to obtain for Impero the
13 confidential, proprietary and trade secret information of the competitor and to take
14 such information away from the competitor such that the competitor can no longer
15 use such information.

16 66. TMX is informed and believes and based thereon alleges that it is
17 Defendant Impero's practice and policy to hire employees of its competitors with
18 the expectation that, once hired, the new employees will be able to obtain for
19 Impero the confidential, proprietary and trade secret information of the competitor
20 and to use that information to unilaterally step into the shoes of the competitor,
21 attempt to do business, and do business with the competitor's customers.

22 67. TMX is informed and believes and based thereon alleges that in
23 connection with the use of TMX's confidential information, trade secrets and
24 proprietary information, the Individual Defendants have and continue to do
25 business with and/or attempt to generate business on behalf of Impero from those
26 customers and accounts that Teledex charged them with the duty of maintaining
27 and handling. The Individual Defendants have attempted to do business and/or are
28 doing business with such customers without informing the customers that: (1) they

1 are no longer agents, employees, or representatives of Teledex doing business on
2 behalf of Teledex and/or (2) they are now agents, employees and representatives of
3 Impero doing business on behalf of Impero.

4 68. TMX is informed and believes and based thereon alleges that the
5 Individual Defendants have further encouraged, requested and caused Teledex
6 customers to transfer business from Teledex to Impero and have done so in
7 connection with the use of TMX's confidential information, trade secrets and
8 proprietary information. Such confidential information, trade secrets and
9 proprietary information has allowed Defendants to target specific customer
10 representatives, using customer feedback technological information belonging to
11 TMX as recently as January 1, 2010, to structure their own proposals with full
12 knowledge of prior and recent needs and prior agreements with Teledex.

13 **FIRST CAUSE OF ACTION**

14 **(Misappropriation of Trade Secrets--**

15 **In Violation of California Civil Code §§ 3426, et seq.**

16 **Against All Defendants)**

17 69. TMX realleges and incorporates by this reference each and every
18 allegation set forth in Paragraphs 1 through 62, inclusive.

19 70. Defendants have wrongfully misappropriated for their own use and
20 benefit trade secret and confidential proprietary information of Teledex and TMX,
21 including the confidential proprietary information, including but not limited to
22 customer information and technological information created or developed at
23 substantial time and expense.

24 71. Defendants are in the possession of and are presently using for their
25 sole economic benefit the trade secrets and confidential, proprietary information of
26 TMX including the Confidential Information and Proprietary Information.

27 72. Defendants' use of this confidential, proprietary information and these
28 trade secrets will deprive TMX of an extremely valuable competitive advantage

1 which was gained through substantial time and expense, and maintained in secrecy.

2 73. Defendants (a) misappropriated this confidential, proprietary
3 information and these trade secrets through improper means, or (b) acquired this
4 confidential, proprietary information and these trade secrets under circumstances
5 which give rise to a duty on the part of Defendants and other persons with access to
6 those trade secrets to maintain their secrecy and limited use. Defendant Impero
7 acquired this confidential, proprietary information and these trade secrets at a time
8 when they knew, or had reason to know, that this confidential, proprietary
9 information and these trade secrets had been acquired through improper means.

10 74. Defendants have commenced, and are about to commence, solicitation
11 of Teledex customers based upon the confidential, proprietary information and
12 trade secrets misappropriated from Teledex and TMX.

13 75. Defendants' improper use of TMX's confidential, proprietary
14 information and trade secrets will continue, to the irreparable injury of TMX unless
15 enjoined by this Court. TMX has no speedy or adequate remedy at law to prevent
16 this irreparable injury absent the requested injunction. TMX accordingly requires
17 an injunction in the form to be submitted to this Court prohibiting solicitation of
18 Teledex's customers and requiring a return of Teledex's and TMX's Confidential
19 Information and Proprietary Information.

20 76. As a direct and proximate result of defendants' misappropriation of
21 TMX's confidential, proprietary information and trade secrets, TMX has suffered
22 damages in an amount which is presently unascertainable, plus interest in
23 accordance with applicable law. TMX will seek leave of this Court to amend this
24 Complaint to set forth the precise amount of these damages when that amount has
25 been ascertained.

26 77. Defendants' conduct in obtaining and exploiting TMX's Confidential
27 Information and Proprietary Information was and is willful, intentional, fraudulent,
28 malicious, and oppressive, and has been taken in clear violation of TMX's rights in

1 its trade secrets and proprietary information despite defendants' knowledge of those
2 rights. Defendants' acts constitute despicable conduct. This wrongful conduct was
3 authorized and ratified by Defendant Impero. This conduct entitles TMX to an
4 award of punitive and exemplary damages.

5 78. Defendants' misappropriation of TMX's trade secrets has been willful
6 and malicious and has forced TMX to retain attorneys to protect its legal rights in
7 its proprietary information and trade secrets. Defendants' conduct entitles TMX to
8 an award of its attorneys' fees incurred and expended in protecting these rights, in
9 an amount according to proof.

10 **SECOND CAUSE OF ACTION**

11 **(Breach of Fiduciary Duty and Duty of Loyalty--**

12 **Against R. Lesniak, D. Lesniak, Steigelman, Zhang, Heinlein, and** 13 **Dover)**

14 79. TMX realleges and incorporates by this reference each and every
15 allegation set forth in Paragraphs 1 through 78, inclusive.

16 80. R. Lesniak, D. Lesniak, Steigelman, Zhang, Heinlein, and Dover,
17 inclusive, in their capacity as sales representatives, managers and/or executives of
18 Teledex, occupied positions of trust and confidence with Teledex and had a
19 fiduciary duty to exercise the utmost good faith and loyalty to Teledex.

20 81. In the course and scope of their duties with Teledex these defendants
21 were granted access to and entrusted with substantial confidential, proprietary
22 information, and trade secrets, including the Confidential Information and
23 Proprietary Information, with the express understanding and agreement that this
24 confidential, proprietary information, and trade secrets would be used by these
25 defendants solely within the scope of their employment with Teledex and for the
26 benefit of Teledex and its affiliates and subsidiaries. Further, the fiduciary
27 obligations of these Individual Defendants created a duty on the part of these
28 Individual Defendants not to disclose any Teledex confidential, proprietary

1 information, or trade secrets to any person outside those expressly authorized by
2 Teledex. This confidential, proprietary information, and these trade secrets were,
3 and remain, the sole and exclusive property of Teledex., duly and lawfully
4 purchased and acquired by TMX.

5 82. These Individual Defendants have breached their fiduciary duties to,
6 and confidential relationship with Teledex, by misappropriating, disclosing, and
7 disseminating Teledex's confidential, proprietary information, and trade secrets to
8 unauthorized third parties and by using this information to solicit existing Teledex
9 customers.

10 83. TMX has lawfully acquired and purchased certain of Teledex's
11 Collateral including but not limited to proceeds, claims and rights to payments.

12 84. The breach of fiduciary duty by these Individual Defendants will
13 continue, to the irreparable injury of TMX, unless enjoined by this Court.

14 85. As a direct and proximate result of the breach of their fiduciary duties
15 by these Individual Defendants, TMX has suffered damages in an amount which is
16 presently unascertainable, plus interest in accordance with applicable law. TMX
17 will seek leave of this Court to amend this Complaint to set forth the precise
18 amount of those damages when that amount has been ascertained.

19 86. The conduct of these Individual Defendants as alleged herein, is a
20 violation of the fiduciary obligations each owed and knew they owed to Teledex,
21 and was ands willful, intentional, malicious, and oppressive and as such constitutes
22 despicable conduct. This conduct entitles TMX to an award of punitive damages
23 against these Individual Defendants.

24 **THIRD CAUSE OF ACTION**

25 **(Breach of Contract--**

26 **Against R. Lesniak, D. Lesniak, Steigelman, Zhang, Heinlein, and**
27 **Dover)**

28 87. TMX realleges and incorporates by this reference each and every

1 allegation set forth in Paragraphs 1 through 86, inclusive.

2 88. TMX is informed and believes and based thereon alleges that
3 Defendants R. Lesniak, D. Lesniak, Steigelman, Zhang, Heinlein, and Dover and
4 Teledex entered into written agreements relating to, inter alia, confidential
5 information, proprietary information, inventions, and trade secrets. The agreements
6 were entered into for the valuable consideration of the Individual Defendants'
7 employment at Teledex. These written agreements, which consist of the Teledex
8 Proprietary Information and Inventions Agreement, each of these Defendants
9 agreed that:

10 5. Proprietary Information to be Kept in Confidence

11 Employee acknowledges that the Proprietary Information
12 is a special, valuable and unique asset of the Company,
13 and Employee agrees at all times during the period of
his/her employment and thereafter to keep in confidence
and trust all Proprietary Information... (Emphasis added)

14 8. Return of Materials at Termination

15 In the event of any termination of his/her employment,
16 whether or not for cause and whatever the reason,
17 Employee will promptly deliver to the Company, or any
18 Subsidiary designated by it, all documents, data, records
19 and other information pertaining to his/her employment,
and Employee shall not take with him/her any documents
or data, or any reproduction or excerpt of any documents
or data, containing or pertaining to any Proprietary
Information.

20 9. Disclosure to Company; Inventions as Sole
21 Property of the Company

22 Employee acknowledges and agrees that all Inventions
23 shall be the sole property of the Company...

24 89. By virtue of the acts described herein, Lesniak, Steigelman, Zhang,
25 Heinlein, and Dover, each of them, have breached the provisions of their respective
26 Proprietary Information and Inventions Agreements with Teledex in, inter alia, the
27 following ways:

28 (a) by disclosing Teledex confidential, proprietary information, and trade

1 secrets to third persons not authorized by Teledex to receive such information;

2 (b) taking, copying and removing Teledex's confidential, proprietary and
3 trade secret information and property for use at Impero;

4 (c) actively soliciting, communicating with, and doing business with the
5 customers they formerly were assigned to service while at Teledex;

6 (d) removing, copying, and spying on confidential, proprietary, trade
7 secret information by gaining unauthorized access to networks, servers and
8 databases using confidential, proprietary and trade secret information.

9 90. TMX is informed believes and based thereon alleges that the
10 Individual Defendants have used TMX's confidential, proprietary and trade secret
11 information in seeking to unlawfully obtain such customers' business.

12 91. Teledex has performed all obligations, covenants, and conditions on its
13 part to be performed pursuant to its Proprietary Information and Inventions
14 Agreement, with these Individual Defendants, except where such performance has
15 been prevented or excused.

16 92. As a direct and proximate result of the foregoing breaches, TMX has
17 suffered damages in an amount which is presently unascertainable, plus interest in
18 accordance with applicable law.

19 **FOURTH CAUSE OF ACTION**

20 **(Conversion - Recovery of Personal Property--**

21 **Against All Defendants)**

22 93. TMX realleges and incorporates by this reference each and every
23 allegation set forth in Paragraphs 1 through 92, inclusive.

24 94. Defendants, and each of them, are in possession of TMX's property
25 and confidential, proprietary information and trade secrets, including, inter alia, the
26 Confidential Information and Proprietary Information.

27 95. TMX never authorized Defendants to take possession of the
28 information described above. Nor has any third party lawfully authorized

1 Defendants to take possession of any of the items described herein.

2 96. Defendants' possession of TMX's property, confidential and
3 proprietary information and trade secrets is in direct violation of the TRO and
4 Teledex's Proprietary Information and Inventions Agreement of the Individual
5 Defendants and the fiduciary duties of each of them. Further, Defendants'
6 possession of the items described herein is the possession of wrongfully obtained
7 trade secrets acquired by an improper means by persons who knew, or who had
8 reason to know, that knowledge of TMX's confidential, proprietary information and
9 trade secrets was acquired under circumstances giving rise to a duty to limit its use
10 or maintain its secrecy in accordance with California Civil Code §§ 3426, et seq.

11 97. Defendants' theft and taking of TMX's property, misappropriation of
12 TMX's trade secrets, and use of misappropriated trade secrets will continue to
13 irreparably injure TMX, unless and until enjoined and restrained by this Court.

14 98. TMX has no adequate remedy at law to prevent defendants from
15 continuing to refuse to return to TMX the confidential, proprietary information, and
16 trade secrets misappropriated by defendants. TMX therefore seeks an order of this
17 Court requiring defendants, and each of them, to return all TMX confidential,
18 proprietary information, and trade secrets.

19 **FIFTH CAUSE OF ACTION**

20 **(Unfair Competition In Violation of**
21 **California Business and Professions**

22 **Code §§ 17200, et seq.--Against All Defendants)**

23 99. TMX realleges and incorporates by this reference each and every
24 allegation set forth in Paragraphs 1 through 98, inclusive.

25 100. Defendants' acts as alleged herein, including, inter alia,
26 misappropriating and using TMX's property, confidential and proprietary
27 information, and trade secrets, constitute acts of unfair competition within the
28 meaning of California Business and Professions Code §§ 17200, et seq. TMX has

1 no speedy or adequate remedy at law because defendants' acts of misappropriation
2 have caused, and will continue to cause, irreparable injury to TMX.

3 101. Defendants' taking of TMX's property and information and
4 misappropriation of TMXs confidential, proprietary information, and trade secrets
5 are in violation of the Uniform Trade Secrets Act ("UTSA"), Civil Code §3426, et
6 seq.

7 102. Defendants' taking, accessing, copying, using, and/or deleting of
8 Teledex's property and information is in violation of Penal Code section 502.

9 103. TMX is informed and believes, and on that basis alleges, that
10 defendants have continued these acts of unfair competition as herein above
11 described, and will continue these acts unless and until enjoined and restrained by
12 an Order of this Court.

13 104. As a direct and proximate result of these acts of unfair competition,
14 TMX has suffered damages in an amount which is presently unascertainable. When
15 the precise amount of those damages has been ascertained, TMX will seek leave of
16 this Court to amend this Complaint 'to reflect the amount of those damages.

17 105. Defendants' conduct was and is willful, intentional, malicious and
18 oppressive, and constitutes despicable conduct in direct derogation and violation of
19 the rights and duties defendants knew were owed to Teledex. This conduct entitles
20 TMX to an award of punitive and exemplary damages against the defendants, and
21 each of them.

22 106. Defendants' taking of TMX's property and information and
23 misappropriation of TMXs confidential, proprietary information, and trade secrets
24 has forced TMX to retain attorneys to protect its legal rights in its proprietary
25 information and trade secrets. Defendants' conduct entitles TMX to an award of its
26 attorneys' fees incurred and expended in protecting these rights, in an amount
27 according to proof.

28

SIXTH CAUSE OF ACTION

**(Interference with Prospective Business Relations--
Against All Defendants)**

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4 107. TMX realleges and incorporates by this reference each and every
5 allegation set forth in Paragraphs 1 through 106, inclusive.

6 108. Over the course of many years, and at great expense and effort,
7 Teledex has developed a substantial business in developing and providing
8 technology, internet and telephone solutions to hotels, resorts, and high-density
9 condominiums and apartment complexes.

10 109. Through its efforts, Teledex has established a relationship between
11 itself and its customers. Once a satisfactory relationship exists, that customer will
12 normally authorize Teledex to continue with additional purchases. This business
13 relationship is such that it will normally continue unless and until interfered with.

14 110. Defendants, through the use of unfair methods of competition as
15 described herein, have solicited and induced, and are continuing to solicit and
16 induce, TMX's customers to do business with defendants rather than with TMX.
17 But for this interference, these customers would have placed, or would have
18 continued to place, their business with TMX.

19 111. The wrongful and tortious acts of Defendants, as alleged herein, have
20 directly and proximately damaged TMX in a sum which is presently
21 unascertainable, plus interest in accordance with applicable law. When the precise
22 amount of these damages has been ascertained, TMX will seek leave of this Court
23 to amend this Complaint to set forth the full amount of these damages.

24 112. In doing the acts alleged herein, defendants have acted with
25 oppression, fraud and malice, without justification, and with the intent to damage
26 TMX in its business and customer relations, all of which constitutes despicable
27 conduct. TMX is therefore entitled to an award of punitive and exemplary damages
28 against defendants, and each of them.

SEVENTH CAUSE OF ACTION

**(For Imposition of a Constructive Trust and/or an Accounting--
Against All Defendants)**

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4 113. TMX realleges and incorporates by this reference each and every
5 allegation set forth in Paragraphs 1 through 112, inclusive.

6 114. As a result of the wrongful and tortious acts alleged herein,
7 Defendants, and each of them, are now in possession of substantial sums which
8 properly should be conveyed to TMX. No part of said sums have been delivered by
9 defendants to TMX.

10 115. By reason of the wrongful manner in which defendants, and each of
11 them, obtained said sums, defendants are now involuntary trustees holding said
12 sums and profits therefrom in constructive trust for TMX with a duty to convey said
13 sums and profits to TMX forthwith.

14 116. TMX has been and will be unable to ascertain the precise amount of
15 the sums held by defendants, and each of them, as constructive trustees, without a
16 full and complete accounting by defendants. TMX prays that this Court imposes a
17 constructive trust on all profits and other sums obtained by defendants from the
18 wrongful and tortious acts as alleged herein, and requires a full and complete
19 accounting to TMX of all said sums forthwith.

20 **EIGHTH CAUSE OF ACTION**

21 **(For Violation of Penal Code §502 –**
22 **Against all Defendants)**

23 117. TMX realleges and incorporates by this reference each and every
24 allegation set forth in Paragraphs 1 through 116, inclusive.

25 118. California Penal Code section 502(e) provides that a civil cause of
26 action is available against any person who commits any acts in violation of section
27 502(c).

28 119. TMX is informed and believes and based thereon alleges that

1 Defendants violated section 502(c) by committing the following acts:

2 (a) Improperly accessing and gaining entry without authorization to
3 TMX's computer network and servers;

4 (b) Knowingly accessing TMX's networks and computer systems
5 and without permission altering, damaging, deleting, destroying and otherwise
6 making use of data to wrongfully obtain money, property and data;

7 (c) Knowingly and without permission accessing TMX data and
8 copied, took, deleted, and made use of data;

9 (d) Knowingly and without permission provided and/or assisted in
10 providing a means to access TMX's computers, servers, networks and computer
11 systems.

12 120. As a direct, proximate and foreseeable result of Defendants' unlawful
13 actions, TMX suffered and continues to suffer substantial losses and damages in an
14 amount equal to be proven at trial.

15 121. As a result of the actions herein alleged, TMX is entitled to an award
16 of reasonable attorneys' fees pursuant to Penal Code section 502(e)(2).

17 122. TMX is informed and believes, and on that basis alleges, that the
18 Defendants have continued these unlawful acts as herein above described, and will
19 continue these acts unless and until enjoined and restrained by an Order of this
20 Court, as is expressly authorized by Penal Code section 502(e)(1).

21 123. TMX is informed and believes, and on that basis alleges, that the
22 Defendants' wrongful actions were taken with the intent to injure TMX and its
23 business. TMX further alleges that Defendants knowingly and willfully committed
24 the acts alleged herein in violation of Penal Code section 502(c). TMX is further
25 informed and believes and based thereon alleges that said despicable acts were done
26 maliciously, oppressively, and with a wanton disregard of TMX's rights. TMX is
27 therefore entitled to punitive damages against Defendants pursuant to Penal Code
28 section 502(e)(4), in an amount according to proof.

PRAYER

1
2 WHEREFORE TMX prays for relief against all Defendants, as follows:

3 A. For a temporary restraining order and a preliminary and permanent
4 injunction enjoining and restraining Defendants, their officers, directors, agents,
5 subsidiaries, servants, employees, and any other person, firm, entity or corporation
6 acting in concert with or controlled by them, in whole or in part from:

7 (1) Destroying, erasing, deleting, overwriting, or corrupting any data,
8 information and trade secrets relating to the technology, customers, suppliers, and
9 any other information relating to the business operations of Teledex;

10 (2) Accessing, divulging, making known, or making any use whatsoever
11 of the confidential, proprietary information, and trade secrets of TMX, acquired
12 from Teledex and/or TMX, which confidential, proprietary information, and trade
13 secrets consist of information obtained from TMX by defendants and relating to:
14 data, technology, products, and services of Teledex, the identity of Teledex's
15 customers, the identity of Teledex's customer contacts, pricing of Teledex's
16 products, sales, pricing, shipping, and invoicing information regarding Teledex's
17 customers, and other Confidential Information and Proprietary Information.

18 (3) Attempting to do business with, doing business with, soliciting or
19 accepting, directly or indirectly, any bids, proposals, contracts, orders, sales, or
20 agreements for the sale of products or services with any customer or supplier using
21 any confidential, proprietary information and trade secrets of TMX;

22 (4) Taking any steps whatsoever to enter into or perform agreements,
23 sales, or orders with any customer or supplier of Teledex using any confidential,
24 proprietary information and trade secrets of TMX;

25 (5) Disclosing, sharing, copying, or divulging any of the confidential,
26 proprietary and trade secret information of TMX to any business or individual;

27 (6) Intentionally interfering with or inducing a breach of any contract
28 between or among Teledex and TMX and any of its customers, suppliers,

1 employees or any other contracting party;

2 (7) Intentionally interfering with any prospective business opportunities
3 between or among TMX and its respective customers or suppliers; and

4 (8) Developing, producing or procuring, selling or marketing any product,
5 service, program, or system, which is based, in whole or in part, on any TMX
6 confidential, proprietary information, trade secret, or product obtained or diverted
7 from TMX by defendants with TMX's direct authorization or consent.

8 (9) Accessing Teledex's computers, networks, servers and computer
9 systems and using, copying, taking, erasing, deleting or overwriting any data or
10 information;

11 B. For a temporary restraining order and preliminary and permanent
12 injunction requiring defendants, their officers, directors, agents, subsidiaries,
13 servants, employees and any other person, firm, entity or corporation acting in
14 concert with or controlled by them, in whole or in part, to immediately deliver to
15 TMX any of the following which are in their control, custody or possession:

16 (1) All hardware, software and other tangible property belonging to TMX,
17 including but not limited to laptop computers, desktop computers, tower computers,
18 hard drives, servers, and any other data storage and/or memory device;

19 (2) All data, information, codes, passwords, code source information,
20 customer and supplier information, and any other confidential, proprietary
21 information, and trade secrets belonging to TMX;

22 (3) Any information regarding any Teledex and TMX present contract or
23 business relationship;

24 (4) Any Teledex and TMX confidential, proprietary information, and trade
25 secrets created, assembled or derived in connection with TMX's and Teledex's
26 development and defendants' use of any of the items set forth above, including the
27 Confidential Information and Proprietary Information;.

28

1 C. For a temporary restraining order and preliminary and permanent
2 injunction prohibiting defendants, their officers, directors, agents, subsidiaries,
3 servants, employees and any other person, firm, entity or corporation acting in
4 concert with or controlled by them, in whole or in part, from destroying, deleting,
5 erasing, or corrupting any property, data, codes, software, or technical information
6 taken, obtained, copied, or deleted from TMX and/or Teledex.

7 D. For a temporary restraining order and preliminary and permanent
8 injunction prohibiting defendants, their officers, directors, agents, subsidiaries,
9 servants, employees and any other person, firm, entity or corporation acting in
10 concert with or controlled by them, in whole or in part, from committing any
11 further acts of unfair competition and from utilizing confidential, proprietary and
12 trade secret information obtained from Defendants from TMX and/or Teledex.

13 E. For damages in an amount which is presently unascertainable, plus
14 interest in accordance with applicable law.

15 F. For punitive and exemplary damages against defendants, and each of
16 them.

17 G For recovery of all attorneys' fees and costs incurred in this action, in
18 an amount according to proof.

19 H. For a declaration that defendants, and each of them, hold all monies
20 received as a result of their wrongful acts alleged herein in constructive trust for
21 TMX.

22 I. For an order compelling defendants, and each of them, to fully account
23 to TMX for all monies received as a result of the wrongful acts alleged-herein.

24 J. For an order requiring defendants, and each of them, to transfer
25 possession of said monies to TMX.

26 K. For cost of suit incurred herein.

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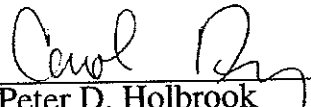
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L. For such other and further relief as the Court deems just and proper.

DATED: January 14, 2010

Buchalter Nemer
A Professional Corporation

By: 
Peter D. Holbrook
Carol A. Dwyer
Attorneys for Plaintiff
TMX FUNDING INC., A
DELAWARE CORPORATION