

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IPAYMENT HOLDINGS, INC., and	:	Index No.: _____
IPAYMENT, INC.,	:	
	:	SUMMONS
Plaintiffs,	:	
v.	:	Plaintiffs designate New York
	:	County as the place of trial
CARL GRIMSTAD and JESSICA GRIMSTAD,	:	
	:	Venue is proper pursuant to CPLR §
Defendants.	:	503
	:	
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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
February 22, 2017

WILLKIE FARR & GALLAGHER LLP

By: 

Tariq Mundiya
Todd G. Cosenza
James C. Dugan
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

*Attorneys for Plaintiffs iPayment
Holdings, Inc. and iPayment, Inc.*

TO: Carl Grimstad
160 East 63rd Street
New York, New York 10065

Jessica Grimstad
160 East 63rd Street
New York, New York 10065

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CARL GRIMSTAD and JESSICA GRIMSTAD, :
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Defendants. :
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COMPLAINT

Plaintiffs, by and through their undersigned counsel, Willkie Farr & Gallagher LLP, file this Complaint against Defendants Carl Grimstad and Jessica “Gigi” Grimstad. Plaintiffs allege, upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. Defendant Carl Grimstad served as CEO of iPayment from 2011 through 2016. Defendant was given notice of his termination on August 26, 2016, which termination became effective on November 24, 2016.

2. Although the sordid details of his tenure as CEO of iPayment are still under investigation, it has now become clear that Grimstad used the Company as a piggybank for himself and for his wife, Defendant Jessica “Gigi” Grimstad. This conduct included charging personal and familial expenses to the Company; allowing Gigi Grimstad to use company funds for her personal expenses; frequenting strip clubs with employees of the Company and permitting expenses for those activities to be reimbursed through the Company; engaging the services of high-priced escorts, one of whom was employed by the Company under Grimstad’s watch; frequent absences from the Company’s offices to play golf while the Company’s liquidity

was deteriorating; and allowing a four-year criminal embezzlement scheme that involved losses to the Company exceeding \$12.1 million to occur right under his nose.

3. On September 1, 2016, Grimstad filed suit in this court, *see Grimstad v. iPayment Holdings, Inc. et al.*, Index No. 654658/2016 (the “First NY Action”), asserting claims for breach of his December 29, 2014 employment agreement (the “Employment Agreement”), which he acknowledged as frivolous by executing a release of iPayment from those claims on December 5, 2016. Then, on December 9, 2016, Grimstad filed an amended complaint against iPayment for the sum of \$143,000 to cover his legal expenses. On February 22, 2017, Grimstad discontinued the First NY Action without prejudice as to all defendants and without costs to the parties as against one another.

4. Notwithstanding his now-discontinued claim for legal expenses, Grimstad, in fact, owes iPayment significant damages to cover the financial and reputational harm that he has inflicted on the Company. Grimstad’s conduct has caused significant value destruction to the Company, its shareholders, its debtholders, and its other constituents, for which Grimstad must compensate iPayment.

5. Grimstad’s actions constitute breaches of Section 2 of the Employment Agreement, in which he covenanted to “use his commercially reasonable efforts to promote the interests of the Company Group,” as well as breaches of the duty of good faith and fair dealing. Furthermore, in charging certain personal expenses to the Company, Carl and Gigi Grimstad have unjustly enriched themselves at the Company’s expense. All told, Defendants owe iPayment over \$445,000 to compensate it for the willful and intentional abuse it suffered during his disastrous and profligate tenure at its helm.

JURISDICTION

6. This Court has personal jurisdiction over Defendants pursuant to C.P.L.R. § 301.

7. Venue is proper pursuant to C.P.L.R. § 503, as one or more of the parties reside in New York County.

8. Pursuant to Section 15 of the Employment Agreement, Defendant Carl Grimstad has “consent[ed] to exclusive jurisdiction and venue [in] the state and federal courts in New York.”

THE PARTIES

9. Plaintiff iPayment Holdings, Inc. is a Delaware corporation, whose principal place of business at all relevant time was Tower 56, East 56th Street, 33rd Floor, New York, New York 10022.

10. Plaintiff iPayment, Inc. is a Delaware corporation, whose principal place of business at all relevant times was Tower 56, East 56th Street, 33rd Floor, New York, New York 10022.

11. From 2014 through 2016, iPayment maintained offices for Grimstad at Tower 56, East 56th Street, 33rd Floor, New York, New York 10022. This office functioned as Grimstad’s home office while he served as CEO of iPayment.

12. Defendant Carl Grimstad resides at 160 East 63rd Street, New York, New York 10065, and served as CEO of the Company from May of 2011 through November 26, 2016. Mr. Grimstad is a member of the Board of Directors of the Company.

13. Defendant Jessica “Gigi” Grimstad” resides at 160 East 63rd Street, New York, New York 10065, is the wife of Defendant Carl Grimstad, and is the Chief Executive Officer, sole employee, and controlling shareholder of GS Design Concepts, Inc., a New York

corporation whose principal place of business is located at 160 East 63rd Street New York, New York 10065.

FACTS

The Employment Agreement, Grimstad's Termination, And The Procedural History Of Defendant's Prior Action Against iPayment.

14. iPayment is a provider of payment solutions and processing services in the United States, and has been in business for over sixteen years. As of December 28, 2014, all of the outstanding and issued capital stock in the Company was owned by Grimstad or entities controlled by him.

15. Pursuant to a restructuring in late 2014, which was required for the Company to obtain necessary additional financing (the "Restructuring"), Grimstad's stake in iPayment was reduced to approximately 20% of the outstanding equity in the Company. Additionally, as part of the Restructuring, Grimstad's role as CEO of iPayment was formalized in the Employment Agreement, executed by and between Grimstad and the Company.

16. Along with the Company's Bylaws – amended and restated on December 29, 2014 as part of the Restructuring – the Employment Agreement sets out the terms of Grimstad's employment, as well as the rights and obligations of both Grimstad and the Company with respect thereto.

17. Section 2 of the Employment Agreement provides that Grimstad "shall serve as [the] Chief Executive Officer" of the Company, "shall be the sole highest ranking executive officer [for the Company]" and "shall have all authority and duties consistent with such position" In Section 2 of the Employment Agreement, Grimstad covenants that he "shall *devote substantially all his business time and attention to the performance of such duties,*

services and responsibilities, *and shall use his commercially reasonable efforts to promote the interests of the Company . . .*” (Emphasis added.)

18. Section 3(d) of the Employment Agreement provides that “personal use of Company aircraft shall be permitted if (I) such use will not interfere with the use of the aircraft for business purposes and (II) the Executive reimburses the Company the actual cost of such personal use.”

19. Section 3(d) of the Employment Agreement also provides that Grimstad and the Company “shall reasonably cooperate in good faith to materially reduce . . . the cost to the Compan[y] of private air travel during the Employment Term by \$1,000,000 per annum, and if such cost is not so reduced by the end of such six-month period, then (A) the Compan[y] may take whatever actions [it] deem[s] appropriate with respect to the then-existing private air travel arrangements of the Compan[y].”

20. On August 26, 2016, in accordance with Section 5(b) of the Employment Agreement, the Executive Committee of the Board gave Grimstad notice that, in 90 days, he would be terminated as CEO effective November 24, 2016. Grimstad was terminated pursuant to Section 5(a)(v) of the Employment Agreement, which addresses termination for reasons other than cause or disability.

21. Additionally, the Executive Committee concluded that Grimstad should not perform any duties on behalf of iPayment during the pendency of the 90-day notice period, and that he should not have access to iPayment’s computer network and email servers during that time.

22. On September 1, 2016, Grimstad filed the First NY Action, alleging two counts of breach of contract under the Employment Agreement.

23. On December 5, 2016, Grimstad returned to the Company a signed copy of a release pursuant to which he released “any and all existing claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, whether or not mature or ripe” against the Company, “includ[ing], but not limited to, . . . claims for . . . attorneys’ fees.”

24. Rather than dismissing the action immediately – as he should have done in light of his clear and unambiguous release – on December 9, 2016, Grimstad instead filed an “amended complaint” alleging one count of indemnification under the Company’s Bylaws and one count of breach of contract under the Employment Agreement. The amended complaint sought \$143,009.75 to cover supposed attorneys’ fees incurred by Grimstad in connection with both the First NY Action and a governmental investigation.

25. After repeated adjournments of the deadline by which the Company was to respond to the amended complaint, on February 22, 2017, Grimstad discontinued the First NY Action without prejudice as to all defendants and without costs to the parties as against one another.

26. His now-abandoned claim for legal expenses in the First NY Action, notwithstanding, Grimstad owes iPayment over \$445,000, incurred as the result of the pattern of abuse he and his wife engaged in at the expense of the Company’s shareholders and other constituents. This abusive conduct – which constitutes a breach of Section 2 of the Employment Agreement, as well as breaches of the duty of good faith and fair dealing, and unjust enrichment, and which is still being investigated – is detailed below.

Lifetime Ban From The Electronic Transaction Association.

27. Grimstad's misconduct and his volatile and self-destructive behavior began long ago. In 2002, Grimstad attended a conference held by the Electronic Transaction Association, the leading trade association for the electronic payments industry, which represents over 500 companies worldwide involved in electronic transaction processing products and services.

28. At that conference, Grimstad publicly assaulted another attendee and, as a result, has been banned for life from attending any further conferences or events of the Electronic Transaction Association.

29. The resulting ban had a detrimental impact on the Company, as it restricted Grimstad's ability to participate, as CEO, in important trade association meetings, and has harmed the Company's reputation.

Grimstad's Abusive Spending Habits.

30. During his tenure as iPayment's CEO, Grimstad presided over and participated in wanton and abusive spending practices whereby his own personal and familial expenses were routinely charged to the Company.

31. Indeed, in connection with the Restructuring and thereafter, investors expressed significant concerns about wasteful and lavish spending at the Company, including profligate personal use of the corporate jet, which had to be addressed specifically in the Employment Agreement. Such spending occurred under Grimstad's direction, and had a negative impact on the Company's performance.

32. By way of example, and to demonstrate the excesses in which Grimstad frequently indulged, in 2011, Grimstad charged to the Company approximately \$288,000 of expenses incurred at the Mark Hotel on the Upper East Side of Manhattan. While Grimstad was

entitled to reasonable relocation and hotel expenses associated with his transition from Nashville to New York, charging over a quarter of a million dollars in hotel expenses to cover such a move was excessive. But, as iPayment was soon to learn, this was merely one of numerous egregious examples of Grimstad feeding at the iPayment trough.

33. Between 2011 and 2012, Grimstad charged to the Company more than \$10,000 of expenses for clothing for a Grimstad family retainer who served both as his personal bodyguard and as a family chauffeur.

34. In 2012, Grimstad charged to the Company over \$70,000 of expenses incurred in order to subsidize his wife's extravagant lifestyle. These expenses included clothing from high-end department stores such as Bergdorf Goodman. Gigi Grimstad is a bit player on the New York social scene, having been transplanted from Nashville to New York, where she now runs a family design business. As described on a fashion website:

The Grimstads are a Fashion First Family... Hailing from Nashville, Tennessee they are the family behind the ultra posh retail destination in the Southeast, *Jamie*. They are now spearheading blogs (www.jamiegrimstad.com), styling influencers, borrowing high fashion looks from mom's closet and giving New York, their current home, a taste of their Southern charm and style. Herewith, the Grimstads share with us their favorite borrowed looks.¹

35. It is no surprise, then, that Grimstad allowed iPayment to reimburse \$60,000 of expenses for payments to GS Design Concepts, a company controlled by his wife, whose business address is 160 East 63rd Street, New York, New York 10065 – the same as the Grimstad residence in New York City.

36. Between 2012 and 2015, Grimstad charged to the Company (a) over \$13,000 in medical expenses for both himself and members of his family; (b) over \$1,800 for expenses

¹ *Gigi Grimstad with Daughters; Favorite Look I Ever Borrowed*, 05.05.2016 Armarium Website. Accessed at <https://www.armarium.com/stories/uoNR4ZCAcU>

incurred at a New York City entertainment space called the Core Club; and (c) \$11,000 in golfing related expenses.

37. Together, these personal expenses incurred by Grimstad and his wife, and charged to the Company, total nearly \$450,000.

Grimstad's Golf Habit.

38. Grimstad maintained a prodigious golf habit while serving as CEO of iPayment. Between April 2013 and November 2016, Grimstad played over 400 rounds of golf, averaging close to 100 rounds per year.

39. Grimstad played 72 rounds of golf between May and September 2015, a period during which the Company was underperforming – as evidenced by the Company's plummeting EBITDA – and during which it was engaged in ongoing recapitalization talks.

40. A significant number of these rounds of golf were played on weekdays, during normal business hours. In fact, on occasion, Grimstad would affirmatively request that his golfing partners schedule rounds of golf on weekdays, rather than on weekends.

Frequenting Of Strip Clubs By iPayment Employees And Grimstad's Use Of Escorts.

41. As CEO of iPayment, Grimstad condoned and encouraged iPayment employees to frequent strip clubs. Under Grimstad's stewardship, expenses from those activities were allowed to be reimbursed through the Company.

42. Grimstad was aware that iPayment employees attended strip clubs with frequency and often attended those clubs along with his employees. Grimstad never instructed iPayment employees that expenses from such activities were not to be charged to the Company.

43. In fact, prior to 2013, certain iPayment employees were permitted to approve their own expenses.

44. Grimstad believed it was permissible for individuals to visit strip clubs in their capacity as iPayment employees, and believed that dinner or drinks at such establishments constituted appropriate business expenses. Grimstad often joined his own employees at strip clubs, including at the Company's annual agent conferences, and believed that these frequent visits to strip clubs were good for workplace morale.

45. In late 2007, while in Las Vegas, Grimstad and another officer of iPayment went to a strip club called The Spearmint Rhino where they became acquainted with an employee of that establishment who also worked as a personal escort (the "Escort"). According to the Escort, Grimstad asked her to return with him to his hotel room, where he proceeded to offer her \$4,000 in exchange for certain sexual activities.

46. In 2008, the Escort was hired as an employee of iPayment, despite lacking any apparent qualifications for the job for which she was hired. Shortly thereafter, the Escort's mother was also hired as an employee of iPayment.

47. According to the Escort, an iPayment employee introduced himself to the Escort as Grimstad's "buffer," whose job it was to procure escorts for Grimstad.

48. That same iPayment employee has testified, in separate proceedings, that in addition to his involvement in the procurement of the services of the Escort for Grimstad, he was also involved in the procurement of escorts for Grimstad on at least two other occasions.

49. The Escort was terminated by the Company in 2012 and paid \$37,000 by the Company in severance.

The 2008-2012 Embezzlement.

50. As reported in the Company's 2012 Form 10-K, in August 2012, the Company learned that certain of its employees (including members of management) and outside contractors had engaged in financial misconduct.

51. The financial misconduct occurred in three principal areas: (i) creation of false obligations to make residual and other payments (which resulted in the Company making such payments in respect of merchant accounts that were not subject to legitimate payment obligations); (ii) overstatement of certain vendor invoices, principally in the information technology area; and (iii) falsification of certain employee expense reimbursements and other payments (the "2008-2012 Embezzlement").

52. These activities, which occurred between the third quarter of 2008 and September 2012, involved a total loss of funds to the Company of approximately \$12.1 million.

53. The 2008-2012 Embezzlement forced the Company to restate its financial statements for the years ended December 31, 2009, 2010 and 2011.

54. As a direct result of the 2008-2012 Embezzlement, the Government initiated an investigation of the Company and of certain of the principals involved in the misconduct. Upon information and belief, that investigation continues to this day.

55. As a result of the 2008-2012 Embezzlement and the related SEC investigation, the Company has incurred, and continues to incur, significant legal expenses.

CAUSES OF ACTION**COUNT I****Breach of Contract
(Against Carl Grimstad)**

56. Plaintiffs repeat and re-allege paragraphs 1 through 55 hereof as though fully set forth herein.

57. The Employment Agreement is a valid and binding contract.

58. Plaintiffs fully performed their obligations under the Employment Agreement.

59. In Section 2 of the Employment Agreement, Defendant covenants that he “shall devote substantially all his business time and attention to the performance of [his] duties, services and responsibilities, and shall use his commercially reasonable efforts to promote the interests of the Company”

60. Defendant has failed to devote substantially all his business time and attention to the performance of his duties, services, and responsibilities to the Company by and through the conduct set forth above, including his frequenting strip clubs with employees of the Company and his frequent absences from the Company’s offices to play golf.

61. Defendant has failed to use his commercially reasonable efforts to promote the interests of the Company by and through the conduct set forth above, including, his abusive and profligate personal spending charged to the Company; frequenting strip clubs with employees of the Company and permitting activities at those establishments to be reimbursed through the Company; engaging the services of escorts, including one such individual who was employed by the Company under Defendant’s watch; frequent absences from the Company’s offices to play golf; and allowing the Company to fall prey to a four-year embezzlement scheme – carried out by certain of the Company’s high level employees and outside contractors – that involved a total loss of funds to the Company of approximately \$12.1 million.

62. As a result of Defendant’s breach of the Employment Agreement, Plaintiffs have suffered damages in an amount to be determined at trial.

63. As a result of Defendant’s breach of the Employment Agreement, Plaintiffs have suffered nominal damages.

COUNT II
Breach of Implied Covenant of Good Faith and Fair Dealing
(Against Carl Grimstad)

64. Plaintiffs repeat and re-allege paragraphs 1 through 63 hereof as though fully set forth herein.

65. The Employment Agreement is a valid and binding contract.

66. The Company and Defendant are parties to the Employment Agreement.

67. Though not expressly addressed by the Employment Agreement, by and through the conduct set forth above, including, his abusive and profligate personal spending charged to the Company; frequenting strip clubs with employees of the Company and permitting activities at those establishments to be reimbursed through the Company; engaging the services of escorts, including one such individual who was employed by the Company under Defendant's watch; frequent absences from the Company's offices to play golf; and allowing the Company to fall prey to a four-year embezzlement scheme – carried out by certain of the Company's high level employees and outside contractors – that involved a total loss of funds to the Company of approximately \$12.1 million, Defendant deprived the Company of the right to receive the benefits of the Employment Agreement.

68. Defendant's implied promise not to harm the Company's finances and its reputation by and through the conduct set forth above, is not contrary to any express provision in the Employment Agreement.

69. Defendant's breach of his implied promise not to harm the Company's finances and its reputation by and through the conduct set forth above is not itself a breach of any express provision in the Employment Agreement.

COUNT III
Unjust Enrichment (Against Carl Grimstad)

70. Plaintiffs repeat and re-allege paragraphs 1 through 69 hereof as though fully set forth herein.

71. Defendant benefitted himself at the Company's expense through the conduct set forth above, including, charging to the Company over \$10,000 of expenses for clothing for an individual who served as Defendant's personal bodyguard and as chauffeur for the Grimstad family; over \$70,000 of expenses to subsidize Gigi Grimstad's extravagant lifestyle; and \$60,000 of expenses for payments to GS Design Concepts, a company controlled by Gigi Grimstad, whose business address is the Grimstad residence in New York City.

72. Equity and good conscience require restitution of these amounts and any other personal expenses charged by the Grimstad family to iPayment, in an amount to be determined at trial.

COUNT IV
Unjust Enrichment
(Against Jessica "Gigi" Grimstad)

73. Plaintiffs repeat and re-allege paragraphs 1 through 72 hereof as though fully set forth herein.

74. Defendant Gigi Grimstad benefitted herself at the Company's expense through the conduct set forth above, including, Defendant Carl Grimstad charging to the Company over \$10,000 of expenses for clothing for an individual who served as chauffeur for the Grimstad family; over \$70,000 of expenses to subsidize Defendant Gigi Grimstad's extravagant lifestyle; and \$60,000 of expenses for payments to GS Design Concepts, a company controlled by Defendant Gigi Grimstad, whose business address is the Grimstad residence in New York City.

75. Equity and good conscience require restitution of these amounts and any other personal expenses charged by the Grimstad family to iPayment, in an amount to be determined at trial.

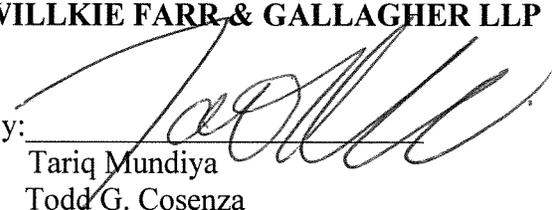
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs are entitled to a judgment against Defendants, awarding them:

- 1) Compensatory damages in an amount to be determined at trial;
- 2) Nominal damages;
- 3) An accounting of all improper gains, benefits, and reimbursements received by Defendants from the Company;
- 4) The disgorgement of all improper gains, benefits, and reimbursements received by Defendants from the Company;
- 5) Restitution in an amount to be determined at trial;
- 6) Costs and attorneys' fees incurred in connection with this action; and
- 7) Such further relief as this Court deems just and proper.

Dated: New York, New York
February 22, 2017

WILLKIE FARR & GALLAGHER LLP

By: 
Tariq Mundiya
Todd G. Cosenza
James C. Dugan
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

*Attorneys for Plaintiffs iPayment
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