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16 Attorneys for Defendant/Counterclaimant

17 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
18 IN AND FOR THE COUNTY OF MARICOPA
19

20 Blackhawk Network, Inc., an Arizona
corporation,

21 Plaintiff,

22 vs.

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

25 Defendant.
26
27
28

No. CV 2022-051638

**SL CARD COMPANY, INC.'S
SEVENTH SUPPLEMENTAL
RULE 26.1 DISCLOSURE
STATEMENT**

(Assigned to The Honorable
Christopher Coury)

1 Pursuant to Arizona Rules of Civil Procedure Rule 26.1, Defendant SL Card
2 Company, Inc. (“SL Card”) provides this Sixth Supplemental Rule 26.1 Disclosure
3 Statement. Additions to SL Card’s previous Disclosure statement are shown in **bold**
4 **underlining** and deletions are shown with ~~strike throughs~~.

5 **PRELIMINARY STATEMENT**

6 SL Card has not yet completed discovery concerning the factual basis of its claims
7 and defenses, and may not yet have discovered facts, legal theories, witnesses, or documents
8 relevant to this matter, or inadvertently may have omitted facts, legal theories, witnesses, or
9 documents from this disclosure statement which later may be deemed relevant. All of the
10 disclosures contained herein are based only upon such information as is presently available
11 and specifically known to SL Card. As additional facts, legal theories, witnesses, or
12 documents are discovered and developed, SL Card will further supplement this disclosure
13 statement. The discussion of facts and legal concepts in certain sections of this disclosure
14 statement is not intended to indicate the exclusive manner in which the facts and legal
15 concepts may be used in this case. The organization of this disclosure statement into sections
16 similarly is not to be construed as a limitation on the applicability of any statement of fact
17 or law to any claim asserted. Notwithstanding these limitations, and without waiving the
18 foregoing rights, SL Card supplements its ~~Fifth~~ **Sixth** Supplemental Rule 26.1 Disclosure
19 Statement as follows:

20 **I. FACTUAL BASIS SUPPORTING SL CARD’S CLAIMS AND DEFENSES TO**
21 **BLACKHAWK’S BREACH OF CONTRACT CLAIM**

22 On May 23, 2022, Plaintiff Blackhawk Network, Inc. (“Blackhawk” or “Plaintiff”)
23 filed a complaint against SL Card for breach of Sections 8 and 10 of the January 1, 2017
24 Product Development Agreement (“PDA”) between Blackhawk, SL Card, and SL Card’s
25 then-parent company, Delaware entity Linq3 Technologies LLC (“L3”). Blackhawk’s
26 Complaint contends that SL Card breached the PDA by disclosing to L3 and Interactive
27 Communications International, Inc. (“ICI”) both the trademark QUICKTICKET (the
28 “QUICKTICKET Mark”) and the concept of pre-printed draw lottery tickets bearing pre-

1 printed draw numbers that can be purchased and activated “in-lane” at a retailer’s point of
2 sale (“POS”) and entered into a lottery game (“Preprinted Draw Tickets”), a concept
3 Blackhawk’s Complaint refers to as “QuickTicket V2.” Blackhawk claims that the
4 QUICKTICKET Mark and Preprinted Draw Tickets constitute both Blackhawk confidential
5 information and Blackhawk intellectual property, and thus SL Card’s purported
6 unauthorized disclosure thereof constitutes a breach of PDA sections 8 and 10 relating to
7 confidential information and intellectual property, respectively.

8 SL Card has asserted Counterclaims against Blackhawk for breach of Section 10 of
9 the PDA through its unauthorized use of SL Card’s intellectual property, including the
10 QUICKTICKET Mark and technology L3 developed, and has also asserted claims for
11 federal and common law trademark infringement, unfair competition, and deceptive trade
12 practices (“trademark infringement counterclaims”) based on Blackhawk’s unauthorized use
13 of SL Card’s QUICKTICKET Mark. While SL Card’s defenses to Blackhawk’s breach of
14 contract claims and its breach of contract and trademark infringement counterclaims are
15 largely based on the same common set of facts, the parties have agreed to supplement and
16 SL Card now supplements its initial disclosures to address SL Card’s Counterclaims after
17 Blackhawk files its answer thereto.

18 **A. FACTUAL BACKGROUND OF SL CARD’S CLAIMS AND**
19 **DEFENSES**

20 **1. The Relationship Between L3 And Blackhawk**

21 In or around 2015, Blackhawk and L3 began discussions regarding the possibility of
22 Blackhawk distributing an L3 lottery product to the network of retailers to which Blackhawk
23 distributed gift cards. Specifically, the companies sought to develop and distribute a new L3
24 product that L3 had tentatively named “Play Now,” which L3 conceived as an in-lane lottery
25 product that, upon activation at a retailer’s POS, would allow players of participating State
26 Lotteries to play multi-state national draw games through real-time, ticketless transactions.
27 As originally envisioned, consumers would purchase a Play Now lottery card – similar in
28 size and appearance to a gift card – that would be scanned and activated “in-lane” at a

1 retailer's POS along with other products the consumer was buying. The Play Now card was
2 to contain a code that would be revealed when the players scratched off its protective
3 covering. To receive its draw numbers, the player would text the code to the lottery, which
4 in turn would text to the player's mobile phone an image of a lottery ticket containing the
5 player's draw numbers. The player would at that point be entered in the next lottery draw.
6 The parties envisioned that L3 would use its lottery expertise, intellectual property, and
7 technical know-how to create the product, and Blackhawk would distribute the product
8 through its retailer distribution network, which was comprised of retailers whose systems
9 were already connected to Blackhawk for purposes of activating gift cards. Notably, these
10 early discussions regarding the Play Now product took place between Blackhawk and L3
11 and did not involve SL Card because SL Card had yet to be formed and thus did not exist.

12 **2. The PDA**

13 L3 and Blackhawk decided to memorialize their discussions concerning
14 commercialization of the Play Now in writing. The parties determined that L3 would create
15 a wholly owned subsidiary to be the issuer of the Play Now card and that Blackhawk would
16 contract directly with that subsidiary, with L3 guaranteeing the subsidiary's performance.
17 Thus, shortly before the PDA was signed, SL Card was formed as that subsidiary.
18 Blackhawk and SL Card signed a Product Development Agreement ("PDA") governing the
19 relationship between SL Card, L3, and Blackhawk with respect to the Play Now card on
20 January 1, 2017. Section 10 of the PDA addresses Intellectual Property Rights and provided
21 that SL Card would own all intellectual property in the Play Now product as well as any
22 enhancements thereto, including any name used with that product:

23 As between Blackhawk and Linq3, Blackhawk owns (i)
24 Blackhawk's Preexisting Intellectual Property and any
25 modifications, derivatives, or improvements made thereto; and
26 (ii) any new Intellectual Property it creates both independent of,
27 and in connection with, its performing Services or delivering
28 Deliverables pursuant to this Agreement that does not contain
Linq3 Preexisting Intellectual Property or Linq3 Intellectual
Property or any derivative works thereof. For the avoidance of
doubt, ***all Intellectual Property rights in the Play Now Product,***

1 *including in the specifications, features, and functionality of*
2 *the Play Now Product (and any enhancements to the Play Now*
3 *Product made under this Agreement), and any and all rights*
4 *to the “PLAY NOW” name (or any successor brand or product*
name to be used on or in connection with the Play Now
Product) shall be owned exclusively by Linq3.

5 For all other intellectual property, the PDA confirmed the parties would each own their
6 respective “Preexisting” and “new” intellectual property and “any modifications,
7 derivatives, or improvements made thereto.”

8 The PDA stated that parties were to use SL Card’s “Preexisting Intellectual Property”
9 along with Blackhawk’s activation network to develop the Play Now product. The parties
10 expressly acknowledged in the PDA that “certain aspects of the Play Now Product are
11 subject to the approval” of the state lotteries and that “future developments” of the product
12 may thus be required. The PDA defined “Intellectual Property” as “any patents, patent rights,
13 copyrights, trade secrets, trademarks, trade names, service marks, rights in software, and all
14 other intellectual property, and all applications and rights to apply for registration or
15 protection rights pertaining thereto.” It defined “Preexisting Intellectual Property” as
16 “Intellectual Property that a Party owned or had the exclusive right to use as of immediately
17 prior to the Effective Date” of January 1, 2017. The PDA provided that SL Card was
18 responsible for communicating with the state lotteries for product adoption, whereas
19 Blackhawk was responsible for communicating with its retailers for product adoption.

20 L3 was not a “party” to the PDA. Rather, the PDA defined the “parties” as
21 “Blackhawk” and “SL Card” and stated that L3 was signatory to the PDA only “for purposes
22 of Sections 15.1 and 21.12.” Nevertheless, because SL Card had no employees, the parties’
23 agreed upon course of conduct involved Blackhawk working with L3 employees in
24 connection with bringing the Play Now product to market. Section 15.1 related to an
25 exclusivity period, whereas Section 21.12 concerned L3’s guarantee of SL Card’s “punctual
26 payment and performance” under the PDA. L3 was not a party to Sections 8 and 10. L3
27 formed SL Card to be the issuer of the product developed in connection with the PDA,
28

1 whereas under the parties' agreed upon course of conduct, L3 was the technology provider
2 that ~~would~~ developed ed the technology necessary to support the product. At the time it was
3 formed and at the time the PDA was executed, SL Card did not have any employees. With
4 Blackhawk's knowledge and consent, all dealings and communications under the PDA took
5 place between Blackhawk and L3, and all information regarding the development,
6 modifications and/or enhancements of the Play Now product was communicated between
7 employees of Blackhawk and employees of L3. The parties ultimately adopted the name
8 "the Lottery Card" for the Play Now product, but also referred to the product as "Play at the
9 Checkout" or "PATC."

10 **~~3.~~ Enhancement of the Play Now Product**

11 While developing the Play Now product and attempting to generate interest in and
12 approval of the product with various state lottery commissions, L3 and Blackhawk learned
13 that the product as originally conceived was not a viable option under the laws of California,
14 and certain other states, as such states did not permit the use of mobile phones to play lottery
15 games. The parties therefore began discussing ways to alter the Play Now product to avoid
16 mobile phone use as a stop gap measure to allow the parties to sell lottery products into those
17 states until such time as the laws of those states could be changed to allow mobile phone
18 use.

19 One of the first ideas the parties discussed was to print the draw numbers on a paper
20 receipt at the time of purchase instead of having the numbers texted to the user on a mobile
21 phone. This was referred to as the "print on receipt" option, and involved the Play Now
22 product being modified so that instead of activating a "card" with a scratch-off code at the
23 retailer's POS and thereafter receiving draw numbers through a ticket "image" texted to a
24 user's phone, a paper lottery ticket would be sold and activated in-lane at a retailer's point
25 of sale and the draw numbers would thereafter be provided on a printed receipt. Other
26 entities, including Blackhawk's competitor ICI, were in the process of developing a similar
27 print on receipt product involving printing a lottery ticket on receipt paper, and Blackhawk
28 had recently begun distributing a similar "print on receipt" product involving activation of a

1 paper ticket that did not have draw numbers on it for the Ontario Lottery & Gaming
2 Corporation (“OLG”) in Canada under OLG’s trademark QUICKTICKET, for which OLG
3 holds a Canadian Trademark Registration. OLG, which conceived and built the “print on
4 receipt” QuickTicket solution, also owned certain patents directed to the communication of
5 data and the communication flow for its “print on receipt” solution, including U.S. Patent
6 No. 9,865,135 (the “135 Patent”). Blackhawk acquired the 135 Patent and thereafter filed a
7 continuation application that issued as U.S. Patent No. 10,769,894 (the “894 Patent”), a
8 patent whose claims have all since been ruled unpatentable by the Patent Trial and Appeal
9 Board (“PTAB”) due to prior art. The Federal Circuit has since affirmed the PTAB’s
10 unpatentability ruling.

11 Ultimately, however, the parties rejected the idea of pursuing a print on receipt
12 concept for various reasons, including compliance with the Multi-State Lottery Association
13 (“MUSL”) rules and the need for substantial POS modifications to allow the concept to work
14 in the U.S. Instead, when challenged by L3 CEO Tom Spiegel to come up with a solution
15 for Texas that did not involve mobile phone use, L3 employee John Houseal proposed that
16 the Play Now product be modified to (i) use a paper ticket sold and activated at the retailer’s
17 POS, instead of a plastic card; (ii) have the paper ticket be preprinted with draw numbers
18 instead of having a ticket image with draw numbers texted to the player’s mobile phone, to
19 achieve compliance with Texas, Arizona, and California lottery rules; and (iii) incorporate
20 certain information on the paper ticket necessary to comply with MUSL rules for anonymous
21 play. In fact, the Arizona Lottery had earlier conceived of and requested development of this
22 very product wherein a paper lottery ticket bearing pre-printed draw numbers would be sold
23 and activated at the POS. The concept was also reflected in a lottery ticket offered by the
24 Indiana State Lottery, known as Black Pearl. The parties ultimately agreed to pursue this
25 solution to the problem facing the Play Now product in California and other states, like
26 Texas. Because the concept did not require an issuer, as did the Play Now product, SL Card
27 had no involvement in the building of the product nor in any communications or exchange
28 of information relating to the product. Instead, L3 was responsible for determining the

1 product's features and building the technology necessary to take the idea from concept to
2 product. Despite acknowledging that an amendment to the PDA was required to cover the
3 parties' efforts with respect to a QuickTicket product, L3 and Blackhawk never amended
4 the PDA to explicitly address the QuickTicket product that L3 began building, nor did they
5 enter into another contract specific to the building, development, distribution, or
6 commercialization of a ticket-based product, such as the QuickTicket that L3 began
7 building.

8 Blackhawk began referring to ~~this~~ the solution that L3 began building as
9 QUICKTICKET V2, apparently in reference to OLG's QUICKTICKET product in Canada,
10 which OLG conceived, built, and owned. Although Blackhawk has referred to the OLG
11 QuickTicket solution as a Blackhawk solution, the evidence in this case, including
12 admissions from Blackhawk's witnesses, establish unequivocally that this was an OLG
13 solution and that Blackhawk's involvement was simply as a vendor to OLG for purposes of
14 distributing and activating the product using its gift card activation platform that was already
15 used by the retailers selling OLG's QuickTicket product. Blackhawk was to assume a similar
16 role in connection with L3's development of a U.S. QuickTicket product. Moreover, while
17 there were certain similarities from a *consumer* perspective between OLG's QuickTicket
18 product and the QuickTicket product that L3 began building, from a technology view point,
19 the products worked very differently and the technology required to build the products'
20 respective functions and features was also very different. The plan was for the parties to
21 jointly commercialize the resulting QuickTicket product once L3 completed the product's
22 development and received approval from the state lotteries and Blackhawk obtained interest
23 in the product from its retailers. From a technical standpoint, however, this modified Play
24 Now product used L3's same Lottery platform that supported the Play Now/Lottery Card
25 product. Although the *concept* of Preprinted Draw Tickets was publicly disclosed in both
26 the 135 Patent Blackhawk had acquired from OLG and Blackhawk's now-invalid 894 Patent
27 – and, unbeknownst to John Houseal, Blackhawk's Canadian employee Ryan Koop made a
28 passing reference to California providing an opportunity to test a product with numbers on

1 the ticket – neither patent disclosed how to implement the solution at all, much less in a
2 manner that would comply with MUSL rules, and Mr. Koop’s passing reference to
3 QuickTicket V2 was not explored. In addition, the sale and activation of Prepaid Draw
4 Tickets comprising each and every one of the features that Blackhawk contends comprise
5 QuickTicket V2 is the subject of U.S. Patent Number 7,627,497, entitled “Method for selling
6 lottery tickets from a POS terminal,” filed on March 22, 2004 and issued on December 1,
7 2009. The PTAB’s ruling that the claims of Blackhawk’s 894 Patent are unpatentable was
8 based entirely on the 497 Patent.

9 Beyond using the concept of a lottery ticket printed on paper, a common practice used
10 for years, L3 used its lottery expertise exclusively to begin designing and building the
11 modified Play Now/Lottery Card product to produce the desired functionality and maintain
12 compliance with MUSL and state specific rules. At the same time that L3 worked to develop
13 the modified Play Now/Lottery Card Product and the parties worked to gain the Texas and
14 Arizona lotteries’ acceptance of that product, which the parties called QuickTicket (Arizona
15 called its product Quick Card, a product the Arizona lottery director, Gregg Edgar
16 conceived), the parties continued to pursue the adoption and sale of the original version of
17 the Play Now/Lottery Card product in other states.

18 **4. Registration and Use of the QUICKTICKET Mark**

19 Pursuant to the PDA, on June 7, 2018, L3 filed an application to federally register the
20 QUICKTICKET Mark. Federal Trademark Registration No. 5,991,853 for the
21 QUICKTICKET Mark – now owned by SL Card pursuant to assignment – issued on
22 February 18, 2020. SL Card’s trademark licensee, Interactive Communication International,
23 Inc. (“ICI”) – who began developing its own QuickTicket product at least as early as August
24 of 2018, and likely earlier – launched its lottery products in connection with the
25 QUICKTICKET Mark in November of 2019.

26 On August 17, 2018, Blackhawk filed an “intent to use” (“ITU”) trademark
27 application seeking registration of a stylized version of the QUICKTICKET Mark.
28 Blackhawk’s ITU application, however, disclaimed “the exclusive right to use

1 'QUICKTICKET'" other than in connection with stylized letters. Thereafter, on May 20,
2 2019, Blackhawk filed an ITU application to register the QUICKTICKET word mark. Both
3 of Blackhawk's applications remain pending. Blackhawk has yet to submit any statement of
4 use in connection with either application. Blackhawk did not launch its QuickTicket product
5 until sometime in 2020 or 2021 and thus did not begin using the QUICKTICKET Mark in
6 commerce until years after SL Card's application to register the QUICKTICKET Mark and
7 ICI's use of that mark in commerce in connection with lottery products and services.

8 **5. The Acquisition of L3 and SL Card**

9 In early 2019, Blackhawk learned that certain assets of L3 that comprised its lottery
10 business were being acquired by the InComm Family. Specifically, Linq3 Acquisition LLC
11 ("Linq3") – a wholly owned subsidiary of PRE Solutions, Inc. and indirect subsidiary of HI
12 Technology, Inc. – was formed to acquire ~~certain~~ those assets of L3 that comprised its
13 lottery business of L3 and all equity stock in SL Card. Separately, after SL Card and most
14 of the assets of L3 were sold, ICI, a direct subsidiary of HI Technology, hired a number of
15 former L3 employees. Linq3's acquisition of L3 and SL Card closed on March 1, 2019.
16 As part of the acquisition, L3 assigned to Linq3 all of its patents, trademarks, and
17 applications therefor, including its ITU application to federally register the
18 QUICKTICKET Mark (the "ITU Application"). The Trademark Assignment
19 agreement ("Assignment Agreement") that assigned those patents, trademarks, and
20 applications stated that L3:

21 assigns, sells, transfers, and conveys to Assignee [Linq3], its successors
22 and assigns, free and clear of all liens and encumbrances (other than
23 Permitted Liens, as defined in the Asset Purchase Agreement), all of
24 Assignor's [Linq3's] rights, title and interest, including all common law
25 rights that may exist therein and all corresponding rights that, now or
26 hereafter, may be secured throughout the world, in and to the
TRADEMARKS and in and to any registrations, renewals and
extensions that may be granted thereon, together with the goodwill of
the business connected therewith and/or symbolized thereby.

27 The Assignment Agreement defined TRADEMARKS to include Linq3's ITU
28 Application. The Assignment Agreement further acknowledged that the Assignment

1 Agreement was being “executed” in “accordance with and subject to the terms and
2 provisions of the Asset Assignment Agreement” pursuant to which L3 assigned the
3 assets of its lottery business to Linq3. When Linq3 subsequently filed its Statement of
4 Use, it described Linq3 as “a successor to the Applicant’s business or portion of the
5 business to which the mark pertains.” After SL Card and the lottery assets of L3 were
6 sold to Linq3, ICI, a direct subsidiary of HI Technology, hired a number of former L3
7 employees. After When these three former L3 employees began working at ICI, they
8 learned that ICI had already been developing its own QuickTicket product for many months
9 and in fact, was further along in its development of that product than L3 was in the
10 development of its QuickTicket product. Upon being hired at ICI, certain of those employees
11 began assisting with ICI’s completion of the development of a-the Preprinted Draw Ticket
12 product preliminarily called Lucky Draw that ICI had been working on prior to L3’s
13 acquisition by Linq3. Thereafter, in November of 2019, ICI began selling its products in
14 Texas under the QUICKTICKET Mark. In October 2022, Linq3 assigned the issued
15 trademark registration for the QUICKTICKET Mark to SL Card.

16 **6. Blackhawk Discontinues The Lottery Card**

17 In late February of 2019, after Blackhawk learned of L3’s acquisition and was unable
18 to convince L3 to reconsider its decision to become part of the InComm Family and to
19 instead sell itself to Blackhawk, Blackhawk unilaterally discontinued its distribution and
20 support of the Lottery Card product and instead began developing its own QuickTicket
21 product using technology developed by L3. Blackhawk subsequently launched its own
22 QuickTicket product using SL Card’s QUICKTICKET Mark and technology in 2020 or
23 2021.

24 **II. LEGAL THEORIES ON WHICH SL CARD’S DEFENSES AND CLAIMS** 25 **ARE BASED**

26 **A. SL Card’s Defenses to Blackhawk’s Claims**

27 Under Delaware law, applicable here under PDA Section 21.3, the elements of a
28 contract breach claim are: “(1) a contractual obligation; (2) a breach of that obligation by the

1 defendant; and (3) resulting damage to the plaintiffs.” *Greenstar, LLC v. Heller*, 814 F.
2 Supp. 2d 444, 450 (D. Del. 2011) (citations omitted) (emphasis added). According to
3 Blackhawk, SL Card breached the PDA by disclosing confidential information and
4 intellectual property to L3 and/or ICI, and thereafter, L3, Linq3, e2Interactive, Inc. (“e2”)
5 (an IP holding company that holds intellectual property used by the InComm family of
6 entities), and/or ICI used such confidential information and intellectual property to (i) file a
7 trademark application for the QUICKTICKET Mark, (ii) file for patents that disclose the
8 concept of Preprinted Draw Tickets, and (iii) market and sell Preprinted Draw Tickets in
9 connection with the QUICKTICKET Mark. To show such breach, Blackhawk must prove
10 that the PDA applies to the parties’ work in connection with the QuickTicket product, that
11 it was SL Card and not any other entity that engaged in conduct that breached the PDA and
12 that the information SL Card used or disclosed information that-qualifies under the PDA as
13 Blackhawk “Confidential Information” or Blackhawk “Intellectual “Property.” It can show
14 none of these things. To the extent that the Court finds that the PDA does not apply to or
15 govern the parties work in connection with the QuickTicket product, Blackhawk’s breach of
16 contract likewise fails as there was no applicable contract that could be breached. **The facts**
17 **and legal basis of SL Card’s defenses to Blackhawk’s claims are also stated in SL**
18 **Card’s briefing on the motions for summary judgment in this lawsuit.**

19 **1. The PDA Applied to the Play Now Product**

20 The stated purpose of the PDA was the development and distribution of “a consumer
21 solution for real-time, ticketless lottery transactions by leveraging certain existing Linq3
22 products and Linq3 protocols and processes and other Linq3 Preexisting Intellectual
23 Property, and certain technology that Blackhawk provides in connection with the existing
24 point-of-sale technology and infrastructure of Approved Alliance Partners, to sell Lottery
25 Products in Approved Alliance Partner Stores.” The PDA referred to this product as the Play
26 Now product, but it was ultimately launched as the Lottery Card. Blackhawk’s witnesses
27 have testified in this case that Blackhawk provided L3 with information regarding its
28 QuickTicket V2 concept in connection with the development of a *ticket*-based product, *i.e.*,

1 the QuickTicket product, for the U.S. market, not in connection with modifying the Play
2 Now/Lottery Card product to meet the requirements of the Texas and Arizona state lotteries.

3 There was no written contract or agreement governing the development and
4 distribution of a ticket-based product, such as the QuickTicket product. Additionally, despite
5 discussing that need for an amendment to the PDA to bring the parties' efforts with respect
6 to a QuickTicket product within the scope of the PDA, the parties never amended the PDA
7 to address the parties' respective rights and obligations in connection with the development,
8 distribution, ownership, intellectual property, or any other terms relating to a ticket-based
9 product, such as the QuickTicket product.

10 To the extent Blackhawk contends that the QuickTicket product falls within the scope
11 of the PDA, the PDA is very clear that SL Card was to own all intellectual property related
12 to the products being developed under the PDA. To the extent Blackhawk asserts that the
13 PDA does not apply to the parties' efforts with respect to QuickTicket, *none* of the
14 provisions of the PDA would apply to the work the parties performed or the information
15 exchanged in connection with the development of that product, including paragraphs 8 and
16 12 relating to confidential information and intellectual property. Blackhawk cannot pick and
17 choose only some of the PDA's provisions to apply to QuickTicket development while
18 asserting that other provisions of the PDA do not apply. The PDA is not a general non-
19 disclosure or confidentiality agreement intended to govern the parties' relationship as a
20 whole. It is a distribution agreement for certain products, with terms that govern the parties'
21 conduct with respect to those products and those products alone. Either QuickTicket is one
22 of the products governed by the PDA or it is not. Blackhawk cannot have it both ways.

23 **2. Blackhawk Did Not Disclose Any Information Regarding QuickTicket**
24 **to SL Card**

25 L3 began working with Blackhawk in 2015. L3 had been developing and building
26 technology for lottery products since its inception in 2009. L3 formed SL Card in December
27 of 2016 for the purpose of issuing the Play Now/Lottery Card product. Because that product
28 involved issues of breakage (unused funds remaining on the card), L3 incorporated SL Card

1 in the state of Arizona for the same reason that Blackhawk is incorporated in the state of
2 Arizona – favorable laws of escheatment. The parties agreed that SL Card would be the
3 counter party to Blackhawk in the PDA. Nevertheless, the parties’ agreed course of conduct
4 throughout their working relationship was that L3 would continue to develop the Play
5 Now/Lottery Product and communicate with the state lotteries and their providers, as it had
6 done prior to SL Card’s creation and execution of the PDA.

7 Thereafter, when the decision was made to pursue a ticket-based product for those
8 states that had laws prohibiting the use of mobile phones for lottery play, there was no need
9 for a card issuer, like SL Card, to have any involvement in such a product. Ticket-based
10 products, unlike the Lottery Card product, do not have an “issuer” and do not involve issues
11 of breakage, as they do not involve funds being loaded onto a card. Thus, SL Card had no
12 involvement in any communications or discussions about or plans to develop a ticket-based
13 product. Rather, all communications, discussions, and information exchanged in connection
14 with plans and efforts to develop a ticket-based product, such as QuickTicket, involved only
15 L3, not SL Card.

16 **3. SL Card Did Not Disclose Any Blackhawk Confidential Information** 17 **Or Blackhawk Intellectual Property**

18 SL Card did not disclose or use any Blackhawk Confidential information or
19 Blackhawk Intellectual Property. Indeed, at the time the PDA was entered, SL Card had no
20 employees. Rather, at all times during the PDA, the parties’ course of conduct was for
21 Blackhawk to communicate directly with employees of L3, and with respect to the
22 QuickTicket concept in particular, Blackhawk communicated *only* with L3. Thus any and
23 all information relating to QuickTicket that Blackhawk contends to be confidential
24 information and Blackhawk Intellectual property that was purportedly shared under the PDA
25 was shared by Blackhawk directly with L3, who, to the extent the PDA even applies to such
26 information, was not bound by either Section 8 or Section 10 of the PDA. Additionally, SL
27 Card did not direct L3 to file any patent applications. L3 had been filing patent applications
28 directed to L3’s innovations for many years prior to L3’s relationship with Blackhawk and

1 had several issued patents in its name relating to its lottery platform and methods performed
2 in connection therewith. When L3 began working to develop a QuickTicket product during
3 its relationship Blackhawk, L3 and L3 alone made the decision to file continuation in part
4 applications designed to ensure protection of its lottery ticket platform as used with the new
5 lottery products it was developing. SL Card, whose purpose for existing was to issue the
6 Lottery Card product, played no part in L3's decision to extend its patent rights to cover the
7 use of L3's lottery ticket platform with newly developed products.

8 SL Card likewise did not share any information with ICI, who had already begun
9 developing a Preprinted Draw Ticket product prior to L3's acquisition by Linq3. Indeed, ICI
10 had been a party of the NASPL API Working Group helping to develop an API for lottery
11 products since 2016. The members of the NASPL API Working Group had numerous
12 discussions during NASPL API Working Group meetings throughout 2018 regarding
13 preprinted draw tickets with draw numbers preprinted thereon that would be activated at the
14 POS, which Paul Riley, an IGT executive who lead the NASPL API Working Group,
15 referred to as QuickTicket 2.0. In Spring of 2018, ICI was preparing to launch a print on
16 receipt product, where the lottery ticket was printed on receipt paper at the time of purchase,
17 in Dollar General stores located in Texas. However, the amount of time it would take for
18 Dollar General to modify its POS systems to print dynamic lottery ticket information on the
19 receipt was longer than The Texas Lottery and IGT had desired – the Texas Lottery wanted
20 to launch an in-lane product as soon as possible and IGT was under contract with The Texas
21 Lottery that including penalties for each month an in-lane product was not launched in
22 Texas. Thus, in late 2018, ICI began working with IGT and the Texas state lottery to develop
23 a lottery ticket solution that ICI referred to internally as Lucky Draw and which IGT referred
24 to as QuickTicket 2.0. The Lucky Draw product was a preprinted ticket that bore preprinted
25 draw numbers covered by a scratch-off coating. The ticket was designed to be displayed at
26 a retailer and purchased by a consumer who would hand the ticket to the cashier and pay for
27 the ticket. The cashier would scan an activation bar code that was also preprinted on the
28 ticket, thereby sending an activation request to the state lottery who would return an

1 activation authorization. The purchaser's bet selections, *i.e.*, draw numbers, would then be
2 in the next draw. A receipt would be printed verifying the activation, and the player would
3 scratch off the coating to reveal the draw numbers that were entered into the next game.

4 After the assets of L3 were acquired by Linq3 Acquisitions LLC (a wholly-owned
5 subsidiary of Pre Solutions, Inc.), ICI hired certain former L3 employees to work on ICI's
6 various lottery product initiatives. When they began communicating with ICI, these former
7 L3 employees learned that ICI was nearing completion of its Lucky Draw solution
8 development. The Texas Lottery directed that ICI change the name of its product from Lucky
9 Draw to QuickTicket. IGT worked with both ICI and Blackhawk to design the look of their
10 respective lottery products pursuant to the Texas Lottery's directive that the respective
11 product be as consistent as possible both in look and functionality so that consumers would
12 have a consistent experience with the QuickTicket product regardless of source. Blackhawk
13 and ICI shared their respective design proposals and participated together in calls with IGT
14 to finalize the design of the parties' respective QuickTicket offerings. The Texas Lottery
15 ultimately chose ICI's design submissions.

16 **4. The Information Blackhawk Claims Was Disclosed Is Neither** 17 **Confidential Nor Blackhawk Intellectual Property**

18 Blackhawk cannot show that any of the information it accuses SL Card of disclosing
19 constitutes either Blackhawk's "Intellectual Property" or "Confidential Information" under
20 the PDA. The concept of Preprinted Draw Tickets was publicly disclosed in the 135 and 894
21 Patents and thus is not confidential. Additionally, Blackhawk and others discussed the
22 concept at numerous trade shows attended broadly by members of the lottery industry, at
23 NASPL conferences, within the NASPL API working group, and during Blackhawk's
24 Annual Summit, likewise attended by retailers and lottery vendors. And Arizona's Quick
25 Card product which was conceived of by Arizona's lottery director Gregg Edgar and —
26 which Blackhawk claims is identical to QuickTicket, —was described in great detail in the
27 July/August 2018 issue of Insights Magazine. The QUICKTICKET Mark was also disclosed
28 to state lottery commissions, Blackhawk retailers, and during lottery conferences without

1 any obligations of confidentiality and is likewise the subject of publicly available trademark
2 applications filed by Blackhawk, which Blackhawk filed as “intent to use” applications,
3 making clear to the public Blackhawk’s intent to use that mark in connection with the
4 products and services identified in its applications. As such, neither the QUICKTICKET
5 Mark nor Blackhawk’s purported plans to use that mark qualify as confidential information
6 under the PDA’s definition thereof, which excludes from the definition of confidential any
7 information that is or becomes generally available to the public by means other than a breach
8 of the obligations of the receiving Party under the PDA.

9 Neither the QUICKTICKET Mark nor QuickTicket V2 constitutes Blackhawk
10 “Intellectual Property” because neither satisfies the PDA’s definition of Intellectual Property
11 for all of the reasons set forth in SL Card’s motion to dismiss and reply in support of its
12 motion to dismiss. For example, the QUICKTICKET Mark does not qualify as Blackhawk’s
13 “Intellectual Property” because, among other reasons, Blackhawk did not use the mark in
14 commerce before L3 filed its trademark application for the QUICKTICKET Mark. Although
15 Blackhawk claims that it *intended* to use that mark, an intent to use a mark does not provide
16 a party with rights to such mark. Additionally, at the time that SL Card is alleged to have
17 used Blackhawk’s intellectual property, Blackhawk had only one issued patent in the lottery
18 space, U.S. Patent No. 9,865,135 (the “135 Patent”), and one pending patent application,
19 U.S. Patent App. No. 15/833,566 (the “566 App.”). Blackhawk concedes that the claims of
20 the 135 Patent are not directed “QuickTicket V2.” And while Blackhawk claims that the
21 specification of the 135 patent discloses “QuickTicket V2,” a patent owner obtains no patent
22 rights in embodiments disclosed in the specification but not the claims. **Moreover, in a**
23 **document submitted to the Patent Trial and Appeal Board on May 15, 2024 in**
24 **connection with an *inter partes* review (“IPR”) proceeding brought against the 135**
25 **Patent, Blackhawk admitted to having disavowed all rights to the embodiment**
26 **disclosed in the 135 Patent in which preprinted lottery tickets bear preprinted draw**
27 **numbers, i.e., QuickTicket V2. See SLCARD 1411042-109, p. 21, n. 2 (“The**
28 **specification [of the 135 Patent] discloses another embodiment in which a lottery ticket**

1 912 already is associated with *wager information* 914 which may be *printed on a ticket*
2 to allow selection of preferred numbers by a consumer. See EX1001.0015 (col. 10:5-
3 10). As explained, *this embodiment was disavowed by the definition provided in the '135*
4 *Patent's prosecution history*" (emphasis added)). Having disavowed the QuickTicket V2
5 embodiment, Blackhawk cannot now claim such embodiment constitutes its
6 intellectual property.

7 Likewise, Blackhawk has no patent rights by virtue of the pending 566 App., since
8 patent applications do not provide the owner thereof with any patent rights. Also, Blackhawk
9 does not accuse SL Card of taking or using the 566 App., but rather it accuses SL Card of
10 taking and using the information that it disclosed to SL Card in December of 2017 and May
11 of 2018, which information does not include the 566 App. Nor does the existence of the 135
12 Patent or the 566 App. (or the patent that issued therefrom) provide Blackhawk with the
13 "rights to apply for registration or protection rights pertaining" to QuickTicket V2. As noted,
14 Blackhawk claims to having expressly disavowed any rights to QuickTicket V2 in the
15 135 Patent. And, A a lottery draw ticket with all of the features that Blackhawk claims
16 comprise QuickTicket V2 was disclosed in the prior art (*e.g.*, through at least U.S. Patent
17 No. 7,627,497), meaning Blackhawk cannot claim intellectual property rights in
18 QuickTicket V2 , or claim that it had a right "to apply for registration or protection rights
19 pertaining," derivative rights, or any other rights to such tickets. Blackhawk cannot capture
20 through derivative rights or any other theory something it expressly disavowed and that
21 was disclosed in the prior art, and its attempt to do so through a breach of contract claim is
22 preempted. The preemption doctrine precludes any attempt by Blackhawk to assert patent-
23 like rights to obtain patent-like protection of unpatented products. See, *e.g.*, *C.G.H., Inc. v.*
24 *Nash Finch, Inc.*, No. A11-1598, 2012 WL 1070116, *1 (Ct. App. Minn. April 2, 2012).
25 Moreover, as shown below in connection with SL Card's counterclaims, to the extent the
26 PDA applies to the parties' work in connection with the QuickTicket product, the PDA
27 specifies that SL Card is to own all intellectual property developed in connection with that
28 product.

1 To the extent Blackhawk contends QuickTicket V2 is a “trade secret,” Blackhawk’s
2 broad dissemination of QuickTicket V2 to the lottery industry at large thoroughly
3 undermines any such claim. Indeed, the QuickTicket V2 concept was not only widely known
4 within the lottery industry, but the NASPL API working group – with membership across
5 the lottery industry – frequently discussed QuickTicket V2 and undertook efforts for the
6 NASPL API to be used with QuickTicket V2.

7 **5. Blackhawk is Not Entitled to An Injunction Transferring Ownership**
8 **of Patents Owned by E2 Interactive, Inc. (“E2”) to Blackhawk**

9 As part of its Request for Relief Blackhawk is asking the Court for “[s]ole ownership
10 of the ’561 patent, ’812 patent, ’438 patent, ’432 patent, ’196 application, and ’211
11 application” and “any subsequent patent application that is a continuation or continuation-
12 in-part of the ’561 patent and ’812 patent, and any subsequent patent application that claims
13 the benefit of the ’561 patent or ’812 patent.” Each of the patents and applications that are
14 the subject of this request are owned by non-party e2 Interactive. A state court lacks the
15 authority or jurisdiction to force a non-party to transfer ownership of its patents based on the
16 theories Blackhawk has asserted in this case. Moreover, there is no provision in the PDA
17 relating to the transfer of intellectual property ownership in the event of a breach of
18 provisions 8 or 10. There is also no legitimate basis for Blackhawk to seek ownership of
19 patents owned by a non-party and which has claims that do not recite a lottery ticket with
20 each of the features Blackhawk contends comprise QuickTicket V2. Moreover, section 10.1
21 of the PDA states that it is L3 and not Blackhawk that rightfully owns “LinQ3’s Preexisting
22 Intellectual Property and any modifications, derivatives, or improvements made thereto.”
23 Each of the patents and applications that Blackhawk seeks sole ownership of through its
24 Request for Relief is a continuation in part, *i.e.*, a derivative, of patents or patent applications
25 that qualify under the PDA as LinQ3’s Preexisting Intellectual Property.” Thus, under section
26 10.1, Blackhawk is not entitled to ownership of such derivative patents.

1 **B. SL Card’s Counterclaims**

2 SL Card has asserted counterclaims for breach of contract due to Blackhawk’s
3 unauthorized use of SL Card’s intellectual property in violation of PDA Section 10, and for,
4 federal trademark infringement and unfair competition under the Lanham Act, and Texas
5 common law trademark infringement and unfair competition, as a result of Blackhawk’s
6 willful and unauthorized use of SL Card’s QUICKTICKET Mark.¹ **The facts and legal**
7 **basis of SL Card’s defenses to Blackhawk’s claims are also stated in SL Card’s briefing**
8 **on the motions for summary judgment in this lawsuit.**

9 **1. Blackhawk Breached the PDA By Using SL Card’s Intellectual**
10 **Property**

11 To show that Blackhawk breached Section 10 of the PDA, SL Card must show that
12 the PDA applies to the parties’ respective work on a QuickTicket product and that under the
13 PDA, SL Card is the rightful owner of intellectual property associated with the QuickTicket
14 product and that Blackhawk used such intellectual property without SL Card’s permission.

15 The PDA expressly recognized that the product developed under the PDA was to
16 leverage “[SL Card] Preexisting Intellectual Property” and that the products covered by the
17 PDA would be using such SL Card preexisting intellectual property. Paragraph 10.1 of the
18 PDA not only made clear that SL Card would continue to own its “Preexisting Intellectual
19 Property” and “any modifications, derivatives, or improvements made thereto,” but it further
20 expressly stated that it was SL Card that would have exclusive ownership of all intellectual
21 property to the Play Now product, regardless of any changes required to be made to the
22 product in order to obtain lottery and/or governmental approval and regardless of the name
23 the parties ultimately chose for the product: “For the avoidance of doubt, all Intellectual
24 Property rights in the Play Now Product, including the specifications, features, and
25 functionality of the Play Now Product (***and any enhancements to the Play Now Product***
26 ***made under this Agreement***) and any and all rights to the ‘PLAY NOW’ name (***or any***

27
28 ¹ SL Card will be withdrawing its unfair and deceptive trade practices counterclaim and
therefore does not address that counterclaim in this disclosure.

1 *successor brand or product name to be used on or in connection with the Play Now*
2 *Product*) shall be owned exclusively by [SL Card]” (emphasis added).

3 Thus, to the extent the PDA applies to the QuickTicket product, the PDA is clear that
4 SL Card, not Blackhawk, is to own all intellectual property to that product. Specifically, L3
5 enhanced the original Play Now product concept to avoid use of mobile phones in order to
6 allow sales of the product in certain states and adopted the QUICKTICKET Mark for that
7 enhanced product, and thus SL Card became the owner of all intellectual property associated
8 with that product, including the QUICKTICKET Mark, for which it owns a federal
9 trademark registration.

10 Nevertheless, Blackhawk has (i) maintained two federal trademark applications to
11 register the QUICKTICKET Mark; (ii) launched a lottery product using the features and
12 functionality developed by L3 in connection the enhanced Play Now product, and (iii) has
13 been offering such product in connection with the QUICKTICKET Mark since 2020 or
14 2021. Blackhawk’s maintenance of its applications to register the QUICKTICKET Mark
15 and its unauthorized marketing and sale of lottery products that use SL Card’s technology
16 in connection with the QUICKTICKET Mark is a breach of Paragraph 10 of the PDA.

17 **4. 2. Blackhawk’s Trademark Infringement**

18 By virtue of its Federal Trademark Registration and the continuous use of the
19 QUICKTICKET Mark in commerce, SL Card is the owner of all right, title, and interest in
20 and to the QUICKTICKET Mark in connection with lottery products and services.
21 Nevertheless, Blackhawk has not only maintained its trademark applications to register the
22 QUICKTICKET Mark, but in 2020 or 2021, it began using the QUICKTICKET Mark in
23 commerce in connection with lottery products, including in the state of Texas. SL Card also
24 uses the QUICKTICKET Mark in commerce in connection with lottery products in the state
25 of Texas. Blackhawk’s unauthorized use of the QUICKTICKET Mark in connection with
26 lottery products is likely to cause consumer confusion, mistake, or deception as to the source
27 or origin of its lottery products, and thus constitutes trademark infringement and unfair
28 competition in violation of the Lanham Act and Texas common law.

1 Blackhawk now raises a late-disclosed defense to SL Card's Trademark
2 Infringement claim, namely that SL Card's trademark registration is void *ab initio*
3 pursuant to 15 U.S.C. § 1060(a)(1), because L3 assigned the ITU application for the
4 trademark to Linq3 in March of 2019, before the statement of use perfecting the
5 application was filed. Because L3's assignment of the ITU Application to Linq3 was
6 part of a larger assignment of L3's entire lottery business, the assignment and thus the
7 ensuing registration are both valid.²

8 Section 1060(a)(1) reads, in relevant part:

9 Notwithstanding the preceding sentence, no application to register a
10 mark under section 1051(b) of this title shall be assignable prior to the
11 filing of an amendment under section 1051(c) of this title to bring the
12 application into conformity with section 1051(a) of this title or the filing
13 of the verified statement of use under section 1051(d) of this title, *except*
14 *for an assignment to a successor to the business of the applicant, or portion*
15 *thereof, to which the mark pertains, if that business is ongoing and*
16 *existing.*

17 (emphasis added). Thus, under § 1060(a)(1), an ITU application can be validly assigned
18 in two ways: (i) if a verified statement of use or an amendment to allege use has been
19 filed prior to the assignment or (ii) if the assignment was to a “successor to the business
20 of the applicant, or portion thereof, to which the mark pertains, if that business is
21 ongoing and existing.” This latter exception to the assignment bar is sometimes
22 referred to as the “ongoing and existing business” exception.

23 L3's assignment of ITU Application to Linq3 was validly assigned to Linq3
24 because Linq3 was a successor to L3's lottery business to which the QUICKTICKET
25 Mark pertained. Blackhawk asserts that for the “ongoing and existing business”
26 exception to apply, the assignor must have made some use of the mark in commerce

27 ² SL Card also incorporates the facts and legal basis in support of this counterclaim
28 and the lack of merit for Blackhawk's assertion that the trademark registration is void
ab initio from its April 16, 2024 Opposition to Blackhawk's Motion for Leave to File
Motion For Summary Judgment.

1 prior to the assignment. The Trademark Trial and Appeal Board, however, has
2 rejected this argument as being “inconsistent with the intent behind allowing
3 trademark applications based on an intent-to-use.” *Exel Oyj v. D’Ascoli*, Opposition
4 No. 91160397, 2008 WL 4354180, at *7 (T.T.A.B. Sept. 19, 2008) (non-precedential).
5 Specifically, in *Exel*, the Board stated:

6
7 we consider the statute as allowing for assignment of intent to use
8 applications when (i) the overall business of the applicant was
9 transferred, or (ii) if the intent to use applicant remained an “ongoing
10 and existing” business after the assignment, the portion thereof to
11 which the mark pertains was transferred. The statute must allow for
12 the transfer of a[n intent to use] application claiming a bona fide
13 intention to use the mark for goods *which are not yet in production or*
14 *which may be in the planning stage*, and which may represent an
15 extension of an applicant’s business The anti-trafficking provision
16 of the statute merely requires that if the application is transferred
17 prior to use of the mark, and the transferor remains an ongoing and
18 existing business after the transfer, that the transfer be accompanied
19 by that portion of the transferor’s business to which the mark
20 pertained, *i.e.*, that portion of the business that would have used the
21 mark had there been no transfer.

22 *Id.* (emphasis added). Here, L3 assigned the ITU Application to Linq3 when the overall
23 lottery business of L3 was transferred. To the extent any part of L3 remained an
24 “ongoing and existing business” after the assignment, L3 transferred the portion of its
25 business to which the QUICKTICKET Mark pertained to Linq3.

26 Several courts have adopted the same reasoning as *Exel*. See, e.g., *Vacation*
27 *Rental Partners, LLC v. Vacaystay Connect, LLC*, No. 15 CV 10656, 2017 WL 1150806
28 (N.D. Ill. March 28, 2017) (finding that the reasoning in *Exel* “makes sense” especially
given that the legislative history of § 1060(a) shows that it “was designed to allow
assignment of intent-to-use applications before actual use - the provision prohibits
assignments unless the application is ‘assigned with the business associated with the
intended use of the mark’”), citing S. Rep. No. 100-515, at 25 (1988) (emphasis added);
Fitzpatrick v. Sony-BMG Music Entertainment, Inc., No. 07 Civ. 2933, 2010 WL 3377500

1 (S.D. N.Y., Aug. 24, 2010) (upholding validity of assignment of an intent to use
2 application under the “existing business” exception where the assignee assigned his
3 ITU application three months before any use of the mark in commerce, because the
4 assignee used the “trademark for the same purposes *intended* by [the assignor] at the
5 time of his trademark application”) (emphasis added).

6 In his treatise McCarthy on Trademarks & Unfair Competition, J. Thomas
7 McCarthy, an internationally recognized authority in the field of trademarks, noted
8 that “[i]f having an ‘ongoing business’ means that the designation must have already
9 been used as a trademark to sell goods or services, then the ‘exception’ to the
10 prohibition is illusory.” 3 McCarthy on Trademarks & Unfair Competition § 18:13
11 (4th ed.) quoting P. Chestek, The Switch Thrown Wrong—How Railrunner Sent
12 Intent-to-Use Down the Wrong Tracks, 106 Trademark Rptr. 693, 697 (2016) (Arguing
13 that requiring full-scale commercial use of a mark in order to meet the “ongoing and
14 existing business” exception would read the exception out of the statute, and noting
15 that “the statute says that a business must exist, not that it has reached a stage where
16 the goods or services are being offered, or that the goods or services being offered use
17 the mark.”). Notably, after citing to Senate Judiciary Report on S. 1883, S. Rep. No.
18 100-515, p. 25 (Sept. 15, 1988) which states that “the application [must be] assigned
19 with the business associated with the intended use of the mark,” McCarthy concludes
20 that “[t]his indicates that courts that require actual marketplace use of the mark in
21 sales prior to the assignment are in error.”

22 Because L3’s assignment of the ITU Application to Linq3 was part of a larger
23 assignment of L3’s entire lottery business, the assignment and thus the ensuing
24 registration are both valid.

1 **III. THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ANY**
2 **WITNESSES WHOM SL CARD EXPECTS TO CALL AT TRIAL, AND A**
3 **DESCRIPTION OF THE SUBSTANCE OF THE TESTIMONY**

4 SL Card has not yet identified the final witnesses it expects to call at trial. SL Card
5 is continuing its investigation concerning its final witness list and will supplement this
6 disclosure as discovery proceeds in accordance with the Court's March 13, 2023 Scheduling
7 Order. SL Card makes this disclosure having received limited documents from Blackhawk,
8 the majority of which relate to patent applications owned by the InComm family, and having
9 taken no depositions of any witnesses. The lay witnesses disclosed below are based only
10 upon such information as is presently available and specifically known to SL Card. As
11 additional facts, legal theories, witnesses, or documents are discovered and developed, SL
12 Card will further supplement the below subject areas and/or amend its disclosure.
13 Nevertheless, pursuant to the Court's March 13, 2023 Minute Entry, SL Card has undertaken
14 its best efforts and hereby identifies the following lay witnesses who it expects to ~~may~~ call
15 to testify at trial.

16 1. Mark Smith: contact through Quinn Emanuel counsel, 1200 Abernathy Road,
17 Suite 1500 Atlanta, GA 30328; Tel: (404) 482-3502

18 SL Card currently believes Mr. Smith will be able to testify about the parties'
19 respective work and obligations under the PDA and marketing and development of the
20 QuickTicket product and ICI's work in connection with the QuickTicket product.

21 2. John Houseal: contact through Quinn Emanuel counsel, 1200 Abernathy
22 Road, Suite 1500 Atlanta, GA 30328; Tel: (404) 482-3502

23 SL Card currently believes Mr. Smith will be able to testify about the parties'
24 respective work and obligations under the PDA and marketing and development of the
25 QuickTicket product and ICI's work in connection with the QuickTicket product.

26 3. Craig Fitzgerald: contact through Quinn Emanuel counsel, 1200 Abernathy
27 Road, Suite 1500 Atlanta, GA 30328; (404) 482-3502
28

1 SL Card currently believes Mr. Fitzgerald will be able to testify about the technical
2 aspect of QuickTicket developed by Linq3 as well as the relationship between Blackhawk,
3 L3, SL Card, certain lottery products developed pursuant to that relationship, and ICI's
4 development, marketing, and sale of QuickTicket lottery tickets.

5 4. Michael Parlotto: contact through Quinn Emanuel counsel, 1200 Abernathy
6 Road, Suite 1500 Atlanta, GA 30328; Tel: (404) 482-3502

7 SL Card currently believes that Mr. Parlotto will be able to testify about ICI's early
8 and continued work on lottery products, including a QuickTicket product.

9 5. Paul Riley: 10 Memorial Dr., Providence, RI, 02903; Tel: 401-392-1000

10 SL Card currently believes that Mr. Riley will be able to testify about the non-
11 confidential nature of aspects of QuickTicket that Blackhawk contends are confidential, all
12 entities involved in the development and creation of QuickTicket, the differences and
13 similarities between QuickTicket and earlier lottery products and systems, IGT's
14 understanding of ownership issues related to QuickTicket, and IGT's work with ICI, L3, and
15 Blackhawk related to QuickTicket.

16 6. OLG Representative: contact information currently unknown

17 SL Card currently believes that OLG will be able to testify about ownership issues
18 related to the QuickTicket mark and the extent of Blackhawk's contribution to development
19 of the QuickTicket product.

20 7. Talbott Roche: contact through Baker & Hostetler LLP, 1050 Connecticut
21 Avenue, NW, Washington D.C., 20036

22 SL Card currently believes that Ms. Roche will testify regarding the parties'
23 relationships, understandings and work performed under the PDA, the development of the
24 QuickTicket product, the parties' understanding regarding ownership of QuickTicket, and
25 Blackhawk's decision to terminate the Lottery Card product

26 8. Richard Gottlieb: contact through Baker & Hostetler LLP, 1050 Connecticut
27 Avenue, NW, Washington D.C., 20036
28

1 SL Card currently believes that Mr. Gottlieb will testify regarding the parties'
2 relationships, understandings and work performed under the PDA, the development of the
3 QuickTicket product, and the parties' understanding regarding ownership of QuickTicket.

4 9. Ryan Koop: contact through Baker & Hostetler LLP, 1050 Connecticut
5 Avenue, NW, Washington D.C., 20036

6 SL Card currently believes that Mr. Koop will testify regarding the sales and
7 development of QuickTicket products in Canada, OLG's ownership of the QuickTicket
8 product and technology in Canada and Blackhawk's limited role in that product, and
9 interactions and communications between employees of Blackhawk in Canada and the U.S,
10 including Blackhawk employees' knowledge of the QuickTicket products and sales in
11 Canada.

12 10. Gregg Edgar: James Stripe, Burch & Cracchiolo, P.A., 1850 N. Central
13 Avenue, Suite 1700, Phoenix, AZ 85004; Tel: (602) 274-7611.

14 SL Card believes Mr. Edgar may testify about the Arizona Lottery's Quick Card
15 product, including how and when it was conceived.

16 11. Daniel Cage: contact through Quinn Emanuel counsel, 1200 Abernathy Road,
17 Suite 1500 Atlanta, GA 30328; Tel: (404) 482-3502

18 Daniel Cage may testify about development of L3's QuickTicket product.

19 SL Card expressly reserves the right to supplement and/or amend its witness list
20 below as further facts, analysis, evidence, issues, and or circumstances indicate.
21 Furthermore, SL Card expressly reserves the right to call (1) additional witnesses to provide
22 foundation testimony should Blackhawk contest the authenticity or admissibility of any
23 materials to be proffered at trial; (2) any witness identified by Blackhawk on its witness list,
24 whether or not later withdrawn; (3) substitute witnesses, to the extent that the employment
25 of any witness changes or a witness otherwise becomes unavailable for trial; (4) additional
26 witnesses to respond to issues raised by the Court's rulings; and (5) additional witnesses for
27 impeachment purposes or for rebuttal.

1 **IV. THE NAMES AND ADDRESSES OF ANY PERSON WHOM SL CARD**
2 **BELIEVES MAY HAVE KNOWLEDGE OF INFORMATION RELEVANT**
3 **TO THE SUBJECT MATTER OF THE ACTION, AND A DESCRIPTION OF**
4 **THE NATURE OF THE KNOWLEDGE OR INFORMATION EACH SUCH**
5 **PERSON IS BELIEVED TO POSSESS**

6 SL Card identifies the following individuals who may have knowledge or information
7 relevant to the subject matter of the action, along with their addresses where known, and a
8 fair description of the nature of the knowledge or information such person may have.
9 Individuals with contact information listed as “Quinn Emanuel” are current or former
10 employees, contractors, or affiliates of SL Card, L3, or ICI who may be contacted only
11 through SL Card’s counsel at Quinn Emanuel Urquhart & Sullivan LLP.

12 SL Card anticipates that the lay witnesses it will call at trial will be drawn from the
13 list of persons identified as having knowledge of the dispute below or persons identified by
14 Blackhawk as having knowledge of the dispute. SL Card will timely update this Disclosure
15 as it identifies anticipated trial witnesses. In addition to the persons listed below, SL Card
16 reserve their right to rely upon all individuals and/or entities listed in the other parties’ initial
17 disclosures, including any subsequent disclosure supplementing, revising, correcting,
18 clarifying, or otherwise amending any information disclosed therein.

19 SL Card notes that *ex parte* communications with a former employee of an opposing
20 party is barred if: (1) a party intends to argue that the acts or omissions of the former
21 employee gave rise to the underlying litigation; (2) the acts or omissions of the former
22 employee in connection with the matter may be imputed to the organization; or (3) the
23 former employee has an ongoing relationship with the former employer in connection with
24 the litigation. *See* Ariz. Sup. Ct. R. 42; Rules of Professional Conduct, Rule 4.2; *Lang v.*
25 *Superior Court*, 170 Ariz. 602, 826 P.2d 1228 (App. 1992). By listing any current or former
26 employees and officers/directors, SL Card in no way gives permission to Blackhawk or their
27 attorneys or representatives to contact these witnesses *ex parte*. Current or former
28 employees of SL Card or the InComm family of entities should be contacted only through
SL Card’s outside counsel.

1 **A. L3**

2 SL Card anticipates that its counsel, Quinn Emanuel and Osborn Maledon, will
3 represent all current and former employees of L3 for purposes of their testimony in this
4 matter. Please contact SL Card's counsel to confirm whether former employees are
5 represented before contacting them directly. SL Card does not consent to the *ex parte* contact
6 of any current or former employee of Linq3.

- 7 1. Tom Spiegel
8 Former Chairman & CEO of L3
9 c/o Quinn Emanuel
 1200 Abernathy Road, Suite 1500
 Atlanta, GA 30328

10 Mr. Spiegel may have knowledge of L3 and SL Card, including the relationship
11 between Blackhawk, L3, and SL Card, and certain lottery products developed pursuant to
12 that relationship.

- 13 2. John Minutaglio
14 Former Chief Technology Officer of L3
15 c/o Quinn Emanuel
 1200 Abernathy Road, Suite 1500
 Atlanta, GA 30328

16 Mr. Minutaglio may have knowledge of L3, including the relationship between
17 Blackhawk, L3, and SL Card, and certain lottery products developed pursuant to that
18 relationship.

- 19 3. Daniel Cage
20 Former Chairman & CEO of L3
21 c/o Quinn Emanuel
 1200 Abernathy Road, Suite 1500
 Atlanta, GA 30328

22 Mr. Cage may have knowledge of L3, including the relationship between Blackhawk,
23 L3, and SL Card, and certain lottery products developed pursuant to that relationship.

- 24 4. Travis Smith
25 Former Chief Technology Officer L3
26 c/o Quinn Emanuel
 1200 Abernathy Road, Suite 1500
 Atlanta, GA 30328

1 Mr. T. Smith may have knowledge of L3, including the relationship between
2 Blackhawk, L3, and SL Card, and certain lottery products developed pursuant to that
3 relationship.

4 **B. Employees of ICI**

5 SL Card anticipates that its counsel, Quinn Emanuel and Osborn Maledon, will
6 represent all employees of ICI for purposes of their testimony in this matter.

- 7 1. Mark Smith
8 Vice President, Sales and Marketing
9 c/o Quinn Emanuel
1200 Abernathy Road, Suite 1500
Atlanta, GA 30328

10 Mr. M. Smith was previously the Chief Marketing Officer of L3 and joined ICI in
11 March 2019. He may have knowledge of L3 from the date of his employment there, the
12 relationship between Blackhawk, L3, and SL Card, and certain lottery products developed
13 pursuant to that relationship. He also has knowledge of ICI's development, marketing, and
14 sale of QuickTicket lottery tickets.

- 15 2. Craig Fitzgerald
16 Senior Director, Product Management
17 c/o Quinn Emanuel
1200 Abernathy Road, Suite 1500
18 Atlanta, GA 30328

19 Mr. Fitzgerald was previously the Vice President of Lottery Customer Success
20 Management at L3 and joined ICI in March 2019. He may have knowledge L3, the
21 relationship between Blackhawk, L3, SL Card, and certain lottery products developed
22 pursuant to that relationship. He also has knowledge of ICI's development, marketing, and
23 sale of QuickTicket lottery tickets.

- 24 3. John Houseal
25 Vice President
26 c/o Quinn Emanuel
1200 Abernathy Road, Suite 1500
27 Atlanta, GA 30328
28

1 Mr. Houseal was previously the Chief Product Officer at L3 and joined ICI in March
2 2019. He may have knowledge of L3 since the date of his employment there, the relationship
3 between Blackhawk, L3, SL Card, and certain lottery products developed pursuant to that
4 relationship. He also has knowledge of ICI's development, marketing, and sale of
5 QuickTicket lottery tickets.

6 4. Matt Dillard
7 Linq3 Counsel
8 c/o Quinn Emanuel
9 1200 Abernathy Road, Suite 1500
Atlanta, GA 30328

10 Mr. Dillard was previously the in-house counsel at L3 and joined ICI in March 2019.
11 He may have knowledge of the creation of SL Card, the relationship between Blackhawk,
12 L3, SL Card, and certain lottery products developed pursuant to that relationship.

13 5. Michael Parlotto
14 VP of Emerging Technologies
15 c/o Quinn Emanuel
16 1050 Crown Pointe Pkwy., Ste 500
Atlanta, GA 30338

17 Mr. Parlotto may have knowledge of ICI's involvement in the lottery industry and its
18 development, function, and features of ICI's QuickTicket product.

19 **C. Blackhawk**

20 1. Talbott Roche
21 CEO and President
22 c/o Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Washington D.C., 20036

23 Ms. Roche is expected to have knowledge of Blackhawk and its relationship with L3
24 and ICI and Blackhawk's decision to terminate the Lottery Card product.

25 2. Melissa Murillo
26 Senior Manager, Product Management
27 c/o Baker & Hostetler LLP
28 1050 Connecticut Avenue, NW
Washington D.C., 20036

1 Ms. Murillo is expected to have knowledge of Blackhawk, its relationship with L3
2 and SL Card, and the development of lottery products pursuant to the relationship.

3 3. Richard Gotlieb
4 General Manager, Lottery & Sports Betting
5 c/o Baker & Hostetler LLP
6 1050 Connecticut Avenue, NW
7 Washington D.C., 20036

8 Mr. Gotlieb is expected to have knowledge of Blackhawk, its relationship with L3
9 and SL Card, and the development of lottery products pursuant to the relationship.

10 4. Ryan Koop
11 Director of Business Development
12 c/o Baker & Hostetler LLP
13 1050 Connecticut Avenue, NW
14 Washington D.C., 20036

15 Mr. Koop is expected to have knowledge of Blackhawk operations in Canada, its
16 relationship with OLG, the QuickTicket product in Canada, sales of QuickTicket products
17 in Canada, and interactions and communications between employees of Blackhawk in
18 Canada and the U.S.

19 5. Michael Biscotti [former Blackhawk employee]
20 c/o Baker & Hostetler LLP
21 1050 Connecticut Avenue, NW
22 Washington D.C., 20036

23 Mr. Biscotti is expected to have knowledge of Blackhawk, its relationship with L3
24 and SL Card, and development of products pursuant to that relationship.

25 6. Bill Tauscher [former Blackhawk employee]
26 c/o Baker & Hostetler LLP
27 1050 Connecticut Avenue, NW
28 Washington D.C., 20036

Mr. Taucher is expected to have knowledge of Blackhawk, its relationship with L3
and the development of products pursuant to that relationship.

1 7. David Tate [former Blackhawk employee]
2 c/o Baker & Hostetler LLP
3 1050 Connecticut Avenue, NW
4 Washington D.C., 20036

5 Mr. Tate is expected to have knowledge of Blackhawk and the formation of its
6 relationship with L3.

7 8. Tom Shaheen [former Blackhawk employee]
8 c/o Baker & Hostetler LLP
9 1050 Connecticut Avenue, NW
10 Washington D.C., 20036

11 Mr. Shaheen is expected to have knowledge of Blackhawk, its relationship with L3
12 and SL Card, and development of products pursuant to that relationship.

13 **Other**

14 1. Paul Riley
15 10 Memorial Dr.,
16 Providence, RI, 02903
17 Vice President Product Innovation and R&D IGT

18 Mr. Riley is expected to have knowledge of the Lottery Card and QuickTicket
19 products and development thereof.

20 2. Ryan Mindell
21 Executive Director
22 Texas Lottery Commission

23 Mr. Mindell is expected to have knowledge regarding the development of the
24 QuickTicket product.

25 3. Joe Fulton
26 Director Product Management
27 Scientific Games

28 Mr. Fulton is expected to have knowledge regarding the development of the
QuickTicket product.

 4. Gino Guinti
 Senior Hospitality Channel innovation Manager
 OLG

1 Mr. Guinti is expected to have knowledge of the 135 Patent and any predecessor
2 patents, the content thereof, the inventions claimed therein, the conception and reduction to
3 practice of the inventions claimed therein, and the assignment thereof to Blackhawk.

4 5. OLG

5 OLG is expected to have knowledge of its rights in QUICKTICKET Mark,
6 Blackhawk's participation or lack thereof in the development of product associated with the
7 QUICKTICKET Mark, success and sales of product sold in connection with the
8 QUICKTICKET Mark, any use of that mark in the U.S., and efforts with or interest in a
9 QuickTicket V2 product.

10 6. Gregg Edgar
11 Former Executive Director of the Arizona Lottery

12 Mr. Edgar is expected to have information regarding Arizona's Quick Card lottery
13 product, including how and when it was conceived and its development.

14 **V. THE NAMES AND ADDRESSES OF ANY PERSON WHO HAS GIVEN A**
15 **STATEMENT RELEVANT TO THE SUBJECT MATTER OF THE ACTION,**
16 **AND THE CUSTODIAN OF EACH OF THOSE STATEMENTS**

17 The following individuals have given statements relevant to the party's claims or
18 defenses:

- 19 A. Deposition of Craig Fitzgerald in this lawsuit, dated June 22, 2023;
- 20 B. Deposition of Mark D. Smith in this lawsuit, dated June 22, 2023 and August
21 11, 2023;
- 22 C. Deposition of John Minutaglio in this lawsuit, dated June 23, 2023;
- 23 D. Deposition of Ryan Koop in this lawsuit, dated July 12, 2023;
- 24 E. Deposition of Richard Gotlieb in this lawsuit, dated July 14, 2023;
- 25 F. Deposition of Melissa Murillo in this lawsuit, dated July 20, 2023;
- 26 G. Deposition of Thomas Spiegel in this lawsuit, dated July 18, 2023;
- 27 H. Deposition of Michael G. Biscotti in this lawsuit, dated July 19, 2023;
- 28 I. Deposition of John F. Houseal, Jr. in this lawsuit, dated July 26, 2023;
- J. Deposition of Louise Talbott Roche in this lawsuit, dated July 28, 2023;

- 1 K. Deposition of Daniel Cage in this lawsuit, dated August 1, 2023;
2 L. Deposition of James McDonald in this lawsuit, dated August 2, 2023;
3 M. Deposition of John Paul Riley in this lawsuit, dated August 4, 2023;
4 N. Deposition of Michael Parlotto in this lawsuit, dated August 9, 2023;
5 O. Deposition of Gregg Edgar in this lawsuit, dated August 10, 2023;
6 P. James McDonald's verifications of the following documents:
7 (i) Blackhawk's Initial Disclosure Statement relating to its affirmative claims; (ii)
8 Blackhawk's Initial Disclosure Statement relating to SL Card's counterclaims; (iii);
9 Blackhawk's Responses and Objections to SL Card's First Set of Nonuniform
10 Interrogatories; (iv) Blackhawk's Responses and Objections to SL Card's Second Set
11 of Nonuniform Interrogatories; (v) Blackhawk's First Supplemental Responses and
12 Objections to SL Card's Second Set of Nonuniform Interrogatories; (vi) Blackhawk's
13 Responses and Objections to SL Card's Third Set of Nonuniform Interrogatories.

14 SL Card is not presently aware of any other persons who have given written or
15 recorded statements relevant to any party's claim or defense. SL Card is continuing its
16 investigation, and will supplement this disclosure as discovery proceeds in accordance with
17 the deadlines set by the Court.

18 **VI. ANTICIPATED SUBJECT AREAS OF EXPERT TESTIMONY**

19 SL Card identifies the following-subject areas of expert testimony that SL Card
20 expects to use or rely on to support its defenses and counterclaims. By making this disclosure,
21 SL Card does not represent that it is identifying every subject matter upon which it will offer
22 expert testimony for purposes of this lawsuit. SL Card makes this disclosure having received
23 no documents from Blackhawk Network Inc. ("Blackhawk") and having taken no
24 depositions of any witnesses. The subject areas of expert testimony disclosed below are
25 based only upon such information as is presently available and specifically known to SL
26 Card. As additional facts, legal theories, witnesses, or documents are discovered and
27 developed, SL Card reserves the right to further supplement the below subject areas and/or
28 amend its disclosure. Continuing investigation and discovery may reveal the absence of any

1 need for expert discovery or additional relevant subject matters of expert testimony, and SL
2 Card reserves the right to supplement this disclosure accordingly.

3 1. Intellectual Property / Patent Procedure Expert:

- 4 a. Testimony regarding patent procedure and what rights are provided and not
5 provided by patents and patent applications, and what information within a
6 patent is within the public domain;
7 b. Testimony regarding Blackhawk's claim that it has intellectual property rights
8 in something called QuickTicket V2 by virtue of the patents cited in
9 Blackhawk's Complaint;
10 c. Testimony explaining continuation and continuation-in-part applications and
11 inventorship thereof; ~~and~~
12 d. Testimony regarding Blackhawk's claim that SL Card took and/or used
13 Blackhawk's intellectual property by including certain information in its
14 patent applications;
15 e. Testimony regarding derivative rights;
16 f. Testimony regarding the various types of Intellectual Property set forth in the
17 PDA's definition thereof;
18 g. Testimony regarding how trademark rights are acquired in the United States.

14 2. Lottery Industry Expert:

- 15 a. Testimony regarding the prior art regarding Prepaid Draw Tickets;
16 b. Testimony regarding the *Inter Partes* Review and Post-Grant Review process
17 and the import of the Patent Trial and Appeal Board's written decision that the
18 '894 Patent is invalid on Blackhawk's claims of intellectual property rights in
19 the concept of Prepaid Draw Tickets;
20 c. Testimony regarding the lottery industry generally, including the history of in-
21 lane products.

20 **VII. A COMPUTATION AND MEASURE OF EACH CATEGORY OF DAMAGES**
21 **ALLEGED BY THE DISCLOSING PARTY, THE DOCUMENTS AND**
22 **TESTIMONY ON WHICH SUCH COMPUTATION AND MEASURE ARE**
23 **BASED, AND THE NAME, ADDRESS, AND TELEPHONE NUMBER OF**
24 **EACH WITNESS WHOM THE DISCLOSING PARTY EXPECTS TO CALL**
25 **AT TRIAL TO TESTIFY ON DAMAGES**

24 Neither party is seeking financial damages in this case, although SL Card is seeking
25 reasonable attorneys' fees and costs pursuant to Arizona and federal law.
26
27
28

1 **VIII. THE EXISTENCE, LOCATION, CUSTODIAN, AND DESCRIPTION OF**
2 **ANY TANGIBLE EVIDENCE, DOCUMENTS OR ELECTRONICALLY**
3 **STORED INFORMATION THAT SL CARD PLANS TO USE AT TRIAL**

4 SL Card may use any documents produced during the litigation or exhibits used in
5 any deposition, as well as certain documents on which its experts rely on rendering the
6 opinions expressed in their reports. Specifically, SL Card identifies the following
7 documents:

- 8 • Fitzgerald Deposition Exhibits 1 through 21;
- 9 • Smith Deposition Exhibits 1 through 23;
- 10 • Minutaglio Deposition Exhibits 1 through 18;
- 11 • Koop Deposition Exhibits 1 through 32;
- 12 • Gotlieb Deposition Exhibits 1 through 45;
- 13 • Murillo Deposition Exhibits 1 through 17;
- 14 • Spiegel Deposition Exhibits 1 through 56;
- 15 • Biscotti Deposition Exhibits 1 through 26;
- 16 • Houseal Deposition Exhibits 1 through 93;
- 17 • Roche Deposition Exhibits 1 through 25;
- 18 • Cage Deposition Exhibits 1 through 57;
- 19 • McDonald Deposition Exhibits 1 through 4;
- 20 • Riley Deposition Exhibits 1 through 38;
- 21 • Parlotto Deposition Exhibits 1 through 48;
- 22 • Edgar Deposition Exhibits 1 through 13;
- 23 • Smith 30(b)(6) Deposition Exhibits 1 through 31;
- 24 • The documents cited in SL Card's Responses and Objections to Blackhawk's
25 First Set of Non-Uniform Interrogatories;
- 26 • The documents cited in SL Card's original and supplemental Responses and
27 Objections to Blackhawk's Second Set of Non-Uniform Interrogatories; and
- 28 • The documents cited in SL Card's Responses and Objections to Blackhawk's
Third Set of Non-Uniform Interrogatories.

- Other documents produced in this case that will be identified in any pretrial statement and/or trial exhibit list required by the Court.

SL Card states that it is continuing its investigation concerning relevant tangible evidence, documents, or ESI that it may use at trial, and will supplement this disclosure as discovery proceeds in accordance with the deadlines set by the Court.

IX. THE EXISTENCE, LOCATION, CUSTODIAN, AND DESCRIPTION OF ANY TANGIBLE EVIDENCE, DOCUMENTS OR ELECTRONICALLY STORED INFORMATION THAT SL CARD BELIEVES MAY BE RELEVANT TO THE SUBJECT MATTER OF THE ACTION

The parties agreed to an ESI protocol on April 24, 2023, and, subject to its responses and objections to discovery requests made by Blackhawk in this lawsuit, SL Card has conducted an appropriate search for all tangible evidence, documents and agreed upon ESI in its possession, custody or control.

Subject to the limitations set forth above, SL Card identifies the following possible categories of relevant tangible evidence, documents, or ESI in its possession, custody or control that it may use to support its defenses and/or counterclaims, unless solely for impeachment. By making this disclosure, SL Card does not represent that it is identifying every potentially relevant category of documents or tangible things upon which it may rely for purposes of this lawsuit. Continuing investigation and discovery may reveal additional relevant categories of relevant tangible evidence, documents, or ESI, and SL Card reserves the right to supplement this disclosure accordingly. SL Card does not waive its right to object to the production of any particular tangible evidence, document, or ESI disclosed herein on the basis of any valid objections to its discoverability or admissibility.

SL Card expects the following categories of documents to be located in the files of one or more of the current and former L3 and Blackhawk individuals and/or ICI employees identified in Paragraph III above and/or counsel for Blackhawk, L3, Linq3, and e2.

- Documents relating to the PDA, including drafts thereof and negotiations leading thereto, and performance thereunder;

- 1 • Communications between Blackhawk and L3 or SL Card relating to lottery
- 2 products;
- 3 • Documents relating to Blackhawk's decision to discontinue and its
- 4 discontinuation of the Lottery Card product;
- 5 • Documents relating to the parties' respective development, plans to use, first
- 6 use of, and use of the QUICKTICKET Mark in the U.S.;
- 7 • Documents relating to the parties' respective trademark applications for the
- 8 QUICKTICKET Marks;
- 9 • Documents relating to Blackhawk's relationship with OLG, including
- 10 agreements and communications between Blackhawk and OLG regarding the
- 11 QUICKTICKET Mark and any QuickTicket product;
- 12 • Documents reflecting or consisting of presentations regarding proposed and
- 13 actual lottery products. including proposed and actual lottery products offered
- 14 in connection with the QUICKTICKET Mark;
- 15 • Documents reflecting communications and agreements between Blackhawk
- 16 and IGT and Blackhawk and Scientific Games regarding the Lottery Card,
- 17 QuickTicket products, and other lottery product solutions;
- 18 • Documents reflecting communications and agreements between Blackhawk
- 19 and any state lottery officials or employees relating to the Lottery Card and
- 20 QuickTicket products;
- 21 • Documents reflecting Blackhawk's investment in, expectations for, and
- 22 support of the Lottery Card product;
- 23 • Documents reflecting Blackhawk's intellectual property rights in features,
- 24 functions, and/or the operation of lottery products and services, including
- 25 those offered in connection with the QUICKTICKET Mark;
- 26 • Blackhawk file histories for U.S. Patent Nos. 9,865,135, 10,769,894;
- 27 • U.S. Patent Nos. 10,229,561, D877,812, 10,943,438, 10,943,432, and U.S.
- 28 Patent Application No. 17/196,196, U.S. Patent Application No. 17/196,211;

- 1 • Documents reflecting Blackhawk's experience with the lottery industry prior
- 2 to January 1, 2017;
- 3 • Documents, including organization charts, reflecting the relationship between
- 4 SL Card and other direct and indirect subsidiaries of HI Technology;
- 5 • Documents reflecting SL Card's rights in the QUICKTICKET Mark;
- 6 • Documents reflecting Blackhawk's efforts to support U.S. retailer adoption of
- 7 the Lottery Card product and the QuickTicket product, including Blackhawk's
- 8 communications with retailers regarding the Lottery Card product and the
- 9 QuickTicket product;
- 10 • Documents concerning Blackhawk's marketing of products and services
- 11 offered in connection with the QUICKTICKET Mark;
- 12 • Communications between Blackhawk and the Patent Office regarding
- 13 applications to use QUICKTICKET Mark;
- 14 • Communications with the PTO regarding the L3's application to use
- 15 QUICKTICKET Mark;
- 16 • Documents concerning ICI's work and efforts regarding the development of
- 17 lottery products;
- 18 • Communications or agreements between Blackhawk and OLG and/or Gino
- 19 Guinti regarding assignment of 9,865,135 and other patents;
- 20 • Documents supporting each factual allegation in the Complaint;
- 21 • Documents supporting each factual allegation in SL Card's counterclaims;
- 22 • Blackhawk's and its affiliates current and former organization charts dating
- 23 back to 2016;
- 24 • Documents identifying the current and planned retail locations into which
- 25 Blackhawk sells or plans to sell the QuickTicket Product;
- 26 • Documents and pleadings relating to the Post Grant Review proceeding
- 27 against U.S. Patent No. 10,769,894 in which the PTO found all claims of the
- 28 894 Patent to be invalid;

- Documents and pleadings relating to the Cancellation proceeding that Blackhawk has brought against SL Card’s registration for the QUICKTICKET Mark;
- Blackhawk’s source code for its QuickTicket products; and
- Documents and pleadings relating to *Blackhawk Network, Inc. v. SL Card Company, Inc., et al*, No. CV-21-00813-PHX-MTL (D. Ariz.).
- Documents produced pursuant to the ESI Protocol agreed between the parties as follows:
 - Documents produced in this lawsuit in SL Card’s first production of documents dated April 25, 2023, and produced at Bates number SLCARD_0000001 through SLCARD_0018084, which includes custodial documents provided by Thomas Spiegel, as well as non-custodial documents relevant to InComm’s acquisition of Linq3 and the PDA between Blackhawk and Linq3;
 - Documents produced in this lawsuit in SL Card’s second production of documents dated May 12, 2023, and produced at Bates number SLCARD_0018085 through SLCARD_0100903, which includes custodial emails from Linq3 and InComm responsive to the parties’ agreed upon search terms, as well non-custodial third-party contracts and documents relating to Linq3’s QuickTicket trademark;
 - Documents produced in this lawsuit in SL Card’s third production of documents dated May 30, 2023, and produced at Bates number SLCARD_0100904 through SLCARD_0100978, which includes custodial emails from Linq3 that are cited in SL Card’s Responses and Objections to Blackhawk’s First Set of Non-Uniform Interrogatories;
 - Documents produced in this lawsuit in SL Card’s fourth production of documents dated June 6, 2023, and produced at Bates number SLCARD_0100979 through SLCARD_0343170, which includes

1 custodial emails from Linq3 and Incomm responsive to the parties'
2 agreed upon search terms;

3 ○ Documents produced in this lawsuit in SL Card's fifth production of
4 documents dated June 29, 2023, and produced at Bates number
5 SLCARD_0343171 through SLCARD_1015359, which includes
6 custodial emails from Linq3 and Incomm responsive to the parties'
7 agreed upon search terms;

8 ○ Documents produced in this lawsuit in SL Card's sixth production of
9 documents dated July 11, 2023, and produced at Bates number
10 SLCARD_1015360 through SLCARD_1207897, which includes
11 custodial emails from Linq3 and Incomm responsive to the parties'
12 agreed upon search terms;

13 ○ Documents produced in this lawsuit in SL Card's seventh production
14 of documents dated July 24, 2023, and produced at Bates number
15 SLCARD_1207898 through SLCARD_1372791, which includes
16 custodial emails from Linq3 and Incomm responsive to the parties'
17 agreed upon search terms and files relating to Linq3's patents;

18 ○ Documents produced in this lawsuit in SL Card's eighth production of
19 documents dated August 1, 2023, and produced at Bates number
20 SLCARD_1372792 through SLCARD_1373105, which includes
21 documents relating to Linq3's QuickTicket trademark;

22 ○ Documents produced in this lawsuit in SL Card's ninth production of
23 documents dated August 8, 2023, and produced at Bates number
24 SLCARD_1373106 through SLCARD_1411029, which includes
25 custodial emails from Linq3 and Incomm responsive to the parties'
26 agreed upon search terms; and

27 ○ Documents produced in this lawsuit in SL Card's tenth production of
28 documents dated August 14, 2023, and produced at Bates number

1 SLCARD_1411030 through SLCARD_1411041, which includes
2 examples of Incomm’s lottery tickets.

- 3 ○ Documents produced in this lawsuit in SL Card’s eleventh
4 production of documents dated June 11, 2024, and produced at
5 Bates number SLCARD 1411042 through SLCARD 1411109,
6 which includes Blackhawk’s response in the 135 Patent IPR.

7 SL Card also incorporates by reference the documents identified in Plaintiff’s Rule
8 26.1 disclosures. SL Card may rely on documents that are produced by any party to this
9 litigation, or any third party produced through discovery. SL Card is continuing its
10 investigation concerning the relevant tangible evidence, documents, or ESI that may be
11 relevant to the subject matter of this action, and will supplement this disclosure as discovery
12 proceeds in accordance with the deadlines set by the Court.

13 **X. ANY INSURANCE POLICY, INDEMNITY AGREEMENT, OR**
14 **SURETYSHIP AGREEMENT UNDER WHICH ANOTHER PERSON MAY**
15 **BE LIABLE TO SATISFY PART OR ALL OF A JUDGMENT ENTERED IN**
16 **THE ACTION OR TO INDEMNIFY OR REIMBURSE FOR PAYMENTS**
17 **MADE TO SATISFY THE JUDGMENT**

17 SL Card is not aware of any relevant insurance agreements, indemnity agreements or
18 suretyship agreements relevant to this action. SL Card is continuing its investigation, and
19 will supplement this disclosure as discovery proceeds in accordance with the deadlines set
20 by the Court.

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1 DATED this 11th day of June 2024.

2 OSBORN MALEDON, P.A.

3
4 By /s/ William D. Furnish

5 David B. Rosenbaum

6 Eric M. Fraser

7 William D. Furnish

8 2929 North Central Avenue, Suite 2000

9 Phoenix, Arizona 85012-2793

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11 SULLIVAN, LLP

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13 1050 Crown Pointe Pkwy, Suite 500

14 Atlanta, Georgia 30350

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18 Attorneys for Defendant and Counterclaimant

1 The foregoing has been emailed this
2 11th day of June, 2024, to:

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23 /s/ Karen Willoughby
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