

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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PRESTIGE FLAG MFG. CO., INC.,  
a California corporation,

*Plaintiff,*

v.

Civil Action No.

GOLF SOLUTIONS I, LLC,  
a Wisconsin limited liability company  
doing business as Laser Link Golf,

*Defendant.*

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**PRESTIGE FLAG MFG. CO., INC.'S COMPLAINT FOR:  
(1) PATENT INFRINGEMENT;  
(2) UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a); AND  
(3) UNFAIR COMPETITION UNDER WISCONSIN COMMON LAW.**

**JURY TRIAL DEMANDED**

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Plaintiff Prestige Flag Mfg. Co., Inc. (“Prestige”) complains and alleges as follows against Defendant Golf Solutions I, L.L.C. (“Golf Solutions”).

**THE PARTIES**

1. Plaintiff is a California corporation, having a principal place of business at 591 Camino De La Reina # 917, San Diego, California 92108.

2. On information and belief, Golf Solutions is a Wisconsin limited liability company in the business of manufacturing and selling, among other things, laser rangefinders and flagstick reflectors for use in golf. On information and belief, Golf Solutions has manufactured and sold and/or currently manufactures and sells flagsticks

fitted with prism reflectors, as well as flagstick reflectors. On information and belief, Golf Solutions' managing member is a citizen of Wisconsin. On information and belief, Golf Solutions' business has been, and continues to be primarily conducted from its offices located in Wisconsin at 5315 Voges Road, Madison, Wisconsin, 53718, which is Golf Solutions' principal place of business. On information and belief, Golf Solutions previously had its principal place of business in Wisconsin at 4027 Owl Creek Drive, Madison, Wisconsin, 53718.

### **NATURE OF THE ACTION**

3. This is a civil action against Golf Solutions for infringement of United States Patent Number 7,215,412 ("the '412 Patent"), and United States Design Patent Numbers D564,405 ("the 'D405 Patent") and D546,243 ("the 'D243 Patent") (collectively, "the Asserted Patents") arising under the patent laws of the United States, Title 35 of the United States Code; for unfair competition in violation of the Lanham Act arising under 15 U.S.C. §§ 1125 et. seq.; and for unfair competition arising under the common law of the State of Wisconsin.

### **JURISDICTION AND VENUE**

4. This Court has original subject matter jurisdiction of this action under 15 U.S.C. § 1121(a) (federal question), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) and (b) (any Act of Congress relating to patents and trademarks and related unfair competition), and under the supplemental jurisdiction of this Court, as embodied in 28 U.S.C. § 1367(a).

5. This Court has specific and general personal jurisdiction over Golf Solutions based upon at least: (1) Golf Solutions' status as a domestic corporation at the time this action was commenced (Wis. Stat. 801.05(1)(c)); (2) Golf Solutions' engagement in substantial and not isolated activities within Wisconsin (Wis. Stat. 801.05(d)); (3) Golf Solutions' acts or omissions within Wisconsin that gave rise to Prestige's injuries complained of herein (Wis. Stat. 801.05(3)); and/or (4) acts or omissions outside of

Wisconsin that, at the time of Prestige's injuries, involved solicitation or service activities carried out in Wisconsin by or on behalf of Golf Solutions, and/or products, materials, or things processed, serviced, or manufactured by Golf Solutions that were used or consumed within Wisconsin within the ordinary course of trade (Wis. Stat. 801.05(4)).

6. Additionally, Golf Solutions has committed and continues to commit acts of infringement in violation of at least 35 U.S.C. §§ 271(a), (b), and (c), and place infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Wisconsin, including in this judicial district. Moreover, Golf Solutions' acts, including unfair competition, caused and are causing injury to Prestige within this judicial district. On information and belief, Golf Solutions has begun and will continue to derive substantial revenue from the sale of infringing products within this judicial district, expects its actions to have consequences within this judicial district, and derives substantial revenue from interstate and international commerce, including within this judicial district.

7. Venue is proper within this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b), at least because, on information and belief, Golf Solutions is a Wisconsin limited liability company; Golf Solutions' managing member is a citizen of Wisconsin; and/or Golf Solutions' business, including making, having made, selling, offering for sale, and/or importing infringing products, has been, and continues to be primarily conducted from its offices located in Wisconsin at 5315 Voges Road, Madison, Wisconsin, 53718, which upon information and belief is Golf Solutions' principal place of business and is a regular and established place of business within this district. On information and belief, Golf Solutions has maintained its office at this location since at least December of 2014. On information and belief, prior to December 2014, Golf Solutions maintained its offices and principal place of business in Wisconsin at 4027 Owl Creek Drive, Madison, Wisconsin, 53718, which was also a regular and established place of business within this district.

8. Additionally, venue is proper within this judicial district because a substantial portion of the events giving rise to the claims for relief stated in this Complaint arose in this judicial district. By way of specific example, Golf Solutions has made, had made, imported, sold or offered for sale infringing products in or from this district, and has committed other acts complained of infra within this district. In addition, Prestige suffered and is suffering harm in this district as a result of Golf Solutions' conduct complained of herein.

### **BACKGROUND FACTS**

9. Plaintiff Prestige is a San Diego-based company that designs and manufactures flags, banners, golf course flags, flagsticks, and golf course accessories, including a line of reflection rangefinder products for gauging distance. Customers use Prestige's high quality products in many places throughout the world, including the United States, Canada, Mexico, Europe, and Asia.

10. On October 25, 2013, Prestige duly acquired a golf stick and reflector business from Golf Solutions I, L.L.C. d/b/a Laser Link Golf ("the Laser Link Business") pursuant to an asset purchase agreement between the two companies and in exchange for substantial consideration. Further, pursuant to this asset purchase agreement, Prestige acquired the intellectual property, goodwill, and physical assets related to the Laser Link Business.

11. The acquired Laser Link Business includes reflection products such as flagstick reflectors, sold under the name Smarty (flagstick screw-on reflectors). The Smarty 5 Reflector screws into the top of a golf flagstick, and contains five prisms that reflect laser light. Coupled with a rangefinder, a device that sends laser light toward the flagstick and receives laser light reflected back from reflectors in the Smarty 5 Reflector atop the flagstick, the Smarty 5 Reflector enables a golfer to accurately determine the distance between the golfer and the flagstick.

12. In connection with its acquisition of the Laser Link Business and the associated intellectual property and goodwill, Prestige acquired and owns all right, title, and interest in the asserted design patents: (1) the '412 Patent, titled "Flagpole Reflectors for Laser Range Finders," a copy of which is attached as **Exhibit A** (2) the 'D405 Patent, titled "Flagpole Reflector," a copy of which is attached as **Exhibit B**; and (3) the 'D243 Patent, titled "Flag Stick Reflector," a copy of which is attached as **Exhibit C**. The functionality and designs claimed in the Asserted Patents are embodied in Prestige's Smarty 5 Reflector and/or in Prestige's products.

13. Since acquiring the Laser Link Business, Prestige has continuously offered for sale its Smarty products in interstate commerce, and has vigorously protected its intellectual property, including the innovative functionality and distinctive designs of Prestige's Smarty that are protected through the above-mentioned patents issued by the United States Patent and Trademark Office and duly assigned to Prestige. Prestige's patents cover the functional and distinctive ornamental features of the Smarty 5 Reflector products, including, for example, their overall utility, appearance, shape, and the location and distribution of prisms throughout the device. Prestige is informed and believes that customers in the marketplace have come to associate these distinctive features and overall appearance with Prestige's high quality products, including its Smarty products.

14. On November 20, 2014, Prestige filed a complaint against Golf Solutions and Robert F. O'Loughlin alleging Breach of Contract in connection with Prestige's acquisition of the Laser Link Business. On December 12, 2014, Prestige filed an amended complaint further alleging Negligent Misrepresentation and Fraudulent Misrepresentation in addition to Breach of Contract on the part of Golf Solutions and Robert F. O'Loughlin. On May 6, 2015, Prestige and Golf Solutions and Robert F. O'Loughlin came to a settlement agreement in which Prestige agreed to release Golf Solutions and Robert F. O'Loughlin from the noncompetition agreement set forth in the asset purchase agreement as of October 26, 2017. However, the settlement agreement also set forth that the

assignment of patents (including the Asserted Patents) and trademarks (Smarty) remain intact.

15. On information and belief, Golf Solutions is a worldwide provider of a number of golf course accessories. On information and belief, Golf Solutions' products are on sale and in use throughout the United States, including in the State of California. As of at least November 2017, Golf Solutions has begun offering for sale, a flagstick reflector product named the "BEACON" on its website. A copy of the relevant portions of Golf Solutions website is attached as **Exhibit D**.

16. On information and belief, Golf Solutions' BEACON reflector is described in its advertising as a prism flagstick reflector that uses a five-prism design that is used with laser rangefinders to measure distance. Specifically, Golf Solutions' BEACON reflector embodies the functionality of the flagpole reflectors disclosed and claimed in the '412 Patent. Indeed, Golf Solutions is the original assignee of the '412 Patent.

17. Claim 14 of the '412 Patent is exemplary and reads as follows:

A device for reflecting laser light back to a laser range finder, the device comprising:

a first lateral surface having a first exterior peripheral edge;

a second lateral surface having a second exterior peripheral edge;

a rod surface extending from the first exterior peripheral edge to the second exterior peripheral edge;

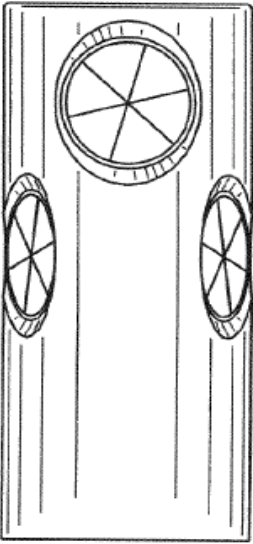
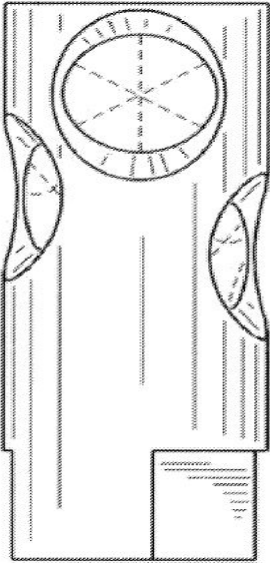

a plurality of sockets, the plurality of sockets formed in the rod surface and arranged in a plurality of rows, wherein two or more sockets are arranged in at least one row of the plurality of rows; and

a light reflector mounted in each of the plurality of sockets, whereby a portion of laser light directed at the device from a laser is reflected back to the laser by at least one light reflector.

18. On information and belief, the resemblance between Golf Solutions' BEACON reflector and the Smarty 5 Reflector (and the designs claimed in the Asserted

Patents) is such as to deceive an ordinary observer, giving such attention as a purchaser usually gives, including inducing the purchaser to purchase one supposing it to be the other. Golf Solutions' BEACON reflector has an overall appearance that is substantially the same, in view of the prior art and in the eyes of an ordinary observer, as the Smarty 5 Reflector (and the designs claimed in the Asserted Patents), as demonstrated by the side-by-side comparison below (Table 1).

**Table 1**

<b>Figure 8 'D243</b>	<b>Figure 4 'D405</b>	<b>BEACON</b>
		

19. However, since assigning the Asserted Patents to Prestige, Prestige has not authorized Golf Solutions to practice the product claimed in the Asserted Patents. Nor has Prestige authorized Golf Solutions to offer products confusingly similar to Prestige's Smarty products. Similarly, Prestige has never authorized Golf Solutions to use Prestige's duly held goodwill and intellectual property associated with the Laser Link Business, including the distinctive trade dress customers have come to recognize when seeking the Smarty Reflector.

20. On information and belief, Golf Solutions has used, imported into, sold, or offered for sale in the United States its BEACON reflector, which infringes the Asserted Patents. Golf Solutions has not obtained permission from Prestige to use, sell, offer, or import Prestige's product or designs claimed in the Asserted Patents. Golf Solutions had many options in developing its BEACON reflector. Nevertheless, Golf Solutions chose to willingly infringe Prestige's product and designs claimed in the Asserted Patents by making, using, selling or offering for sale, and/or importing its BEACON reflector during the terms of Prestige's Asserted Patents, knowing full well that its BEACON product is covered by the Asserted Patents.

### **FIRST CAUSE OF ACTION**

#### **Infringement of Design Patent 'D405**

21. Prestige incorporates and realleges Paragraphs 1 through 21 of this Complaint.

22. Under 35 U.S.C. § 271(a), Golf Solutions has infringed and continues to infringe, literally or under the doctrine of equivalents, the 'D405 Patent by making, using, selling, and/or offering to sell in the United States, and/or importing into the United States the BEACON product identified in this Complaint, which BEACON embodies the design covered by the 'D405 Patent.

23. Moreover, Golf Solutions has infringed and continues to infringe the 'D405 Patent indirectly, under 35 U.S.C. §§ 271(b) and (c), by inducing others to infringe the 'D405 Patent, and by committing acts that constitute contributory infringement of the 'D405 Patent.

24. On information and belief, Golf Solutions has gained profits and will continue to gain profits following its release from the noncompetition clause by virtue of its infringement of the 'D405 Patent.



25. On information and belief, Prestige has sustained damages and will continue to sustain damages as a direct and proximate result of Golf Solutions' infringement of the 'D405 Patent following Golf Solutions' release from the noncompetition clause, and, as such, Prestige is entitled to damages pursuant to 35 U.S.C. §§ 284 and/or 289.

26. Moreover, Prestige is informed and believes that Golf Solutions' infringement of the 'D405 Patent is and has been willful. On information and belief, Golf Solutions has acted and continues to act with objective recklessness by proceeding despite an objectively high likelihood that its actions constitute infringement of Prestige's valid patents, and Golf Solutions is aware of Prestige's patents, including the 'D405 Patent, and knows of the high likelihood that they cover Golf Solutions' products. Indeed, Golf Solutions assigned the Asserted Patents to Prestige as part of the aforementioned asset purchase agreement.

27. This is an exceptional case warranting an award of treble damages to Prestige under 35 U.S.C. § 284, and an award of attorneys' fees under 35 U.S.C. § 285.

28. On information and belief, Prestige will suffer and is suffering irreparable harm from Golf Solutions' infringement of the 'D405 Patent. Prestige has no adequate remedy at law and is, under 35 U.S.C. § 283, entitled to an injunction against Golf Solutions' continuing infringement of the 'D405 Patent. Unless enjoined, Golf Solutions will continue its infringing conduct.

## **SECOND CAUSE OF ACTION**

### **Infringement of Design Patent 'D243**

29. Prestige incorporates and realleges Paragraphs 1 through 29 of this Complaint.

30. Under 35 U.S.C. § 271(a), Golf Solutions has infringed and continues to infringe, literally or under the doctrine of equivalents, the 'D243 Patent by

making, using, selling, and/or offering to sell in the United States, and/or importing into the United States the BEACON product identified in this Complaint, which BEACON product embodies the design covered by the 'D243 Patent.

31. Moreover, Golf Solutions has infringed and continues to infringe the 'D243 Patent indirectly, under 35 U.S.C. §§ 271(b) and (c), by inducing others to infringe the 'D243 Patent, and by committing acts that constitute contributory infringement of the 'D243 Patent.

32. On information and belief, Golf Solutions has gained profits and will continue to gain profits following its release from the noncompetition clause by virtue of its infringement of the 'D243 Patent.

33. On information and belief, Prestige has sustained damages and will continue to sustain damages as a direct and proximate result of Golf Solutions' infringement of the 'D243 Patent following Golf Solutions' release from the noncompetition clause, and, as such, Prestige is entitled to damages pursuant to 35 U.S.C. §§ 284 and/or 289.

34. Moreover, Prestige is informed and believes that Golf Solutions' infringement of the 'D243 Patent is and has been willful. On information and belief, Golf Solutions has acted and continues to act with objective recklessness by proceeding despite an objectively high likelihood that its actions constitute infringement of Prestige's valid patents, and Golf Solutions is aware of these patents, including the 'D243 Patent, and know of the high likelihood that they cover Golf Solutions' products. Again, Golf Solution assigned the Asserted Patents to Prestige as part of the aforementioned asset purchase agreement.

35. This is an exceptional case warranting an award of treble damages to Prestige under 35 U.S.C. § 284, and an award of attorneys' fees under 35 U.S.C. § 285.

36. On information and belief, Prestige will suffer and is suffering irreparable harm from Golf Solutions' infringement of the 'D243 Patent. Prestige has no adequate remedy at law and is, under 35 U.S.C. § 283, entitled to an injunction against Golf Solutions' continuing infringement of the 'D243 Patent. Unless enjoined, Golf Solutions will continue its infringing conduct.

### **THIRD CAUSE OF ACTION**

#### **Infringement of the '412 Patent**

37. Prestige incorporates and realleges Paragraphs 1 through 37 of this Complaint.

38. Under 35 U.S.C. § 271(a), Golf Solutions has infringed and continues to infringe, literally or under the doctrine of equivalents, the '412 Patent by without authority making, using, offering to sell or selling within the United States, or importing into the United States, during the term of the '412 Patent the flagpole reflector products identified in this Complaint, which are covered by the claims of the '412 Patent.

39. Under 35 U.S.C. § 271(b), Golf Solutions has actively induced, and is actively inducing, infringement of the '412 Patent by promoting, offering and selling the BEACON reflector that Golf Solutions knows, when used, will infringe the '412 Patent.

40. Under 35 U.S.C. § 271(c), Golf Solutions has contributed to, and is contributing to, infringement of the '412 Patent by offering to sell or selling within the United States, or importing into the United States, the BEACON products constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of the '412 Patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

## **FOURTH CAUSE OF ACTION**

### **Unfair Competition Under 15 U.S.C. § 1125(a)**

41. Prestige incorporates and realleges Paragraphs 1 through 41 of this Complaint.

42. The acts of Golf Solutions complained of above are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association as to the origin, sponsorship, or approval of Golf Solutions' and Prestige's goods. Moreover, the acts of Golf Solutions complained of above misrepresent the nature, characteristics, or qualities of Golf Solutions' and Prestige's goods. These acts thus constitute false designation of origin and/or affiliation, false or misleading description of fact, or false or misleading representation of fact, in violation of 15 U.S.C. §1125(a).

43. Prestige is informed and believes that Golf Solutions' acts include, for example, offering Golf Solutions' BEACON reflector for sale and piggybacking off Prestige's goodwill, by copying the distinctive features, designs and appearances of Prestige's Smarty products, all of which were assigned to and purchased by Prestige via the asset purchase agreement, which remains intact.

44. Prestige has suffered and will continue to damages from Golf Solutions' conduct in an amount to be proven at trial.

45. Golf Solutions has received and will continue to receive wrongful gains from its conduct in an amount to be proven at trial.

46. Prestige is informed and believes, and thereon alleges that, unless restrained by the Court, Golf Solutions will continue to designate falsely the origin of its goods, causing irreparable damage to Prestige and engendering a multiplicity of lawsuits. Pecuniary compensation will not afford Prestige adequate relief for its resulting damages. Further, Prestige is informed and believes, and thereon alleges, that in the absence of injunctive relief, customers are likely to continue being

mistaken or deceived as to the true source, origin, sponsorship, and affiliation of Golf Solutions' goods.

## **FIFTH CAUSE OF ACTION**

### **Unfair Competition Under Wisconsin Common Law**

47. Prestige incorporates and realleges Paragraphs 1 through 47 of this Complaint.

48. The acts of Golf Solutions complained of above constitute unfair competition under the common law of the State of Wisconsin. Prestige expended significant amounts of money (\$2,500,000.00), time, labor, and resources in the goodwill associated with its Smarty products. On information and belief, Golf Solutions copied those products, including the distinctive features, designs, and appearances of Prestige's Smarty products, all of which were assigned to and purchased by Prestige via the asset purchase agreement, which remains intact, and is trading off that goodwill at relatively little to no engineering or design expense and without Prestige's authorization.

49. Golf Solutions has used and is using its misappropriation of Prestige's goodwill and that of its products to unfairly compete with Prestige for customers and sales of the parties' competing golf products. By trading on Prestige's goodwill, Golf Solutions has obtained an ability to sell its products in the marketplace in competition with Prestige that Golf Solutions would not otherwise have. Prestige has suffered commercial damages and other harm as a result of Golf Solutions' misappropriation—including, for example, lost sales and customer confusion.

50. Prestige is informed and believes that further examples of Golf Solutions' acts of unfair competition include sales of confusingly similar Golf Solutions products.

51. Golf Solutions' misappropriation of Prestige's goodwill invades the property rights of Prestige, which have commercial value.

52. Golf Solutions' misappropriation of Prestige's goodwill constitutes an unfair invasion or infringement and is a form of commercial immorality.

53. Golf Solutions' intentional actions are unlawful, fraudulent, and have led to the material diminution in value of Prestige's intellectual property involved in Golf Solutions' infringement.

54. Golf Solutions' unfair competition with Prestige was, and is, done willfully, maliciously, and/or in an intentional disregard of Prestige's rights.

55. Prestige has suffered actual damages, including but not limited to commercial damages, from Golf Solutions' conduct in an amount to be proven at trial.

56. Golf Solutions has received and will continue to receive wrongful gains from its conduct in an amount to be proven at trial.

57. Golf Solutions' acts complained of above were committed with fraud, malice, and/or oppression. Upon information and belief, Golf Solutions' actions were intended to cause harm to Prestige, and constitute assertions, representations or statements of fact that are untrue, deceptive, and/or misleading. Golf Solutions carried on its conduct with a willful and conscious disregard for Prestige's rights. These acts are also actionable under Federal statutes, including but not limited to 15 U.S.C. § 1125(a).

### **DEMAND FOR JURY TRIAL**

Prestige requests a trial by jury on all issues so triable in this action.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Prestige prays:

- A. For a judgment that Golf Solutions has infringed one or more claims of Prestige's Asserted Patents;
- B. For an order and judgment preliminarily and permanently enjoining Golf Solutions and its officers, directors, agents, servants, employees,

affiliates, attorneys, and all others acting in privity, active concert, or participation with any of them, and its parents, subsidiaries, divisions, successors and assigns, who receive actual notice of the judgment by personal service or otherwise, from further acts of infringement of Prestige's Asserted Patents and further acts of unfair competition;

- C. That Golf Solutions be directed to file with this court, within thirty days after entry of any injunction in this case, a written statement, under oath, setting forth in detail the manner in which Golf Solutions have complied with the injunction;
- D. For a judgment awarding Prestige all damages, in an as yet undetermined amount, adequate to compensate for Golf Solutions' infringement of Prestige's Asserted Patents, and in no event less than a reasonable royalty for Golf Solutions' acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
- E. For a judgment awarding Prestige all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;
- F. For a judgment that Golf Solutions and its officers, agents, distributors, employees, attorneys, subsidiaries, assigns, or related companies, and those in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, be permanently enjoined from using, offering for sale, or employing, directly or indirectly, any device, product, or the like, that is confusingly similar to, or is likely to confuse or deceive as to the affiliation, connection, sponsorship, or association of, the Reflection

Products or commercial activities of Golf Solutions with Plaintiff or the Reflection Products, or with Plaintiff's commercial activities;

- G. That an accounting be directed to determine Golf Solutions' profits resulting from its false designation of origin and affiliation and unfair competition, which are the subject of this suit, and that such profits be increased under 15 U.S.C. §1117;
- H. That Prestige recover its damages, in an as yet undetermined amount, resulting from the above-alleged false designation of origin and unfair competition of Golf Solutions;
- I. That Prestige be awarded punitive damages in an amount to be determined;
- J. For costs of suit and reasonable attorneys' fees; and
- K. For any other remedy to which Prestige may be entitled under the law, and any other further relief as the Court may deem appropriate.



Dated: February 13, 2018

Respectfully submitted,

**SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP**

By: */s/ Bradley C. Graveline*

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