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5 **PILLSBURY WINTHROP SHAW PITTMAN, L.L.P.**  
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10 Technologies, L.L.C. and Cross-Defendant Warren Trepp

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF NEVADA**

13 ETREPPID TECHNOLOGIES, L.L.C., a Nevada  
14 Limited Liability Company

15 Plaintiff,

16 vs.

17 DENNIS MONTGOMERY, THE  
MONTGOMERY FAMILY TRUST, DENNIS  
18 MONTGOMERY and BRENDA  
MONTGOMERY as Trustees of The  
19 MONTGOMERY FAMILY TRUST; and DOES 1  
through 20,

20 Defendants.

21 DENNIS MONTGOMERY; MONTGOMERY  
22 FAMILY TRUST,

23 Counterclaimants and Third-Party Plaintiffs,

24 vs.

25 ETREPPID TECHNOLOGIES, L.L.C.; a Nevada  
Limited Liability Company, WARREN TREPP;  
26 DEPARTMENT OF DEFENSE of the UNITED  
STATES OF AMERICA; and DOES 1-10,

27 Counterdefendants and Third-Party Defendants.  
28

Case No. 3:06-CV-00145 (PMP)(VPC)

**ETREPPID TECHNOLOGIES,  
L.L.C.'S SECOND AMENDED  
COMPLAINT**

1 **ETREPPID TECHNOLOGIES, L.L.C.’S SECOND AMENDED COMPLAINT**

2 Plaintiff and Cross-Defendant eTreppid Technologies, L.L.C. (“eTreppid” or “Plaintiff”)  
3 alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Dennis Montgomery (“Montgomery”), the Montgomery Family Trust, Dennis and  
6 Brenda Montgomery, as trustees for the Montgomery Family Trust, and DOES 1-20 (collectively,  
7 “Defendants”) have wrongfully misappropriated and/or converted trade secrets and other property,  
8 engaged and threatened to blackmail eTreppid by wrongfully converting and withholding eTreppid’s  
9 sensitive proprietary information and other property, and/or have breached contractual agreements  
10 with eTreppid.

11 2. Certain of eTreppid’s employees, including Montgomery, were given access to  
12 eTreppid’s sensitive proprietary information on specific terms and conditions designed to allow them  
13 to perform their duties while protecting eTreppid’s proprietary information, including eTreppid  
14 technology, Source Code, confidential information, and trade secrets related to eTreppid products  
15 (collectively, the “eTreppid Confidential Information”). Prior to January 18, 2006, Defendant  
16 Montgomery was employed by eTreppid as its Chief Technology Officer, responsible for all of  
17 eTreppid’s Source Code. As such, Montgomery had the ability to access eTreppid Confidential  
18 Information.

19 3. Montgomery, had access to eTreppid Confidential Information, and in or around the  
20 period from December 2005 through January 2006, knowingly destroyed or deleted all versions of the  
21 eTreppid Source Code, including all back-up copies, which were located at the Company, and also  
22 stole a complete and/or nearly complete current version of certain computer source code, which is  
23 included in the eTreppid Confidential Information (the “eTreppid Source Code”), for his own personal  
24 use and benefit. Montgomery also copied and then deleted from eTreppid’s computers various  
25 electronically-stored documents and files, including eTreppid’s email.

26 4. On information and belief, Montgomery claims to own some or all of the eTreppid  
27 Source Code and other eTreppid Confidential Information, through his association with and control of  
28 the Montgomery Family Trust.

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1 programs or other technology which is competitive with the Technology or Business of the LLC, ...or  
2 (ii) purchasing or otherwise acquiring, owning, holding, operating, managing, investing, in or  
3 otherwise disposing of a like business of the LLC's Business and interests therein of any kind, or (iii)  
4 otherwise engaging in any or all aspects of a like business of the LLC's Business.”

5 12. Under the terms of Montgomery's employment that existed from January 1, 1999 until  
6 November 1, 2001, set forth in the 1999 Intrepid Operating Agreement, Montgomery agreed to devote  
7 “substantially all of his time and attention and efforts to the Business and affairs of the LLC during  
8 reasonable business hours.”

9 13. Under the terms of Montgomery's employment that existed from January 1, 1999 until  
10 November 1, 2001, set forth in the 1999 Intrepid Operating Agreement, Montgomery agreed not to  
11 compete with Intrepid by “(i) developing, licensing, or exploiting in any manner any software  
12 programs or other technology which is competitive with the Technology or Business of the LLC, ...or  
13 (ii) purchasing or otherwise acquiring, owning, holding, operating, managing, investing, in or  
14 otherwise disposing of a like business of the LLC's Business and interests therein of any kind, or (iii)  
15 otherwise engaging in any or all aspects of a like business of the LLC's Business.

16 14. Under the terms of Montgomery's employment that existed after November 1, 2001, set  
17 forth in the 2001 eTreppid Operating Agreement, Montgomery agreed to devote “substantially all of  
18 his time and attention and efforts to the Business and affairs of the LLC during reasonable business  
19 hours.”

20 15. Under the terms of Montgomery's employment that existed after November 1, 2001, set  
21 forth in the 2001 eTreppid Operating Agreement, Montgomery agreed not to compete with eTreppid  
22 by “(i) developing, licensing, or exploiting in any manner any software programs or other technology  
23 which is competitive with the Technology or Business of the LLC, ...or (ii) purchasing or otherwise  
24 acquiring, owning, holding, operating, managing, investing, in or otherwise disposing of a like  
25 business of the LLC's Business and interests therein of any kind, or (iii) otherwise engaging in any or  
26 all aspects of a like business of the LLC's Business.”

27 16. eTreppid is informed and believes and, on that basis, alleges that the Montgomery  
28 Family Trust is a California Trust.  
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1 17. eTreppid is informed and believes that Dennis Montgomery and Brenda Montgomery,  
2 trustees of the Montgomery Family Trust, are residents of the state of Washington.

3 18. eTreppid is unaware of the true names and capacities, whether individual, corporate or  
4 otherwise, of the defendants sued herein as DOES 1 through 20, and therefore sues these defendants by  
5 such fictitious names. eTreppid will amend this complaint to state the true names and capacities of  
6 such fictitiously named defendants when ascertained. eTreppid is informed and believes, and on that  
7 basis alleges, that each of such fictitiously named defendants was acting as the agent, partner, joint  
8 venturer or potential business partner or acquirer of eTreppid and is jointly and severally responsible  
9 for the acts and omissions alleged herein.

10 19. eTreppid is informed and believes and, on that basis, alleges that the Defendants and  
11 each of them were the agents, servants and employees of their co-defendants and each of them, and in  
12 doing the things alleged herein were acting within the course and scope of their authority as such  
13 agents, servants and employees and with the permission and consent of their co-defendants, and each  
14 of them.

15 **The Nature of eTreppid's Business**

16 20. The eTreppid Source Code is the source code used to implement the various functions  
17 performed by eTreppid Software, including data compression, pattern recognition, object tracking and  
18 anomaly detection and other functions. eTreppid developed and owns the eTreppid Source Code, and  
19 all of eTreppid's revenues derive from eTreppid Software.

20 21. Given the critical importance of the eTreppid Source Code to eTreppid, as Chief  
21 Technical Officer Dennis Montgomery was solely responsible for maintaining a current version of the  
22 eTreppid Source Code and for backing-up (*i.e.*, saving a copy) the eTreppid Source Code.

23 22. To protect the valuable eTreppid Source Code, eTreppid controls access to the eTreppid  
24 Source Code and other eTreppid Confidential Information to maintain its security and confidentiality.  
25 As discussed further below, these controls include limiting access to its facilities, to its computer  
26 servers, and to its tangible and intangible intellectual property.

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**Security Measures Governing Access to eTreppid Source Code**

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2 23. The eTreppid Source Code, prior to its deletion, was stored in on-site computer servers,  
3 including the SRCSERVER and ISASERVER, and two computer workstations. Associated with each  
4 of these servers and workstations was a different RAID (Redundant Array of Independent Disks)  
5 storage box, which actually stored the eTreppid Source Code. Access to these servers is controlled by  
6 an Administrator password. Only Montgomery and one other eTreppid employee, Sloan Venables,  
7 knew the Administrator password in effect prior to and in or around the time period from December  
8 2005 through January 2006.

9 24. The eTreppid servers are stored in a server room that is accessible by only a small  
10 group of personnel, which included Montgomery.

11 25. As of December 2005, the current version of the eTreppid Source Code was stored in  
12 the SRCSERVER. Backup copies of the eTreppid Source Code were stored in multiple other  
13 locations, including a backup server referred to as ISASERVER, two (2) backup computer  
14 workstations, and backup servers located in the warehouse area of eTreppid's facilities. On  
15 information and belief, eTreppid alleges that Montgomery stole the backup servers that had been  
16 located in the warehouse area of eTreppid's facilities—which, on information and belief, contained a  
17 backup copy of some or all of the eTreppid Source Code.

18 26. For overall building security of eTreppid, only a few employees have an individual  
19 code to access the building and activate or de-activate the alarm system. Activation and de-activation  
20 of the alarm system at eTreppid's facilities is electronically monitored and the identity of the  
21 employees using the codes is recorded. Only Montgomery's code was used to access the building over  
22 the weekend of January 6, 2006.

23 27. Further, video cameras monitor the activities, including the access doors to the building  
24 and the server room, and the footage recorded from these cameras is stored on computers at eTreppid's  
25 facilities as video files. On or soon after January 10, 2006, Mr. Venables discovered that the video  
26 files which stored footage recorded from these cameras had been deleted from the computers.

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1 28. Montgomery regularly provided compact discs, DVD's (digital versatile discs) and/or  
2 computer hard disks ("Backup Files") to eTreppid's Chairman, Mr. Warren Trepp ("Mr. Trepp"),  
3 which he informed Mr. Trepp contained the most current version of the eTreppid Source Code.

4 **Misappropriation of Trade Secrets**

5 29. Historically, programmers developing eTreppid Source Code store pieces of the  
6 eTreppid Source Code they are working on at their workstations.

7 30. eTreppid maintained a network of computers that also allowed these programmers to  
8 access a portion of the eTreppid Source Code that was maintained on a shared directory. Montgomery  
9 was the only eTreppid employee who had access to the entirety of the eTreppid Source Code.

10 31. On or around December 19 or 20, 2005, Montgomery began deleting certain eTreppid  
11 Source Code files that were located on the hard drive for certain workstation that had not been recently  
12 used. Montgomery told Mr. Barjinder Bal, an eTreppid employee, that he was deleting the files on Mr.  
13 Bal's workstation for security reasons, and that there remained copies of these files on the  
14 SRCSERVER that Mr. Bal would still be able to access. Also, at that time, the hard drive of Mr. Bal's  
15 workstation contained other eTreppid Source Code files, which Mr. Bal was using in the performance  
16 of his duties at eTreppid.

17 32. When Mr. Bal arrived at work on Monday, January 2, 2006, all of the eTreppid Source  
18 Code that he had been recently using and which had been on the hard drive of his computer  
19 workstation when he left work the previous Friday, December 30, 2005, had been deleted.

20 33. Another programmer/software developer, Mr. Venkata Kalluri, also discovered that the  
21 eTreppid Source Code files stored at his workstation had been deleted.

22 34. Mr. Kalluri asked Montgomery about the deleted eTreppid Source Code files, as he was  
23 concerned about the ability to continuing to work without access to the files. Montgomery responded  
24 that he was performing a daily backup so that Mr. Kalluri would have the most recent files, and that he  
25 (Montgomery) would provide the eTreppid Source Code Mr. Kalluri required on an as-needed basis.

26 35. On December 21, 2005, Mr. Venables participated in a telephone conversation with  
27 Montgomery. In the conversation Montgomery suggested to Mr. Venables that he did not need to  
28 come to the office. Mr. Venables went to the office anyway. When he arrived he noticed that one of  
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1 the computer workstations used to store a backup copy of the eTreppid Source Code was missing. Mr.  
2 Venables asked Montgomery about the missing workstation, and Montgomery told Mr. Venables that  
3 he had taken the workstation and the associated RAID storage box to his home.

4 36. Mr. Venables took a vacation from December 22, 2005 to January 3, 2006.

5 37. During the time period between Christmas and New Year's Day, Montgomery provided  
6 Mr. Kalluri with specific files of the eTreppid Source Code upon demand. To provide the requested  
7 files, Montgomery copied the files to a shared drive that Mr. Kalluri could access. After Mr. Kalluri  
8 accessed the file and copied it to his workstation, the copy in the shared drive was deleted. When he  
9 completed his work on the files, Mr. Kalluri copied them back into the shared drive and informed  
10 Montgomery – who would then be responsible for copying that file to the servers that stored the  
11 eTreppid Source Code.

12 38. Upon returning from his vacation on January 3, 2006, Mr. Venables checked the status  
13 of the SRCSERVER and the ISASERVER. From this check, he determined that all of the eTreppid  
14 Source Code stored on each of these servers had been deleted. He was next informed by another  
15 employee, Jesse Anderson, that portions of the eTreppid Source Code previously stored on the  
16 programmers' workstations had been deleted as well.

17 39. On January 3, 2006, Mr. Venables asked Montgomery what was going on, and Mr.  
18 Montgomery responded that he was "cleaning stuff up," and that this included deleted files that  
19 "weren't needed."

20 40. As of January 9, 2006, Mr. Trepp and Mr. Venables discovered that substantially all of  
21 the eTreppid Source Code was missing. None of the programmers had access to the pieces of the  
22 eTreppid Source Code they had been working on at their personal workstations. Mr. Venables looked  
23 for the eTreppid Source Code in the building, but could not find it. Mr. Trepp also directed employees  
24 to look for a complete copy of the eTreppid Source Code, to no avail. When Mr. Trepp later ordered  
25 an examination of the Backup Files provided to him by Montgomery, it was discovered that the  
26 Backup Files did not, and never had, contained a complete copy of the eTreppid Source Code for any  
27 period of time, contrary to Montgomery's representations. The Backup Files contained no useful data  
28 or source code at all, but were, on information and belief, merely a device used by Montgomery to  
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1 deceive the company into believing there was a complete, updated copy of the eTreppid Source Code  
2 maintained off-premises.

3 41. On the morning of January 10, 2006, when Montgomery was in the building for a brief  
4 period of time, Mr. Venables asked Montgomery what happened to the eTreppid Source Code.  
5 Montgomery said it was stored on the seven hundred fifty three (753) separate “320 Gigabyte hard  
6 Drives” located in the building. Each of the hard drives that could be located were inspected by Mr.  
7 Venables and others, but none of the eTreppid Source Code was found.

8 42. Later on the day of January 10, 2006, Montgomery returned to the building and spoke  
9 with the Chairman, Mr. Warren Trepp. After they talked, Montgomery spoke with Mr. Venables, and  
10 stated that if Mr. Trepp wants to recover the missing eTreppid Source Code, he “needs to give me big  
11 money.”

12 43. eTreppid is informed and believes and, on that basis, alleges that Montgomery has  
13 attempted or will attempt to transfer eTreppid's trade secrets and other intellectual property to third  
14 parties, including the Montgomery Family Trust.

15 **Computer Hard Drives Seized From Defendants’ Residence and/or Storage Units**

16 44. On information and belief, on or around March 6, 2006, agents of the Federal Bureau of  
17 Investigation (the “FBI”) conducted a search, pursuant to a search warrant, of Defendants’ residence  
18 and of several storage units rented by Defendants. On information and belief, FBI agents seized  
19 certain computer hard drives during this search. FBI Special Agent Michael West (“Agent West”)  
20 then contacted Warren Trepp and Sloan Venables at eTreppid, and provided three lists of serial  
21 numbers for twenty-seven computer hard drives (the “Hard Drive Lists”) that, according to Agent  
22 West, the FBI seized from Defendants and were in the FBI’s possession. On information and belief,  
23 all of these twenty-seven computer hard drives, which were in the FBI’s possession, have been  
24 returned to Mr. Montgomery.

25 45. On eTreppid’s behalf, Messrs. Trepp and Venables reviewed the Hard Drive Lists and  
26 have located evidence that corroborates eTreppid’s ownership of the hard drives by virtue of the serial  
27 numbers that appear on the Hard Drive Lists. eTreppid located purchase receipt evidence that  
28 corroborates its ownership rights to twenty of the twenty-seven computer hard drives identified on the

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1 Hard Drive Lists. In summary, at this time eTreppid has evidence relating to its ownership of twenty  
2 of the twenty-seven hard drives seized by the FBI from Montgomery's residence and/or storage units.  
3 eTreppid can further support its ownership of the hard drives and their contents if it is granted access  
4 to the twenty-seven hard drives, which eTreppid believes contain the stolen eTreppid Source Code, or  
5 some portion thereof, and can conduct an analysis to establish contents of the stolen hard drives  
6 belongs to eTreppid.

7 **eTreppid is Suffering Irreparable Harm Due to Mr. Montgomery's Misappropriation**

8 46. Without access to a complete copy of the eTreppid Source Code, the ability of  
9 eTreppid's programmers to perform their ordinary duties and to work on customer projects is limited.  
10 As a result, eTreppid is currently losing over \$6,000.00 per day on wages and other administrative  
11 costs in order to retain key personnel, even though these personnel cannot regularly perform their  
12 ordinary duties because the eTreppid Source Code is missing.

13 47. eTreppid has also spent significant time and effort to secure additional contracts with  
14 customers it has done business with in the past. At present, eTreppid is unable to obtain contracts with  
15 interested customers without the eTreppid Source Code. eTreppid is also precluded from doing  
16 business with certain of its prior customers because they have been brought into this litigation by  
17 Montgomery.

18 **FIRST CAUSE OF ACTION**

19 **(Misappropriation Of Trade Secrets – Nevada Revised Statutes §600A.010 *et seq.*)**  
20 **(Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust)**

21 48. eTreppid re-alleges each and every allegation set forth in Paragraphs 1 through 47,  
22 inclusive, and incorporates them herein by reference.

23 49. The eTreppid Confidential Information is comprised of trade secret materials,  
24 including, but not limited to, eTreppid's Source Code for compression, pattern recognition, object  
25 tracking, anomaly detection technology and other applications. These trade secrets are not generally  
26 known to the public or to other persons who can obtain economic value from their disclosure or use.  
27 These trade secrets are the subject of reasonable efforts by eTreppid to maintain their secrecy, and they  
28 derive independent economic value from not being generally known. The information destroyed,

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1 deleted and/or taken by Montgomery constitutes eTreppid's "trade secrets" under Nevada Revised  
2 Statutes section 600A.030(5).

3 50. On information and belief, Defendants wrongfully, willfully and/or maliciously  
4 misappropriated eTreppid's trade secrets.

5 51. By reason of the above-alleged acts and conduct of Defendants, eTreppid has been  
6 damaged severely, and has and will continue to suffer great and irreparable harm and damage in the  
7 future. The precise amount of this irreparable harm is and will be difficult to ascertain, and eTreppid is  
8 without an adequate remedy at law to redress its injuries.

9 52. eTreppid is entitled to an injunction restraining Defendants, their employers, attorneys,  
10 agents, employees, and all persons acting in concert with them, from using, copying, publishing,  
11 disclosing, transferring, selling or otherwise distributing eTreppid's trade secrets, or any product or  
12 services based on or incorporating all or part of eTreppid's trade secrets, and restraining them from  
13 obtaining any commercial advantage or unjust enrichment from the misappropriation of eTreppid's  
14 trade secrets.

15 53. eTreppid is further entitled to an order requiring Defendants, their employers, attorneys,  
16 agents, employees, and all persons acting in concert with them, to return to eTreppid any and all of its  
17 trade secrets and confidential, proprietary materials, including, but not limited to, the eTreppid Source  
18 Code and other eTreppid Confidential Information.

19 54. eTreppid is further entitled to recover from Defendants the actual damages sustained by  
20 eTreppid as a result of Defendants' wrongful acts. The amount of such damages cannot be determined  
21 precisely at this time.

22 55. Defendants' acts of misappropriation were knowing, willful and/or malicious, and  
23 eTreppid is entitled to an award of punitive damages and attorney's fees against Defendants. N.R.S.  
24 600A.050-060. eTreppid is further entitled to recover from Defendants the gains, profits, advantages,  
25 and unjust enrichment that they have obtained as a result of their wrongful acts. N.R.S. 600A.050.  
26 eTreppid is at present unable to ascertain the full extent of these gains, profits, advantages and unjust  
27 enrichment but, on information and belief, avers that they are substantial and in excess of \$10,000.00.

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**SECOND CAUSE OF ACTION**  
**(Breach of Contract)**  
**(Dennis Montgomery)**

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3 56. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47,  
4 inclusive, and incorporates them herein by reference.

5 57. Montgomery breached the terms of his Contribution Agreement by which he assigned  
6 to eTreppid any and all of his rights to compression software technology in the eTreppid Source Code.

7 58. Montgomery breached the terms of his employment, as memorialized in the Company's  
8 operating agreements in effect during his employment with eTreppid,.

9 59. As a direct and proximate result of Montgomery's breaches of these agreements,  
10 eTreppid has been damaged in an amount and entitled to recover a sum of money according to proof at  
11 the time of trial.

**THIRD CAUSE OF ACTION**  
**(Conversion)**  
**(Dennis Montgomery)**

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13  
14 60. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47,  
15 inclusive, and incorporates them herein by reference.

16 61. eTreppid is informed and believes that Defendants have improperly taken and  
17 converted eTreppid Confidential Information (including, but not limited to, email files and the  
18 eTreppid Source Code) and other property to their use. The value of the eTreppid Confidential  
19 Information is, on information and belief, substantial and in excess of the jurisdictional minimum of  
20 this Court.

21 62. eTreppid is informed and believes that in committing the acts alleged herein,  
22 Defendants are guilty of oppression, fraud or malice in that Defendants wrongfully and unlawfully  
23 obtained eTreppid Confidential Information (including, but not limited to, email files and the eTreppid  
24 Source Code) and other property in order to benefit themselves at eTreppid's expense. eTreppid is  
25 therefore entitled to an award of punitive damages and attorney's fees against Defendants.  
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**FOURTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**  
**(Dennis Montgomery)**

63. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47, inclusive, and incorporates them herein by reference.

64. Montgomery owed a fiduciary duty to eTreppid, as an officer and a member of eTreppid’s management committee.

65. The Montgomery Family Trust, Dennis Montgomery, and Brenda Montgomery, as trustees, owed a fiduciary duty to eTreppid as members of eTreppid.

66. Through the actions set forth above, Defendants have breached their fiduciary duty to eTreppid.

67. As a result of Defendants' breach of fiduciary duty, Plaintiff has suffered damages in an amount to be proven at trial but which exceed \$10,000.00.

68. eTreppid is informed and believes that in committing the acts alleged herein, Defendants are guilty of oppression, fraud or malice in that Defendants wrongfully and unlawfully obtained eTreppid Confidential Information (including, but not limited to, email files and the eTreppid Source Code) and other property in order to benefit themselves at eTreppid’s expense. eTreppid is therefore entitled to an award of punitive damages and attorney’s fees against Defendants.

**FIFTH CAUSE OF ACTION**  
**(Bad Faith – Tortious and Contractual)**  
**(Dennis Montgomery)**

69. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47, inclusive, and incorporates them herein by reference.

70. There exists in every contract entered into within the state of Nevada an implied covenant of good faith and fair dealing.

71. As an officer and manager of eTreppid, Montgomery owed eTreppid a fiduciary duty.

72. Through the actions described above, Montgomery breached the implied covenant of good faith and fair dealing.

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1 73. As a result of Montgomery’s breach of the covenant of good faith and fair dealing,  
2 Plaintiff has suffered damages in an amount to be proven at trial but which exceed \$10,000.00.

3 74. eTreppid is informed and believes that in committing the acts alleged herein,  
4 Montgomery and the Defendants, and each of them, are guilty of oppression, fraud or malice.  
5 eTreppid is therefore entitled to an award of punitive damages and attorney’s fees against Montgomery  
6 and the Defendants, and each of them.

7 **SIXTH CAUSE OF ACTION**  
8 **(Declaratory Relief)**

9 **(Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust)**

10 75. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47,  
11 inclusive, and incorporates them herein by reference.

12 76. An actual dispute exists between eTreppid, on the one hand, and Montgomery and the  
13 Montgomery Family Trust, on the other, regarding the ownership of the eTreppid Source Code.

14 77. Pursuant to N.R.S. 30.040, a judicial determination of the rights, duties and obligations  
15 of the parties under the eTreppid operating agreements and/or the state statutes and local ordinances is  
16 required with a determination and/or declaration that eTreppid holds all rights to any technology that  
17 Montgomery developed while he was an employee of eTreppid.

18 **SEVENTH CAUSE OF ACTION**  
19 **(Intentional Interference with Contract)**  
20 **(Dennis Montgomery)**

21 78. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47,  
22 inclusive, and incorporates them herein by reference.

23 79. Montgomery was aware of certain contracts between eTreppid and a number of third  
24 parties, including but not limited to LLH & Associates, a prime governmental contractor.

25 80. Through the conduct set forth above, Montgomery intended to interfere with and  
26 disrupt the contractual relationship between eTreppid and each and every third party with which  
27 eTreppid had a contract or with which eTreppid was competing for a contract.

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1 81. Through the conduct as set forth above, Montgomery has in fact disrupted the  
2 contractual relationship between eTreppid and each of these third parties by hampering eTreppid's  
3 ability to fulfill its contractual obligations.

4 82. As a result of Montgomery's conduct, eTreppid has incurred damages in an amount to  
5 be determined at trial, but which exceeds \$10,000.00.

6 83. eTreppid is informed and believes that in committing the acts alleged herein,  
7 Montgomery and Defendants, and each of them, are guilty of oppression, fraud or malice. eTreppid is  
8 therefore entitled to an award of punitive damages and attorney's fees against Montgomery and  
9 Defendants, and each of them.

10 **EIGHTH CAUSE OF ACTION**

11 **(Claim and Delivery)**

12 **(Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust)**

13 84. eTreppid re-alleges each and every allegation contained in paragraphs 1 through 47,  
14 inclusive, and incorporates them herein by reference.

15 85. eTreppid is the owner of certain computer hard drives and other electronic storage  
16 media and devices which may contain information that is eTreppid's intellectual property.

17 86. Montgomery wrongfully took some of the computer hard drives that are eTreppid's  
18 property and, on information and belief, copied eTreppid Confidential Information (including, but not  
19 limited to, email files and the eTreppid Source Code) on to those hard drives, and wrongfully detained  
20 the hard drives and the eTreppid Confidential Information stored thereon.

21 87. eTreppid is informed and believes that Montgomery detained this property for the  
22 purpose of either converting it to his own use or demanding that eTreppid pay him a substantial  
23 amount of money for its return.

24 88. On information and belief, agents of the United States of America seized the hard  
25 drives pursuant to a search warrant. Pursuant to this Court's order of March 19, 2007, the hard drives  
26 and other seized property have been returned to Mr. Montgomery.

27 89. The hard drives belong to eTreppid, and should be immediately returned to eTreppid.  
28 All of the data that was stored on those hard drives also belongs to eTreppid and should also be



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Reno, Nevada 89511

1 immediately returned to eTreppid, including all copies of the data and the original data itself, and  
2 including data stored electronically, in hard copy, or in any other manner. Accordingly, eTreppid is  
3 entitled to a writ of possession.

4 WHEREFORE, eTreppid requests judgment against Defendants, and each of them, and all  
5 those acting in concert with them as follows:

6 1. A permanent injunction restraining and enjoining Defendants from continuing the  
7 wrongful acts and conduct set forth above;

8 2. A permanent injunction requiring Defendants to return all eTreppid Confidential  
9 Information (including, but not limited to, email files and the eTreppid Source Code) and other  
10 eTreppid property;

11 3. During the pendency of this action, a preliminary injunction enjoining and restraining  
12 Defendants from the wrongful acts and conduct set forth above and requiring Defendants to deliver to  
13 eTreppid a copy of all Confidential Information (including, but not limited to, email files and the  
14 eTreppid Source Code);

15 4. During the pendency of this action, a writ of possession requiring Defendants to return  
16 all eTreppid Confidential Information (including, but not limited to, email files and the eTreppid  
17 Source Code) and other eTreppid property;

18 5. Restitution;

19 6. Declaratory relief providing that eTreppid holds all rights to any technology developed  
20 by Montgomery while he was an employee of eTreppid;

21 7. A writ of possession entitling eTreppid to take possession of all eTreppid Confidential  
22 Information (including, but not limited to, email files and the eTreppid Source Code) and other  
23 eTreppid property;

24 8. Compensatory damages in an amount to be proven at trial, including but not limited to  
25 damages recoverable pursuant to N.R.S. 600A.050.1;

26 9. Punitive damages pursuant to N.R.S. 600A.050.2;

27 10. Reasonable attorneys' fees;

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**PROOF OF SERVICE**

I, Gaylene Silva, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Hale Lane Peek Dennison and Howard. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action

I am readily familiar with Hale Lane Peek Dennison and Howard’s practice for collection of mail, delivery of its hand-deliveries and their process of faxes.

On June 11, 2007, I caused the foregoing **ETREPPID TECHNOLOGIES, L.L.C.’S SECOND AMENDED COMPLAINT** to be:

  X   filed the document electronically with the U.S. District Court and therefore the court’s computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

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Email [Lezlie@renofamilylaw.com](mailto:Lezlie@renofamilylaw.com)  
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 11, 2007.

/s/ \_\_\_\_\_  
Gaylene Silva