

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
(TYLER DIVISION)**

<b>LOUDCLOUD SYSTEMS, INC.</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>Case No.</b>
	§	
<b>MYTHILI SRIDHAR, and SRIDHAR IYER</b>	§	
	§	
<b>Defendants.</b>	§	

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**PLAINTIFF LOUDCLOUD SYSTEMS, INC.  
ORIGINAL COMPLAINT**

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**TO THE HONORABLE COURT:**

**COMES NOW,** Plaintiff **LOUDCLOUD SYSTEMS, INC.** and files this its Original Complaint against **MYTHILI SRIDHAR** and **SRIDHAR IYER** (the “Complaint”), and in support of said Complaint avers the following:

**I. SUMMARY OF CAUSES OF ACTION**

1. This is a suit for the following causes of action: i) Copyright Infringement; ii) Fraud; iii) Unfair Competition; iv) Civil Conspiracy; v) Breach of Contract; vi) Tortious Interference with Prospective Contracts; vii) Unjust Enrichment; and viii) Suit for Declaratory Relief.

**II. PARTIES**

2. Plaintiff **LOUDCLOUD SYSTEMS, INC.** (“LCS”) is a Texas Corporation with a principal place of business at 5624 Hillsborough Drive, Plano, Texas 75093.

3. **MYTHILI SRIDHAR** (“MYTHILI”) is an individual residing in Collin County,

Plano, Texas, and may be served with process at his residence at 3601 Spring Mountain Drive, Plano, Texas 75025.

4. **SRIDHAR IYER** (“IYER”) is an individual residing in Collin County, Plano, Texas, and may be served with process at his residence at 3601 Spring Mountain Drive, Plano, Texas 75025.

5. MYTHILI and IYER are jointly and severally referred to as “Defendant(s)”.

### **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction over LCS’ claims pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

7. Venue is proper in this district with respect to LCS’ claims pursuant to 28 U.S.C. §§ 1391 and 1400.

### **IV. FACTUAL BACKGROUND**

8. LCS and Defendants entered into an Instrument of Assignment dated January 15, 2010, attached hereto and incorporated herein as Exhibit 1 (the "Assignment"). Under the terms of the Assignment, LCS was obliged to pay to the Defendants \$50,000; on February 11, 2010, LCS paid that \$50,000 to Defendants.

9. As a part of the Assignment, Defendants were to deliver to LCS the materials and patent applications listed on Exhibit A to the Assignment. The materials and patent applications, included, but are not limited to, the computer software known as Chalk, Steam, and U.S. Patent Applications 12/366,826, 61/288013, and 61/259889 (collectively, "Assigned Materials"). They have never delivered the Assigned Materials to LCS. On information and belief, Defendants, at the time of executing the Assignment, never intended to deliver the Assigned Materials.

10. On October 18<sup>th</sup>, 2010, and October 19<sup>th</sup>, 2010, LCS filed for U.S. Copyright

Registration for software contained with the Assigned Materials, including other materials developed by LCS, attached hereto Exhibit 2 and Exhibit 3 (collectively, "Copyrighted Materials").

11. Defendants used and/or attempted to use and/or have exercised dominion over the Assigned Materials in violation of their Assignment agreement with LCS.

12. Defendants used and/or attempted to use and/or have exercised dominion over the Copyrighted Materials in violation of United States Copyright Laws.

13. Up until August 17, 2010, Mythili was an at-will employee of LCS and prior to her employment had executed certain documents associated with her employment by and affiliation with LCS, among them an Employee Proprietary Information and Inventions Agreement ("Employee Agreement") and a Confidentiality and Non-Disclosure Agreement ("Confidentiality Agreement").

#### **V. FIRST CAUSE OF ACTION: COPYRIGHT INFRINGEMENT**

14. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-14.

15. LCS is the owner of certain copyrighted works of computer code that is in software created by LCS which provides and delivers educational products and information over the internet. The works authored by the agents or assignors of LCS are referred to as the LCLIVE, combination of Slate and Chalk Application Software ("LCLIVE") and the Whiteboard Modifications Relating to Chalk, and LCLIVE Software ("WHITEBOARD").

16. LCS filed a Certificate of Registration with the U.S. Copyright Office for LCLIVE on or about October 18, 2010 (the "LCLIVE Registration") and filed a Certificate of Registration with the U.S. Copyright Office for WHITEBOARD on or about October 19, 2010,

(the " WHITEBOARD Registration"). A true and correct copy of the LCLIVE Registration is attached hereto as "Exhibit 2," and is incorporated by reference as if fully set forth herein. A true and correct copy of the WHITEBOARD Registration is attached hereto as "Exhibit 3," and is incorporated by reference as if fully set forth herein.

17. On information and belief, Defendants have illegally used copies of LCLIVE and/or WHITEBOARD, and/or Defendant Mythili absconded with copies of LCLIVE and/or WHITEBOARD when her employment with LCS was terminated. Upon information and belief, Defendants have utilized LCLIVE and/or WHITEBOARD in the production of goods and services for the vendors and customers of www.grpbook.com, some of whom were/are vendors and customers of LCS.

18. Defendants have continued to use the LCLIVE and/or WHITEBOARD despite the fact that neither Mythili nor Iyer have a license or a right to use LCLIVE and/or WHITEBOARD in the goods and services Defendants are selling to vendors and customers.

19. By their unauthorized use, Defendants continue to infringe upon the copyrights owned by LCS in LCLIVE and WHITEBOARD.

20. As a direct and proximate result of Defendants' unauthorized use, LCS has suffered actual damages for which it now sues.

#### **VI. SECOND CAUSE OF ACTION: FRAUD**

21. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-20.

22. Defendants made material representations to LCS. The representations were false. When Defendants made the representations, Defendants knew the representations were false or made the representations recklessly, as a positive assertion, and without knowledge of

their truth. Defendants intended to induce LCS to enter into a commercial agreement and/or business relationship with Defendants by and through the Assignment wherein LCS would purchase the Assigned Materials for a sum certain of \$50,000 from Defendants. LCS relied on Defendants' representations to their detriment.

23. On information and belief, Defendants made the following false representations to LCS: that Defendants had the authority to transfer the Assigned Materials to LCS; that Defendants had possession of the Assigned materials; that Defendant Mythili was the inventor or creator of the Assigned Materials; that Defendants intended by their execution of the Assignment to transfer the Assigned Materials to LCS; and that Iyer was not the target of a federal investigation into mishandling of federal funds by Whoola, Inc., a corporation of which Iyer was president and chief technical officer.

24. On information and belief, the Defendants failed to reveal material information with the intent to mislead LCS so that LCS would execute the Assignment and pay Defendants \$50,000 under the terms is of that agreement. On information and belief, the material information that the Defendants failed to reveal was: that none of the Assigned Materials was patentable; that some or all of the patent applications in the Assigned Materials were fraudulent; that some or all of the Assigned Materials were in the public domain; that Defendants never intended to convey the Assigned Materials to LCS; that Defendants were intending to use the Assigned Materials in competition with LCS; that the investigation into Whoola, Inc., was a criminal investigation; that during 2009 and 2010 Iyer had been the primary target for a federal criminal investigation into the misuse of federal funds by Whoola, Inc.; and that on January 13, 2010, Iyer had signed a plea agreement pleading guilty to a felony violation of 18 U.S.C. §666 (a)(1)(A) and (2), Theft or Bribery Concerning Programs Receiving Federal Funds. Had LCS

known any of these matters it would not have executed the Assignment nor would it have paid or have agreed to pay the Defendants \$50,000 for the Assigned Materials, nor would LCS have employed Mythili. At the time that Defendants failed to disclose these matters, they had a duty to disclose because there was a relationship of trust between Defendants and the principals of LCS.

25. These false representations and failures to reveal material information have caused LCS injury and damages in an amount to be proven at trial, but not less than the \$50,000 LCS paid to Defendants.

26. Because the acts of the Defendants were fraudulent and malicious, LCS is entitled to exemplary damages in such amount as may be found by the trier of fact. Since the conduct of the Defendants is conduct described as a violation Chapter 31 of the Texas Penal Code, the punishment for which is a felony of the third degree or higher, there is no limitation under Section 41.008 of the Texas Civil Practice and Remedies Code on the amount of exemplary damages which LCS can recover.

#### **VII. THIRD CAUSE OF ACTION: UNFAIR COMPETITION**

27. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-26.

28. Defendants have engaged in a course of conduct that was calculated to reduce and/or destroy the economic value of the LCS's good will anywhere and everywhere in the world, and to undermine and/or destroy LCS's rights to fully exploit and benefit from its ownership rights in and to LCLIVE and/or WHITEBOARD.

29. On information and belief, in furtherance of its scheme of unfair competition, Defendants have engaged in the following conduct:

- (a) Wrongful use of trade secrets and confidential information of LCS;
- (b) Inducing and encouraging others to violate the rights of LCS in its intellectual property, trade secrets and confidential information or to misappropriate the intellectual property, trade secrets and confidential information of LCS;
- (c) Use of deceptive means and practices in dealing with LCS with respect to its software and firmware development efforts;
- (d) Other acts of unlawful or unfair competition.

30. On information and belief, Defendants' unfair competition has directly or proximately caused significant foreseeable and consequential harm to plaintiff in the following particular

- (a) LCS's revenue streams have decreased or have not grown as they might reasonably have been expected to grow;
- (b) LCS has been deprived of the opportunity fairly to exploit its LCLIVE and/or WHITEBOARD technology, which revenue opportunity could have been very substantial, potentially on a recurring basis but for Defendants' unfairly competitive practices;
- (c) LCS stands at imminent risk of being deprived of its entire stream of all LCLIVE and/or WHITEBOARD licensing revenue in the near future;
- (d) As a result of Defendants' unfair competition and the marketplace injury sustained by LCS as set forth above, LCS has suffered damages in an amount to be proven at trial, but not less than \$100,000, together with additional damages through and after the time of trial foreseeably and consequentially resulting from Defendants' unfair competition in an amount to be proven at the time of trial.

31. Defendants' unfairly competitive conduct was also intentionally and maliciously designed to destroy LCS's business livelihood and all opportunities of LCS to derive value from LCLIVE, WHITEBOARD and/or its other intellectual property in the marketplace. As such, Defendants' wrongful acts and course of conduct has created a profoundly adverse effect on LCS's business. Consequently, this Court should impose an award of punitive damages against Defendants, jointly and severally, in an amount to be determined by the trier of fact.

#### **VIII. FOURTH CAUSE OF ACTION: CIVIL CONSPIRACY**

32. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-30.

33. On information and belief, by working in concert to defraud LCS and circumvent the legal rights of LCS, Defendants became members of a combination that sought to achieve an unlawful purpose and to achieve lawful purposes by unlawful means, which included fraud, defamation and/or misappropriation of the Assigned Materials and/or the Copyrighted Materials.

34. As members of this combination, Defendants had a meeting of the minds on the object of this combination and on the course of action that they were undertaking

35. Defendants committed unlawful acts, as detailed in other counts of this complaint, to further the object of the combination and to further the course of action undertaken by the combination. The Defendants' unlawful, overt acts included the fraud, defamation and/or misappropriation of the Assigned Materials and/or the Copyrighted Materials.

36. As a direct and proximate result of the Defendants' wrongful conspiracy and the related wrongful acts, LCS has suffered damages.

#### **IX. FIFTH CAUSE OF ACTION: BREACH OF CONTRACT**

37. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs

1-36.

38. Defendants entered into an Assignment for the sale and transfer of the Assigned Materials. Defendants represented to LCS that each had full authority to transfer the Assigned Materials to LCS, and that such Assigned Materials were transferable without encumbrance, and further represented and warranted that Defendants had not conveyed, assigned or otherwise pledged the Assigned Materials. In the Assignment, Defendants agreed to execute and deliver all further instruments, documents and agreements necessary to complete or further evidence the Assignment.

39. Defendants have refused to turn over the patent applications contained within the Assigned Materials. They have, in fact, continued to prosecute such patents in their own name without the consent of LCS.

40. In taking the actions alleged herein regarding the Assigned Material, the Copyrighted Material and other confidential information belonging to LCS, Mythili has violated her Employee Agreement and her Confidentiality Agreement. On information and belief, it is Mythili's intent further to breach her Employee Agreement and her Confidentiality Agreement and to interfere with the business of LCS in ways which will violate these agreements to the detriment of LCS.

41. LCS has sustained injury as a result of Defendants' breaches of contract and suffered damages in an amount to be proven at trial.

**X. SIXTH CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS**

42. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-41.

43. On information and belief, Defendants have contacted LCS's vendors and/or

prospective customers with intent to do harm to LCS's business and intent to interfere with LCS's future contractual relationships with its vendors and prospective customers. On information and belief, Defendants have in those contacts made false, misleading and defamatory statements to those vendors and prospective customers regarding LCS and its business. On information and belief, there was reasonable probability that LCS would have entered into contractual relationships with those vendors and prospective customers. On information and belief, LCS has suffered actual harm or damage as a result of the defendant's interference.

44. LCS is entitled to recover from Defendants all actual damages that it has suffered, as well as exemplary damages.

#### **XI. SEVENTH CAUSE OF ACTION: UNJUST ENRICHMENT**

45. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-44.

46. Defendants have been unjustly enriched, to the detriment of LCS, by their fraud and theft and by the unauthorized use sale, transfer, assignment, attempted sale, attempted purchase, attempted transfer and/or attempted assignment of the Assigned Materials and/or the Copyrighted Materials. Defendants willfully and knowingly interfered with LCS's sole and exclusive rights to and enjoyment of the Assigned Materials as well as with the business, clientele, and sales which LCS would have obtained through the sole and exclusive use of the Assigned Materials and/or the Copyrighted Materials. Defendants have been unjustly enriched by the use, sale, transfer, assignment, attempted sale, attempted purchase, attempted transfer and/or attempted assignment of the Assigned Materials and/or the Copyrighted Materials, which neither Defendant had authority, permission or right to do.

47. On information and belief, Defendants have been unjustly enriched, to the

detriment of LCS, by their fraud and theft and by the unauthorized use of the Assigned Materials and/or the Copyrighted Materials on Defendants' www.grpbook.com domain, which is, in whole or in part, identical with some or all the Assigned Materials and the Copyrighted Material or contains some or all of the Assigned Materials and/or the Copyrighted Material. Defendants willfully and knowingly interfered with LCS's business, clientele, and sales efforts by improperly using the Assigned Materials on the www.grpbook.com website and otherwise. On information and belief, Defendants have profited from their continued use of the Assigned Materials.

48. LCS is entitled to recover all the proceeds from Defendants' unjust enrichment and to have a constructive trust imposed upon those proceeds.

## **XII. EIGHTH CAUSE OF ACTION: DECLARATORY RELIEF**

49. LCS hereby re-incorporates the allegations set forth in the preceding paragraphs 1-48.

50. LCS seeks a judgment from this Court declaring LCS the sole and exclusive owner of the Assigned Materials and/or the Copyrighted Materials.

51. LCS seeks this declaratory judgment in an effort to establish and/or assert its legal interest in and to the Assigned Materials and/or the Copyrighted Materials.

## **XIII. DEMAND FOR ACCOUNTING AND REQUEST TO HOLD HARMLESS**

52. LCS demands an accounting of:

(a) Defendants' sales and licenses relating to any portion of the Assigned Materials or any portion of the Copyrighted Materials; and

(b) Defendants' sales resulting from Defendants' activities and unjust enrichment by utilizing the Assigned Materials and/or Copyrighted Materials on www.grpbook.com domain.

53. LCS further demands that Defendants' profits from the unauthorized use and/or sale and/or re-sale of the Assigned Materials and/or Copyrighted Materials and/or the use of the www.grpbook.com website, as more particularly described hereinabove, be turned over to LCS, increased as the Court finds to be just under the circumstances of this case and that the unlawfully obtained Assigned Materials in the possession of Defendants be returned to LCS.

54. LCS requests the Court order Defendants to indemnify and hold harmless LCS against any and all possible claims of third parties arising out of Defendants' unauthorized use and/or sale and/or re-sale of the Assigned Materials and/or Copyrighted Materials.

#### **XIV. APPLICATION FOR TEMPORARY RESTRAINING ORDER**

55. Because of Defendants' unauthorized use and/or sale and/or re-sale of the Assigned Materials and/or Copyrighted Materials, Defendants have undermined LCS business by using and/or selling and/or reselling the Assigned Materials and/or Copyrighted Materials, directly or indirectly, with third-parties.

56. Because of Defendants' unauthorized use of the Assigned Materials and/or Copyrighted Materials, including, but not limited to, Defendants' unauthorized use the Assigned Materials, in whole or in part, on the www.grpbook.com website, Defendants have undermined LCS's business by interfering with LCS's unrestricted use of the Assigned Materials and/or Copyrighted Materials as well as compromising the sales to which LCS may have consummated had Defendants not operated and/or used the Assigned Materials and/or Copyrighted Materials and/or www.grpbook.com.

57. Defendants' misconduct, as more particularly described herein, has caused and continues to cause LCS irreparable harm for which there is no adequate remedy at law.

58. Since LCS can readily establish itself as owner of the Assigned Materials and/or

Copyrighted Materials, LCS is likely to succeed on the merits of the case prohibiting Defendants' unauthorized use of said Assigned Materials and/or Copyrighted Materials.

59. The injury faced by LCS outweighs the injury that would be sustained by enjoining Defendants from their wrongful conduct more particularly described herein.

60. Furthermore, the Court's granting of a temporary restraining order against Defendants would not adversely affect public policy or any public interest.

61. LCS respectfully requests that:

(a) Defendants be restrained from using, selling and/or attempting to sell the Assigned Materials and/or Copyrighted Materials to any third-party;

(b) Defendants be restrained from publishing on the [www.grpbook.com](http://www.grpbook.com) domain and/or any other internet domain under the custody, possession, or control of Defendants, any information and/or program containing, in whole or in part, the Assigned Materials and/or Copyrighted Materials, or further using the Assigned Materials and/or Copyrighted Materials; and

(c) Defendants be restrained from contacting any of LCS's customers, vendors or shareholders and from in any way disparaging LCS.

62. If necessary, LCS is willing to post a bond in order for the Court to issue the temporary restraining order against Defendants.

#### **XV. ATTORNEYS' FEES**

63. Because of the conduct of Defendants, LCS has been compelled to engage the services of an attorney to prosecute this action. As a result, LCS is entitled to recover from Defendants a reasonable sum for the reasonable and necessary services of their attorneys in the preparation and trial of this action and for any appeals related thereto.

## **XVI. PRAYER FOR RELIEF**

64. WHEREFORE, premises considered, Plaintiff LoudCloud Systems, Inc., respectfully requests that:

(A) Judgment be entered in favor of Plaintiff against the Defendants for actual damages in an amount in excess of the minimum jurisdictional limits of the Court as can be shown;

(B) The Court enter an Order that:

(i) Defendants be enjoined from using, selling or attempting to use or sell any portion of the Assigned Materials and/or any portion of the Copyrighted Materials;

(ii) Defendants be enjoined from publishing on any internet domain under the custody, possession, or control of Defendants, including but not limited to www.grpbook.com, any portion of the Assigned Materials and/or of the Copyrighted Materials;

(iii) Defendants be enjoined from disparaging LCS and from directly or indirectly contacting or doing business with any of Plaintiff's customers or vendors; and

(iv) Defendants turn over to Plaintiff all copies of any portion of the Assigned Materials and/or the Copyrighted Materials, and expunge all copies from all electronic storage.

(C) The Court enter a further Order that:

(i) Defendant Mythili prepare, at her sole expense, a true and accurate audited accounting of all of the activities and assets of Defendants including, without limitation, to all activities related to the use, acquisition, sale, attempted sale, transfer and/or attempted transfer of the Assigned Materials and/or Copyrighted Materials; and

(ii) Defendant Iyer prepare, at his sole expense, a true and accurate audited accounting of all of the activities and assets of Defendants including, without limitation, to all activities related to the use, acquisition, sale, attempted sale, transfer and/or attempted transfer of the Assigned Materials and/or Copyrighted Materials; and

(D) An award of Plaintiff's actual and special damages as pleaded within the jurisdictional limits of the Court;

(E) An award to Plaintiff of Defendants' proceeds from any of the activities herein alleged and the imposition of a constructive trust on those proceeds;

(F) An award of exemplary damages against Defendants;

(G) An award of costs in an amount to be determined by the Court;

(H) An award of attorneys fees in an amount to be proved by Plaintiff;

(I) The Court enter an order that Defendants indemnify and hold Plaintiff harmless against any and all possible claims of third parties arising out of Defendants' use, sale, offer of sale, attempted sale, transfer, offer to transfer, attempted transfer, assignment, offer to assign and/or attempted assignment of the Assigned Materials and/or Copyrighted Materials;

(J) An award of all pre judgment and post-judgment interest on all sums awarded at the highest rate permitted by law; and

(K) An award of such further relief, legal and equitable, to which Plaintiff is justly entitled.

Dated: October 20, 2010.

Respectfully submitted,  
**MYERS WILSON P.C.**

/John T. Wilson/

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