

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

SMARTFLASH LLC AND
SMARTFLASH TECHNOLOGIES
LIMITED

Plaintiffs,

v.

GOOGLE, INC., GEARBOX
SOFTWARE LLC, AND BONUS XP,
INC.

Defendants.

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Civil Action No. 6:14-cv-435

JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Smartflash LLC and Smartflash Technologies Limited file this Complaint against Defendants Google, Inc., Gearbox Software LLC, and Bonus XP, Inc. for patent infringement under 35 U.S.C. § 271 and allege, based on their own personal knowledge with respect to their own actions and based upon information and belief with respect to all others' actions, as follows:

THE PARTIES

- 1. Plaintiff Smartflash LLC is a limited liability corporation organized and existing under the laws of the State of Texas, and maintains its principal place of business at 100 E. Ferguson, Suite 406, Tyler, Texas, 75702. Smartflash LLC maintains a website at www.smartflashllc.com.
2. Plaintiff Smartflash Technologies Limited is a limited company organized and existing under the laws of the British Virgin Islands, and maintains a principal place of business on the island of Tortola.

3. Defendant Google, Inc. is a corporation organized under the laws of Delaware and maintains a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google also maintains a location in this state at 9606 North MoPac Expressway, Suite 700, Austin, Texas 78759. Google has designated Corporation Service Company DBA CSC - Lawyers Inc., 211 East 7th Street Suite 620, Austin, Texas 78701, as its agent for service of process.
4. Defendant Gearbox Software LLC is a limited liability company organized under the laws of Texas and maintains a principal place of business at 101 E. Park Boulevard, Suite 1200, Plano, TX 75074. Gearbox Software has designated Wade J. Callender, 101 East Park Boulevard, Suite 1200, Plano, Texas 75074, as its agent for service of process.
5. Defendant Bonus XP, Inc. is a corporation organized under the laws of Texas and maintains a principal place of business at 970 Garden Park Drive, Allen, Texas 75013. Bonus XP has designated Lawrence B. Mandala, 12770 Coit Road, Suite 600, Dallas, Texas 75251, as its agent for service of process.

#### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
7. This Court has personal jurisdiction over Google, Gearbox Software, and Bonus XP (“Defendants”). Defendants conduct business and have committed acts of patent infringement and/or have induced acts of patent infringement by others in this district and/or have contributed to patent infringement by others in this district, the State of Texas, and elsewhere in the United States.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, among other things, the Defendants are subject to personal jurisdiction in this district, the Defendants have regularly conducted business in this judicial district, and certain of the acts complained of herein occurred in this judicial district.

**PATENTS-IN-SUIT**

9. On February 26, 2008, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,334,720 (the “720 patent”) entitled “Data Storage and Access Systems.”
10. On May 17, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,942,317 (the “317 patent”) entitled “Data Storage and Access Systems.”
11. On October 11, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,033,458 (the “458 patent”) entitled “Data Storage and Access Systems.”
12. On November 22, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,061,598 (the “598 patent”) entitled “Data Storage and Access Systems.”
13. On February 21, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,118,221 (the “221 patent”) entitled “Data Storage and Access Systems.”
14. On December 25, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,336,772 (the “772 patent”) entitled “Data Storage and Access Systems.”

15. Smartflash LLC, together with Smartflash Technologies Limited,<sup>1</sup> owns all rights, title, and interest in and to the '720, '317, '458, '598, '221, and '772 patents (the “patents-in-suit”) and possesses all rights of recovery.
16. Smartflash incorporates the patents-in-suit herein by reference.

### **FACTUAL ALLEGATIONS**

17. The patents-in-suit generally cover devices, methods, and systems for transmitting, retrieving, downloading, storing, and accessing content, content information, DRM data, payment data, and supplementary data. For example, some of the claims in the patents-in-suit cover devices that store data and manage access to the data via payment information and/or use rules. As another example, some of the claims in the patents-in-suit cover a computer system (*e.g.*, one or more connected servers) that transmits content or data to requesters.
18. The Google Play Store website (formerly known as the Android Market) is an online service that supports the purchase and downloads of applications and other digital content from the Google Play Store.
19. The Google Play Store app (formerly known as the Android Market app) is an Android application that supports the purchase and download of applications and other digital content from Google Play Store. The Google Play Store can also be accessed from the Google Play Store app or from related apps, including, for example, Play Music, Play Movies & TV, Play Books, Play Games, Play Apps, and Play Newsstand, which are all developed and distributed by Google.
20. Google sells and delivers digital content through the Google Play Store website.

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<sup>1</sup> Smartflash Technologies Limited joins as a co-plaintiff in this lawsuit only to avoid a dispute as to whether it should be added for standing purposes.

21. Google sells and delivers digital content through the Google Play Store app.
22. Google's end-user customers can use the Google Play website on their personal computers, laptops, or other mobile devices, including Google's Chromebook devices, to purchase and download applications, games, books, music, video, and other digital content.
23. Google's end-user customers can use the Google Play app on their Android-based devices, including Google's Nexus phone and tablet devices, to purchase and download applications, games, books, music, video, and other digital content.
24. An application developer or publisher can use the Android in-application payment functionality to collect payment for enhanced functionality or additional content usable by the application.
25. The Android in-application payment functionality is available through the Google Play services APK and, in operation, is accessible and usable via the Google Play app.
26. An Android application can call the Android in-application payment functionality to convey payment requests and responses.
27. Google Play, in turn, conveys the payment requests and responses to one or more Google Play servers for payment approval.
28. When payment is approved, the Android app receives a purchase token which identifies the transaction and the purchase.
29. Google Play also makes content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (e.g., gender, age, geographic location, etc.).

30. Google Play also allows users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's account and/or library. Users can access their content from their account and/or library via a variety of devices by using Google's cloud storage supporting content purchased from Google Play, including, for example, Google's Google Cloud or Google Drive platforms and/or services.
31. Google develops and distributes media players and viewers, including, for example, the Android Media Player, with the Android operating system.
32. The media players and viewers evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased content or data (*e.g.*, whether the device app rating settings allow access to a game for a certain age group, whether a user has permission to view a book, or whether a movie rental time period has expired).
33. An application developer or publisher can use Google's Mobile Ads, including AdMob, AdSense for Mobile, and Ad Exchange, to provide for in-application advertisement functionality.
34. The in-application advertisement functionality is available through the Google Mobile Ads SDK.
35. An application, such as an Android application, can call the in-application advertisement functionality to present advertisements to users.
36. Google develops and sells its Android-based Nexus phones and tablets that are sold to customers with the Google Play Store preinstalled.

37. Google develops and sells its Chromebook Pixel laptops that are sold to customers with the Google Play Store preinstalled.
38. At least on its Google Play website, Google sells other Android-based phones, including the Google Play Edition of other Android-based phones.
39. At least on its Google Play website, Google sells Chromebook laptops that are developed in conjunction with other manufacturers.
40. The Google Chromecast is a content and media streaming device that supports the purchase and streaming of content and media.
41. Google develops and sells its Chromecast device that is sold to customers with the Google Play Music and Play Movies & TV apps preinstalled.
42. Google develops and distributes its Chrome web browser for multiple platforms, including Windows, Linux, Mac OS, iOS, Chrome OS, and Android platforms.
43. The Google Chrome web browser supports the Chrome Web Store where users can purchase and download themes, extensions, games, and applications for the Chrome web browser and/or Chrome OS.
44. An application developer or publisher can use the Chrome in-application payment functionality to collect payment for enhanced functionality or additional content usable by the application.
45. The Chrome in-application payment functionality is available through application programming interfaces (“APIs”) and other developer tools provided by Google, including In-App Payments for Google Wallet with Digital Goods, Google In-App Payments API for the Web, the Chrome Web Store Licensing API, and Chrome Web Store Payments.

46. A Chrome application can call the Chrome in-application payment functionality to convey payment requests and responses.
47. The Chrome Web Store, in turn, conveys the payment requests and responses to one or more Google and/or Chrome servers for payment approval.
48. When payment is approved, the Chrome app receives an indication (*e.g.*, token, receipt, etc.) that identifies the transaction and the purchase.
49. Google TV is a smart TV platform that is integrated into television, set-top boxes, and other content/media streaming devices.
50. Google develops and distributes Google TV to manufacturers of televisions, set-top boxes, and other content/media streaming devices that sell such devices to customers with Google Play and the Chrome web browser preinstalled in the Google TV platform.
51. Gearbox Software has developed an app that uses one or more of the Google APIs described above and markets that app through Google Play.
52. Gearbox Software developed and markets the “Borderworlds” app that uses Android in-application payment functionality to collect payment for enhanced functionality or additional content.
53. Bonus XP has developed an app that uses one or more of the Google APIs described above and markets that app through Google Play.
54. Bonus XP developed and markets the “Monster Crew” app that uses Android in-application payment functionality to collect payment for enhanced functionality or additional content.
55. Google has committed and continues to commit acts of infringement under 35 U.S.C. § 271 (i) with any version of its Google Play Store, including the Google Play



website and related Google Play Stores, such as, for example, Play Music, Play Movies & TV, Play Books, Play Games, Play Apps, and Play Newsstand; (ii) with any version of the Google Play app, including related Google Play Store apps, such as, for example, the Play Music, Play Movies & TV, Play Books, Play Games, Play Apps, and Play Newsstand apps, or Android including same; (iii) with any version of Google's Mobile Ads, including AdMob, AdSense for Mobile, and Ad Exchange; (iv) with any version of Google's hardware devices, including Google's Nexus mobile phone and tablet devices, Google's Pixel Chromebook, and Google's Chromecast that include functionality that accesses Google Play Stores or apps; (v) with any version of its Android media and content players and viewers, including its Android Media Player; (vi) with any version of its Google TV platform that includes functionality that accesses Google Play Stores or apps; (vii) with any version of its Chrome web store; (viii) with any version of its Chrome web browser that includes or can access the Chrome web store; (ix) with any version of Android, Chromebook, and/or Google TV devices from Google or others including any of the features or functionalities listed in items (i)-(iii) and (v)-(viii) above; and (x) with Google's servers, including those involved in operating the Google Play Store, Google's cloud platforms and/or services such as Google Cloud and Google Drive, Google's Mobile Ads and ad networks (collectively, "Google's Accused Instrumentalities"). In committing these acts of infringement, Google acted despite an objectively high likelihood that its actions constituted infringement of at least one valid patent, and Google actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of at least one valid and enforceable patent.

56. Gearbox Software has committed and continues to commit acts of infringement under 35 U.S.C. § 271 with its Borderworlds app that runs on Google's devices or on other Android devices and uses Android's in-application payment functionality to collect payment for enhanced functionality or additional content.
57. Bonus XP has committed and continues to commit acts of infringement under 35 U.S.C. § 271 with its Monster Crew app that runs on Google's devices or on other Android devices and uses Android's in-application payment functionality to collect payment for enhanced functionality or additional content.
58. Google and Gearbox Software are jointly and severally liable for Gearbox Software's acts of infringement listed above.
59. Google and Bonus XP are jointly and severally liable for Bonus XP's acts of infringement listed above.
60. Defendants' acts of infringement listed above are with respect to or arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process.
61. Questions of fact common to all Defendants exist and will arise in this action.

**COUNT ONE: PATENT INFRINGEMENT BY GOOGLE, INC.**

62. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.
63. As described below, Google has infringed and continues to infringe the patents-in-suit.
64. Google's Accused Instrumentalities meet claims of the patents-in-suit.

65. Google makes, uses, offers to sell, sells and/or imports Google's Accused Instrumentalities within the United States or into the United States without authority from Plaintiffs.
66. Google therefore infringes the patents-in-suit under 35 U.S.C. § 271(a).
67. Google has actual knowledge of the patents-in-suit. Further, Google is aware of the patents-in-suit and their relationship to Google's instrumentalities through Google's exposure to *Smartflash LLC, et al. v. Samsung Electronics Co., Ltd. et al.*, Case No. 6:13-cv-448 (E.D. Tex.), including a subpoena served on Google on April 15, 2014.
68. Google indirectly infringes the patents-in-suit by inducing infringement by others, such as device manufacturers, app developers and publishers, digital content publishers, and end-user customers, for example, by encouraging device manufacturers to make, use, import, sell, and offer to sell Google's Accused Instrumentalities within the United States, by instructing and encouraging app developers and publishers and digital content publishers to sell and offer to sell digital content and applications in the United States through Google's Accused Instrumentalities, and by instructing end-user customers to install and use Google's Accused Instrumentalities in the United States.
69. Google took the above actions intending others to infringe.
70. Google was aware of the patents-in-suit and knew that the others' actions, if taken, would constitute infringement of those patents. Alternatively, Google believed there was a high probability that others would infringe the patents-in-suit but remained willfully blind to the infringing nature of others' actions. Google therefore infringes the patents-in-suit under 35 U.S.C. § 271(b).

71. Google indirectly infringes the patents-in-suit by contributing to infringement by others, such as device manufacturers, app developers and publishers, digital content publishers, and end-user customers by offering to sell and/or selling within the United States products that contain components that constitute a material part of the inventions claimed in the patents-in-suit, and components of products that are used to practice one or more processes/methods covered by the claims of the patents-in-suit and that constitute a material part of the inventions claimed in the patents-in-suit. Such components are, for example, the software components responsible for purchasing of digital content or applications from or using the Google Play Store or Chrome web store; the software components responsible for providing digital content or applications upon payment validation; the software components that provide in-application payment functionality; the software components that provide in-application advertisement functionality; and the software components that install, for example, any version of Android that includes the Google Play app, any version of a media player or viewer, any version of the Google Play and related apps, any version of the Chrome web store, any version of Google TV, any version of Android's in-application payment functionality, or any version of Chrome's in-application payment functionality.
72. In the above offering to sell and/or selling, Google has known these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Alternatively, Google believed there was a high probability that others would infringe the patents-in-suit but remained willfully blind to

the infringing nature of others' actions. Google therefore infringes the patents-in-suit under 35 U.S.C. § 271(c).

73. Google's acts of infringement have caused damage to Plaintiffs. Plaintiffs are entitled to recover from Google the damages sustained by Plaintiffs as a result of Google's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Google have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35 U.S.C. § 283.
74. Google has committed and continues to commit acts of infringement under 35 U.S.C. § 271 with the Google Accused Instrumentalities. In committing these acts of infringement, Google acted despite an objectively high likelihood that its actions constituted infringement of at least one valid patent, and Google actually knew or should have known that its actions constituted an unjustifiably high risk of infringement of at least one valid and enforceable patent.
75. Google's infringement of the patents-in-suit has been and continues to be willful.
76. To the extent that Google releases any new version of Google's Accused Instrumentalities, such instrumentalities meet claims of the patents-in-suit and infringe under 35 U.S.C. § 271(a)-(c) in ways analogous to Google's current infringement described above.

**COUNT TWO: PATENT INFRINGEMENT BY GEARBOX SOFTWARE LLC**

77. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

78. As described below, Gearbox Software has infringed and continues to infringe the patents-in-suit.
79. Gearbox Software's apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content meet claims of the patents-in-suit, or use Google's in-application advertisement functionalities.
80. Gearbox Software makes, uses, offers to sell, sells and/or imports apps that require payment and apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionalities, within the United States or into the United States without authority from Plaintiffs.
81. Gearbox Software therefore infringes the patents-in-suit under 35 U.S.C. § 271(a).
82. Gearbox Software has actual knowledge of the patents-in-suit.
83. Gearbox Software indirectly infringes the patents-in-suit by inducing infringement by its end-user customers to install and use apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionalities, within the United States.
84. Gearbox Software took the above actions intending to cause infringing acts by others.
85. Gearbox Software is aware of the patents-in-suit and knows that the others' actions, when taken, constitute infringement of those patents. Gearbox Software therefore infringes the patents-in-suit under 35 U.S.C. § 271(b).
86. Gearbox Software indirectly infringes the patents-in-suit by contributing to infringement by its end-user customers by offering to sell and/or selling within the United States products that contain components that constitute a material part of the inventions claimed

in the patents-in-suit, and components of products that are used to practice one or more processes/methods covered by the claims of the patents-in-suit and that constitute a material part of the inventions claimed in the patents-in-suit. Such components are, for example, the software components that provide or call in-application payment functionality, the software components that install apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content, the software components that provide or call in-application advertisement functionality, and the software components that install apps that use Google's in-application advertisement functionality to collect payment for enhanced functionality or additional content.

87. In the above offering to sell and/or selling, Gearbox Software has known these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Gearbox Software therefore infringes the patents-in-suit under 35 U.S.C. § 271(c).
88. Gearbox Software's acts of infringement have caused damage to Plaintiffs. Plaintiffs are entitled to recover from Gearbox Software the damages sustained by Plaintiffs as a result of Gearbox Software's wrongful acts in an amount subject to proof at trial. In addition, the infringement and practices of Gearbox Software have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35 U.S.C. § 283.

89. Gearbox Software has committed and continues to commit acts of infringement under 35 U.S.C. § 271. To the extent that Gearbox Software releases any other app that uses Android's in-application payment functionality to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionality, such apps meet claims of the patents-in-suit and infringe 35 U.S.C. § 271(a)-(c) in ways analogous to Gearbox Software's current infringement described above.

**COUNT THREE: PATENT INFRINGEMENT BY BONUS XP, INC.**

90. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.
91. As described below, Bonus XP has infringed and continues to infringe the patents-in-suit.
92. Bonus XP's apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content meet claims of the patents-in-suit, or use Google's in-application advertisement functionalities.
93. Bonus XP makes, uses, offers to sell, sells and/or imports apps that require payment and apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionalities, within the United States or into the United States without authority from Plaintiffs.
94. Bonus XP therefore infringes the patents-in-suit under 35 U.S.C. § 271(a).
95. Bonus XP has actual knowledge of the patents-in-suit.
96. Bonus XP indirectly infringes the patents-in-suit by inducing infringement by its end-user customers to install and use apps that use Android's in-application payment functionality



to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionalities, within the United States.

97. Bonus XP took the above actions intending to cause infringing acts by others.
98. Bonus XP is aware of the patents-in-suit and knows that the others' actions, when taken, constitute infringement of those patents. Bonus XP therefore infringes the patents-in-suit under 35 U.S.C. § 271(b).
99. Bonus XP indirectly infringes the patents-in-suit by contributing to infringement by its end-user customers by offering to sell and/or selling within the United States products that contain components that constitute a material part of the inventions claimed in the patents-in-suit, and components of products that are used to practice one or more processes/methods covered by the claims of the patents-in-suit and that constitute a material part of the inventions claimed in the patents-in-suit. Such components are, for example, the software components that provide or call in-application payment functionality, the software components that install apps that use Android's in-application payment functionality to collect payment for enhanced functionality or additional content, the software components that provide or call in-application advertisement functionality, and the software components that install apps that use Google's in-application advertisement functionality to collect payment for enhanced functionality or additional content.
100. In the above offering to sell and/or selling, Bonus XP has known these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for

substantial non-infringing use. Bonus XP therefore infringes the patents-in-suit under 35 U.S.C. § 271(c).

101. Bonus XP's acts of infringement have caused damage to Plaintiffs. Plaintiffs are entitled to recover from Bonus XP the damages sustained by Plaintiffs as a result of Bonus XP's wrongful acts in an amount subject to proof at trial. In addition, the infringement and practices of Bonus XP have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35 U.S.C. § 283.
102. Bonus XP has committed and continues to commit acts of infringement under 35 U.S.C. § 271.
103. To the extent that Bonus XP releases any other app that uses Android's in-application payment functionality to collect payment for enhanced functionality or additional content, or use Google's in-application advertisement functionality, such apps meet claims of the patents-in-suit and infringe 35 U.S.C. § 271(a)-(c) in ways analogous to Bonus XP's current infringement described above.

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

Plaintiffs hereby demand a jury for all issues so triable.

#### **PRAYER FOR RELIEF**

1. A judgment that the Defendants have directly infringed the patents-in-suit, contributorily infringed the patents-in-suit, and induced the infringement of the patents-in-suit;
2. A preliminary and permanent injunction preventing the Defendants and their officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and

those in active concert or participation with any of them, from directly infringing, contributorily infringing, and inducing the infringement of the patents-in-suit;

3. A judgment that the Google's infringement of the patents-in-suit has been willful;
4. A ruling that this case be found to be exceptional under 35 U.S.C. § 285, and a judgment awarding to Plaintiffs its attorneys' fees incurred in prosecuting this action;
5. A judgment and order requiring Defendants to pay Plaintiffs damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and enhanced damages for willful infringement as provided by 35 U.S.C. § 284;
6. A judgment and order requiring Defendants to pay Plaintiffs the costs of this action (including all disbursements);
7. A judgment and order requiring Defendants to pay Plaintiffs pre-judgment and post-judgment interest on the damages awarded;
8. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that Plaintiffs be awarded a compulsory ongoing licensing fee; and
9. Such other and further relief as the Court may deem just and proper.

Dated: May 07, 2014

Respectfully submitted,

**CALDWELL CASSADY & CURRY**



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