



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SMARTMATIC INTERNATIONAL CORPORATION,
SMARTMATIC USA CORPORATION, and
SMARTMATIC INTERNATIONAL HOLDING B.V.,

Plaintiffs,

v.

DOMINION VOTING SYSTEMS INTERNATIONAL
CORPORATION, DOMINION VOTING SYSTEMS, INC.,
DOMINION VOTING SYSTEMS CORPORATION, and
IRON MOUNTAIN INTELLECTUAL PROPERTY
MANAGEMENT, INC.,

Defendants.

DOMINION VOTING SYSTEMS INTERNATIONAL
CORPORATION and DOMINION VOTING SYSTEMS
CORPORATION,

Counterclaim-Plaintiffs,

v.

SMARTMATIC INTERNATIONAL CORPORATION, and
SMARTMATIC HOLDING BV,

Counterclaim-Defendants.

DOMINION VOTING SYSTEMS INTERNATIONAL
CORPORATION and DOMINION VOTING SYSTEMS
CORPORATION,

Third-Party Plaintiffs,

v.

SMARTMATIC TIM CORPORATION,

Third-Party Defendant.

C.A. No. 7844-VCP
REDACTED VERSION:
FILED: October 17, 2012

**ANSWER, VERIFIED COUNTERCLAIM, AND VERIFIED THIRD PARTY
COMPLAINT OF THE DOMINION DEFENDANTS**

Defendants Dominion Voting Systems International Corporation (“Dominion International”), Dominion Voting Systems Inc. (“Dominion US”) and Dominion Voting Systems Corporation (“Dominion Canada”) (collectively “Dominion”) hereby respond to the Verified Complaint (“Complaint”) of Plaintiffs Smartmatic International Corporation (“Smartmatic International”), Smartmatic USA Corporation (“Smartmatic USA”), and Smartmatic International Holding B.V. (“Smartmatic Netherlands”) (collectively, “Smartmatic”) as follows:

I. PARTIES

1. Plaintiff Smartmatic International Corporation (“Smartmatic International”) is a corporation organized and existing under the laws of Barbados.

RESPONSE NO. 1: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.

2. Plaintiff Smartmatic USA Corporation (“Smartmatic USA”) is a corporation organized and existing under the laws of Delaware.

RESPONSE NO. 2: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint.

3. Plaintiff Smartmatic International Holding B.V. (“Smartmatic Holding”) is a corporation organized and existing under the laws of the Netherlands.

RESPONSE NO. 3: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint.

4. Plaintiffs Smartmatic International, Smartmatic USA and Smartmatic Holding will hereinafter collectively be referred to as “Smartmatic.”

RESPONSE NO. 4: Paragraph 4 of the Complaint contains Smartmatic’s characterization of the parties to which no responsive pleading is required.

5. Defendant Dominion Voting Systems International Corporation (“Dominion International”) is a corporation organized and existing under the laws of Barbados.

RESPONSE NO. 5: Dominion admits the allegations in Paragraph 5 of the Complaint.

6. Defendant Dominion Voting Systems, Inc. (“Dominion Voting”) is a corporation organized and existing under the laws of Delaware.

RESPONSE NO. 6: Dominion admits the allegations in Paragraph 6 of the Complaint.

7. Defendant Dominion Voting Systems Corporation is a corporation organized and existing under the laws of Canada.

RESPONSE NO. 7: Dominion denies the allegations in Paragraph 7 of the Complaint. By way of further response, Dominion clarifies that Dominion Canada is a corporation organized and existing under the laws of Ontario, Canada.

8. Defendants Dominion International, Dominion Voting, and Dominion Voting Systems Corporation will hereinafter be collectively referred to as “Dominion.”

RESPONSE NO. 8: Paragraph 8 of the Complaint contains Smartmatic’s characterization of the parties to which no responsive pleading is required.

9. Defendant Iron Mountain Intellectual Property Management, Inc. (“Iron Mountain”) is a corporation organized and existing under the laws of Delaware.

RESPONSE NO. 9: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

II. BACKGROUND FACTS

A. Introduction

10. This lawsuit arises out of Dominion’s failure to honor its commitments to Smartmatic and its interference with Smartmatic’s business relationships in the Philippines, Mongolia, and Puerto Rico.

RESPONSE NO. 10: Dominion denies the allegations in Paragraph 10 of the Complaint, except admits that Smartmatic purports to bring a lawsuit against Dominion.

11. Smartmatic and Dominion are both engaged in the business of marketing and developing automated election technology, which is a highly competitive field characterized by several barriers that make successful entry challenging, time consuming, and costly. In addition to developing and utilizing capable technology (i.e., the hardware, software, and firmware that comprise the voting system), successful market participants must also demonstrate financial stability, responsiveness to service requests, and a proven record of reliable performance. Because of the inherently public nature of the services provided, any performance mistakes may irreparably harm one's reputation and call into question the viability of automated elections.

RESPONSE NO. 11: Dominion denies the allegations in Paragraph 11 of the Complaint, except admits that Dominion and Smartmatic are both engaged in the business of marketing and developing automated election technology and avers that success in the business depends on many factors, which factors may vary from market to market.

12. In 2009, Smartmatic International and Dominion International executed a License Agreement in which Dominion granted to Smartmatic a worldwide license to market, make, use, and sell precinct count optical scan ("PCOS") voting systems utilizing Dominion's optical scan voting system technology. The License Agreement obligated Dominion International to provide Smartmatic International with, among other things, the hardware, software, firmware, and technical support needed to enable Smartmatic to exploit the broad license granted by Dominion. As set forth more fully below, Dominion International breached its obligations under the License Agreement by

- (1) improperly purporting to terminate the License Agreement based upon an incorrect and pretextual interpretation of the geographic scope of the Agreement's non-compete clause;
- (2) failing to deliver fully functional technology for use in the 2010 Philippines national election;
- (3) failing to provide timely technical support during and after the Philippines election;
- (4) failing to work collaboratively with Smartmatic to find alternative uses for the Licensed Products;
- (5) failing to provide Smartmatic with information relating to the Licensed Technology, including new developments to the Licensed Technology;
- (6) intentionally frustrating Smartmatic's right to market, lease, and sell the Licensed Technology; and
- (7) failing to place in escrow the required source code, hardware design, and manufacturing information.

RESPONSE NO. 12: Dominion denies the allegations in Paragraph 12 of the Complaint, except admits that, in October 2009, Smartmatic International and Dominion International entered into the PCOS Framework License Agreement (the “License Agreement”) (a redacted copy of the License Agreement, with confidential pricing information excised, is attached hereto as Exhibit A), which granted to Smartmatic a license to market, make, use, and sell precinct count optical scan (“PCOS”) voting systems utilizing Dominion’s optical scan voting system technology. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents. By way of further response, Dominion avers that the terms “Smartmatic” and “Dominion” in the License Agreement refer to Smartmatic International and Dominion International, respectively, and, to the extent that any of Dominion’s answers includes language in the License Agreement referring to “Dominion,” the answer will be responding as to Dominion International, only.

13. Dominion International further breached its obligations under Delaware law by acting in concert with Dominion Voting and Dominion Voting Systems Corporation to tortiously interfere with Smartmatic’s prospective and on-going contractual relations in Mongolia, Puerto Rico and the Philippines. Dominion has further harmed Smartmatic’s position in the marketplace by falsely claiming credit for Smartmatic’s achievements, and misrepresenting the enforceability of the License Agreement and the scope of the parties’ relationship. As described more fully below, Dominion has unjustly enriched itself at Smartmatic’s expense and caused Smartmatic to incur significant monetary and reputational damage. Notwithstanding Smartmatic’s repeated attempts to address these issues with Dominion and mitigate the commercial consequences of these actions, Dominion has consistently attempted to avoid its obligations under the License Agreement by, first, attempting to limit the scope of the Agreement and compel Smartmatic to renegotiate its terms and, then, simply disclaiming these obligations by “terminating” the License Agreement. Dominion’s refusal to perform its contractual obligations has forced Smartmatic to file suit to protect its interests and enforce its rights under the License Agreement.

RESPONSE NO. 13: Dominion denies the allegations in Paragraph 13 of the Complaint.

B. The PCOS Agreement

14. Smartmatic is a leading developer of electronic voting systems and automated election technology. In 2009, Smartmatic sought to contract with the Republic of the Philippines (“Philippines”) Commission on Elections (“COMELEC”) to provide certain technology and services to modernize and automate the Philippines’ National Elections (“Philippines Election Modernization Project” or “Project”). One of COMELEC’s requirements for the Project was an election solution that had the ability to read and interpret data from paper ballots, and Smartmatic determined that certain PCOS technology marketed by Dominion would likely satisfy this requirement and be compatible with Smartmatic’s election products. Consequently, Smartmatic began negotiating with Dominion the terms for a license authorizing it to manufacture and sell voting systems which would incorporate Dominion’s PCOS technology. On January 12, 2009, Smartmatic and Dominion Voting Systems Corporation executed a Memorandum of Understanding (“MOU”) in which the parties agreed to continue to negotiate with one another exclusively and in good faith for the purpose of entering a definitive agreement.

RESPONSE NO. 14: Dominion denies the allegations in the first sentence of Paragraph 14 of the Complaint, except admits that Smartmatic is involved in electronic voting system and automated election technology. Dominion lacks knowledge and information sufficient to form a belief as to the allegations in the second and third sentences of Paragraph 14. Dominion denies the remaining allegations in Paragraph 14 of the Complaint, except admits that in 2009 Smartmatic and Dominion held negotiations over the license of PCOS technology which Dominion had developed, and that, on or about January 12, 2009, Smartmatic (through its subsidiary, Smartmatic Services Corporation) and Dominion Canada executed a memorandum of understanding. By way of further response, Dominion respectfully refers the Court to the memorandum of understanding for its full and accurate contents. By way of further response, Dominion avers that the memorandum of understanding was superseded by subsequent agreements and, ultimately, by the License Agreement.

15. On April 3, 2009, the parties executed a Binding Term Sheet setting forth their respective rights and obligations regarding Dominion’s agreement to license to Smartmatic all relevant technology owned by Dominion required to market, sell and implement Dominion’s current and future PCOS technology.

RESPONSE NO. 15: Dominion denies the allegations in Paragraph 15 of the Complaint, except admits that, on April 3, 2009, Smartmatic and Dominion executed a term sheet. By way of further response, Dominion respectfully refers the Court to the terms sheet for its full and accurate contents. By way of further response, Dominion avers that the term sheet was superseded by subsequent agreements and ultimately by the License Agreement.

16. On April 4, 2009, Smartmatic International and “Dominion Voting Systems” executed a license agreement in which Dominion granted Smartmatic International a license to use and manufacture hardware, software, and firmware utilizing Dominion’s technology. This agreement defines such technology as “[a]ll relevant technology owned by Dominion required to market, sell and implement PCOS technology (including all current and future versions of them), specifically inclusive of PCOS hardware, all software and firmware resident on the hardware, and [election management system] software, including the Democracy Suite EMS and Democracy Suite Image Cast PCOS.” See April 4, 2009 License Agreement ¶ 4. The parties understood that this agreement would be used to demonstrate to COMELEC that Dominion licensed and authorized Smartmatic to include and incorporate into the Project Dominion’s Democracy Suite EMS and Image Cast PCOS technology.

RESPONSE NO. 16: Dominion denies the allegations in Paragraph 16 of the Complaint, except admits that, in late April 2009, Smartmatic International and Dominion Voting Systems executed a license agreement effective April 4, 2009 and that Smartmatic would show the license agreement to the Republic of the Philippines (“Philippines”) Commission on Elections (“COMELEC”). By way of further response, Dominion respectfully refers the Court to the license agreement for its full and accurate contents. By way of further response, Dominion avers that the April 2009 license agreement was superseded by the License Agreement.

17. In reliance on the parties’ obligations set forth in the MOU, the Binding Term Sheet, and the license agreement, Smartmatic TIM, a Philippines-based Joint Venture Company, executed a contract with COMELEC in July 2009 to provide a paper-based automated election system for the Project utilizing the Licensed Technology. Under the terms of that contract, Smartmatic TIM agreed to provide COMELEC with electronic voting machines, consolidation and canvassing systems, transmission expertise, technical assistance, and overall project management. The contract further provided COMELEC the right to purchase certain voting products and systems from Smartmatic TIM at the conclusion of the Project. Defined by this agreement as the “Goods,” the voting systems and products subject to COMELEC’s option to

purchase are defined as “the [PCOS] machines and their peripherals, personal computers, servers, electronic transmission devices, printers, integrated software and other related equipment, both hardware and software, including all deliverable supplies . . . and all other materials necessary to carry out the Project.” See July 10, 2009 Contract between Smartmatic TIM and COMELEC at § 1.14.¹ This option to purchase, if exercised, also included a perpetual license to use the “Goods” and the right to modify or customize such “Goods” for future elections at COMELEC’s expense. In sum, COMELEC was acquiring the option to purchase an integrated, fully-functional automated voting system that utilized the Licensed Technology, with the right to modify and enhance the voting system as technology advanced.

RESPONSE NO. 17: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 17 of the Complaint because Smartmatic never provided Dominion with a copy of the purported contract between Smartmatic TIM and COMELEC, and has not attached the document to the Complaint.

18. On October 9, 2009, Smartmatic International and Dominion International expanded upon the obligations set forth in the MOU, the Binding Term Sheet, and the April 2009 license agreement by executing the License Agreement, in which Dominion International granted to Smartmatic International a worldwide license “to make, have made, use, import, offer for sale, lease and sell” voting systems utilizing that certain PCOS technology developed by Dominion International (“Licensed Products”), which included, but was not limited to, the technology described on Exhibit A to the Agreement. Agreement §§ 1.4, 2.1. Entitled “PCOS Voting Systems Specifications and Trademarks,” Exhibit A specifically identifies and describes the then current version of Dominion’s ImageCast Precinct Count Optical Scanner and its Democracy Suite Election Management System, which together comprise the Licensed Technology incorporated into the Licensed Products for use in the Project.

RESPONSE NO. 18: Dominion denies the allegations in Paragraph 18 of the Complaint, except admits that, on October 9, 2009 Smartmatic International and Dominion International executed the License Agreement, in which Dominion International granted to Smartmatic International a license “to make, have made, use, import, offer for sale, lease and

¹ Smartmatic TIM is a joint venture between Total Information Management Corporation (“TIM”) and Smartmatic International Corporation organized under Philippines law.

RESPONSE: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in this footnote.

sell” voting systems utilizing that certain PCOS technology developed by Dominion International (“Licensed Products”). By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents. By way of further response, Dominion avers that the License Agreement superseded prior agreements with respect to the licensing of Dominion technology.

19. In addition to authorizing Smartmatic International to incorporate Dominion’s PCOS technology into automated election platforms offered by Smartmatic, the License Agreement obligates Dominion International to provide “all know-how, trade secrets, methodologies and other technical information relating to the generally released Dominion PCOS voting systems (not including internal releases)” (“Licensed Technology”), and to “provide Smartmatic with all information related to the Licensed Technology . . . as may be reasonably necessary for Smartmatic to exploit the licenses granted in [the Agreement.]” Agreement at §§ 1.4, 2.2. Dominion International further agreed to provide certain technical assistance to ensure the Licensed Technology functioned properly. *See, e.g.*, Agreement at §§ 2.2, 3.1 (“Dominion [International] shall provide at [REDACTED] a minimum base level of support of 1 full time equivalent for the hardware, software, firmware and [election management system] developed by Dominion [International] for inclusion in Licensed Products”).

RESPONSE NO. 19: Paragraph 19 of the Complaint sets forth Smartmatic’s characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in Paragraph 19 of the Complaint, except admits that the paragraph selectively quotes from the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

20. In the event Dominion International modifies or enhances the Licensed Technology, and makes such modifications or enhancements “generally available” to its customers or licensees, the License Agreement obligates it to “provide Smartmatic with sufficient information with respect to such modifications or enhancements to enable Smartmatic to incorporate [the] modifications or enhancements into [the] Licensed Products.” Agreement § 3.2. Further, should Dominion International develop and release products incorporating new PCOS technology, it must make such new technology available to Smartmatic International upon its release to Dominion’s other customers or licensees. *See id.*

RESPONSE NO. 20: Paragraph 20 of the Complaint sets forth Smartmatic's characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in Paragraph 20 of the Complaint, except admits that the paragraph selectively quotes from the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

21. The License Agreement also provides Smartmatic International "the right to request Dominion support and to make new developments, additions, modifications or enhancements to the Licensed Technology ('Requested Improvements')." *Id.* § 3.3. Smartmatic International must compensate Dominion International for any such Requested Improvements [REDACTED], unless otherwise agreed by the Parties in an applicable statement of work. *See id.* Although Requested Improvements are subject to Dominion International's approval, the License Agreement does not authorize Dominion to refuse any reasonable requests made by Smartmatic pursuant to this section. *See id.*

RESPONSE NO. 21: Paragraph 21 of the Complaint sets forth Smartmatic's characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in Paragraph 21 of the Complaint, except admits that the paragraph selectively quotes from the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

22. The Agreement required Dominion International to "place all of its source code for the firmware and [election management system software], as well as all hardware design and manufacture related documents as per Exhibit B, in an escrow account with a third party escrow agent approved by Smartmatic." Agreement § 5.2. Exhibit B to the License Agreement states that "the concept Source Code and IP to be placed in escrow by Dominion applies to the current version and the immediate prior version" of the subject technology, source code, and other information as enumerated in that Exhibit ("Escrowed Materials"). Exhibit B to the Agreement. In the event Dominion International breaches its obligations to provide the products or support it is obligated to provide under the Agreement, and fails to cure such breach within thirty days of receipt of notice from Smartmatic International, "such [E]scrowed [M]aterials shall be released

to Smartmatic for the sole purpose of providing such products or services that Dominion [International] failed to provide.”² Agreement § 5.2.

RESPONSE NO. 22: Paragraph 22 of the Complaint sets forth Smartmatic’s characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in Paragraph 22 of the Complaint, except admits that the paragraph selectively quotes from the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

23. The Agreement also contained a termination clause: should Dominion International default on any of its obligations under the Agreement and fail to remedy such default within sixty days after receiving notice by Smartmatic International, “Smartmatic shall be entitled to terminate th[e] Agreement by written notice to Dominion [International].”³ *See*

² In furtherance of Dominion International’s escrow obligations under Section 5.2 of the License Agreement, Dominion International, Smartmatic International and Iron Mountain executed a Three-Party Escrow Service Agreement on or about April 27, 2010, which sets forth the parties’ various rights and obligations relating to the Escrowed Materials (“Escrow Agreement”). Pursuant to the terms of that contract, Dominion International was obligated to deposit the Escrowed Materials with Iron Mountain within ten days. *See* Escrow Agreement §2(a). The Escrow Agreement also enumerates the contents of the Escrowed Materials and obligates Dominion International to deposit with Iron Mountain “the current version and the immediate prior version” of all such Materials. *See id.* §5. Further, Dominion must provide Iron Mountain a complete and functional copy of the Escrowed Materials at all times. *See id.* §2(a). Dominion Voting Systems Corporation certified the Escrowed Materials in Exhibit Q of the Escrow Agreement. *See id.* Exh. Q.

RESPONSE: Dominion denies the allegations of this footnote, except admits that Dominion International, Smartmatic International and Iron Mountain entered into an Escrow Agreement on or about April 27, 2010. By way of further response, Dominion respectfully refers the Court to the Escrow Agreement for its full and accurate contents.

³ Dominion has similar termination rights. *See* Agreement § 7.2 (“Dominion shall be entitled to terminate this Agreement by written notice to Smartmatic in the event that Smartmatic shall be in default of any of its obligations hereunder and shall fail to remedy any such default within sixty (60) days after notice thereof by Dominion”).

(Continued . . .)

Agreement § 7.2. Section 7.2 further provides that “[u]pon termination of this Agreement pursuant to this Section 7.2, no Party shall be relieved of any obligations incurred prior to such termination and the Party seeking termination shall be entitled to damages caused by the other Party[‘s] breach of this Agreement.” *See id.*

RESPONSE NO. 23: Paragraph 23 of the Complaint sets forth Smartmatic’s characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in Paragraph 23 of the Complaint, except admits that the paragraph selectively quotes from the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

24. In exchange for the license described above, Section 3.4 of the Agreement, entitled “Non-Compete,” restricts Smartmatic International’s ability to “develop, market or sell” PCOS voting systems. Agreement § 3.4. These restrictions purport to prevent Smartmatic from developing, marketing or selling any Licensed Products in the United States during the term of the Agreement. *See id.* Although the phrase “in the United States” was not separately defined in the License Agreement, both parties understood that phrase to delineate the geographic area in the fifty states and not territories possessed by the United States or commonwealths associated with the United States. Further, it was the intention and understanding of the parties that Dominion would focus its energies on the domestic market in the United States, while Smartmatic focused its attention on international markets other than in the United States or Canada.

RESPONSE NO. 24: The first and second sentences of Paragraph 24 of the Complaint set forth Smartmatic’s characterization of the License Agreement, for which no response is required. To the extent a response is deemed required, Dominion denies the allegations in the first and second sentences of Paragraph 24 of the Complaint, except admits that

(. . . continued)

RESPONSE: Dominion denies the allegations of this footnote, except admits that the License Agreement provides Dominion International with certain termination rights. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

Section 3.4 of the Agreement restricts Smartmatic International’s ability to “develop, market or sell” PCOS voting systems and prevents Smartmatic from developing, marketing or selling any Licensed Products in the United States during the term of the agreement. Dominion denies the allegations in the third sentence of Paragraph 24, except admits that the phrase “in the United States” was not separately defined in the License Agreement. Dominion denies the allegations in the fourth sentence of Paragraph 24, except admits that, at the time the License Agreement was signed, Dominion Canada intended to focus its efforts on Canada and the United States. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

25. Because of the inherent sensitivities associated with the parties’ obligations to one another, and to third-parties, the License Agreement contained a confidentiality provision that prohibited Smartmatic from disclosing the Agreement’s terms or even its existence without Dominion’s written consent. *See id.* § 8.14 (“In no event shall Smartmatic disclose the terms or existence of this Agreement without the prior written consent of Dominion”).

RESPONSE NO. 25: Dominion denies the allegations in Paragraph 25 of the Complaint, except admits that the paragraph accurately quotes from Section 8.4 of the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

26. The parties selected Delaware law to govern and interpret the License Agreement. *See id.* § 8.2. They also “irrevocably submit[ted] to the nonexclusive jurisdiction of the state and federal courts of the State of Delaware” for any dispute arising out of or relating to the Agreement. *Id.* § 8.3. The parties further “irrevocably agree[d]” to submit all related claims, disputes, actions or proceedings “solely to such courts” and, thus, “irrevocably waive[d]” any objection to venue for any such disputes brought in a Delaware court. *Id.*

RESPONSE NO. 26: Dominion denies the allegations in Paragraph 26 of the Complaint, except admits that the License Agreement is governed by Delaware law, that the parties agreed that the federal and state courts in the state of Delaware would have non-exclusive

jurisdiction over disputes “arising out of or relating to the License Agreement,” and that the parties waived venue objections for such disputes brought in Delaware. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

27. The Agreement became effective on its execution date, October 9, 2009, and terminates on April 3, 2014, “unless terminated earlier in accordance with the provisions of this Article 7.” *Id.* § 7.1.

RESPONSE NO. 27: Dominion denies the allegations in Paragraph 27 of the Complaint, except admits that the License Agreement defines the “Effective Date” as October 9, 2009, and that Article 7 of the License Agreement includes various termination provisions. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

28. At the time it executed the License Agreement with Smartmatic International, Dominion International was not only aware that Smartmatic intended to utilize the Licensed Technology for the purposes of the Project in the Philippines, but Dominion was also aware that COMELEC had the option to purchase the voting products and systems (i.e., the “Goods”) incorporating the Licensed Technology with the perpetual right to use and modify the Licensed Technology in all future elections.

RESPONSE NO. 28: Dominion denies the allegations in Paragraph 28 of the Complaint, except admits that, at the time Dominion International executed the License Agreement, it had been told by Smartmatic that Smartmatic International (or, possibly, a joint venture company involving Smartmatic International) intended to exercise rights granted under the License Agreement in the Philippines and that COMELEC had an option with such Smartmatic entity. By way of further response, Dominion avers that Smartmatic never provided Dominion with a copy of the purported option nor informed Dominion of the terms of the option, and, specifically, Dominion was not told and did not understand that any such option would

provide COMELEC with the “perpetual right to use and modify the Licensed Technology in all future elections.”

C. The Statement of Work

29. At or about the time the parties executed the License Agreement, Dominion International and Smartmatic International executed an initial Statement of Work (Statements of Work are also defined as “SOW”), which they supplemented and amended a number of times as the Project progressed and its technical scope became more defined.

RESPONSE NO. 29: Dominion denies the allegations in Paragraph 29 of the Complaint, except admits that, at or about the time the parties executed the License Agreement, Dominion International and Smartmatic International executed an initial Statement of Work (Statements of Work are referred to as “SOW”), and that the initial SOW was amended on several occasions. By way of further response, Dominion respectfully refers the Court to the initial SOW and each of its amendments for their full and accurate contents.

30. The initial Statement of Work sets forth the specific tasks, deliverables, and technical support required of Dominion International relating to the Project. *See id.* § 1.6 (identifying the “SOW” as “the document agreed [to] by the Parties which contains specific terms and conditions for specific projects”). The initial SOW incorporates a series of tables that identify the Parties’ respective obligations, tasks, and milestones. *See* Initial SOW § 4 (“Dominion [International] will provide . . . the Project Assistance that is detailed below in Table 1 and 2”); *see also* Agreement at 29 [Table 2] (“The following Dominion Development items reflect [the] initial set of requirements for the proposed functionality”). The Agreement incorporates the SOW by reference. *See id.* § 8.7.

RESPONSE NO. 30: Dominion denies the allegations of Paragraph 30 of the Complaint, except admits that the paragraph selectively quotes or cites to certain provisions of the License Agreement and the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

31. Tracking the language of the License Agreement, the initial SOW obligates Dominion International to provide Smartmatic International “all information related to the

Licensed Technology . . . as may be known or possessed by Dominion [International] and as may be reasonably necessary for Smartmatic to exploit the licenses granted” in the License Agreement. Initial SOW§ 3.

RESPONSE NO. 31: Dominion denies the allegations of Paragraph 31 of the Complaint, except admits that the paragraph selectively quotes or cites to certain provisions of the initial SOW. By way of further response, Dominion respectfully refers the Court to the initial SOW for its full and accurate contents.

32. Among the products the initial SOW tasked Dominion International with providing include: the delivery of certain PCOS training manuals and manufacturing documents, *see* Agreement at 25-26; the delivery of certain PCOS firmware, *see id.* at 25; the delivery of certain PCOS hardware, *see id.* at 25; and, the delivery of election management system (“EMS”) software designed to be used with Dominion International’s PCOS system, *see id.* at 26.

RESPONSE NO. 32: Dominion denies the allegations of Paragraph 32 of the Complaint, except admits that the paragraph selectively cites to certain provisions of the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

33. The initial Statement of Work further obligates Dominion International to provide project assistance and technical support to ensure the Licensed Technology functions properly. *See* Initial SOW §§ 4 (“Project Assistance at no Additional Charge”), 5 (“Additional Project Assistance”). Among the specific support functions assigned to Dominion International in the initial SOW include: manufacturing support, *see* Agreement at 26; support for configuring the EMS platform, including the generation of configuration files for the PCOS units, *see id.* at 27; quality assurance support, *see id.* at 26; and, certain quality control testing functions, *see id.* at 33.

RESPONSE NO. 33: Dominion denies the allegations of Paragraph 33 of the Complaint, except admits that the paragraph selectively quotes or cites to certain provisions of the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

34. In the event COMELEC chose not to exercise its option to purchase the voting products and systems incorporating the Licensed Technology (defined as “Goods” in its contract

with Smartmatic TIM), the initial SOW obligates Dominion International to work collaboratively with Smartmatic International to identify alternative means of employing these devices, and to sell or lease such items from Smartmatic's inventory prior to selling or leasing new PCOS systems to other customers, so long as the Licensed Products in inventory could reasonably be made to meet the customer's requirements. *See* Initial SOW § 8.

RESPONSE NO. 34: Dominion denies the allegations of Paragraph 34 of the Complaint, except admits that the paragraph selectively cites to certain provisions of the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

35. In the event COMELEC exercises its purchase option, "Smartmatic shall pay Dominion an additional license fee in the amount of [REDACTED] five (5) days after the receipt of payment from COMELEC or any third party of the purchase option price or any other purchase or lease payment."⁴ *Id.* § 9 ("Additional Payments"). In furtherance of Dominion's obligations under Section 8 of the Initial SOW, Smartmatic International and Dominion International discussed contingency arrangements for the redeployment of the Licensed Products in the event COMELEC chose not to exercise its purchase option.

RESPONSE NO. 35: Dominion admits that the first sentence of Paragraph 35 of the Complaint selectively quotes from the initial SOW. Dominion denies the allegations in the second sentence of Paragraph 35, except admits that Smartmatic International and Dominion International discussed the possible redeployment of the Licensed Products from the Philippines to other countries, but further avers that Smartmatic declined to proceed with any such re-deployments. By way of further response, Dominion respectfully refers the Court to the SOW for its full and accurate contents.

⁴ To the extent Dominion is entitled to any Additional Payments, which Smartmatic denies since any such obligations have not yet accrued and thus post-date Dominion's "termination," such Additional Payments are subject to the doctrines of setoff and/or recoupment based upon the quantum of Smartmatic's damages as described herein.

RESPONSE: The allegations in this footnote purport to state a legal conclusion, for which no response is required and are therefore denied.

D. The 2010 Election Modernization Project in the Philippines

36. The first phase of the Project was intended to culminate with the successful completion of the Philippines' first automated general election, which was scheduled for May 10, 2010 ("Election"). The Election was comprehensive: including both national and local races, there were over 85,000 candidates vying for nearly 17,000 positions, with an electorate of over 50 million voters. Moreover, there was considerable local concern regarding the potential consequences of moving to automated voting given the recent history of elections in the Philippines, which were characterized by violence and allegations of fraud.

RESPONSE NO. 36: Dominion denies the allegations in the first sentence of Paragraph 36 of the Complaint, except admits that the License Agreement dealt with, among other things, the 2010 election in the Philippines. Dominion lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36 of the Complaint.

37. During a test of the automated voting system conducted shortly before the Election, COMELEC and Smartmatic discovered a defect in the Licensed Technology—Dominion International's software failed to correctly read and record the paper ballot. Once Dominion acknowledged the problem with the software and proposed a solution, Smartmatic International had to obtain, load, distribute, and install new memory cards with the reprogrammed software to over 76,000 PCOS voting systems, most of which had already been delivered to the various polling stations located throughout the 7,100 islands in the archipelago. These steps were necessary to ensure the correct interpretation of votes cast on approximately 50,000,000 paper ballots that had already been printed and were ready for use. Remedying this programming error—for which Dominion International contemporaneously acknowledged responsibility—caused Smartmatic International to incur significant monetary damages and reputational harm, and allowed some to cast doubt as to the legitimacy of the elections themselves. Not only did Smartmatic incur over thirteen million dollars in remedial expenses, but as a direct consequence of Dominion International's failure to perform, COMELEC withheld funds owed to Smartmatic International, initiated a public investigation into Smartmatic's handling of the election and delayed its decision to purchase the voting products and systems (the "Goods") pending additional technical verification. This failure also led to a series of judicial challenges questioning the use of the Licensed Technology for future elections, which continue to this day. Smartmatic has incurred damages in excess of \$20 million as a result of Dominion's failure to deliver functional Licensed Technology.

RESPONSE NO. 37: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences of

Paragraph 37 of the Complaint, except denies that it acknowledged legal responsibility for the costs of addressing issues with the system. Dominion denies the remaining allegations in Paragraph 37. By way of further response, Dominion avers that, upon information and belief, Smartmatic failed to control processing and delivery timelines and as a consequence failed to conduct standard and routine industry-wide testing of the voting system prior to deployment despite the fact that Dominion International had told Smartmatic that it was standard and routine in the industry and needed to be done and despite the fact that Smartmatic had known the necessity of such testing and conducted such testing in prior elections in other countries. Dominion further avers that it nevertheless proposed a solution to issues that arose during belated testing post-deployment, which solutions would have been easy and inexpensive to implement had Smartmatic conducted such timely routine and standard industry-wide testing prior to deployment.

38. Following the completion of the Election, COMELEC asked Smartmatic International to make certain modifications to the Licensed Products. Because some of these modifications required adjustments to the Licensed Technology, Smartmatic International requested Dominion International's assistance with satisfying COMELEC's requirements. *See* Agreement § 3.3. Dominion International failed to timely respond and, contrary to the terms of the License Agreement, sought to use the amendments to the SOW to impose new contractual conditions for its performance. Among other things, Dominion International sought to limit its liability for all such additional technical support, notwithstanding that such work was related to pre-existing contractual obligations under the License Agreement. Dominion International's refusal to provide timely assistance pursuant to these obligations materially harmed and delayed Smartmatic TIM's ability to sell the Licensed Products to COMELEC.⁵ As a result of Dominion

⁵ In September 2010, COMELEC executed a deed of sale to acquire 920 voting machines. Although Smartmatic has not yet received full payment from COMELEC for this limited purchase and, thus, payment to Dominion is not yet due, Smartmatic nonetheless forwarded payment to Dominion at the rate set forth in Section 9 of the initial SOW on August 8, 2012 as a gesture of good faith.

RESPONSE: Dominion denies the allegations in this footnote, except admits that Smartmatic forwarded payment to Dominion on August 8, 2012.

International's failure to provide such support, COMELEC delayed its exercise of its purchase option, which has caused Smartmatic to incur significant monetary damages, including local storage fees in excess of \$2.5 million per year.

RESPONSE NO. 38: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 38 of the Complaint. Dominion denies the remaining allegations in Paragraph 38.

39. On March 30, 2012, COMELEC agreed to purchase the voting products and systems (the "Goods") pursuant to its contract with Smartmatic TIM. Accordingly, COMELEC and Smartmatic TIM executed a Deed of Sale setting forth the terms of sale, which included the completion of certain enhancements and modifications to the Licensed Technology. Smartmatic will not receive full and final payment for the Goods incorporating the Licensed Products until these modifications and enhancements have been completed and are verified by COMELEC, and payment is received from Smartmatic TIM.

RESPONSE NO. 39: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint. By way of further response, Dominion avers that Smartmatic International did not provide Dominion International with a copy of any purported contract between COMELEC and Smartmatic TIM or between Smartmatic TIM and Smartmatic International. Dominion further avers that, upon information and belief, COMELEC has made substantial payments with respect to the purchase of voting machines pursuant to that purported March 30, 2012 contract and further states that pursuant to the License Agreement, Dominion International is entitled to payments of [REDACTED] per voting machine from Smartmatic International within five days of payment by COMELEC. By way of further response, Dominion respectfully refers the Court to that contract for its full and accurate contents.

40. Smartmatic presented COMELEC's requested enhancements and modifications to Dominion in March 2012 pursuant to Smartmatic's contractual rights under Section 3 of the License Agreement. Moreover, Smartmatic advised Dominion that these requested enhancements and modifications were conditions precedent to COMELEC's acceptance of such voting products and systems, were in preparation for the Philippines 2013 national elections, and

must therefore be completed on a timely basis. Following various requests by Smartmatic for confirmation of work estimates and timescales to complete the requested improvements, Dominion purported to terminate the Agreement on May 23, 2012. Moreover, Dominion notified Smartmatic on June 6, 2012 that it would only perform the required modifications and enhancements if Smartmatic agreed to revise the payment terms and limitations of liability set forth in the License Agreement. Dominion's proposed new terms were wholly inconsistent with the parties' existing contractual obligations and significantly to Dominion's advantage. The following week, Dominion notified Smartmatic it would not complete the requested modifications and enhancements unless Smartmatic further agreed to waive any and all claims it may have against Dominion.

RESPONSE NO. 40: Dominion denies the allegations in Paragraph 40 of the Complaint, except admits that, in or about March 2012, Smartmatic provided Dominion International with some requests for enhancements and modifications to Dominion voting systems for purposes of the 2013 election in the Philippines. Dominion further states that Dominion International told Smartmatic International, and Smartmatic International agreed, that the requested work for the 2013 election did not fall within the initial SOW and would require a new SOW, but that Smartmatic International and Dominion International did not finalize a new SOW prior to May 23, 2012. Dominion further admits that Dominion International terminated the License Agreement on May 23, 2012. By way of further response, Dominion respectfully refers the Court to its June 6, 2012 letter for its full and accurate contents, but states that any statements made in the course of settlement negotiations are inadmissible.

41. To effectively service, modify, or enhance the Licensed Products, as authorized by the License Agreement, Smartmatic International must have either Dominion's contracted for assistance or access to the Escrowed Materials. Dominion International's refusal to provide the products and support requested by Smartmatic International may, therefore, only be remedied by the release of the materials in escrow, or required to be escrowed, with Iron Mountain pursuant to Section 5.2 of the License Agreement. Agreement § 5.2 ("In the event Dominion breaches its obligations to provide the products or support it is obligated to provide under this Agreement and fails to cure such breach within thirty (30) days of receipt of notice from Smartmatic, such escrowed materials shall be released to Smartmatic for the sole purpose of providing such products or services that Dominion failed to provide").

RESPONSE NO. 41: Dominion denies the allegations in Paragraph 41 of the Complaint, except Dominion admits that, to make modifications or enhancements allegedly requested by COMELEC, Smartmatic International likely would require assistance from Dominion International, and Dominion lacks knowledge or information sufficient for forming a belief as to whether Smartmatic International could make the requested modifications and enhancements with the use of source code materials in escrow with the escrow agent (“Escrow Agent”). Dominion further states that, due to the valid termination of the License Agreement by Dominion International and the expiration of the initial SOW, Dominion International has no obligation to provide such assistance and Smartmatic is not entitled to access the Escrowed Materials. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

42. Accordingly, pursuant to Section 4(d) of the Escrow Agreement, Smartmatic International asked Iron Mountain to verify that Dominion International had, in fact, placed in escrow the materials identified in Section 5 of the Escrow Agreement.⁶ *See* Escrow Agreement §§ 4(d), 5. Iron Mountain recently confirmed that Dominion International has not deposited a complete set of these materials: Dominion did not place in escrow any of the required materials until May 2012, despite its prior representations to the contrary, and even then only deposited with Iron Mountain an older version of them, although the License Agreement requires Dominion to deposit into escrow the current version and the immediate prior version of its

⁶ In March 2010, Dominion provided a certificate of deposit stating that the Escrowed Materials had been deposited with Iron Mountain. Smartmatic relied upon this representation and further believed that Dominion continued to place in escrow new versions of these Materials as they were developed, pursuant to Dominion’s obligation to deposit with Iron Mountain “the current version and the immediate prior version” of all Escrowed Materials. Exhibit B to the Agreement.

RESPONSE: Dominion admits that in March 2010 Dominion International provided a certificate of deposit to Smartmatic. Dominion respectfully refers the Court to the certificate for its full and accurate contents. Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence.

Source Code and relevant intellectual property.⁷ *See id.* Smartmatic International also understands that Dominion International may have intentionally placed in escrow encrypted Source Code and/or other Escrowed Materials such that in the event this information is required for any reason connected with the Project, it will not be capable of functional application without Dominion's direct support and involvement.

RESPONSE NO. 42: Dominion denies the allegations in paragraph 42 of the Complaint, except Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations related to any communications between Smartmatic International and Iron Mountain. Dominion further avers that Dominion International was only obligated under the License Agreement to place with the Escrow Agent the source code referenced in the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents. By way of further response Dominion states that delays occurred in the deposit of Source Code with the Escrow Agent pending negotiations of

⁷ According to its own website and press materials, Dominion has modified and enhanced the Licensed Technology over the past few years. In fact, Dominion's website boasts that its Democracy Suite 4.0, which includes the ImageCast Evolution, Precinct, and Central Count Scanners, as well as the associated Election Management System, has been certified by the United States Election Assistance Commission. Although Smartmatic has a contractual right to this modified and enhanced technology, Dominion is withholding this technology from Smartmatic and has repeatedly notified Smartmatic's negotiating partners that Dominion has superior technology. Dominion is reportedly using this as a basis for competing against Smartmatic.

RESPONSE: Dominion denies that Smartmatic International has a contractual right to modified and enhanced technology developed by affiliates other than Dominion International, and denies that prior to termination of the License Agreement Dominion International withheld technology to which Smartmatic International was entitled pursuant to the License Agreement. Dominion admits that Dominion Canada has advised election authorities in Puerto Rico that Dominion Canada has different technology to what Smartmatic International licensed from Dominion International. By way of further response, Dominion respectfully refers the Court to its website and materials for their full and accurate comments.

the terms of the escrow arrangement and that Smartmatic was aware that Dominion International had not deposited Source Code with the Escrow Agent.

43. On June 1, 2012, Smartmatic International asked Dominion to fulfill its escrow obligations within ten days by placing in escrow the current version and the immediate prior version of the Escrowed Materials. *See* Smartmatic International Letter dated June 1, 2012. On June 11, 2012, Dominion International notified Smartmatic International that it considered the Agreement terminated as of May 23, 2012, notwithstanding the fact that no opportunity to cure was ever provided, and specifically disclaimed its support and escrow obligations. *See* Dominion International Letter dated June 11, 2012. Smartmatic has reminded Dominion that it incurred these obligations prior to Dominion's purported termination of the License Agreement, and Section 7.2 of the Agreement expressly prohibits Dominion from using "termination" as a basis for refusing to fulfill its previously incurred obligations. Nonetheless, Dominion refuses to fulfill Smartmatic's requests for improvements, modifications, and enhancements to the Licensed Technology, or to place in escrow the current version and the immediate prior version of the Escrowed Materials, so that Smartmatic may provide the products or services Dominion refuses to provide.

RESPONSE NO. 43: The first three sentences of Paragraph 43 of the Complaint purport to characterize written communications between the parties, which characterizations are denied. By way of further response, Dominion respectfully refers the Court to Smartmatic International's letter dated June 1, 2012 and Dominion International's letter dated June 11, 2012, for their full and accurate contents. Dominion denies the allegations in the fourth sentence of Paragraph 43, except admits that it has declined to respond to some of Smartmatic's requests because the License Agreement is terminated and the initial SOW is either expired, terminated or both.

E. The June 2012 Mongolia Election

44. Dominion International's failure to fulfill its obligations relating to the Project is not the only instance whereby Dominion has failed to honor the License Agreement and prevented or adversely affected Smartmatic International from exercising its rights to market the Licensed Technology. Based on information and belief, Dominion International has violated its obligation under the License Agreement to provide Smartmatic with the technical information owned or possessed by Dominion relating to the Licensed Technology, which Dominion is using to compete against Smartmatic and undermine Smartmatic's attempts to market and sell Licensed Products. *See* Agreement §§ 1.4, 3.

RESPONSE NO. 44: Dominion denies the allegations in Paragraph 44 of the Complaint.

45. For example, Dominion has acknowledged that it demonstrated certain critical functionality relating to the Cyrillic language before the Mongolian Election Authorities, but refuses to provide Smartmatic International with sufficient information regarding such functionality so as to enable Smartmatic to incorporate the functionality into the Licensed Products, while at all times denying that the functionality in any way represented Licensed Technology. *See id.* Moreover, when requesting access to and support for such functionality, Dominion responded with development timescales that were designed to prejudice the ability of Smartmatic to compete with Dominion on equivalent terms and on a strategic market opportunity in which the ability to demonstrate a voting system's compatibility with the Cyrillic language represented a major achievement. Dominion reportedly notified the Authority that Smartmatic does not have access to the demonstrated functionality, which may only be obtained through Dominion directly.

RESPONSE NO. 45: Dominion denies the allegations in Paragraph 45 of the Complaint, except admits that Dominion US demonstrated certain ad hoc functionality improvements relating to the Cyrillic language before the Mongolian Election Authorities, and that Smartmatic did not have access to the Cyrillic functionality as a License Product. By way of further response, Dominion does not recall whether Dominion US told the Mongolian Election Authorities in 2011 that Smartmatic did not have access to the Cyrillic functionality as a Licensed Product, but if Dominion US made such a statement to the Mongolian Election Authorities, it would have been a true statement.

46. On March 5, 2012, Smartmatic International notified Dominion International that it had breached its contractual obligations and demanded access to the demonstrated technology pursuant to Section 3.2 of the License Agreement. Dominion International ignored Smartmatic's correspondence and refuses to provide this modified or enhanced technology to Smartmatic International.

RESPONSE NO. 46: Dominion denies the allegations in Paragraph 46 of the Complaint, except admits that, on or about March 5, 2012, Dominion International received a notice from Smartmatic International about the License Agreement.

47. In consequence of the demonstration provided by Dominion, the Mongolian Election Authorities reportedly agreed to purchase the ImageCast PCOS voting system from Dominion, without reference to any further open bidding process, and the said system was used in the first automated elections held in Mongolia in June 2012.

RESPONSE NO. 47: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, except admits that the Mongolian Election Authorities purchased a Dominion voting system from Dominion US for use in the June 2012 election.

F. The November 2012 Puerto Rico Election

48. In June 2011, the Puerto Rico State Elections Commission (“Commission”) issued a request for proposal relating to the acquisition of hardware, software and support services for the purpose of implementing a uniform electronic vote counting system using optical scanning voting technology.

RESPONSE NO. 48: Dominion admits the allegations in Paragraph 48 of the Complaint.

49. Both Smartmatic and Dominion submitted bids in response to the Commission’s request for proposal. Shortly thereafter, Smartmatic entered into discussions with the Commission to provide the requested automated election products and services. Based on the status of those negotiations, and on an extensive period of prior discussions and demonstrations with the Puerto Rican authorities going back many years, Smartmatic believed it had a reasonable expectation of entering a contractual relationship with the Commission.

RESPONSE NO. 49: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint, except admits that Dominion Canada submitted a bid to the Puerto Rican Election Commission (“the Commission”), and that, upon information and belief, Smartmatic Netherlands also submitted a bid.

50. Smartmatic recently learned that Dominion informed the Commission that Smartmatic does not have access to the latest Certificated PCOS technology developed by Dominion and which Smartmatic understands represented a condition precedent to securing a successful bid pursuant to the terms of the Request for Proposal. If true, Dominion International has violated its obligations under the License Agreement by failing either to provide Smartmatic

International with the Licensed Technology and/or modifications and enhancements to the Licensed Technology, or to license and make available to Smartmatic International Dominion's new PCOS technology. *See* Agreement § 1.4 (definition of Licensed Technology) and § 3.2. Alternatively, if Dominion International has not denied Smartmatic International access to Dominion's new, modified, or enhanced PCOS technology, but instead misrepresented to the Commission Smartmatic's right to access such technology, it has wrongfully interfered with Smartmatic's prospective business relationships and adversely affected Smartmatic's right to market, lease and sell the Licensed Technology.

RESPONSE NO. 50: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 50 that refer to what Smartmatic "recently learned" or what it "understands." Dominion denies that Dominion International violated the License Agreement and that Dominion made misrepresentations to the Commission. The remaining allegations in Paragraph 50 of the Complaint purport to state a legal conclusion, for which no response is required and are therefore denied.

51. Dominion also misrepresented to the Commission the scope of the geographic restriction in the License Agreement by claiming that Smartmatic is contractually prohibited from competing against it in Puerto Rico. Dominion made this representation with the full knowledge that, at the time the parties executed the License Agreement, they intended to treat Puerto Rico as an international market available to both parties.

RESPONSE NO. 51: Dominion denies the allegations in Paragraph 51 of the Complaint.

52. Smartmatic has recently discovered that Dominion, in seeking to secure the Puerto Rican election opportunity, also sought to procure manufacturing capacity and expertise from Smartmatic's exclusive contract manufacturer, thereby seeking to induce the contract manufacturer into breaching its exclusive manufacturing agreement with Smartmatic.

RESPONSE NO. 52: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 52 of the Complaint that refer to what Smartmatic "recently discovered." By way of further response, Dominion denies that it sought to induce any manufacturer to break an exclusive arrangement with Smartmatic.

53. Once Smartmatic became aware of Dominion's interference with the Commission, it immediately demanded that Dominion contact the Commission in writing and correct its misrepresentations. Based on information and belief, Dominion has failed to take any steps to correct its misrepresentations and is therefore responsible for all damages Smartmatic suffers as a consequence.

RESPONSE NO. 53: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 53 of the Complaint. The remaining allegations of Paragraph 53 of the Complaint are denied. By way of further response, Dominion denies that it made misrepresentations or is responsible for any damages to Smartmatic.

54. As a result of the misrepresentations referred to above, the Commission refused to entertain negotiations with Smartmatic, notwithstanding the fact that Smartmatic had ready access to manufacturing capability, had presented a lower bid, and had access to the financial resources required by the Commission, which began exclusive negotiations with Dominion instead.

RESPONSE NO. 54: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 54 of the Complaint, except, upon information and belief, denies that the Commission considered Smartmatic Netherlands' bid to be lower than Dominion Canada's. Further answering, Dominion states that on information and belief, the Commission considered Smartmatic International's bid price to be higher and Smartmatic's overall bid scoring to be lower than Dominion Canada's.

55. On information and belief, after having decided to award the contract for the provision of a PCOS automated voting system to Dominion and following extensive negotiations between the parties, the Puerto Rican Election Commission declared it had suspended its automation and modernization project because Dominion sought to vary the terms of the original request for proposal by refusing to provide the requisite Financial Performance Bond and sought to impose additional contractual conditions that made the completion of the project unpalatable and subject to judicial challenge. Consequently, Dominion deprived all parties of this business opportunity and denied the Puerto Rican people the opportunities and benefits afforded by automated voting.

RESPONSE NO. 55: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 55 of the Complaint related to the Commission's actions, decisions, or reasoning, except admits that the Commission notified Dominion Canada that it was the preferred bidder and that the Commission would proceed to negotiate a contract with Dominion Canada. Dominion denies the allegations in the second sentence of Paragraph 55.

56. Dominion International's conduct in Mongolia and Puerto Rico appear to be consistent with a pattern of activity designed to interfere with Smartmatic's prospective business relationships and prejudice Smartmatic International's ability to compete.

RESPONSE NO. 56: Dominion denies the allegations in Paragraph 56 of the Complaint.

G. Dominion's Invalid Attempt at Terminating the License Agreement

57. Thirteen months after the Puerto Rican Election Commission issued its Request for Proposal, which Dominion knew had been the subject of a formal bid response by Smartmatic, Dominion International notified Smartmatic International on May 23, 2012 that "pursuant to Section 7.2 of the PCOS Agreement, [Smartmatic] is in breach of the PCOS Agreement and [Dominion International] is terminating the agreement as a result of such breach." See Dominion International Letter dated May 23, 2012. Dominion International further claimed that Smartmatic International's purported breach "is not capable of being remedied . . . [so] the PCOS Agreement is terminated immediately," or "in the unlikely event that Dominion International is not entitled to immediate termination . . . the [License] Agreement will terminate 60 days from Your receipt of this Notice." *Id.* The letter further instructed Smartmatic International to "cease using any Licensed Product in any jurisdiction" and to "return to Dominion International all Confidential Information as defined in Section 6 of the Agreement." *Id.* Dominion based its "termination" solely upon its interpretation of Section 3.4 ("Non-Compete") and whether Puerto Rico is "in the United States," as that phrase is used in the Agreement. *Id.*

RESPONSE NO. 57: Dominion denies that allegations in Paragraph 57 of the Complaint, except admits that on May 23, 2012 Dominion International sent a letter terminating the License Agreement to Smartmatic, and that the paragraph selectively quotes from that letter.

By way of further response, Dominion respectfully refers the Court to its letter to Smartmatic International dated May 23, 2012 for its full and accurate contents.

58. On May 24, 2012, the next day, Smartmatic International notified Dominion International that its purported termination of the License Agreement was invalid; the Agreement remained a valid, binding and enforceable contract; and Dominion International must therefore immediately withdraw its “termination” notice and fulfill its contractual obligations. *See* Smartmatic International Letter dated May 24, 2012. On June 5, 2012, Smartmatic International reiterated its position regarding the invalidity of Dominion International’s purported termination and requested confirmation from Dominion that it would fulfill its contractual obligations under the Agreement. *See* Smartmatic International Letter dated June 5, 2012.

RESPONSE NO. 58: Dominion denies the allegations of Paragraph 58 of the Complaint, except admits that on May 24, 2012 and on June 5, 2012, Smartmatic International sent a letter to Dominion International contesting the termination of the License Agreement. By way of further response, Dominion respectfully refers the Court to Smartmatic International’s letters to Dominion International dated May 24, 2012 and June 5, 2012 for their full and accurate contents.

59. On June 11, 2012, Dominion International confirmed it “terminated” the License Agreement as of May 23, 2012. *See* Dominion International Letter dated June 11, 2012. Dominion further asserted that it was under no obligation to fulfill its obligations to Smartmatic International pursuant to that contract and specifically denied any obligation to fulfill its escrow and support obligations (sections §§ 5.2 and 3.3, respectively). *See id.* Although Dominion subsequently acknowledged that Smartmatic communicated its requests for enhancements, modifications, improvements, and technical support from Dominion prior to Dominion’s “termination” notice, Dominion claims its purported termination “wip[ed] out that obligation.” *See* Dominion International Letter dated July 10, 2012 (“Smartmatic may have contacted Dominion for the Requested Improvements from Dominion before the date Dominion terminated the PCOS Agreement on May 23, 2012, to the extent Dominion had any obligation, it was to deliver those Requested Improvements and such delivery obligation would not have occurred until after the termination of the PCOS Agreement, thereby wiping out that obligation”). Because Dominion refuses to provide technical support, COMELEC’s requested modifications and enhancement have not been fully implemented, and Smartmatic has not yet received final payment from COMELEC. Any obligations under Section 9 of the initial Statement of Work (“Additional Payments”) have, therefore, not yet accrued and post-date Dominion’s “termination.”

RESPONSE NO. 59: Dominion denies the allegations in the first, second, and third sentences of Paragraph 59 of the Complaint, except admits that, on June 11, 2012 Dominion International sent a letter to Smartmatic International regarding the termination of the License Agreement, and that, on July 10, 2012 Dominion International sent a letter to Smartmatic International regarding the termination of the License Agreement that contains the quoted language. Dominion is without knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 59 of the Complaint. The remaining allegations of Paragraph 59 of the Complaint are denied. By way of further response, Dominion respectfully refers the Court to Dominion International's letters to Smartmatic International dated June 11, 2012 and July 10, 2012 for their full and accurate contents.

60. Smartmatic has repeatedly notified Dominion that its purported termination of the License Agreement is both substantively and procedurally infirm. First, Dominion has misinterpreted the geographic restrictions set forth in Section 3.4 of the Agreement ("Non-Compete"). Dominion's position is not supported by law, the Agreement, or the parties' intent. Second, Dominion's "termination" fails to comply with the requirements set forth in the License Agreement. In the event of a purported breach, Section 7.2 authorizes the non-breaching party to terminate the Agreement, but only after providing notice of the alleged breach followed by a sixty day period during which the breaching party has an opportunity to cure. Although Smartmatic International denies that it is in breach of any of its contractual obligations, Dominion International has purported to terminate the Agreement without providing Smartmatic the opportunity to cure any alleged breach. Dominion International's purported termination fails to comply with the requirements of Section 7.2 and is, therefore, invalid. Moreover, Section 7.2 expressly forbids Dominion from using termination, even a valid one, as a basis for refusing to perform its previously incurred contractual obligations, such as Dominion's escrow and support obligations described above. Nonetheless, Dominion has refused to fulfill its obligations under the Agreement since it issued its "termination" notice on May 23, 2012.

RESPONSE NO. 60: Dominion denies the allegations in the first sentence of Paragraph 60 of the Complaint, except admits that Smartmatic International has notified Dominion International that it disagrees that the termination of the License Agreement was valid.

The remaining allegations in Paragraph 60 of the Complaint purport to state a legal conclusion, for which no response is required and are therefore denied.

61. In an attempt to mitigate its damages, Smartmatic continued to communicate with Dominion following its “termination” in May 2012; however, Dominion refuses to fulfill its contractual obligations under the License Agreement unless Smartmatic agrees to revise the payment terms and limitations of liability set forth in the Agreement. Moreover, Dominion has further conditioned its performance upon Smartmatic’s agreement to waive any and all claims Smartmatic may have against Dominion. Dominion’s unqualified refusal to perform its existing contractual obligations under the License Agreement unless and until Smartmatic accedes to these new terms was intended to radically alter the parties’ existing contractual obligations: these new terms are wholly inconsistent with and fundamentally different from the obligations contained in the License Agreement, and are significantly to Dominion’s advantage. Dominion’s continued refusal to perform its obligations under the License Agreement has forced Smartmatic to file suit to protect its interests and enforce its contractual rights.

RESPONSE NO. 61: Dominion denies the allegations in Paragraph 61 of the Complaint, except states that it lacks sufficient information to admit or deny the allegations in the first clause of the first sentence. By way of further response, Dominion states that any statements made in the course of settlement negotiations are inadmissible.

III. IRREPARABLE HARM

62. If Smartmatic is denied its bargained-for right either to obtain from Dominion modifications, enhancements, improvements, and new developments to the Licensed Technology, or to access the Escrowed Materials for the purpose of providing the products or services Dominion refuses to provide, Smartmatic will suffer immediate and irreparable harm, the consequences of which are unpredictable and beyond the parties’ control. As demonstrated above, Dominion is systemically engaging in anticompetitive conduct designed to jeopardize Smartmatic’s revenue-generating relationships and harm its ability to compete in a market segment characterized by significant barriers to entry. If Dominion is not prevented from withholding its services and Escrowed Materials from Smartmatic, Smartmatic will be compelled to seek alternative methods of incorporating the modified Licensed Technology into its automated election systems to attempt to mitigate the consequences of its lack of access to the underlying technology, which will jeopardize Smartmatic’s current business relationships and deprive it of opportunities to develop new ones. Paradoxically, Dominion’s refusal to fulfill its contractual obligations will imperil *Smartmatic’s* standing in the marketplace. Dominion has done just that in Mongolia and Puerto Rico, where it misrepresented Smartmatic’s ability to access the Licensed Technology and persuaded entities with whom Smartmatic was negotiating to withdraw from negotiations with Smartmatic and pursue a contractual relationship with Dominion instead.

RESPONSE NO. 62: Dominion denies the allegations in Paragraph 62 of the Complaint.

63. Smartmatic's request for expedited relief is further justified because of the difficulty of quantifying its damages after the fact, which would be imprecise, difficult to calculate, and would not provide full, fair, and complete relief for the alleged wrong in any event. The inevitable harm to Smartmatic's reputation, loss of goodwill, and revenue-generating relationships is difficult, if not impossible, to measure and cannot adequately be compensated by monetary damages alone. Smartmatic will, therefore, suffer irreparable harm in the absence of expedited judicial intervention.

RESPONSE NO. 63: Dominion denies the allegations in Paragraph 63 of the Complaint.

COUNT I

Declaratory Judgment

64. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 64: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

65. Despite the clear language in the License Agreement, Dominion International refuses to acknowledge its contractual obligations to Smartmatic International. An actual controversy has therefore arisen and now exists between the Parties regarding Dominion International's obligations under this Agreement. Accordingly, pursuant to the Delaware Declaratory Judgment Act, 10 *Del. C.* §§ 6501 *et seq.*, Smartmatic seeks a declaration from the Court on the following:

RESPONSE NO. 65: Dominion denies the allegations in the first sentence of Paragraph 65 of the Complaint. Dominion admits that an actual controversy between the parties now exists. The third sentence of Paragraph 65 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies the allegations in the third sentence of Paragraph 65 of the Complaint.

1. Dominion’s “termination” of the License Agreement is invalid

66. Under section 7.2 of the License Agreement, Dominion International may terminate the Agreement “by Written notice to Smartmatic [International] in the event that Smartmatic [International] shall be in default of any of its obligations hereunder and shall fail to remedy any such default within sixty (60) days after notice thereof by Dominion [International].” On May 23, 2012, Dominion International notified Smartmatic International of an alleged breach, but purported immediately to terminate the Agreement without providing Smartmatic International the required sixty days to cure any alleged default. Dominion International’s notice fails to fulfill the preconditions for termination set forth in the Agreement and is therefore invalid. Moreover, Dominion’s “termination” is substantively infirm because it is based upon a misinterpretation of the geographic restrictions set forth in Section 3.4 of the Agreement (“Non-Compete”). Dominion’s interpretation of this provision is not supported by applicable law, the Agreement, or the parties’ intent. Despite Smartmatic International’s communications to Dominion contesting the validity of Dominion International’s purported termination on both of these points, Dominion International has not withdrawn its “termination” or otherwise given Smartmatic International any indication that it will fulfill its contractual obligations under the Agreement. In fact, Dominion has repeatedly and unequivocally confirmed its purported termination of the Agreement and its refusal to perform its obligations under that contract.

RESPONSE NO. 66: Dominion admits that the first sentence of Paragraph 66 of the Complaint selectively quotes from a portion of the License Agreement, and Dominion respectfully refers the Court to the License Agreement for its full and accurate contents. Dominion denies the allegations in the second sentence of Paragraph 66, except admits that, by letter dated May 23, 2012, Dominion International terminated the License Agreement, and Dominion respectfully refers the Court to the letter for its full and accurate contents. The third, fourth, and fifth sentences of Paragraph 66 of the Complaint purport to state legal conclusions, for which no response is required and are therefore denied. Dominion denies the remaining allegations in Paragraph 66 of the Complaint, except admits that Dominion International has not withdrawn the termination.

67. Smartmatic seeks a declaration from the Court that Dominion International’s purported termination of the Agreement is invalid.

RESPONSE NO. 67: Paragraph 67 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to the declaration it seeks.

68. Smartmatic International also seeks to recover its attorneys' fees and costs.

RESPONSE NO. 68: Paragraph 68 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to attorneys' fees and costs.

2. (a). **The License Agreement is valid, binding, and enforceable; Dominion must specifically perform its obligations under Section 3 of the Agreement and the related Statements of Work within thirty days and release to Smartmatic the Escrowed Materials for the sole purpose of providing the modifications, enhancements, and improvements Dominion fails to provide;**

69. Under section 7.2 of the License Agreement, Dominion International may terminate the Agreement "by written notice to Smartmatic [International] in the event that Smartmatic [International] shall be in default of any of its obligations hereunder and shall fail to remedy any such default within sixty (60) days after notice thereof by Dominion [International]." Dominion purported to terminate the License Agreement on May 23, 2012, but failed to fulfill the substantive and procedural requirements for termination set forth in section 7.2 of the Agreement. Dominion's attempted termination is, therefore, invalid and the License Agreement remains a valid, binding, and enforceable contract.

RESPONSE NO. 69: Dominion admits that the first sentence of Paragraph 69 of the Complaint quotes selectively from Section 7.2 of the License Agreement, and respectfully refers the Court to the License Agreement for its full and accurate contents. Dominion further admits that it terminated the License Agreement by letter dated May 23, 2012. The remaining allegations in Paragraph 69 of the Complaint purport to state legal conclusions, for which no response is required and are therefore denied.

70. Section 3 of the Agreement and Section 5 of the Philippines Project's initial Statement of Work obligate Dominion to provide certain technical support services relating to the Licensed Technology. Moreover, Section 5.2 of the Agreement obligates Dominion International to place in escrow "all of its source code for the firmware and EMS, as well as all

hardware design and manufacture related documents.” “In the event Dominion [International] breaches its obligations to provide the products or support it is obligated to provide . . . and fails to cure such breach within thirty (30) days of receipt of notice from Smartmatic, such escrowed materials shall be released to Smartmatic for the sole purpose of providing such products or services that Dominion [International] failed to provide.

RESPONSE NO. 70: Dominion admits that Paragraph 70 of the Complaint quotes selectively from the License Agreement and the initial SOW, and respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents. The remaining allegations in Paragraph 70 of the Complaint purport to state legal conclusions, for which no response is required and are therefore denied.

71. COMELEC has requested from Smartmatic certain modifications, comprising enhancements and improvements to the Licensed Products or, alternatively, Additional Project Assistance, some of which require adjustments to the Licensed Technology. Pursuant to the Agreement, which obligates Dominion to provide Smartmatic with technical support and assistance to make such requested modifications and improvements, Smartmatic specifically requested Dominion’s assistance with those modifications that required adjustments to the Licensed Technology. Because the Licensed Technology includes Dominion’s proprietary source code and intellectual property, Smartmatic requires Dominion to perform its support obligations under the Agreement for the purpose of the 2013 Philippines elections and also to release the Escrowed Materials to Smartmatic to enable Smartmatic to provide the support which Dominion refuses to provide.

RESPONSE NO. 71: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 71 of the Complaint. Dominion denies the remaining allegations in Paragraph 71 of the Complaint, except admits that Smartmatic has requested that Dominion International make certain modifications and enhancements to Dominion voting systems related to the Philippines. By way of further response, Dominion states that Dominion International has no further obligations with respect to the 2013 election because the License Agreement has been terminated and the initial SOW has expired and/or been terminated.

72. Smartmatic seeks a declaration from the Court that the License Agreement remains valid, binding and enforceable, and Dominion International must, therefore, specifically perform its obligations under Section 3 of the License Agreement and the related Statements of Work within thirty days and release to Smartmatic the Escrowed Materials for the sole purpose of providing the products or services Dominion fails to provide.

RESPONSE NO. 72: Paragraph 72 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to the declaration it seeks. By way of further response Dominion states that, to the extent Smartmatic seeks a declaration that "Dominion International must ... specifically perform its obligations under Section 3 of the License Agreement and the related Statements of Work within thirty days and release to Smartmatic the Escrowed Materials for the sole purpose of providing the products or services Dominion fails to provide," such relief is injunctive in nature and inappropriate for declaratory relief.

73. Smartmatic International also seeks to recover its attorneys' fees and costs.

RESPONSE NO. 73: Paragraph 73 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to attorneys' fees and costs.

(b). Alternatively, Dominion's refusal to perform its contractual obligations under the License Agreement constitutes a repudiation of the Agreement; Smartmatic is discharged from its performance obligations under the Agreement as of the date of Dominion's repudiation, including any obligation to provide the Additional Payments to Dominion as set forth in Section 9 of the initial Statement of Work, and the Escrowed Materials are to be released to Smartmatic for the sole purpose of providing such products or services that were accrued obligations of Dominion prior to its repudiation.

74. Under section 7.2 of the License Agreement, Dominion International may terminate the Agreement "by written notice to Smartmatic [International] in the event that Smartmatic [International] shall be in default of any of its obligations hereunder and shall fail to remedy any such default within sixty (60) days after notice thereof by Dominion [International]."

Dominion purported to terminate the License Agreement on May 23, 2012, but failed to fulfill the substantive and procedural requirements for termination set forth in section 7.2 of the Agreement. Dominion's attempted termination is, therefore, invalid and Dominion's unequivocal notice that it will not perform its valid, binding, and enforceable obligations under the License Agreement coupled with its outright refusal to perform these obligations constitute a repudiation of that contract.

RESPONSE NO. 74: Dominion denies the allegations in Paragraph 74 of the Complaint, except admits that the first sentence of the paragraph selectively quotes from Section 7.2 of the License Agreement, and that, by letter dated May 23, 2012, Dominion International terminated the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement and Dominion International's letter to Smartmatic International dated May 23, 2012, for their full and accurate contents.

75. COMELEC has requested from Smartmatic certain modifications to the Licensed Products. Since some of the modifications requested by COMELEC require adjustments to the Licensed Technology, which contains Dominion's proprietary source code and intellectual property, Smartmatic specifically requested Dominion's assistance with these modifications pursuant to Section 3 of the Agreement. Dominion subsequently notified Smartmatic that it would fulfill these contractual obligations, but only if Smartmatic agreed to revise the payment terms and limitations of liability set forth in the License Agreement. Dominion further conditioned its performance upon Smartmatic's agreement to waive any and all claims Smartmatic may have against Dominion. Dominion's unqualified refusal to perform its existing contractual obligations under the License Agreement unless and until Smartmatic accedes to these terms was intended to radically alter the parties' existing contractual obligations. Moreover, these new terms are wholly inconsistent with and fundamentally different from the obligations contained in the License Agreement. Despite its pre-existing contractual obligation to make such modifications and enhancements, Dominion has specifically and repeatedly denied any obligation to perform its support functions under the License Agreement. Dominion's unequivocal refusal to perform its binding contractual obligations coupled with its demand that Smartmatic agree to new terms fundamentally different from those contained in the License Agreement each constitute a repudiation of that contract.

RESPONSE NO. 75: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 76 of the Complaint, except admits that Smartmatic provided Dominion International with some requests for enhancements and modifications to Dominion voting systems related to the

Philippines. Dominion denies the remaining allegations in Paragraph 76 of the Complaint, except admits that Dominion International told Smartmatic International that the requested work related to the Philippines would require a new statement of work. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents. By way of further response, Dominion states that any statements made in the course of settlement discussions between the parties are inadmissible and cannot be utilized to support a claim by Smartmatic.

76. Smartmatic seeks a declaration from the Court that Dominion International's refusal to perform its contractual obligations under the License Agreement constitutes a repudiation of the Agreement such that Smartmatic is discharged from all performance obligations under that contract as of the date of Dominion's repudiation. Smartmatic seeks a further declaration from the Court that Dominion's repudiation of the Agreement pre-dated any obligation under Section 9 of the initial Statement of Work to make any Additional Payments to Dominion and Smartmatic is, therefore, specifically discharged from this obligation. Moreover, the Escrowed Materials are to be released to Smartmatic for the sole purpose of providing such products or services that were accrued obligations of Dominion prior to its repudiation.

RESPONSE NO. 76: Paragraph 76 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to the declaration it seeks. By way of further response Dominion states that, to the extent Smartmatic seeks a declaration that "the Escrowed Materials are to be released to Smartmatic for the sole purpose of providing such products or services that were accrued obligations of Dominion prior to its repudiation," such relief is injunctive in nature and inappropriate for declaratory relief.

77. Smartmatic International also seeks to recover its attorneys' fees and costs.

RESPONSE NO. 77: Paragraph 77 of the Complaint contains Smartmatic's characterization of its action for which no response is required. To the extent that a response is deemed required, Dominion denies that Smartmatic is entitled to attorneys' fees and costs.

COUNT II

(Breach Of The License Agreement)

Dominion Improperly “Terminated” the Agreement

78. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein

RESPONSE NO. 78: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

79. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 79: Dominion denies the allegations in Paragraph 79 of the Complaint.

80. Smartmatic International has fully performed its obligations as required by this agreement.

RESPONSE NO. 80: Dominion denies the allegations in Paragraph 80 of the Complaint.

81. Under section 7.2 of the License Agreement, Dominion International may terminate the Agreement “by written notice to Smartmatic [International] in the event that Smartmatic [International] shall be in default of any of its obligations hereunder and shall fail to remedy any such default within sixty (60) days after notice thereof by Dominion [International].” Dominion International purported to terminate the License Agreement on May 23, 2012, but failed to fulfill the substantive and procedural requirements for termination set forth in section 7.2 of the Agreement. Dominion International’s attempted termination is, therefore, invalid and Dominion’s refusal to perform its contractual obligations under the License Agreement constitutes a breach of contract. Dominion International’s failure to perform is not excused by any reason.

RESPONSE NO. 81: Dominion denies the allegations in Paragraph 81 of the Complaint, except admits that the first sentence of the paragraph selectively quotes from or cites to Section 7.2 of the License Agreement, and that, by letter dated May 23, 2012, Dominion International terminated the License Agreement. By way of further response, Dominion

respectfully refers the Court to the License Agreement and Dominion International's letter to Smartmatic International dated May 23, 2012, for their full and accurate contents.

82. Dominion International's failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International's breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys' fees and costs.

RESPONSE NO. 82: Paragraph 82 of the Complaint purports to state a legal conclusion, for which no response is required and are therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 82 of the Complaint.

COUNT III

(Breach Of The License Agreement)

Dominion Failed to Deliver Functional Licensed Technology

83. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 83: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

84. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 84: Dominion denies the allegations in Paragraph 84 of the Complaint.

85. Smartmatic International has fully performed its obligations as required by this agreement.

RESPONSE NO. 85: Dominion denies the allegations in Paragraph 85 of the Complaint.

86. Under the terms of the License Agreement and the SOW incorporated therein, Dominion International was obligated to deliver to Smartmatic International functional Licensed Technology, plus "all information related to the Licensed Technology as may be known or possessed by Dominion [International] and as may be reasonably necessary for Smartmatic to

exploit the licenses granted in [the Agreement].” Dominion International was also contractually obligated to provide Smartmatic International with the technical support needed to ensure the Licensed Technology’s functionality. Despite these obligations, Dominion International failed to provide functional Licensed Technology in accordance with its contractual obligations, it failed to provide the information related to the License Technology necessary for Smartmatic International to exploit the licenses granted in this Agreement, and it failed to provide the technical support needed to ensure the Licensed Technology functioned properly. Dominion International’s failure to perform is not excused by any reason.

RESPONSE NO. 86: Dominion denies the allegations of Paragraph 86 of the Complaint, except admits that the first and second sentences of the paragraph selectively quote from or cite to the License Agreement and the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

87. Dominion International’s failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International’s breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys’ fees and costs.

RESPONSE NO. 87: Paragraph 87 of the Complaint purports to state a legal conclusion, for which no response is required and is therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 87 of the Complaint.

COUNT IV

(Breach Of The License Agreement)

Dominion Failed to Provide Timely Technical Support

88. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 88: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

89. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 89: Dominion denies the allegations in Paragraph 89 of the Complaint.

90. Smartmatic International has fully performed its obligations as required by this agreement.

RESPONSE NO. 90: Dominion denies the allegations in Paragraph 90 of the Complaint.

91. Under the terms of the License Agreement, Dominion International was obligated to provide to Smartmatic International the technical support needed to incorporate the “hardware, software, firmware and EMS developed by Dominion” into the Licensed Products. The initial SOW, which the Agreement expressly incorporates, further obligated Dominion International to provide “Project Assistance” as set forth on Tables 1 and 2 of the initial SOW and “Additional Project Assistance,” as set forth in Section 5 of the initial SOW. Despite these obligations, Dominion International failed to provide Smartmatic International with timely technical support in accordance with its contractual obligations. Dominion International failed to address timely Smartmatic International’s Requested Improvements and COMELEC’s conditions for exercising its option to purchase the Licensed Products (i.e., the “Goods”), which has compromised Smartmatic International’s ability to provide satisfactory customer service and materially harmed Smartmatic’s ability to sell the Licensed Products to COMELEC. *See* Agreement § 3.3. Moreover, Dominion has also failed to provide the required technical support needed to incorporate the modifications and enhancements requested by COMELEC in preparation for the Philippines 2013 national elections. These requested modifications and enhancements were communicated to Dominion well before its purported termination of the Agreement, which does not serve as a basis for avoiding these support obligations in any event. Instead, Dominion International has sought to use its ownership and control of the Licensed Technology to rewrite the License Agreement by insisting upon the inclusion of ex post contract conditions in the amended SOWs as a condition to fulfilling its pre-existing contractual obligations. Dominion International’s failure to perform is not excused by any reason.

RESPONSE NO. 91: Dominion denies the allegations of Paragraph 91 of the Complaint, except admits that the first and second sentences of the paragraph selectively quote from or cite to the License Agreement and the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

92. Dominion International’s failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has

sustained damages because of Dominion International's breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys' fees and costs.

RESPONSE NO. 92: Paragraph 92 of the Complaint purports to state a legal conclusion, for which no response is required and is therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 92 of the Complaint.

COUNT V

(Breach Of The License Agreement)

Dominion Failed to Work Collaboratively to Redeploy the Licensed Products

93. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 93: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

94. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 94: Dominion denies the allegations in Paragraph 94 of the Complaint.

95. Smartmatic International has fully performed its obligations as required by this agreement.

RESPONSE NO. 95: Dominion denies the allegations in Paragraph 95 of the Complaint.

96. Under the terms of the initial SOW, which the License Agreement expressly incorporates, Dominion International was obligated to "work cooperatively [with Smartmatic] in reselling or re-leasing the Licensed Products in the event COMELEC elects not to exercise the purchase option and the Licensed Products are returned to Smartmatic and placed in its inventory." The parties further agreed to sell or lease the Licensed Products out of such inventory "before selling or leasing new PCOS systems in any other market where the Licensed Products in inventory can be made to meet the customer's requirements within a reasonable budget."

RESPONSE NO. 96: Dominion denies the allegations in Paragraph 96 of the Complaint, except admits that the first sentence of the paragraph selectively quotes from or cites to the initial SOW. By way of further response, Dominion respectfully refers the Court to the License Agreement and the initial SOW for their full and accurate contents.

97. Despite this obligation, Dominion International failed to work collaboratively with Smartmatic International when it pursued alternative PCOS opportunities in Puerto Rico, Mongolia, and all other territories currently targeted by Dominion, including the United States and Canada. Dominion International also failed to identify alternative uses for the Licensed Technology or to redeploy Licensed Products from Smartmatic's inventory to such other projects. Dominion International's failure to fulfill its contractual obligations is further compounded by its intentional failure to support, and even prevent Smartmatic's own marketing efforts in Mongolia and Puerto Rico. Dominion International's breach is not excused by any reason.

RESPONSE NO. 97: Dominion denies the allegations in Paragraph 97 of the Complaint.

98. Dominion International's failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International's breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys' fees and costs.

RESPONSE NO. 98: Paragraph 98 of the Complaint purports to state a legal conclusion, for which no response is required and is therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 98 of the Complaint.

COUNT VI

(Breach Of The License Agreement)

Dominion Failed to Provide New Developments and Next Generation

99. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 99: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

100. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 100: Dominion denies the allegations in Paragraph 100 of the Complaint.

101. Smartmatic International has fully performed its obligations as required by the Agreement.

RESPONSE NO. 101: Dominion denies the allegations in Paragraph 101 of the Complaint.

102. In the event Dominion International modifies or enhances the Licensed Technology and makes such modifications or enhancements generally available to its customers or licensees, the License Agreement obligates Dominion to “provide Smartmatic with sufficient information with respect to such modifications or enhancements to enable Smartmatic to incorporate such modifications or enhancements” into the Licensed Products. Further, in the event Dominion International develops and releases new PCOS technology, such technology “shall be licensed and made available to Smartmatic” upon its release to other customers or licensees.

RESPONSE NO. 102: Dominion denies the allegations in Paragraph 102 of the Complaint, except admits that Paragraph 102 selectively quotes from or cites to the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

103. The License Agreement defines “Licensed Technology” as all “know-how, trade secrets, methodologies and other technical information owned or possessed by Dominion” relating to its generally released PCOS voting systems and includes, but is not limited to, Dominion’s technology described on Exhibit A to the Agreement. Exhibit A identifies and describes Dominion’s “ImageCast” and “Democracy Suite” technology, which is, therefore, Licensed Technology under the Agreement. Dominion is contractually obliged to make this Licensed Technology, including upgraded, Certificated and enhanced versions of it, available to Smartmatic. This includes, for example, the latest certified version of Democracy Suite 4.0, the ImageCast Evolution (ICE) precinct scanner, the ImageCast (ICP) precinct scanner, and ImageCast (ICC) central count scanner.

RESPONSE NO. 103: Dominion denies the allegations in Paragraph 103 of the Complaint, except admits that the paragraph selectively quotes from or cites to the License

Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

104. Since completing the initial phase of the Philippines project in May 2010, Smartmatic has not received notification of any enhancements or modifications to the Licensed Technology, notwithstanding the fact that many such enhancements and/or modifications have been made. The effect of this failure to provide full and timely access to this Licensed Technology, when coupled with Smartmatic's contractual restriction from developing its own PCOS voting technology, has significantly harmed Smartmatic's standing in the worldwide market, and its ability to exploit the Licensed Technology.

RESPONSE NO. 104: Dominion denies the allegations in Paragraph 104 of the Complaint.

105. Dominion Voting recently notified the Puerto Rico State Elections Commission that Smartmatic does not have access to the latest PCOS technology developed by Dominion and then offered to sell voting systems containing such technology to the Commission. As indicated by these communications, Dominion International has failed to fulfill its contractual obligations to Smartmatic: It has developed and marketed new technology and/or enhanced its existing technology, but failed to make such developments or enhancements available to Smartmatic. Dominion International's refusal to provide Smartmatic with its newly developed technology, enhancements to existing technology, and information related to the Licensed Products constitutes a breach of the Agreement. Dominion International's failure to perform is not excused by any reason.

RESPONSE NO. 105: Dominion denies the allegations in Paragraph 105 of the Complaint, except admits that, on August 8, 2011, Dominion Canada sent a letter to the Commission regarding Smartmatic Netherlands' submission to the Commission and that Dominion Canada offered to sell its PCOS voting systems to the Commission. By way of further response, Dominion respectfully refers the Court to Dominion Canada's letter dated August 8, 2011 for its full and accurate contents.

106. Moreover, Dominion International demonstrated certain critical functionality relating to the Cyrillic alphabet to the Mongolian Election Authorities, who subsequently agreed to purchase the demonstrated election products from Dominion. Although Smartmatic International demanded access to this functionality pursuant to the License Agreement, Dominion International refuses to fulfill its contractual obligations. Dominion International's refusal to perform is not excused by any reason.

RESPONSE NO. 106: Dominion denies the allegations in Paragraph 106 of the Complaint, except admits that Dominion US demonstrated certain functionality related to the Cyrillic alphabet to the Mongolian Election Authorities and that Mongolia subsequently agreed to purchase a voting system from Dominion US.

107. Dominion International's failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International's breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys' fees and costs.

RESPONSE NO. 107: Paragraph 107 of the Complaint purports to state a legal conclusion, for which no response is required and are therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 107 of the Complaint.

COUNT VII

(Breach Of The License Agreement)

Dominion Is Frustrating Smartmatic's Right to Market, Lease and Sell the Licensed Technology

108. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 108: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

109. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 109: Dominion denies the allegations in Paragraph 109 of the Complaint.

110. Smartmatic International has fully performed its obligations as required by the Agreement.

RESPONSE NO. 110: Dominion denies the allegations in Paragraph 110 of the Complaint.

111. The License Agreement provides Smartmatic International the right “to make, have made, use, import, offer for sale, lease and sell” voting systems embodying the Licensed Technology. As demonstrated by its failure to provide timely technical support in the Philippines, and its misrepresentations to the Puerto Rico Elections Commission and the Mongolian Election Authorities, Dominion is engaging in conduct designed to prejudice Smartmatic’s ability to compete. Dominion’s misrepresentations have adversely affected Smartmatic International’s rights under the License Agreement to market the Licensed Technology and, therefore, constitute a breach of that contract. Dominion International’s failure to fulfill its contractual obligations is not excused by any reason.

RESPONSE NO. 111: Dominion denies the allegations of Paragraph 111 of the Complaint, except admits that the first sentence of the paragraph selectively quotes from or cites to the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

112. Moreover, Dominion seeks to take unfair commercial advantage of the Philippines Project by using it to demonstrate its own capability and expertise in the international market. By way of example, Dominion’s web site claims that it has successfully deployed over 100,000 PCOS voting machines (“The greatest number of deployed optical scan systems in the world”), but ignores the fact that 80% of those machines were actually manufactured and deployed by Smartmatic. While Dominion is overstating its role in the Project, it is also notifying Smartmatic’s potential customers and business partners that Smartmatic has limited, if any, access to the Licensed Technology, ignoring the fact that the voting machines for which it is attempting to take credit incorporate the very technology it claims Smartmatic cannot access.

RESPONSE NO. 112: Dominion denies the allegations in Paragraph 112 of the Complaint. By way of further response, Dominion respectfully refers the Court to its website for its full and accurate contents.

113. Dominion has intentionally undermined and frustrated Smartmatic’s right to market, lease, and sell the Licensed Technology and has, therefore, breached the License Agreement’s implied covenant of good faith and fair dealing. Dominion International’s failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International’s breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys’ fees and costs.

RESPONSE NO. 113: Paragraph 113 of the Complaint purports to state a legal conclusion, for which no response is required and are therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 113 of the Complaint.

COUNT VIII

(Breach Of The License Agreement)

Dominion Failed to Place in Escrow its Source Code, Hardware Design and Manufacture Related Documents

114. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 114: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

115. The License Agreement is a valid contract, and is enforceable by and binding upon Smartmatic International and Dominion International.

RESPONSE NO. 115: Dominion denies the allegations in Paragraph 115 of the Complaint.

116. Smartmatic International has fully performed its obligations as required by the Agreement.

RESPONSE NO. 116: Dominion denies the allegations in Paragraph 116 of the Complaint.

117. Section 5.2 of the License Agreement obligates Dominion International to place in escrow, within thirty days of the date of the License Agreement, “all of its source code for the firmware and EMS, as well as all hardware design and manufacture documents as per Exhibit B.” *See* Agreement at § 5.2. Exhibit B to the License Agreement states that “the concept Source Code and IP to be placed in escrow by Dominion applies to the current vision and the immediate prior version” of the subject technology, source code, and other information as enumerated in that Exhibit. *See* Exhibit to the Agreement. In the event Dominion International breaches its obligation to provide products or support, and fails to cure such breach within thirty days of receipt of notice from Smartmatic, “the escrowed materials shall be released to Smartmatic for

the sole purpose of providing such products or services that Dominion failed to provide.” *See* Agreement at § 5.2.

RESPONSE NO. 117: Dominion denies the allegations in Paragraph 117 of the Complaint, except admits that the paragraph selectively quotes from or cites to the License Agreement. By way of further response, Dominion respectfully refers the Court to the License Agreement for its full and accurate contents.

118. Based on information and belief, Dominion International failed to place in escrow any of the required materials until May 7, 2012. Moreover, Smartmatic International subsequently learned that the material Dominion International placed in escrow was not the current version and the immediate prior version of the required information, but was instead an outdated and possibly encrypted version of these materials, rendering them ineffective. In response to Smartmatic’s request to fulfill its escrow obligations, Dominion International notified Smartmatic International on June 11, 2012 that it was under no obligation to place in escrow the materials described in the License Agreement and Exhibit B to the Agreement. Dominion International’s failure to place in escrow the source code and other required information as set forth in the License Agreement is a breach of that contract. Dominion International’s failure to fulfill its contractual obligations is not excused by any reason.

RESPONSE NO. 118: Dominion denies the allegations in Paragraph 118 of the Complaint, except admits that Dominion International placed in escrow the version of software that had been deployed in the Philippines.

119. Dominion International’s failure to perform the contractual obligations imposed by the License Agreement constitutes a breach of that contract. Smartmatic International has sustained damages because of Dominion International’s breach and is therefore entitled to recover monetary damages, as well as all reasonable attorneys’ fees and costs.

RESPONSE NO. 119: Paragraph 119 of the Complaint purports to state a legal conclusion, for which no response is required and are therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 119 of the Complaint.

COUNT IX

(Tortious Interference with Prospective Contractual Relations)

Dominion Tortiously Interfered with Smartmatic's Prospective Contractual Relations with the Puerto Rican State Elections Commission

120. Plaintiffs hereby incorporate paragraphs I through 63 as though fully set forth herein.

RESPONSE NO. 120: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

121. Smartmatic entered into negotiations with the Puerto Rican State Elections Commission to provide certain automated election products and services. Based on the status of those negotiations, the fact that Smartmatic had presented a lower priced bid, had manufacturing capability, and possessed superior financial resources, including the ability and willingness to provide the aforementioned Performance Bond, Smartmatic believed it had a reasonable probability of entering a contractual relationship with the Commission.

RESPONSE NO. 121: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 121 of the Complaint, except to say that on information and belief, the Commission did not consider Smartmatic Netherlands to have presented a lower bid than Dominion Canada to the Commission.

122. Smartmatic recently learned that during Smartmatic's negotiations with the Puerto Rican State Elections Commission, Dominion informed the Commission that Smartmatic does not have access to the latest PCOS technology developed by Dominion, including Dominion's PCOS technology that the United States Election Assistance Commission recently certified. Dominion also misrepresented to the Puerto Rican Election Commission the scope of the geographic restriction in the License Agreement, notifying the Commission that Smartmatic is contractually prohibited from competing against it in Puerto Rico. Dominion's misrepresentations to the Commission were intentional and designed deliberately to undermine Smartmatic's negotiations with the Commission.

RESPONSE NO. 122: Dominion lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 122 of the Complaint, except admits that, on August 8, 2011, Dominion Canada sent a letter to the Commission regarding Smartmatic Netherlands' submission to the Commission. Dominion denies the remaining

allegations in Paragraph 122 of the Complaint. By way of further response, Dominion respectfully refers the Court to Dominion Canada's letter dated August 8, 2011 for its full and accurate contents.

123. As a result of Dominion's misrepresentations, the Commission withdrew from negotiations with Smartmatic and instead awarded the contract to Dominion.

RESPONSE NO. 123: Dominion denies the allegations in Paragraph 123 of the Complaint.

124. Smartmatic has sustained damages because of Dominion's tortious conduct and is therefore entitled to recover all monetary damages arising from Dominion's tortious interference with Smartmatic's prospective business relations with the Commission.

RESPONSE NO. 124: Paragraph 124 of the Complaint purports to state a legal conclusion, for which no response is required and are therefore denied. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 124 of the Complaint.

COUNT X

(Tortious Interference with Prospective Contractual Relations)

Dominion Tortiously Interfered with Smartmatic's Prospective Contractual Relations with the Mongolian Election Authorities

125. Plaintiffs hereby incorporate paragraphs 1 through 63 as though fully set forth herein.

RESPONSE NO. 125: Dominion restates and incorporates its responses to the allegations in the preceding paragraphs as though fully set forth herein.

126. Smartmatic entered into negotiations with the Mongolian Election Authorities to provide certain automated election products and services. Based on the status of those negotiations, Smartmatic believed it had a reasonable probability of entering a contractual relationship with that entity.

RESPONSE NO. 126: Dominion lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126 of the Complaint.

127. Dominion demonstrated certain critical functionality relating to the Licensed Technology to the Mongolian Election Authorities for the purpose of showcasing the availability of such functionality and consummating a purchase agreement with the Authority. During its demonstration, Dominion reportedly noted to the Authority that Smartmatic did not possess or otherwise have access to the demonstrated functionality, which could only be acquired through Dominion directly. Dominion made this representation despite its obligation under the License Agreement to provide Smartmatic International with access to the Licensed Technology together with sufficient information with respect to such modifications or enhancements to enable Smartmatic to incorporate such technology into the Licensed Products.

RESPONSE NO. 127: Dominion denies the allegations in Paragraph 127 of the Complaint, except admits that Dominion US demonstrated certain functionality of its voting systems to the Mongolian Election Authorities in order to convince the Mongolian Election Authorities to purchase voting systems from Dominion US, and that Smartmatic did not have access to the demonstrated functionality. By way of further response, Dominion does not recall whether Dominion US told the Mongolian Election Authorities that Smartmatic did not have access to similar technology, but if Dominion US made such a statement to the Mongolian Election Authorities, it would have been a true statement.

128. As a result of Dominion's misrepresentations, the Mongolian Election Authority withdrew from negotiations with Smartmatic and instead awarded the contract to Dominion.

RESPONSE NO. 128: Dominion denies the allegations in Paragraph 128 of the Complaint.

129. Smartmatic has sustained damages because of Dominion's tortious conduct and is therefore entitled to recover all monetary damages arising from Dominion's tortious interference with Smartmatic's prospective business relations with the Authority.

RESPONSE NO. 129: Paragraph 129 of the Complaint purports to state a legal conclusion, for which no response is required. To the extent that a response is deemed required, Dominion denies the allegations in Paragraph 129 of the Complaint.

* * *

Dominion states that the headings throughout the Complaint do not constitute well-pleaded allegations of fact and therefore require no response. To the extent a response is required, the allegations of the headings in the Complaint are denied.

The remainder of the Complaint comprises Smartmatic's prayer for relief for which no responsive pleading is required. To the extent a response is deemed required, Dominion denies that Smartmatic is entitled to any remedy or relief on its claims whatsoever, either as requested or otherwise.

* * *

Dominion alleges the following separate and affirmative defenses to the Complaint and, in so doing, does not assume the burden to establish any fact or proposition necessary to that affirmative defense where that burden is properly imposed on Smartmatic.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Smartmatic improperly conflates the various Dominion entities from time to time in its allegations. To the extent that Dominion International, Dominion US, and Dominion Canada answer the Complaint collectively, or to the extent that they respond to allegations as to “Dominion” without specifying a particular Dominion entity, Dominion International, Dominion US, and Dominion Canada do not waive their corporate separateness or their defense that one Dominion entity is not liable for the acts or omissions of another. Similarly, each of the Dominion entities is liable only for its own acts and omissions and not those of another Dominion entity. Furthermore, to the extent that any of Smartmatic’s claims are based on a contract between a Smartmatic entity and a Dominion entity, only the Smartmatic entity that is a party to the contract has standing to assert that claim, and may assert it against only the Dominion entity that is a party to that contract.

THIRD AFFIRMATIVE DEFENSE

Smartmatic’s allegations against Dominion Canada and Dominion US lack particularity and fail to state claims against Dominion Canada and Dominion US. Specifically, Smartmatic references in many paragraphs the License Agreement which Dominion International executed, performed and later terminated, but Smartmatic makes only occasional references to Dominion Canada and Dominion US, without identifying what those companies allegedly did that was improper.

FOURTH AFFIRMATIVE DEFENSE

To the extent that any of Smartmatic’s allegations are based on agreements prior to October 2009 that were superseded by the License Agreement, neither such allegations nor the prior agreements can serve as a basis for any legal claim by Smartmatic.

FIFTH AFFIRMATIVE DEFENSE

While the License Agreement was in effect through May 23, 2012 Smartmatic International was only entitled to market Licensed Products and Licensed Technology, as defined in the License Agreement, and not all voting systems developed by various Dominion entities. Similarly, Smartmatic International was not entitled to obtain and market all improvements or modifications to Licensed Products or Licensed Technology, only those specifically referenced in the License Agreement.

SIXTH AFFIRMATIVE DEFENSE

The lawful termination of the License Agreement by Dominion International for material breach by Smartmatic precludes any claims by Smartmatic pursuant to that agreement.

SEVENTH AFFIRMATIVE DEFENSE

Smartmatic's contract claims are barred by its own breaches of contract as stated in further detail in Dominion's Verified Counterclaim.

EIGHTH AFFIRMATIVE DEFENSE

Smartmatic's equitable claims are barred by its own inequitable conduct and unclean hands as stated in further detail in Dominion's Verified Counterclaim.

NINTH AFFIRMATIVE DEFENSE

To the extent that any of Smartmatic's claims are based on inadmissible statements made during off the record settlement communication, they are barred.

TENTH AFFIRMATIVE DEFENSE

Dominion was entitled to advise election authorities of the truthful terms and status of the License Agreement.

ELEVENTH AFFIRMATIVE DEFENSE

Smartmatic’s right to recover damages, which is denied in its entirety, is also limited by damage limitation provisions in the License Agreement.

TWELFTH AFFIRMATIVE DEFENSE

To the extent that Smartmatic is seeking damages for alleged functionality problems with Dominion voting machines in the 2010 election in the Philippines, any damages are attributable to Smartmatic’s negligence in failing to conduct standard and routine industry-wide testing of the machines prior to deployment, despite the fact that Dominion International had advised Smartmatic to consider such testing and despite the fact that Smartmatic had conducted such testing in other prior elections. Even if the negligence of Smartmatic was only partly responsible for its damages, Dominion is entitled to a reduction of the damages due to comparative negligence.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent that Smartmatic International is seeking damages for alleged failure to re-deploy voting machines from the Philippines to another country, Smartmatic International is not entitled to any such damages because Smartmatic International did not request Dominion International to participate in any redeployments of Smartmatic inventory in the Philippines or other countries and declined one or more redeployment proposals by Dominion International.

FOURTEENTH AFFIRMATIVE DEFENSE

Dominion International did not cause Smartmatic International to incur storage costs for inventory in the Philippines.

* * *

Dominion reserves the right to assert other affirmative defenses when and if they become appropriate in this action.

* * *

WHEREFORE, Dominion International, Dominion US, and Dominion Canada respectfully request that the Court:

A. Enter judgment in their favor, denying all relief requested in the Verified Complaint and dismissing Smartmatic's Verified Complaint with prejudice;

B. Issue a Declaration that

i. Dominion International validly terminated the License Agreement;

ii. As of May 23, 2012, the License Agreement is no longer a valid, binding, and enforceable contract; Dominion International is not required to perform its obligations under Section 3 of the License Agreement and related SOWs or release to Smartmatic International the Escrowed Materials; and

iii. Dominion International did not repudiate the License Agreement and Smartmatic International is not discharged from its obligations under License Agreement that either accrued prior to the termination of the License Agreement on May 23, 2012 or survived the termination of the License Agreement on May 23, 2012;

C. Award them costs, including reasonable attorneys' fees and expenses; and

D. Award them such other and further relief as the Court deems just and proper.

VERIFIED COUNTERCLAIM AND THIRD-PARTY COMPLAINT

INTRODUCTION

This Counterclaim seeks a declaratory judgment, injunctive relief and damages with respect to Counterclaim-Defendants' impermissible marketing of Counterclaim-Plaintiffs' voting system products in Puerto Rico in violation of contractual noncompetition provisions, as well as declaratory relief, injunctive relief, and damages with respect to Counterclaim-Defendants' and Third-Party Defendant's improper ongoing efforts to market and sell upgraded versions of Counterclaim Plaintiffs' voting system products in the Philippines.

THE PARTIES

1. Counterclaim-Plaintiff Dominion Voting Systems International is a Barbados corporation with its principal place of business in Christ Church, Barbados ("Dominion International").

2. Counterclaim-Plaintiff Dominion Voting Systems Corp. is an Ontario corporation with its principal place of business in Toronto, Ontario, Canada ("Dominion Canada").

3. Dominion International and Dominion Canada are referred to herein for convenience collectively as "Dominion."

4. Counterclaim-Defendant Smartmatic International Corporation is, upon information and belief, a Barbados corporation with its principal place of business in Garrison St. Michael, Barbados ("Smartmatic International").

5. Counterclaim-Defendant Smartmatic International Holdings, BV is, upon information and belief, a Dutch corporation with its principal place of business in The Netherlands ("Smartmatic Netherlands").

6. Third-Party Defendant Smartmatic–TIM Corporation is, upon information and belief, a Philippines corporation with its principal place of business in Makati City, the Philippines (“Smartmatic TIM”).

BACKGROUND FACTS

Dominion and Smartmatic

7. Dominion Canada, which has been in existence since 2003, is in the business of developing and selling voting systems to countries, states and municipalities for use in casting and tabulating ballots in political elections. Dominion Canada’s voting systems consist of voting machines, software and firmware. One of Dominion Canada’s principal types of voting systems is a precinct count optical scanning (“PCOS”) system. Dominion Canada has developed several versions of the PCOS voting system.

8. Dominion International is a subsidiary of Dominion Canada that has been in existence since 2009 and which, by agreement with Dominion Canada, resells, licenses, leases, or otherwise provides Dominion voting machines and the related use of Dominion software and firmware in selected countries.

9. Upon information and belief, a Venezuelan-owned company named “Smartmatic” (“Smartmatic Venezuela”) has been in the voting system business since at least the time Dominion Canada began operations in 2003. Upon information and belief, neither Smartmatic Venezuela nor any of its affiliates has developed and sold its own PCOS voting system.

10. Upon information and belief, in approximately 2005, Smartmatic Venezuela incorporated an American subsidiary in Delaware, Smartmatic Corporation (“Smartmatic Delaware”), for the purpose of acquiring an American competitor of Dominion, Sequoia Voting Systems (“Sequoia”).

11. Upon information and belief, in or about 2006, the United States government, through the Congressional Committee on Foreign Investment in the United States, concerned about the potential danger of having a Venezuelan-owned company involved closely in American elections, required Smartmatic Delaware to divest itself of ownership of Sequoia. Upon information and belief, the United States, Smartmatic Delaware and several third parties signed a written agreement in 2006 providing for the divestiture, and in 2007 Smartmatic Delaware sold its stock in Sequoia to a holding company founded by top management at Sequoia.

12. Multiple Smartmatic entities, including the Counterclaim-Defendants and Third-Party Defendant, exist in various countries. Upon information and belief, all or most are controlled by Antonio Mugica, a Venezuelan, and the Smartmatic entities work in a coordinated manner to carry out an organized competitive marketing effort around the world.

13. Dominion and Smartmatic have been competitors in the voting system business since approximately 2003. During that time, Dominion's principal focus has been in Canada, where it began its operations, and in the United States, which in 2002 enacted the Help America Vote Act ("HAVA") to fund extensive improvements to voting systems in the United States in the wake of the problematic 2000 presidential election. In fact, the enactment of HAVA, which provided sales opportunities in the United States for companies in the electronic voting system business, is one of the primary reasons Dominion Canada was established.

14. As part of Dominion Canada's efforts in the United States, in 2007, Dominion Canada and Sequoia entered into an agreement to collaborate in the sale of voting systems to jurisdictions in New York State. In 2009, Dominion Canada purchased certain assets of Sequoia

which provided Dominion Canada with additional contracts for voting systems in New York State.

15. By contrast, after Smartmatic Delaware's forced divestiture of its ownership in Sequoia in 2007, Smartmatic focused on markets outside of Canada and the United States.

The License Agreement

16. Upon information and belief, in or about early 2009, Smartmatic International and Total Information Management Corporation formed a joint venture called Smartmatic-TIM, which those parties later incorporated as Third-Party Defendant Smartmatic TIM, for the purpose of bidding to provide voting machines and other voting system components for the 2010 election in the Philippines.

17. Upon information and belief, the Philippines required PCOS systems for the 2010 election. Because Smartmatic neither owned nor had access to PCOS voting systems, in or about early 2009 Smartmatic approached Dominion about an agreement to license Dominion's PCOS voting systems, including hardware, software and firmware. Negotiations proceeded consistent with Dominion's understanding that Smartmatic needed PCOS voting machines for use in the Philippines and possibly other countries.

18. Because Smartmatic and Dominion were competitors, Dominion made clear that any license for its PCOS technology would be limited in nature and, in particular, would not include Canada and the United States. Negotiations proceeded consistent with Dominion's statements to Smartmatic that Dominion intended to focus primarily on Canada and the United States and with Smartmatic's statements to Dominion that Smartmatic was not looking to sell Dominion voting systems in Canada or the United States.

19. In early 2009, Smartmatic and Dominion executed a series of term sheets, memoranda and agreements with respect to a license of Dominion voting systems.

20. Upon information and belief, on or about July 10, 2009, Smartmatic TIM entered into a contract with the Philippines Election Commission (“COMELEC”) for the provision of PCOS voting machines and other systems for the 2010 Philippines’ national election. Although the COMELEC/Smartmatic TIM contract required PCOS voting systems that Dominion International would be providing, Smartmatic International did not disclose that contract to Dominion International when it was executed and has refused to provide a copy to Dominion International despite several requests by Dominion International. Upon information and belief, the contract essentially called for COMELEC to lease approximately 82,000 PCOS voting machines for 2010 from Smartmatic TIM with an option to purchase them at a later time for use in future elections.

21. Upon information and belief, Smartmatic TIM won the bidding process in the Philippines by submitting a price for PCOS voting systems that was only approximately one-third of what it had discussed with Dominion. As a result, during re-negotiations with Dominion in the summer and fall of 2009, Smartmatic International insisted that Dominion reduce its price per unit from [REDACTED] per voting machine to [REDACTED] per machine and threatened to terminate the License Agreement if Dominion International did not accede to those demands.

22. Smartmatic, and in particular Mr. Mugica, encouraged Dominion Canada to establish an international subsidiary in Barbados, like Smartmatic International, for the purposes of signing a license agreement with Smartmatic International. Principally for that reason, in the fall of 2009, Dominion Canada established Dominion International as its wholly-owned subsidiary in Barbados.

23. On October 9, 2009, Dominion International and Smartmatic International entered into a PCOS Framework License Agreement (the “License Agreement”) that superseded all prior agreements between Dominion and Smartmatic. (A redacted copy of the License Agreement, with confidential pricing information excised, is attached hereto as Exhibit A.) Consistent with Dominion International’s intent to provide a limited license to Smartmatic International and protect Dominion Canada’s market positions in Canada and the United States, the License Agreement provided, essentially, that Smartmatic International:

- a. would have a nonexclusive license to sell Dominion International’s PCOS voting systems throughout the world other than Canada and the United States (Section 2.1);
- b. would not “modify, enhance or otherwise make any changes to” Dominion International’s PCOS voting systems without prior written agreement of Dominion International (Section 2.3);
- c. would be entitled to certain modifications or enhancements of Dominion International’s PCOS voting systems, but only those modifications or enhancements which Dominion International made “generally available” to customers or licensees (Section 3.2);
- d. would not “develop, market or sell” Dominion International’s PCOS voting systems in Canada (Section 3.4a);
- e. would not “develop, market or sell” Dominion International’s PCOS voting systems “in the United States” (Section 3.4b);
- f. would not develop and sell its own or third-party PCOS voting systems during the term of the License Agreement (Section 3.4b);

- g. would not “develop, market or sell” any third party PCOS voting system “in any country other than the United States” for four and a half years (Section 3.4c);
- h. would pay Dominion International a license fee for each voting machine delivered by Smartmatic to a third party (Section 4); and
- i. would enter into individual Statements of Work (“SOWs”) with Dominion International for technical support, maintenance and upgrades for voting systems sold to individual foreign countries (Section 1.6).

24. The License Agreement provided that it would supersede all prior agreements (Section 8.7).

25. The License Agreement also contained an anti-assignment clause, preventing assignment without the consent of the other party (Section 8.10).

26. Importantly, the License Agreement provided that it could be terminated upon notice of a default and a failure to remedy the default within sixty days (Section 7.2).

27. The License Agreement provided that it would be governed by Delaware law (Section 8.2), and that the parties consented to the nonexclusive jurisdiction of the state and federal courts located in Delaware (Section 8.3).

The Philippines 2009

28. Pursuant to Section 1.6 of the License Agreement, Dominion International and Smartmatic International entered into Statement of Work #1 (the “SOW”), in which Dominion International agreed to provide Smartmatic International with PCOS voting machine technology, software and firmware, and support and maintenance for the 2010 Philippines election. The SOW provided, among other things, that Smartmatic International would pay Dominion

International a license fee of [REDACTED] in three installments, based on a single use license for the 2010 election (Section 6) and, in the event COMELEC exercised an option to purchase the PCOS voting machines, Smartmatic International would pay Dominion International an additional license fee within five days of payment by COMELEC of [REDACTED] for each voting machine which COMELEC purchased from Smartmatic (Section 9).

29. The initial SOW did not apply to any elections held in the Philippines after 2010 (Section 1) and did not permit Smartmatic to license any Dominion technology to COMELEC after the 2010 election.

30. Upon information and belief, in 2009 or 2010, Smartmatic TIM leased approximately 82,000 PCOS machines to COMELEC for use in the Philippines' 2010 election. As a result, under the License Agreement and the initial SOW, Dominion International was to receive three payments totaling [REDACTED] from Smartmatic International upon payment by COMELEC.

31. Despite numerous requests by Dominion International, Smartmatic International refused to provide information to Dominion International about payments by COMELEC, even though COMELEC payments triggered Smartmatic International's obligations to pay Dominion International.

32. Smartmatic International failed to make the third payment of [REDACTED] to Dominion International in 2010 in the timeframe specified in the initial SOW and, in fact, failed to make the third payment at any time in 2010 or 2011. Smartmatic International thus breached the License Agreement by not disclosing payments by COMELEC and by not paying Dominion International as specified in the initial SOW.

33. Upon information and belief, in or about September 2010, Smartmatic TIM and COMELEC entered into an agreement for the sale of 920 Dominion PCOS voting machines to COMELEC. Smartmatic failed to voluntarily disclose the sale of the 920 units to Dominion International.

34. Pursuant to the License Agreement and the initial SOW, Dominion International was to be paid [REDACTED] for each voting machine sold to COMELEC within five days of payment by COMELEC. Upon information and belief, COMELEC paid Smartmatic TIM for these 920 units in or about November 2010. Nonetheless, Smartmatic International failed to remit payment to Dominion International as required by the License Agreement and the initial SOW.

35. As a result, Smartmatic International breached the License Agreement by failing to disclose to Dominion International the sale of the 920 units and failing to pay Dominion International the additional license fee within five days of payment by COMELEC as required by the License Agreement and the initial SOW.

36. In 2012, Dominion learned about certain payments by COMELEC through media reports and confronted Smartmatic in writing regarding the final [REDACTED] installment on the lease of 82,000 voting machines to COMELEC (in 2009 or 2010) and the additional license fee for the sale of 920 machines to COMELEC (in 2010). Dominion then demanded information from Smartmatic International about COMELEC payments to Smartmatic and demanded payment from Smartmatic International if, in fact, Smartmatic had been paid. Smartmatic International was not forthcoming with accurate information about the COMELEC payments, and only upon a notice of default from Dominion International did Smartmatic International eventually pay the fees it owed to Dominion International under the License Agreement and the initial SOW.

Puerto Rico 2011-2012

37. In the spring of 2011, the Puerto Rican Election Commission (the Commission”) announced a competitive bidding process for a new voting system to be completed in time for the 2012 elections. Payment for the new system was to be funded partially by U.S. government funds provided pursuant to HAVA.

38. In or about mid-2011, Dominion Canada entered into the competitive bidding process in Puerto Rico to secure a contract to provide Puerto Rico with voting machines. Upon information and belief, in or about mid-2011, Smartmatic Netherlands also submitted a bid proposal to the Commission.

39. Upon becoming aware of the Smartmatic Netherlands bid, Dominion International advised Mr. Mugica of Smartmatic, including by email in July 2011, that Puerto Rico is part of the United States for purposes of the License Agreement and that, therefore, pursuant to the License Agreement, Smartmatic is prohibited from providing voting systems to Puerto Rico. Dominion International also advised Smartmatic that it could not compete against Dominion Canada in Puerto Rico. Dominion International also reminded Smartmatic that, again pursuant to the License Agreement, it had no right to market Dominion products developed for sale in the United States.

40. In response, Smartmatic denied that Puerto Rico is part of the United States, and Smartmatic Netherlands continued its efforts in Puerto Rico in competition with Dominion Canada.

41. Despite being told by Dominion International that it could not market the same Dominion voting system as Dominion Canada was marketing in Puerto Rico, in its bid submission Smartmatic Netherlands specifically misrepresented to the Commission that:

- a. Dominion Canada was Smartmatic Netherlands' designated subcontractor, when in fact Dominion Canada had never agreed to act as a subcontractor for Smartmatic Netherlands; and
- b. Smartmatic Netherlands had the ability to provide the same Dominion voting system as Dominion Canada when, in fact, Smartmatic Netherlands had no right to market any Dominion systems in Puerto Rico and, in any event, did not have access to the same systems for international sales that Dominion Canada used for sales in the United States, including Puerto Rico.

42. Smartmatic Netherlands made similar misrepresentations in Puerto Rican legal proceedings and to the Puerto Rican media. Smartmatic Netherlands expressly and incorrectly relied on the License Agreement as the basis for its misrepresentations. Smartmatic Netherlands also improperly distributed copies of the License Agreement, which by its terms was confidential, to the Commission and the Puerto Rican media, and included copies in its submissions in Puerto Rican legal proceedings involving the Commission's proposed selection of a company to provide voting systems for the 2012 elections.

43. Smartmatic International and/or Smartmatic Netherlands also falsely told a Commission technical committee that if Dominion Canada were selected to provide voting machines for the 2012 election, Smartmatic Netherlands would be Dominion Canada's implementation partner.

44. In early May 2012, after another competing bidder withdrew, and after Dominion Canada provided the Commission with approvals Dominion Canada had received for use of its voting system in U.S. elections, the Commission notified Dominion Canada that it was the

preferred bidder for the 2012 election and that the Commission would proceed to negotiate a contract with Dominion Canada at an overall price of [REDACTED].

45. Shortly thereafter, on May 17 and May 21, 2012, respectively, Smartmatic's Puerto Rican counsel wrote to the Commission and falsely stated that Smartmatic, as a result of the License Agreement, could take advantage of the approval Dominion Canada had received.

46. Upon information and belief, once Smartmatic International and Smartmatic Netherlands realized that Dominion Canada was in a position to win the Puerto Rican bid over Smartmatic Netherlands, they decided to convince the Commission not to award the contract to Dominion Canada even if it meant that Puerto Rico would not be able to obtain a new voting system for the 2012 election.

47. In an effort to undermine Dominion Canada's proposal, Smartmatic International and/or Smartmatic Netherlands told the Commission, in addition to misrepresentations listed above, that Dominion Canada lacked financial ability to perform a contract in Puerto Rico and could not provide voting machines on a timely basis. Smartmatic International and/or Smartmatic Netherlands also disclosed information to the Commission from confidential settlement discussions between Dominion and Smartmatic. In legal proceedings involving the prospective award of a voting system contract for the 2012 election, Smartmatic also misrepresented to a Puerto Rican court, including in mid-May 2012, that Smartmatic had an exclusive license to utilize Dominion technology in Puerto Rico and that Dominion Canada lacked financial resources to perform the proposed contract.

48. On May 23, 2012, Dominion International, through counsel, notified Smartmatic International that Smartmatic's actions in Puerto Rico in competition with Dominion constituted a breach of the License Agreement and, as the breach could not be remedied, that the License

Agreement was being terminated immediately. (Dominion also stated that if immediate termination was not permissible, the termination would occur in 60 days.) Finally, Dominion International demanded the return of confidential information about its voting systems from Smartmatic International. A copy of the termination letter is attached hereto as Exhibit B.

49. Smartmatic International's breach of the License Agreement was incurable. Moreover, Smartmatic International and Smartmatic Netherlands proceeded to exacerbate the breach. After receipt of the termination notice of May 23, 2012, Smartmatic International and Smartmatic Netherlands continued their efforts to prevent Dominion Canada from finalizing a contract with the Commission, including by making misrepresentations to the Commission about Dominion Canada and taking legal action in Puerto Rico to stop the negotiations between the Commission and Dominion Canada.

50. Upon information and belief, as a result of Smartmatic International's and Smartmatic Netherlands' interference and misrepresentations, the Commission imposed stricter new conditions on Dominion Canada in connection with awarding Dominion Canada the contract, including payment terms and performance bond terms. In addition, Smartmatic Netherlands' participation in the bidding process and litigation in the Puerto Rican courts involving the prospective award of a voting system contract for the 2012 election delayed the selection process and shortened the time between the Commission's designation of Dominion Canada as the preferred bidder and the 2012 election, thus making it prohibitive for Dominion Canada to guarantee delivery deadlines that, but for such delays, would have been manageable.

51. Due to Smartmatic Netherlands' competition in violation of the License Agreement as well as other interference and misrepresentations by Smartmatic International

and/or Smartmatic Netherlands, Dominion Canada was not successful in reaching an agreement with the Commission to provide voting systems for the 2012 elections in Puerto Rico.

Philippines 2012-2013

52. Upon information and belief, on or about March 30, 2012, in preparation for the 2013 election in the Philippines, COMELEC and Smartmatic TIM executed an agreement by which COMELEC would purchase the remaining approximately 81,000 PCOS voting machines, which it had previously leased for the 2010 election (i.e., in addition to the 920 machines that it purchased in 2010). Upon information and belief, the sales contract required upgrades, which would involve revisions to Dominion's software, not previously provided to Smartmatic International. Only Dominion has the expertise necessary to perform the required upgrades.

53. Smartmatic International did not disclose this contract to Dominion International when it was executed and has refused to produce a copy to Dominion International despite Dominion International's requests.

54. In or about June 2012, the Supreme Court of the Philippines issued a decision upholding, against a local challenge, the agreement between COMELEC and Smartmatic TIM for the purchase of the remaining approximately 81,000 upgraded Dominion PCOS voting machines which COMELEC had used for the 2010 election on a leased basis.

55. On June 14, 2012, Dominion International, through counsel, wrote to Smartmatic International to advise it that, due to the termination of the License Agreement, Smartmatic International was no longer licensed to provide those 81,000 machines to COMELEC, and that Dominion had no obligation to undertake the upgrades. A copy of the letter is attached hereto as Exhibit C.

56. The initial SOW attached to the License Agreement by its terms did not extend to the 2013 election. The License Agreement provided that additional work beyond the initial SOW would have to be negotiated as part of a new SOW. Although Smartmatic and Dominion had preliminary discussions about a possible SOW for future collaboration in the Philippines, the parties failed to reach agreement.

57. Smartmatic's continued efforts in the Philippines to sell 81,000 prospectively-upgraded Dominion PCOS voting machines to COMELEC without a license from Dominion International and without a new SOW violates Dominion Canada's and Dominion International's ownership rights in the voting machines and associated technology.

Injury to Dominion

58. Dominion International and Dominion Canada have been injured and continue to be injured by the actions of the various Smartmatic entities, including but not limited to the following actions:

- a. Marketing Dominion voting systems in Puerto Rico despite the prohibition in the License Agreement against marketing in the United States;
- b. Interfering with Dominion's marketing efforts in Puerto Rico, through misrepresentations and other improper conduct, such that Dominion Canada has been unable to enter a contract to sell voting systems to the Commission in Puerto Rico for 2012;
- c. Failing to pay Dominion International its contractual license fee in connection with the March 30, 2012 sale of approximately 81,000 voting machines to COMELEC in the Philippines;

- d. Continuing to market upgraded Dominion voting systems in the Philippines notwithstanding the termination of the License Agreement and the SOW which ended Smartmatic International's and Smartmatic TIM's rights to sell the Dominion voting systems;
- e. Failing to disclose the termination of the License Agreement to COMELEC; and
- f. Failing to return Dominion's confidential information to Dominion International upon the termination of the License Agreement.

59. Dominion International and Dominion Canada have suffered financial and other injuries as a result of the actions of the various Smartmatic entities, including but not limited to:

- a. Late and non-existent payments for the sale of PCOS units to COMELEC;
- b. Damage to their reputation through Smartmatic's continued efforts to sell upgraded PCOS systems to COMELEC without a valid license to do so and without inclusion of the Dominion upgrades;
- c. Loss of the opportunity to sell Dominion Canada voting systems to Puerto Rico;
- d. Damage to their reputation as a result of the misrepresentations and other misconduct of Smartmatic in Puerto Rico; and
- e. Legal and other costs in responding to Smartmatic Netherland's presentations to the Commission and litigation in the Puerto Rican courts.

COUNT ONE

Declaratory Judgment
(Dominion International v. Smartmatic International, Smartmatic Netherlands and Smartmatic TIM)

60. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

61. During negotiations with Smartmatic, Dominion made clear that any license of Dominion voting systems would include protections for Dominion Canada’s primary markets in Canada and the United States, and specifically HAVA-funded jurisdictions. The License Agreement provides such protections in the non-compete provision of Section 3.4, in part, by providing that Smartmatic “shall not develop, market or sell any Licensed Products in the United States at any time during the term of the agreement.”

62. The term “the United States” in Section 3.4 of the License Agreement includes Puerto Rico, which is a United States territory. In addition, the parties understood that Puerto Rico would be off-limits for Smartmatic’s marketing efforts. Accordingly, Smartmatic was not and is not permitted to market Dominion voting systems in Puerto Rico.

63. Smartmatic International and Smartmatic Netherlands breached the License Agreement by marketing, or causing Smartmatic Netherlands to market, Dominion’s voting systems in Puerto Rico. These breaches caused harm to Dominion International and Dominion Canada, by causing the Commission to impose new financial conditions upon Dominion Canada which otherwise would not have been imposed and so delaying the bidding process that it became impractical for Dominion Canada to guarantee delivery deadlines.

64. As a result of Smartmatic's incurable breach, Dominion International was entitled to terminate the License Agreement effective immediately and did so by letter dated May 23, 2012.

65. Smartmatic International denies that it breached the License Agreement by competing in Puerto Rico and denies that the License Agreement could be terminated without passage of a 60-day remedy period.

66. This action presents an actual, valid, ripe, and justiciable case or controversy in that Smartmatic International has contested whether Puerto Rico is considered to be part of the United States or is considered to be a "country other than the United States," whether Smartmatic breached the License Agreement by marketing Dominion voting systems in Puerto Rico, and whether Dominion International's letter dated May 23, 2012 served to terminate the License Agreement effective immediately.

67. A declaratory judgment will clarify and settle whether Dominion properly terminated the License Agreement.

68. Dominion International is entitled to a declaratory judgment that:

- a. Puerto Rico is part of the United States for purposes of the License Agreement;
- b. Smartmatic International and Smartmatic Netherlands breached the License Agreement by marketing, or causing Smartmatic Netherlands to market, Dominion voting systems in Puerto Rico;
- c. Dominion International's letter of May 23, 2012 served to terminate the License Agreement immediately because the breach could not be cured;
and

- d. As a result of Dominion International's valid termination of the License Agreement, neither Smartmatic International, Smartmatic Netherlands, Smartmatic TIM nor any other Smartmatic entity has a license to make, have made, use, import, offer for sale, lease or sell Dominion technology or products including anywhere in the world, but not limited to, Puerto Rico and the Philippines.

COUNT TWO

Breach of Contract: Puerto Rico **(Dominion International v. Smartmatic International)**

69. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

70. The License Agreement provides Smartmatic International with a limited license to make, have made, use, import, offer for sale, lease and sell Dominion International's voting systems. The territory in which said license may be exercised is expressly circumscribed to exclude the United States and Canada. Specifically, the License Agreement provides that Smartmatic International is expressly prohibited from marketing or selling Dominion International voting systems in the United States at any time during the term of the License Agreement.

71. The License Agreement provides that Smartmatic may not assign its limited license to another party without the prior written consent of Dominion International.

72. Pursuant to the terms of License Agreement, Smartmatic International had and has no right to market or sell Dominion PCOS voting systems in Puerto Rico because Puerto

Rico is part of the United States. Smartmatic International breached the License Agreement by participating in Smartmatic marketing efforts in Puerto Rico.

73. If Smartmatic International purported to assign or sublicense its rights to Dominion voting systems under the License Agreement to Smartmatic Netherlands, it did so without Dominion International's prior written consent. Therefore, the purported assignment or sublicense constituted a breach of the License Agreement.

74. If Smartmatic International did not purport to assign or sublicense its rights under the License Agreement to Smartmatic Netherlands, Smartmatic International nevertheless knew that Smartmatic Netherlands was publicly relying on the License Agreement for its purported right to market Dominion voting systems and encouraged and/or allowed Smartmatic Netherlands to do so. Smartmatic International acted in bad faith, knowing that Puerto Rico is part of the United States and having been advised by Dominion International that marketing Dominion's voting systems in Puerto Rico constituted a breach of the License Agreement.

75. As a result of Smartmatic Netherlands's breaching competitive activity in Puerto Rico, the Commission imposed strict new conditions on Dominion Canada in order for Dominion Canada to obtain the contract, including payment terms and performance bond terms. The actions prevented Dominion Canada from finalizing a contract with the Commission.

76. Dominion International has suffered financial injury as a result of Smartmatic International's breach of contract, including the loss of the opportunity of its sublicensee, Dominion Canada, to sell voting systems to the Commission for use in Puerto Rico's elections.

77. Dominion International is entitled to recover damages from Smartmatic International in an amount to be determined by the Court.

COUNT THREE

Breach of Contract: Puerto Rico **(Dominion International v. Smartmatic Netherlands)**

78. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

79. If Smartmatic Netherlands was properly an assignee or sublicensee under the License Agreement, which Dominion International denies, Smartmatic Netherlands is liable to Dominion International for breach of contract in connection with its bid to the Commission and its litigation efforts in Puerto Rico seeking reconsideration of the Commission's decision to negotiate with Dominion Canada for voting systems the 2012 election in Puerto Rico. Smartmatic Netherlands is liable because, if it was properly an assignee or sublicensee under the License Agreement, it was bound by the geographic limitation against selling and marketing Dominion International voting systems in Puerto Rico which is included in Section 3.4(b) of the License Agreement.

80. As a result of Smartmatic Netherlands's breaching competitive activity in Puerto Rico, the Commission imposed strict new conditions on Dominion Canada in order for Dominion Canada to obtain the contract, including payment terms and performance bond terms, which prevented Dominion Canada from finalizing a contract with the Commission.

81. Dominion International has suffered financial injury as a result of Smartmatic International's breach of contract, including the loss of the opportunity of its sublicensee, Dominion Canada, to sell voting systems to the Commission for use in Puerto Rico's elections.

82. Dominion International is entitled to recover damages from Smartmatic Netherlands in an amount to be determined by the Court.

COUNT FOUR

Violation of Lanham Act: Puerto Rico
(Dominion International and Dominion Canada v. Smartmatic International and Smartmatic Netherlands)

83. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

84. Smartmatic International and Smartmatic Netherlands have violated Section 43a of the Lanham Act, 15 U.S.C. §1125, by their conduct in Puerto Rico because, as described in more detail above, they made false statements related to Dominion voting systems, which false statements were material and likely to cause confusion or mistake or deceive decision-makers at the Commission with respect to the affiliation, connection or association of Smartmatic Netherlands to Dominion and as to Dominion's lack of approval of Smartmatic Netherlands' representations to the Commission; the voting machines in question traded in interstate commerce; and Dominion International and Dominion Canada suffered financial harm and loss of goodwill as a result of the false statements.

85. Dominion International and Dominion Canada are entitled to recover damages pursuant to the Lanham Act in an amount to be determined by the Court, as well as injunctive relief to prevent Smartmatic from continuing to market Dominion voting systems in Puerto Rico, otherwise compete in Puerto Rico and make misrepresentations about its rights to sell Dominion voting systems in Puerto Rico.

COUNT FIVE

Unfair Competition: Puerto Rico
(Dominion International and Dominion Canada v. Smartmatic International and Smartmatic Netherlands)

86. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth here.

87. In or about mid-2011, Dominion Canada entered into the competitive bidding process in Puerto Rico to secure a contract to provide Puerto Rico with voting machines.

88. With the assistance of Smartmatic International, Smartmatic Netherlands improperly submitted a competitive bid based on the use of Dominion voting systems, which Smartmatic Netherlands had no contractual or other right to do.

89. In early May 2012, the Commission notified Dominion Canada that it was the preferred bidder for the 2012 election, and that the Commission would proceed to negotiate a contract with Dominion Canada at an overall price of [REDACTED]. Based on the notification that it was the preferred bidder, its prior discussions with the Commission and its willingness to comply with the Commission's existing requirements as it understood them, Dominion Canada had a reasonable expectation of entering into a binding contract with the Commission to provide voting systems for the 2012 election in Puerto Rico.

90. Smartmatic misrepresented to the Commission that Dominion lacked financial ability to perform a contract in Puerto Rico and could not provide voting machines on a timely basis. Smartmatic misrepresented to the Commission, the Puerto Rican courts and the Puerto Rican media that Smartmatic Netherlands had a legal right to compete in Puerto Rico and to sell the same voting systems as Dominion Canada. Smartmatic improperly disclosed the confidential License Agreement to the Commission, the Puerto Rican courts and the Puerto Rican media.

Smartmatic also disclosed information to the Commission from confidential settlement discussions between Dominion and Smartmatic. Upon information and belief, Smartmatic did so intentionally in an effort to undermine Dominion Canada's proposal.

91. These actions constituted knowing and willful unfair methods of competition and unfair acts or practices in trade or commerce.

92. After receipt of the termination notice dated May 23, 2012, Smartmatic continued its efforts to prevent Dominion Canada from finalizing a contract with the Commission, including by making additional misrepresentations to the Commission about Dominion Canada and through litigation in Puerto Rico intended to disrupt Dominion Canada's negotiations with the Commission.

93. As a result of Smartmatic's interference and misrepresentations with respect to Dominion Canada's bid, the Commission imposed stricter new conditions on Dominion Canada in order for Dominion Canada to obtain the contract, including payment terms and performance bond terms. Smartmatic's conduct also delayed the overall contract negotiation process, which left less time before the 2012 election and made it prohibitive for Dominion Canada to guarantee delivery deadlines which, but for such delays, would have been manageable.

94. As a result of Smartmatic's interference and misrepresentations, Dominion Canada was unable to reach an agreement with the Commission because of the new financial requirements and shortened time for meeting delivery deadlines.

95. Dominion International and Dominion Canada are entitled to obtain damages from Smartmatic Netherlands in an amount to be determined by the Court, as well as injunctive relief to prevent Smartmatic Netherlands or any other Smartmatic entity from continuing to market or sell Dominion voting systems in Puerto Rico.

COUNT SIX

Tortious Interference With Prospective Business Relations: Puerto Rico (Dominion International v. Smartmatic Netherlands)

96. Dominion restates and incorporates the allegations in preceding paragraphs as though fully set forth herein.

97. In or about mid-2011, Dominion Canada entered into the competitive bidding process in Puerto Rico to secure a contract to provide Puerto Rico with voting machines.

98. In early May 2012, the Commission notified Dominion Canada that it was the preferred bidder for the 2012 election, and that the Commission would proceed to negotiate a contract with Dominion Canada at an overall price of [REDACTED]. Based on the notification that it was the preferred bidder, its prior discussions with the Commission and its willingness to comply with the Commission's existing requirements as it understood them, Dominion Canada had a reasonable expectation of entering into a binding contract with the Commission to provide voting systems for the 2012 election in Puerto Rico.

99. Smartmatic misrepresented to the Commission that Dominion lacked financial ability to perform a contract in Puerto Rico and could not provide voting machines on a timely basis. Smartmatic misrepresented to the Commission, the Puerto Rican courts and the Puerto Rican media that Smartmatic Netherlands had a legal right to compete in Puerto Rico and to sell the same voting systems as Dominion Canada. Smartmatic improperly disclosed information to the Commission from confidential settlement discussions between Dominion and Smartmatic. Upon information and belief, Smartmatic did so intentionally in an effort to undermine Dominion Canada's proposal.

100. After receipt of the termination notice dated May 23, 2012, Smartmatic continued its efforts to prevent Dominion Canada from finalizing a contract with the Commission, including by making additional misrepresentations to the Commission about Dominion Canada and through litigation in Puerto Rico intended to disrupt Dominion Canada's negotiations with the Commission.

101. As a result of Smartmatic's interference and misrepresentations, the Commission imposed stricter new conditions on Dominion Canada in order for Dominion Canada to obtain a contract, including payment terms and performance bond terms. Smartmatic's interference and misrepresentations also delayed the overall contract negotiation process which left less time before the 2012 election and made it prohibitive for Dominion Canada to meet delivery deadlines that, but for such delays, would have been manageable.

102. As a result of Smartmatic's interference and misrepresentations, Dominion Canada was unable to reach an agreement with the Commission because of the new financial requirements and the shortened time for meeting delivery deadlines.

103. Dominion International has suffered financial injury as a result of Smartmatic Netherland's conduct, including the loss of the opportunity of its sublicensee, Dominion Canada, to sell voting systems to the Commission for use in Puerto Rico's election.

104. Dominion International is entitled to obtain damages from Smartmatic Netherlands in an amount to be determined by the Court.

COUNT SEVEN

Defamation: Puerto Rico (Dominion Canada v. Smartmatic Netherlands)

105. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

106. In or about mid-2011, Dominion Canada entered into the competitive bidding process in Puerto Rico to secure a contract to provide Puerto Rico with voting machines.

107. In early May 2012, the Commission notified Dominion Canada that it was the preferred bidder for the 2012 election, and that the Commission would proceed to negotiate a contract with Dominion Canada at an overall price of [REDACTED].

108. Smartmatic Netherlands negligently and falsely represented to the Commission that Smartmatic Netherlands had the right to compete in Puerto Rico and to sell the same voting systems as Dominion Canada. Smartmatic Netherlands negligently and falsely represented to the Commission that Dominion Canada lacked financial ability to perform a contract in Puerto Rico and could not provide voting machines on a timely basis. Smartmatic Netherlands did not have an adequate basis for such representations and may have known them to be false. Upon information and belief, Smartmatic made these misrepresentations in an effort to undermine Dominion Canada's proposal to the Commission.

109. After receipt of the termination notice dated May 23, 2012, Smartmatic continued its efforts to prevent Dominion Canada from finalizing a contract with the Commission by making additional misrepresentations to the Commission about Dominion Canada and through litigation in Puerto Rico intended to disrupt Dominion Canada's negotiations with the Commission.

110. As a result of Smartmatic's misrepresentations, the Commission imposed strict new conditions on Dominion Canada in order for Dominion Canada to obtain the contract, including payment terms and performance bond terms. Smartmatic's interference and misrepresentations also delayed the overall contract negotiation process which left less time before the 2012 election and made it prohibitive for Dominion Canada to meet delivery deadlines that, but for such delays, would have been manageable.

111. As a result of Smartmatic's misrepresentations, Dominion Canada was unable to reach an agreement with the Commission because of the new financial requirements and the shortened time for meeting delivery deadlines.

112. Dominion International is entitled to obtain damages from Smartmatic Netherlands in an amount to be determined by the Court.

COUNT EIGHT

Breach of Contract: Philippines **(Dominion International v. Smartmatic International)**

113. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

114. Pursuant to the License Agreement and the initial SOW, Smartmatic International was required to pay Dominion International a license fee of [REDACTED] in three installments based on a single use license for the 2010 election in the Philippines.

115. Pursuant to the License Agreement and the initial SOW, in the event COMELEC exercised an option to purchase the PCOS voting machines, Smartmatic was required to pay Dominion International an additional license fee of [REDACTED] for each voting machine sold to COMELEC within five days of payment by COMELEC to Smartmatic International.

116. Smartmatic International failed to pay Dominion International both the third payment due for the lease to COMELEC of voting machines for the 2010 election and for the sale of 920 voting machines to COMELEC in September 2010 within the contractual timeframes and did so only after Dominion International declared a breach of the License Agreement.

117. Smartmatic International also failed to pay Dominion International within five days of COMELEC's payment for COMELEC's 2012 exercise of its option to purchase 81,000 voting machines from Smartmatic TIM and COMELEC's initial payments for these voting machines as required by the License Agreement and the initial SOW.

118. By failing to make payments due in 2010 to Dominion International in a timely manner and, with respect to COMELEC's payments to Smartmatic in 2012, by failing to make any payments at all to Dominion International, Smartmatic International has breached the License Agreement.

119. Dominion International is entitled to recover damages from Smartmatic International in an amount to be determined by the Court.

COUNT NINE

Injunctive Relief: Philippines **(Dominion International and Dominion Canada v. Smartmatic International and Smartmatic TIM)**

120. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

121. Despite the termination of the License Agreement and the initial SOW, Smartmatic International and Smartmatic TIM have continued to tell COMELEC that they will provide COMELEC with software and firmware upgrades based on Dominion Technology for approximately 82,000 voting machines for the 2013 election.

122. Neither Smartmatic International nor Smartmatic TIM is licensed to provide such upgrades to COMELEC.

123. Dominion International has suffered irreparable harm as a result of Smartmatic International's and Smartmatic TIM's breach of contract, including harm to its reputation if Smartmatic International and Smartmatic TIM continue to market upgraded Dominion voting systems without having the right to sell or upgrade their systems.

124. Dominion International and Dominion Canada are entitled to an injunction enjoining Smartmatic from marketing or selling any Dominion voting systems to any person or entity and enjoining the Defendants from marketing upgraded Dominion PCOS voting systems or Dominion Software to anyone, including COMELEC.

125. Dominion has no remedy at law.

COUNT TEN

Violation of Deceptive Trade Practices Act: Puerto Rico and Philippines (Dominion International and Dominion Canada v. Smartmatic International, Smartmatic Netherlands and Smartmatic TIM)

126. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

127. Smartmatic International, by itself or through its affiliates, Smartmatic Netherlands and Smartmatic TIM, violated the Delaware Uniform Deceptive Trade Practices Act, 6 *Del. C.* § 2531, *et seq.*, by their conduct in Puerto Rico and the Philippines.

128. Smartmatic, through Mr. Mugica, has told Dominion officials on numerous occasions that Smartmatic International would refuse to honor the terms of the License Agreement and that Smartmatic would put Dominion out of business.

129. Smartmatic International, in concert with Smartmatic Netherlands and Smartmatic TIM, has taken action in an effort to carry out Mr. Mugica's threat by deceiving election authorities as to Dominion's products and business condition and Smartmatic's rights with respect to Dominion's products.

130. Smartmatic International, by itself or through its affiliates, Smartmatic Netherlands and Smartmatic TIM, knowingly made statements to the Commission and COMELEC that were likely to cause confusion or misunderstanding as to Smartmatic's affiliation, connection, or association with, or certification by, Dominion, including that the Smartmatic defendants had the right to market and sell Dominion products, when they either had no such right in the first place, as in Puerto Rico, or the right ceased with the termination of the License Agreement.

131. Smartmatic International, by itself or through its affiliates, Smartmatic Netherlands and Smartmatic TIM, knowingly misrepresented to the Commission and COMELEC that Smartmatic's goods or services have the sponsorship or approval of Dominion.

132. Smartmatic International, by itself or through its affiliate, Smartmatic Netherlands, knowingly misrepresented to the Commission that for the 2012 election in Puerto Rico Smartmatic had the ability to provide the same Dominion voting system as Dominion Canada. Smartmatic International, by itself or through its affiliate, Smartmatic TIM, knowingly misrepresented to COMELEC that Smartmatic had the ability to provide upgrades to voting systems for the 2013 election in the Philippines.

133. Smartmatic International, by itself or through its affiliate, Smartmatic Netherlands, knowingly disparaged the goods, services and business of Dominion by making

false or misleading representations to the Commission that Dominion lacked financial ability to perform a contract in Puerto Rico and could not provide voting machines on timely basis.

134. Upon information and belief, and based on their past conduct detailed above, absent an injunction, Smartmatic International and its affiliates will continue to deceive election authorities by making statements that will cause confusion or misunderstanding as to Smartmatic's affiliation, connection, or association with, or certification by, Dominion, and misrepresenting that Smartmatic's goods or services have the sponsorship or approval of Dominion.

135. Upon information and belief, and based on their past conduct detailed above, absent an injunction, Smartmatic International and its affiliates will continue to deceive election authorities by misrepresenting that Smartmatic had the ability to provide the same Dominion voting system as Dominion.

136. Upon information and belief, and based on their past conduct detailed above, absent an injunction, Smartmatic International and its affiliates will continue to deceive election authorities by disparaging the goods, services, or business of Dominion.

137. Dominion International and Dominion Canada have suffered and will continue to suffer irreparable harm as a result of Smartmatic International's, Smartmatic Netherlands', and Smartmatic TIM's intentional misrepresentations.

138. Dominion International and Dominion Canada are entitled to an injunction enjoining Smartmatic International, Smartmatic Netherlands and Smartmatic TIM from continuing to deceive election authorities by misrepresenting that Smartmatic is affiliated, connected, associated with or licensed by Dominion, that Smartmatic's goods or services have the sponsorship or approval of Dominion, by misrepresenting that Smartmatic has the ability to

provide the same Dominion voting system as Dominion Canada, by representing that Smartmatic has the ability to provide software upgrades to Dominion voting systems, and by disparaging the goods, services, or business of Dominion.

139. Dominion International and Dominion Canada are entitled to treble damages relating to Smartmatic's prior tortious conduct.

140. Dominion International and Dominion Canada are entitled to reasonable attorneys' fees and costs.

COUNT ELEVEN

Civil Conspiracy: Puerto Rico and Philippines **(Dominion International and Dominion Canada v. Smartmatic International, Smartmatic Netherlands and Smartmatic TIM)**

141. Dominion restates and incorporates the allegations in the preceding paragraphs as though fully set forth herein.

142. Smartmatic International and/or Smartmatic Netherlands and/or Smartmatic TIM constituted a confederation or combination of two or more persons.

143. Smartmatic International, Smartmatic Netherlands and Smartmatic TIM conspired to make misrepresentations to election authorities in Puerto Rico and the Philippines including with respect to the status and applicability of the License Agreement, the rights of Smartmatic International, Smartmatic Netherlands and Smartmatic TIM to market and sell Dominion voting systems in Puerto Rico and the Philippines and the financial condition of Dominion Canada.

144. Smartmatic International and Smartmatic Netherlands also conspired to make similar misrepresentations in the Puerto Rican courts and Puerto Rican media.

145. The conspiracy among Smartmatic International, Smartmatic Netherlands and/or Smartmatic TIM caused actual damage to Dominion International and Dominion Canada,

including but not limited to loss of the opportunity on the part of Dominion Canada to provide voting systems to Puerto Rico, legal fees in defending against litigation in Puerto Rico and damage to the reputations of Dominion International and Dominion Canada.

146. Dominion International and Dominion Canada are entitled to recover damages from Smartmatic International, Smartmatic Netherlands and Smartmatic TIM in an amount to be determined by the Court.

WHEREFORE, Dominion International and Dominion Canada respectfully request that the Court:

- A. Enter judgment in their favor;
- B. Issue a declaratory judgment:
 - i. Declaring that Puerto Rico is part of the United States for purposes of the License Agreement;
 - ii. Declaring that Smartmatic International and Smartmatic Netherlands breached the License Agreement by marketing, or causing Smartmatic Netherlands to market, Dominion voting systems in Puerto Rico;
 - iii. Declaring that Dominion International's letter of May 23, 2012 served to terminate the License Agreement immediately because the breach could not be cured;
 - iv. Declaring that neither Smartmatic International, Smartmatic Netherlands, Smartmatic TIM nor any other Smartmatic entity has a license to make, have made, use, import, offer for sale, lease or sell Dominion technology or products anywhere in the world, including, but not limited to, in Puerto Rico and the Philippines;
 - v. Declaring that Smartmatic is required to return confidential information to Dominion International; and

vi. Declaring that Dominion International is entitled to return of all source code and other materials which it delivered to the Escrow Agent.

C. Award Dominion damages for Smartmatic's breach of contract

D. Award Dominion treble damages for Smartmatic's prior tortious conduct;

E. Issue an injunction enjoining the Defendants from making, having made, using, importing, offering for sale, leasing or selling Dominion technology or products to any person or entity anywhere in the world including but not limited to Puerto Rico and the Philippines, and enjoining the Defendants from making, having made, using, importing, offering for sale, leasing or selling upgraded Dominion PCOS voting systems or Dominion software to anyone, including, but not limited to, the Commission and COMELEC;

F. Issue an injunction enjoining Smartmatic from continuing to deceive election authorities by misrepresenting that Smartmatic's goods or services have the sponsorship or approval of Dominion, by misrepresenting that Smartmatic has the ability to provide the same Dominion voting system as Dominion Canada, and by disparaging the goods, services, or business of Dominion.

G. Award Dominion reasonable costs, fees and expenses, including attorneys' fees; and

H. Grant Dominion such further relief as the Court deems just and proper.

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