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**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

STRIKEFORCE TECHNOLOGIES, INC.,

Plaintiff,

v.

AUTHENTIFY PATENT CO., LLC
and AUTHENTIFY, INC.,

Defendants.

:
:
: JURY TRIAL DEMANDED
:
: Civil Action No.: 1:13-cv-03242
:
: **AMENDED COMPLAINT FOR**
: **DECLARATORY JUDGMENT**
: **OF NON-INFRINGEMENT**
: **AND INVALIDITY OF U.S.**
: **PATENT NO. 6,934,858**
:
: **(Electronically Filed)**
:

Plaintiff StrikeForce Technologies, Inc. (“StrikeForce”), by its undersigned counsel, files this Amended Complaint against Defendants Authentify Patent Co., LLC (“Authentify Patent”), and Authentify, Inc. (“Authentify”), and avers as follows:

1. This is an action for a declaratory judgment of patent non-infringement and invalidity for the purpose of resolving an actual controversy between the parties, as alleged herein.

THE PARTIES

2. Plaintiff StrikeForce is a corporation incorporated in the state of Wyoming, with its principal place of business located at 1090 King Georges Post Road, Edison, New Jersey 08837.

3. Defendant Authentify is a corporation existing under the laws of the State of Delaware and maintains its principal place of business at 8745 West Higgins Road, Suite 240, Chicago, Illinois 60631.

4. Defendant Authentify Patent is a limited liability company incorporated in the State of Washington, having its principal place of business at 13338 NE 97th Street, Redmond, Washington 98052-3157. Authentify Patent's registered agent for process of service is CT Corporation System, 505 Union Ave., SE, Suite 120, Olympia, Washington 98501.

5. Defendant Authentify Patent owns one or more patents relating to out-of-band ("OOB") authentication, including U.S. Patent No. 6,934,858 (the "'858 Patent"). (A true and correct copy of the '858 Patent is attached as Exhibit A to Exhibit 1 to this Complaint.)

JURISDICTION AND VENUE

6. This Court has jurisdiction over these claims for declaratory relief arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, pursuant to 28 U.S.C. § 1338, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Defendants conduct business in and have substantial contact with the State of New Jersey, such that requiring the Defendants to respond to this action will not violate due process. Defendants are subject to the personal jurisdiction of this Court and are amenable to service of process pursuant to the New Jersey long-arm statute and Rule 4(h) of the Federal Rules of Civil Procedure.

7. Venue is proper under 28 U.S.C. §§ 1391(b) and (c), because Plaintiff has engaged in activity in this judicial district alleged to infringe the '858 Patent, which is purportedly owned by Authentify Patent. In particular, Plaintiff has offered to sell allegedly infringing services and/or products to customers located in this district. Defendants are subject to personal jurisdiction in this judicial district and have done business within this district.

8. An actual controversy exists between the Parties with respect to the non-infringement of '858 Patent. On April 26, 2013, Authentify Patent filed – but has not yet served – a lawsuit for

infringement of the '858 Patent against the Plaintiff in the United States District Court for the Western District of Washington that relates to Plaintiff's ability to make, use, sell and/or offer to sell at least some of its products and services.

FACTUAL BACKGROUND

9. The application for the '858 Patent was filed on December 13, 2000 and listed the inventor as James R. Woodhill. On December 13, 2000, the same day as the '858 Patent application was filed, Woodhill assigned the '858 Patent to Authentify.

10. Woodhill is the founder and current Chairman of Authentify. Authentify is engaged in the business of developing and selling OOB authentication technologies.

11. Authentify regularly solicits, sells, and makes available OOB authentication technologies covered by the '858 Patent to various companies, including financial institutions and individuals, inside the state of New Jersey.

12. By early 2012 Authentify sought to realize greater revenues from the '858 Patent by aggressively engaging in an effort to license the '858 Patent and initiate patent litigation. To facilitate this plan Authentify partnered with ipVco LLC ("ipVco") to act as its exclusive licensing and management partner for the '858 Patent.

13. Following the selection of ipVco, Authentify formed Authentify Patent as a Washington state limited liability company on February 8, 2012. On February 22, 2012, Authentify assigned the '858 Patent to Authentify Patent. Authentify retained all rights to incorporate the OOB authentication technology covered by the '858 Patent into its products, including products marketed, offered for sale sold in the state of New Jersey.

14. Authentify Patent and ipVco both purportedly maintain their principal places of business at 218 Main Street, Suite 418, Kirkland, WA 98033.

15. Authentify is the sole member and managing member of Authentify Patent. Authentify Patent has no independent decision-making capabilities and all facets of its operations

are dominated, controlled and directed by Authentify. The control exerted by Authentify suggests that all financial gains and losses by Authentify Patent inure directly to the benefit or detriment of Authentify and its shareholders.

16. With respect to the '858 Patent, Authentify and Authentify Patent are alter egos of one another. Working together, Authentify and Authentify Patent constitute a joint enterprise that acts to monetize the '858 Patent. As such, each act of one entity is attributable to the other. Authentify and Authentify Patent further enjoy an agency and fiduciary relationship whereby each has assented to the acts of the other with regard to the monetization of the '858 Patent.

17. Press releases related to the monetization of the '858 Patent further reflect that Authentify Patent does not truly enjoy an independent existence from Authentify. On at least two occasions press releases were issued discussing litigation seeking to enforce the '858 Patent that was initiated by Authentify Patent. Although purporting to "announce" developments related to Authentify Patent, each press release concludes with an extensive discussion of Authentify's business operations.

18. On August 28, 2012, a press release was issued announcing a settlement of a patent suit filed by Authentify Patent against PhoneFactor, Inc. The press release concluded with the following statement:

Authentify Patent Co LLC is a wholly owned subsidiary of Authentify Inc. Authentify, Inc. is a leading global provider of telephone-based Out-of-Band (OOB) authentication services. With a client list that includes five of the world's top ten banks, three of the five largest ecommerce websites and two of the top four insurance companies in North America, Authentify has the most experience and expertise in deploying OOB solutions in the industry. These multi-factor authentication (MFA) services enable organizations that need strong security to quickly and cost-effectively add two-factor or multi-factor authentication layers to user logons, transaction verifications or critical changes such as adding an ACH payee, resetting passwords or changing contact information. The company's patented technology employs a service-oriented message architecture and XML API to seamlessly integrate into existing security processes. Authentify markets primarily to financial services firms that need to protect their clients' online accounts, corporate security professionals managing access control, and e-merchants who want to limit fraud on their sites.

19. On April 26, 2013, a press release was issued announcing the filing of a patent suit by Authentify Patent against StikeForce. The press release concluded with the following statement:

About Authentify Patent Co LLC & Authentify Inc. Authentify Patent Co LLC is a wholly owned subsidiary of Authentify Inc. Authentify, Inc. is a leading global provider of telephone-based Out-of-Band (OOB) authentication services. With a client list that includes five of the world's top ten banks, three of the five largest ecommerce websites and two of the top four insurance companies in North America, Authentify has the most experience and expertise in deploying OOB solutions in the industry.

20. Peter Tapling, President and CEO of Authentify, and a leading expert in the field of internet identity management, who is a frequent speaker at industry events, has traveled to New Jersey to conduct presentations on countermeasures to prevent fraudulent attacks on consumers and to otherwise market Authentify products embodying the '858 Patent.

21. Authentify's clients include, among others, the Hewlett-Packard Company, the Associated Bank, VeriSign, Inc., PaymentOne, the Department of Defense, Amazon.com, Inc., Bank of America, e-Bay Inc., FIS Global, HSBC, Lloyd's Bank, PayPal, RSA, and Yelp, Inc. – many of whom, if not all, have significant operations in New Jersey and may utilize Authentify's technology and services in New Jersey.

22. Defendant Authentify Patent licenses products under the '858 Patent ("Licensed Products") to third parties. Those third parties, including Authentify, sell and/or use the Licensed Products throughout the United States, including New Jersey. Defendants have, therefore, derived revenue from the sale and/or use of those Licensed Products in New Jersey.

23. The financial-services and insurance industries have a commanding presence in New Jersey. There are more than 12,300 financial-services operations in New Jersey.

24. Because of its close proximity to New York and Philadelphia, in addition to its advancements in fiber optics, infrastructure, talent, highly competitive corporate real-estate and utilities rates, New Jersey has attracted and welcomed the presence of a multitude of financial and insurance institutions.

25. Authentify describes itself as a leader in offering OOB authentication to the financial services and banking industries. Given the strong presence of these industries in New Jersey, with a heavy concentration of data centers, network management and system operations for almost every major bank in Jersey City, it is highly likely Authentify regularly conducts business in New Jersey.

26. Authentify Patent and Authentify maintain a strong presence in the financial and insurance sector in New Jersey and, thereby, New Jersey consumers and companies.

27. Authentify Patent and Authentify derive substantial revenue throughout the United States and worldwide, including New Jersey, as a result of a network of distributors and/or dealers and/or clients whose market share vastly encompasses the international market.

28. Indeed, Authentify boasts on its website a number of products, including but not limited to Authentify xFA and Authentify 2CHK Innovation, both of which are mobile applications accessible to the general public, including citizens of New Jersey.

29. Authentify xFA is a mobile application that permits consumers to connect with financial companies to authorize transactions. Authentify xFA utilizes voice and biometrics technology – as opposed to conventional passwords – to authorize such transactions.

30. Authentify 2CHK Innovation utilizes a reviewal process that directly connects to end users and financial services firms. For example, when a consumer intends to remit payment to a third party, the financial firm – utilizing Authentify 2CHK Innovation – will send a confirmation message to the consumer, who is able to review the transaction on the mobile application.

31. The Authentify 2CHK Innovation is currently available as a mobile application on the Android, iOS (i.e., Apple), Windows and OS X platforms, which include both mobile devices and computers.

32. Those who download Authentify 2CHK Innovation must agree to a Software License Agreement. The Software License Agreement verifies that the application will connect users to individuals, retailers, financial institutions or other firms or companies. Moreover, the Software

License Agreement indicates that Authentify may collect information from end users to gather details about advancing the application.

33. Through the application of the mobile applications, Authentify and Authentify Patent maintain continuous, systematic, and substantial contacts with New Jersey. These contacts include, but are not limited to, interacting with consumers and end users in New Jersey who use services provided by financial-services firms, ecommerce websites, and insurance companies that utilize the '858 Patent and other Authentify products. This interaction with New Jersey residents, among other contacts, reflects the Defendants' purposeful targeting of New Jersey and its services.

34. Moreover, Authentify's products, which include the Authentify xFA and Authentify 2CHK Innovation, permit Authentify to market their services to New Jersey companies.

35. AuthentifyxFA and Authentify 2CHK are offered on sites such as the Apple Store, and can be readily downloaded by consumers in New Jersey. Defendants distributed these products for free directly to customers of financial institutions as part of an effort to sell products to the financial institutions that incorporate the '858 Patent.

36. StrikeForce is a leading provider of OBO authentication, keystroke encryption and mobile security products. StrikeForce and Authentify are direct competitors in the area of providing transaction/data security products to the financial and banking industries.

37. On April 26, 2013, Authentify Patent filed a lawsuit against StrikeForce in the United States District Court for the Western District of Washington styled *Authentify Patent Patent Co., LLC v. StrikeForce Technologies, Inc.*, No. 2:13-cv-741 (hereinafter "the Western District of Washington Action"). The Complaint alleges, *inter alia*, that StrikeForce has infringed and continues to willfully infringe the claims of the '858 Patent and claims entitlement to an injunction, and compensatory, exemplary and treble damages. A true and correct copy of the Complaint filed by Authentify Patent in the Western District of Washington Action is attached as Exhibit 1.

38. By letter dated May 10, 2013, Authentify Patent, through its counsel of record in the Western District of Washington Action, sent a letter to StrikeForce at its headquarters in Edison, New Jersey, inviting StrikeForce to discuss possible settlement of this action. The letter accuses StrikeForce of infringing the '858 Patent and asserts that Authentify Patent "is fully prepared to take this case to trial, and it will seek all remedies provided by law." A true and correct copy of Authentify Patent's letter is attached as Exhibit 2.

39. StrikeForce does not infringe and has not infringed the claims of the '858 Patent, and denies Authentify Patent's claims that it has infringed the claims of the '858 Patent. Moreover, StrikeForce denies that it is subject to personal jurisdiction in the Western District of Washington.

40. Upon filing the Western District of Washington Action, Defendants issued a press release informing the markets, as well as current and potential customers of StrikeForce, of the litigation and alleging that StrikeForce's products infringe the '858 Patent.

41. Despite issuing a demand letter, filing suit, and issuing a press release publicizing the Western District of Washington Action and being named as a defendant in the above-captioned action, Authentify Patent has still not taken steps to perfect service of process in the Western District of Washington Action on StrikeForce. As a result, absent this action, StrikeForce and its products will have been publicly accused of infringing the '858 Patent but left without an appropriate forum in which to contest the allegation.

42. As a result of the Defendants' deliberate efforts to cast a cloud over Strikeforce, as described above, Defendants have disrupted and continue to disrupt the business relationships between StrikeForce and its existing and prospective customers.

43. Based on the foregoing, an actual, substantial, and continuing justifiable controversy exists between Plaintiff StrikeForce and Defendants as to Authentify Patent's allegations that StrikeForce's products and services infringe the claims of the '858 Patent.

44. Plaintiff StrikeForce therefore seeks a judicial determination and a declaration of the respective rights and duties of StrikeForce and Defendants with regard to the '858 Patent and StrikeForce's products and services. Such a determination and declaration is necessary and appropriate at this time so that the Parties may ascertain their respective rights and duties.

COUNT I

Declaratory Judgment of Non-Infringement of the U.S. Patent No. 6,934,858

45. Plaintiff incorporates by this reference the averments set forth in paragraphs 1 through 44 of this Amended Complaint.

46. Plaintiff has not directly infringed, contributed to the infringement of, or induced others to infringe, any claim of the '858 patent either literally or under the doctrine of equivalents.

47. Plaintiff has not willfully infringed any claim of the '858 Patent.

COUNT II

Declaratory Judgment of Invalidity of U.S. Patent No. 6,934,858

48. Plaintiff incorporates by this reference the averments contained in paragraphs 1 through 47 of this Amended Complaint.

49. The '858 Patent is invalid and unenforceable because, *inter alia*, the '858 Patent was not obtained in a manner consistent with and required by the provisions of Title 35 of the United States Code.

50. In particular, the '858 Patent fails to comply with, at least, the required condition for patentability under 35 U.S.C. § 102 *et seq.*, because the invention claimed by Woodhill was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the '858 Patent, or made by another inventor and not abandoned, suppressed, or concealed before the invention claimed in the '858 Patent.

51. The '858 Patent also fails to comply with 35 U.S.C. § 103 for non-obviousness in view of the prior art.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff StrikeForce Technologies, Inc. hereby prays for judgment against Defendants as follows:

A. A declaratory judgment that Plaintiff does not infringe, contribute to the infringement of, or induce the infringement of, or willfully infringe, any claim of United States Patent No. 6,934,858;

B. A declaratory judgment that each of the claims of United States Patent No. 6,934,858 is invalid and unenforceable;

C. That Defendants, their subsidiaries, affiliates, parent, successors, assigns, officers, agents, servants, employees, attorneys, managing members, and all persons acting in concert or in participation with them, or any of them, be enjoined from asserting any claim of United States Patent No. 6,934,858 against Plaintiff;

D. That this case be deemed exceptional and that Plaintiff be awarded its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

E. That Plaintiff be awarded its costs of suit; and

F. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

Dated: August 2, 2013

Respectfully submitted,

By: /s/ Stephen M. Orlofsky

Stephen M. Orlofsky

David C. Kistler

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Attorneys for Plaintiff StrikeForce Technologies, Inc.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Plaintiff StrikeForce Technologies, Inc. hereby certifies that the matter in controversy in this action is the subject of an action styled *Authenticate Patent Patent Co., LLC v. StrikeForce Technologies, Inc.*, No. 2:13-cv-741, which was filed in the United States District Court for the Western District of Washington on April 26, 2013, which has not yet been served on StrikeForce. The parties to that action are those named in the case style. StrikeForce denies that it is subject to personal jurisdiction in the Western District of Washington.

Dated: August 2, 2013

Respectfully submitted,

By: /s/ Stephen M. Orlofsky

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Attorneys for Plaintiff StrikeForce Technologies, Inc.

JURY DEMAND

Plaintiff StrikeForce Technologies, Inc. hereby demands a trial by jury of all causes of action so triable.

Dated: August 2, 2013

Respectfully submitted,

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