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July 20, 2020

*Via E-mail (apfilings@sec.gov) and overnight courier*

Vanessa Countryman
U.S. Securities and Exchange Commission Secretary
Office of the Secretary
100 F Street, NE
Washington, DC 20549

Re: In the Matter of Trans-Pacific Aerospace Company, Inc. and Vertical Computer Systems, Inc., Exchange Act Release No. 89276, Admin. Proceeding File No. 3-19864

Dear Ms. Countryman:

Please find enclosed an original and three copies of a *Notice of Appearance and Motion to File Amicus Brief and Proposed Amicus Brief or, Alternatively, to State Views* by Steven Infanti, a shareholder in Vertical Computer Systems, Inc., a Respondent in the above-captioned proceeding. I am also delivering copies to the Respondents by overnight courier.

I cannot determine if this proceeding has been assigned to a hearing officer because the docket has not been posted on the Commission's website listing open administrative proceedings. *See https://www.sec.gov/litigation/apdocuments/ap-open-fileno-asc.xml*. Consequently, I kindly request that you forward the attached materials to the hearing officer, if one has been assigned.

Sincerely yours,

HOLLAND & KNIGHT LLP

By: _____
Stephen P. Warren

Attachments

cc: Respondent Trans-Pacific Aerospace Company, Inc.
Respondent Vertical Computer Systems, Inc.

**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 89276**

**ADMINISTRATIVE PROCEEDING**
**FILE No. 3-19864**

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In the Matter of

Trans-Pacific Aerospace Company, Inc.

and Vertical Computer Systems, Inc.,

Respondents.

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## NOTICE OF APPEARANCE AND MOTION TO FILE AMICUS BRIEF AND PROPOSED AMICUS BRIEF OR, ALTERNATIVELY, TO STATE VIEWS

Pursuant to Rules 102 and 210(d) and (e) of the SEC's Rules of Practice, non-party Steven Infanti, Sr., through undersigned counsel, files this Notice of Appearance and Motion to File Amicus Brief and Proposed Amicus Brief or, Alternatively, to State Views.

## INTRODUCTION

Vertical Computer Systems, Inc. ("VCSY" or "Company") is a publicly traded company that provides software applications. Unfortunately VCSY's long-time CEO has largely abdicated his fiduciary responsibilities and has allowed the Company to become deficient in its SEC filings and, consequently, the Securities and Exchange Commission ("Commission") has brought this proceeding pursuant to Section 12(j) of the Securities Exchange Act of 1934 to determine if VCSY's registration should be suspended for a period up to twelve months or revoked.

This motion is brought by Steven Infanti, Sr. ("Infanti"), a VCSY shareholder, to request that, in lieu of revocation, the Commission suspend VCSY's registration for a period of six months to permit Infanti and his fellow shareholders sufficient time to implement a plan to remove the

CEO, install new directors, and bring VCSY back into compliance by making the delinquent SEC filings. A six-month suspension is in the shareholders' best interests (both current and prospective shareholders) and is consistent with the purpose of Section 12(j), which authorizes the Commission to take action as "necessary or appropriate for the protection of investors." *See* 15 U.S.C. § 15l(j).

## NOTICE OF APPEARANCE

Pursuant to Rule 102 of the Commission's Rules of Practice, attorney-at-law Stephen P. Warren from the law firm of Holland & Knight LLP hereby appears as counsel on behalf of movant Steven Infanti, and requests that copies of all notices, pleadings and other papers served or filed in this proceeding be furnished to him at the following addresses:

Stephen Warren, Esq.
Holland & Knight LLP
701 Brickell Avenue
Suite 3300
Miami, Florida 33131
Phone 305.349.2256
Fax 305.679.6431
Email: stephen.warren@hklaw.com

## MOTION TO FILE AMICUS BRIEF OR, ALTERNATIVELY, TO STATE VIEWS

### I. Statement of Facts

Incorporated in Delaware in 1992, VCSY provides software applications and tech services and has certain intellectual property assets, including "Ploinks" (a private communication application). As of May 2018, the Company had 23 employees. *See* VCSY Form 10-K (filed May 10, 2018), at pg. 13.

For approximately the past 19 years, the Company has been run by Richard Wade ("Wade"), who is the President, CEO and Director. *See id.* at pg. 32. Wade also serves as the Company's principal accounting officer. *See id.* The only other director on the two-director board is William Mills ("Mills"), whose tenure at the company is also approximately 19 years. Wade

and Mills are VCSY's only active corporate officers and directors. *See id.* VCSY has approximately 1.2 billion shares of common stock outstanding, which trade on the OTC markets. *See id*, at pg. 1 ("As of May 10, 2018, the issuer had 1,188,415,201 shares of common stock, par value $0.00001, issued and 1,148,415,201 outstanding."). Upon information and belief, Wade has issued additional shares of common stock as a means of paying for past due debt, bringing the outstanding total to approximately 1,207,500,000 shares.

In recent years, Wade has single-handedly managed VCSY by unchecked fiat, but has, at the same time, largely abdicated his managerial responsibilities and breached the fiduciary duties he owes to VCSY's shareholders. Most pertinent to this proceeding, Wade has caused VCSY to become delinquent in its SEC filings. The company's most recent Form 10-K was filed in May 2018 (for the year-ended Dec. 31, 2017) and its most recent Form 10-Q was filed in November 2018 (for the quarter-ended Sept. 30, 2018). According to the July 9, 2020 Order Instituting Proceedings in this matter, VCSY is a void Delaware corporation, which implies that VCSY is delinquent in filing its Delaware Corporation Franchise Tax Returns and has not obtained a Certificate of Renewal and Revival to place VCSY in good standing with the State of Delaware. As Wade is VCSY's principal accounting officer, it is clear that he has failed to meet his responsibility to keep VCSY in good standing with the state of Delaware. In addition, Wade and Mills have also failed to hold an annual shareholder meeting since 2015.

There are troubling signs that Wade's actions go beyond mere corporate mismanagement. In July 2019, VCSY announced that its auditor had resigned and that the auditor had, prior to resigning, identified material weaknesses in the Company's internal controls over financial reporting, including a lack of internal controls over expenditures, related party transactions, and segregation of duties. *See* VCSY Form 8-K (filed July 2, 2019). These internal control

deficiencies appear to implicate Wade directly. Upon information and belief, Wade has not retained another auditor.

Earlier this year, a group of eight VCSY shareholders filed a shareholder derivate lawsuit in Texas state court against Wade and Mills asserting claims for breach of fiduciary duty, accounting, and fraud. *See* **Exhibit A** (petition filed in *Valdetaro et al. v. Wade et al.*, Case No. DC-20-06209 (Dallas. Co. District Court)). The shareholders' complaint alleges that Wade has failed to appoint a CFO (which is required by VCSY's By-Laws), engaged in self-dealing, failed to file financial reports, failed to pay to the respective governments payroll taxes (resulting in an IRS lien against VCSY's subsidiary), paid himself (Wade) excess compensation while not paying other employees, and misled shareholders about the state of affairs and the Company's plans.

## II. Procedural History

On July 9, 2020, the Commission instituted this proceeding pursuant to Section 12(j) of the Securities Exchange Act of 1934 asserting that VCSY was delinquent in its filings.[1] The Commission's Order states that VCSY has not filed a periodic report since its Form 10-Q for the period ended Sept. 30, 2018.[2]

Also on July 9, 2020, the Commission announced that it was suspending trading in VCSY's stock for ten business days due to "a lack of current and accurate information about" VCSY. *See* SEC Release No. 89275.

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[1] The Commission's Order instituting this proceeding also names Trans-Pacific Aerospace Company, Inc. ("Trans-Pacific") as a respondent delinquent in its filings. The movant, Infanti, owns no shares in, and has no interest in, Trans-Pacific and, therefore, seeks no relief vis-à-vis Trans-Pacific.

[2] The Order also states that VCSY filed for bankruptcy in Florida in March 2011, but that appears to be an error. There is an unrelated Florida corporation with a Florida mailing address that shares VCSY's name, which filed for bankruptcy in Florida. *See* **Exhibit B** (Florida corporate filing).

## III. Argument

**AS A SHAREHOLDER, INFANTI SHOULD BE PERMITTED TO SUBMIT AN AMICUS BRIEF OR, ALTERNATIVELY, TO STATE HIS VIEWS ON WHETHER VCSY'S STOCK REGISTRATION SHOULD BE SUSPENDED OR REVOKED.**

Infanti seeks permission to file an amicus brief in this proceeding as a non-party pursuant to Rule of Practice 210. Section (d) of Rule 210 provides, in pertinent part, that "[a]n amicus brief may be filed only if: (i) a motion for leave to file the brief has been granted . . . ." Alternatively, Infanti seeks permission to file a memorandum stating his views on what sanction is appropriate for VCSY's delinquent filings. Section (e) of Rule 210 states that "[a]ny person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views."

A leading case on allowing an amicus brief in this type of proceeding is *In the Matter of Comverse Technology,* 2010 WL 2886397 (July 22, 2010). The *Comverse* proceeding was also brought by the Commission pursuant to Section 12(j) because of delinquent filings by a registrant. One of the registrant's shareholders moved to file an amicus brief or, alternatively, to state its views. The Division of Enforcement opposed the motion. ALJ Mahony granted the motion and provided the following rationale for doing so:

> The Commission's comments to Rule 210(e) in its adoption of the Rules of Practice indicate that it envisioned a means for participation by security holders when it noted that, "[f]rom time to time persons, particularly individual security holders or members of the public, who do not otherwise wish to participate in a proceeding on any extended basis will seek to make written statements of their views in a letter or by appearing at a hearing." Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,759 (June 23, 1995) (emphasis added). PSAM would appear to be exactly the kind of party that the Commission envisaged utilizing Rule 210(e). Despite the Division's contention that it is "not aware of any [Section 12(j) proceeding] in which a non-party was allowed to submit a statement of its views," the infrequent use of Rule 210(e) is hardly a legitimate reason to disallow any use of the rule. As such, the filings of PSAM on June 16 and June 28, 2010, are admitted into the record as a statement of PSAM's views and, pursuant to Rule 210(e), will be considered "only to the extent that the statements therein made are otherwise supported by the record."

*Comverse Tech.,* 2010 WL 2886397, at *2.

As was the case in *Comverse*, the instant motion is brought by a shareholder seeking to be heard on the appropriate sanctions for delinquent filings. The movant, Infanti, owns 500,000 shares of VCSY common stock. *See* **Exhibit C** (brokerage statement). Thus, Infanti is "exactly the kind of party that the Commission envisaged" filing an amicus brief under Rule 210(d) or statement of views under Rule 210(e). *See also In re Left Behind Games, Inc.*, 2013 WL 11270127 (Oct. 30, 2013) (allowing controlling stockholder to participate in Section 12(j) delinquent-filer proceeding pursuant to Rule 210(f)). Accordingly, Infanti should be granted permission to file the following amicus brief. Alternatively, this submission should be accepted as a statement of Infanti's views under Rule 210(e).

**PROPOSED AMICUS BRIEF (OR STATEMENT OF VIEWS)**

## I. STATEMENT OF INTEREST

Movant Infanti owns 500,000 shares of VCSY's common stock. Accordingly, if the Commission were to revoke the registration for VCSY's common stock, it would have a direct impact on Infanti and all the other VCSY shareholders because it would: (a) make it substantially more difficult for Infanti and all VCSY shareholders to sell or otherwise transfer their shares in the absence of a public market; (b) make it more difficult for VCSY to raise capital; and (c) likely have an adverse impact on VCSY's already-depressed share price. *See Eagletech Comms., Inc.*, Exch. Act Rel. No. 54095 (July 5, 2006) (recognizing that deregistration can harm current shareholders "by a diminution in the liquidity and value of their stock").

## II. THE INTERESTS OF VCSY'S SHAREHOLDERS WOULD BE BEST SERVED BY AN ORDER SUSPENDING (NOT REVOKING) VCSY'S REGISTRATION FOR A PERIOD OF SIX MONTHS.

Infanti and many of his fellow shareholders have watched, with great concern, how Wade, the current President, CEO, and Director, has driven VCSY, a viable company with potentially

valuable assets, into the proverbial ground. In recent years alone, the following has happened: (1) the Internal Revenue Service placed a lien against one of VCSY's subsidiaries for failing to pay payroll taxes and Luiz Valdetaro ("Valdetaro"), the Chief Technology Officer, who Wade put on administrative suspension when Valdetaro questioned Wade's improper conduct to, in Valdetaro's opinion, punish him for questioning Wade's improper activities; (2) VCSY's chief financial officer resigned and, upon information and belief, Wade has not hired a replacement as mandated by the VCSY By-Laws; (3) VCSY's auditor resigned citing concerns over VCSY's lack of internal controls over financial reporting directed at Wade's activities for Wade's sole benefit and the detriment of VCSY and its shareholders; (4) VCSY has not held an annual shareholder meeting in five years even though they are mandated by its by-laws; (5) based on the SEC papers in this proceeding, VCSY has failed to pay its annual franchise tax in Delaware and, to our knowledge, it has not been reinstated; (6) VCSY repeatedly filed notifications of inability to timely file required periodic filings; and (7) VCSY has not filed any periodic filings for the past 20 months.

The shareholders are not, however, resting on their laurels. Earlier this year, eight VCSY shareholders filed a shareholder derivative lawsuit against Wade and his co-director Mills for breach of fiduciary duty and fraud. Also earlier this year, another shareholder served a books-and-records request on VCSY requesting, among other things, the Company's shareholder list. In addition, Infanti and many of his fellow shareholders have been in close communication and are coordinating a plan of action to rescue VCSY. That group of shareholders is moving ahead with a five-part plan, as discussed below.

Step One: In the event it is determined that VCSY has not taken the steps to correct the deficiencies, Infanti and his fellow shareholders will take all steps necessary to get VCSY in good standing with the State of Delaware, including paying VCSY's past due corporate franchise taxes

in Delaware and securing a Certificate of Reinstatement and Revival.

Step Two: The shareholders have retained counsel to spearhead either (i) a consent procedure authorized by the By-Laws of VCSY and Delaware's Corporation Law to remove Wade and Mills as officers and directors, or (ii) file an action in Delaware Chancery Court seeking an order requiring Wade and Mills to hold an annual meeting, which would allow the shareholders to vote to replace Wade and Mills as officers and directors. In either scenario, the goal is to remove Wade and Mills from the Company. Infanti and some of his fellow shareholders have rallied the shareholder base to remove Wade and Mills. Infanti represents that, as of the date hereof, shareholders holding approximately 430,000,000 shares out of the approximately 1.2 billion outstanding shares of common stock have acknowledged their support. Infanti expects that once an updated NOBO list[3] is obtained, which the shareholders have been asking for since May 2020, the group of activist shareholders will grow to more than 650 million or more shares (*i.e.*, a majority), permitting the removal Wade and Mills.

Step Three: Infanti and his fellow shareholders have identified several qualified individuals who are prepared to join VCSY's board of directors after Wade and Mills are removed. Attached as **Exhibit D** is a short description of these individuals and their qualifications.

Step Four: After Wade and Mills are removed as officers and directors, VCSY will retain an auditor as expeditiously as possible and, as necessary, make the required improvements to the internal controls that the previous auditor determined were lacking.

Step Five: Once an auditor is retained, VCSY will "catch up" on its filings and regain SEC compliance by filing the delinquent reports..

Under Exchange Act Section 12(j), the Commission is authorized, "as it deems necessary

[3] List of non-objection beneficial owners of VCSY's stock.

or appropriate for the protection of investors," to revoke the registration of a security or suspend the registration of a security for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of the security has failed to comply with any provision of the Exchange Act or the rules thereunder. 15 U.S.C. § 78l(j). The assessment of what sanction is appropriate — suspension or revocation — is determined by "the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions, on the other hand." *In the Matter of Gateway Int'l Holdings, Inc.*, Exchange Act Release No. 53907, Admin. File 3-11894 (May 31, 2006).

While Infanti cannot provide any guarantee that the action plan described above will be successful, Infanti asks only for the opportunity to try. The Division of Enforcement may respond that revoking VCSY's registration would not impede Infanti and his fellow shareholders from pursuing the action plan, but the reality is that Infanti, and many of the VCSY shareholders, invested in a publicly-traded company. If the Commission were to revoke VCSY's registration, it would fundamentally change the nature of VCSY by eliminating a public market for its 1.2 billion shares. *In the Matter of Accredited Business Consolidators, Corp.*, Release No. ID-712, 2014 WL 12655580 (Dec. 1, 2014) (recognizing that revoking registration could "affect [the registrant's] financial position"). Infanti respectfully requests that, in lieu of revoking VCSY's registration, the Commission exercise its discretion to suspend VCSY's registration for a period of six months, to give Infanti and his fellow shareholders an opportunity to complete the action plan and regain compliance for VCSY. If, after six months, VCSY remains in delinquent status, the Commission would, of course, retain the right to revoke the registration at that time. In the meantime, the investing public would be protected because all trading in VCSY's stock would be halted so long

as the suspension is in place.[4]

## CONCLUSION

For all the foregoing reasons, Movant Steven Infanti respectfully requests that if the Commission determines that VCSY is delinquent in its filings in violation of Section 13(a) and the rules promulgated thereunder, and does not accept any defenses that may be presented by VCSY, that the Commission suspend the registration of VCSY's common stock for a period of six months (in lieu of revoking VCSY's registration).

Dated: July 20, 2020

Respectfully submitted,

**HOLLAND & KNIGHT LLP**
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Miami, Florida 33131
Tel: (305) 374-8500
Fax: (305) 789-7799

By: _____
Stephen Warren

[4] The Commission has stated multiple times in Section 12(j) proceedings that it cannot consider only the impact on current investors because the securities laws are also meant to protect prospective investors. *See, e.g., In the Matter of Ivoice, Inc.*, Release No. ID-536, 2013 WL 11270598 (Dec. 2, 2013) ("There can be no doubt that both existing and prospective shareholders are harmed by the continuing lack of current and reliable financial information on Protectus."). However, a six-month suspension will protect the interests of both current and prospective investors, whereas a revocation would, effectively, punish current investors for sins committed by the Company.

## CERTIFICATE OF SERVICE

Pursuant to SEC Rule of Practice 150 and the Commission's March 18, 2020 Order ('34 Act Release No. 88415), I certify that on July 20, 2020, I served the foregoing document and exhibits on the Commission electronically at apfilings@sec.gov and by sending the original and three courtesy paper copies to the Office of the Secretary, 100 F Street, NE., Washington, DC 20549. I further certify that on July 20, 2020 I served paper copies on the parties via overnight courier to the following addresses:

Vertical Computer Systems, Inc.
101 West Renner Road, Suite 200
Richardson, Texas 75082
*Respondent*

Trans-Pacific Aerospace Company, Inc.
2975 Huntington Drive, Suite 107
San Marina, CA 91108
*Respondent*

By: _____
Stephen P. Warren

# EXHIBIT A

FILED
5/14/2020 10:53 PM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Stephanie Clark DEPUTY

CAUSE NO. DC-20-06209

| | | |
|---|---|---|
| LUIZ VALDETARO, INDIVIDUALLY, AND BILL KISH, STEVEN JUNCKER, AL GALVAN, THOMAS BACHA, AL ECHEVARRIA JR., RUSSELL AND TERESA HACHEY AND WILLIAM CALHOUN, DERIVATIVELY ON BEHALF OF VERTICAL COMPUTER SYSTEMS, INC., | § | IN THE DISTRICT COURT |
| *Plaintiffs*, | § | |
| v. | § | 68th JUDICIAL DISTRICT |
| RICHARD S. WADE and WILLIAM MILLS, Esq., | § | |
| *Defendants*. | § | DALLAS COUNTY, TEXAS |

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Come Now Plaintiffs Luiz Valdetaro, Individually ("Valdetaro"), and Bill Kish of Wadsworth Ohio, Steven Juncker of Universal City, Texas, Al Galvan of Austin, Texas, Thomas Bacha of Naugatuck, Connecticut, Al Echevarria Jr., of Niskayuna, New York, Russell and Teresa Hachey of Waltham, Massachusetts, and William Calhoun of Huntington Beach, California (hereinafter collectively "the Derivative Plaintiffs") and file this their First Amended Original Petition for Temporary Restraining Order and Temporary and Permanent Injunctive Relief complaining of Defendants Richard S. Wade ("Wade") and William Mills, Esq. ("Mills"), and for same would show the Court as follows:

## I. THE PARTIES

1. Plaintiff Valdetaro is an individual citizen and resident of Dallas County, Texas. The Derivative Plaintiffs are shareholders of the common stock of Vertical Computer Systems, Inc., each of whom owns at least one million shares individually and are part of a much larger group of shareholders who collectively hold over 325 million shares. Defendant Wade is a resident of Dallas County, Texas where he may be served with process at his residence of [redacted], Dallas, Texas [redacted], or he may be served at his place of business located at 101 West Renner Road, Suite 200 Richardson, Texas 75082. Defendant Mills is a resident of California, where he offices at 800 West 6th St, #500, Los Angeles, California 90017, and he may be served through the Secretary of the State of Texas pursuant to the state's Long Arm Statute. Mr. Mills has been one of two directors, along with Wade, of nominal Plaintiff Vertical Computer Systems, Inc. ("Vertical" or the "Company") as well as its corporate Secretary, for approximately 20 years. Vertical has maintained an office in the Dallas –Ft Worth since 2003. As a result, Mills has subjected himself to personal jurisdiction in the State of Texas and of this Court. Both Defendants have been served but have not yet answered.

## II. VENUE

2. Venue is proper in Dallas County, Texas because it is the residence of Defendant Wade and the location of the majority of the acts complained of herein.

## III. DISCOVERY CONTROL PLAN

3. In compliance with Texas Rule of Civil Procedure 190, Plaintiffs hereby invoke Discovery Control Plan Level 2 in accordance with Texas Rule of Civil Procedure 190.3. Pursuant to Rule 47 (c) Plaintiffs seek damages in excess of $1,000,000.00 jointly and severally from the Defendants.

## IV. FACTS COMMON TO ALL CAUSES OF ACTION

### A. The Defendants Control the Company by Ignoring its By-laws.

4. Vertical is a Delaware Corporation which holds itself out to be a global provider of application software, cloud-based and software services and intellectual property assets with operations or sales in the United States, Canada, and Brazil. Vertical is essentially a holding company with interests in a number of subsidiaries, the most important of which is its 75% ownership of NOW Solutions Inc., ("NOW Solutions US") also a Delaware Corporation, and NOW's wholly owned subsidiary, NOW Solutions Canada, Inc.

5. For almost two decades Vertical and its subsidiaries have been controlled completely by the directorship of Defendants Wade and Mills. During that entire time there has only been one shareholder meeting although the company bylaws and the general statutes of the State of Delaware require an annual meeting. In fact, the only annual meeting ever held was in 2015 and that was as a result of a lawsuit filed by a Florida shareholder. By being the only two directors of Vertical, Wade and Mills have been able to effectively control Vertical by never giving the shareholders the right to vote on its Board of Directors.

6. Although Vertical is a Public Company with over 1.1 billion shares issued, Wade effectively has unbridled power because he has been the President and CEO of Vertical the entire time and, as shown below, Mills has completely abrogated his fiduciary responsibilities as Wade's co-director.

7. More particularly, the Plaintiffs would show that under Wade's mismanagement the stock price of Vertical has gone from approximately $5 a share to less than one penny as of the date of this filing. The Company has seen its revenue drop almost in half in recent years as a result of the gross negligence and self-dealing of Defendant Wade. No annual 10K report has been filed

with the Securities and Exchange Commission since May 10, 2018 (for the year ended December 31, 2017).

**B. Wade Stops Paying Trust Fund Withholding Taxes to the IRS.**

8. Beginning in late 2012, Wade determined that he would stop remitting withholding taxes from the paychecks of employees of Vertical and NOW Solutions. These taxes are denoted as "trust fund" taxes because they are collected by the employer and held in trust for the Internal Revenue Service. As the person who controlled the checkbooks for Vertical and its subsidiaries, Wade made a conscious decision that he would just simply not pay those taxes although he knew it would certainly jeopardize the viability of the Company. This decision on his part caused the Chief Financial Officer of Vertical at the time, Mr. Freddy Holder, to resign. Since that time Holder has acted as an outside financial consultant with responsibilities to manage and monitor Company accounts but with no authority to make spending decisions or oppose Wade's authority as the CEO. Although it was a requirement of the bylaws that there be a Chief Financial Officer, Wade and Mills never reappointed anyone to that corporate position nor was there ever an internal audit committee formed. This effectively meant that since 2013 there was no one with supervisory oversight at Vertical or its subsidiaries to act as a check on the financial actions of Mr. Wade.

9. Over the next several years the liability to the IRS including penalties and interest continued to grow along with debts to third party lenders. Plaintiff Valdetaro, the Chief Technical Officer of Vertical and its subsidiaries, confronted Wade about the debt but he was always told that the matter was "under control" and that payout arrangements had been made with the IRS. What Valdetaro did not know, because it was hidden by Wade from the Company, was the self-dealing by Wade with his personal lenders which precipitated the Company's financial problems.

### C. Wade Engages in Questionable Financial Dealings on behalf of Vertical with Individuals to Whom He Personally Owes Hundreds of Thousands of Dollars.

10. From early in the history of the Company, Wade had personal business dealings with two California residents, Robert Mokhtarian and Robert Farias. Although never disclosed to his fellow employees or in SEC reports, Wade was borrowing huge sums of money personally from these two individuals while at the same time entering into questionable financial transactions with them on behalf of Vertical and its subsidiaries. More particularly, from 2001 to 2009 Wade personally borrowed approximately $500,000.00 from Mokhtarian while engaging in loan transactions for Vertical with a lender in which Mokhtarian was an investor and Farias was an intermediary. Wade became delinquent in his personal debts to Mokhtarian and was eventually sued individually in California. Mokhtarian received a judgment there against Wade individually for $458,000.00 in 2010 (the "Mokhtarian lawsuit"). On information and belief, Wade has improperly diverted Vertical assets over the years to make payments on or obtain forbearance on this personal debt.

11. Farias is a CPA who also owned a company called Lakeshore Investments, LLC ("Lakeshore"). Lakeshore is currently suing Now Solutions in California for almost 3 million dollars (the "Lakeshore lawsuit"). Wade's relationship with Farias represents the worst form of self-dealing and breach of fiduciary duty on his part. Over the years Farias acted as Wade's personal tax preparer although he apparently never charged Wade anything for his services. This fact was admitted by Farias in a sworn deposition filed in the Lakeshore lawsuit within the past two weeks, excerpts of which are attached hereto as Exhibit "1" and incorporated by reference herein.[1] He also from time to time loaned Wade personally tens of thousands of dollars for which

[1] *See* Exhibit "3" excerpts of the Deposition of Robert Farias taken on March 11, 2020 to the Declaration of Chad Biggins dated April 28, 2020 attached hereto as Exhibit "1" ("Farias Depo.") at pp. 16:15 – 17:6.

he charged no interest and is still owed between $30,000.00 to $40,000.00.[2] As a favor Wade hired Farias as an employee or contractor at one point around 2009 for which he was paid between $300,000.00 and $450,000.00 as a "salary" and placed on the Company's health care plan.[3] Although this employment relationship ended years ago, Farias is still on the Vertical health care plan, a "quid pro quo" worth many thousands of dollars annually.[4] Farias also controls between 10 and 25 million shares of Vertical for which he admittedly has not paid a penny.[5]

12. In approximately 2013, Wade entered into an agreement with Farias whereby, in a loan in the amount of $1,759,000.00 from Lakeshore to Vertical, Mr. Mokhtarian's loan to NOW Solutions from his entity (Tara Financial) was replaced.[6] Since January 2013, as part of various sweetheart deals negotiated by Wade with Farias, Lakeshore and/or Farias have received over $5 million dollars (including 25% of the shares of NOW Solutions at no cost) and there is still almost $3 million dollars allegedly owed to Lakeshore.[7] This indebtedness is currently the subject of the Lakeshore lawsuit. Mr. Holder as a consultant familiar with the financials of Vertical, has signed a sworn Declaration in the Lakeshore lawsuit calculating that the total interest on the Lakeshore debt since 2013 is usurious (well over 250%) when all the fees and benefits accrued to Farias and Lakeshore are included.[8] A true and correct copy of this sworn Declaration is attached hereto as Exhibit "2" and incorporated by reference herein. Because of his personal business relationship with Farias, nothing about the Lakeshore dealings can be considered arms-length transactions negotiated by Wade in good faith.

[2] Farias Depo. at pp. 17:7-10; 26:1-13; 41:23 – 42:17; 135:19-23.
[3] Farias Depo at pp. 21:7 – 22:23.
[4] Farias Depo. at pp. 18:22 – 20:18; 41:1-22; 133:5 – 135:23.
[5] Farias Depo at pp. 73:8 – 74:12.
[6] Farias Depo. at pp. 14: 15-24; 46:4 – 47:10; 51:2 – 52:21; 107:3-9.
[7] Farias Depo. at pp. 72:7 – 74:12; 107:3-9; 125:1-13.
[8] Farias Depo. at pp. 51:1 – 52:21.

13. It was about the same time as the Lakeshore loan that Wade stopped remitting the withholding taxes from the paychecks of employees of NOW Solutions. It now appears clear that Vertical's financial problems since then arose mainly because of the debt he was personally accumulating in the dealings with Farias and Mokhtarian.

14. By December 2017, the liability to the IRS including penalties and interest had ballooned to over $1.5 million dollars. Plaintiff Valdetaro, although he was the Chief Technical Officer of Vertical and its subsidiaries, did not receive his full salary in 2017. When he confronted Wade about the trust tax problem, he was again told that the matter was "under control" and that payout arrangements had been made with the IRS. Moreover, Wade assured him that he had no personal liability because the company's tax lawyer (Lawrence Garr) was protecting Mr. Valdetaro from any personal liability. In fact, none of this was true as Mr. Valdetaro was to learn to his complete shock.

**D. Mr. Wade Abandons any Pretense of Honest Dealing with Vertical's Revenue.**

15. At all material times Mr. Wade had an annual salary of $300,000. However, he routinely underpaid Mr. Valdetaro, as well as the Company's chief operating officer and corporate general counsel, among others. Even though he did not pay other executive officers and employees their salaries for weeks and sometimes months at a time, Wade always made sure that he got at least his annual salary indirectly by writing checks to himself for cash and his use of the Company debit card for all his personal expenses and ATM cash withdrawals. This was being done on a regular basis even though he knew that the salaries of other employees and payment of the trust fund taxes to the IRS were his first responsibility. In his recent sworn deposition, Mr. Farias

acknowledged that, as Wade's CPA, he knows that Wade has been improperly paying all his personal expenses for years with the Company debit card because he has no personal credit cards.[9]

16. After Mr. Wade's failure to comply with the payout plan which had been arranged with the IRS, a tax lien was filed against NOW Solutions (US) in the fall of 2018. Simultaneously, Mr. Valdetaro also received a letter from the IRS informing him that the government intended to levy against his personal assets for the trust fund taxes. When he talked directly to the tax lawyer who had been representing NOW Solutions, he found out that he had been lied to by Wade the entire time. In fact, Mr. Wade had not honored any of the payout arrangements negotiated on behalf of the company nor had Mr. Valdetaro's lack of involvement in the trust fund taxes been shown to the IRS. Moreover, because he had relied on the misrepresentations of Wade concerning the lack of personal responsibility, it was then too late to challenge the assessment made against his personal assets. This was in spite of a letter Garr sent to the IRS which demonstrated that Valdetaro had nothing to do with the payment of the payroll tax, attached as Exhibit "3". Mr. Farias also confirmed in his deposition that Wade had misrepresented to him as well that he had the IRS problem "under control."[10]

17. Valdetaro then took it upon himself to look at the bank records of Vertical and NOW Solutions and realized the extent of Wade's self-dealing and breach of his fiduciary duties. More particularly, he saw that Wade had been writing checks to himself from the company bank accounts in the tens of thousands of dollars and then negotiating them for cash in order to avoid the IRS levy against his personal assets. Moreover, he saw that Wade had been using the Vertical bank account debit card as his own personal credit card, routinely making cash withdrawals from ATMs, and charging personal expenses such as repairs to his Porsche and expensive meals at

[9] Farias Depo. at pp. 16:20 – 18:2; 128:4 – 129:3; 134:3-13; 138:16 – 139:25.
[10] Farias Depo. at pp. 141:16 – 142:18.

Dallas restaurants. By making unauthorized charges for personal expenses against the debit card and embezzling cash through the ATM withdrawals and checks Wade actually paid himself more than twice his annual salary of $300,000.00 in 2018. Farias indicated in his deposition that, because he was Wade's CPA, he recalled Wade had taken out approximately $675,000.00 in that year.[11] Valdetaro also learned that Wade had directed NOW Solutions' wholly owned subsidiary in Canada to wire money directly to Vertical, thereby bypassing its parent NOW Solutions US and avoiding the IRS tax lien.

18. There was no annual 10K report filed in 2019 for the year ending December 31, 2018 as a result of the actions of Mr. Wade. Vertical's long-time outside audit firm, MaloneBailey, resigned in 2019 expressly because of the lack of internal financial controls at Vertical and its subsidiaries. Mr. Valdetaro for his part called Mr. Wade a "crook" to his face after he saw the fraudulent use of the debit card and the unauthorized checks written to "cash" and threatened to resign. He knew that the more than six hundred thousand dollars that Wade had paid himself in 2018 alone could have been used to fund the tax lien payout plan as well as pay the full salaries of key executives who received only a fraction of what they were owed in 2018 and prior years.

19. What Valdetaro did not know at that time, however, was the nature and extent of Wade's personal dealings with Mokhtarian and Farias. In 2013, concurrently with Wade's decision to stop paying the taxes, Mokhtarian domesticated the California judgment he had against Wade in Texas and started collection efforts. However, as shown in Court filings, Wade resisted all obligations to cooperate with the Texas Court in complying with post-judgment discovery in that case. He refused to turn over his personal records, assets, or to attend scheduled hearings and depositions. All of this resulted in the 68th District Court signing an Order Appointing a Receiver

[11] Farias Depo. at pp. 134:3-13.

and to Compel Discovery, attached hereto as Exhibit "4". The Order was signed on May 7, 2019. At that time Valdetaro had no knowledge of either the Mokhtarian lawsuit or the Receivership. He had no knowledge of the money Wade owed to Farias or that Farias was being carried on the Vertical health plan (nor that Wade still had his ex-wife on the plan although they had been divorced for 20 years).[12]

20. Two days later, on May 9, Wade removed Plaintiff Valdetaro from the Company, by placing him on "paid administrative leave" on the pretext that an "investigation" needed to be made regarding some unspecified allegations of impropriety. Wade had his law firm collect Valdetaro's personal laptop and make a copy of the hard drive supposedly to facilitate the investigation. This was nothing but an elaborate ruse by Wade intended to silence Valdetaro and keep him from discovering what he was doing with the money and the existence of the Receivership. Wade then told the other employees that they could not talk to Mr. Valdetaro because of the ongoing inquiry. To date, however, Valdetaro has not heard the results of the investigation although Wade did cut off Valdetaro's paycheck without giving any reason shortly after placing him on administrative leave. Upon information and belief Wade continued to pay himself virtually his entire salary in 2019 by violating the Receivership order although other senior executives at the company were not paid and the penalties and interest on the outstanding tax liability continued to grow. Wade continues to write checks to himself and to use the company debit card to obtain cash and pay for his personal expenses and meals to this day in direct violation of the Receivership order in the Mokhtarian lawsuit and his fiduciary duty not to engage in self-dealing.

[12] Farias Depo. at pp. 134:14 – 135:11.

21. All the above actions by Wade are a breach of his fiduciary duties as a director and officer of Vertical and its subsidiaries. He has jeopardized the financial viability of the Company by not paying the IRS the payroll withholding taxes and obligating Vertical in onerous financial arrangements with individuals with whom he has undisclosed personal obligations. He has engaged in self-dealing by maintaining control of the Company by refusing to elect a Chief Financial Officer or conduct an annual shareholders meeting as mandated by the bylaws of Vertical. His ongoing theft of money from Vertical by negotiating checks to himself and the unauthorized use of the Company debit card to withdraw cash and pay for personal expenses is a clear violation of his highest duties of care, obedience, and loyalty owed to the company. In addition, since May 7, 2019, he has been writing checks to himself and improperly using the Company debit card to obtain cash in violation of the Receivership Order in the Mokhtarian lawsuit. The Derivative Plaintiffs request the Court take Judicial notice of the filings in the Mokhtarian lawsuit for purposes of this case.

### E. Mr. Mills has Joint and Several Liability for Wade's Breaches of Fiduciary Duty.

22. As a co-director with Wade of Vertical and the Secretary of the Corporation, Mr. Mills owes the shareholders of the Company the highest measure of fiduciary duty. This is certainly true in the case of a lawyer such as Mr. Mills who advertises on his firm's webpage that he is an expert in "corporate governance". Because he was required to sign off on the Vertical 10K reports for calendar years 2015, 2016 and 2017 he was certainly aware that Mr. Wade had not been paying the trust fund taxes that were his responsibility. He also knew about the Lakeshore Investments loan and the modifications thereto because they were set out in the Form 10K he signed every year from 2014 to 2018. He knew from the 10K for the period ending December 31,

2017 that MaloneBailey had given the opinion that there was a question whether the company would survive as a going concern.

23. Mills had actual knowledge that, regardless of the nonpayment of the tax lien against NOW Solutions and the failure to pay employee salaries, Wade paid himself over $600,000 in 2018. He knew that the Chief Financial Officer had resigned years before and that the Company's outside auditor had resigned in 2019. He therefore had direct personal knowledge that for some time there had been no financial controls on Mr. Wade whatsoever. He also has direct knowledge that Wade was paying himself indirectly by his use of the Vertical debit card and directly with checks written to himself personally, some in the amount of $30,000.00. He also knew that other key employees were underpaid in 2017, 2018 and 2019. Nonetheless, even knowing Mr. Wade's dishonest proclivities, he did nothing.

24. Finally, not only did Mr. Mills look the other way when Wade was violating his fiduciary duties, he facilitated the breaches of those duties by allowing Wade to have a free hand in handling the finances of the Company. He knew that the Vertical bylaws as well as Delaware corporate statutes mandated an annual shareholders meeting at which time the new Board of Directors would be approved. He and Wade maintained control by never scheduling an annual shareholders meeting. He did however manage to collect his $42,000 annual directors fee. Thus, by ignoring the bylaws he helped to ensure that there would be no change in corporate governance. Moreover, he ignored the requirement under the bylaws that the company was required to have a chief financial officer. Nothing has been done in the last year to replace the outside auditor. Mills has thus ensured by his gross negligence that corporate executive salaries and taxes remain unpaid while Wade continues to enrich himself at the Company's expense.

25. Prior to filing this lawsuit, Plaintiffs' counsel sent a letter to Mr. Mills detailing some of the above improprieties. A request was made to the effect that Mr. Mills do something to fulfill his fiduciary obligations to Vertical and its shareholders. A true and correct copy of this correspondence is attached hereto as Exhibit "A" to the Affidavit of Luiz Valdetaro (attached hereto as Exhibit "5") and incorporated by reference the same as if fully copied and set forth at length. To date there is no indication that Mr. Mills has done anything in response thereto, nor has he bothered to respond to the letter.

26. The Plaintiffs are keenly aware of the demand requirement as a prerequisite to filing an action against a Board of Directors. Given the past conduct of the Defendants, however, it should be obvious that making a demand on these Directors would be futile. There are only two Directors of Vertical and neither is disinterested with respect to these matters. Moreover, if Wade is in fact not paying other principal executives ANY salary for all of 2020, he may have so depleted its cash that Vertical's continued existence is in jeopardy and irreparable harm is threatened thereby. Plaintiffs have only recently become aware that Mokhtarian's lawyers are threatening to have Wade jailed for his continued contempt of this Court. As a result, there is no time to waste and immediate injunctive relief is vital.

27. Plaintiffs are also aware that Vertical's bylaws contain a Delaware Corporate Code Section 102 (b) (7) provision which offers a "business judgment" defense to a company's directors. However, none of the actions complained of herein could even remotely be considered matters of "business judgment". Not remitting payroll withholding taxes to the IRS is a violation of the law and caused the Vertical CFO to quit and forced the Company to incur hundreds of thousands of dollars in penalties and interest. Not rehiring a CFO in 7 years as mandated by the bylaws is not a matter of business judgment and left sole check writing authority in Wade's hands. Embezzling

tens of thousands of dollars on Vertical's debit card and fraudulently trying to pass off the charges as business-related is not a matter of business judgment. It is tax fraud. Allowing the CEO to secretly take out twice his annual salary in 2018 while other employees were paid a fraction of theirs is not a matter of business judgment. Wade's paying himself via ATM cash withdrawals and $30,000.00 checks at a time when the Company is defaulting on its contractual obligations to its employees, creditors and the IRS is not a matter of "business judgment". Failure to institute minimal internal financial systems and controls after the outside audit firm quits for that very reason is gross negligence.

28. Finally, the existence of the Receivership Order against Wade presents a matter of special urgency that Plaintiffs only learned about within the past week. It now appears that Wade's actions in writing checks to himself and then negotiating them for cash and using the Company debit card to make ATM withdrawals are not merely breaches of fiduciary duty to Vertical, but illegal under the terms of the Receivership Order. Because Mr. Mills refuses to take any action to protect the Company and no other remedy is available to stop the malfeasance, the Derivative Plaintiffs plead that this Court act through its equitable powers.

29. All conditions precedent have been performed or have occurred.

## V. CAUSES OF ACTION AGAINST THE DEFENDANTS

30. For purposes of these causes of action the Plaintiffs incorporate paragraphs 1 through 29 above as if fully copied and set forth herein.

### A. Breach of Fiduciary Duty.

31. The Derivative Plaintiffs bring this action on behalf of Vertical against both Defendants jointly and severally. Both Wade and Mills owed the highest fiduciary duty as Officers and Directors to the Company and its Shareholders. They have ignored Vertical bylaws requiring the appointment of a CFO and have thereby allowed Wade to engage in self-dealing and outright

theft on a massive scale. By not holding annual Shareholder meetings as required by law and not filing required Form 10k reports they have insulated themselves from accountability. Although Vertical is a public company, no financial reports have been filed for two years and only Wade apparently knows where the money is going. The fact that senior employees other than Wade have not received a paycheck since 2019 is unconscionable. Either there is no money to pay salaries, in which case the situation is truly dire, or alternatively, there is money, but Wade is spending it all himself. In any case, because of the Receivership Order Wade did not have a legal right to withdraw cash from the Company other than his current salary for the past year.

32. The Derivative Plaintiffs hereby seek damages for the non-payment of the payroll taxes together with accrued penalties and interest; all sums of cash removed from ATM machines using Wade's debit card and checks written to him and negotiated; all charges on the Company debit card or other credit that were not for a legitimate business purpose including car expenses, meals, food and cell phones; and any and all sums paid to Wade for compensation in excess of the percentage of salaries paid to other employees for each year in which all salaries were not fully paid. Reimbursement is also sought for improper payments or benefits Wade paid to Farias for fictitious salaries, health care, stock transfers or other transactions as may be disclosed in discovery.

33. The Plaintiffs also seek the forfeiture of any contractual consideration in the form of Director's fees the Defendants received from 2013 forward. The complete disregard of mandates in the Vertical bylaws to have a CFO or any other financial controls on Wade was deliberate and grossly negligent.

34. Because of the control of the finances of Vertical by Wade and Mills as fiduciaries, and Wade's concealment of his personal dealings with Farias and others, the Derivative Plaintiffs

invoke the discovery rule with respect to any improper payments or other damages identified in the course of this litigation.

35. Plaintiffs also seek pre- and post-judgment interest, and costs of court. They also seek their reasonable attorney's fees for bringing this Cause of Action pursuant to the Texas Business Org. Code Section 21.001 et seq.

**B. Accounting.**

36. The Derivative Plaintiffs seek an accounting of the following:

(a) Bank records for Vertical and its subsidiaries over which Wade had check writing authority from 2013 to date;

(b) All purchases, charges or cash withdrawals on Vertical debit or credit cards or those of its sudsidiaries, used by Wade from 2013 to date.

(c) Use of and charges for phones authorized by Wade for himself from 2013 forward that were actually used by non-employees; and

(d) Director fees paid to the Defendants from 2013 forward.

**C. Fraud.**

37. Plaintiff Valdetaro brings this Cause of Action individually against the Defendants, jointly and severally, for fraud involving the non-payment of trust fund taxes from 2013 forward. Valdetaro relied to his detriment on Wade's representations regarding the liability. More particularly, Wade told him that there was a payment plan in effect to pay the taxes and that Mr. Garr was representing the Company and its Directors and officers. Moreover, Wade specifically told him that Valdetaro would have no personal liability because he had no personal authority over the collection or handling of the payroll whatsoever. As stated in Exhibit "3", Valdetaro had not been involved in financial matters and had no authority over payment of the trust fund taxes. He was never involved in anything other than technical issues at the company.

38. When the IRS threatened to levy his personal assets in November 2018, he learned the following material facts:

(a) Wade had repeatedly violated the payout arrangements he had made with the IRS, mainly because he had embezzled over $300,000.00 from the Company in 2018;

(b) As a result of Wade's malfeasance, the IRS payout arrangement was in default;

(c) The Company lawyer had never been representing Valdetaro individually and no attempt had been made to demonstrate that he was not a "responsible person" under Internal Revenue Code Section 6672; and

(d) By the time Mr. Garr sent the Form 12153 Statement to the IRS it was already too late for Valdetaro to contest liability.

39. Because of his detrimental reliance on the material representations of Wade, Valdetaro was forced to enter into a payout arrangement with the IRS to avoid losing his home and other property. The amount of the assessment, for which monthly payments have already begun, is $425,000.00.

40. Plaintiff seeks judgment against the Defendants, jointly and severally, for the damages he has suffered as a result of the tax lien, both for the amount of the lien against his assets, and pre-and post-judgment interest thereon together with costs of Court.

## VI. TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

41. The Derivative Plaintiffs seek a Temporary Restraining Order, a Preliminary Injunction, and upon trial a Permanent Injunction, because the harm to Vertical and its subsidiaries is both immediate and irreparable. As of December 2017, the last period for which Vertical filed a Form 10k statement, its outside auditor filed a "going concern" opinion for the Company. Since

that time, a lien against one of the two revenue producing entities, NOW Solutions, was filed now in excess of one million dollars with principal and interest. Wade paid himself more than $600,000.00 in 2018 and continues to use the Company debit card and checkbook to support himself. On information and belief Wade has continued to take his entire $300,000.00 salary since then while the other three principal executives of Vertical have not received any salary in 2020.

42. Vertical has a probable right to relief under the circumstances. The Defendants are operating in violation of the Company bylaws. The outside auditor quit a year ago because of the lack of internal financial controls and no Form 10k was filed for 2018 as a result. Based upon information the Plaintiffs have received over the past week they learned from Wade's CPA that he is using the Vertical debit card to support himself and has no other credit cards. The Plaintiffs also learned about the Mokhtarian lawsuit and Wade's violation of the Receivership Order. If Wade and Mills remain in financial control of Vertical, it will collapse. If the Company collapses the harm will be irreparable to the shareholders.

43. The Plaintiffs have no legal remedy. The Defendants have acted with impunity and in flagrant disregard of the bylaws and their fiduciary duties to the shareholders for years. The owners of the common shares of the Company will have irrevocably lost the hundreds of millions they invested over the past twenty years. It is doubtful that Wade has any resources left to satisfy a judgment because of the IRS lien and the money he owes personally to Mokhtarian and Farias. Unless the Court acts with urgency to restrain Wade from continuing to loot the assets of Vertical, the Company will collapse, and the Shareholders will be wiped out.

44. Plaintiffs request that this Court sign a Temporary Restraining Order for the following relief:

(a) Restrains Defendant Richard S Wade from the use of any credit or debit cards issued in the name of Vertical Computer Systems Inc. or any of its subsidiaries;

(b) Restrains defendant Richard S Wade from writing checks, transferring, withdrawing or wiring cash out of any banking account or credit facility of Vertical Computer Systems, Inc. or any of its subsidiaries, either to himself or to any person not employed by Vertical Computer Systems, Inc. or its subsidiaries, or to satisfy any personal obligations of Wade such as legal fees, installment payments on loans from Robert Mokhtarian or Robert Farias, rent obligations, automobile expenses or meals and entertainment.;

(c) Restrains the Defendants from destroying, hiding, or altering any financial records of Vertical Computer Systems, Inc., or any of its subsidiaries.

45. In addition, the Derivative Plaintiffs pray that the Court set a hearing for a Preliminary Injunction continuing the elements of the Temporary Restraining Order as well as the following relief:

(a) That Wade be prohibited from receiving a salary until the earlier of the time as he is removed from office, resigns or until the other employees of Vertical have been paid their accumulated salary deficits for 2020;

(b) That the Defendants immediately designate a Chief Financial Officer with check writing authority on behalf of Vertical and its subsidiaries;

(c) That the Defendants be prohibited from terminating any employee or independent contractor except for criminal acts, gross negligence, or cause

as defined in any written employee or subcontractor agreements they may have with Vertical or its subsidiaries.

46. The Plaintiffs will agree to post an appropriate bond considering the nature of the actions of the Defendants and the fact that the injunctive relief sought simply requires the subjects to adhere to existing fiduciary obligations and to comply with the Receivership Order.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Luiz Valdetaro and the Derivative Plaintiffs pray that Defendants Richard Wade and William Mills, Esq. be cited to appear, that they have Injunctive relief as prayed for herein and that upon trial of this matter, Plaintiffs recover the following against Defendants as follows:

(a) Damages for Breach of Fiduciary Duty against Defendants jointly and severally;

(b) Reasonable and necessary attorney's fees and costs of court;

(c) Pre and post judgment interest at the maximum permissible rate;

(d) Damages in the amount of $425,000.00 against the Defendants jointly and severally on behalf of Plaintiff Valdetaro, together with pre-and post-judgment interest thereon and costs of court:

(e) Permanent Injunctive relief as prayed for herein: and

(f) Such other and further relief, both special and general, either at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

*/s/ Peter J. Harry*

Peter J. Harry
Texas State Bar No. 09134600
pete@pjharrylaw.com

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2828 Hood Street #1201
Dallas, TX 75219
(469) 232-2653 – (telephone)
(469) 232-2656 – (facsimile)

*Attorney for Plaintiffs Luiz Valdetaro and Derivative Plaintiffs*

# EXHIBIT B

**2020 FLORIDA PROFIT CORPORATION ANNUAL REPORT**

**FILED**
**Apr 27, 2020**
**Secretary of State**
**0164619764CC**

DOCUMENT# G90665

**Entity Name:** VERTICAL COMPUTER SYSTEMS, INC.

**Current Principal Place of Business:**

401 E. LAS OLAS BLVD.
SUITE 130-463
FT. LAUDERDALE, FL 33301

**Current Mailing Address:**

401 E. LAS OLAS BLVD
SUITE 130-463
FT. LAUDERDALE, FL 33301 US

**FEI Number: 59-2452454**

**Certificate of Status Desired:** No

**Name and Address of Current Registered Agent:**

WEINBERG, STEVEN A.
7805 SW 6TH CT
GATEHOUSE RD
PLANTATION, FL 33324 US

*The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.*

SIGNATURE:

Electronic Signature of Registered Agent — Date

**Officer/Director Detail :**

| | |
|---|---|
| Title | PDTS |
| Name | HOWELL, BRETT |
| Address | 411 N NEW RIVER DR. E.<br>APT. 3901 |
| City-State-Zip: | FT. LAUDERDALE FL 33301 |

*I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.*

SIGNATURE: BRETT HOWELL PRES. 04/27/2020

Electronic Signature of Signing Officer/Director Detail — Date

# EXHIBIT C

RAYMOND JAMES®

INFANTI STEVEN SR
Steven J. Infanti
[redacted]

Pricing as of: 07/17/2020 11:16:06 AM

Account: [redacted]

| Description | Symbol/ CUSIP | Type / Loc | Quantity | Price | Daily Change $ | Current Value | Avg Inv Per Share | Inv GL $ | Inv GL % | Est. Ann Inc | % of Port |
|---|---|---|---|---|---|---|---|---|---|---|---|
| CASH | CASH | | | | | $0.00 | | | | | 0.00% |
| VERTICAL COMPUTER SYSTEMS INCORPORATED COM NEW | VCSY | 1 / 00S | 500,000L | $0.012 | $0.00 | $6,000.00 | $0.040 | ($14,247.00) | -70.37% | $0.00 | 100.00% |
| **Total: 2** | | | | | **$0.00** | **$6,000.00** | | **($14,247.00)** | **-70.37%** | **$0.00** | **100.00%** |

[1]Missing Cost Basis is not included in total cost calculations  e - Periodic Exchange Plan exists for this holding  o - Open Order exists  p - Periodic Investment Plan exists for this holding
s - Systematic Withdrawal Plan exists for this holding  * - Multiple investment plans exist for this holding  N - Pricing is not available for this security  † - Current Value does not include Life Insurance Values

# EXHIBIT D

## FUTURE BOARD MEMBERS

### John Adler

- Chief Executive Officer: Call Control
- Advisor Zabo
- Dallas/Fort Worth Area
- Builds business and revenues with innovation in process, people or offering

### Mike Short

- COO & director Alani Consulting
- Dallas/Fort Worth area
- COO & Director Cor Tech Inc
- Over 25 years of experience at Senior and Executive level positions
- Experienced in acquiring companies ranging from $1million to $1billion in revenue streams

### Len Chermack

- CEO Hexa Global Ventures
- Member of Board of Advisors of Adapt Software India Limited and TFW Labs Inc.
- Interim CRO, CEO Advisor Multiple Al/Cloud, Saas Tech Companies