

AO 120 (Rev. 3/04)

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE                  FILING OR DETERMINATION OF AN                  ACTION REGARDING A PATENT OR                  TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Middle District of Florida, Tampa on the following  Patents or  Trademarks:

DOCKET NO. 8:08-cv-1964T26TBM	DATE FILED 10/01/2008	U.S. DISTRICT COURT Middle District of Florida - Tampa Division
PLAINTIFF  Vickery and Company		DEFENDANT  VC Systems & Controls, Inc. VC Administration, Inc. Henry G. Vickery
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	See attached complaint	
2	5,297,736	
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
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5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Sheryl L. Loesch	(BY) DEPUTY CLERK  Barbara Sohn	DATE  10/01/2008
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

VICKERY AND COMPANY \*  
8935 MAISLIN DRIVE \*  
TAMPA, FL 33637 \*

PLAINTIFF, \*

v. \*

CASE NO. \_\_\_\_\_

VC SYSTEMS & CONTROLS, INC., \*  
8811 VENTURE COVE \*  
TAMPA, FL 33637 \*

SERVE ON ITS REGISTERED AGENT: \*  
MR. HENRY G. VICKERY \*  
8811 VENTURE COVE \*  
TAMPA, FL 33637 \*

VC ADMINISTRATION, INC., \*  
8811 VENTURE COVE \*  
TAMPA, FL 33637 \*

SERVE ON ITS REGISTERED AGENT: \*  
MR. HENRY G. VICKERY \*  
8811 VENTURE COVE \*  
TAMPA, FL 33637 \*

AND \*

MR. HENRY G. VICKERY, \*  
6723 MAYBOLE PLACE \*  
TEMPLE TERRACE, FL 33617 \*

DEFENDANTS. \*

\* \* \* \* \*

COMPLAINT FOR PATENT INFRINGEMENT, DECLARATORY,  
INJUNCTIVE AND OTHER RELIEF

Plaintiff Vickery and Company ("V&C"), by its attorneys, Franklin & Prokopik, P.C., hereby sues Defendants VC Systems & Controls, Inc. ("VC Systems"), VC Administration, Inc. ("VC Administration") and Mr. Henry G. Vickery, for patent infringement, declaratory relief, breach of contract, for an accounting, and for its causes of action states as follows:

PARTIES

1. Plaintiff V&C is a Florida corporation with its principal place of business located at 8935 Maislin Drive, Tampa, Florida.
2. Defendant VC Systems is a Florida corporation with its principal place of business located at 8811 Venture Cove, Tampa, Florida.
3. Defendant VC Administration is a Florida corporation with its principal place of business located at 8811 Venture Cove, Tampa, Florida.
4. Defendant Henry G. Vickery is an individual who resides at 6723 Maybole Place, Temple Terrace, Florida, and regularly conducts business at 8811 Venture Cove, Tampa, Florida.
5. Upon information and belief, Defendant Henry G. Vickery is the sole shareholder of Defendants VC Systems and VC Administration.

JURISDICTION & VENUE

6. This is an action for patent infringement pursuant to 35 U.S.C. §§ 271 *et seq*.
7. This Court has original jurisdiction over federal law claims pursuant to 28 U.S.C. §§ 1338 & 2201, and supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367, as such claims are so related to the patent infringement claims so as to form part of the same case or controversy.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 & 1400(b), as all defendants reside in Hillsborough County, Florida.

**FACTS COMMON TO ALL COUNTS**

**I. Corporate History**

9. V&C was formed in 1961, and from at least 1978 onward did business as a distributor of fire pumps and domestic water booster pump systems ("Pumps").

10. Contractors install Pumps in buildings in order to increase the water pressure available to built-in fire suppression systems, particularly in high-rise buildings.

11. In 1984, V&C began manufacturing and distributing its own Pumps.

12. Shortly after the turn of the century, Henry Vickery and his long time employee, Dennis Barber, began discussing a transfer of the distribution side of V&C to Barber.

13. Dennis Barber and Henry Vickery agreed that in order to evaluate the proposed transaction, and to determine the viability of each side of the business as a stand alone entity, the manufacturing and distribution businesses would need to be separated from one another.

14. Henry Vickery established VC Systems in October of 2002 to spin off the manufacturing side of V&C, and at the same time established VC Administration to handle the joint expenses of V&C and VC Systems (the "Common Expenses") during their transition to separate operating companies.

15. Henry Vickery ran VC Systems, V&C and VC Administration from 2002 through the end of 2004.

16. For a period of time prior to December 31, 2004, Dennis Barber handled the day to day operations of V&C and had access to certain, but not all financial information pertaining to V&C.

17. On December 31, 2004 and January 1, 2005, Dennis Barber acquired stock in V&C, and V&C redeemed all outstanding shares held by Henry Vickery.

18. VC Administration continued to function at the direction of Henry Vickery for some period of time following January 1, 2005, however upon information and belief, VC Administration has forfeited its charter for failing to file papers and/or pay fees necessary to maintain its corporate existence.

19. As of the filing of this Complaint, Dennis Barber holds all issued and outstanding shares of V&C and, upon information and belief, Defendant Henry Vickery owns all issued and outstanding shares of Defendants VC Systems and VC Administration.

## **II. The Patent**

20. On November 9, 1992, Defendant Henry Vickery, applied for a patent for a "Flow Test Chamber," which diminished and diverted the flow of a high pressure stream of water generated while testing a fire pump.

21. On March 29, 1994, the United States Patent and Trademark Office ("USPTO") issued Patent Number 5,297,736 (the "Patent") to Henry Vickery.

22. The Patent and all attendant rights were subsequently assigned to V&C by an assignment duly recorded in the USPTO (the "Assignment").

23. V&C remains the owner of the Patent and has granted no license to VC Systems or Henry Vickery for its use.

24. Shortly after its founding, VC Systems began manufacturing, using, offering for sale and actually selling a product known as the "Flo-Rig," which infringes the Patent.

### **III. The Distribution Agreement**

25. In connection with the change in control of V&C, on December 31, 2004, V&C and VC Systems entered into a "Distribution Agreement" (the "Distribution Agreement"). A copy of the Distribution Agreement is attached hereto as Exhibit 1 and incorporated as though fully set forth herein.

26. In the Distribution Agreement, VC Systems granted V&C the exclusive right to distribute Pumps to the building and fire trades within a defined territory (the "Territory") and agreed to provide certain "engineering, support, training and related consulting services" for V&C.

27. VC Systems further agreed not to solicit orders from, or sell Pumps directly to, the building and fire trades within the Territory.

28. In a Stock Redemption Agreement between V&C and Henry Vickery, Henry Vickery agreed, in Paragraph 14, that he would "refer all customer inquiries relating to [V&C] and its subsidiaries to [V&C] from and after Closing." A copy of the Stock Redemption Agreement is attached hereto as Exhibit 2.

29. Per "Exhibit B" to the Distribution Agreement, the Territory included the Florida counties of Marion, Volusia, Citrus, Sumter, Lake, Seminole, Brevard, Orange, Polk, Hernando, Pasco, Hillsborough, Pinellas, Manatee, Hardee, Highlands, Okeechobee, St. Lucie, Desoto, Sarasota, Charlotte, Lee, Collier and Glades.

**IV. VC Systems' Violation of Exclusive Distribution Rights**

30. In violation of Section VII of the Distribution Agreement, VC Systems on several occasions sold and shipped Pumps into the Territory, directly to customers in the building and fire trades, for use within the Territory (the "VC Systems Sales").

31. Upon information and belief, the VC Systems Sales are substantial and material.

**V. VC Systems' Anticipatory Repudiation of the Distribution Agreement**

32. VC Systems sent a letter to V&C by email on September 3, 2008 (the "Demand Letter"), demanding payment of \$109,429.40 in allegedly outstanding invoices, and stating that should V&C fail to pay this amount within five business days, VC Systems would "be required to terminate the Distribution Agreement of December 31, 2004, for material breach," and further threatening that "Failure to pay will result in termination of the Agreement and all future quotes for any VC Systems Equipment." A copy of the Demand Letter is attached hereto as Exhibit 3.

33. The allegedly overdue invoices comprising the \$109,429.40 (the "Invoices") all arose prior to the parties execution of the Distribution Agreement.

34. The Invoices were incurred while Defendant Henry Vickery owned and was in charge of V&C, and were not fully disclosed to Dennis Barber prior to his acquisition of V&C.

35. V&C disputes liability for payment of the Invoices and claims a right of set-off for its claims arising out of VC Systems' breaches of the Distribution Agreement.

36. The Invoices do not relate to orders placed pursuant to the Distribution Agreement, and the Distribution Agreement contains no cross-default provision that would give VC Systems any right to terminate it for non-payment of the Invoices.

37. On September 29, 2008, VC Systems sent a second letter to V&C (the "Termination Letter"), in which VC Systems terminated the Distribution Agreement for several alleged breaches, including (i) the overdue Invoices, (ii) Current accounts payable which have gone over 30 days, and (iii) non-payment of fees which V&C and VC Systems had agreed to defer. A copy of the Termination Letter is attached hereto as Exhibit 4.

38. Defendant VC Systems unequivocal termination of the Distribution Agreement is wrongful and without cause, as V&C had timely and ably performed all of its obligations thereunder.

39. Non-payment of the overdue Invoices, if owed at all, does not constitute a breach of the Distribution Agreement, as the Invoices pre-dated and bear no relation to the Distribution Agreement.

40. The current accounts payable are not yet due pursuant to the parties ordinary course of dealing established over three years, and even if overdue, would not give rise to a default under the Distribution Agreement sufficient to provide cause for termination.

41. Non-Payment of the \$87,000 in allegedly due consulting payments (the "Deferred Payments") does not constitute a breach of the Distribution Agreement, as V&C and VC Systems agreed in 2005 to defer the Deferred Payments, and no subsequent agreement has modified the parties 2005 agreement.

42. VC Systems never demanded payment of the Deferred Payments prior to termination of the Distribution Agreement.

43. VC Systems' termination of the Distribution Agreement is unjustified, without cause, and constitutes a breach of the Distribution Agreement by anticipatory repudiation.

44. V&C has suffered damages arising from VC Systems unlawful termination of the Distribution Agreement.

#### **VI. Warranty Claims**

45. VC Systems warranted in the Distribution Agreement that all products sold to V&C would be free from defects in materials and workmanship at the time of the sales transaction, and would "either make an appropriate adjustment in the original sales price or provide a replacement product" for any product that proved defective in materials or workmanship.

46. The Pumps contain transducers (the "Transducers") which are critical to their function.

47. The Transducers in a number of Pumps VC Systems sold to V&C have proven defective.

48. VC Systems ultimately acknowledged design defects with the Transducers, however VC Systems has thus far failed to replace the defective Transducers, or provide any adjustment in the original sales price for any of the affected systems.

**VII. Transactions with VC Administration**

49. From its inception through early 2005, VC Administration would from time to time invoice V&C and VC Systems for their purported respective portions of the entities common expenses (the "Common Expenses").

50. V&C, while under the control of Defendant Henry Vickery, and later, upon the request of Henry Vickery, made various payments to VC Administration (the "VC Administration Transfers"), pursuant to invoices generated by VC Administration allegedly for V&C's pro rata share of the Common Expenses.

51. Upon information and belief, V&C paid more than its fair share of the Common Expenses.

52. VC Administration and VC Systems were related to one another and to V&C by common ownership, and upon information by a common board of directors, at the time most of the VC Administration Transfers were made.

53. Upon information and belief, Defendant Henry Vickery was the sole shareholder and controlling director of V&C, VC Systems and VC Administration when the vast majority of the VC Administration Transfers took place.

54. Upon information and belief, the VC Administration Transfers were neither fair nor reasonable to V&C, and had the effect of improperly benefitting VC Administration, VC Systems, and indirectly, Henry Vickery, at the expense of V&C by causing V&C to pay more than its fair share of the Common Expenses.

55. Defendant Henry Vickery owed V&C a fiduciary duty.

56. Defendant Henry Vickery, driven by his self interest, breached his fiduciary duties to V&C by permitting it to enter into transactions resulting in the VC Administration Transfers when such transactions were not in the best interests of V&C.

57. The Defendants refuse to comply with V&C's repeated requests for an accounting of funds paid by V&C to VC Administration.

#### **VIII. Attorneys' Fees**

58. Section XII (H) of the Distribution Agreement provides that the "unsuccessful party" in any action "relating to the provisions [thereof] or any default thereunder" shall pay the successful party's attorneys' fees and costs.

#### **COUNT I** **PATENT INFRINGEMENT** **(AGAINST VC SYSTEMS)**

59. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

60. VC Systems has infringed and continues to infringe the Patent.

61. VC Systems infringement is willful and intentional.

62. As a result of VC Systems activities and infringement of the Patent, V&C has suffered and will continue to suffer substantial damages.

63. VC Systems' infringement of the Patent will continue unless and until enjoined by this Court.

**WHEREFORE**, Vickery and Company requests that this Court enter an order:

- a. Declaring the Patent valid and infringed by VC Systems & Controls, Inc.;

- b. Declaring VC Systems & Controls, Inc.'s infringement of the Patent as knowing and willful;
- c. Granting judgment in its favor and against Defendant VC Systems & Controls, Inc. in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), or such other amount as according to proof, as its damages caused by VC Systems' infringement of the Patent, trebled pursuant to 35 U.S.C. § 284;
- d. Finding this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding Vickery and Company its attorneys' fees and costs incurred in bringing this action;
- e. Permanently enjoining VC Systems & Controls, Inc., its subsidiaries, agents, officers and employees, and all other acting in concert with it, from further infringement of the Patent, under penalty of contempt; and
- f. Granting such other and further relief as is proper under the circumstances.

**COUNT II**  
**DECLARATORY ACTION FOR RESCISSION**  
**OF THE DISTRIBUTION AGREEMENT**

- 64. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.
- 65. V&C contracted for the exclusive right to market and distribute Pumps in the Territory.
- 66. V&C paid substantial amounts to VC Systems under the Distribution Agreement for its exclusive distribution rights and related services.

67. Defendant VC Systems breached the Distribution Agreement by entering into the VC Systems Sales in the Territory without the knowledge or consent of V&C.

68. The VC Systems Sales deprived V&C of its contractual bargain, not only through lost sales, but also through loss of business reputation, and therefore each individually, and all collectively, constitutes a material breach of the Distribution Agreement.

69. Defendant VC Systems breached the Distribution Agreement by failing to honor the warranties contained therein.

70. Defendant VC Systems breached the Distribution Agreement by changing the terms of the parties' business relationship from credit to 'cash on demand' without giving 15 days' notice, and further breached by applying the change in terms to existing orders, violating Section IX(B) of the Distribution Agreement.

71. Defendant VC Systems breached the Distribution Agreement by terminating it with the Termination Letter notwithstanding that V&C had not breached the Distribution Agreement. VC Systems' termination constitutes an anticipatory repudiation of the Distribution Agreement without cause.

72. Defendant VC System's several breaches of the Distribution Agreement, each and collectively, constitute material breaches excusing any further performance on the part of V&C.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

- a. Declaring that Defendant VC Systems' breaches of the Distribution Agreement constitute material breaches thereof;

- b. Declaring that Defendant VC Systems' sale of Pumps into the Territory constitutes a material breach of the Distribution Agreement;
- c. Declaring that Defendant VC Systems' termination of the Distribution Agreement by anticipatory repudiation constitutes a material breach of the Distribution Agreement;
- d. Declaring that VC Systems material breaches of the Distribution Agreement excuse any further performance thereunder by V&C; and
- e. Granting such other and further relief as is proper under the circumstances.

**COUNT III**  
**BREACH OF CONTRACT**  
**(AGAINST VC SYSTEMS)**

73. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

74. VC Systems breached the Distribution Agreement by making sales of Pumps into the Territory in violation of the exclusive distribution rights afforded V&C thereunder.

75. VC Systems breached the Distribution Agreement by failing to honor its warranty obligations to V&C.

76. VC Systems breached the Distribution Agreement by its anticipatory repudiation thereof.

77. VC Systems' breaches of the Distribution Agreement are material and caused substantial damage to Plaintiff V&C.

78. V&C is contractually entitled to its attorneys' fees incurred in bringing this action.

**WHEREFORE**, Plaintiff Vickery and Company requests that the Court enter an Order:

- a. Granting judgment in its favor and against Defendant VC Systems & Controls, Inc., in the amount of One Million Dollars (\$1,000,000.00) or such other amount as according to proof; and
- b. Granting such other and further relief as is proper under the circumstances.

**COUNT IV**  
**ACCOUNTING**  
**(AGAINST ALL DEFENDANTS)**

79. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

80. VC Administration, by virtue of its role as a conduit for the Common Expenses owed a fiduciary duty to both VC Systems and V&C to account for all monies it received and disbursed.

81. Defendant Henry Vickery, by virtue of his role as the owner and controlling director of VC Administration, owes V&C a fiduciary duty to account for all monies he caused to be paid by V&C to VC Administration.

82. Defendants have failed and refused, despite demand, to provide any documentation, information or accounting of the monies VC Administration received from V&C and VC Systems and disbursed on account of the Common Expenses.

**WHEREFORE**, Plaintiff Vickery and Company requests that the Court enter an Order:

- a. Compelling Defendants VC Administration, Inc., Henry Vickery and VC Systems & Controls, Inc. to provide a full accounting of all monies paid to, received and disbursed by VC Administration, Inc. for the period commencing

October 1, 2002 and continuing through the present, or through the cessation of operations of VC Administration, Inc.;

- b. entering judgments in favor of Plaintiff Vickery and Company and against Defendants VC Administration, Inc., VC Systems & Controls, Inc. and Henry Vickery, in such amounts as may be determined due Plaintiff Vickery and Company on such account, together with attorneys' fees, pre-judgment interest, any costs associated with the accounting which may be borne by the Plaintiff, and post-judgment interest at the legal rate; and
- c. Granting such other and further relief as is proper under the circumstances.

**COUNT V**  
**RESCISSION OF INTERESTED DIRECTOR TRANSACTIONS**  
**(AGAINST ALL DEFENDANTS)**

83. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

84. At a time when Defendant Henry Vickery owned and controlled V&C, VC Systems and VC Administration, V&C entered into certain transactions with VC Systems, VC Administration and Henry Vickery (the "Interested Director Transactions").

85. The Interested Director Transactions include, but are not limited to, the VC Administration Transfers, a "consulting fee" of approximately \$78,000.00 paid to VC Systems in 2004, and upon information and belief, numerous other transactions between the parties.

86. Many of the Interested Director Transactions were neither fair nor reasonable to V&C.

87. Upon information and belief, none of the Interested Director Transactions were approved by a majority of the disinterested directors of V&C.

88. The Interested Director Transactions damaged V&C and directly and indirectly benefitted VC Systems, VC Administration and Henry Vickery.

89. V&C is entitled to rescission of the Interested Director Transactions to the extent that such transactions are unfair or unreasonable to V&C and were not approved by a majority of the disinterested directors of V&C, and V&C is entitled to a return of all monies paid thereunder to Defendants VC Systems, VC Administration and Henry Vickery.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

- a. Granting judgment in favor of Plaintiff Vickery and Company and against Defendant Henry Vickery in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), or such other amount as according to proof, together with attorneys' fees, pre and post-judgment interest and costs of this action;
- b. Granting judgment in favor of Plaintiff Vickery and Company and against Defendant VC Systems & Controls, Inc. in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), or such other amount as according to proof, together with attorneys' fees, pre and post-judgment interest and costs of this action;
- c. Granting judgment in favor of Plaintiff Vickery and Company and against Defendant VC Administration, Inc. in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), or such other amount as according to

proof, together with attorneys' fees, pre and post-judgment interest and costs of this action; and

d. Granting such other and further relief as is proper under the circumstances.

**COUNT VI**  
**UNJUST ENRICHMENT**  
**(AGAINST VC SYSTEMS)**

90. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

91. Upon information and belief, V&C conferred a benefit upon VC Systems by making contributions to VC Administration in an amount greater than V&C's proportional share of the Common Expenses, thus reducing the amount VC Systems was required to contribute.

92. Upon information and belief, VC Systems, by virtue of its common ownership and control with V&C, appreciated the benefit of V&C's overpayments to VC Administration.

93. Upon information and belief, VC Systems accepted and retained the benefits conferred by V&C's overpayments to VC Administration under circumstances that make it inequitable for VC Systems to retain such benefit without paying the value thereof, i.e. VC Systems knew at the time of the benefit that it was improperly benefitting at the expense of V&C.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

a. Granting judgment in favor of Plaintiff Vickery and Company and against Defendant VC Systems & Controls, Inc., in the amount of Five Hundred

Thousand Dollars (\$500,000.00), or such other amount as according to proof, together with attorneys' fees, pre and post-judgment interest, and costs of this action; and

- b. Granting such other and further relief as is proper under the circumstances.

**COUNT VII**  
**BREACH OF FIDUCIARY DUTY**  
**(AGAINST HENRY VICKERY)**

94. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

95. Henry Vickery, while acting as the controlling director of V&C, had a fiduciary duty to V&C to ensure that the transactions into which V&C entered were in the best interests of V&C, setting aside his own personal interest.

96. Henry Vickery, as a director of V&C, breached his fiduciary duty by permitting V&C to enter into transactions, in which he had a personal interest, which were not in the best interests of V&C, by permitting V&C to transfer assets for less than fair value, and Henry Vickery breached his fiduciary duty to V&C in other ways.

97. V&C has suffered substantial damages as a result of Henry Vickery's breach of his fiduciary duties.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

- a. Granting judgment in its favor and against Defendant Henry Vickery in the amount of One Million Dollars (\$1,000,000.00), or such other amount as according to proof; and
- b. Grant such other and further relief as is proper under the circumstances.

**COUNT VIII**  
**BREACH OF CONTRACT FOR MONEY LOANED**  
**(AGAINST HENRY VICKERY)**

98. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

99. At some point prior to January 1, 2005, Plaintiff V&C lent an amount in excess of \$204,618.65 to Defendant Henry Vickery.

100. As of January 1, 2005, the sum of \$204,618.65 (the "Debt") remained outstanding and owing by Defendant Henry Vickery.

101. Plaintiff V&C sent a letter on September 5, 2008 demanding payment of the Debt (the "September 5 Letter") together with interest at the statutory rate, totaling \$275,467.16 (the "Balance"), on or before September 10, 2008. A copy of the September 5 Letter is attached hereto as Exhibit 5.

102. To date, Defendant Henry Vickery has failed and refused to remit the Balance to V&C, despite demand.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

- a. Granting judgment in its favor and against Defendant Henry Vickery in the amount of Two Hundred Seventy-five Thousand Four Hundred Sixty-Seven Dollars and Sixteen Cents (\$275,467.16), together with attorneys' fees, pre and post-judgment interest and costs of this action; and
- b. Granting such other and further relief as is proper under the circumstances.

**COUNT IX**  
**UNJUST ENRICHMENT**  
**(AGAINST HENRY VICKERY)**

103. Plaintiff V&C incorporates the foregoing paragraphs as though fully set forth herein.

104. On January 1, 2005, V&C entered into a three year lease (the "Lease") with Henry Vickery and his wife, Hannah Colsen Vickery for a portion of the office and warehouse occupied by VC Systems and VC Administration (the "Premises"). A copy of the Lease is attached hereto as Exhibit 6.

105. Prior to the end of the lease term, V&C vacated the Premises and subsequently paid Henry Vickery the rent remaining due through the end of the term.

106. Henry Vickery subsequently re-took the Premises and converted it to his own use.

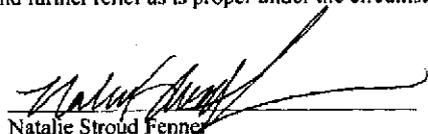
107. V&C conferred a benefit upon Henry Vickery by remitting funds in relation to Premises that it no longer occupied.

108. Henry Vickery appreciated the benefit of V&C payment of rent for the period following V&C's vacation of the Premises.

109. Henry Vickery accepted and retained the benefits conferred by V&C's overpayment of rent under circumstances that make it inequitable for Henry Vickery to retain such benefit without paying the value thereof, i.e. by retaking the Premises, Henry Vickery obtained not only the benefit of the overpayment of rent, but also obtained the benefit of use of the Premises to the detriment of V&C.

**WHEREFORE**, Plaintiff Vickery and Company requests that this Court enter an Order:

- a. Granting judgment in its favor and against Defendant Henry Vickery in the amount of Thirty Thousand Dollars (\$30,000.00), or such other amount as according to proof, together with attorneys' fees, pre and post-judgment interest, and costs of this action; and
- b. Granting such other and further relief as is proper under the circumstances.



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