

David B. Rosenbaum, 009819  
Eric M. Fraser, 027241  
William D. Furnish, 028725  
OSBORN MALEDON, P.A.  
2929 North Central Ave., Suite 2000  
Phoenix, Arizona 85012-2793  
(602) 640-9000  
[drosenbaum@omlaw.com](mailto:drosenbaum@omlaw.com)  
[efraser@omlaw.com](mailto:efraser@omlaw.com)  
[wfurnish@omlaw.com](mailto:wfurnish@omlaw.com)

Robin L. McGrath (*admitted pro hac vice*)  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
1050 Crown Pointe Pkwy, Suite 500  
Atlanta, Georgia 30350  
(470) 890-1012  
[robinmcgrath@quinnemanuel.com](mailto:robinmcgrath@quinnemanuel.com)

Linda Brewer (*admitted pro hac vice*)  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
50 California Street, 22nd Floor  
San Francisco, CA 94111  
(415) 875-6600  
[lindabrewer@quinnemanuel.com](mailto:lindabrewer@quinnemanuel.com)

Inge Larish (*pro hac vice pending*)  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
1109 First Avenue, Suite 210  
Seattle, WA 98101  
(206)905-7000  
[ingelarish@quinnemanuel.com](mailto:ingelarish@quinnemanuel.com)

Attorneys for Defendant/Counterclaimant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Blackhawk Network, Inc., an Arizona  
corporation,

Plaintiff/Counter-defendant,

vs.

SL Card Company Inc. d/b/a Linq3, an  
Arizona corporation,

Defendant/Counterclaimant.

No. CV 2022-051638

**SL CARD COMPANY INC.'S  
AMENDED ANSWER TO  
COMPLAINT, AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIMS**

(Assigned to The Honorable  
Christopher Coury)

Defendant SL Card Company Inc. ("SL Card" or "Defendant"), by and through its  
undersigned counsel, hereby submits the following Amended Answer, Affirmative

1 Defenses, and Counterclaims (“Answer”) in response to the Complaint filed by Blackhawk  
2 Network, Inc. (“Blackhawk” or “Plaintiff”). This Answer is based upon SL Card’s  
3 knowledge as to its own activities, and upon information and belief as to the activities of  
4 others.

5 SL Card denies all allegations in the Complaint, whether express or implied, that  
6 are not specifically admitted below. The numbered paragraphs below correspond to the  
7 numbered paragraphs in the Complaint. Any factual allegation below is admitted only as to  
8 the specific admitted facts, not as to any purported conclusions, characterizations,  
9 implications, or speculation that arguably could follow from the admitted facts. SL Card  
10 denies that Plaintiff is entitled to the relief requested or any other relief. SL Card responds  
11 to the Complaint as follows:

12 **RESPONSE TO COMPLAINT**

13 1. SL Card admits that Plaintiff Blackhawk Network, Inc. filed the Complaint  
14 in this action. SL Card admits that SL Card Company Inc. is an Arizona corporation. SL  
15 Card denies the remaining allegations contained in Paragraph No. 1 of the Complaint.

16 **RESPONSE TO THE PARTIES**

17 2. SL Card lacks knowledge or information sufficient to form a belief as to the  
18 truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies  
19 them.

20 3. SL Card admits it is an Arizona corporation with its registered agent in  
21 Maricopa County, Arizona. SL Card denies that it does business as Linq3 and denies the  
22 remaining allegations contained in Paragraph 3 of the Complaint.

23 4. SL Card admits that it was previously owned by Linq3 Technologies LLC,  
24 now L3 Technologies LLC (“L3”), which is a Delaware corporation. SL Card admits  
25 Interactive Communications International, Inc. is a Florida corporation with its principal  
26 place of business at 250 Williams Street, 5<sup>th</sup> Floor, Atlanta, Georgia, 30303. SL Card  
27 admits that Linq3 Technologies LLC is a Florida corporation with its principal office at  
28 250 Williams Street, 5<sup>th</sup> Floor, Atlanta, Georgia, 30303. SL Card admits that e2 Interactive

1 and HI Technology Corp. are Georgia corporations with a principal office address of 250  
2 Williams Street, Suite 5-2002, Atlanta, Georgia, 30303. Except as expressly admitted, SL  
3 Card denies the allegations contained in Paragraph 4 of the Complaint.

4 **RESPONSE TO JURISDICTION AND VENUE**

5 5. SL Card admits it is an Arizona corporation with a registered agent in  
6 Maricopa County. Paragraph 5 contains conclusions of law to which no response is  
7 required. To the extent that a response is required, and for the purposes of this action only,  
8 solely to conserve the resources of the parties and the Court, SL Card does not contest  
9 personal jurisdiction in this Court for this action.

10 6. Paragraph 6 contains conclusions of law to which no response is required. To  
11 the extent that a response is required, and for the purposes of this action only, SL Card  
12 does not contest subject matter jurisdiction and venue in this Court for this action.

13 **RESPONSE TO FACTUAL ALLEGATIONS**

14 7. SL Card denies the allegations contained in Paragraph 7 of the Complaint.

15 8. SL Card denies the allegations contained in Paragraph 8 of the Complaint.

16 9. SL Card admits that a copy of the Distribution Agreement is attached as  
17 Exhibit A to the Complaint. SL Card denies the remaining allegations contained in  
18 Paragraph 9 of the Complaint.

19 10. SL Card admits that L3 filed an application to register the trademark  
20 QUICKTICKET (the "QUICKTICKET" Mark") as a federal trademark, and was SL  
21 Card's parent at the time. SL Card denies the remaining allegations contained in Paragraph  
22 10 of the Complaint.

23 11. SL Card denies the allegations contained in Paragraph 11 of the Complaint.

24 B. **Blackhawk Network**

25 12. SL Card lacks knowledge or information sufficient to form a belief as to the  
26 truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies  
27 them.  
28

1           13.     SL Card lacks knowledge or information sufficient to form a belief as to the  
2 truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies  
3 them.

4           14.     SL Card lacks knowledge or information sufficient to form a belief as to the  
5 truth of the allegations contained in Paragraph 14 of the Complaint, and therefore denies  
6 them.

7           15.     SL Card lacks knowledge or information sufficient to form a belief as to the  
8 truth of the allegations contained in Paragraph 15 of the Complaint, and therefore denies  
9 them.

10          16.     SL Card denies the allegations contained in Paragraph 16 of the Complaint.

11          C.     Blackhawk's QuickTicket™ Patents

12          17.     SL Card denies the allegations contained in Paragraph 17 of the Complaint.

13          18.     SL Card denies the allegations contained in Paragraph 18 of the Complaint.

14          19.     SL Card admits that Patent No. 9,865,135 issued on January 9, 2018 and  
15 Patent No. 10,769,894 issued on September 8, 2020. Except as expressly admitted, SL  
16 Card denies the allegations contained in Paragraph 19 of the Complaint.

17          20.     SL Card admits the '135 patent and the '894 patent are each entitled  
18 "Methods for selling pre-printed online lottery tickets." SL Card denies the remaining  
19 allegations contained in Paragraph 20 of the Complaint.

20          21.     SL Card denies the allegations contained in Paragraph 21 of the Complaint.

21          22.     SL Card denies the allegations contained in Paragraph 22 of the Complaint.

22          D.     Blackhawk's Distribution Agreement with Linq3

23          23.     SL Card admits that Blackhawk and SL Card executed a Product  
24 Distribution Agreement ("PDA") effective January 1, 2017 and that L3 was a party to the  
25 PDA with respect to certain provisions. SL Card admits the quoted words appear in the  
26 PDA. SL Card denies all remaining allegations contained in Paragraph 23 of the  
27 Complaint.

28          24.     Admitted.

1           25.   Admitted.

2           26.   SL Card admits that SL Card Company Inc., an Arizona corporation, is  
3 designated by the shorthand “Linq3” in the PDA. Except as expressly admitted, SL Card  
4 denies the allegations contained in Paragraph 26 of the Complaint.

5           27.   SL Card admits that Linq3 Technologies LLC, a Delaware limited liability  
6 company, is designated by the shorthand “Linq3 Technologies” in the PDA. Except as  
7 expressly admitted, SL Card denies the allegations contained in Paragraph 27 of the  
8 Complaint.

9           28.   SL Card admits Section 10 of the PDA is titled “Intellectual Property  
10 Rights.” SL Card admits that the quoted words appear in Section 10.1 of the PDA. To the  
11 extent not expressly admitted, SL Card denies the allegations contained in Paragraph 28 of  
12 the Complaint.

13          29.   SL Card denies the allegations contained in Paragraph 29 of the Complaint.

14          30.   SL Card admits that the quoted words appear in the PDA in connection with  
15 Section 10.2. Except as expressly admitted, SL Card denies the allegations contained in  
16 Paragraph 30 of the Complaint.

17          31.   SL Card admits that the quoted words appear in Section 10.3, which also  
18 contains additional words. SL Card denies all remaining allegations contained in Paragraph  
19 31 of the Complaint.

20          32.   SL Card admits that Section 8 of the PDA is titled “Confidentiality” and that  
21 the quoted words appear in Section 8.1 of the PDA. SL Card denies the remaining  
22 allegations contained in Paragraph 32 of the Complaint.

23          33.   SL Card denies the allegations contained in Paragraph 33 of the Complaint.

24          34.   SL Card admits that the quoted words appear in Section 8.4 of the PDA,  
25 along with other words. SL Card denies all remaining allegations contained in Paragraph  
26 34 of the Complaint.

1           35.     SL Card admits that Section 17 is entitled “Publicity Restrictions” and that  
2 the quoted words appear in the PDA, along with other words. SL Card denies all remaining  
3 allegations contained in Paragraph 35 of the Complaint.

4           36.     SL Card admits that Section 14.2 is titled “Termination for Cause and Other  
5 Events” and that the quoted words appear in Section 14.2 of the PDA along with other  
6 words. SL Card denies the remaining allegations contained in Paragraph 36 of the  
7 Complaint.

8           37.     SL Card admits that the quoted words appear in Section 13.1 of the PDA,  
9 along with other words. To the extent not expressly admitted, SL Card denies the  
10 allegations contained in Paragraph 27 of the Complaint.

11          38.     SL Card admits that the quoted words appear in Section 16 of the PDA,  
12 along with other words. SL Card denies all remaining allegations contained in Paragraph  
13 38 of the Complaint.

14          39.     SL Card admits that Section 21.2 of the Distribution Agreement contains the  
15 quoted word, along with other words, but denies the remaining allegations contained in  
16 Paragraph 39 of the complaint. Paragraph 39 contains conclusions of law to which no  
17 response is required. To the extent that a response is required, SL Card denies all  
18 remaining allegations in Paragraph 39.

19          40.     SL Card admits that Section 21.4 states that “The interpretation and  
20 enforcement of this Agreement shall be governed by the laws of the State of Delaware,  
21 without the conflict of law principles.” Except as expressly admitted, SL Card denies the  
22 allegations contained in Paragraph 40 of the Complaint.

23          41.     SL Card admits that Daniel Cage signed the agreement on behalf of SL Card  
24 Company Inc. and identified his title as “Director/President.” SL card denies the remaining  
25 allegations contained in Paragraph 41 of the Complaint.

26          42.     SL Card denies the allegations contained in Paragraph 42 of the Complaint.  
27  
28

1           43.     SL Card admits that Daniel Cage signed the Agreement on behalf of Linq3  
2 Technologies LLC and identified his title as “President, Founder.” Except as expressly  
3 admitted, SL Card denies the allegations of Paragraph 43 of the Complaint.

4           E.     Blackhawk Introduces QuickTicket™ to Linq3

5           44.     SL Card denies the allegations contained in Paragraph 44 of the Complaint.

6           45.     SL Card denies the allegations contained in Paragraph 45 of the Complaint.

7           46.     SL Card denies the allegations contained in Paragraph 46 of the Complaint.

8           47.     SL Card denies the allegations contained in Paragraph 47 of the Complaint.

9           48.     SL Card denies the allegations contained in Paragraph 48 of the Complaint.

10          49.     SL Card admits that on May 11, 2018, Blackhawk had a telephone  
11 discussion that included Daniel Cage and John Houseal. SL Card denies all remaining  
12 allegations contained in Paragraph 49 of the Complaint.

13          50.     SL Card admits that in May of 2018, Daniel Cage was SL Card’s Director  
14 and President and John Houseal was SL Card’s Chief Product Officer. Except as expressly  
15 admitted, SL Card denies the allegations of Paragraph 50 of the Complaint.

16          51.     SL Card admits Travis Smith was SL Card’s Chief Technology Officer. SL  
17 Card denies the remaining allegations contained in Paragraph 51 of the Complaint.

18          52.     SL Card admits that Blackhawk adopted SL Card’s proposal to change the  
19 Play Now product to include certain features SL Card developed. SL Card denies the  
20 remaining allegations contained in Paragraph 52 of the Complaint.

21          F.     Without Authorization, Linq3-DE Files for Patents and a Trademark on  
22                 QuickTicket™

23          53.     SL Card admits that on November 20, 2017, L3 (then Linq3 Technologies  
24 LLC) filed U.S. Patent Application No. 15/818,569. SL Card admits Daniel Cage, John  
25 Houseal, and Travis Smith are named inventors in the application. SL Card denies all  
26 remaining allegations contained in Paragraph 53 of the Complaint.

1           54.     SL Card admits that Daniel Cage, John Houseal and Travis Smith are listed  
2 as named inventors on Application No. 16/010,398. SL Card denies all remaining  
3 allegations contained in Paragraph 54 of the Complaint.

4           55.     SL Card denies the allegations contained in Paragraph 55 of the Complaint.

5           56.     SL Card admits that the quoted words, without the word [that], appears in  
6 Application No. 16/010,398. SL Card denies the remaining allegations contained in  
7 Paragraph 56 of the Complaint.

8           57.     SL Card admits that on March 12, 2019, the '398 application was granted as  
9 U.S. Patent No. 10,229,561. SL Card denies all remaining allegations contained in  
10 Paragraph 57 of the Complaint.

11          58.     SL Card admits that on August 22, 2018, Linq3 Technologies LLC filed U.S.  
12 Patent Application No. 29/660,720 ("the '720 application"), which claims priority to the  
13 '398 application. SL Card admits that the '720 application issued as U.S. Patent No.  
14 D877,812 on March 10, 2020 ("the '812 patent"). SL Card admits that Daniel Cage, John  
15 Houseal, and Travis Smith are the only named inventors of the '812 patent. SL Card  
16 admits the '812 patent is entitled "Quick Ticket for Lottery" and is a design patent. SL  
17 Card denies all remaining allegations contained in Paragraph 58 of the Complaint.

18          59.     SL Card denies the allegations contained in Paragraph 59 of the Complaint.

19          60.     SL Card admits that on June 7, 2018, L3 (then Linq3 Technologies LLC)  
20 filed a U.S. trademark application for the QUICKTICKET Mark. SL Card admits that the  
21 validity of this application is being challenged in a separate action in the United States  
22 Patent and Trademark Office, but denies that this challenge has merit. SL Card further  
23 denies all remaining allegations contained in Paragraph 60 of the Complaint.

24          G.     Subsequent Events

25          61.     SL Card denies the allegations contained in Paragraph 61 of the Complaint.

26          62.     SL Card admits that e2Interactive filed U.S. Patent Application No.  
27 16/298,871 ("the '871 application") on March 11, 2019, which is a continuation of the  
28 '398 application. SL Card admits the '871 application issued as U.S. Patent No.

1 10,943,438 (“the ’438 patent”) on March 9, 2021. SL Card admits that Daniel Cage, John  
2 Houseal, and Travis Smith are named inventors. SL Card denies all remaining allegations  
3 contained in Paragraph 62 of the Complaint.

4 63. SL Card admits that e2Interactive filed U.S. Patent Application No.  
5 16/351,275 (“the ’275 application”) on March 12, 2019, which is a continuation of the  
6 ’398 application. SL Card admits that the ’275 application issued as U.S. Patent No.  
7 10,943,432 (“the ’432 patent”) on March 9, 2021. SL Card admits that Daniel Cage, John  
8 Houseal, and Travis Smith are named inventors. SL Card denies all remaining allegations  
9 contained in Paragraph 63 of the Complaint.

10 64. SL Card admits that e2Interactive filed U.S. Patent Application No.  
11 17/196,196 (“the ’196 application”) on March 9, 2021, which is a continuation of the ’871  
12 application, which is a continuation of the ’398 application. SL Card admits the ’196  
13 application is currently pending at the United States Patent and Trademark Office. SL Card  
14 admits that Daniel Cage, John Houseal, and Travis Smith are named inventors. SL Card  
15 denies all remaining allegations contained in Paragraph 64 of the Complaint.

16 65. SL Card admits that e2Interactive filed U.S. Patent Application No.  
17 17/196,211 (“the ’211 application”) on March 9, 2011, which is a continuation of the ’275  
18 application, which is a continuation of the ’398 application. SL Card admits that the ’211  
19 application is currently pending at the United States Patent and Trademark Office. SL Card  
20 admits that Daniel Cage, John Houseal, and Travis Smith are named inventors. SL Card  
21 denies all remaining allegations contained in Paragraph 65 of the Complaint.

22 66. SL Card denies the allegations contained in Paragraph 66 of the Complaint.

23 67. SL Card denies the allegations contained in Paragraph 67 of the Complaint.

24 68. SL Card admits that Blackhawk sent SL Card a letter dated August 14, 2019  
25 with the subject line that reads “Material Breach of Agreement; request for Dialogue and  
26 Cure.” SL Card denies the remaining allegations contained in Paragraph 68 of the  
27 Complaint.  
28

1           69.     SL Card either lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations of Paragraph 69 of the Complaint and thus denies such  
3 allegations.

4           70.     SL Card denies the allegations contained in Paragraph 70 of the Complaint.

5           71.     SL Card denies the allegations contained in Paragraph 71 of the Complaint.

6           72.     SL Card denies the allegations contained in Paragraph 72 of the Complaint.

7           73.     SL Card admits that it disputes that it has committed a material breach of the  
8 PDA. SL Card denies all remaining allegations contained in Paragraph 73 of the  
9 Complaint.

10                           **COUNT I (Breach of Contract against Linq3)**

11           74.     SL Card repeats and incorporates by references its answers to each and every  
12 allegation of the Complaint as if fully set forth herein.

13           75.     SL Card admits that Blackhawk and SL Card entered into the Distribution  
14 Agreement on January 1, 2017. SL Card denies all remaining allegations contained in  
15 Paragraph 75 of the Complaint.

16           76.     SL Card denies the allegations contained in Paragraph 76 of the Complaint.

17           77.     SL Card denies the allegations contained in Paragraph 77 of the Complaint.

18           78.     SL Card denies the allegations contained in Paragraph 78 of the Complaint.

19           79.     SL Card denies the allegations contained in Paragraph 79 of the Complaint.

20           80.     SL Card denies the allegations contained in Paragraph 80 of the Complaint.

21           81.     SL Card denies the allegations contained in Paragraph 81 of the Complaint.

22           82.     SL Card denies the allegations contained in Paragraph 82 of the Complaint.

23           83.     SL Card denies the allegations contained in Paragraph 83 of the Complaint.

24           84.     SL Card denies the allegations contained in Paragraph 84 of the Complaint.

25           85.     SL Card denies the allegations contained in Paragraph 85 of the Complaint.

26           86.     Any allegation in the Complaint that SL Card has not expressly admitted in  
27 this Answer is denied.

28

1                                   **RESPONSE TO PRAYER FOR RELIEF**

2           SL Card denies that Blackhawk is entitled to any relief for the allegations made in  
3 the Complaint, including the relief requested in subsections A-G.

4                                   **AFFIRMATIVE AND OTHER DEFENSES**

5           SL Card asserts the following defenses in response to the allegations in the  
6 Complaint. SL Card expressly reserves the right to assert any other defenses that may now  
7 exist or, in the future, may be available based on discovery and further factual  
8 investigation in this case, including, but not limited to, defenses under Rule 8(c) of the  
9 Arizona Rules of Civil Procedure..

10                                  **FIRST DEFENSE**

11           Plaintiff is not entitled to injunctive relief, at least because any alleged injury to  
12 Plaintiff is not immediate or irreparable, Plaintiff has an adequate remedy at law, and/or  
13 public policy concerns weigh against any injunctive relief.

14                                  **SECOND DEFENSE**

15           Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches  
16 and/or estoppel. SL Card has suffered and will suffer material prejudice arising from  
17 Plaintiff's delay in asserting its claim of purported breach of contract.

18                                  **THIRD DEFENSE**

19           Plaintiff's claims are barred, in whole or in part, because Plaintiff has come to the  
20 Court with unclean hands, for example, due to its breaches of the PDA. SL Card  
21 incorporates by reference its Counterclaims, as though fully set forth herein.

22                                  **FOURTH DEFENSE**

23           Plaintiff has failed to state a claim, in whole or in part, upon which relief may be  
24 granted.

25                                  **FIFTH DEFENSE**

26           Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral  
27 estoppel and res judicata.

1

2

5

- 7

- 8

- 10

## 11

12

## 17

18

## 26

27

1 owned subsidiary of Linq3 Technologies LLC ( "Linq3"), a Florida entity headquartered in  
2 Atlanta, Georgia.

3 3. Upon information and belief, based on the allegations in its Complaint,  
4 Blackhawk is an Arizona corporation with its principal place of business located at 6220  
5 Stoneridge Mall Rd., Pleasanton, CA 94588. Upon information and belief, based on the  
6 allegations in its Complaint, Blackhawk also has an office at 16610 N. Black Canyon  
7 Hwy, Phoenix, AZ 85053.

### 8 **JURISDICTION AND VENUE**

9 4. This Court has subject matter jurisdiction over these counterclaims pursuant  
10 to A.R.S. § 12-123.

11 5. Blackhawk has consented to personal jurisdiction of this Court at least by  
12 commencing its action alleging breach of contract against SL Card in this Court.

13 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

### 14 **FACTUAL ALLEGATIONS**

#### 15 **The Parties and the Product Development Agreement**

16 7. SL Card was formed in 2016 as a wholly owned subsidiary of Delaware  
17 entity Linq3 Technologies LLC ("L3").

18 8. Founded in 2007, L3 was an innovation and technology company focused on  
19 transforming the lottery industry with smart systems integrations, intuitive technologies,  
20 and innovative consumer products. L3's business was to design, build, and market state of  
21 the art lottery products and solutions for both traditional and digital lottery game play.

22 9. From the time of its inception, L3 launched a number of revolution lottery  
23 products that successfully leveraged consumer interaction at retailers' point of sale  
24 systems. L3 also held all of the regulatory and state licenses that allowed it to generate and  
25 distribute lottery tickets through a proprietary technology platform that used existing point  
26 of sale devices at major retailers across the United States.

27 10. In or around 2016, Blackhawk and L3 entered into discussions regarding  
28 joining forces to use L3's lottery knowledge, expertise, and technology with Blackhawk's

1 retail partnerships to develop a L3-owned lottery product that Blackhawk would distribute  
2 throughout its network of retailers known as Blackhawk's Alliance Partner Network.

3 11. While Blackhawk did not have lottery expertise, it claimed to operate a  
4 distribution network that allowed for the sale of gift cards in the United States and in  
5 Canada. As explained by Blackhawk, when a gift card is purchased at one of Blackhawk's  
6 retail partners, an activation request would be sent to Blackhawk, which serves as a central  
7 hub that would route those requests to card processors. The card processors would then  
8 send a confirmation transaction back to Blackhawk, which would route those confirmation  
9 transactions back to the retailer's point of sale. It was this activation network the parties  
10 discussed using to sell lottery products through Blackhawk's retailers.

11 12. L3 formed SL Card as the entity that would develop the lottery products,  
12 initially intended to be called the "Play Now Product," that would then be distributed and  
13 sold by Blackhawk through its distribution network in the same manner Blackhawk  
14 distributed and sold gift cards.

15 13. On January 1, 2017, SL Card and Blackhawk entered into a "Product  
16 Distribution Agreement" ("PDA"). L3 was also a party to the PDA "for purposes of  
17 Sections 15.1 and 21.12 of the PDA."

18 14. The PDA expressly recognized that it was SL Card who had the lottery  
19 product and technology expertise and that Blackhawk was bringing to the relationship its  
20 gift card activation network and its Alliance Partner Network.

21 15. Specifically, the PDA stated that SL Card "and/or its Affiliates, in  
22 collaboration with Lotteries and their operators" had "developed certain protocols and  
23 processes that allow for the sale of Lottery Products on various unmanned point of sale  
24 ('POS') terminals or other similar devices located at authorized locations" and had also  
25 "developed related software, and authored, conceived, and/or developed related  
26 Preexisting Intellectual Property and processes" in "connection with Lottery Products,"  
27 defined in the PDA as "any state and/or multi-state lottery product sold or offered for sale  
28 by one or more Lotteries."

1           16.     On the other hand, the PDA noted that “Blackhawk is in the business of  
2 partnering with retailers and third-party brands to provide gift cards and other pre-paid  
3 digital products via the Alliance Partner Network.”

4           17.     The PDA recognized that the parties desired “to facilitate data exchanges  
5 between certain protocols and processes of [SL Card] and certain technology that  
6 Blackhawk provides in connection with the Alliance Partner Network to develop a new  
7 consumer product . . . .”

8           18.     Specifically, the PDA provided that the parties were to work together to  
9 develop a lottery product “by leveraging certain existing [SL Card] products and SL Card  
10 protocols and processes and other [SL Card] Preexisting Intellectual Property, and certain  
11 technology that Blackhawk provides in connection with the existing point-of-sale  
12 technology and infrastructure of Approved Alliance Partners, to sell Lottery Products in  
13 Approved Alliance Partner Stores, as described more fully in Exhibit B as attached hereto  
14 and incorporated herein (the ‘**Play Now Product**’)” (emphasis added).

15           19.     Thus, SL Card’s role under the PDA was to develop the Play Now Product  
16 using its lottery expertise and technology and to handle the lottery side of the relationship  
17 and Blackhawk’s role was to distribute and activate the products through its retail  
18 relationships.

19           20.     This division of labor was confirmed in Exhibit B to the PDA (which was  
20 incorporated into the PDA) which provided that SL Card “will initiate discussions with the  
21 appropriate officials of each Lottery for which [SL Card] has been approved to sell Lottery  
22 Products (each, a ‘Lottery Partner’) with respect to the Play Now Product (in an order and  
23 priority to be determined by [SL Card])...[SL Card] will maintain direct interface with all  
24 Lotteries and Lottery Partners.”

25           21.     Exhibit B further provided that “Blackhawk will initiate discussions with the  
26 Alliance Partners (in an order and priority to be agreed upon between the Parties) with  
27 respect to the Play Now Product and shall use its reasonable best efforts to enconrage [sic]  
28

such Alliance Partners to sell the Play Now Products. . . . Blackhawk will maintain direct interface with all Alliance Partners.”

### **The Play Now Product**

22. As initially envisioned, the Play Now Product was to be a “real-time, ticketless lottery” product where a consumer would purchase a CR-80 (*i.e.*, a credit card sized) lottery “card” at a retailer’s point of sale location through which the card would be “activated” similar to a gift card. Upon activation, the player would receive 5 or 10 random plays or entries. A “ticket” image with lottery numbers on it would be delivered via text to the player’s cell phone. Winnings under \$600 were automatically paid to the cell phone via PayPal. To claim any prize over \$600, the physical Play Now lottery card, which was the “ticket” in that instance, was required.

23. Annex A to the PDA showed a working version of the Play Now Product.

#### **1. Initial Mockup**

Current working version; subject to change:



24. The parties understood that changes to the Play Now product could be necessitated for government and/or lottery approval: “The parties hereby acknowledge and agree that certain aspects of the play Now Product are subject to the approval of certain

1 governmental and/or quasi-governmental authorities, including, without limitation, the  
2 applicable Lotteries.”

3       25.     The parties further acknowledged and agreed that “each Lottery has approval  
4 over anything that appears on a screen or card or can be perceived by a Player in  
5 connection with such Lottery’s Lottery Products, and both Parties agree that they shall  
6 collaborate and create such proposed content subject to the approval of the Lotteries.”

7       26.     Paragraph 10.1 of the PDA expressly stated that it was SL Card and SL Card  
8 alone that would have exclusive ownership of all intellectual property to the Play Now  
9 product, regardless of any changes required to be made to the product in order to obtain  
10 lottery and/or governmental approval and regardless of the name the parties ultimately  
11 chose for the product: “For the avoidance of doubt, all Intellectual Property rights in the  
12 Play Now Product, including the specifications, features, and functionality of the Play  
13 Now Product (*and any enhancements to the Play Now Product made under this*  
14 *Agreement*) and any and all rights to the ‘PLAY NOW’ name (*or any successor brand or*  
15 *product name to be used on or in connection with the Play Now Product*) shall be owned  
16 exclusively by [SL Card]” (emphasis added).

17 **Marketing of the Play Now Product**

18       27.     Pursuant to the PDA, SL Card began meeting with State Lotteries to generate  
19 interest in the Play Now product. During these efforts, SL Card learned that certain states,  
20 in particular Arizona, California, and Texas, did not allow the use of any mobile phone to  
21 play lottery games.

22       28.     Because the Play Now Product, as originally envisioned, provided the lottery  
23 numbers on a ticket image sent via text to a cell phone, SL Card needed to make certain  
24 changes to the product in order to get the approval of these states.

25       29.     In discussions on this topic with Blackhawk, Blackhawk proposed using a  
26 “print on receipt” concept similar to what the Ontario Lottery & Gaming Company (OLG)  
27 was doing in Canada. With such a product, instead of texting an image of a ticket  
28 containing lottery numbers to a cell phone, the retailer would print the lottery numbers on a

1 receipt after a ticket without lottery numbers was purchased. Blackhawk had recently  
2 started distributing and activating OLG's "print on receipt" lottery tickets, which OLG  
3 called "QuickTicket," through the same activation network it intended to use for SL Card's  
4 Play Now product. OLG obtained, and continues to own today, a Canadian trademark  
5 registration for its QUICKTICKET Mark.

6         30. SL Card informed Blackhawk that under Multi-State Lottery Association  
7 ("MUSL") rules, the "print on receipt" method was not a viable method in the United  
8 States. Specifically, SL Card explained that MUSL security requirements would require  
9 point-of-sale hardware updates that were not feasible.

10         31. Instead, of pursuing a "print on receipt" solution, SL Card proposed  
11 replacing the CR-80 card with a paper "ticket" containing pre-printed plays or entries  
12 (since they could no longer be texted) and the paper ticket would then be required to claim  
13 all winnings.

14         32. Given the regulatory limitations with Blackhawk's "print on receipt"  
15 suggestions, Blackhawk ultimately agreed that the parties should pursue the changes  
16 proposed by SL Card. Blackhawk began referring to this amended Play Now product as  
17 "QuickTicket V2" and the parties thereafter referred to the revised product concept as  
18 QuickTicket.

19         33. As with the original version of the Play Now product, all of the technology  
20 and intellectual property for this revised product – with the exception of the Blackhawk  
21 activation network – was developed and provided by SL Card as expressly contemplated in  
22 the PDA. Specifically, SL Card used its lottery product expertise to develop the technology  
23 and features necessary to enable the product to properly function and to comply with  
24 MUSL rules while at the same time making the product feasible for implementation at  
25 scale across Blackhawk's activation network.

26         34. After Blackhawk accepted SL Card's proposed changes to the Play Now  
27 product, the parties jointly created a number of presentations describing the revised  
28

1 product (among other products) to discuss both internally and to share with state lottery  
2 officials.

3 35. Shortly after the parties agreed to make the revised Play Now product a  
4 priority and began referring to the product as QuickTicket, Blackhawk began having  
5 discussions directly with State Lottery officials and/or their operators, without notifying  
6 SL Card, in direct contravention of the roles and responsibilities set forth in the PDA.

7 36. Similarly, despite its obligation to “use its best efforts to cause each of the  
8 Approved Alliance Partners to make the Play Now Products available for purchase” in  
9 those states that did allow the use of cell phones to play lottery games, Blackhawk  
10 completely abandoned the original Play Now product.

11 37. Blackhawk’s duplicitous conduct ended the parties’ relationship.

12 **The QUICKTICKET Mark**

13 38. On June 7, 2018, and pursuant to the PDA which made clear that SL Card  
14 would own all rights to whatever name used for the revised Play Now Product, L3 filed an  
15 “intent to use” application to federally register the trademark QUICKTICKET in  
16 connection with “non-magnetically encoded cards for participating in a lottery” and  
17 “administration of lotteries for others, facilitating lottery play and placement of lottery  
18 wagers for others, namely lottery services.”

19 39. At the time it filed this application, Blackhawk had not made any use of the  
20 QUICKTICKET Mark in commerce.

21 40. L3’s trademark application for the QUICKTICKET Mark was published for  
22 opposition on November 6, 2018. Blackhawk did not oppose the mark.

23 41. On March of 2019, Florida entity Linq3 Acquisitions LLC acquired certain  
24 assets of L3, including SL Card. Linq3 Acquisitions then changed its name to Linq3  
25 Technologies LLC (“Linq3”)

26 42. L3 subsequently transferred the application to federally register the  
27 QUICKTICKET Mark to Linq3.  
28

1           43.     Thereafter, Linq3, through its licensee Interactive Communications  
2 International, Inc. (“ICI”) began using the QUICKTICKET Mark in commerce on  
3 November 5, 2019.

4           44.     On February 18, 2020, the United States Patent and Trademark Office  
5 (“PTO”) issued U.S. Trademark Registration No. 5,991,863 to Linq3 for the  
6 QUICKTICKET Mark in connection with “non-magnetically encoded cards for  
7 participating in a lottery” and “administration of lotteries for others, facilitating lottery  
8 play and placement of lottery wagers for others, namely lottery services” (the “Lottery  
9 Products and Services”).

10          45.     Linq3 has since assigned the QUICKTICKET Mark and its federal  
11 registration therefor to SL Card.

12          46.     Since November of 2019, SL Card, through its licensee ICI, has continuously  
13 used the QUICKTICKET Mark in connection with Lottery Products and Services sold in  
14 the United States.

15          47.     By virtue of its Federal Trademark Registration and its continuous use of the  
16 QUICKTICKET Mark in commerce (through its licensee ICI), SL Card is the owner of all  
17 right, title, and interest in and to the QUICKTICKET Mark in connection with Lottery  
18 Products and Services.

19 **Blackhawk’s Unauthorized Use of the QUICKTICKET Mark**

20          48.     Without SL Card’s knowledge or authorization, and in violation of the PDA,  
21 Blackhawk filed two federal trademark applications to register the QUICKTICKET Mark.

22          49.     First, on August 17, 2018, Blackhawk filed an intent to use application to  
23 register the Stylized QUICKTICKET Mark in connection with “providing services to  
24 enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail  
25 checkout registers, namely, electronic cash transactions, credit card and debit card  
26 transaction processing services” and “providing services to enable the purchase of lottery  
27 entries at, and the issuance of lottery receipts at, retail checkout registers, namely, platform  
28 as a service (PAAS) featuring computer software platforms for printing receipts.”

50. Second, on May 20, 2019, Blackhawk filed another intent use application to register the QUICKTICKET Mark in connection with “providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, electronic cash transactions, credit card and debit card transaction processing services” and “providing services to enable the purchase of lottery entries at, and the issuance of lottery receipts at, retail checkout registers, namely, platform as a service (PAAS) featuring computer software platforms for printing receipts.”

51. Thereafter, without SL Card's authorization, Blackhawk began offering to State Lotteries and retail establishments lottery tickets and services using the QUICKTICKET Mark.

52. Blackhawk's QuickTicket lottery products have the identical or nearly identical features as and capabilities of the technology SL Card developed and implemented in connection with the modified Play Now Product that SL Card, through its licensee ICI, began offering for sale and selling under SL Card's QUICKTICKET Mark. As set forth in the PDA, all intellectual property rights in SL Card's modified Play Now product sold in connection with SL Card's QUICKTICKET Mark is exclusively owned by SL Card.

53. In December 2020, Blackhawk filed a petition to cancel SL Card's registration for the QUICKTICKET Mark, which petition is stayed pending resolution of this litigation.

## FIRST COUNTERCLAIM

**(Breach of Contract)**

54. SL Card repeats and re-alleges each and every allegation of its Counterclaims as if set forth herein.

55. Under Section 10.1 of the PDA, SL Card exclusively owns “all Intellectual Property rights” not only in the “Play Now Product, including in the specifications, features, and functionality of the Play Now Product” and the “PLAY NOW name,” but also to any enhancements made to the Play Now product and to any “successor brand or

1 product name” used in connection with the revised Play Now Product, including the  
2 QUICKTICKET Mark.

3 56. Section 14.2 of the PDA defines a material breach of the PDA to include a  
4 “breach of Section 10 (Intellectual Property Rights).”

5 57. Blackhawk’s sale, offering for sale, and marketing of QUICKTICKET  
6 lottery products using SL Card’s Intellectual Property, without SL Card’s authorization,  
7 constitutes a material breach of the PDA. Blackhawk’s filing of an application to register  
8 and its use of the QUICKTICKET Mark in connection with lottery product and services  
9 likewise constitutes a material breach of Section 10 of the PDA.

10 58. PDA Section 13 provides “that a breach of any term of the Sections entitled  
11 ‘Confidentiality,’ ‘Intellectual Property Rights,’ or ‘Exclusivity’ will cause irreparable  
12 harm to the other Party for which monetary damages will not be an adequate remedy, and,  
13 therefore, each Party shall be entitled to injunctive relief in addition to any remedies it may  
14 have hereunder or in law.”

15 59. SL Card has been irreparably harmed by Blackhawk’s actions entitling SL  
16 Card to injunctive relief.

## 17 **SECOND COUNTERCLAIM**

### 18 **(Trademark Infringement - 15 U.S.C. § 1114)**

19 60. SL Card repeats and re-alleges each and every allegation of the  
20 Counterclaims as if set forth herein.

21 61. By virtue of Trademark Registration No. 5,991,863 for the QUICKTICKET  
22 Mark and its continuous use of the QUICKTICKET Mark in commerce, SL Card is the  
23 owner of all right, title, and interest in and to the QUICKTICKET Mark in connection with  
24 “non-magnetically encoded cards for participating in a lottery” and “administration of  
25 lotteries for others; facilitating lottery play and placement of lottery wagers for others,  
26 namely, lottery services.”

1           62.     SL Card has made widespread and continuous use of the QUICKTICKET  
2 Mark in interstate commerce and the QUICKTICKET Mark enjoys considerable goodwill  
3 that has become associated with SL Card.

4           63.     Blackhawk has used and is using in commerce reproductions, copies,  
5 facsimiles, and depictions of the QUICKTICKET mark in commerce in a manner likely to  
6 cause confusion or mistake or to deceive. Blackhawk's actions have at all times been  
7 without SL Card's consent.

8           64.     SL Card's rights in its QUICKTICKET mark predates Blackhawk's first use  
9 of the QUICKTICKET.

10          65.     The aforementioned acts of Blackhawk constitute federal trademark  
11 infringement in violation of 15 U.S.C. § 1114.

12          66.     The intentional nature of Blackhawk's acts makes this an exceptional case  
13 under 15 U.S.C. § 1117(a).

14          67.     SL Card has been, is now, and will be irreparably harmed by Blackhawk's  
15 aforementioned acts of infringement, and, unless enjoined by the Court, Blackhawk will  
16 continue to infringe SL Card's QUICKTICKET mark. There is no adequate remedy at law  
17 for the harm caused by the acts of infringement alleged herein.

18                               **THIRD COUNTERCLAIM**

19                               **(Federal Unfair Competition)**

20          68.     SL Card repeats and re-alleges each and every allegation of its  
21 Counterclaims as if set forth herein.

22          69.     Blackhawk's use of the confusingly similar QUICKTICKET Mark has  
23 caused and is likely to cause confusion, deception, and mistake by creating the false and  
24 misleading impression that Blackhawk's lottery products are manufactured or distributed  
25 by SL Card, or are affiliated, connected, or associated with SL Card, or have the  
26 sponsorship, endorsement, or approval of SL Card or its licensee.

27          70.     Blackhawk has made false representations, false descriptions, and false  
28 designations of, on, or in connection with its goods in violation of 15 U.S.C. § 1125(a).

1 Blackhawk's activities have caused and, unless enjoined by this Court, will continue to  
2 cause a likelihood of confusion and deception of members of the trade and public, and,  
3 additionally, injury to SL Card's goodwill and reputation as symbolized by the  
4 QUICKTICKET Mark, for which SL Card has no adequate remedy at law

5 71. Blackhawk's actions demonstrate an intentional, willful, and malicious intent  
6 to trade on the goodwill associated with SL Card's QUICKTICKET Mark to the great and  
7 irreparable injury of SL Card.

8 72. Blackhawk's conduct has caused, and is likely to continue causing,  
9 substantial injury to the public and to SL Card. SL Card is entitled to injunctive relief and  
10 its reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116, and 1117

#### 11 **FOURTH COUNTERCLAIM**

##### 12 **(Unfair and Deceptive Trade Practices)**

13 73. SL Card repeats and re-alleges each and every allegation of the  
14 Counterclaims as if set forth herein.

15 74. Blackhawk has been and is passing off its goods as those of SL Card,  
16 causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or  
17 approval of Blackhawk's goods, causing a likelihood of confusion as to SL Card's  
18 affiliation, connection, or association with adidas, and otherwise damaging the public.

19 75. Blackhawk's conduct constitutes unfair and deceptive acts or practices in the  
20 course of a business, trade, or commerce in violation of the unfair and deceptive trade  
21 practices statute of several states, including California CAL. BUS. & PROF. CODE §  
22 17200, et seq. (West 2009) and Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375  
23 (2009).

24 76. Blackhawk's unauthorized use of the confusingly QUICKTICKET Mark has  
25 caused and is likely to cause substantial injury to the public and to SL Card. SL Card,  
26 therefore, is entitled to injunctive relief and to recover its reasonable attorneys' fees.

1 **FIFTH COUNTERCLAIM**

2 **(Common Law Trademark Infringement and Unfair Competition)**

3 77. SL Card repeats and re-alleges each and every allegation of its  
4 Counterclaims as if set forth herein.

5 78. Blackhawk's acts constitute common law trademark infringement and unfair  
6 competition and have created and will continue to create, unless restrained by this Court, a  
7 likelihood of confusion to the irreparable injury of SL Card. SL Card has no adequate  
8 remedy at law for this injury.

9 79. Blackhawk acted with full knowledge of SL Card's (or its licensee's) use of,  
10 and statutory and common law rights to SL Card's QUICKTICKET Mark and without  
11 regard to the likelihood of confusion of the public created by Blackhawk's activities.

12 80. Blackhawk's actions demonstrated an intentional, willful, and malicious  
13 intent to trade on the goodwill associated with SL Card's QUICKTICKET Mark to the  
14 great irreparable injury of SL Card.

15 81. As a result of Blackhawk's actions, SL Card is entitled to injunctive relief.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, SL Card prays for judgment against Blackhawk as follows:

18 A. Entry of judgment in favor of SL Card against Blackhawk on all claims for  
19 relief;

20 B. An order enjoining Blackhawk and all of its agents, officers, employees,  
21 representatives, successors, assigns, attorneys, and all other persons acting  
22 for, with, by, through or under authority from Blackhawk, or in concert or  
23 participation with Blackhawk, and each of them, from:

- 24 a. advertising, marketing, promoting, offering for sale, distributing, or  
25 selling any lottery products in connection with the QUICKTICKET  
26 Mark;  
27 b. using the QUICKTICKET Mark on or in connection with any of  
28 Blackhawk's goods;

- 1 c. using the QUICKTICKET Mark or any other copy, reproduction,  
2 colorable imitation, or simulation thereof on or in connection with  
3 Blackhawk's goods;
- 4 d. using any trademark, name, logo, design, or source designation of any  
5 kind on or in connection with Blackhawk's goods or services that is a  
6 copy, reproduction, colorable imitation, or simulation of, or  
7 confusingly similar to SL Card's QUICKTICKET Mark
- 8 e. using any trademark, name, logo, design, or source designation of any  
9 kind on or in connection with Blackhawk's goods that is likely to  
10 cause confusion, mistake, deception, or public misunderstanding that  
11 such goods or services are produced or provided by SL Card, or are  
12 sponsored or authorized by SL Card, or are in any way connected or  
13 related to SL Card;
- 14 C. An order requiring Blackhawk to deliver up for impoundment and for  
15 destruction, all lottery tickets, advertising, promotional materials, or other  
16 materials in the possession, custody or under the control of Blackhawk that  
17 use the QUICKTICKET Mark
- 18 D. An order finding Blackhawk in breach of the parties PDA and enjoining  
19 Blackhawk, its officers, agents, servants, employees, attorneys, and other  
20 persons or entities who are in active concert or participation with them, from  
21 making, have made, selling, offer to sell, using, disclosing, reproducing, or  
22 distributing, any lottery product using the technology developed by SL Card  
23 under the PDA or from using the QUICKTICKET Mark in connection with  
24 its lottery products and services.
- 25 E. An order requiring Blackhawk to withdraw in the PTO its application to  
26 federally register the QUICKTICKET Mark and its challenge to SL Card's  
27 federal registration for the QUICKTICKET Mark.
- 28 F. An award of attorneys' fees and costs as permitted by law.

1 G. And order granting such other and further relief as the Court may deem just  
2 and proper

3 **DEMAND FOR A JURY TRIAL**

4 SL Card demands a jury trial for all issues so triable.

5 DATED this 19th day of July, 2023.

6 OSBORN MALEDON, P.A.

7 By /s/ William D. Furnish

8 OSBORN MALEDON, P.A.

9 David B. Rosenbaum

10 Eric M. Fraser

11 William D. Furnish

12 2929 North Central Avenue, Suite 2100

13 Phoenix, Arizona 85012-2793

14 QUINN EMANUEL URQUHART &

15 SULLIVAN, LLP

16 Robin McGrath (*admitted pro hac vice*)

17 1200 Abernathy Road, Suite 1500

18 Atlanta, Georgia 30328

19 Linda Brewer (*admitted pro hac vice*)

20 50 California Street, 22nd Floor

21 San Francisco, CA 94111

22 Inge Larish (*pro hac vice pending*)

23 1109 First Avenue, Suite 210

24 Seattle, WA 98101

25 *Counsel to Defendant and Counterclaimant*

26 *SL Card Company, Inc.*

1 The foregoing has been electronically filed via  
2 AZTurboCourt and electronically delivered  
this 19th day of July, 2023, to:

3 The Honorable Christopher Coury

4 David A. Selden

5 Isaac S. Crum

Messner Reeves LLP

6 7250 N. 16th Street, Suite 410

Phoenix, AZ 85020

7 [dselden@messner.com](mailto:dselden@messner.com)

8 [icrum@messner.com](mailto:icrum@messner.com)

9 Jason F. Hoffman (pro hac vice pending)

Paul M. Levine (pro hac vice pending)

10 BAKER & HOSTETLER LLP

11 1050 Connecticut Avenue, N.W.

Washington, DC 20036

12 [jhoffman@bakerlaw.com](mailto:jhoffman@bakerlaw.com)

13 [pmlevine@bakerlaw.com](mailto:pmlevine@bakerlaw.com)

14 Attorneys for Plaintiff

15 /s/ Karen Willoughby