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6 **EIGHTH JUDICIAL DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 DIMENSION, INC., a Nevada Corporation,
9 and DIGITAL FOCUS MEDIA INC., a
10 dissolved California Corporation,

11 Plaintiffs,
v.

12 TMM, INC., a Nevada Corporation, DIGITAL
13 FOCUS, INC., a California Corporation,
THOMAS B. SIMPSON, an individual;
14 ROBIN L. HASKINS, an individual,
MICHAEL W. FERNANDEZ, an individual;
15 ALAN D. SLOAN, an individual; GERARD V.
CAVANAUGH, an individual; MICHAEL K.
16 KOZOLE, an individual; STANLEY FORD, an
individual; PAUL B. HEALY, an individual;
and DOES 1-10,

17 Defendants.
18

Case No.: A-19-798443-C

Department: 26

FIRST AMENDED COMPLAINT

Jury Trial Demanded

19 Plaintiffs DIMENSION, INC. (“Dimension”) and DIGITAL FOCUS MEDIA, INC.
20 (“DFMI”) bring the following First Amended Complaint against Defendants TMM, INC.
21 (“TMMI”), DIGITAL FOCUS, INC. (“DFI”), THOMAS B. SIMPSON (“Simpson”), ROBIN L.
22 HASKINS (“Haskins”), MICHAEL W. FERNANDEZ (“Fernandez”), ALAN D. SLOAN
23 (“Sloan”), GERARD V. CAVANAUGH (“Cavanaugh”), MICHAEL K. KOZOLE (“Kozole”),
24 STANLEY FORD (“Ford”), PAUL B. HEALY (“Healy”), and DOES 1-10, and allege as follows:

25 **JURY TRIAL DEMAND**

26 1. Plaintiffs Dimension and DFMI hereby demand a jury trial of all issues so triable
27 in this case.

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1 **JURISDICTIONAL ALLEGATIONS**

2 2. The District Courts of Nevada have subject matter jurisdiction over this matter
3 because this action concerns issues of Nevada law and Nevada corporations.

4 3. As set forth more particularly in the description of the Parties herein, the District
5 Courts of Nevada have personal jurisdiction over the Defendants because Defendants reside in or
6 are incorporated in Nevada, have engaged in activities in Nevada that are substantial, continuous
7 and systematic, and/or the claims alleged herein arise from the Defendants' activities in Nevada
8 by which Defendants have purposefully availed themselves of the privilege of conducting
9 activities in Nevada, such that the exercise of jurisdiction over Defendants is reasonable.

10 **PARTIES**

11 4. Plaintiff Dimension is a Nevada corporation.

12 5. Plaintiff DFMI is a dissolved California corporation and the predecessor-in-
13 interest to Plaintiff Dimension.

14 6. Defendant TMMI is a Nevada corporation.

15 7. Defendant DFI was a California corporation, but was acquired by TMMI in June
16 2012 and is now a wholly owned subsidiary of TMMI.

17 8. Defendant Simpson, upon information and belief, is a resident of California, was
18 the President of DFI from 1998 to 2012, was the Chief Technology Officer and Director of
19 Operations of TMMI in the 1990s, and is a significant shareholder of TMMI. Simpson was also
20 the President of DFMI from May 2000 until approximately October 2000, when he was removed
21 after DFMI shareholders filed suit against him for mismanagement of the company. Simpson
22 remained an officer of the company thereafter, but Joseph Stratter was acting president. Upon
23 information and belief, Simpson ordered, is responsible for, and/or actively participated in the
24 wrongful actions described below committed by DFI during his tenure.

25 9. Defendant Haskins, upon information and belief, is a resident of California, was
26 CEO and Chairman of the Board of DFI from 1998 to 2012, and a major shareholder of TMMI.
27 Upon information and belief, Haskins ordered, is responsible for, and/or actively participated in
28 the wrongful actions described below committed by DFI during his tenure.

1 10. Defendant Fernandez, upon information and belief, is a resident of California and
2 served as Acting President of TMMI from October 1995 to October 2011, and is currently a
3 business consultant and independent contractor of TMMI as well as a major shareholder of TMMI.
4 Upon information and belief, Fernandez ordered, is responsible for, and/or actively participated
5 in the wrongful actions described below committed by TMMI during his tenure.

6 11. Defendant Sloan is, upon information and belief, a resident of Georgia. Upon
7 information and belief, Sloan is a major shareholder of TMMI and is on the advisory board for
8 TMMI, and ordered, is responsible for, and/or actively participated in the wrongful actions
9 described below committed by TMMI during his employment with TMMI.

10 12. Defendant Cavanaugh was a Director, CEO and Chairman of TMMI and, upon
11 information and belief, ordered, is responsible for, and/or actively participated in the wrongful
12 actions described below committed by TMMI during his tenure.

13 13. Defendant Kozole is, upon information and belief, a Director of TMMI and, upon
14 information and belief, ordered, is responsible for, and/or actively participated in the wrongful
15 actions described below committed by TMMI during his tenure.

16 14. Defendant Ford is, upon information and belief, a Director of TMMI and ordered,
17 is responsible for, and/or actively participated in the wrongful actions described below committed
18 by TMMI during his tenure.

19 15. Defendant Healy is, upon information and belief, the Chief Executive Officer,
20 President, and Director of TMMI and, upon information and belief, ordered, is responsible for,
21 and/or actively participated in the wrongful actions described below committed by TMMI during
22 his tenure.

23 16. Defendants Does 1-10, upon information and belief, are directors or officers of
24 TMMI who are responsible for, and/or actively participated in the wrongful actions described
25 below committed by TMMI during their tenure. Plaintiffs will ask leave of Court to amend the
26 Counterclaims to insert the true names and capacities of DOES when that information has been
27 ascertained.

28 17. This Court has personal jurisdiction over each of the Defendants.

1 18. This Court has personal jurisdiction over Defendant TMMI because TMMI is a
2 Nevada corporation, and TMMI chose to bring suit in Nevada by which actions avail itself of the
3 privilege of doing business in Nevada, by which actions the claims alleged herein arise.

4 19. This Court has personal jurisdiction over Defendant DFI because DFI is a wholly
5 owned subsidiary of TMMI, and DFI chose to bring suit in Nevada and avail itself of the privilege
6 of doing business in Nevada by which action the claims alleged herein arise.

7 20. Simpson is subject to personal jurisdiction in Nevada because, upon information
8 and belief, he is a major shareholder of TMMI, a Nevada corporation, and has worked closely
9 with officers and directors of TMMI on business in Nevada. Thus, he has continuous and
10 systematic contacts with Nevada, specific contacts with Nevada and Nevada corporations, and
11 has directed intentional acts at Nevada residents, including Plaintiffs, in Nevada, giving rise to
12 the claims alleged herein.

13 21. Haskins is subject to personal jurisdiction in Nevada because, upon information
14 and belief, he is a shareholder of TMM, a Nevada corporation, and has worked closely with
15 officers and directors of TMMI on business in Nevada. Thus, he has continuous and systematic
16 contacts with Nevada, specific contacts with Nevada and Nevada corporations, and has directed
17 intentional acts at Nevada residents, including Plaintiffs, in Nevada, giving rise to the claims
18 alleged herein.

19 22. Cavanaugh is subject to personal jurisdiction in Nevada because, upon information
20 and belief, he was the CEO, Director and Chairman of TMMI, a Nevada corporation, does
21 business in Nevada, has continuous and systematic contacts with Nevada, has specific contacts
22 with Nevada and Nevada corporations, and has directed intentional acts at Nevada residents,
23 including Plaintiffs, giving rise to the claims alleged herein.

24 23. Kozole is subject to personal jurisdiction in Nevada because, on information and
25 belief, he is a Director of TMMI, a Nevada corporation, does business in Nevada, has continuous
26 and systematic contacts with Nevada, has specific contacts with Nevada and Nevada corporations,
27 and has directed intentional acts at Nevada residents, including Plaintiffs, giving rise to the claims
28 alleged herein.

1 Plaintiffs' perpetual, fully-paid, exclusive world-wide license to certain software code known as
2 the PVS/SGI Source Code ("Exclusive License" or "License") that Defendants had conveyed to
3 Plaintiffs approximately 13 years earlier in exchange for \$500,000.

4 30. Defendants further brought and perpetuated the 2013 Lawsuit in bad faith for the
5 ulterior purpose of discovering Dimension's trade secrets and patented technology, driving
6 Dimension out of business, coercing Dimension into settlement due to prolonged litigation costs,
7 and/or deterring third parties from investing in Dimension and its technology.

8 31. Defendants lost the bench trial of the 2013 Lawsuit which took place from
9 November 16-18, 2016.

10 32. On November 22, 2016, the District Court in the 2013 lawsuit issued its Findings
11 of Fact, Conclusions of Law and Judgment ("Judgment") against Defendants TMMI and DFI and
12 in favor of Plaintiffs, declaring Dimension the sole and exclusive holder of the License and
13 holding that Defendants were equitably estopped from denying they had properly assigned the
14 License to Plaintiffs some thirteen years earlier for valuable consideration.

15 33. The Judgment also awarded Dimension \$54,139.56 in costs plus accrued interest.

16 34. On January 11, 2017, Defendants TMMI and DFI appealed the Judgment in the
17 2013 Lawsuit against them to the Nevada Supreme Court, Supreme Court Case No. 72779.

18 35. On December 27, 2018, the Nevada Supreme Court affirmed the Judgment of the
19 District Court against Defendants, finding that Defendants were estopped from denying the
20 assignment of the License to Plaintiffs, because "when a party acts in bad faith, he or she can be
21 stopped from later claiming legal protection under the principles of equity and fairness".

22 36. On January 23, 2019, the Nevada Supreme Court issued a Remittitur of the matter
23 back to the District Court.

24 37. To date, Defendants intentionally and willfully have refused to comply with the
25 Judgment of the District Court ordering TMMI to pay \$54,139.56 plus accrued interest to
26 Dimension.

27 38. As a result of Defendants wrongful prosecution and continuation of the 2013
28 Lawsuit and subsequent appeal for the improper and ulterior purpose of abusing the legal process

1 to: (i) defraud Plaintiffs of the Exclusive License Plaintiffs had paid Defendants \$500,000 for
2 some thirteen years earlier, (ii) coerce or compel a settlement detrimental to Plaintiffs, (iii)
3 discover Dimension's trade secrets, (iv) interfere with Dimension's business, and/or (v) put
4 Dimension out of business, Dimension has been harmed in an amount in excess of \$15,000.

5 **B. Plaintiff's Investors Put Up \$500,000 to Purchase the Exclusive License on the**
6 **Condition They Would Own the Company Holding It.**

7 39. Iterated Systems, Inc. ("ISI") originally created the PVS/SGI Source Code. In
8 early March of 2000, Simpson learned that ISI would sell an Exclusive License in the Code for
9 \$500,000. At the time, Simpson held approximately \$1.2 million in proceeds from his sale of
10 stock on behalf of certain investors that later became the investors in Plaintiff DFMI ("Investors").

11 40. At a March 20, 2000, meeting held in the home of Dr. Larry Panik, one of the
12 Plaintiff's Investors, Simpson informed the Plaintiff's Investors of the opportunity to purchase
13 the Exclusive License and offered to have Simpson's company, DFI, enter into a license
14 agreement ("Agreement") with ISI to secure the Exclusive License immediately.

15 41. Plaintiff's Investors agreed to let Simpson use their money to purchase the
16 Exclusive License on their behalf with the express understanding that they would own stock in
17 the company holding the Exclusive License commensurate with their investment.

18 42. However, DFI, as a subchapter "S" company, having already issued all or nearly
19 all of its outstanding shares, did not have and could not issue sufficient shares to "house" the
20 Investors. Recognizing this issue, Simpson offered to have DFI temporarily hold the License on
21 behalf of the Investors and then assign it to a suitable company that could properly issue shares
22 to the Investors once one was identified or formed.

23 43. The Investors agreed and authorized DFI to enter into the License with ISI. Thus,
24 the express understanding of the parties was that the License to the Code would ultimately be held
25 by whatever company was owned by the Investors whose funds paid for it.

26 44. To evidence each Investor's shares, Simpson had DFI temporarily issue DFI stock
27 certificates to the Investors as a "place saver" of their respective interests in the License ("place
28 saver certificates") even though DFI could not lawfully issue such certificates. Simpson

1 represented that the “place saver certificates” would later be replaced with real stock in the
2 company that could hold the License on behalf of the Investors.

3 45. On March 28, 2000, DFI entered into the Agreement with ISI for the License –
4 executed by Simpson on behalf of DFI and Defendant Alan Sloan on behalf of ISI.

5 **C. In May 2000, DFMI Was Created to Replace DFI as the Licensee of the Code, the**
6 **DFI Place Saver Certificates Were Cancelled and the Investors Were Issued DFMI**
7 **Stock.**

8 46. Under the terms of the Agreement, ISI was to receive five million shares of DFI
9 non-dilutable stock, which DFI was required to warrant represented five percent of DFI’s stock,
10 but as a subchapter “S” corporation, DFI not only lacked the available authorized shares, it could
11 not issue shares to an entity such as ISI.

12 47. To remedy this problem, in May of 2000, Simpson formed DFMI, a “C”
13 corporation, which he represented to the Investors would be the “vehicle for the License
14 Agreement.”

15 48. Then, as president of both DFMI and DFI, Simpson instructed the Investors to turn
16 in their DFI “place saver certificates” for DFMI stock and stated the License would be assigned
17 to DFMI.

18 49. In reliance on these representations, Simpson testified that “100 percent” of the
19 Investors accepted DFMI shares in the place of their DFI “place saver certificates”.

20 **D. In September 2000, Simpson Signed the Assignment and Second Addendum to the**
21 **Agreement and Affirmed He Had Completed All Required Documentation to Assign**
22 **the License to DFMI.**

23 50. On September 20, 2000, while Simpson was simultaneously president of both DFI
24 and DFMI, he executed the “Assignment and Second Addendum” to the Agreement
25 (“Assignment”), representing “*DFI has assigned the Agreement to DFMI* as part of a merger¹
26 in which DFMI acquired all the assets of DFI.”

27 ¹ Simpson repeatedly informed the Investors and even testified at trial that “DFI was no more” and that after the
28 assignment, DFI “ceased to exist,” that DFMI simply took over for DFI, that DFI became DFMI by merely “re-adding
the M”, etc.

1 51. As president of DFI and DFMI, Simpson also assured the shareholders that he and
2 Robin Haskins, CEO of DFI, had completed the documentation required to perfect such an
3 assignment:

- 4 • “*Paper work transferring the Codec’s contract from DFI to DFMI is*
5 *available for review in the DFMI and DFI due diligence books.*”²
- 6 • “I contacted Robin Haskins [CEO and Chairman of DFI] . . . and *asked*
7 *him to please send me a letter explaining that the Codec that was*
8 *purchased in the name of DFI was in fact the property of DFMI. He*
9 *was happy to do that and I received his letter shortly after that.* I also
10 informed ISI, who had no problems also, and made note of this with *an*
11 *addendum to the contract.*”³
- 12 • Haskins confirmed DFMI’s ownership, writing: “I have also informed
13 the DFI shareholders that all Iterated source code will be delivered to
14 DFMI and *DFI warrants that it has no claims on said code. This code*
15 *was paid for and belongs to DFMI and will be held by DFMI.*”⁴

16 52. Simpson testified in the 2013 Lawsuit that DFI made these representations to the
17 shareholders to “reassure them of what they owned” since they paid for the License.

18 **E. Between June 2000 and June 2001, Simpson Repeatedly Assured Shareholders in**
19 **Writing and Press Releases That Plaintiff DFMI Owned the License.**

20 53. As admitted by Defendants in the 2013 Lawsuit, Simpson authored “Shareholder
21 Letters” stating that the License had been transferred to DFMI and the Code was being or had
22 been transferred as well:

- 23 • “*since DFMI is the owner of this technology*, it can pursue the
24 licensing of this capability to various service providers around the
25 world.”⁵
- 26 • “We have spoken to Iterated Systems about the transfer of the source
27 code and they support the move in amendment and state that the
28 original contract allows for this. *All the source code is at DFMI.*”⁶

29 ² November 2000 Email to Shareholder Hoyt. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and
30 that DFI was aware of it.

31 ³ Apr. 25, 2001 Shareholder Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and that DFI was
32 aware of it.

33 ⁴ March 20, 2000 Haskins Letter. DFI admitted in the 2013 Lawsuit that Haskins wrote this letter.

34 ⁵ June 2000 DFMI Shareholder Welcome Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and
35 that DFI was aware of it.

36 ⁶ September 11, 2000 Shareholder Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and that

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- “There is a great deal of work ahead of us to complete the task of making *your CODEC* the only choice for producers.”⁷
- “*The code that DFMI has reengineered from the fractal source code is DFMI’s and DFMI’s only . . . TMM has no rights implied or otherwise to use or view DFMI’s source code.*”⁸
- DFMI’s interim board of directors has authority to “[i]nsure the safety of all *DFMI assets including but not limited to the Fractal Codec.*”⁹

54. Even Defendant TMMI acknowledged in the 2013 Lawsuit that DFMI owned the exclusive License.¹⁰

55. In July 2001, TMMI entered into an agreement to sublicense a derivative product based on “the new DFMI codec”.¹¹ This followed “Shareholder Letters” on October 26 and 27, 2000, wherein Simpson announced an “agreement to build TMM a derivative product” in which TMM will “pay DFMI a recurring royalty” with plans on “doing many custom[] software applications . . . with royalties paid to DFMI” in the future.

F. Tax Records Reflect That DFMI Owned the License.

56. Simpson testified that he signed both the DFMI and DFI federal tax returns for 2000 and that he used the same tax accountant to prepare both returns.

57. Simpson did not have DFI list the License as an asset in its 2000 return or any return thereafter, but, tellingly, he did have the License listed as an \$846,500 asset in DFMI’s 2000 return (and it continued to be listed as a DFMI asset until the company was dissolved and Simpson was no longer in control of DFMI).

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DFI was aware of it.

⁷ October 26, 2000 Shareholder Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and that DFI was aware of it.

⁸ October 27, 2000 Shareholder Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and that DFI was aware of it.

⁹ April 18, 2001 Shareholder Letter. DFI admitted in the 2013 Lawsuit that Simpson wrote this letter and that DFI was aware of it.

¹⁰ Dimension witness Billy Gerald Clouse testified in the 2013 Lawsuit that TMMI’s president, Michael Fernandez and Simpson told Clouse TMMI did not own the License, DFMI did and that TMMI was trying to get it from DFMI.

¹¹ July 10, 2001 TMMI Joint Press Release.

1 **G. As Long as Simpson was In Control of DFMI, He Represented DFMI Owned the**
2 **License.**

3 58. On December 12, 2000, DFMI's shareholders filed a shareholder derivative
4 lawsuit to remove Simpson as president and to obtain an accounting from him.¹²

5 59. In June 2001, the lawsuit settled, a new board of directors was elected, and
6 Simpson and Robin Haskins were removed as officers and directors of DFMI.

7 60. Simpson admitted in the 2013 Lawsuit he took the Code "as soon as Larry [Panik,
8 now the President of Plaintiff Dimension] started making noise [about bringing an action to
9 remove Simpson as DFMI's president]."

10 61. Before then, Simpson admitted on the stand at the trial of the 2013 Lawsuit that it
11 "didn't matter what entity held the [C]ode as long as [Simpson was] in control of the entity."

12 62. Simpson further admitted he unilaterally intended to exchange the Code and
13 License to get tradeable TMMI shares for himself long after the Investors who paid for the License
14 were out of DFI and without their approval or approval of DFMI's board.

15 63. Upon learning in 2002 that Simpson had attempted to sell copies of the Code to
16 TMMI, DFMI sued Simpson and TMMI, as well as TMMI officers Michael Fernandez and David
17 Elliott, to recover all copies of the Code and corporate books as the holder of the Exclusive
18 License (the "2002 California Lawsuit").

19 64. The California court entered default against "Total Multi-Media, Inc." for failure
20 to appear and answer DFMI's Second Amended Complaint in the 2002 California Lawsuit).

21 65. Nevertheless, TMMI admitted in the 2013 Lawsuit that "TMMI knew of the
22 contents of DFMI's Second Amended Complaint, filed in the 2002 California Lawsuit" in which
23 DFMI maintained its exclusive right to the License.

24 66. DFMI and Simpson settled the lawsuit on December 2, 2002.

25 67. Per the terms of the settlement agreement, Simpson was required to return the Code
26 to DFMI.

27 _____
28 ¹² Settlement Agreement, Mutual Release, and Covenant Not to Sue.

1 68. After the settlement of the 2002 California Lawsuit and until Defendants filed the
2 2013 Lawsuit, neither DFI nor TMMI ever contacted DFMI again regarding the PVS/SGI Source
3 Code or to retract their representations that Plaintiff DFMI was the exclusive holder of the License
4 to such Code.

5 69. Similarly, at the 2013 Lawsuit it was confirmed that DFI never contacted ISI or its
6 successors to claim DFI or TMM had any interest in the License or to allege that Plaintiff DFMI
7 was not the owner of the License.

8 70. For the next decade, DFMI and its successor, Plaintiff Dimension, in reliance on
9 the innumerable representations that Plaintiffs held the Exclusive License and that all legal
10 formalities required for such had long ago been completed, proceeded to invest hundreds of
11 thousands of dollars to develop the Code.

12 71. Although Defendants brought the 2013 Lawsuit on the sworn affidavit of Simpson
13 that he lied when he claimed the License had been assigned to Plaintiff DFMI and that DFI
14 retained the License and then rightfully sold it to TMMI in 2012, at the trial of the 2013 Lawsuit,
15 Simpson was unable to sustain the claim that “TMM owned it”, and finally, after having been
16 repeatedly caught in his prevarications, admitted that Plaintiff DFMI “is entitled to everything”
17 set forth under the License Agreement.

18 **H. Defendants Prosecuted the 2013 Lawsuit with Knowledge that Defendants Had**
19 **Previously Assigned the Exclusive License to Plaintiffs**

20 72. Despite the sworn testimony and statements of Defendants Simpson, Haskins, and
21 Fernandez that TMMI and DFI knew Simpson had assigned the License to Plaintiff DFMI (and
22 had repeatedly reaffirmed the same), on March 11, 2013, Defendants, TMMI and DFI, under the
23 control and direction of Defendants Simpson, Haskins, Fernandez, Sloan, Cavanaugh, Kozole,
24 and DOES 1-10 filed the 2013 Lawsuit and then continued it for the unlawful purpose of abusing
25 the court process to defraud Plaintiffs of the Exclusive License Defendants had assigned to
26 Plaintiffs thirteen years earlier in exchange for \$500,000.

27 73. Defendants knew that DFMI had relied to its detriment on that assignment, yet
28 Defendants falsely claimed in their complaint in the 2013 Lawsuit that DFI did not assign the

1 License to DFMI.

2 74. As admitted by their principals at the trial of the 2013 Lawsuit, Defendants TMMI
3 and DFI knowingly and intentionally lied that the Exclusive License was retained by DFI and
4 assigned to TMMI in 2012.

5 75. Cavanaugh, Ford, and Kozole knew that Simpson, Haskins, and Fernandez had
6 committed fraudulent acts and could not be trusted.

7 76. TMMI, at the direction of Cavanaugh, Ford, and Kozole, sued Simpson, on
8 January 25, 2013 in an action titled *TMM, Inc. v. Simpson*, A-13-675673-C in the Eighth Judicial
9 District Court of Nevada.

10 77. Among TMMI's allegations were that Simpson had participated in a civil
11 conspiracy "to defraud TMMI and its shareholders" and that Simpson had "forged several
12 instruments purporting to provide him with intellectual property rights and/or a license to certain
13 of TMMI's intellectual property rights, which he then utilized to execute agreements with third
14 party companies."

15 78. TMMI also alleged in its complaint, verified by Cavanaugh, that the "fractal
16 version VDK 1.0 - 1.4 is the fractal technology upon which all of TMMI's recent enhancement
17 and development work is based."

18 79. TMMI attached to its verified complaint a "true and correct copy of the PVS/SGI
19 License Agreement ... as Exhibit 2," which Exhibit included the Second Addendum, as well as an
20 image of the Second Addendum that, upon information and belief, was downloaded from DFMI's
21 website.

22 80. Upon information and belief, TMMI either settled or dismissed the lawsuit in
23 exchange for Simpson agreeing to assist TMMI in the 2013 Lawsuit against Plaintiffs. Indeed,
24 shortly after the current lawsuit was filed, the lawsuit against Simpson was voluntarily dismissed.

25 81. Furthermore, TMMI, at the direction of Cavanaugh, Ford, and Kozole, sued
26 Broadclip Inc., in an action titled *TMM, Inc. v. Broadclip, Inc.*, A-12-668150-C in the Eighth
27 Judicial District Court of Nevada.

28 82. Among TMMI's allegations in that suit were that Simpson had committed forgery

1 and “executed, without the permission of TMMI, an Assignment of License (‘Fraud
2 Assignment’),” referring to TMMI’s alleged license from ISI in 1993.

3 83. TMMI also alleged in its complaint, verified by Cavanaugh, that the “fractal
4 version VDK 1.0 - 1.4 is the fractal technology upon which all of TMMI's recent enhancement
5 and development work is based.”

6 84. Upon information and belief, TMMI either settled or dismissed the lawsuit, at least
7 in part in exchange for Simpson agreeing to assist TMMI in the 2013 Lawsuit against Plaintiffs.

8 85. Furthermore, TMMI, at the direction of Cavanaugh, Ford, and Kozole, sued
9 Fernandez, in an action titled *TMM, Inc. v. Mariea*, A-12-668148-C in the Eighth Judicial District
10 Court of Nevada.

11 86. Among TMMI's allegations were that Fernandez and his wife had participated in
12 “a civil conspiracy . . . to defraud TMMI and its shareholders out of over 1.1 Million Shares of
13 common stock and/or additional monies related to a sham loan to TMMI that benefitted the
14 Fernandezes personally.”

15 87. Upon information and belief, TMMI either settled or dismissed the lawsuit in
16 exchange for Fernandez agreeing to assist TMMI in the 2013 Lawsuit against Plaintiffs.

17 **I. Defendants Prosecuted the 2013 Lawsuit to Defraud Plaintiffs of the Exclusive**
18 **License for Which Plaintiffs Had Paid Defendants 13 Years Earlier.**

19 88. Having secured Simpson and Fernandez’s assistance, TMMI then pursued and
20 continued the 2013 Lawsuit for the express purpose of defrauding Plaintiffs of the very License
21 Plaintiffs had purchased from Defendants thirteen years earlier.

22 89. Even after losing the 2013 Lawsuit, Defendants continued to pursue the 2013
23 Lawsuit on appeal for the continuing ulterior and wrongful purpose of defrauding Plaintiffs of
24 their exclusive right to the Exclusive License.

25 90. Defendants continued to pursue the 2013 Lawsuit on appeal even though
26 Defendants knew and testified at the trial of the 2013 Lawsuit that Plaintiffs would not have paid
27 for the Exclusive License if it was not “exclusive”.

28 91. Thus, by continuing the 2013 Lawsuit on appeal, Defendants attempted to

1 unlawfully abuse the legal process to defraud Plaintiffs of Plaintiff's exclusive rights in the
2 License.

3 **J. Defendants Attempted to Abuse the Process of the 2013 Lawsuit to Coerce**
4 **Settlement, Discover Plaintiff Dimension's Trade Secrets, Interfere with**
5 **Dimension's Business and/or Put Plaintiff Dimension Out of Business.**

6 92. Defendants pursued the 2013 Lawsuit in bad faith as part of a continuing scheme
7 to abuse the legal process to unlawfully get rid of a competitor, take its technology and/or coerce
8 an unfair settlement.

9 93. Defendants brought the 2013 Lawsuit against Dimension and DFMI not out of a
10 good faith belief that Defendants TMMI or DFI owned the License, but in an attempt to discover
11 Dimension's trade secrets and patented technology, to try to drive Dimension out of business and
12 coerce it into settlement due to prolonged litigation costs, and/or to deter third parties from
13 investing in Dimension and its technology.

14 94. Defendants abused the 2013 Lawsuit by fraudulently charging Plaintiffs with
15 misappropriating the License that Defendants had previously assigned to Plaintiffs to inflict
16 substantial litigation expenses and the risk of loss of the License Plaintiffs had already paid to
17 obtain as some form of extortion to put pressure on Plaintiffs to compel Plaintiffs to settle on
18 terms that would harm Plaintiffs.

19 95. Defendants in the course of the 2013 Lawsuit threatened to continue what
20 Defendants knew were baseless claims for the purpose of attempting to extort a settlement from
21 Plaintiff Dimension in which Dimension would have to surrender, at a minimum, Dimension's
22 exclusive right to the License or lose the License altogether.

23 96. Defendants abused the 2013 Lawsuit by exacerbating the fees of the lawsuit by
24 repeatedly filing the same motions after the court had previously denied them and after the time
25 to move for reconsideration of such motions had past.

26 97. In the course of the 2013 Lawsuit, Defendants secured and presented two
27 knowingly false affidavits from their own principal, Simpson, falsely claiming that Defendant
28 DFI had not assigned the License to Plaintiff DFMI when it had, statements that Simpson was

1 forced to contradict on cross examination in open court at the trial of the 2013 Lawsuit where
2 Simpson testified that DFMI had always owned the License.

3 98. Nevertheless, and despite knowing DFMI was the rightful exclusive licensee of
4 the License, Defendants continued to pursue the 2013 Lawsuit.

5 99. In the course of the 2013 Lawsuit, Defendants manufactured claims for trade secret
6 misappropriation that Defendants' principals later admitted at trial and under oath were without
7 basis as Simpson admitted Plaintiffs owned the License for the unlawful pretext of seeking to
8 obtain Plaintiff Dimension's trade secrets.

9 100. Defendants used the 2013 Lawsuit process not for the purpose of recovering any
10 trade secret or enjoining the use of a license right to which they had any legitimate claim—as
11 evidenced by the testimony of their principals at trial—but for the illegitimate purpose of
12 damaging, if not destroying, a competitor by defaming its reputation in pleadings and in the public
13 forum, by tying up its core technology in court proceedings for over three years, and by placing a
14 false cloud over Plaintiff Dimension's right to the Exclusive License.

15 101. In furtherance of these efforts, Defendants delayed and extended the 2013 case,
16 wrongfully named Plaintiffs' principals as defendants without any evidence in support of such
17 claims, filed excessive motions, propounded excessive discovery requests, caused unnecessary
18 hearings and motion practice and engaged in bad faith settlement discussions all designed to
19 exacerbate Plaintiff Dimension's costs, coerce settlement, and/or render Dimension insolvent.

20 102. Defendants used discovery in the 2013 Lawsuit to exact settlement talks at the risk
21 of being forced to disclose detailed technical information, and then used that information to
22 initiate actions against Dimension's patent.

23 103. Defendants damaged Plaintiff Dimension by abusing the 2013 Lawsuit to “ice” the
24 company, to deprive it of investment capital and/or sideline it in the market during the duration
25 of the 2013 Lawsuit and appeal.

26 104. Plaintiff Dimension has been harmed by the abuse of the 2013 Lawsuit process,
27 not only by the costs of defending against Plaintiffs' frivolous claims, but also by being prevented
28 from moving forward in the market as would have been the case but for Plaintiffs' continued

1 abuse of the legal process.

2 105. Defendants, thus, abused the 2013 Lawsuit process by using that process for a
3 purpose other than that for which it was designed and intended.

4 106. None of the processes abused by Defendants in the 2013 Lawsuit were designed
5 or intended to permit Defendants to: (i) defraud Plaintiffs of the Exclusive License Plaintiffs had
6 paid Defendants \$500,000 for some thirteen years earlier, (ii) coerce or compel a settlement
7 detrimental to Plaintiffs, (iii) discover Dimension's trade secrets, (iv) interfere with Dimension's
8 business, and/or (v) render Dimension insolvent or otherwise put Dimension out of business.

9 107. Plaintiffs incurred over \$900,000.00 in legal expenses and costs to oppose
10 Defendant's abuses of the legal process in the 2013 Lawsuit, in addition to damages Plaintiff
11 Dimension suffered arising from Defendants' abuse of the 2013 Lawsuit process to interfere with
12 Dimension's business, and/or to render Dimension insolvent or to otherwise put Dimension out
13 of business, which expenses, costs, and damages Plaintiffs otherwise would not have incurred.

14 108. Thus, Defendants and each of them proximately harmed Plaintiffs in an amount
15 far in excess of \$15,000.

16 **FIRST CAUSE OF ACTION**

17 **(Abuse of Process)**

18 109. Plaintiffs repeat and reallege the allegations in the previous Paragraphs as if fully
19 set forth at this point and incorporate them herein by reference.

20 110. Defendants TMMI, DFI and their officers/directors initiated and continued the
21 2013 Lawsuit against Counterclaimants for a purpose other than resolving a legal dispute.

22 111. Defendants TMMI, DFI and their officers/directors initiated and continued the
23 2013 Lawsuit without a good faith belief that they were the rightful owners of the License, but
24 rather in an attempt to: (i) defraud Plaintiffs of the Exclusive License Plaintiffs had paid
25 Defendants \$500,000 for some thirteen years earlier, (ii) coerce or compel a settlement detrimental
26 to Plaintiffs, (iii) discover Dimension's trade secrets and patented technology, (iv) interfere with
27 Dimension's business, and/or (v) render Dimension insolvent or otherwise drive Dimension out
28

1 of business due to prolonged litigation costs, and/or by deterring third parties from investing in
2 Dimension and its technology.

3 112. Plaintiffs were harmed in an amount in excess of \$15,000 by Defendants' abuses
4 of process in connection with the 2013 Lawsuit.

5 113. Plaintiffs are entitled to compensation for the legal costs and attorney's fees
6 Plaintiffs incurred in defending against the claims raised in the 2013 Lawsuit, including the legal
7 costs and attorney's legal fees incurred in securing a declaratory judgment that Plaintiff
8 Dimension is the exclusive owner of the License and the legal costs and attorney's fees incurred
9 in defending that judgment on appeal.

10 114. Plaintiffs are also entitled to damages to Plaintiff Dimension's business suffered
11 as a result of Defendants' prosecution and continuation of the 2013 Lawsuit and appeal of the
12 2013 Lawsuit.

13 115. Plaintiffs are also entitled to recover their costs and attorney's fees incurred in
14 prosecuting this action.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

17 1. General and compensatory damages in an amount of more than \$15,000.00 to be
18 proven at trial;

19 2. If required, a constructive trust in favor of Plaintiffs over all assets of Defendant
20 TMMI, including the License and 20,000,000 shares of preferred TMMI stock;

21 3. An award of all attorneys' fees, costs, and interest incurred by Plaintiffs in
22 defending and countering the claims asserted by Defendants in the 2013 Lawsuit, including
23 without limitation the attorney's fees, costs, and interest incurred in securing a declaratory
24 judgment that Plaintiff Dimension is the exclusive owner of the Exclusive License, and the
25 attorney's fees and costs incurred in defending the appeal filed by Defendants to the Nevada
26 Supreme Court.

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1 4. Punitive and exemplary damages against each Defendant for knowing and
2 malicious conduct;

3 5. An award of interest, costs, and attorneys' fees incurred by Plaintiffs in prosecuting
4 this action; and

5 6. Such other and further relief as the Court deems just and proper.

6 Dated this 15th day of July, 2019.

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WEIDE & MILLER, LTD.

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By: /s/ F. Christopher Austin

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