

# 2017-07595 / Court: 157

CAUSE NO. \_\_\_\_\_

**GIANT GRAY, INC.,**

*Plaintiff,*

v.

**RAY C. DAVIS and  
CHARLES C. DAVIS,**

*Defendants.*

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**JUDICIAL DISTRICT**

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff Giant Gray, Inc. (“Giant Gray”) files this Original Petition against Ray C. Davis and Charles C. Davis (“Defendants”) as follows:

**I. NATURE OF THE CASE**

1. This is an action brought by Giant Gray to recover millions of dollars stolen by two of the Company’s former top executives. Through an elaborate scheme to create fraudulent and forged invoices to make payments to fictitious companies, and by requiring Giant Gray’s payment of personal expenses unrelated to the Company’s business, Defendants took in excess of **\$15 million** from the Company under false pretenses. Giant Gray now seeks damages against Defendants for fraud, breach of fiduciary duty, money had and received, violation of the Texas Theft Liability Act (TEX. CIV. PRAC. & REM. CODE § 134.001 et seq.), unjust enrichment and restitution, civil conspiracy, imposition of constructive trust, and joint and several liability.

**II. DISCOVERY LEVEL**

2. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Giant Gray intends to conduct discovery under Level 2 of this Rule.

### **III. PARTIES**

3. Giant Gray is a Texas corporation authorized to transact business in the state of Texas. Giant Gray is organized under the laws of Texas and its principal place of business is located in Houston, Texas.

4. Upon information and belief, Defendant Ray Davis maintains a primary residence at 7710 Oxfordshire Drive, Spring, Texas 77379. Ray Davis can be served with process at this address.

5. Upon information and belief, Defendant Charles Davis maintains a primary residence at 13107 Chriswood Drive, Cypress, Texas 77429. Charles Davis can be served with process at this address.

### **IV. JURISDICTION AND VENUE**

6. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court. Pursuant to Rule 47(c)(5) of the Texas Rules of Civil Procedure, Giant Gray seeks monetary relief over \$1,000,000.

7. This Court has personal jurisdiction over Defendants because they are residents and citizens of Texas.

8. Pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1)-(2), venue is proper in Harris County, Texas because all or a substantial part of the events or omissions giving rise to Giant Gray's claims occurred in Harris County and, upon information and belief, Defendants resided in Harris County at the time Giant Gray's causes of action accrued.

### **V. FACTUAL BACKGROUND**

9. In November 2005, Ray Davis founded Behavioral Recognition Systems, Inc. ("BRS"), a software company formed to develop and market a proprietary artificial intelligence

technology designed to analyze video-based information.<sup>1</sup> Throughout most of his tenure with BRS, Ray Davis served as BRS's Chairman and Chief Executive Officer. In July 2015, Ray Davis sold his controlling interest in BRS, which he granted to himself for essentially zero consideration in April 2015.

10. BRS also employed Charles Davis -- Ray Davis' son. BRS first hired Charles Davis in 2010. Charles Davis became an executive vice-president at the Company and led BRS's investor relations department. Giant Gray terminated Charles's employment in May 2016.

11. Throughout their tenure as employees and executives at the Company, Defendants repeatedly breached their duties to the Company and treated the Company's coffers as their own personal bank to fund a lavish lifestyle they otherwise could not afford.

12. While employed by BRS, Defendants, among other things, created fraudulent invoices to purchase antiquities and other extravagant goods and services, and to otherwise personally enrich themselves. Further, Defendants required BRS to pay for substantial credit charges incurred solely for personal expenses. The deceit employed by Defendants to conceal their fraud and breach of duties knew no bounds and went undetected for years -- resulting in their theft of more than **\$15 million** from the Company.

13. As explained more fully below, Defendants defrauded the Company by a variety of creative and deceptive ways.

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<sup>1</sup> BRS changed its name to Giant Gray in March 2016. In this lawsuit, "BRS," "Giant Gray," and the "Company" are used interchangeably.

**A. L.S. Farrow**

14. Beginning in December 3, 2013 and continuing through November 12, 2014, Ray Davis authorized and ordered BRS to make the following wire transfers to an entity named L.S. Farrow:

| <b>Date</b>              | <b>Amount</b>       |
|--------------------------|---------------------|
| <b>December 3, 2013</b>  | <b>\$82,650.15</b>  |
| <b>December 23, 2013</b> | <b>\$112,757.60</b> |
| <b>July 11, 2014</b>     | <b>\$116,539.80</b> |
| <b>October 17, 2014</b>  | <b>\$111,050.80</b> |
| <b>November 12, 2014</b> | <b>\$256,352.00</b> |
| <b>Total</b>             | <b>\$679,350.35</b> |

15. The Company has recently learned that these payments were not for any legitimate business purposes, but rather were to purchase antiques for Ray Davis's personal collection.

16. According to so-called "invoices" found in Company files, BRS paid L.S. Farrow, allegedly an Australian company, more than \$650,000 for "Financial Services." This was nothing more than an elaborate lie concocted by Ray Davis. L.S. Farrow never provided "Financial Services" to the Company. No contract between L.S. Farrow and BRS exists, nor are there any records between the Company and L.S. Farrow discussing any "Financial Services" being provided to the Company. None of BRS's payments to "L.S. Farrow" were for the benefit of BRS. The truth is that no Australian entity named L.S. Farrow even exists.

17. The purported L.S. Farrow invoices claim that L.S. Farrow's principal offices can be found at 600 Princes Highway, Springvale, Victoria, Australia. If one runs a simple Google search for L.S. Farrow, one would discover that L.S. Farrow is an individual who passed away on April 18, 2010 and is buried at the Springvale Botanical Cemetery. The Springvale Botanical Cemetery is located at -- drum roll please -- 600 Princes Highway, Springvale, Victoria, Australia. That's right: Ray Davis created dummy invoices for a company named L.S. Farrow and then had the Company wire more than \$650,000 to L.S. Farrow at a Barclay's Bank account ending in 8080.

18. So who is L.S. Farrow? In reality, L.S. Farrow is Lee Farrow -- an antiques dealer based in the United Kingdom who routinely marketed and sold a variety of antiques to Ray Davis. Regular communications between Ray Davis and Lee Farrow reveal Farrow marketed such antiques as an "emerald bangle," a "Byzantine bracelet," "roman gold rings," and "luristan bronze swords," which Ray Davis sought to purchase so he could "open a private museum" when he retired.

19. Ray Davis purchased many items from Farrow over the years and regularly authorized wire transfers to Farrow's account, and at some point even confirmed in -mail he should send the funds to Farrow's Barclay's Bank account ending in 8080 (the same account to which the Company wired more than \$650,000). When Lee Farrow contacted Ray Davis on his work email, Ray specifically requested Farrow send all future correspondence to Ray's personal email as it would not be "appropriate" for Ray to communicate with Farrow over his work email.

20. It appears as if Ray Davis decided that, instead of spending his own money on "Byzantine bracelets," "roman gold rings," and "luristan bronze swords," he would have the Company fund his expensive tastes in antiques. To that end, Ray created fraudulent invoices for

“Financial Services” to back up BRS’s transfer of funds to Lee Farrow to pay for Ray’s antique purchases. The Company was only able to find three invoices related to the five transactions with L.S. Farrow. Lee Farrow probably had no idea that he was embroiled in Ray Davis’ illegal and unethical scheme. Lee Farrow simply received payments for antiques and forwarded the goods to Ray in the United States. Make no mistake: Each of the payments Ray Davis ordered BRS to make to L.S. Farrow were for Ray’s personal benefit, not the benefit of the Company. The payments were fraudulent, unauthorized by BRS and made surreptitiously.

21. Ray Davis cannot assert – at least with a straight face – that he was unaware of the Company’s wire transfers to Lee Farrow. He knew full well that the Company was funding his antique hobby. Only Ray Davis and Charles Davis had the ability to make wire transfers on behalf of the Company. Indeed, Ray Davis was the only person at the Company who received emails from BRS’s bank (Bank of America) notifying him that the payments to L.S. Farrow had been scheduled. Email communications between Ray Davis and Lee Farrow also unmask the deception. On December 3, 2013, the Company wired \$82,650.15 to Lee Farrow. That same day, Lee Farrow sent Ray Davis an email titled “the bank wire” and followed up with another email two days later stating “TRANSFER COMPLETE....” The extent of the fraud and deception perpetrated by Ray Davis is truly remarkable. Unfortunately, as set forth below, the fraudulent scheme far exceeds the L.S. Farrow transactions.

**B. Afcon Communications**

22. Much like L.S. Farrow, Defendants authorized and ordered BRS to make nearly two dozen payments to an entity named Afcon Communications beginning January 6, 2014, with such payments continuing until March 18, 2015.

23. Specifically, the following payments were made to Afcon:

| <b>Date</b>              | <b>Amount</b>         |
|--------------------------|-----------------------|
| <b>January 6, 2014</b>   | <b>\$500,000.00</b>   |
| <b>January 21, 2014</b>  | <b>\$48,000.00</b>    |
| <b>February 3, 2014</b>  | <b>\$48,000.00</b>    |
| <b>February 20, 2014</b> | <b>\$168,000.00</b>   |
| <b>March 3, 2014</b>     | <b>\$96,000.00</b>    |
| <b>April 1, 2014</b>     | <b>\$96,000.00</b>    |
| <b>May 1, 2014</b>       | <b>\$96,000.00</b>    |
| <b>June 2, 2014</b>      | <b>\$96,000.00</b>    |
| <b>June 9, 2014</b>      | <b>\$328,000.00</b>   |
| <b>July 1, 2014</b>      | <b>\$96,000.00</b>    |
| <b>July 17, 2014</b>     | <b>\$319,895.00</b>   |
| <b>August 1, 2014</b>    | <b>\$96,000.00</b>    |
| <b>August 5, 2014</b>    | <b>\$388,455.63</b>   |
| <b>September 2, 2014</b> | <b>\$96,000.00</b>    |
| <b>October 1, 2014</b>   | <b>\$96,000.00</b>    |
| <b>November 3, 2014</b>  | <b>\$96,000.00</b>    |
| <b>December 1, 2014</b>  | <b>\$96,000.00</b>    |
| <b>December 31, 2014</b> | <b>\$96,000.00</b>    |
| <b>January 21, 2015</b>  | <b>\$550,000.00</b>   |
| <b>March 18, 2015</b>    | <b>\$380,000.00</b>   |
| <b>Total</b>             | <b>\$4,209,351.13</b> |

24. Invoices found at the Company indicate that BRS supposedly paid Afcon for “Advertising & Marketing,” “Image Management,” “Public Relations,” and “Financial Consulting Services.” These invoices are fraudulent, created by the Defendants in an effort to funnel millions of dollars out of the Company’s coffers and into their own pockets.

25. The truth is that BRS and Afcon never entered into any contract, and Afcon never provided any advertising and marketing, image management, public relations, or financial consulting services to BRS. BRS paid other companies to provide such services – not Afcon. Most telling is that there is not a single Company record (including email) that reflects that BRS and Afcon engaged in a single business transaction. There is not a single BRS employee who can identify any work performed by Afcon.

26. So who is Afcon? A recent investigation revealed that Afcon is a shell entity controlled by Ray Davis to further his and Charles Davis’s continued, systematic and unlawful misappropriation and theft of funds from BRS. And the logo on the Afcon invoices in the Company’s records? Simply stolen from a legitimate Israeli company by the same name.

27. According to publicly available records, Afcon is a corporation registered in and organized under the laws of Wyoming. It was incorporated by Wyoming Corporate Services, a business-incorporation specialist that has created thousands of Wyoming companies, many owned and managed anonymously. A Reuters’ special report about Wyoming Corporate Services noted that “[t]he secretive business havens of Cyprus and the Cayman Islands face a potent rival: Cheyenne, Wyoming.” Per the Wyoming Secretary of State’s office, Afcon’s principal address is 1712 Pioneer Avenue, Cheyenne, Wyoming 82001, which matches the address provided on the Afcon invoices found in BRS’s files. That very address is also the

principal address for Wyoming Corporate Services. When BRS sent its 1099 to Afcon in 2015, it was -- unsurprisingly -- returned to sender.

28. If the purpose in setting up Afcon was to hide the identity of its owners and directors, then that effort failed miserably. A quick glance at the Wyoming Secretary of State's records identifies Afcon's "President/Director" as none other than Ray Davis.

29. Ray Davis never notified BRS that he had a financial or ownership interest in Afcon or that he otherwise served as the "President/Director" of Afcon. Instead, Defendants, in a further attempt to steal millions of dollars in Company funds, created fraudulent invoices to cover up BRS's payments to Afcon and conceal their self-dealing and theft.

30. There is no doubt whatsoever that Ray Davis authorized and knew of the payment of funds to Afcon, via wire, and such funds were deposited into an account ultimately controlled by Ray Davis. Indeed, Ray Davis received emails at his personal email address confirming wire transfers made by the Company to Afcon. In other words, the "recipient" of the funds received e-mails at Ray's outlook e-mail. Ray Davis also received (at his BRS email) e-mails confirming the funds had been sent. There are also emails left on Ray Davis's computer which mention Afcon, the website of Wyoming Services Corporation, and reference the "Afcon new password."

31. When Charles Davis was asked about BRS's payments to Afcon in August 2014 by Company employees, Charles did not come clean and reveal the fraudulent nature of these transactions. In fact, he did quite the opposite. He pretended as if the payments were legitimate, notifying BRS's accounting department that the payments should be "booked under Marketing expenses" and that Afcon scanned the internet to remove negative media.

32. Each of the payments BRS made to Afcon were for Defendants' personal benefit. The payments to Afcon were fraudulent, improper and unauthorized by BRS. But there is more.

### C. Blackstone Group

33. Beginning March 1, 2010 and continuing through December 31, 2014, Defendants authorized and ordered BRS to make 137 payments to an entity named Blackstone Group. In total, Defendants authorized and ordered BRS to make payments to Blackstone Group in an amount of **\$6,929,132.05**.

34. Per invoices found in Company files, BRS purportedly paid Blackstone Group for, among other things “Keyword & Search Rank Optimazation” [sic], “Online Reputation Management,” “Search Engine Optimazation” [sic] and “Negative Online Presence Disaster Mitigation.”

35. In reality, no company named Blackstone Group ever provided such services to BRS. BRS engaged other companies that provided such services -- not Blackstone Group. There is no contract between BRS and Blackstone Group, nor are there any records at the Company (including any emails whatsoever) showing that Blackstone Group rendered any services to BRS at any time. Although the name Blackstone Group sounds legitimate, there is no web presence for such a company, and the website on the “invoices” is not a real website.

36. As was the case with the L.S. Farrow and Afcon deceptions in which Ray Davis tried to hide his theft through the creation of bogus companies, Ray Davis created Blackstone Group in a misguided effort to hide his criminal acts -- and Charles Davis helped him perpetuate this criminal conduct. Blackstone Group was organized under the laws of the State of Colorado. According to the Colorado Secretary of State (and as stated in the Blackstone Group’s phony invoices found at BRS), Blackstone Group’s principal office was located at 4164 Austin Bluffs Parkway, No. 104, Colorado Springs, Colorado 80918. That address, however, is not an office building in which legitimate business operates. Rather, it is the location of a UPS Store.

37. Blackstone Group is nothing but another attempt by Ray Davis to unlawfully misappropriate BRS's money for personal profit. Indeed, in one email uncovered in the Company's records, when BRS processed a payment to Blackstone Group, a notification was provided by BRS's bank to Blackstone Group *at Ray Davis's personal email address!* It appears he was the **only** Company employee notified of the transactions with Blackstone Group.

38. Further, one of Ray's BRS email contains an attachment showing wire transfers *from* Blackstone Group's Wells Fargo account to yet another antiques company -- confirming Ray Davis controlled Blackstone Group and maintained access to and control over Blackstone Group's accounts. Once again, Ray was using Company money -- transferred from BRS to Blackstone Group -- to fund his personal antiques collection.

39. Defendants never notified BRS that Ray Davis controlled Blackstone Group's accounts or that he otherwise had control over Blackstone Group. Yet, in furtherance of Defendants' scheme to defraud and to conceal their self-dealing and theft, Ray Davis created fraudulent invoices to justify BRS's payment of the Blackstone Group. One would think a real company that provides search engine optimization would know how to spell optimization. Further, at one point when the Company's accountants were trying to reconcile transactions with Blackstone -- Charles Davis simply provided the accountants with a spreadsheet of payments to Blackstone. As the head of investor relations, Charles Davis would only have this information if he was helping his father perpetuate this fraudulent scheme.

40. Each of the payments Defendants ordered BRS to make to Blackstone Group were for Ray Davis' personal benefit. Additionally, the payments were fraudulent and unauthorized by BRS.

**D. Mirage Software Systems**

41. Ray Davis also authorized and ordered BRS to make a variety of payments to an entity named Mirage Software Systems beginning January 7, 2008, with such payments continuing until December 15, 2009.

42. Specifically, the following payments were made to Mirage Software:

| <b>Date</b>               | <b>Amount</b>         |
|---------------------------|-----------------------|
| <b>January 7, 2008</b>    | <b>\$250,000.00</b>   |
| <b>January 31, 2008</b>   | <b>\$250,000.00</b>   |
| <b>February 19, 2008</b>  | <b>\$250,000.00</b>   |
| <b>March 7, 2008</b>      | <b>\$250,000.00</b>   |
| <b>April 24, 2008</b>     | <b>\$250,000.00</b>   |
| <b>May 19, 2008</b>       | <b>\$250,000.00</b>   |
| <b>July 29, 2008</b>      | <b>\$200,000.00</b>   |
| <b>August 20, 2008</b>    | <b>\$200,000.00</b>   |
| <b>September 17, 2008</b> | <b>\$100,000.00</b>   |
| <b>October 28, 2008</b>   | <b>\$200,000.00</b>   |
| <b>November 14, 2008</b>  | <b>\$150,000.00</b>   |
| <b>January 31, 2009</b>   | <b>\$190,000.00</b>   |
| <b>April 6, 2009</b>      | <b>\$50,000.00</b>    |
| <b>September 18, 2009</b> | <b>\$289,779.13</b>   |
| <b>October 30, 2009</b>   | <b>\$285,000.00</b>   |
| <b>December 15, 2009</b>  | <b>\$285,000.00</b>   |
| <b>Total</b>              | <b>\$3,449,779.13</b> |

43. It should come as no surprise to anyone who has read the first 42 paragraphs of this lawsuit that Mirage Software is, indeed, a mirage – something illusory, without substance or reality. BRS never signed any agreement with Mirage Software, never conducted business with Mirage Software and never did anything of substance. Remarkably, BRS's records are devoid of a single invoice from Mirage Software justifying the payment of almost \$3.5 million of Company funds, and there is no email between any BRS employees and Mirage Software.

44. These issues were all identified after Ray Davis left the Company and individuals other than Ray Davis and Charles Davis were given complete access to the Company's books and records. This information could not have been discovered by the Company until Ray Davis sold the Company and gave up complete reins.

45. Like the other three companies discussed above, Ray Davis authorized the payment of funds to Mirage Software for his own personal enrichment. Company emails show that **only** Ray Davis had notice of BRS's payments to Mirage Software (he received notifications from Bank of America regarding the transfers). And, importantly, Ray held an ownership or other beneficial interest in Mirage Software. Indeed, publicly available documents show Ray Davis was the sole person notified when Mirage Software's registered agent resigned. That is not a coincidence.

46. Ray Davis authorized the payment of funds to Mirage Software and said funds were deposited into an account ultimately controlled by Ray Davis. Each of the payments Ray Davis ordered BRS to make to Mirage Software were for Ray Davis' personal benefit. Additionally, the payments were fraudulent and unauthorized by BRS.

#### **E. Credit Card Charges**

47. As executives and employees of BRS, BRS paid Ray and Charles Davis's personal American Express Credit Cards with the understanding that any personal charges incurred on their respective cards would be reimbursed. Company policy actually required Ray and Charles Davis to reimburse the Company for personal charges.

48. Both Ray and Charles Davis put excessive, personal charges on their American Express Cards without ever reimbursing BRS. These personal charges were not trivial amounts. **They total millions and millions of dollars** and were an essential part of Ray and Charles Davis's scheme to rip the Company off while expanding their personal fortune. Ray and Charles Davis intentionally mischaracterized numerous charges on their respective American Express cards as expenses for BRS when the charges were, in reality, incurred for their own personal benefit.

49. By way of example only, Ray Davis's June 2014 American Express statement contains many improper personal charges that, though Ray claimed were incurred for business expenses, could not have been incurred for the benefit of BRS. These include \$25,000 paid to Methodist Hospital for "MEDICAL SERVICES," \$2,444 for tickets to Theatre Under the Stars, thousands of dollars for high-end restaurants, and numerous iTunes and amazon.com charges that clearly do not have any work-related connection.

50. Ray Davis's extravagant spending was not limited solely to June 2014. Again, by way of example only, he had the Company pick up the tab for American Express bills that included \$12,312.36 for Bang & Olufsen (a high-end consumer electronics company), \$16,000.00 to the Apple Store, \$1,326.07 for a Montblanc pen, personal car washes, plane tickets

for his entire family to fly across the country, art supplies and thousands of dollars in PayPal charges for “video game arcade,” “hobby, toy and games” and “precious stones.”

51. Charles Davis exhibited similar spending habits. For instance, Charles incurred two charges of \$5,715.60 and \$485.10 on his American Express statement in April 2014. Charles claimed the expenses were incurred for business purposes and BRS covered the charges. According to Charles Davis’s American Express statement, however, the charges were incurred for luxury car rentals in Houston, which is where Charles resides. Obviously, said expenses could not have been incurred for the benefit of BRS and were done solely for Charles Davis’s personal gain.

52. To date, Defendants have not reimbursed BRS or Giant Gray for [the vast majority of] their personal expenses.

**F. Defendants’ Concealment of their Fraud**

53. Defendants actively concealed their fraudulent and criminal conduct from BRS intentionally and repeatedly.

54. Defendants conspired to generate and record fraudulent invoices to justify BRS’s payment of millions of dollars.

55. Defendants also mischaracterized payments on their American Express cards as being incurred for business purposes when the charges were really incurred personally.

56. When questions were asked about certain payments, Defendants obfuscated the truth -- explaining payments were being made to pay for services that were never provided. Instead, these payments were made solely to line Defendants’ pockets.

57. Further, Ray Davis and Charles Davis concealed their devious plot to steal Company funds by blatantly lying to outside auditors tasked with looking at BRS’s balance

sheets, related statements of operations, stockholders' equity and cash flows. By way of example, Ray Davis signed correspondence to auditors in which he pledged that (i) he had no knowledge of any fraud or suspected fraud affecting the Company involving Management; and (ii) all related party transactions had been properly recorded or disclosed in financial statements. These statements were bold-faced lies aimed at diverting attention from and concealing his fraudulent activities. Charles Davis also engaged in demonstrably false representations to hide the illicit scheme from others. In March 2016, Charles Davis represented that (i) he had no knowledge of any fraud or suspected fraud affecting the Company involving Management; and (ii) all related party transactions had been properly recorded or disclosed in financial statements. These statements were false.

58. At the earliest, it was not until Ray Davis had relinquished control of BRS (and thus his ability as CEO to continually conceal Defendants' malfeasance) in July 2015, that BRS could have discovered Defendants' fraud.

## **VI. CAUSES OF ACTION**

### **COUNT I: FRAUD AGAINST ALL DEFENDANTS**

59. Giant Gray incorporates the above paragraphs by reference.

60. Defendants are liable for fraud based on their false representations of fact to the Company. Defendants provided documents and other information containing false and/or misleading information to BRS. By receiving such payments via entities they controlled, Defendants misrepresented to BRS that such payments were justified.

61. Defendants knew at all times that the payments were improper, that their representations to BRS and its auditors were false, and/or misleading. Defendants made such misrepresentations with the intent that BRS would rely on them to their detriment.

62. BRS relied on Defendants' misrepresentations and, as a result, sustained the injuries and damages complained of herein, including, but not limited to, the loss of monies that Defendants diverted from BRS's accounts.

63. Giant Gray is therefore entitled to recover all the actual damages caused by Defendants' fraud. In addition, Giant Gray is entitled to recover exemplary and punitive damages for Defendants' willful, intentional, malicious, and criminal conduct.

**COUNT II: BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS**

64. Giant Gray incorporates the above paragraphs by reference.

65. During relevant time periods, Defendants were employed by BRS in, among other things, executive positions. Defendants maintained a special relationship of trust and confidence with BRS, which entrusted Defendants with possession of confidential and proprietary information in connection with their employment with BRS. Accordingly, a fiduciary relationship existed between Defendants and BRS under which Defendants owed and/or assumed fiduciary duties to BRS, including the duties of good faith, utmost honesty, undivided loyalty, and due care to BRS.

66. By the acts alleged above, Defendants breached the respective fiduciary duties they owed to BRS by embezzling corporate funds, usurping corporate opportunities, manipulating BRS's finances and operations for personal gain, failing to disclose matters to the appropriate members of management (including BRS's board of directors), and otherwise. These acts proximately caused harm and financial damage to BRS, including, but not limited to, the loss of monies that Defendants diverted from BRS's accounts. Therefore, Giant Gray is entitled to actual damages, and further to equitable relief, including constructive trust.

67. Because Defendants breached their fiduciary duties, willfully, intentionally, maliciously, and with reckless disregard for the rights and welfare of the Company, Giant Gray is entitled to an award of exemplary damages in an amount to be determined by a finder of fact and not subject to limitation because the wrongdoing constitutes a violation of the Texas Penal Code as provided in Texas Civil Practices and Remedies Code § 41.008.

68. Giant Gray is further entitled to disgorgement of any profits or benefits Defendants received as a result of breaching the fiduciary duties they owed to BRS. Accordingly, Giant Gray seeks to recover all sums paid to Defendants from any source including but not limited to: L.S. Farrow; Afcon Communications; Blackstone Group; Mirage Software; and/or the items they purchased with their American Express cards (as set forth above).

**COUNT III: MONEY HAD AND RECEIVED AGAINST ALL DEFENDANTS**

69. Giant Gray incorporates the above paragraphs by reference.

70. Defendants are currently in possession of money received in connection with payments made by BRS to L.S. Farrow, Afcon Communications, Blackstone Group, and Mirage Software that belong to BRS in equity and good conscience. Specifically, Defendants are in possession of monies which were sent to bank accounts believed to be owned by L.S. Farrow, Afcon Communications, Blackstone Group, and Mirage Software but that were, in reality, owned and/or controlled by Defendants.

71. As described herein, payments to L.S. Farrow, Afcon Communications, Blackstone Group, and Mirage Software were procured by Defendants' false and misleading statements of fact, and were not properly authorized by BRS. By the acts alleged herein, Defendants obtained this money by theft, deception, violation of Texas criminal statutes, and/or breaching fiduciary duties owed to BRS.

72. Defendants have no past or present right or entitlement to such funds.

73. Giant Gray is entitled to recover all such funds from Defendants.

**COUNT IV: VIOLATION OF THE TEXAS THEFT LIABILITY ACT AGAINST ALL DEFENDANTS**

74. Giant Gray incorporates the above paragraphs by reference.

75. Pursuant to the Texas Theft Liability Act, a person who commits theft is liable for the damages resulting from the theft. TEX. CIV. PRAC. & REM. CODE § 134.004(a).

76. By the acts alleged above, Defendants stole, by theft (as that term is used in TEX. CIV. PRAC. & REM. CODE § 134.002(2)), at least **\$15,267,612.66**.

77. BRS sustained damages as a result of Defendants' theft of such funds, including, but not limited to, the loss of the funds, lost business opportunities and other costs, fees, and expenses.

78. Pursuant to the Texas Theft Liability Act, Giant Gray is entitled to recover all such amounts as damages from Defendants, as well as its attorneys' fees and court costs. TEX. CIV. PRAC. & REM. CODE §§ 134.003, 134.005.

**COUNT V: UNJUST ENRICHMENT AND RESTITUTION AGAINST ALL DEFENDANTS**

79. Giant Gray incorporates the above paragraphs by reference.

80. Defendants have been unjustly enriched by their wrongful receipt of BRS's funds, all of which were paid to Defendants, via shell entities, under fraudulent pretenses and without appropriate authorization.

81. Defendants were never entitled to keep any of the wrongfully obtained funds.

82. Defendants obtained these funds or benefit of these funds by fraud, deception, breach of fiduciary duty, or taking of an undue advantage.

83. Giant Gray is entitled to damages and/or restitution from Defendants in the amount received.

**COUNT VI: CIVIL CONSPIRACY AGAINST ALL DEFENDANTS**

84. Giant Gray incorporates the above paragraphs by reference.

85. By the acts alleged herein, Defendants conspired to effect the payments described herein from BRS without BRS's effective authorization or consent. As described above, such actions by Defendants constitute fraud, a breach of fiduciary duty, and a violation of the Texas Theft Liability Act.

86. Giant Gray sustained damages as a result of the conspiracy between or among Defendants and any additional co-conspirators including, but not limited to, the loss of the funds described above.

87. Giant Gray is entitled to recover all such amounts as damages from Defendants.

**COUNT VII: IMPOSITION OF CONSTRUCTIVE TRUST AGAINST ALL DEFENDANTS**

88. Giant Gray incorporates the above paragraphs by reference.

89. As alleged above, Defendants blatantly violated their fiduciary duties to BRS. Defendants knowingly participated in the breaches. Further, Defendants each committed actual fraud in procuring payments from BRS as described herein.

90. Defendants have been unjustly enriched at Giant Gray's expense by their wrongful acts and by their collective receipt of at least **\$15,267,612.66**.

91. Giant Gray therefore seeks the imposition of a constructive trust on all of Defendants' assets that are traceable in any way to the unlawful payments described above.

92. Giant Gray also seeks the imposition of a constructive trust on any assets that Defendants might have conveyed to any other person who had knowledge whatsoever of the wrongful transfers.

**COUNT VIII: JOINT AND SEVERAL LIABILITY**

93. Giant Gray incorporates the above paragraphs by reference.

94. All Defendants are jointly and severally liable for Giant Gray's damages.

95. All Defendants acted with the specific intent to harm BRS.

96. All Defendants acted in concert with each other and others to engage in conduct that constitutes a violation of the Texas Penal Code, as described herein.

97. All Defendants' actions proximately caused Giant Gray's legally recoverable damages.

**VII. CONDITIONS PRECEDENT**

98. All conditions precedent to Giant Gray's claims for relief have been performed or have occurred.

**VIII. SELF AUTHENTICATION**

99. Pursuant to Texas Rule of Civil Procedure 193.7, this is the "actual" written notice to you that all documents produced in this litigation will be used by Giant Gray at any pre-trial proceedings and at trial. Hence, all documents produced in this litigation are deemed self-authenticating for use in any pre-trial proceeding or at trial; and any objections thereto by Defendants shall be in writing and placed on the record giving Giant Gray a reasonable opportunity to establish the challenged document's authenticity.

**IX. REQUESTS FOR DISCLOSURE**

100. Pursuant to Texas Rule of Civil Procedure 194, Defendants are requested to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2

**X. PRAYER FOR RELIEF**

WHEREFORE, Giant Gray prays that Defendants be cited to appear and answer herein and that Giant Gray have judgment in its favor and against Defendants as follows:

- (1) Compensatory, economic and/or actual damages in an amount to be determined at trial.
- (2) Punitive and/or exemplary damages in an amount to be determined at trial.
- (3) Pre-judgment and post-judgment interest at the maximum rate permitted by law.
- (4) An award of reasonable attorneys' fees and costs incurred in pursuing this action.
- (5) Any other relief that the Court deems appropriate and proper.

Dated: February 2, 2017

Respectfully Submitted,

EDISON, MCDOWELL & HETHERINGTON LLP

By: 

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Texas Bar No. 00790629  
Andrew R. Kasner  
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**ATTORNEYS FOR  
PLAINTIFF GIANT GRAY, INC.**