

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**PATTON BOGGS LLP,**

**Plaintiff,**

**v.**

**UPAID SYSTEMS, LTD.,**

**Defendant.**

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**CIVIL ACTION NO. 2:12cv160**

**COMPLAINT**

Plaintiff, PATTON BOGGS, LLP, presents the following claims and causes of action against Defendant UPAID SYSTEMS, LTD., as follows:

**INTRODUCTION**

1. Plaintiff Patton Boggs LLP brings this Complaint seeking recovery of unpaid legal fees, including contractual interest on unpaid amounts. As of the date of this complaint, Patton Boggs is owed millions of dollars, with interest accruing as per the engagement agreement between the parties.

**PARTIES**

2. Plaintiff Patton Boggs LLP (“Patton Boggs”) is a limited liability partnership organized under the laws of the District of Columbia. Patton Boggs maintains several other offices, including an office in Texas, where several Patton Boggs partners reside.

3. Defendant Upaid Systems, Ltd. (“Upaid”) is a company organized under the laws of the British Virgin Islands, with its principal offices in Tortola, British Virgin Islands and the United Kingdom.

### **JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Venue lies properly in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this district.

5. Defendant Upaid is subject to personal jurisdiction because it utilized Patton Boggs' services in the State of Texas, sent communications into the State of Texas relating to the matters discussed in this Complaint and availed itself of the federal and state court system in this state in the course of utilizing Patton Boggs' services, as described below.

### **FACTUAL BACKGROUND**

6. On or about April 4, 2007, Upaid initiated fraud and patent infringement related litigation against Satyam Computer Service, Limited ("Satyam") in this Court in the case styled *Upaid Systems, Limited v. Satyam Computer Service, Limited*, Case No. 2:07-CV-00114-DF (the "Satyam Litigation").

7. Subsequently, Upaid discharged its initial legal counsel and retained Patton Boggs to become lead counsel in the Satyam Litigation, pursuant to a written engagement agreement dated May 30, 2007 ("the Engagement Agreement"). Patton Boggs' engagement was limited to representation in the Satyam Litigation and did not encompass general corporate or tax advice.

8. As detailed in the Engagement Agreement, Patton Boggs agreed that the normal hourly rates of the partners involved in the Satyam Litigation would be reduced by 40% from Patton Boggs' standard rates. The parties also agreed that:

In return, Upaid additionally agrees to the following success fee applicable to any award of damages or settlement payment arising from this litigation: 4% of the gross of any damages award or settlement proceeds (or a value of any non-cash considerations) agreed to by an enforceable legal document prior to September 17,

2007; 15% of the gross of any damages award or settlement payment (or a value of any non-cash considerations) thereafter.

The above provision, along with the remainder of the Engagement Agreement, is clear and unambiguous.

9. The Engagement Agreement also incorporated by reference the Patton Boggs Standard Terms of Engagement for legal services, which provided in relative part:

We will bill you on a regular basis, ordinarily each month, for both fees and costs and expenses. We generally send our statements out in the second half of the month following the month to which the bill relates. Our statements are payable upon presentation. If any monthly statement is not paid in full within 30 days of its date, we may assess a late charge on the unpaid balance at the rate of 1.0% per month until full payment is made.

10. Patton Boggs zealously pursued the Satyam Litigation for several years, winning virtually all pre-trial motions and putting together a *prima facie* case of fraud and forgery against Satyam. The majority of the work Patton Boggs performed in the Satyam Litigation was through attorneys in the firm's Texas office and involved filings and hearings in this Court. In addition to the main proceeding in this Court, ancillary proceedings took place in state courts in Texas.

11. While the merits of Upaid's claims against Satyam were being favorably developed through the work of Patton Boggs, Satyam imploded in an Enron-like scandal. The Chairman of the Satyam board confessed to massive cooking of the corporate books, and Satyam, once one of the largest companies in India, was placed under the control of the Indian government. The ability of Upaid to collect on any possible judgment against Satyam, regardless of the size, was placed in serious doubt.

12. After the demise of Satyam, Upaid fell behind in payment of Patton Boggs' monthly statements. Upaid paid only a portion of the Patton Boggs' invoice covering third-party

services rendered in February 2009, and made no payments thereafter. During this time, Patton Boggs was gearing up for a trial setting.

13. The trial preparation was extensive. For example, the damage model for Upaid was premised upon Upaid proving that a multitude of third-parties were infringing upon Upaid's patents, which had been compromised by Satyam's fraud and forgery. Some months into the litigation, Satyam determined to challenge the infringement claims upon which Upaid's damage model would be based, resulting in a series of patent cases within a fraud and forgery case, and substantially increasing the scope of issues to be litigated and the total costs of the litigation.

14. As the delinquent bills mounted, Upaid intentionally induced Patton Boggs into continuing to work on the Satyam Litigation by promise of payments. Upaid also confirmed that it was not disputing the Patton Boggs' invoices, and re-confirmed the terms of the Engagement Agreement.

15. The Satyam case was settled shortly before trial through mediation. The initial settlement agreement was the result of late night negotiations and was in skeleton form. It was initially executed by the parties on July 18, 2009. The parties spent weeks thereafter trying to prepare a more formal and more expansive settlement agreement, but to no avail. Finally, the parties simply re-typed the original form and re-signed the settlement agreement in December 2009, with full board approval from both Satyam and Upaid.

16. The Satyam settlement involved substantial sums of money being paid to Upaid in two tranches. Upaid has received most of the settlement moneys, thus triggering the contingent fee portion of the Patton Boggs Engagement Agreement (15% of the gross amount received).

17. Since mid-2009, Upaid has been delinquent in the payment of the agreed hourly rates and costs. During this two and one-half year period, Upaid continued to use Patton Boggs' legal services from time to time, and Patton Boggs continued in good faith to provide such services. These delinquent billings now total \$3,152,534.63, exclusive of interest and any contingent fee due.

18. On January 13, 2012, Patton Boggs made a final written demand on Upaid's corporate counsel for payment of moneys long due under the engagement letter, including agreed hourly bills and costs that had been invoiced, and the contingent fee due on settlement moneys received. No payment of any amount has been made in response to this final demand.

19. Despite the clear terms of the Engagement Agreement, and Upaid's multiple promises and assurances that it would pay Patton Boggs, Upaid has failed and refused to live up to its obligations and its word. Patton Boggs has made reasonable efforts, prior to this suit, to collect from Upaid the moneys properly due and owing under the Engagement Agreement. These efforts have been to no avail, leaving Patton Boggs with no resort but to file this collection suit.

**COUNT I  
(BREACH OF CONTRACT)**

20. Each of the allegations contained in Paragraphs 1 through 19 of this Complaint are incorporated herein as if set forth in full.

21. The Engagement Agreement is a valid and enforceable contract between Patton Boggs and Upaid.

22. Patton Boggs has fully and properly performed all of its obligations under the Engagement Agreement, including diligently pursuing the Satyam Litigation and rendering its

invoices on a timely basis. All conditions precedent to Patton Boggs' entitlement to fees under the Engagement Agreement have occurred.

23. Upaid has materially and repeatedly breached its obligations under the Engagement Agreement by failing to pay the Patton Boggs invoices for agreed monthly fees, costs and expenses, by failing to pay the contingent fee due upon receipt of the settlement moneys, and by failing to pay interest on the unpaid amounts as agreed.

24. As a result of the foregoing, Patton Boggs has been damaged as follows: \$3,152,534.63 in costs and hourly billings, plus 15% of the gross settlement moneys received or to be received by Upaid, along with interest accruing on the unpaid amounts at the contractual rate of 1% per month.

**COUNT II**  
**(DECLARATORY JUDGMENT -- ANTICIPATORY BREACH OF CONTRACT)**

25. The allegations contained in Paragraphs 1 through 24 of this Complaint are reincorporated herein by references as if set forth in full.

26. Upon Upaid's receipt of future settlement moneys from Satyam, Patton Boggs will be due an additional contingency fee equal to 15% of such additional moneys. By failing to pay the amounts already due to Patton Boggs, Upaid has anticipatorily breached the remainder of its obligations under the Engagement Agreement, including the success payment that will be due for the remainder of the settlement payments from Satyam. Patton Boggs is thus entitled to full performance by Upaid at this time, including payment of the contingent fee for future settlement payments from Satyam.

27. A genuine, justiciable controversy exists between the parties regarding Upaid's obligation to pay the entirety of the success fee at this time due to its anticipatory breach of its past financial obligations under the Engagement Agreement. As authorized by the Texas

Uniform Declaratory Judgments Act, § 37.002 et seq of the Texas Civil Practice and Remedies Code, Patton Boggs seeks a declaratory judgment that it is currently entitled to the full amount of its contingent fee, including the 15% of future settlement payments.

**COUNT III  
(ATTORNEY'S FEES)**

28. The allegations contained in Paragraphs 1 through 32 of this Complaint are reincorporated herein by reference as if set forth in full.

29. The Standard Terms of Engagement attached to and incorporated into the Engagement Agreement provide that:

If collection activities are necessary, you agree to pay to us any costs we may incur in collecting the debt, including court costs, filing fees and a reasonable attorney's fee.

30. Accordingly, Patton Boggs seeks recovery of reasonable attorneys' fees for collecting the debt owed by Upaid pursuant to the express terms of the Engagement Agreement, and pursuant to sections 38.001 and 37.009 of the Texas Civil Practice & Remedies Code. All conditions precedent to the recovery of such fees have occurred, including but not limited to presentment and timely demand for payment.

**PRAYER FOR RELIEF**

Wherefore, premises considered, Patton Boggs, as plaintiff, respectfully prays that the Defendant Upaid be cited to appear and answer herein and that Patton Boggs be granted the following damages and relief:

- 1) Money damages owed under the terms of that Engagement Agreement, including the unpaid monthly invoices for time and costs, and the full amount of the contingent fee of 15% of the gross moneys received and to be received in the Satyam settlement;

- 2) Pre-judgment and post-judgment interest as provided in the Engagement Agreement, and/or allowed by law;
- 3) A declaratory judgment as requested herein;
- 4) The costs and reasonable attorneys' fees incurred by Patton Boggs in pursuing this action; and
- 5) Such other relief, at law or in equity, to which Patton Boggs may be justly entitled to receive.

Dated: March 26, 2012

Respectfully submitted,

/s/ John Ward, Jr.

T. John Ward, Jr.

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**ATTORNEYS FOR THE PLAINTIFF**



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury
PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability
610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other
422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
820 Copyrights 830 Patent 840 Trademark
861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609
400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE