



Factoring, LLC (“Southwest Bank Factoring”); and (x) Southwest Bank (“Southwest Bank”).

### **DISCOVERY-CONTROL PLAN**

1. Plaintiffs TBOSA and TEF intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and ask that the Court enter an order setting forth a suitable discovery control plan. Pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiffs seek damages greatly in excess of \$1,000,000.00.

### **PARTIES**

2. Plaintiff TBOSA is a Texas state-chartered bank, located in San Antonio, Texas. Plaintiff TEF is a wholly owned subsidiary of TBOSA, which is also located in San Antonio, Texas.

3. Defendant Ronald Wayne Schroeder may be served with process at 664 River Chase Drive, New Braunfels, Texas 78132. Defendant Thomas Gene Hartung, Jr. is an individual who may be served with process at 15218 Moss Way, San Antonio, Texas 78232. Defendant Alvy’s Logistics d/b/a Alvy’s Trucking may be served with process upon its general partner, Rigo Alvarado, at 2117 West Airport Fwy, Suite 46, Irving, Texas 75062. Defendant Jill Martin Alvarado is an individual who may be served with process at 2713 Stanford Drive, Irving, Texas 75062. Defendant Rigo Alvarado is an individual who may be served with process at 2713 Stanford Drive, Irving, Texas 75062, or at 2117 West Airport Fwy, Suite

46, Irving, Texas 75062. Defendant Nerd Factory, LLC is a Texas limited liability company which may be served with process by serving its Managing Member, Phyllis Jo Martinez, at 3210 Gazelle Range, San Antonio, Texas 78529. Defendant Phyllis Jo Martinez is an individual who may be served with process at 3210 Gazelle Range, San Antonio, Texas 78529. Isaiah Navarrete is an individual who may be served with process at 105 El Cielo, Boerne, Texas 78006. Defendant Southwest Bank Factoring, LLC is a Texas limited liability company and is a subsidiary of Southwest Bank. It may be served with process by serving its President, Dewey Bryant, at 4800 East 42<sup>nd</sup> Street, Odessa, Texas, 79762. Defendant Southwest Bank may be served with process by serving its CEO, Dewey Bryant, at 4800 East 42<sup>nd</sup> Street, Odessa, Texas, 79762.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this matter by virtue of the relief sought herein. This Court also has personal jurisdiction over all of the parties as they are either Texas residents or entities that do business in Texas.

5. Venue is proper in Comal County. As will be described in more detail below, Plaintiffs' claims include fraud, negligent misrepresentation, civil conspiracy, breach of contract, money had and received, and unjust enrichment. Venue here is appropriate under the Texas Civil Practice and Remedies Code for several reasons. First, pursuant to Section 15.002(1) of the Texas Civil Practice

and Remedies Code, Comal County is the place in which all or a substantial part of the events or omissions giving rise to the potential claims have occurred. For example, Defendant Schroeder officed in Comal County during his tenure of employment with Plaintiff TEF (1067 FM 306, Suite 308, New Braunfels, Texas 78130), and, as will be described more fully below, orchestrated his fraudulent scheme from his place of employment. Furthermore, Schroeder filed a d/b/a assumed name certificate in Comal County for a bogus and fraudulent entity named "Republic Logistics" that he used to defraud Plaintiffs into wiring \$3,365,404.98 of their money (\$444,959.31 of this total amount went to Southwest Bank Factoring, LLC and Southwest Bank, with the remainder going to Defendant Schroeder's bank account at Frost Bank). Moreover, Defendant Southwest Bank Factoring, LLC filed with the Texas Secretary of State in 2019 an assumed name certificate for an entity called "Titan Finance" listing its principal office as 1067 FM 306, Suite 308, New Braunfels, Texas 78130, being in Comal County, and therefore purposely chose to engage in business in that county. Moreover, Defendant Southwest Bank Factoring, LLC committed contractual breaches of multiple buy-out agreements with Plaintiffs, and various customers, on or after August 1, 2019, in Comal County. Further, Defendant Schroeder knowingly deceived Plaintiffs into wiring \$444,959.31 of their money to Southwest Bank Factoring, LLC for a bait and switch entity fraudulently created by Schroeder.

Once Plaintiffs' funds were wired, Plaintiffs' money was surreptitiously redirected by Schroeder to pay off debt owed by a totally different and unrelated entity than had been represented by Schroeder would be the beneficiary of the payoff by Plaintiffs. Additionally, Defendants Schroeder, Alvy's Logistics d/b/a Alvy's Trucking, R. Alvarado, J. Alvarado, as well as Defendants Schroeder, Nerd Factory, LLC, and Martinez, conspired to create fraudulent invoices in order to misled Plaintiffs about the true condition of the aged receivable status of invoices for Alvy's Trucking and Nerd Factory, LLC, respectively. In addition to the foregoing, pursuant to Section 15.002(2) of the Texas Civil Practices and Remedies Code, Comal County is Schroeder's county of residence .

6. Because venue in this County is appropriate as to several of the Defendants, then, under Section 15.005, venue in this County is likewise appropriate for all of the remaining parties, as each of these Defendants are involved in the same transactions and occurrences referenced herein against their co-Defendants.

### **SUMMARY OF THE CASE**

7. Plaintiffs seek to recover a total of approximately \$13.2 million in damages in this case. Of that total amount, Plaintiffs contend that approximately \$10.4 million went directly to Defendants Southwest Bank Factoring, LLC and/or Southwest Bank. Plaintiffs contend that they were fraudulently induced to enter

into multiple buy-out agreements on or after August 1, 2019, whereby TBOSA and TEF invested approximately \$10.4 million to purchase the accounts receivable of various businesses from Southwest Bank Factoring, LLC and/or Southwest Bank. In addition, Plaintiffs lost several additional millions of dollars as a result of being fraudulently induced to wire funds for fraudulent invoices to a fake company called “Republic Logistics.” Unbeknownst to Plaintiffs, the overwhelming majority of all of the customer invoices they purchased were either fraudulently prepared, hopelessly aged and uncollectable, or both. Plaintiffs now file suit to recover all monies paid out and its other damages resulting from the actions of the Defendants.

## **BACKGROUND FACTS**

### **A. The Factoring Business**

8. The Bank of San Antonio is a Texas state-chartered bank located in San Antonio, Texas. Texas Express Funding, LLC, is a wholly owned subsidiary of TBOSA. TEF is in the business of accounts receivable purchasing, also called factoring. Factoring occurs when a company sells specific accounts receivable to a third party at a discounted price in order to accelerate its cash flow. The businesses that sell their accounts receivables in the factoring market are referred to as clients and/or customers of TBOSA and TEF. A customer’s accounts receivable is supported by legitimate underlying invoices, whereby each vendor

has previously billed a third party to compensate them for whatever particular services or products have been rendered or made. The third party for whom the work was performed is called the account debtor, and is the ultimate source of repayment for the factoring entity.

9. The relationship between TEF and its customer is not primarily one between a lender and a borrower. Instead, the relationship is primarily one between a purchaser and a seller. By accepting the credit risk of the account debtors involved in the purchase, TEF can earn a much greater return on its investment than through a loan relationship with the customer. Generally, TEF will require the customer to accept the credit risk associated with a specific debtor (called “recourse factoring”). Customer invoices are usually paid directly from the customer's account debtors following the assignment of each receivable to TEF. This reliance on the account debtor for payment places a heavy emphasis on the evaluation and monitoring of the customer's accounts receivable, including the creditworthiness of the account debtor, the documentation supporting the sale, and the relationship of the customer to the account debtor.

10. Accordingly, factoring enables TBOSA, through its subsidiary TEF, to purchase and manage the accounts receivable of credit-worthy customers with recourse. This includes the ability to require the customer to repurchase any delinquent accounts and with the customer's repurchase obligation supported by a

reserve account maintained at TBOSA. Remittances from account debtors are directed to a TBOSA/TEF controlled lockbox. TBOSA provided the funds to TEF to conduct its factoring activities.

11. Obviously, it is crucial that the underlying invoices which are purchased by the Plaintiffs represent a bona fide sale of product or service by the customer to the account debtor. Likewise, it is vital that the account debtor actually pay each of customer invoices, so that TEF and, ultimately, TBOSA, will receive a return on its investment. Otherwise, the factoring business is not a viable business.

12. In order to reduce risk and to maximize success, it is important for a factoring business to vet, not only each potential customer, but also each customer's respective debtor who will ultimately pay the customer's invoice. TEF put certain policies and procedures in place to ensure that its investment decisions were sound and likely to yield an acceptable rate of return for this for-profit enterprise.

**B. Defendants Schroeder and Navarrete Sell Their Factoring Business to Defendant Southwest Bank.**

13. On October 13, 2014, Defendants Ronald Wayne Schroeder and Isaiah Navarrete created a factoring business called Titan Factoring, LLC, which was headquartered in San Antonio, Texas. On or around April 27, 2017, Titan Factoring, LLC sold all or part of its factoring business to Defendant Southwest

Bank, whereby Defendant Southwest Bank created a subsidiary named Southwest Bank Factoring, LLC. Although Defendant Southwest Bank is located in Odessa, its subsidiary, Defendant Southwest Bank Factoring, LLC, made a conscious decision to do business in Comal County, and even filed an assumed name certificate for a d/b/a called Titan Factoring, listing its headquarters in New Braunfels (Comal County), the same city where Wayne Schroeder lives.

**C. Defendant Ronald Wayne Schroeder Deceives Plaintiffs TBOSA and TEF.**

14. On August 1, 2019 and thereafter, Ronald Wayne Schroeder induced Plaintiffs to buy-out ten (10) different customer accounts which were owned by Southwest Bank Factoring, LLC. Separate written buy-out agreements were signed by Schroeder on behalf of TEF, by Paul Weaver on behalf of Southwest Bank Factoring, LLC, and by certain other individuals on behalf of each of the ten (10) different customers for whom accounts receivable were being purchased. In order to induce the Plaintiffs to fund these agreements, Schroeder made critical misrepresentations of fact to fraudulently induce TBOSA and TEF into agreeing to buy out multiple aged factoring accounts owned by Southwest Bank Factoring, LLC. Among those misrepresentations were false statements that the payment cycle for the acquired customer accounts—for example, trucking companies such as Alvy's Logistics d/b/a Alvy's Trucking and a janitorial, remediation and restoration company such as Nerd Factory, LLC—was less than 90 days. In truth,

the actual invoices for these and other companies were severely aged, some of which were in excess of a year and even 500 days in arrears. After lying about the true status of the invoices being acquired, Schroeder further represented that the underlying factoring agreements between Southwest Bank Factoring, LLC required their factoring customers to repurchase their own invoices once they remained unpaid for 120 days. By explaining the 120-day feature of the factoring agreements, Plaintiffs were defrauded into believing that Southwest Bank Factoring, LLC would not be selling any invoices older than 120 days for two simple reasons. First, any such aged invoices belonging to Southwest Bank Factoring, LLC would have already been repurchased by the customers and therefore not available for sale to Plaintiffs. Second, if not repurchased and therefore not collectible, then Southwest Bank and/or Southwest Bank Factoring, LLC had a duty to publicly disclose these charge-offs on their quarterly call reports. Had Plaintiffs known the true aged status of the receivables, it would not have agreed to invest in the factoring deal touted by Schroeder. In addition, and unbeknownst to Plaintiffs, Schroeder uploaded false information on or after August 1, 2019 into a software system called Factorview, which Schroeder knew was going to be relied upon by Plaintiffs in determining the status of a particular businesses' accounts receivable. Instead of uploading the actual invoices, Schroeder instead simply fabricated false data entries by inserting fake information

into an excel spreadsheet format and uploading that false information into Factorview. By doing this, Schroeder misled Plaintiffs into believing that virtually none of the underlying invoices being bought from Southwest Bank Factoring, LLC were older than 120 days. Indeed, almost none of the data indicated that any invoices were older than 90 days, which is precisely what Schroeder had said was the normal turnaround time for payment of these types of invoices. In truth, however, the dates inputted by Schroeder were fake; many invoices dated back to calendar year 2018--not 2019--as indicated in Factorview. Had Plaintiffs known of these true facts, it would never have agreed to Schroeder's proposal to buy out these accounts from Southwest Bank Factoring, LLC.

**D. Schroeder's Misrepresentations of Fact Were Relied Upon by Plaintiffs.**

15. In order to effectuate the transfer of these customer accounts, Wayne Schroeder signed separate buyout agreements in his new capacity as the manager of TEF on or after August 1, 2019. These agreements were not dated, but contained written misrepresentations of the amount of factoring accounts being purchased as of August 1, 2019. Each such agreement was signed by Schroeder and by Paul Weaver on behalf of Southwest Bank Factoring, LLC. Schroeder had actual knowledge of the true aged status of the accounts receivable being sold to Plaintiff. Moreover, one of these buyout agreements purports to be signed by Ryan Martinez on behalf of Nerd Factory, LLC. In truth, Ryan Martinez did not sign

this agreement because he was in prison. Schroeder forged his signature. Another buyout agreement purports to be signed by Dalila Park on behalf of a customer account called Blue Design & Consulting, LLC, but, on information and belief, her signature was likewise forged by Schroeder. Discovery will soon determine whether Paul Weaver, Dewey Bryant, Isaiah Navarrete, Lori Acosta, Yvette Carrasco, and Kaylen Shorey, knew or should have known these facts.

**E. Did Southwest Bank Factoring, LLC Negligently or Fraudulently Conceal the True Status of Its Accounts?**

16. Discovery will soon determine whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known about all of the facts alleged in this lawsuit. It is certain, however, that Schroeder knew. Indeed, a recently discovered secret spreadsheet dated July 2, 2019, just weeks before the sale, reflected that most of the soon-to-be purchased invoices were seriously delinquent, e.g., substantially older than 120 days, and were unlikely to be paid back. Defendant Schroeder represented to Plaintiffs that Southwest Bank Factoring, LLC had factoring agreements with each of its account debtors, such as Alvy's Logistics d/b/a Alvy's Trucking and Nerd Factory, LLC. Schroeder provided a template agreement to the Plaintiffs for Southwest Bank Factoring, LLC, along with the representation that the template agreement accurately encompassed the material terms of each of the factoring agreements in already in existence with Southwest Bank Factoring, LLC for each of the ten (10) customer

accounts being purchased by Plaintiffs. This template contained a 120 day repurchase clause in paragraph 7.1, whereby stale invoices would have either been repurchased by the customer and/or charged off as uncollectable by Southwest Bank. Thus, if Southwest Bank Factoring, LLC had followed its own factoring agreements, as well as complied with accounting and regulatory reporting rules, virtually none of the aged accounts listed on the recently discovered July 2, 2019 secret spreadsheet would have even been available to sell to the Plaintiffs on or after August 1, 2019.

**F. TBOSA and TEF Perform Their Promises, and Invest Millions in the Factoring Business.**

17. Not realizing it had been fraudulently deceived, TBOSA wired, on behalf of TEF, \$8,225,903.59 to Defendants Southwest Bank Factoring, LLC and Southwest Bank for four (4) of the ten (10) client accounts on August 1, 2019. TBOSA and TEF had been led to believe that these accounts were valuable and that the accounts receivable being purchased were not significantly aged or questionable as to their collectability. On August 2, August 5, August 21, September 5, September 13, October 17 and on December 9, 2019, TBOSA also wired, on behalf of TEF, additional payments of \$2,223,203.45, for a grand total of \$10,449,107.04.

**G. The Republic Logistics Transaction Defrauded Plaintiff**

18. At the request of Schroeder, Plaintiffs wired \$444,959.31 to Defendants Southwest Bank Factoring, LLC and Southwest Bank on December 9, 2019. As will be described more fully herein, this wire request was the intended result of a conspiracy between Schroeder, Tommy Hartung, and Isaiah Navarrete, the purpose of which was to pay off an unrelated debt which was owed to Southwest Bank Factoring, LLC and/or Southwest Bank by a company called Cruising Kitchens. In furtherance of the conspiracy to defraud Plaintiffs, Wayne Schroeder: (i) created a fake d/b/a called “Republic Logistics” that he owned and/or controlled, and, with the help of Hartung, prepared and submitted a bogus client application and a fake factoring agreement; (ii) misrepresented “Republic Logistics” as being a different company known as Republic Logistics, LLC, the latter of which had previously been vetted and approved for a \$4 million loan by TBOSA; (iii) induced TBOSA, on behalf of TEF, to wire \$444,959.31 to Southwest Bank Factoring, LLC and/or Southwest Bank, purportedly on behalf of the previously-approved entity, and then (iv) instructed Southwest Bank Factoring, LLC and/or Southwest Bank to allocate the wire funds to yet a third, completely unrelated entity known as Cruising Kitchens so as to financially benefit Southwest Bank Factoring, LLC and/or Southwest Bank by paying down debts owed by Cruising Kitchens.

- i. The Real Entity is Called Republic Logistics, LLC.

19. Established in 2018, Republic Logistics, LLC is a legitimate logistics and trucking company primarily focusing on the hauling of frac sand in the Permian basin. Primary customers of this business include Catalyst Energy Services, LLC, ProPetro Services, Inc., TSS and Alamo Pressure Pumping. On August 15, 2019, TBOSA's Director's Loan Committee ("DLC") approved a line of credit for Republic Logistics, LLC. On September 16, 2019, TBOSA officially approved a \$4 million line of credit as an accounts receivable financing loan. Prior to approval, TBOSA gathered information and carefully vetted Republic Logistics, LLC to ensure that such a loan would be appropriate and reasonable, and based on that approved a line of credit to Republic Logistics, LLC. To this day, Republic Logistics, LLC has neither requested nor received any funds from either TBOSA or TEF.

ii. The Bait and Switch Entity is Called Republic Logistics.

20. On December 1, 2019, Wayne Schroeder signed a bogus Factoring Agreement purportedly on behalf of "BOSA and/or assigns" with an entity named "Republic Logistics." Although this agreement defines "Republic Logistics" as the "client," this entity is not the same entity as the previously vetted and previously approved Republic Logistics, LLC. This agreement was entered into without the knowledge or approval of Plaintiffs. This agreement was also signed by Schroeder's co-conspirator, Tommy Hartung, purportedly on behalf of something

referred to as “DBA Republic Logistics.” Mr. Hartung listed his address as a PO box address in Sinton, Texas.

21. In furtherance of the conspiracy to defraud Plaintiffs, on December 5, 2019, a client application for TBOSA was filled out by Tommy Hartung for Hartung Oilfield, LLC and sent to Wayne Schroeder. Also in furtherance of the conspiracy, on December 6, 2019, an application for Tommy Hartung DBA Republic Logistics was processed by Wayne Schroeder. Because Schroeder was acting as the manager of TEF, TBOSA was not aware that these activities were occurring.

22. On December 9, 2019, Wayne Schroeder sent an email to an employee in TBOSA’s internal credit department. In that email, he stated that “We are going to activate Republic Logistics (Client)... Limit for Republic is \$3,000,000—approved 8/15/19 in DLC and is on tracking sheet already.” These statements are demonstrably false. The reference to TBOSA’s DLC approval on 8/15/19 is actually referring to Republic Logistics, LLC, the previously vetted and previously approved bonafide logistics and trucking company. Unfortunately, the internal TBOSA employee believed what he had been told by Schroeder as President of TEF, and did not realize that the requesting entity was not the same as the approved entity.

23. On December 12, 2019, Wayne Schroeder filed an assumed name certificate for an unincorporated business called “Republic Logistics.” Instead of listing Tommy Hartung as the owner<sup>1</sup>, Wayne Schroeder listed himself as the “owner.” The address for this d/b/a is in New Braunfels, Comal County, Texas.

24. TBOSA and TEF had been led to believe that the \$444,959.31 was to purchase accounts receivable of Republic Logistics, LLC owned by Southwest Bank Factoring, LLC and/or Southwest Bank. This wire never ultimately even made it to Republic Logistics, LLC. Nor did the wire even make it to the bait and switch entity called “Republic Logistics.” Instead, the funds and the wire went directly to Defendant Southwest Bank Factoring, LLC and/or Southwest Bank, but not to purchase invoices. Correspondence between Schroeder and Southwest Bank and Southwest Bank Factoring, LLC shows that the funds were actually to be applied to pay off debt owed by a different customer of Southwest Bank named Cruising Kitchens. In that regard, Wayne Schroeder instructed TBOSA to wire the funds for “Republic Logistics.” Curiously, the written wire request itself does not mention “Republic Logistics,” but simply mentions Southwest Bank and its subsidiary’s d/b/a known as Titan Finance. Moreover, by separate email, Wayne Schroeder alerts Southwest Bank Factoring, LLC and/or Southwest Bank to expect an incoming wire to be credited to Cruising Kitchens. Schroeder knew he was

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<sup>1</sup> Hartung certified that “Republic Logistics” was his sole proprietorship just twelve (12) days earlier on December 1, 2019.

deceiving Plaintiffs when they requested and accepted \$444,959.31 by wire transfer. Discovery will soon answer whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known of these facts.

25. TBOSA and TEF only began to discover these concerning facts in May of 2020. From December 9, 2019 until April 13, 2020, Wayne Schroeder continued to fraudulently induce TBOSA, on behalf of TEF, to wire “Republic Logistics” the total sum of approximately \$3,365,404.98, ostensibly to purchase accounts receivable of Republic Logistics, LLC.

#### **H. The Alvy’s Conspiracy**

26. One of the ten (10) customer buy-out agreements Plaintiffs purchased from Southwest Bank Factoring, LLC on or after August 1, 2019 involved a trucking company called Alvy’s Logistics d/b/a Alvy’s Trucking. Alvy’s purportedly had master service agreements with reputable, publicly traded account debtors such as Apache, WPX Energy Production, Anadarko, EOG Resources, Matador, and Oxy. Schroeder knew the true status of the aged accounts receivable for Alvy’s, but instead defrauded Plaintiffs by misrepresenting the true status of that customer account and by fraudulently concealing those true facts. Discovery will soon demonstrate whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known of these facts.

27. On August 1, 2019, in reliance on the above-referenced fraudulent misrepresentations and fraudulent concealment, Plaintiffs wired \$3,609,277.10 to Southwest Bank Factoring, LLC and/or Southwest Bank to purchase Alvy's accounts receivable. Had Southwest Bank and Southwest Bank Factoring, LLC complied with their own factoring agreement with Alvy's, as well as all pertinent factoring regulations, there would never have been any account receivables available to sell, as each and every invoice being sold was aged in excess of 120 days. Under the factoring agreement that Southwest Bank Factoring, LLC had with Alvy's, all invoices older than 120 days were required to be repurchased by Alvy's, and, failing repurchase, should have been charged off by Southwest Bank and promptly and properly reported as a loss in its quarterly call report.

28. While Schroeder was misrepresenting the true nature of the Alvy's severely aged account status in order to induce the Plaintiffs to purchase this specific customer account, secret written documentation has recently been discovered by the Plaintiffs that showed, as of July 2, 2019, 190 of the 205 invoices which were purchased were aged in excess of 90 days. Thus, by the time of purchase on August 1, 2019, each of these invoices were aged in excess of 120 days, and therefore, should never have been sold to Plaintiffs in the first place, for the reasons described above.

29. In furtherance of his wrongful actions, Schroeder altered the true aged status of the Alvy's invoices by inputting false dates for the invoices rather than uploading the actual invoices into Factorview, all in an effort to make it appear that the invoices purchased by Plaintiff were less than 120 days old, when in fact they were exactly the opposite. Discovery will soon demonstrate whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known of these facts.

30. Moreover, after wiring \$3,609,277.10 to Southwest Bank Factoring, LLC and/or Southwest Bank, Plaintiffs learned, for the very first time, that they had not just purchased Alvy's accounts receivables as had been represented. Rather, after payoff, Plaintiffs discovered that they had also unwittingly purchased a loan to Alvy's that was secured by parcels of land. This latter fact was not disclosed by either Schroeder, Southwest Bank Factoring, LLC, or Southwest Bank, much less discussed or agreed upon with Plaintiffs. To make matters worse, Schroeder wrongfully released collateral for the Alvy's loan in September of 2019, which allowed the Jill and Rigo Alvarado to subsequently sell the collateral and to keep and live off the sale proceeds.

31. Only three payments were ever received during the term of Plaintiffs' relationship with Alvy's. None of those payments actually came from any account debtors. To the contrary, all three payments were the result of fraud, whereby: (i)

Schroeder and Jill Alvarado and Rigo Alvarado made fraudulent “new” invoices in order to induce Plaintiffs to send new money for those “new” invoices and then Alvy’s would simply use those new funds to pay off older invoices that had previously been purchased by Plaintiffs; or (ii) these parties used the entity called “Republic Logistics” to issue fraudulent invoices to induce Plaintiffs to send new money and then Alvy’s would simply use those funds to pay off older invoices that have been previously purchased by the Plaintiffs. Incredibly, no debtor deposits were made into any of these accounts.

32. In furtherance of their conspiracy, Jill Alvarado sent at least two kickbacks to Schroeder. The first kickback involved a check from Jill Alvarado (from Resource One Credit Union) payable to Wayne Schroeder for \$55,678.32 with a memo line stating, “Reimburse for Wire”. The second kickback involved a wire transfer from Jill Alvarado/Alvy’s (from Resource One Credit Union) to Wayne Schroeder/Traditions Construction for \$44,000.

33. TBOSA testing procedures required Alvy’s to produce invoice copies to support the data in the Factorview system. Fraudulent invoices were subsequently created to match the data in the TEF system by Jill Alvarado. Email correspondence between Jill Alvarado and Schroeder shows Alvarado stating she will be up all night producing the invoices and asking if she should make up well numbers.

34. Total losses attributable to the Alvy's conspiracy are \$4,573,018.76.

### **I. The Nerd Factory Conspiracy**

35. Another one of the ten (10) customer buy out agreements whereby Plaintiffs purchased from Southwest Bank Factoring, LLC on or after August 1, 2019 involved a janitorial, remediation and restoration company called Nerd Factory, LLC.

36. When Plaintiffs purchased the Nerd Factory invoices from Southwest Bank Factoring, LLC on or after August 1, 2019, none of the invoices should have been available for purchase. To the contrary, all invoices were aged in excess of 120 days, and, had Southwest Bank Factoring, LLC and Southwest Bank complied with their factoring agreement with Nerd Factory, as well as factoring regulatory requirements, these accounts receivable should have either been repurchased by the customer or charged off by the Southwest Bank. Neither occurred, such that Plaintiffs, once again, acquired worthless accounts receivable.

37. To make matters worse, Schroeder altered invoice dates and dollar amounts when he input them into Factorview, thereby making it appear, falsely, that all of the purchased invoices were younger than 120 days. Discovery will soon demonstrate whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known of these facts.

38. Only seven payments were ever received during the term of Plaintiffs' relationship with Nerd Factory. None of those payments actually came from any account debtors. To the contrary, all seven payments were the result of fraud, whereby: (i) Schroeder and Phyllis Martinez made fraudulent "new" invoices in order to induce Plaintiffs to send new money for those "new" invoices and then Nerd Factory would simply use those new funds to pay off older invoices that had previously been purchased by Plaintiffs; or (ii) these parties used the entity called "Republic Logistics" to issue fraudulent invoices to induce Plaintiffs to send new money and then Nerd Factory would simply use those funds to pay off older invoices that have been previously purchased by the Plaintiffs. Incredibly, no debtor deposits were made into any of these accounts.

39. In furtherance of their conspiracy, Nerd Factory and Phyllis Martinez sent at least one kickback to Schroeder. The kickback involved a wire transfer to Bank of America in the amount of \$267,343.95 from the Plaintiffs to Nerd Factory for an invoice purchase. Thereafter, Nerd Factory and Phyllis Martinez had a cashier's check drawn on Bank of America made payable to Traditions Construction for the exact same amount, \$267,343.95. This check was then deposited into a Marion State Bank account owned or controlled by Schroeder. On information and belief, Schroeder used part of the proceeds to purchase a Ford Shelby Cobra Mustang, valued at \$90,000.00.

40. Recently, Plaintiffs discovered that Nerd Factory's principal, Ryan Martinez, was in prison. Subsequent investigation has confirmed that his sentence began on October 3, 2018, making it a physical impossibility for him to have signed the factoring buy-out agreement on August 1, 2019. Indeed, Schroeder forged that signature. Discovery will soon answer the question of whether Southwest Bank Factoring, LLC and/or Southwest Bank knew or should have known of these facts.

41. Phyllis Martinez participated in Schroeder's schemes. As Plaintiffs stepped up their collection efforts, correspondence between them shows Schroeder coaching Martinez on how to respond to TEF inquiries. Martinez uses the language which Schroeder recommended in her response. In one instance, Schroeder tells Martinez she does not need to respond.

42. Total losses attributable to the Nerd Factory conspiracy are \$2,063,386.24.

#### **J. The Blue Design Conspiracy**

43. Another one of the ten (10) customer buy-out agreements Plaintiffs purchased from Southwest Bank Factoring, LLC involved a company handling masonry contracts for large commercial projects (such as universities) called Blue Design & Consulting, LLC and/or Blue Masonry & Plaster, LLC (Blue Design).

44. When Plaintiffs purchased Blue Design invoices from Southwest Bank Factoring, LLC on or after August 1, 2019, none of the invoices should have

been available for purchase. To the contrary, all invoices were aged in excess of 120 days, and, had Southwest Bank Factoring, LLC and Southwest Bank complied with their factoring agreement with Blue Design, as well as factoring regulatory requirements, these accounts receivable should have either been repurchased by the customer or charged off by the Southwest Bank. Neither occurred, such that Plaintiffs, once again, acquired worthless accounts receivable. To make matters worse, Schroeder altered invoice dates when he input them into Factorview, thereby making it appear, falsely, that all of the purchased invoices were younger than 120 days.

45. Total losses attributable to the Blue Design conspiracy are \$980,985.68.

### **CAUSES OF ACTION**

46. Plaintiffs incorporate all previous paragraphs of this Petition by this reference.

#### ***A. Breach of Contract.***

47. Plaintiffs sue Defendant Southwest Bank Factoring, LLC, for breach of contract for multiple buy-out agreements which were entered with TEF on or after August 1, 2019. The parties to these various agreements were Southwest Bank Factoring, LLC (signed by Paul Weaver), TEF (signed by Schroeder), and various customers, such as Alvy's, Nerd Factory, Blue Design, and others. Under

these buy-out agreements, Defendant Southwest Bank Factoring, LLC was contractually obligated to assign bonafide accounts receivables from reputable customers that were no older than 120 days from the date of the invoice. In breach of those agreements, Defendant Southwest Bank Factoring, LLC sold seriously aged accounts receivables of little or no value because they were grossly in excess of 120 days late. Indeed, some invoices were in excess of 500 days delinquent. Furthermore, Defendant Southwest Bank Factoring, LLC breached these agreements by purporting to sell accounts receivable that did not actually exist, but instead were fabricated by Schroeder in order to lure Plaintiffs into wiring money for non-existent accounts. As a result of this Defendant's breaches of contract, Plaintiffs suffered damages in the amount of \$10,449,107.04, for which Plaintiffs now sue.

***B. Fraud.***

***i. Affirmative Misrepresentation***

48. Plaintiffs also sue each of the Defendants (except for Defendants Southwest Bank Factoring, LLC and Southwest Bank) for fraud. The elements of a cause of action for fraud are: (1) a material representation was made; (2) which was false; (3) which was either known to be false when made or was asserted without knowledge of its truth; (4) which was intended to be acted upon; (5) which was relied upon; and (6) which caused injury. *Formosa Plastics Corporation USA*

*v. Presidio Engineers and Contractors, Inc.*, 960 S.W.2d 41, 47, 41 Tex. Sup. Ct. J. 289 (Tex.1998) ; *De Santis v. Wackenhut Corporation*, 793 S.W.2d 670, 688, 33 Tex. Sup. Ct. J. 517 (Tex.1990). To satisfy the intent element, the plaintiff need only prove that defendant had reason to expect reliance on the misrepresentation, not that the defendant intended to induce the plaintiff to rely. *Ernst & Young, LLP v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 575 (Tex. 2001). As a result of these Defendants' fraud, Plaintiffs suffered damages in the amount of \$13.2 million, for which Plaintiffs now sue.

***ii. Fraudulent Concealment.***

49. Fraud by nondisclosure is a subcategory of a fraud action in Texas which is created by a duty to disclose between the parties. *See* Michol O'Connor, O'CONNOR'S TEXAS CAUSES OF ACTION, at 302 (2015). When there is a duty to disclose information and a party does not disclose it, the nondisclosure may be as misleading as a positive misrepresentation of fact. *Id*; *citing Schlumberger Tech. v. Swanson*, 959 S.W.2d 171, 181 (Tex. 1997). To establish fraud by nondisclosure, plaintiff must prove (1) the defendant failed to disclose facts to the plaintiff, (2) the defendant had a duty to disclose those facts, (3) the facts were material, (4) the defendant knew the plaintiff was ignorant of the facts and the plaintiff did not have an equal opportunity to discover the facts, (5) the defendant was deliberately silent when it had a duty to speak, (6) by failing to disclose the

facts, the defendant intended to induce the plaintiff to take some action or refrain from acting, (7) the plaintiff relied on the defendant's nondisclosure, and (8) the plaintiff was injured as a result of acting without that knowledge. *Blankinship v. Brown*, 399 S.W.3d 303, 308 (Tex. App. — Dallas 2013, no pet.) (citing *Horizon Shipbuilding, Inc. v. Blyn II Holding, LLC*, 324 S.W.3d 840, 850 (Tex.App.-Houston [14th Dist.] 2010, no pet.)).

50. As explained above, Schroeder made affirmative misrepresentations of fact and also fraudulently concealed the true facts. Plaintiffs relied on these misrepresentations and omissions to their detriment. Had Plaintiffs known the truth, they would not have entered into any of the buy-out agreements. Nor would they have wired any of the \$13,369,552.71 in funds. Defendants Schroeder, Hartung, and Navarrete committed fraud in the Republic Logistics conspiracy. Defendant Schroeder also committed fraud in the Alvy's conspiracy, the Nerd Factory conspiracy, and the Blue Design conspiracy. In addition, Defendant Alvy's Logistics d/b/a Alvy's Trucking, as well as Defendants Rigo Alvarado and Jill Martin Alvarado, each committed fraud regarding Alvy's Trucking invoices, as they fabricated invoices in order to mislead Plaintiffs into believing those invoices were real and/or not stale. Defendant Nerd Factory, LLC, as well as Defendant Phyllis Martinez, each committed fraud regarding Nerd Factory invoices, as they fabricated invoices in order to mislead Plaintiffs into believing those invoices were

real and/or not stale. As a result of these Defendants' fraud, Plaintiffs suffered damages in the amount of \$13.2 million, for which Plaintiffs now sue.

***C. Negligent Misrepresentation.***

51. Alternatively, each of the Defendants, including Southwest Bank Factoring, LLC and Southwest Bank, engaged in negligent misrepresentations of fact which Plaintiffs relied and were harmed as a result. The elements of a cause of action for negligent misrepresentation are: (1) a representation was made by a defendant in the course of his business or in a transaction in which he has a pecuniary interest; (2) the defendant supplied "false information" for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffered a pecuniary loss by justifiably relying on the representation. *Federal Land Bank Association of Tyler v. Sloane*, 825 S.W.2d 439, 442, 35 Tex. Sup. Ct. J. 184 (Tex.1991). As a result of these Defendants' negligent misrepresentations, Plaintiffs suffered damages in the amount of \$13.2 million, for which Plaintiffs now sue.

***D. Money Had and Received/ Unjust Enrichment.***

52. Because Defendants Southwest Bank Factoring, LLC and Southwest Bank received over \$10.4 million from Plaintiffs, an equitable claims for money had and received and/or unjust enrichment, is hereby brought. These funds

rightfully belong to Plaintiffs, and in equity and conscience, must be repaid to them. A party may recover under an unjust enrichment theory when another party has obtained a benefit from it by fraud, duress, or the taking of an undue advantage. *Heldenfels Brothers, Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41, 35 Tex. Sup. Ct. J. 802 (Tex.1992). The party seeking to recover under an unjust enrichment theory must show that the benefit or profit to the other party was "unjust" under principles of equity. *Zapata Corporation v. Zapata Gulf Marine Corporation*, 986 S.W.2d 785, 788 (Tex. App. -Houston [1st Dist.] 1999, no pet'n). As a result of these Defendants' receipt of funds and unjust enrichment, Plaintiffs suffered damages in the amount of \$10,449,107.04, for which Plaintiffs now sue.

53. Plaintiffs seek to impose a constructive trust to recover these monies. Plaintiffs also seek to recover any and all personal property that secures any and all of these transactions.

54. Plaintiffs have been forced to retain outside counsel to prosecute this lawsuit. As such, Plaintiffs seek to recover all attorneys' fees and expenses reasonably and necessarily incurred, pursuant to Chapter 38.001 of the Texas Civil Practice and Remedies Code.

55. Plaintiffs also seek to impose punitive and/or exemplary damages arising out of its claims for fraud and conspiracy.

56. All conditions precedent to the assertion of these claims and for recovery have been performed and/or otherwise satisfied.

**PRAYER**

WHEREFORE, Plaintiffs TBOSA and TEF respectfully pray that each Defendants be cited to appear and answer and that damages, both actual and exemplary/punitive, along with attorneys' fees and expenses, and court costs, be awarded herein.

Respectfully submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

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