

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN F. CARTER, CRISTOPHER D.
CARTER, and CARTER BROTHERS
SECURITY SERVICES, LLC,

Plaintiffs and
Counterclaim-Defendants,

-v-

TYCO INTEGRATED SECURITY LLC

Defendant and
Counterclaim-Plaintiff.

CIVIL ACTION NO. 14-cv-07416 (JMF)

ANSWER AND COUNTERCLAIMS

Tyco Integrated Security LLC (“TycoIS”) hereby answers the Complaint and asserts Counterclaims against the Plaintiffs, Carter Brothers, Inc. (“CBI”), Carter Brothers Security Services, LLC (“CBSS”), Cris D. Carter and John F. Carter (“The Carters”) (collectively, “Plaintiffs”).

ANSWER TO COMPLAINT

Defendant TycoIS herewith answers the Complaint filed by Plaintiffs. All averments of the Complaint not specifically admitted below are denied. In response to the averments contained in the Complaint, TycoIS states the following:

I. PRELIMINARY STATEMENT

1. In response to paragraph 1 of the Complaint, TycoIS denies that any amounts are owed to Plaintiffs as alleged in paragraph 1 of the Complaint and respectfully refers to the October 26, 2012 Settlement Agreement and Mutual Release (“Settlement Agreement”), Membership Unit Purchase Agreement (“MUPA”), Asset Purchase Agreement (“APA”), and

Transition Services Agreement (“TSA”) (collectively, the Transaction Agreements”)¹ for a complete and accurate recitation of their terms and conditions.

2. In response to paragraph 2 of the Complaint, TycoIS admits that pursuant to APA ¶ 2.1, “as of immediately prior to the Ownership Change Effective Time,” CBLLC sold, transferred, delivered, conveyed and assigned to CBSS “[a]ll Equity Interests in Carter Brothers, Inc., a California corporation and, prior to the Asset Transfer Effective Time, a wholly-owned subsidiary of [CBLLC].” TycoIS respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

3. TycoIS neither admits nor denies the allegations in paragraph 3 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. TycoIS denies that the conditions to release of the Holdback Funds were met or that Plaintiffs are entitled to any portion of the Holdback Funds, as TycoIS’s valid claims against the Holdback Funds exceed its value.

4. TycoIS denies the allegations in paragraph 4 of the Complaint.

II. JURISDICTION AND VENUE

5. The allegations in paragraph 5 of the Complaint do not require a response inasmuch as TycoIS removed this action from the Supreme Court of the State of New York, County of New York and Plaintiffs have consented to such removal. TycoIS states that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in

¹ The pertinent agreements are not annexed hereto because of their respective confidentiality provisions. Upon entry of a Confidentiality Agreement among the parties and a Protective Order, TycoIS will deposit full and complete copies of the Transaction Agreements with the Court or shall do so for *in camera* review as may be otherwise directed by the Court.

controversy exceeds \$75,000 exclusive of interest and costs and because there is complete diversity of citizenship between the parties.

6. TycoIS denies that Plaintiffs have been damaged in an amount in excess of \$500,000.00 as alleged in paragraph 6 of the Complaint. No further response to paragraph 6 is required inasmuch as this action has been removed from the Commercial Division of the Supreme Court of the State of New York.

7. In response to paragraph 7 of the Complaint, TycoIS admits that this Court has personal jurisdiction over the parties and that venue is proper pursuant to MUPA ¶ 9.10, APA ¶ 7.10, and TSA ¶ 6(h) whereby the parties consented to this Court's jurisdiction for disputes relating to the Transaction Agreements and waived any defenses relating to jurisdiction.

III. THE PARTIES

8. TycoIS is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint, except admits upon information and belief that at all relevant times CBI was and is incorporated, organized, and existing under the laws of the State of California and has its principal place of business in Atlanta, Georgia.

9. TycoIS is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint, except admits upon information and belief that CBSS is a Florida limited liability company with its principal place of business located in Atlanta, Georgia.

10. TycoIS admits upon information and belief the allegations in paragraph 10 of the Complaint.

11. TycoIS admits upon information and belief the allegations in paragraph 11 of the Complaint.

12. With respect to the allegations contained in paragraph 12 of the Complaint, TycoIS states that it is a Delaware limited liability company. TycoIS further states that it has one member: Tyco Fire & Security US Holdings LLC, a Delaware limited liability company with its principal place of business in New Jersey. Tyco Fire & Security US Holdings LLC also has only one member - - Tyco Fire & Security (US) Management, Inc. - - which is incorporated in Nevada and has its principal place of business in New Jersey. TycoIS is therefore a citizen of Nevada or New Jersey for purposes of determining diversity.

13. With respect to the allegations contained in paragraph 13 of the Complaint, TycoIS states that it is a Delaware limited liability company. TycoIS further states that it has one member: Tyco Fire & Security US Holdings LLC, a Delaware limited liability company with its principal place of business in New Jersey. Tyco Fire & Security US Holdings LLC also has only one member - - Tyco Fire & Security (US) Management, Inc. - - which is incorporated in Nevada and has its principal place of business in New Jersey. TycoIS is therefore a citizen of Nevada or New Jersey for purposes of determining diversity.

IV. ALLEGATIONS RELEVANT TO ALL CLAIMS

A. Events Leading to the Signing of the MUPA and the APA

14. TycoIS admits the allegations in paragraph 14 of the Complaint only to the extent that TycoIS' former affiliate, ADT Security Services, Inc. ("ADT") entered into a Strategic Alliance Agreement with CBLLC dated June 13, 2002 ("SAA"), which agreement was renegotiated and, in August of 2007, ADT and CBLLC executed a Strategic Alliance and

Subcontracting Services Agreement (“SASSA”). TycoIS respectfully refers to the SAA for a complete and accurate recitation of its terms and conditions.²

15. TycoIS admits the allegations in paragraph 15 of the Complaint only to the extent that the SAA required CBLLC to provide project management and construction services for ADT exclusively. TycoIS respectfully refers to the SAA for a complete and accurate recitation of its terms and conditions.

16. TycoIS denies the allegations in paragraph 16 of the Complaint and states that the SAA provided for ADT and CBLLC to develop and maintain a mentor/protégé relationship. TycoIS further states that the SASSA did not describe or contemplate the parties as having a mentor/protégé relationship. TycoIS respectfully refers to the SAA and SASSA for a complete and accurate recitation of their terms and conditions.

17. TycoIS denies the allegations contained in paragraph 17 of the Complaint, except admits upon information and belief that despite CBLLC’s successive material breaches of the SAA, a Subordinated Promissory Note dated March 2, 2007, and the SASSA, The Carters and CBLLC contacted the United States Department of Justice concerning various allegations, all of which were false and are denied in all respects and which were released, waived, and extinguished pursuant to the terms of the Settlement Agreement.

18. TycoIS admits the allegations in paragraph 18 of the Complaint only to the extent that The Carters and CBLLC made such allegations to the United State Department of Justice, all of which allegations were and are denied.

² Neither the SAA nor the SASSA is annexed hereto because each contains a confidentiality provision. Upon entry of a Confidentiality Agreement among the parties and a Protective Order, TycoIS will deposit full and complete copies of the SAA and SASSA with the Court or shall do so for *in camera* review as may be otherwise directed by the Court.

19. TycoIS admits the allegations in paragraph 19 of the Complaint only to the extent that the parties entered into and executed the APA and MUPA. TycoIS respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 19 of the Complaint constitutes a legal conclusion, to which no response is required.

20. TycoIS admits the allegations in paragraph 20 of the Complaint only to the extent that the parties entered into a Settlement Agreement dated October 26, 2012 that was intended to resolve, release, waive, and extinguish the parties respective claims against each other. TycoIS respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

21. TycoIS denies the allegations in paragraph 21 of the Complaint.

22. TycoIS neither admits nor denies the allegations contained in paragraph 22 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 22 of the Complaint constitutes a legal conclusion, to which no response is required.

23. TycoIS neither admits nor denies the allegations contained in paragraph 23 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 23 of the Complaint constitutes a legal conclusion, to which no response is required.

24. TycoIS neither admits nor denies the allegations contained in paragraph 24 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 24 of the Complaint constitutes a legal conclusion, to which no response is required.

25. TycoIS neither admits nor denies the allegations contained in paragraph 25 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 24 of the Complaint constitutes a legal conclusion, to which no response is required.

B. Plaintiffs' Failure to Satisfy the Holdback Provisions

26. TycoIS denies the allegations in paragraph 26 of the Complaint.

27. TycoIS denies the allegations in paragraph 27 of the Complaint.

28. TycoIS denies the allegations in paragraph 28 of the Complaint.

C. Tyco's Purported Inappropriate Control of CBI

29. TycoIS denies the allegations in paragraph 29 of the Complaint.

30. TycoIS admits that The Carters were to have ownership of the legal entity Carter Brothers, Inc. and any associated liabilities. TycoIS denies that Carter Brothers, Inc. was to retain any assets not associated with the Security Business and, to the extent Plaintiffs are now claiming it did, they are in breach of the MUPA.

31. TycoIS denies the allegations in paragraph 31 of the Complaint.

32. TycoIS denies the allegations in paragraph 32 of the Complaint, insofar as any operations not related to the Security Business do not belong to Carter Brothers, Inc.

33. TycoIS denies the allegations in paragraph 33 of the Complaint, insofar as any operations not related to the Security Business do not belong to Carter Brothers, Inc.

34. TycoIS denies the allegations in paragraph 34 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegations in paragraph 34 of the Complaint constitutes a legal conclusion, to which no response is required.

D. Tyco's Alleged Inappropriate Use of the Carter Brothers Marks and Logos

35. TycoIS neither admits nor denies the allegations in paragraph 35 of the Complaint and respectfully refers to the Transactions Documents for a complete and accurate recitation of their terms and conditions.

36. TycoIS neither admits nor denies the allegations in paragraph 36 of the Complaint and respectfully refers to the Transactions Documents for a complete and accurate recitation of their terms and conditions.

37. With respect to paragraph 37 of the Complaint, TycoIS denies that it inappropriately used the Carter Brothers Name, Marks and Logo.

38. TycoIS lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 38 of the Complaint.

39. TycoIS admits the allegations in paragraph 39 of the Complaint, but denies that it has engaged in any misappropriation of or wrongdoing with respect to the "Carter Name."

40. TycoIS denies the allegations in paragraph 40 of the Complaint.

E. Tyco's Allegedly Inappropriate Refusal To Continue Representation of John Carter

41. TycoIS neither admits nor denies the allegations in paragraph 41 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

42. TycoIS denies the allegations in paragraph 42 of the Complaint.

43. TycoIS admits the allegations in paragraph 43 of the Complaint only to the extent that the "H&L Litigation" was an action filed in the New York State Supreme Court,

County of New York in which, among other things, John Carter allegedly breached his fiduciary duty to CBLLC.

- 44. TycoIS denies the allegations in paragraph 44 of the Complaint.
- 45. TycoIS denies the allegations in paragraph 45 of the Complaint.
- 46. TycoIS denies the allegations in paragraph 46 of the Complaint.
- 47. TycoIS denies the allegations in paragraph 47 of the Complaint.

V. CAUSES OF ACTION

First Cause of Action for Breach of Contract

- 48. In response to paragraph 48 of the Complaint, TycoIS repeats and realleges every response contained above as if fully set forth herein.
- 49. TycoIS denies the allegations in paragraph 49 of the Complaint.
- 50. TycoIS neither admits nor denies the allegations in paragraph 50 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 50 of the Complaint constitutes a legal conclusion, to which no response is required.
- 51. TycoIS denies the allegations in paragraph 51 of the Complaint.
- 52. TycoIS neither admits nor denies the allegations in paragraph 52 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.
- 53. TycoIS denies the allegations in paragraph 53 of the Complaint.
- 54. TycoIS denies the allegations in paragraph 54 of the Complaint.

55. TycoIS neither admits nor denies the allegations in paragraph 55 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

56. TycoIS neither admits nor denies the allegations in paragraph 56 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

57. TycoIS denies the allegations in paragraph 57 of the Complaint.

58. TycoIS denies the allegations in paragraph 58 of the Complaint.

59. TycoIS neither admits nor denies the allegations in paragraph 59 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions.

60. TycoIS denies the allegations in paragraph 60 of the Complaint.

61. TycoIS denies the allegations in paragraph 61 of the Complaint.

62. TycoIS neither admits nor denies the allegations in paragraph 62 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraphs 62 and 63 of the Complaint constitutes a legal conclusion, to which no response is required.

63. TycoIS neither admits nor denies the allegations in paragraph 63 of the Complaint and respectfully refers to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraphs 62 and 63 of the Complaint constitutes a legal conclusion, to which no response is required.

64. TycoIS denies the allegations in paragraph 64 of the Complaint.

65. TycoIS denies the allegations in paragraph 65 of the Complaint.

Second Cause of Action for Conversion

66. In response to paragraph 66 of the Complaint, TycoIS repeats and realleges every response contained above as if fully set forth herein.

67. TycoIS denies the allegations contained in paragraph 67 of the Complaint.

68. TycoIS denies the allegations contained in paragraph 68 of the Complaint.

69. TycoIS denies the allegations contained in paragraph 69 of the Complaint and respectfully refer to the Transaction Agreements for a complete and accurate recitation of the terms and conditions. Any further allegation contained in paragraph 69 of the Complaint constitutes a legal conclusion, to which no response is required.

70. TycoIS denies the allegations contained in paragraph 70 of the Complaint inasmuch as Plaintiff's various breaches of the Transaction Agreements constitute a waiver of any alleged claim to the Holdback Funds and consent.

71. TycoIS denies the allegations contained in paragraph 71 of the Complaint and respectfully refer to the Transaction Agreements for a complete and accurate recitation of the terms and conditions. Any further allegation contained in paragraph 71 of the Complaint constitutes a legal conclusion, to which no response is required.

72. TycoIS denies the allegations contained in paragraph 72 of the Complaint.

73. TycoIS denies the allegations in paragraph 73 of the Complaint, insofar as any operations not related to the Security Business do not belong to Carter Brothers, Inc.

74. TycoIS denies the allegations contained in paragraph 74 of the Complaint.

Third Cause of Action for Trespass to Chattels

75. In response to paragraph 75 of the Complaint, TycoIS repeats and realleges every response contained above as if fully set forth herein.

76. TycoIS denies the allegations in paragraph 76 of the Complaint.

77. TycoIS denies the allegations in paragraph 77 of the Complaint.

78. TycoIS denies the allegations in paragraph 78 of the Complaint and respectfully refer to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 78 of the Complaint constitutes a legal conclusion, to which no response is required.

79. TycoIS denies the allegations contained in paragraph 79 of the Complaint inasmuch as Plaintiff's various breaches of the Transaction Agreements constitute a waiver of any alleged claim to the Holdback Funds and consent.

80. TycoIS denies the allegations in paragraph 80 of the Complaint and respectfully refer to the Transaction Agreements for a complete and accurate recitation of their terms and conditions. Any further allegation contained in paragraph 80 of the Complaint constitutes a legal conclusion, to which no response is required.

81. TycoIS denies the allegations in paragraph 81 of the Complaint.

82. TycoIS denies the allegations in paragraph 82 of the Complaint, insofar as any operations not related to the Security Business do not belong to Carter Brothers, Inc.

83. TycoIS denies the allegations in paragraph 83 of the Complaint.

Fourth Cause of Action for Intentional Interference with Contractual Relations

84. In response to paragraph 84 of the Complaint, TycoIS repeats and realleges every response contained above as if fully set forth herein.

85. TycoIS denies the allegations in paragraph 85 of the Complaint.

86. TycoIS lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 86 of the Complaint.

87. TycoIS denies the allegations in paragraph 87 of the Complaint.

88. TycoIS denies the allegations in paragraph 88 of the Complaint.

89. TycoIS denies the allegations in paragraph 89 of the Complaint.

90. TycoIS denies the allegations in paragraph 90 of the Complaint.

**Fifth Cause of Action for Intentional
Interference with Prospective Economic Advantage**

91. In response to paragraph 91 of the Complaint, TycoIS repeats and realleges every response contained above as if fully set forth herein.

92. TycoIS denies the allegations in paragraph 92 of the Complaint.

93. TycoIS lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 93 of the Complaint.

94. TycoIS denies the allegations contained in paragraph 94 of the Complaint.

95. TycoIS denies the allegations contained in paragraph 95 of the Complaint.

96. TycoIS denies the allegations contained in paragraph 96 of the Complaint.

97. TycoIS denies the allegations contained in paragraph 97 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

98. Plaintiffs have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

99. Plaintiffs' claims against TycoIS are barred by Settlement Agreement and Mutual Release dated October 26, 2012.

THIRD AFFIRMATIVE DEFENSE

100. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands and wrongful conduct.

FOURTH AFFIRMATIVE DEFENSE

101. Plaintiffs' claims are barred, in whole or in part, by waiver and estoppel.

FIFTH AFFIRMATIVE DEFENSE

102. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate their alleged damages.

SIXTH AFFIRMATIVE DEFENSE

103. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to satisfy necessary conditions precedent to their claims.

SEVENTH AFFIRMATIVE DEFENSE

104. Plaintiffs have consented by contract to TycoIS's retention of the Holdback Funds.

RESERVATION OF DEFENSES

105. Additional facts may be revealed through the discovery process that support additional affirmative defenses that are currently unknown to TycoIS. Therefore, TycoIS reserves the right to assert additional affirmative defenses in the event that discovery (or its own investigation) supports the pleading of additional affirmative defenses.

WHEREFORE, defendant Tyco Integrated Security LLC requests that the Complaint be dismissed with prejudice, that judgment be entered in its favor against the Plaintiffs, and that it be awarded the costs of suit, including reasonable attorneys' fees, together with and such other and further relief as the Court may deem just and proper.

COUNTERCLAIMS

Counterclaim-Plaintiff, Tyco Integrated Security LLC (“TycoIS”) files this Counterclaim against the Counterclaim-Defendants, Carter Brothers, Inc. (“CBI”), Carter Brothers Security Services, LLC (“CBLLC”), Cris D. Carter and John F. Carter (collectively, “The Carters”), and alleges the following:

I. PRELIMINARY STATEMENT

1. The claims among the parties in this litigation arise out of a series of transactions whereby TycoIS - - in an effort to resolve long-standing disputes with The Carters - - purchased a substantial portion of a business belonging to The Carters for a purchase price in excess of \$37 million.

2. TycoIS received did not receive what it was promised, but instead received a company worth far less than The Carters represented. Shortly after the transaction closed, TycoIS discovered a litany of undisclosed liabilities and litigations – violations of the representations and warranties in the Transaction Agreements to the tune of millions of dollars. CBLLC was subject to audits and IRS investigations, including an apparent investigation into whether The Carters’ used CBLLC for their personal use and gain. The Carters have apparently failed to turn over all of the assets and operations that they promised. The Carters blocked access to, or destroyed, documents owned by the company. In sum, the company that TycoIS inherited was a mess, all attributable to what can most charitably be described as The Carters’ gross mismanagement.

3. The Transaction Agreements included \$3,000,000 in Holdback Funds to protect TycoIS from situations just like this – as a reserve for TycoIS’ indemnification rights for The Carters’ breach of representations, warranties and other provisions of the Transaction Agreements. In accordance with the Transaction Agreements, TycoIS has asserted

indemnification claims against the Holdback Fund that exceed its value and for which TycoIS is entitled to recover from the Counterclaim-Defendants in an amount to be proven at trial, but not less than \$1,000,000 together with costs, expenses, and attorneys' fees, as detailed below.

II. THE PARTIES

4. TycoIS is a Delaware limited liability company. TycoIS has one member, Tyco Fire & Security US Holdings LLC, a Delaware limited liability company with its principal place of business in New Jersey. Tyco Fire & Security US Holdings LLC also has only one member - - Tyco Fire & Security (US) Management, Inc. - - which is incorporated in Nevada and has its principal place of business in New Jersey. Because the citizenship of a limited liability company is determined by the citizenship of its members, TycoIS is a citizen of Nevada and New Jersey for purposes of determining diversity.

5. At all relevant times hereinafter mentioned, individual counterclaim-defendants John F. Carter and Cris D. Carter were and still are citizens of the State of Florida.

6. At all times relevant hereinafter mentioned, counterclaim-defendant CBI is incorporated, organized, and existing under the laws of the State of California and has its principal place of business in Atlanta, Georgia.

7. Counterclaim defendant CBSS is a Florida limited liability company with its principal place of business located in Atlanta, Georgia. CBSS has two members: the individual counterclaim defendants John F. Carter and Cris D. Carter – each of whom resides in and is a citizen of the State of Florida. Accordingly, CBSS is a citizen of Florida for purposes of determining diversity.

III. PROCEDURAL HISTORY

8. On August 15, 2014, CBI, CBSS, and The Carters commenced an action by filing a Summons and Complaint against TycoIS in the Supreme Court of the State of New York, County of New York (Index No. 652518/2014) (the “State Court Action”).

9. On September 12, 2014, TycoIS filed a Notice of Removal of the State Court Action to this Court because this Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

10. Plaintiffs/Counterclaim-Defendants do not oppose removal.

IV. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 exclusive of interest and costs and because there is complete diversity of citizenship between the parties. The Court also has supplemental jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367.

12. This Court has personal jurisdiction over the Counterclaim-Defendants pursuant to, *inter alia*, Section 9.10 of the Membership Unit Purchase Agreement (“MUPA”), Section 6(h) of the Transition Services Agreement (“TSA”), Section 7.10 of the Security Business Asset Purchase Agreement (“APA”), and Section 24 of the Settlement Agreement, whereby the parties consented to this Court’s jurisdiction for disputes relating to these agreements and waived any defenses relating to jurisdiction.

13. Venue in this Court is proper pursuant to MUPA § 9.10, TSA § 6(h), APA § 7.10, and Settlement Agreement § 24, whereby the parties designated this Court as the forum for disputes relating to these agreements and waived any defenses relating to jurisdiction.

V. PERTINENT BACKGROUND AND FACTUAL HISTORY

14. The parties to this litigation had a business relationship dating back to at least 2002. TycoIS (then affiliated with ADT Security Services, Inc.) regularly subcontracted significant commercial security and life safety project work to Carter Brothers.

15. Throughout their relationship, TycoIS provided substantial financial assistance to The Carters' company, in the form of various promissory notes and other debt obligations, that were restructured periodically overtime.

16. Over time, the relationship between TycoIS and The Carters began to sour.

17. Among other things, TycoIS consistently received complaints from customers about the quality of Carter Brothers' work.

18. Ultimately, The Carters ran into substantial financial difficulties and defaulted on various debt obligations to TycoIS.

19. While TycoIS had previously agreed, on several occasions, to restructure the debt, by the spring of 2012, when The Carters were again in default, and based on the continued sub-standard performance it had received throughout the relationship, TycoIS had had enough and determined it was time to terminate the relationship once and for all.

20. In response, John Carter launched a disparagement campaign against TycoIS in an effort to extort TycoIS into reconsidering its position. Among other things, John Carter purportedly filed a claim with the United States Department of Justice accusing TycoIS of violating federal antitrust laws and threatened to attempt to launch a public boycott of TycoIS.

21. In an effort to conclude an irretrievably broken relationship without resort to litigation, TycoIS ultimately agreed to settle The Carters' threatened claims, which settlement included TycoIS's purchase of certain portions of The Carters' business.

A. The Acquisition and Transaction Agreements

22. Prior to October 26, 2012, The Carters owned Carter Brothers LLC (“CBLLC”), which was composed primarily of a security business and a fire and life safety business. As part of the transaction to resolve the dispute between the parties, TycoIS agreed to purchase all aspects of The Carters’ business, except for the security business.

23. On October 26, 2012 (“the Closing Date”), the parties entered into four agreements pursuant to which they settled their past disputes and outstanding claims and whereby TycoIS purchased certain portions of CBLLC’s business: (i) the Settlement Agreement and Mutual Release (“Settlement Agreement”); (ii) the Membership Unit Purchase Agreement (“MUPA”); (iii) the Security Business Asset Purchase Agreement (“APA”); and (iv) (iii) the Transition Services Agreement (“TSA”) (collectively, “the Transaction Agreements”).

24. The Transaction Agreements were structured so that a new company formed by The Carters, CBSS, would first purchase the assets of CBLLC that related exclusively to the security business (through the APA), and then TycoIS would purchase the remainder of the business (through the MUPA). After completion of the transaction, TycoIS was supposed to own all aspects of CBLLC, except those that related exclusively to the security business, which would then belong to CBSS.

25. TycoIS paid \$35,750,000 for CBLLC (minus an estimated \$12,000,000 for CBLLC’s outstanding debts).

26. The parties agreed that TycoIS would retain \$3,000,000 of the total purchase price as a “Holdback Fund,” against which TycoIS would have a right to a set-off for any indemnification claims against The Carters, including claims resulting from (i) breaches of representations and warranties in the Transaction Agreements; (ii) taxes on or before the Closing

Date for which The Carters were liable; (iii) company transaction expenses paid for by TycoIS; and (iv) any liabilities relating to CBSS or other assets which were not purchased by TycoIS.

27. MUPA § 2.2(c) provided for the distribution of the Holdback Fund only when the Counterclaim-Defendants fully satisfied each of the following conditions: (i) assignment of the lease for premises at 100 Hartsfield Centre, (ii) assignment of leases described in APA § 5.5(b), (iii) reissuance of licenses specified in MUPA Schedule 2.2(c), (iv) payment and satisfaction in full of unpaid sales taxes relating to the Pre-Closing Period, and (v) closure of the audit by the Florida Department of Revenue, including the payment in full of all amounts, including penalties and interest.

B. Post-Closing Events

28. Shortly after the Closing Date, TycoIS discovered multiple material and undisclosed problems concerning CBLLC and encountered repeated misconduct by the Counterclaim-Defendants, including, but not limited to (i) unfiled and/or unpaid taxes, (ii) outstanding default judgments relating to lawsuits against CBLLC; (iii) unpaid COBRA and bonuses for specified employees; (iv) materially inaccurate financial statements; (v) grossly unorganized and incomplete records, making it difficult to defend pending litigation, to properly determine tax liabilities, or to determine how the company was structured; (vi) CBSS employees, agents and/or representatives wrongfully and without permission entering CBLLC's locked premises to remove certain documents and equipment that were the rightful property of TycoIS/CBLLC, (vii) CBSS employees, agents and/or representatives destroying, deleting, and/or impeding access to documents and electronic information necessary to operate CBLLC's business, to defend litigations, and respond to audits.

29. Accordingly, on February 27, 2013, and in a series of letters thereafter, TycoIS submitted formal indemnification demands and notified the Counterclaim-Defendants that the conditions for distribution of the Holdback Fund had not been satisfied, that TycoIS' indemnification claims (described below) exceeded the \$3,000,000 value of the Holdback Fund, and that TycoIS was and is therefore entitled to a set-off pursuant to MUPA § 8.2.

i. Claims Asserted Against the Holdback Fund by TycoIS

(a) Unpaid/unfiled taxes

30. Counterclaim-Defendants represented and warranted that they complied in all material respects with, were not in violation of, and had not received any notices of material violation with respect to, any federal, state, local or foreign law pertaining to the ownership or operation of CBLLC attributable to any taxable period ending on or prior to the Closing Date. MUPA § 4.9.

31. The Counterclaim-Defendants represented and warranted that all federal, state, local income tax returns, as well as all sales and use tax returns, required to be filed by or on behalf of CBLLC were filed and were accurate. Id.

32. The Counterclaim-Defendants also represented and warranted that all federal, state, and local income taxes, as well as all sales and use taxes, owed by CBLLC were paid. Id.

33. The Counterclaim-Defendants further agreed to indemnify and hold harmless TycoIS for "any Taxes attributable to any Pre-Closing Period or Taxes of any Person other than the Company for which the Company is liable" MUPA at ¶ 8.1(a)(iii).

34. After the Closing Date, however, TycoIS learned that the Counterclaim-Defendants did not file complete and accurate income, sales, and/or use tax returns, or knowingly failed to pay or wrongfully underpaid said taxes, in multiple jurisdictions.

35. Moreover, at present, the Internal Revenue Service is auditing certain activities of the Counterclaim-Defendants undertaken prior to the Closing Date, including various deductions for business expenses for personal items and expenditures, and TycoIS has been required to expend substantial resources in connection with the audit.

36. After the Closing Date, TycoIS also learned that CBLLC was subject to a number of open audits for sale and use taxes and that returns required in several jurisdictions, including but not limited to Florida and New York, had not been filed, and TycoIS has been required to expend substantial resources in connection with these audits.

37. TycoIS has been damaged by the Counterclaim-Defendants' breaches concerning unpaid and/or unfiled taxes in an amount exceeding \$400,000.

(b) Litigations

38. The Transaction Agreements obligate the Counterclaim-Defendants to pay any liabilities relating to that aspect of CBLLC's business which became part of CBSS. APA § 2.3.

39. The Counterclaim-Defendants also represented and warranted that there were no pending or threatened litigation matters relating to CBLLC that had not been disclosed to TycoIS. MUPA at ¶ 4.7.

40. To date, TycoIS has incurred substantial litigation expenses in connection with the defense and settlement of lawsuits against CBLLC's security business and for litigation which was threatened against CBLLC before the Closing Date, but not disclosed to TycoIS.

TycoIS has made a claim against the Holdback Fund in excess of \$1,000,000 for these breaches of the Transaction Documents.

41. In addition, TycoIS paid almost \$1,000,000 to settle a litigation commenced by an electrical subcontractor (H&L Electric) against CBLLC for sums owed in connection with a hotel construction project when John Carter allegedly diverted money received from the project owner for his own benefit. The Counterclaim-Defendants engaged in conduct that compromised CBLLC's litigation position, including but not limited to failing to bond off plaintiff's mechanic's lien within 7 days as they were contractually obligated to do months before the Closing Date. MUPA § 4.6(a)(vii). TycoIS has asserted an indemnification claim with respect to the H&L Electric claim for an amount in excess of \$1,000,000.

(c) Transaction expenses, bonuses, and COBRA costs

42. In MUPA § 8.1(a)(iv), the Counterclaim-Defendants agreed to indemnify TycoIS for "any amount by which actual Company Transaction Expenses are greater than the Estimated Transaction Expenses" Despite their representations and warranties to the contrary, the actual Company Transaction Expenses exceeded the Estimated Transaction Expenses by \$499,607, and TycoIS has asserted a claim against the Holdback for this amount, which Counterclaim-Defendants have not disputed.

43. Pursuant to MUPA §§ 7.4 and 8.1(a)(iv), the Counterclaim-Defendants are responsible for amounts payable to employees under CBLLC's 2011 bonus plan. After the Closing Date, CBLLC was required to satisfy in excess of \$450,000 in bonus payments through settlement and litigation claims, and TycoIS has asserted a claim against the Holdback for these amounts.

ii. ***Other Claims for Indemnity For Breach of the MUPA***

(a) ***Inaccurate financial statements***

44. Counterclaim-Defendants represented and warranted in MUPA § 4.4 that TycoIS received accurate, unaudited consolidated financial statements, including balance sheets, statements of income and cash flows concerning CBLLC for the year ending December 31, 2011 as well as for the eight-month period ending August 31, 2012 (the “Financial Statements”), and that the Financial Statements were prepared in accordance with United States generally accepted accounting principles.

45. After the Closing Date, however, TycoIS discovered numerous, material irregularities in the Financial Statements that were not and could not have been discovered through the exercise of proper due diligence.

46. By way of example and not limitation, the Counterclaim-Defendants failed to disclose that prior to the Closing Date, CBLLC acquired residential real property located at 141 Golf Terrace Drive, Stockbridge, Georgia. In addition, several items represented as costs that had been paid were not, and various revenue line items were not realized or were reported prematurely.

47. TycoIS has been damaged by the Counterclaim-Defendants’ breaches concerning CBLLC’s Financial Statements and is entitled to indemnity pursuant to MUPA § 8.1(a)(i) in an amount to be determined at trial.

(b) Wrongfully prohibiting access to documents and information

48. Pursuant to the TSA, CBSS was to ensure an orderly transition of CBLLC's business to TycoIS by providing personnel, "IT Server/Support," and all information (including books of account and general administrative records) reasonably necessary for CBLLC to carry out its operations and obligations.

49. Notwithstanding the foregoing, the Counterclaim-Defendants continually withheld documents and information necessary to operate the business of CBLLC and that were rightfully the property of TycoIS pursuant to the Transaction Agreements.

50. Specifically and by way of example only, the Counterclaim-Defendants repeatedly and wrongfully refused - - at the express direction of John Carter - - to provide TycoIS with access to documents and information which were the rightful property of TycoIS pursuant to the Transaction Agreements.

51. As a result, in or about March of 2013, TycoIS hired an independent data consultant to collect the information necessary to defend the several litigations, respond to audit inquiries from various tax jurisdictions, and to otherwise operate CBLLC.

52. The independent consultant hired by TycoIS conducted a forensic audit that revealed that information had been deleted and/or was not preserved as required by the Transaction Agreements and by sound business practices.

53. In addition, in or about June of 2013, agents, representatives and/or employees of the Counterclaim-Defendants wrongfully and without permission entered premises duly occupied by CBLLC/TycoIS, removed documents and equipment that were the rightful property of CBLLC/TycoIS pursuant to the Transaction Agreements.

54. As a result of Counterclaim-Defendants' breaches of the TSA, including but not limited to TSA §§ 1(a) and 4(b), TycoIS incurred additional expenses in excess of \$25,000 to which TycoIS is entitled to indemnification pursuant to MUPA § 8.1(a)(ii) and TSA § 6.1(b).

(c) Carter Brothers, Inc.

55. During the course of negotiating the October 26, 2012 transaction, TycoIS discovered that a separate legal entity called "Carter Brothers, Inc." existed in the State of California.

56. The Counterclaim-Defendants were unable or unwilling to provide information requested by TycoIS concerning the nature of this entity, what it was, what it owned, and how it operated.

57. As a result, the Transaction Agreements contained various provisions to insulate TycoIS from potential liabilities concerning Carter Brothers, Inc., while ensuring that TycoIS was receiving all assets necessary to run CBLCC. (i) Carter Brothers, Inc. was expressly excluded from the assets purchased by TycoIS (APA § 2.1(m)); (ii) that Carter Brothers LLC had no subsidiaries (MUPA § 4.1); and (iii) that the assets purchased by TycoIS included all assets necessary to run the purchased business (MUPA §§ 4.3, 4.5).

58. The Counterclaim-Defendants now allege in their complaint that Carter Brothers, Inc. was a viable legal entity that generated millions of dollars in revenue in recent years, and that they, rather than CBLCC, owned these revenue generating assets.

59. If that allegation is true, then the Counterclaim-Defendants breached their representation and warranty that the assets transferred by Counterclaim-Defendants to TycoIS contained "all of the proprieties necessary to conduct the Businesses as currently documented" because the purported revenue was neither disclosed nor turned over to TycoIS.

60. Based on the foregoing, TycoIS is entitled to recover damages up to the full purchase price and other appropriate damages in excess of \$37,000,000.

COUNTERCLAIM COUNT I
(Claim for Declaratory Judgment that
TycoIS is Entitled to Retain the Holdback Funds)

61. TycoIS incorporates herein by reference and re-alleges as if fully set forth the averments of Counterclaim paragraphs 1 through 60.

62. TycoIS fulfilled all of its contractual obligations under the Transaction Agreements.

63. Any obligations under the Transaction Agreements that TycoIS may not have performed were waived by the conduct of the Counterclaim-Defendants.

64. The Counterclaim-Defendants have not satisfied all of the conditions precedent to release of the Holdback Fund, including but not limited to failing to assign the lease for premises located at 100 Hartsfield Centre to TycoIS.

65. Unless and until each of the conditions precedent is satisfied in full, TycoIS has no obligation to return any portion of the Holdback Fund.

66. The Transaction Agreements provide that if TycoIS makes a claim for indemnification prior to satisfaction of the Holdback Fund conditions, TycoIS shall be entitled to set-off against the Holdback Fund the amount of losses that is the subject of the indemnification claims.

67. As set forth more fully above, TycoIS has, and has asserted, claims against the Holdback Fund totaling well in excess of the \$3,000,000 value of the Holdback Fund.

68. Pursuant to MUPA §§ 8.1(a) and 8.2, TycoIS is entitled to retain the Holdback Funds and seeks an order of this Court permitting it to retain such funds.

69. A legally cognizable controversy exists between the parties.

70. TycoIS seeks a declaration that it is entitled to retain the full \$3,000,000 of the Holdback Fund.

71. In addition to the declaratory judgment, TycoIS is entitled to recover the reasonable attorneys' fees and costs associated with this claim.

COUNTERCLAIM COUNT II
(BREACH OF CONTRACT)

72. TycoIS incorporates herein by reference and re-alleges as if fully set forth the averments of Counterclaim paragraphs 1 through 71.

73. TycoIS has fulfilled all of its contractual obligations under the Transaction Agreements.

74. Any obligations under the Transaction Agreements that TycoIS may not have performed were waived by the conduct of the Counterclaim-Defendants.

75. As explained more fully above, Counterclaim-Defendants are in breach of numerous provisions of the Transaction Agreements, including but not limited to: APA § 2.1, 2.3, 5.2(b), 5.5; MUPA §§ 4.1, 4.3, 4.4, 4.5, 4.6(a)(vii), 4.7, 4.9, 7.4; Settlement Agreement §§ 2(a)(1), 2(a)(3), 3(a), 4; and TSA §§ 1(a), 4(b).

76. TycoIS has suffered damages from the Counterclaim-Defendants' breaches of the Transaction Agreements.

77. Pursuant to MUPA § 8.1, TycoIS is entitled to indemnification from Counterclaim-Defendants in an amount to be proven at trial.

78. Alternatively, based on the Counterclaim-Defendants material violations of the representations and warranties contained in the MUPA, including the representation and warranty that TycoIS would receive "all of the properties necessary to conduct the Business as

currently constituted” (MUPA § 4.5), TycoIS is entitled to recover damages up to the purchase price it expended for CBLLC and other damages in excess of \$37 million.

PRAYER FOR RELIEF

WHEREFORE, TycoIS requests entry of judgment in its favor and against Counterclaim-Defendants, including compensatory and punitive damages, awarding TycoIS prejudgment interest, declaring that TycoIS is entitled to indemnification against the Holdback Fund, and awarding it monetary damages up to the sum paid for CBLLC, together with post-judgment interest thereon, and for such other and further relief as this Court deems just and proper.

Dated: November 10, 2014

PEPPER HAMILTON LLP

By: /s/ Consuelo Alden Vasquez
Robert F. Hickok, Esq.
Consuelo Alden Vasquez, Esq.

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JUDGE FURMAN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARTER BROTHERS, INC., CARTER
BROTHERS SECURITY SERVICES, LLC,
CRIS D. CARTER and JOHN F. CARTER,

Plaintiffs,

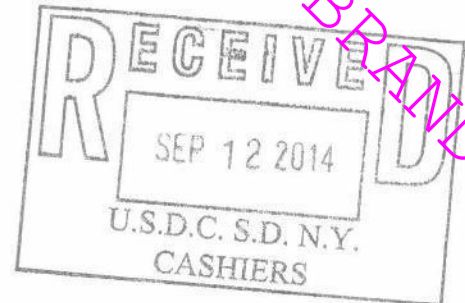
-v-

TYCO INTEGRATED SECURITY LLC and
DOES 1 through 20, inclusive,

Defendants.

CIVIL ACTION NO. _____

NOTICE OF REMOVAL



PLEASE TAKE NOTICE that, on this date, Defendant Tyco Integrated Security LLC ("TycoIS"), through its counsel, has filed this Notice of Removal in the office of the Clerk of the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1441 and 1446, Fed. R. Civ. P. 81(c), and Local Civil Rule 81.1 of the United States District Courts for the Southern and Eastern Districts of New York, and hereby removes the above-captioned action, pending under Index No. 652518/2014 in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

In support of this Notice of Removal, TycoIS states:

BACKGROUND

1. This lawsuit is a civil action within the meaning of 28 U.S.C. §§ 1441(b) and 1446(b).
2. As of October 26, 2012, TycoIS entered into a Membership Unit Purchase Agreement ("MUPA") with John F. Carter and Cris D. Carter (as members of Carter Brothers, LLC ("CB LLC")), and with Carter Brothers Security Services, LLC ("CBSS LLC"). Pursuant to the MUPA, TycoIS purchased CB LLC, one of CBSS LLC's affiliated companies.
3. CB LLC then entered into an Asset Purchase Agreement ("APA") with CBSS LLC, John Carter, and Cris Carter whereby CBSS LLC purchased all equity interests in Carter Brothers, Inc. ("CBInc").
4. On August 15, 2014, CBInc, CBSS LLC, Cris D. Carter and John F. Carter commenced an action by filing a Summons and Complaint against TycoIS in the Supreme Court of the State of New York, County of New York (Index No. 652518/2014) (the "State Court Action") under Index No. 652518/2014 (copies of which are annexed as Exhibit A and hereinafter cited as "Compl."). The Complaint asserted five causes of action arising out of the MUPA and the APA.
5. For the reasons set forth below, TycoIS seeks - - and plaintiffs do not oppose - - removal to the United States District Court for the Southern District of New York based upon diversity of citizenship

BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

6. The plaintiffs and TycoIS are of diverse citizenship as described below.

7. At all relevant times hereinafter mentioned, the individual plaintiffs John

F. Carter and Cris D. Carter were and still are citizens of the State of Florida. *See* Compl. ¶¶ 10-11.

8. At all times relevant hereinafter mentioned, plaintiff CBInc is incorporated, organized, and existing under the laws of the State of California and has its principal place of business in Atlanta, Georgia. *See* Compl. ¶ 8. A “corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” 28 U.S.C. 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). Therefore, at the time of filing the State Court Action and as of the date of this Notice of Removal, CBInc was and is a citizen of the States of California and Georgia for diversity purposes.

9. Plaintiff CBSS LLC is a Florida limited liability company with its principal place of business located in Atlanta, Georgia. For diversity jurisdiction purposes, the citizenship of a limited liability company is determined by the citizenship of its members. *Bayerische Landesbank v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012) (hereinafter “*Bayerische*”). CBSS LLC has two members: the individual plaintiffs John F. Carter and Cris D. Carter - - each of whom resides in and is a citizen of the State of Florida. *See* Compl. ¶¶ 10-11. Accordingly, CBSS LLC is a citizen of Florida for purposes of determining diversity. *Bayerische*, 692 F.3d at 49; *Hertz Corp. v. Friend*, 559 U.S. at 80.

10. Defendant TycoIS is a Delaware limited liability company. While the Complaint asserts that TycoIS is a citizen of Florida and Delaware, this is incorrect. Compl. at ¶

13. TycoIS has one member: Tyco Fire & Security US Holdings LLC, a Delaware limited liability company with its principal place of business in New Jersey. Tyco Fire & Security US Holdings LLC also has only one member - - Tyco Fire & Security (US) Management, Inc., which is incorporated in Nevada and has its principal place of business in New Jersey. Because the citizenship of a limited liability company is determined by the citizenship of its members, TycoIS is a citizen of Nevada or New Jersey for purposes of determining diversity. *Bayerische*, 692 F.3d at 49.

B. AMOUNT IN CONTROVERSY

11. The Complaint alleges that Plaintiffs “have been damaged in an amount in excess of \$500,000.” *See* Exhibit A, ¶ 6. Accordingly, the damages sought by plaintiffs place an amount in controversy in excess of this Court’s \$75,000 jurisdictional threshold, exclusive of interest, and costs and other relief requested by Plaintiffs. 28 U.S.C. §§ 1332, 1441(b).

**REMOVAL OF THIS ACTION FROM STATE COURT TO
THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK IS PROPER**

12. This is an action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between plaintiffs and defendants, and the matter in controversy exceeds \$ 75,000, as outlined at ¶¶ 1-6 above.

13. The United States District Court for the Southern District is the district having jurisdiction over the place where the State Court Action is pending (*i.e.*, Supreme Court of the State of New York, County of New York).

14. Removal is timely as it is being made within thirty (30) days of Defendant’s receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based,” pursuant to 28 U.S.C. § 1446(b) (*i.e.*, Complaint dated August 15, 2015).

15. Plaintiffs do not oppose removal. *See* Exhibit B.

16. Accordingly, this action may and should be removed to this Court pursuant to 28 U.S.C. § 1441.

17. A true and correct copy of all process, pleadings, and orders served in this action to date have been filed and annexed to this Notice of Removal in accordance with 28 U.S.C. § 1446 (a).

PLEASE TAKE FURTHER NOTICE that upon filing the Notice of Removal in the Office of the Clerk of the United States District Court for the Southern District of New York, TycoIS has also filed copies of this Notice with the Clerk of the Supreme Court of the State of New York, County of New York, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

Dated: September 12, 2014

Respectfully submitted,

PEPPER HAMILTON LLP

By: 

Consuelo Alden Vasquez (CAV 1614)

Attorney for Tyco Integrated Security LLC
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(212) 808-2702

To: Ronald A. Giller, Esq.
GORDON & REES LLP
Attorneys for Plaintiffs
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New York, New York 10004
(212) 269-5500

Clerk of the Court
Supreme Court - New York County
60 Centre Street
New York, New York 10007

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION**

CARTER BROTHERS, INC., CARTER
BROTHERS SECURITY SERVICES, LLC,
CHRIS D. CARTER and JOHN F. CARTER,

Plaintiffs,

-versus-

TYCO INTEGRATED SECURITY LLC, and
DOES 1 through 20, inclusive,

Defendants.

Index #:

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorney an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue of this action is that one or more defendants reside and/or do business in this County.

Dated: August 15, 2014
New York, New York

GORDON & REES LLP

By: Ronald A. Giller
Ronald A. Giller, Esq.
Attorneys for Plaintiff
90 Broad St., 23rd Floor
New York, NY 10004
(212) 269-5500 (Phone)
(212) 269-5505 (Fax)

TO: Tyco Integrated Security LLC
c/o Connie Vasquez, Esq.
Pepper Hamilton LLP
620 Eighth Avenue, 37th Floor
New York, NY 10018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION

CARTER BROTHERS, INC., CARTER
BROTHERS SECURITY SERVICES, LLC,
CHRIS D. CARTER and JOHN F. CARTER,

Plaintiffs,

-versus-

TYCO INTEGRATED SECURITY LLC, and
DOES 1 through 20, inclusive,

Defendants.

Index #:

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Carter Brothers, Inc., Carter Brothers Security Services, LLC, Chris D. Carter and John F. Carter (collectively "Plaintiffs"), by their attorneys, Gordon & Rees, LLP, respectfully allege as follows against Defendant Tyco Integrated Security LLC ("TYCO") and DOES 1 through 20:

I. PRELIMINARY STATEMENT

1. This is an action for damages, declaratory and injunctive relief based on TYCO's failure to pay amounts owed to Plaintiffs as previously agreed upon in the parties' October 26, 2012 Membership Unit Purchase Agreement (the "MUPA"). Defendant Tyco Integrated Security, LLC ("TYCO") acquired 100 percent of the equity interest in Carter Brothers, LLC ("CBLLC") from Cris D. Carter and John F. Carter (collectively "The Carters"). CBLLC, which consisted of a Fire and Life Safety division and a security division, concurrently sold the assets of the security division to a newly formed entity, Carter Brothers Security Services, LLC ("CBSS"), pursuant to the Asset Purchase Agreement (the "APA"), also dated October 26, 2012. CBSS is 100 percent owned by The Carters.

2. CBLLC also formerly owned a separate company named Carter Brothers, Inc.

("CBI"). Pursuant to the terms of the APA, one hundred percent (100 %) of the equity interest in CBI was also sold to CBSS. As a result, The Carters subsequently owned all of the equity of CBI, as well as all of the equity of CBSS.

3. Pursuant to the terms of the MUPA, \$3,000,000 from the purchase price was held back (the "Holdback Funds"), until such time as certain conditions set forth in MUPA § 2.2(c) were met (the "Holdback Conditions"). Despite the Holdback Conditions being reasonably met by Plaintiffs, TYCO has refused to release any portion of the Holdback Funds to Plaintiffs, as required under MUPA § 2.2(a).

4. Further, TYCO wrongfully continued, and still continues, to use the "Carter Brothers" name (in breach of the MUPA). TYCO has refused to represent John Carter in litigation as required by the MUPA. TYCO has also wrongfully represented to the world that it owns CBI, a separate company whose equity interest and assets are legally and contractually owned by CBSS, wrongfully converting CBI funds to its own use and depriving Plaintiffs of their legal right to possession of the funds.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action because Defendants have conducted or transacted business in this State, which subjects each Defendant to the jurisdiction of the Courts of this State.

6. This matter may be properly heard in the Commercial Division because Plaintiffs have been damaged in an amount in excess of \$500,000.00 and the subject matter of this action meets the requirements of Section 202.70 of the Rules of the Commercial Division of the Supreme Court of the State of New York.

7. In addition, the parties' agreements, including the MUPA and the APA provide that disputes relating to those agreements or certain specified documents "must . . . be brought only in the federal or state courts located in the Southern District of the State of New York, which shall have exclusive jurisdiction to resolve any Litigation, and each Party irrevocably consents to the jurisdiction thereof for any Litigation." MUPA § 9.10; APA § 7.10.

III. THE PARTIES

8. Plaintiff CBI is a company specializing in fire and life safety, and is a California company.

9. Plaintiff CBSS is a minority-owned enterprise engaged in the business of project management, contracting services, installation and maintenance of integrated electronic security and life safety systems is a Florida company.

10. Plaintiff Chris D. Carter is a Florida resident.

11. Plaintiff John F. Carter is a Florida resident.

12. Defendant TYCO is a commercial security systems integrator, providing security and business optimization services to more than 500,000 customers.

13. TYCO is a Delaware limited liability company and is headquartered in Boca Raton, Florida.

IV. ALLEGATIONS RELEVANT TO ALL CLAIMS

A. Events Leading to the Signing of the MUPs and the APA.

14. In or about 2002, Plaintiffs and TYCO formed a strategic alliance wherein each of them committed to working together to achieve mutual goals and objectives.

15. Plaintiffs were to provide project management services and manage a database of qualified subcontractors in all sectors of TYCO's business.

16. TYCO agreed to mentor Plaintiffs and provide sponsorship, sales management, training infrastructure, development and management support.

17. This relationship deteriorated, and in 2012, The Carters and CBLLC (then owned by The Carters) filed a complaint with the United States Department of Justice alleging that TYCO engaged in bribery and fraudulent conduct in connection with TYCO's award of various federal procurement contracts, which was anti-competitive and criminal in nature.

18. In connection with these claims, TYCO employees, on more than one occasion, referred to The Carters as the "N----- Brothers," as reflected in internal correspondence.

19. Putting such egregious conduct aside, on October 26, 2012, The Carters and

TYCO entered into the MUPA and the APA, whereby The Carters sold all of their equity interest in CBLLC to TYCO (the "Transaction"), and CBLLC concurrently sold the security division assets, along with one hundred percent (100 %) of the equity interest in CBI, to CBSS. (See the MUPA § 2.1.)

20. The MUPA expressly states that TYCO and The Carters executed concurrently with the MUPA, a settlement agreement relating to the resolution of claims, including The Carters' claims of anti-competitive and civil rights violations against TYCO.

21. Despite what The Carters believed to be a resolution of their claims against TYCO, after the signing of the October 26, 2012 settlement, the MUPA, and the APA, TYCO continued to engage in the same anti-competitive, fraudulent and otherwise detrimental conduct. This conduct is harmful to the Plaintiffs and is ongoing and continuous in nature.

22. Under the MUPA, in consideration of The Carters' interest in CBLLC, TYCO agreed to pay to The Carters, \$35,750,000, minus CBLLC's indebtedness and the Holdback Funds in the amount of \$3,000,000. (See MUPA § 2.2.)

23. TYCO's release of the Holdback Funds, as provided in the MUPA, was only conditioned upon the following:

a. "the assignment of the Hartsfield Centre Lease (as defined in the Security Business APA) and the effectiveness of the sublease relating thereto as contemplated by Section 5.5(a) of the Security Business APA."

b. "assignment to the Company of the leases contemplated by Section 5.5(b) of the Security Business APA."

c. "the re-issuance or other resolution on terms reasonably satisfactory to the Buyer of those licenses identified by jurisdiction on Schedule 2.2(c)."

d. "payment and satisfaction in full of unpaid sales taxes relating to the Pre-Closing Period."

e. "the closure of the Company's pending audit by the Florida Department of Revenue, including the payment of all amounts (tax, penalty, and interest) in full and final

settlement thereof.” See the MUPA § 2.2(c).

24. When it acquired the equity interest in CBLLC, TYCO also assumed responsibility for all of the litigation pending or initiated before the sale of CBLLC, as identified in the “Data Room.”

25. The MUPA also contains an indemnification provision whereby the parties each agreed to indemnify the other against certain losses or breaches associated with the MUPA.

B. Plaintiffs’ Satisfaction of the Holdback Provisions.

26. After the MUPA was executed, Plaintiffs took steps to comply, or substantially comply, with the Holdback Provisions, and it did so, to wit:

a. Plaintiffs took measures to assign the Hartsfield Centre Lease and the sublease thereto before representatives from TYCO took control of the process.

b. Plaintiffs took measures to assign to CBLLC the leases as listed and contemplated in the APA.

c. Plaintiffs reissued or resolved the licenses identified on Schedule 2.2(c) of the MUPA.

d. To their knowledge and belief, Plaintiffs paid and satisfied the unpaid sales taxes relating to periods prior to the closing of the MUPA.

e. The Florida Department of Revenue’s audit was completed and there was a full and final settlement with respect to any and all payments due.

27. TYCO has express knowledge of Plaintiffs’ compliance with the Holdback Provisions and has been provided with documentation supporting such compliance on numerous occasions.

28. Despite Plaintiffs’ compliance with their obligations, and the knowledge that Plaintiffs have complied with the Holdback Conditions, TYCO still refuses to release the Holdback Funds, as required by the MUPA.

C. Tyco’s Inappropriate Control of CBL.

29. Following the Transaction, upon information and belief, it appears as though

TYCO inappropriately took control of CBI.

30. TYCO was made aware that The Carters were the full and complete owners of CBI through an Affidavit of Ownership and Control that was attached to the closing binder in the MUPA. Additionally, Section 2.1(m) of the APA specifically provided that The Carters retained 100% of the equity interest of CBI.

31. Despite this knowledge, TYCO engaged in activity and made certain communications clearly indicating that, at minimum, it was running the operations of CBI.

32. Specifically, TYCO assumed various CBI leases in California, collected funds owed to CBI, cashed checks made to CBI, converted CBI's revenue to their own, and then closed two CBI offices in California.

33. Moreover, TYCO personnel were under the distinct impression that TYCO owned CBI and continued to act accordingly with this belief. Specifically, TYCO personnel sent emails to CBI employees expressing ownership in CBI.

34. Despite this incorrect and improper conduct by TYCO, The Carters still retain all of the equity ownership in CBI, as set forth in APA § 2.1(m), and as has been demonstrated to TYCO on repeated occasions.

D. Tyco's Inappropriate Use of the Carter Brothers Marks and Logos.

35. Pursuant to the MUPA § 7.8, TYCO was only permitted to use the Carter Brother Names, Marks and Logos (the "Carter Name") for a period of nine months, and this usage should have ended on or before July 26, 2013. The MUPA § 7.8 also provides that TYCO should use reasonable, best efforts to transition the Carter Name in six months.

36. Moreover, under the MUPA § 7.8, TYCO is "not permitted to issue any press release or otherwise disseminate a public statement including the Carter Names, Marks and Logos."

37. Nonetheless, upon information and belief, TYCO still continues to use the Carter Name in association with its business.

38. In addition, a Twitter page for Carter Brothers has been modified by someone,

who is not affiliated with The Carters, to indicate that "Carter Brothers is now [T]yco."

39. Plaintiffs have sent several demands to TYCO insisting that TYCO cease the usage of the Carter Name.

40. Despite these demands, TYCO continues to improperly use the Carter Name.

E. Tyco's Inappropriate Refusal to Continue Representation of John Carter.

41. Pursuant to the MUPA § 4.7, TYCO is obligated to defend The Carters against litigation matters that were included in the Data Room (an addendum to the MUPA). This litigation representation includes litigation matters "threatened" against CBLLC.

42. In fact, TYCO did represent John Carter in another litigation matter which was eventually settled.

43. One of the litigation matters listed in the Data Room was the "H&L Litigation," a construction lien matter filed in New York state court in which John Carter is accused of breaching his fiduciary duty.

44. Upon information and belief, TYCO fully intended to represent John Carter in this matter, in accordance with the MUPA's requirements.

45. Indeed, TYCO did begin actual representation of John Carter, and initially retained an attorney for these purposes.

46. However, when TYCO's counsel learned that TYCO had fired the primary source of information relating to the H&L Litigation and that another key employee with knowledge had transitioned to CBSS, TYCO improperly refused to represent John Carter in the H&L Litigation, in breach of the MUPA.

47. Because TYCO represented John Carter in a separate litigation matter listed in the Data Room, TYCO's claims that it is not obligated to represent John Carter in the H&L Litigation is inconsistent with its previous actions.

V. CAUSES OF ACTION

First Cause Of Action For Breach Of Contract
(Against All Defendants)

48. Plaintiffs re-allege and incorporate each of the foregoing allegations as though fully set forth herein.

49. Plaintiffs allege that TYCO and DOES 1 through 20 committed known breaches of contract as follows, and additionally, according to proof.

50. On or about October 26, 2012, The Carters, CBSS and TYCO entered into the MUPA, whereby The Carters sold all of their equity interest in CBLLC to TYCO.

51. Plaintiffs have performed, or substantially performed, all of their obligations under the MUPA and The Carters have transitioned all of their equity interest in CBLLC to TYCO.

52. The MUPA obligates TYCO to release the Holdback Funds upon the occurrence of the Holdback Conditions.

53. Despite numerous demands, TYCO has willfully refused and failed to release the Holdback Funds, in breach of the MUPA.

54. TYCO is also improperly withholding legal fees pertaining to the H&L Litigation as a holdback expense without justification.

55. Pursuant to the MUPA § 7.8, TYCO was only permitted to use the Carter Name for a period of nine months, and this usage should have ended on or before July 26, 2013. MUPA § 7.8 also provides that TYCO should use reasonable, best efforts to transition the Carter Name in six months.

56. Moreover, under the MUPA § 7.8, TYCO is “not permitted to issue any press release or otherwise disseminate a public statement including the Carter Names, Marks and Logos.”

57. TYCO continues to use the Carter Name and has issued public statements reflecting this usage of the Carter Name, in breach of the MUPA.

58. Despite numerous demands, TYCO has willfully refused and failed to cease all usage of the Carter Name, in breach of the MUPA.

59. The MUPA § 4.7 obligates TYCO to defend The Carters against litigation matters that were included in the Data Room, which expressly includes the H&L Litigation.

60. TYCO's representation of John Carter in another litigation matter listed in the Data Room is reflective of its knowledge of its obligations to represent John Carter in pending litigation listed in the Data Room.

61. TYCO has breached the MUPA by failing and refusing to represent Plaintiff John Carter in the H&L Litigation, despite demands to do so.

62. The MUPA and the Transition Services Agreement ("TSA") required The Carters to transition to TYCO the third floor of its Hartsfield Centre lease, and for TYCO to assume assignment of the same.

63. Pursuant to the TSA, TYCO was obligated to pay for the lease of the Hartsfield Centre through June 2016.

64. TYCO has breached the MUPA by failing and refusing to pay for the third floor lease of the Hartsfield Centre, despite demands to do so.

65. As a proximate result of TYCO's breaches as described above, and further according to proof, Plaintiffs have suffered and continued to suffer harm. Plaintiffs should be indemnified for legal fees, expenses, and all damages otherwise incurred as a result of TYCO's breaches.

Second Cause Of Action For Conversion
(Against All Defendants)

66. Plaintiffs re-allege and incorporate each of the foregoing allegations as though fully set forth herein.

67. Plaintiffs allege TYCO and DOES 1 through 20 committed conversion by intentionally and without authority, exercising control over their personal property as follows, and additionally, according to proof.

68. Plaintiffs have performed, or substantially performed, all of the Holdback Conditions.

69. The MUPA obligates TYCO to release the Holdback Funds upon the occurrence of the Holdback Conditions. The funds are a readily identifiable sum which is being wrongfully withheld by TYCO, despite numerous demands for return of the funds. Plaintiffs have a legal right to ownership and possession of the funds.

70. Plaintiffs have not consented to TYCO's possession of the funds.

71. Additionally, based upon the terms of the MUPA, The Carters did not transfer any of their interest in CBI to TYCO. The Carters, therefore, continue to retain a one hundred percent equity ownership in CBI.

72. TYCO has engaged, and continues to engage, in activities which substantially interfere with the ownership of CBI.

73. TYCO has assumed various CBI leases in California, collected funds owed to CBI, cashed checks made to CBI, converted CBI's revenue to their own, and closed two CBI offices in California. Plaintiffs have not consented to these activities and have made numerous demands to TYCO to cease and desist.

74. Plaintiffs have been harmed and TYCO's actions have substantially caused the harm, to be determined according to proof at trial.

Third Cause Of Action For Trespass To Chattels
(Against All Defendants)

75. Plaintiffs re-allege and incorporate each of the foregoing allegations as though fully set forth herein.

76. Plaintiffs allege TYCO and DOES 1 through 20 committed trespass to chattels by intentionally, and without authority, exercising control over their personal property as follows, and additionally, according to proof.

77. Plaintiffs have performed, or substantially performed, all of the Holdback Conditions.

78. The MUPA obligates TYCO to release the Holdback Funds upon the occurrence of the Holdback Conditions. The funds are a readily identifiable sum which is being wrongfully withheld by TYCO, despite numerous demands for return of the funds. Plaintiffs have a legal right to ownership and possession of the funds.

79. Plaintiffs have not consented to TYCO's possession of the funds.

80. Additionally, based upon the terms of the MUPA, The Carters did not transfer any of their interest in CBI to TYCO. The Carters, therefore, continue to retain a one hundred percent equity ownership in CBI.

81. TYCO has engaged, and continues to engage, in activities which substantially interfere with the ownership of CBI.

82. TYCO has assumed various CBI leases in California, collected funds owed to CBI, cashed checks made to CBI, converted CBI's revenue to their own, and closed two CBI offices in California. Plaintiffs have not consented to these activities and have made numerous demands to TYCO to cease and desist.

83. Plaintiffs have been harmed and TYCO's actions have substantially caused the harm, to be determined according to proof at trial.

Fourth Cause Of Action For Intentional Interference
With Contractual Relations
(Against All Defendants)

84. Plaintiffs re-allege and incorporate each of the foregoing allegations as though fully set forth herein.

85. Plaintiffs allege TYCO and DOES 1 through 20 intentionally and maliciously interfered with several known contracts as follows, and additionally, according to proof.

86. Plaintiffs have contracts and ongoing business relationships with the following clients: The State of Florida, 3M, Standard Register, PepsiCo, Frito Lay, City of Oakland, Bridge Housing, and Hotel Sofitel, as well as numerous others business clients.

87. TYCO has knowledge, or should have known, of each of the aforementioned contractual relationships.

88. TYCO intended to disrupt the aforementioned contractual relationships by, among other things, wrongfully conducting business as the purported owner of CBI.

89. TYCO's actions prevented performance or made performance more expensive or difficult with respect to the aforementioned contracts.

90. Plaintiffs have been harmed and TYCO's actions have substantially caused the harm, to be determined according to proof at trial.

Fifth Cause Of Action For Intentional Interference
With Prospective Economic Advantage
(Against All Defendants)

91. Plaintiffs re-allege and incorporate each of the foregoing allegations as though fully set forth herein.

92. Plaintiffs allege TYCO and DOES 1 through 20 intentionally interfered with several of its economic relationships as follows, and additionally, according to proof.

93. Plaintiffs have contracts and ongoing business relationships with the following clients: The State of Florida, 3M, Standard Register, PepsiCo, Frito Lay, City of Oakland, Bridge Housing, and Hotel Sofitel, as well as numerous others business clients.

94. TYCO has knowledge, or should have known, of each of the aforementioned contractual and business relationships.

95. TYCO disrupted the aforementioned contractual and business relationships by, among other things, wrongfully conducting business as the purported owner of CBI.

96. TYCO's actions prevented performance or made performance more expensive or difficult with respect to the aforementioned contracts.

97. Plaintiffs have been harmed and TYCO's actions have substantially caused the harm, to be determined according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against TYCO as follows:

(a) Judgment in an amount to be determined at trial, including compensatory and punitive damages;

- (b) Pre- and post-judgment interest, to the fullest extent assessable at law or in equity, on all amount of damages;
- (c) A judicial declaration that CBSS owns CBI, including its assets, free of any claims;
- (d) An injunction against TYCO to forever enjoin it from interfering with CBSS's ownership of CBI;
- (e) Reasonable attorneys' fees, costs, and expenses; and
- (f) Such other further relief as the Court may deem just and proper.

Dated: New York, New York
August 15, 2014

Respectfully Submitted,

GORDON & REES, LLP

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EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CARTER BROTHERS, INC., CARTER BROTHERS SECURITY
SERVICES, LLC, CHRIS D. CARTER AND JOHN F. CARTER,

Plaintiffs,

Index No. 652518/2014

- against -

STIPULATION

TYCO INTEGRATED SECURITY LLC, and DOES 1 through 20,
inclusive,

Defendants.
-----X

WHEREAS, pursuant to prior stipulation, the parties agreed that any action commenced by Carter Brothers, Inc. and/or Carter Brothers Security Services, LLC would be filed in the United States District Court for the Southern District of New York (a copy of which stipulation is annexed hereto and made a part hereof as Exhibit A); and

WHEREAS, the above-captioned action was filed in the Supreme Court of the State of New York, County of New York, Commercial Division on August 15, 2014;

NOW, THEREFORE, it is

STIPULATED AND AGREED by and among the respective parties and their undersigned counsel that Plaintiffs will not object to the removal of this action to the United States District Court for the Southern District of New York; and it is further

STIPULATED AND AGREED that this stipulation shall survive any such removal; and it is further

STIPULATED AND AGREED that Tyco Integrated Security LLC shall have sixty (60) days from the date of filing of a notice of removal to answer, move, or otherwise respond to the

Complaint; and it is further

STIPULATED AND AGREED that this Stipulation may be signed in counterparts with facsimile or electronic signatures having the same force and effect as originals.

Dated: September 11, 2014

GORDON & REES

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CARTER BROTHERS SECURITY SERVICES,
LLC, CHRIS D. CARTER and JOHN F. CARTER

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