

Arkansas  
State Claims Commission  
FEB 20 2014

Please Read Instructions on Reverse Side of Yellow copy  
Please print in ink or type

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Arkansas  
State Claims Commission

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BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- Mr.
- Mrs.
- Ms.
- Miss

Lien Technologies, Inc. Claimant

vs.

State of Arkansas, Respondent  
Dept. of Finance & Admin.

Do Not Write in These Spaces		
Claim No.	14-0631-CC	
Date Filed	February 20, 2014	
	(Month) (Day) (Year)	
Amount of Claim \$	750,000.00 +	
Fund	DFA	

COMPLAINT Breach of Contract

Lien Technologies, Inc. the above named Claimant, of 6701 Turk Road, Texarkana  
(Name) (Street or R.F.D. & No.) (City)  
Arkansas 71854 (870) 773-5436 County of Miller  
(State) (Zip Code) (Daytime Phone No.)  
represented by Mark Burgess, Esquire,  
(Legal Counsel, if any, for Claim)  
of 2301 Moores Lane, Texarkana, Texas 75503 (903) 838-6123 (903) 832-8489 says:  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Phone No.)

State agency involved: Department of Finance and Administration Amount sought: In Excess of \$750,000.00  
Month, day, year and place of incident or service:

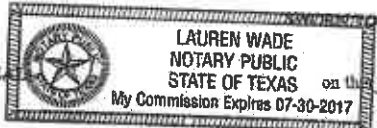
Explanation:  
Beginning in 2007, Lien Technologies, Inc. (Lien) presented the idea and a model of a computer software system (System) to representatives of the Arkansas Department of Finance and Administration (DFA) for the implementation of an Electronic Filing User Interface (EFUI) allowing car dealers, financial institutions, and/or vehicle purchase lenders to quickly issue indicia of registration and title, and the notation of liens on the titles, in connection with the sale and financing of the sale of automobiles. The EFUI would interface with the DFA's Revenue Office Automation System. This system allowed for the streamlining of the vehicle registration and titling process in the State of Arkansas, as it would expedite the receipt of taxes on the sale of automobiles in the State which would tremendously assist in the management and receipt of operational finances for the State of Arkansas. Lien's system did not cost the State of Arkansas anything to operate. The fees and revenues generated by Lien by using the System was through independent contracts between Lien and automobile dealers and banking institutions in the State of Arkansas.  
Representatives of Lien and DFA held a number of in depth and in detail meetings with one another as the DFA evaluated the propriety and usefulness of the System over a period of years. Lien expended thousands of hours of research and hundreds of thousands of dollars in cash and man hours in preparing the necessary procedures and information necessary by the DFA, at the request of the DFA, in order for the DFA to approve the System and agree to enter into a contract with Lien for the implementation of the System. DFA saw a great benefit to the State of Arkansas and the taxpayers and the tax based by utilizing the System. [Explanation continued on separate page and attached hereto and made a part hereof.]

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?  
No when? N/A to whom? N/A  
(Yes or No) (Month) (Day) (Year) (Department)  
and that the following action was taken thereon: N/A  
and that \$ N/C was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address  
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)  
and that the nature thereof is as follows:  
and was acquired on \_\_\_\_\_ in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Mark C. Burgess, Attorney  
(Print Claimant/Representative Name) Mark C Burgess  
(Signature of Claimant/Representative)

and subscribed before me at Boyd + Burgess LLP, Texarkana, TX  
14th day of February, 2014  
(Date) (City) (State) (Month) (Year)  
Lauren Wade  
(Notary Public)



SP1-R/99

My Commission Expires: 7-30-2017  
(Month) (Day) (Year)

[Explanation continued]

A Contract was entered into between Lien and the DFA on the date of November 22, 2010. A true and correct copy of this Contract is attached. This Contract entitled "Electronic Vehicle Record Transaction Agreement" implemented the system described above, and based upon this Contract Lien began negotiations with private third parties, including auto dealers and banks, and entered into License/Services Agreements in which these third parties agreed to utilize the System.

Lien spent a great deal of time and financial resources designing the System, and making specific and detailed changes to the System after negotiations with the DFA began, as requested by the DFA. Such of an outlay of financial resources easily exceeds \$300,000 in value. Lien was not expected to receive a complete return on its investment of time and resources through the implementation of the System for a period of time, until it was implemented fully and Lien had the opportunity to sell more of the License/Service Agreements to other third parties. Lien had begun making great progress in the entering into such License/Service Agreements with third parties after the issuance of the Contract by the DFA. Revenues had begun being received by Lien and Lien was on track, as it planned, to begin realizing a profit from the System that it spent such a great deal of time, effort, and money on developing, presenting to the DFA, and tweaking as per the DFA's requests and requirements.

However on the date of August 9, 2013 the DFA delivered a letter to Lien Technologies, Inc., advising that as of September 26, 2013 the DFA would no longer honor the Contract of November 22, 2010.

DFA's refusal to honor the Contract with Lien was in breach of the Contract between the Parties. The breach of the Contract by DFA was without justification or contractual authority. This breach by DFA has caused Lien to suffer damages including lost profits that would have reasonably been expected to be received during the life of the Contract. Lien detrimentally relied upon the promises and representations of DFA when negotiating, and entering into the Contract, and thereafter when Lien continued to work to enter into License/Service Agreements with third parties for the implementation of the System. Lien's reliance was justified, and lead to not only the loss of hundreds of thousands of dollars of lost profit reasonably expected to be incurred in the future, it also cost Lien hundreds of dollars for the value of labor, ideas and services that were invested in the System and the negotiations of the Contract.

## ELECTRONIC VEHICLE RECORD TRANSACTION AGREEMENT

THIS AGREEMENT is entered into this 22 day of November, 2010, by and between Lien Technologies, Inc., an Arkansas corporation ("LIEN") and the State of Arkansas Department of Finance and Administration, Revenue Division ("DFA") (collectively, the "Parties").

### RECITALS

WHEREAS, LIEN wishes to establish an Electronic Filing User Interface ("EFUI") that allows car dealers, financial institutions, and/or vehicle purchase lenders (collectively, "Dealers") to file car dealer, lender, and customer applications for certificates of title and vehicle registration with DFA, to issue indicia of registration and title in connection therewith, and to create and update lien and other records for vehicle registrations and titles ("Electronic Filing Services"), such EFUI to interface with DFA's Revenue Office Automation System ("ROAS"), as maintained and operated for DFA by the Arkansas Department of Information Systems ("DIS");

WHEREAS, DFA wishes to allow the use of such EFUI to streamline the vehicle registration and titling process in the State of Arkansas, and thus wishes to grant LIEN access to ROAS for the purpose of creating and updating vehicle registration records for the State of Arkansas;

NOW, THEREFORE, in mutual consideration of the covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **1. Definitions.**

- 1.1. "LIEN Host System" means LIEN's computer hardware and software system capable of interfacing with the DIS mainframe system to allow inquiries and updates to ROAS's vehicle-related databases.
- 1.2. "EFUI" means LIEN's Electronic Filing User Interface that establishes an interface for Dealers to the LIEN Host System.
- 1.3. "Dealer License" means the subscription agreement between LIEN and Dealers for the purpose of licensing EFUI to Dealers, and any other agreements between Dealers, LIEN, and/or DFA as may be required for Dealers to use EFUI.
- 1.4. "Indicia" means evidence of title and/or registration, including but not limited to title certificates, license plates, registration certificates, and month and year decals.
- 1.5. "Dealer" means any new or used car dealer, bank approved to accept state funds, financial institution, vehicle purchase lender, or other person that is a party to a current Dealer License in full force and effect.

- 1.6. "Vehicle Record" means any vehicle-related record of DFA maintained on the ROAS.
- 1.7. "Transaction" means a vehicle sale, vehicle lease, vehicle registration renewal, or any other vehicle-related transaction that creates or alters a Vehicle Record by using the LIEN Host System or the EFUI.
- 1.8. "Standards" means the actions, orders, statutes, rules, regulations, opinions, policies, and procedures governing or established by DFA for conducting Transactions relating to Vehicle Records, as applicable to the LIEN Host System and EFUI.
- 1.9. "Electronic Filing Services" means the services provided by LIEN to Dealers whereby Dealers request Transactions via the EFUI and LIEN executes such Transactions via the LIEN Host System.
- 1.10. "Confidential Information" means know-how, designs, computer source code, computer object code, computer executable code, other computer programming code or information, formulations, inventions, processes, methods, customer lists, customer contacts, trade secrets, unpublished patent applications, and other business information that LIEN owns, cultivates, and develops in the course of LIEN's business and is the subject of reasonable efforts to maintain the information's confidential nature. Confidential information includes information protected by state statutes and the Federal Driver Privacy Protection Act. Confidential Information is not information that, at the time of disclosure and as proven by clear and convincing evidence, was available in the public domain or from a third party, was known to the DFA, or was not the subject of reasonable efforts to maintain the information's confidential nature. Further, Confidential Information does not include patents, published patent applications, published documents, publicly available portions of copyright deposits, trademarks, trademark file wrappers, or other intellectual property or intellectual property applications that are in the public domain as proven by clear and convincing evidence.

**2. Requirements to Become Dealer.**

- 2.1. **Written License Agreement Required.** LIEN shall require each Dealer to enter into a Dealer License with LIEN. The Dealer License shall expressly require Dealer to acknowledge the Standards and agree to comply therewith, including compliance with the federal Driver Privacy Protection Act, in order to use Electronic Filing Services. The Dealer License shall be approved by DFA before LIEN may consider the Dealer License to be in full force and effect. DFA shall not unreasonably withhold from approving any Dealer License in a timely fashion. LIEN agrees to prohibit access to Electronic Filing Services for any Dealer deemed to be in violation of the Standards by DFA or LIEN.

- 2.2. **Dealer Requirements.** LIEN shall obtain prior written approval from DFA for each authorized Dealer. LIEN shall provide copies of Dealer Licenses and a list of all authorized Dealers to DFA upon request.
  - 2.3. **Dealer Termination.** LIEN agrees to terminate any Dealer identified by DFA who repeatedly fails to provide proper documentation required for title and registration.
3. **Electronic Interface with ROAS.**
- 3.1. **Development by LIEN.** LIEN shall develop, at its own expense, the LIEN Host System, which will be capable of connecting LIEN with the ROAS's databases, and the EFUI, which shall serve as the Dealer interface to the LIEN Host System. The LIEN Host System and the EFUI shall comply with and be subject to the Standards and to the other terms and limitations in this Agreement.
  - 3.2. **Equipment and Maintenance.** LIEN shall provide at its own expense all hardware, software, equipment, devices, modems, communications facilities, wiring, security devices, and other components necessary to provide a secure communications interface between the LIEN Host System and the ROAS. LIEN shall bear responsibility for maintaining all such components and shall timely repair or replace any component which is faulty or defective. Ownership of all such components shall remain with LIEN. After reasonable notice, LIEN shall have the right to remove any such components physically located upon DFA's premises or premises under the control of DFA upon the termination or expiration of this Agreement. Nothing in this subsection shall be interpreted as requiring LIEN to install, maintain, or repair any hardware, software, equipment, devices, modems, communications facilities, wiring, security devices, or other components owned, licensed, or controlled by DFA. LIEN agrees to update program code and equipment within a reasonable time upon notification by DFA.
  - 3.3. **DFA Assistance with Development.** DFA agrees to cooperate with LIEN to establish the capability for LIEN to create and update Vehicle Records and to perform other Transactions. DFA shall provide reasonable assistance to LIEN in developing the interface between the LIEN Host System and ROAS, including but not limited to the following:
    - 3.3.1. Providing application programming interface specifications;
    - 3.3.2. Authorizing reasonable access to premises and facilities, to the extent necessary for the installation, testing, maintenance, repair, or replacement of any equipment or component of the interface between ROAS and the LIEN Host System, in accordance with DFA and DIS security policies;
    - 3.3.3. Providing pre- and post-implementation testing facilities; and
    - 3.3.4. Giving timely advance notification of future ROAS changes which might affect the interface between ROAS and the LIEN Host System.

- 3.4. **Technical Requirements.** LIEN agrees that the interface it shall develop between the LIEN Host System and the ROAS System shall comply and, during the term of this Agreement, remain in compliance with the technical architecture required by DIS, including but not limited to the security requirements set forth by DIS.
  - 3.5. **Security Requirements.** LIEN agrees to comply with the Standards pertaining to electronic data security. LIEN agrees that the LIEN Host System shall control the flow of all data between Dealers and the ROAS in order to secure and restrict access to the ROAS and its databases. LIEN shall develop procedures for controlling access to the LIEN Host System to ensure that such access is available only to Dealers in good standing who have been properly authenticated.
  - 3.6. **Feature Requests.** LIEN may request that DFA implement new features for the ROAS. DFA agrees to accommodate such requests as legislative and budgetary concerns reasonably allow. If DFA agrees to implement such new features, DFA and LIEN agree to work together to create data models, software specifications, APIs, and other documentation necessary to implement such features in a manner that complies with DFA's architectural and security requirements.
4. **Access to ROAS and Authorization to Conduct Transactions.**
- 4.1. **Access to ROAS Granted.** In consideration for LIEN's assistance in updating and maintaining the ROAS databases, the sufficiency of which DFA hereby acknowledges, DFA grants, and agrees to authorize DIS to grant, LIEN and Dealers direct, online, real-time access to ROAS at no cost to LIEN or Dealers. DFA agrees to accept the appointment of Dealers who use Electronic Filing Services as a limited electronic agent of DFA for purposes of conducting Transactions relating to Vehicle Records. LIEN shall receive no compensation from DFA, but shall accept as full consideration the ability to charge participation fees to Dealers in LIEN's discretion.
  - 4.2. **Permissible Uses of ROAS.** Access to ROAS by LIEN and Dealers shall be limited to the electronic access to and submission of Vehicle Records, including the following:
    - 4.2.1. Applications for new vehicle registration, certificates of title, and liens or other security interests;
    - 4.2.2. Applications for transfer of vehicle registrations, certificates of title, and liens or other security interests;
    - 4.2.3. Applications for vehicle registration renewal; and
    - 4.2.4. Payment of all fees and taxes associated with the foregoing.
  - 4.3. **Dealer Training.** LIEN shall require in the Dealer License that each Dealer must disclose the identity of all authorized Electronic Filing Services users and provide

training to such users regarding the proper usage of Electronic Filing Services, including the constraints upon use and disclosure of the information retrieved from or submitted to ROAS or the LIEN Host System. Upon reasonable request, DFA and LIEN shall exchange any lists of authorized users of Electronic Filing Services.

- 4.4. **Impermissible Uses of ROAS.** Each Dealer License must contain prohibitions against, *inter alia*, the dissemination of Dealer Electronic Filing Services account information or the use of Electronic Filing Services by an unauthorized person.
  - 4.5. **Distribution of Indicia to Dealers.** DFA will make available to LIEN sufficient supplies of Indicia as reasonably necessary for LIEN to provide Indicia to Dealers utilizing Electronic Filing Services, subject to inventory control and bookkeeping requirements of DFA. As a condition for using Electronic Filing Services, LIEN shall require Dealers to comply with approved methods of securing and protecting Indicia from unauthorized access and use. DFA will make available license plates and month expiration decals. LIEN must obtain at their own expense registration certificates and year expiration decals from a vendor approved by DFA.
  - 4.6. **Issuance of Indicia by Dealers.** DFA grants authority to LIEN and any Dealer who submits a Transaction to issue Indicia for such Transaction. LIEN shall confirm that the Dealer, person, or entity on whose behalf the Transaction is submitted has paid all appropriate taxes and fees to DFA. LIEN shall also confirm that the person or entity on whose behalf the Transaction is submitted has assessed county personal property taxes for the appropriate year, has paid county personal property taxes for the appropriate year, and has proof of current liability insurance. Issuance of Indicia shall be subject to the Standards.
  - 4.7. **Suspension and Termination of Access Privileges.** DFA or LIEN may, without notice, suspend or terminate the access privileges of any Dealer upon the breach of any responsibility established pursuant to a Dealer License.
5. **Financial Terms.**
- 5.1. **Surety Bond Required for Live Electronic Filing Services.** LIEN agrees to post a \$1,000,000 surety bond payable to DFA to guarantee performance of the promises, conditions, and obligations herein and as may be agreed to in writing by LIEN and DFA. Such bond shall be posted prior to any live post-implementation, beta, or pilot testing of the LIEN Electronic Filing Services that require the actual collection of fees or taxes in connection with the execution of Transactions. DFA may draw upon such bond up to the amount of the actual damage incurred by DFA or the face amount of the bond, whichever is less, upon written notification to LIEN by DFA of confirmation of a breach by LIEN of any provision of this Agreement. Actual damages incurred by DFA in excess of the face amount of the bond shall be grounds for termination of this Agreement.

- 5.2. **Audits.** DFA may perform an audit of LIEN's records upon ten (10) business days' notice. The audit shall be performed by a DFA auditor at DFA's expense. DFA may perform problem audits upon identification of accounting anomalies, and may also perform annual audits to determine inventory levels and proper payment of taxes and fees owed to DFA.
- 5.3. **Notice of Insufficient Funds.** LIEN shall bear the responsibility for collecting all sums for which a bank has issued a notice of insufficient funds.
6. **Equal Access.**
- 6.1. **Additional Service Providers.** DFA reserves the right to contract with other parties ("Additional Service Providers") who wish to provide electronic filing systems and services in the State of Arkansas, but DFA agrees to contract only with Additional Service Providers who agree to be bound and who abide by the Standards. Together, LIEN and Additional Service Providers who agree to be bound and who abide by the Standards shall be referred to as "Certified Service Providers".
- 6.2. **Terms and Incentives.** DFA shall extend to LIEN the benefits of the most favorable terms (including any advertising, publication, promotion, discount, rebate, reduction, pricing, revenue sharing, access fees, certification requirements, or other term or incentive) offered to or enjoyed by other Certified Service Providers, in substantially similar form and format. DFA shall use reasonable efforts to inform LIEN of any terms offered to other Certified Service Providers that could be considered more favorable than the terms contained herein. At the written request of LIEN, any more favorable terms offered to another Certified Service Provider shall be deemed a part of this Agreement.
- 6.3. **Surety Bond Requirements.** DFA agrees that it will not contract with any other Certified Service Provider unless such Certified Service Provider posts a surety bond with the DFA in an amount equal to or greater than the surety bond posted by LIEN, as provided for herein.
- 6.4. **DFA May Implement Own System.** There shall be no prohibition on DFA implementing its own system to provide services similar to Electronic Filing Services as may be required in the future by the Arkansas Legislature.
7. **Term and Termination.**
- 7.1. **Term.** The term of this Agreement shall be seven (7) years from the date of execution of this Agreement.
- 7.2. **Termination for Cause.** This Agreement may be terminated for cause. In the event of material default by either party, the other party shall give the breaching party written notice of the breach and a specific request for the correction sought. The breaching party shall have thirty (30) days to cure the breach. If the breach is not cured by the breaching party within the thirty (30) day period, the other party

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may terminate this Agreement by giving written notice of such termination to the breaching party. Events giving rise to default are as follows:

- 7.2.1. Material and continuing failure of LIEN to maintain the availability of any of the Electronic Filing Services;
- 7.2.2. Material and continuing failure of DFA to maintain or to make available the ROAS in such a manner as to enable LIEN to maintain the availability of any of the Electronic Filing Services;
- 7.2.3. Material and continuing failure of either party to maintain appropriate data security, as defined in this Agreement and the Standards;
- 7.2.4. Material breach of the confidentiality provisions of this Agreement;
- 7.2.5. Material and continuing failure by LIEN to update software or equipment within a reasonable time after written request by DFA; and
- 7.2.6. Material breach of any other obligation in this Agreement.

**8. Intellectual Property.**

- 8.1. **Owned by LIEN.** LIEN retains ownership of all copyrights, works of authorship, computer source code, computer object code, computer executable code, trade secrets, know-how, designs, formulations, inventions, processes, methods, customer lists, customer contacts, trademarks, service marks, patents, patent applications, Confidential Information, and other business information (the "Intellectual Property") generated or created by LIEN in the course of its business, including but not limited to the components of EFUI and the LIEN Host System involved in providing the Electronic Filing Services.
- 8.2. **Not Owned by LIEN.** LIEN does not claim ownership of intellectual property owned, licensed, or controlled by DFA.
- 8.3. **Warranties by LIEN.** LIEN represents and warrants that EFUI, Lien Host System, hardware, software, equipment, devices, modems, communications facilities, wiring, security devices, and other components used by LIEN to implement Electronic Filing Services, any combination thereof, and the use thereof, do not violate or infringe any U.S. patent, copyright, trade secret, or any other proprietary right of any third party of which LIEN has knowledge.
- 8.4. **Warranties by DFA.** DFA represents and warrants that ROAS, the interfaces provided to LIEN to access any system of DFA, any hardware, software, equipment, devices, modems, communications facilities, wiring, security devices, and other components used, designed, specified, or required by DFA, any combination thereof, and the use thereof, do not violate or infringe any U.S. patent, copyright, trade secret, or any other proprietary right of any third party of which DFA has knowledge.

- 8.5. **Use of Names and Trademarks.** LIEN may use DFA's name or any trademarks owned by DFA to state or advertise that LIEN is a Certified Service Provider of Electronic Filing Services, but may not use DFA's name or any trademarks owned by DFA to state or imply that DFA recommends LIEN's Electronic Filing Services to the exclusion of other Certified Service Providers. DFA may use LIEN's name or any trademarks owned by LIEN to state that LIEN is a Certified Service Provider. Any use by either party of the other party's name or trademark must be approved in writing prior to such use.
- 8.6. **Trade Secrets.** The parties acknowledge that the Intellectual Property owned by LIEN contains material that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- 8.7. **Confidentiality.** Except as otherwise provided, DFA agrees to maintain Confidential Information disclosed to DFA by LIEN in the strictest confidence as, *inter alia*, software acquired by purchase, lease, or license, and will not disclose such information to any third party, including any third party seeking such information pursuant to a request under the Freedom of Information Act or other similar law. Such obligation shall continue notwithstanding the termination of this Agreement until all information disclosed to DFA by LIEN has entered the public domain, as proven by clear and convincing evidence.
- 8.8. **Judicially-Order Disclosure.** Notwithstanding any provision in this Agreement to the contrary, DFA may disclose any information obtained from LIEN pursuant to a valid court order. If such a court order issues, DFA shall, to the extent practicable, seek a protective order governing the disclosure of such information.
9. **Liability.**
- 9.1. **Remedies Available to DFA.** Unless otherwise stated herein, DFA's sole remedy under this Agreement is the right to draw upon the corporate security bond required by this Agreement. LIEN shall not be liable for any further monetary damages, including damages resulting from the loss or disclosure of data, the use of products, or the performance or non-performance under this Agreement, whether or not LIEN was advised of the possibility of or intended the natural result of such damages. Except to the extent of non-payment or partial payment of taxes and fees, DFA shall not be entitled to monetary damages for any cause of action relating to the unavailability, interruption, delay, or inaccurate or incomplete transmission of data during the commission of Electronic Filing Services; in such situation, LIEN shall make such services available or to correct or complete such transmission of data as promptly as reasonably practicable.

- 9.2. **LIEN Required to have Business Insurance.** LIEN shall maintain a business liability insurance policy sufficient to cover foreseeable third party claims for negligence acts.
- 9.3. **Liability for Dealer Actions.** LIEN shall not be liable for any act or omission by any Dealer unless, by clear and convincing evidence, such act or omission occurred with the knowledge, concurrence, and participation of LIEN.

**10. Miscellaneous.**

- 10.1. **Notice.** Any notice pursuant to this Agreement shall be in writing, shall sent by courier or mail with delivery confirmation, and shall be deemed given as of the date of delivery, as confirmed by courier tracking or return receipt. Unless another address is provided in writing, notices shall be addressed as follows:

<p><b>TO LIEN:</b>  Lien Technologies, Inc.  6701 Turk Road  Texarkana, AR 71854</p>	<p><b>TO DFA:</b>  Administrator, Office of Motor Vehicles  P.O. Box 1272  Little Rock, AR 72203</p>
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- 10.2. **Force Majeure.** Except for obligations to make payments, if any, neither party shall be liable to the other if the fulfillment or performance of any terms or provisions of this Agreement is delayed or prevented by civil insurrection, wars, terrorist acts, fires, floods, government (other than DFA) action, order, statute, ordinance, rule, or regulation, or any other causes not within the reasonable control of LIEN or DFA through the exercise of reasonable diligence.
- 10.3. **Warranty.** LIEN disclaims all warranties not specifically made herein, including the implied warranties of merchantability and of fitness for a particular purpose.
- 10.4. **Non-Discrimination.** In connection with performance under this Agreement, LIEN agrees to refrain from discriminating against any employee or applicant for employment on the basis of race, color, religion, sex, age, marital status, disability, or national origin, in compliance with Federal and State law.
- 10.5. **Relationship of the Parties.** When acting under this Agreement, LIEN is acting as an agent of DFA and serves in a fiduciary capacity.
- 10.6. **Additional Instruments.** The Parties agree to execute and deliver such other and further instruments and all notices, releases, and other documents that are necessary to fully implement the terms of this Agreement.
- 10.7. **Additional Warranties.** The Parties agree to abide by the terms, conditions, provisions, covenants, and agreements contained in this Agreement. The Parties further agree to abide by the spirit of this Agreement and to fulfill all obligations under this Agreement in good faith.

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- 10.8. **Persons Bound.** The Parties agree that this Agreement shall inure to the benefit of and be binding upon the Parties and their respective agents, employees, successors, assigns, and legal representatives.
- 10.9. **Entire Agreement.** Except as otherwise provided herein, this Agreement along with other documents executed herewith constitute the entire agreement between the Parties pertaining to the subject matter contained herein.
- 10.10. **Amendment.** This Agreement shall not be modified or amended except by written agreement signed by all of the Parties.
- 10.11. **Choice of Law.** The laws of the State of Arkansas shall govern the validity, construction, interpretation, administration, and enforcement of this Agreement, and the Circuit Court of Pulaski County, Arkansas shall have jurisdiction and venue over disputes arising out of this Agreement.
- 10.12. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable under present or future laws, such provision shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.
- 10.13. **Captions not Binding.** All titles, headings, and captions in this Agreement are for convenience only and are in no way binding on the interpretation of this agreement.
- 10.14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same agreement. Any facsimile signature on this Agreement shall be as effective as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first indicated above.

LIEN TECHNOLOGIES, INC.

Title of Authorized Agent

*President*

  
Signature of Authorized Agent

*Toney Livingston*  
Name of Authorized Agent

ARKANSAS DEPT OF FINANCE &  
ADMIN., REVENUE DIVISION

Michael D. Munns  
Signature of Authorized Agent

MICHAEL D. MUNNS  
Name of Authorized Agent

ASSISTANT COMMISSIONER  
Title of Authorized Agent

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

Arkansas  
State Claims Commission

MAR 18 2014

RECEIVED

LIEN TECHNOLOGIES, INC.

CLAIMANT

VS.

CLAIM NO. 14-0631-CC

STATE OF ARKANSAS,  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION

RESPONDENT

**RESPONDENT'S ANSWER**

Comes now the Respondent, State of Arkansas, Department of Finance and Administration, here in after, DFA, by and through its attorney, Todd G. Cockrill, who submits this Answer to Claimant's Complaint:

1. Respondent denies each and every allegation contained in the Claim filed herein.
2. Respondent affirmatively states that the document referred to by the Claimant does not constitute a contract of any kind. In Arkansas, in order for a contract to exist, there must be: (a) competent parties, (b) subject matter, (c) legal consideration, (d) mutual agreement, and (e) mutual obligations. *Kearney v. Shelter Ins. Co.*, 71 Ark. App. 302, 29 S.W.3d 747 (2000). The agreement referred to by the Claimant fails for want of consideration and mutual obligations of the parties.
3. Respondent pleads that pursuant to Arkansas Claims Commission Rule 1.5(e) Claimant has failed to provide an itemized outline of the damages sought and the overall total claimed in a monetary amount, and the complaint should be dismissed.

4. The Respondent pleads the additional affirmative defenses: estoppel, failure of consideration, failure to properly mitigate damages, impossibility, intervening or supervening cause, and lack or failure of mutual obligations.

5. The Claimant's failures to sufficiently plead are not merely technical violations of the Rules; they unduly prejudice the Respondent in preparing a responsive pleading to adequately protect the resources of the taxpayers of the State of Arkansas.

6. Respondent affirmatively states the claim should be dismissed pursuant to Arkansas Claims Commission Rule 1.5 and Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state a claim or cause of action upon which relief can be granted.

7. Claimant should be put to strict proof with respect to his claim, and should be held to strict proof in regard to his damages.

8. Respondent reserves the right to amend its Answer upon discovery of further evidence related to this claim.

9. Should the Commission approve the Claim, Respondent shall provide the appropriate fund code for payment of the claim.

WHEREFORE, premises considered, Respondent prays that the Commission dismiss Claimant's Complaint, and for all other relief to which it may show itself entitled

Respectfully Submitted,

DFA/REVENUE DIVISION  
STATE OF ARKANSAS

By:



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**CERTIFICATE OF SERVICE**

I, Todd G. Cockrill, on this 18<sup>th</sup> day of March, 2014, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the Claimant's attorney by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

Mark Burgess  
Attorney at Law  
2301 Moores Lane  
Texarkana, TX 75503



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Todd G. Cockrill  
Attorney for Respondent



IN THE ARKANSAS STATE CLAIMS COMMISSION

LIEN TECHNOLOGIES, INC.

VS.

STATE OF ARKANSAS

DEPARTMENT OF FINANCE AND ADMINISTRATION

CLAIM NO. 14-0631-CC

Arkansas  
State Claims Commission  
CLAIMS

JUL 07 2014

RECEIVED

RESPONDENT

Pre-Hearing Brief of Lien Technologies, Inc.

Comes now, Lien Technologies, Inc., and for its brief of the issues and evidence prior to the hearing set for August 14, 2014, would respectfully show unto the Commission the following in support of its claims:

**I. Introduction:**

Lien Technologies, Inc., is an Arkansas Incorporated entity in good standing with the State of Arkansas. Lien Tech and its principals, Toney Livingston and Sandy Livingston, developed an idea and process to assist the State of Arkansas in the collection of tax revenue generated upon the sale of motor vehicles to citizens of the State of Arkansas, and for the expedited filing of motor vehicle titles and liens with the State upon the conclusion of such sales. The best part of this process was that this process cost the State of Arkansas nothing, and greatly enhanced the State's recovery of tax dollars, even if only by the recognition of the time value of money created by the process of expediting the recovery of tax dollars upon sale of motor vehicles in the state of Arkansas, reducing the time from an average of 30 days to 1-2 days after the conclusion of a sale. A contract was entered into between Lien Tech and the Arkansas Department of Finance and Administration (DFA), dated November 22, 2010, entitled "Electronic Vehicle Record Transaction Agreement". The process developed by Lien Tech involved many thousands of dollars and hours of labor and effort incurred after receiving the 7 year contract from the DFA to implement its plan. However, the contract was breached by the DFA without any warning, or any valid legal or contractual right by the DFA by the DFA's letter dated August 9, 2013. Lien Tech has suffered damages for which seeks and is entitled to recover in this action.

Lien Technologies references the Commission to the Complaint it has filed in this action for a more detailed description of the nature of the system that was the subject of the Contract between Lien Technologies, Inc. and the State of Arkansas that is the subjection of the present action.

**II. Documents Provided with Lien Tech's Brief:**

1. Contract between Lien Tech and the DFA – dated November 22, 2010
2. Letter from the DFA dated August 9, 2013 rescinding the Contract of November 22, 2010.
3. Lien Technology, Inc.'s Answers to Interrogatories.
4. Deposition of Toney Livingston, with exhibits attached

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5. Deposition of Ken Williams of the DFA, with exhibits attached
6. Deposition of Dr. Mike Casey, with exhibits attached
7. Deposition of Greg Ashby, with exhibits attached.
8. Invoices to Lien Technologies, Inc. from Third Parties.

### III. Legal Arguments:

1. There is no evidence presented to justify the breach of the Contract by the DFA. Therefore the DFA is liable to Lien Tech for damages.
2. Lien Tech has suffered damages based upon the reasonable expected profits to be generated under the Contract, as supported by its expert witness Dr. Mike Casey.
3. In the alternative, Lien Tech is entitled to recover reliance and restitution damages for the value of the services and work incurred and undertaken by Lien Tech in implementing the agreement in reliance upon the DFA to honor the contract, and for the amount of expenses incurred that Lien Technologies has no ability to recover now that the Contract with the State was improperly terminated.

### IV. Evidence Supporting Arguments.

#### 1. Deposition of Toney Livingston: (numbers in parenthesis are the page numbers of Mr. Livingston's deposition testimony)

Mr. Livingston is a resident of Texarkana, Arkansas. (5) He is married to Sandra Livingston. (7) He has 15 years of banking experience, the last nine years being with Wells Fargo Bank. (7)

Lien Tech was incorporated in the year 2007. Mr. Livingston is president and CEO PO and his wife is treasurer and secretary. Dr. Mike Casey is vice president. (14-15)

Mr. Livingston first came up with the idea of Lien Technologies, Inc in 2007. The idea arose from his experience in banking, because it always been a struggle to perfect a lien on vehicle titles in the State of Arkansas. After frustration developed on a particular loan, Mr. Livingston came up with the idea of the system that was the ultimate process implemented in the contract between the Lien Technologies, Ind. and the DFA. (9-10) Mr. Livingston thereafter approached the State of Arkansas with his idea in October 2007, and spoke to Mr. Richard Weiss of the DFA. Others in their original meeting were John Theis, Tim Leathers, and Candace Franks of the DFA. (10) These meetings occurred at the DFA's office in Little Rock. (11) While in the original meeting Mr. Livingston presented the substance of the idea, explaining it allowed for integration with the State's systems to provide a web-based program for banks, credit unions, and car dealers to go on line to register vehicles. (11-12) During this first meeting, and at its conclusion, Mr. Richard Weiss of the DFA stated to Mr. Livingston "well, if y'all are going to do our job for us and not charges, let's see what we can do." (12) At the conclusion of the meeting, everyone got up and shook hand Mr. Livingston was informed by the DFA that they would "get

in touch with a couple of guys who will help you (Mr. Livingston) with this project." It was thereafter Mr. Livingston meet with Mike Munns and Roger Duren of the DFA. (12)

It was proximally a month later that Mr. Livingston first met with Mike Munns, Roger Duren, and Ken Williams.(13) In this meeting they talked about strategy, i.e., what Lien Tech wanted to do, and Roger Duren gave Mr. Livingston a copy of the contract that the State had with a company named Computerized Vehicle Registration, CVR, and they said there are a lot of holes in that contract. CVR had entered into a contract with the State of Arkansas, providing a similar product and system as was being proposed by Lien Technologies, Inc. Mr. Livingston was advised that the State was not happy with CVR's application, so that's when the contract negotiations began with Lien Tech and the State began. (13)

Lien Tech's business model was for their computer system to link with the State, to provide an opportunity for a banker or a car dealer who had a customer come in to purchase a motor vehicle, who received finance approval, to log into the Lien Tech system. They could thereafter input the information just as the Revenue Office would to register the vehicle, and also provide documentation. It would be 100% electronic which allowed for the scanning of documents and uploading them to the State, a one-stop process. (13-14) The customer would not have to go to the revenue office, and could sign all the documentation and everything that was needed at the bank or car dealership. The taxes would be paid online.

Mr. Livingston became aware of the motor vehicle registration and lien process through research and study, and had knowledge from being Arkansas resident, plus from his experience as a lender in the State of Arkansas.(15-16)

Mr. Livingston stated that he had a couple meetings with the State in 2007 regarding the project, a few in 2008, and then began meeting again in 2009. Everything began to pick up in the year 2010 when Mike Munns and Roger Duren met with him on a couple of occasions. (17) The DFA wanted Mr. Livingston to approach the State regarding the project, and Mr. Livingston advised the DFA that he was not going to spend the enormous amount of money required to get the project going until they had an agreement. It was at that time that they started working on the agreement, getting it where it was satisfactory for both sides. (18)

There were approximately five revisions to the contract that was eventually signed between Lien Tech and the State. (21) The contract was eventually signed on November 20, 2010. (21) Mike Munns signed the contract on behalf of the State. It was signed in Mr. Mike Martin's office in Little Rock Arkansas, and Mr. Livingston went up to Little Rock to pick it up. (21)

When the agreement was signed on November 22, 2010, the system did not exist.(24)

While negotiations were undergoing with the DFA, Mr. Livingston was trying to find funding for Lien Technologies. (25) He found shareholders Rick and Melissa Doty to pledge \$100,000. (25) The company Data Cast, Inc, put the system together or Lien Technologies, a system which was valued at around \$200,000. (26) Mr. Livingston did not go through bank loans of any kind, raising funding through investors only. (26) A man name Elton Buck pledged

\$50,000 to Lien Technologies, Inc which was actually pulled into the company, and which was subsequently pulled back out. (26)

Mr. Livingston discussed the document entitled Lien Tech Valuation, that was produced in Lien Technology, Inc.'s discovery responses, which gave a pro forma spreadsheet of expected profits of the company during the life of the contract. (27) Mr. Livingston and Dr. Mike Casey created this document.(28) It was created in February 2014, in preparation of the claims commission hearing. (30) This documents marked as Exhibit 2 to Mr. Livingston's deposition. (31)

Mr. Livingston met Dr. Mike Casey in the year 1997 or 1998, while a student in college. Dr. Casey was his finance professor. (43-44)

Exhibit 3 to Mr. Livingston's deposition was a separate pro forma financial document created based on the presumption of a monthly subscription price to be entered into with Lien Technologies and its customers. Lien Tech envisioned having a monthly subscription fee of \$275 and a rate per title of \$10 with his customers who would implement the contract under this proforma statement.(32-33)

Exhibit 4 to Mr. Livingston's deposition was a separate pro forma spreadsheet, prepared in 2008. (33) It was prepared prior to the signing of the original contract in November 2010. (34) The pro forma marked as exhibit 4 was presented to his investors. (36) Dr. Mike Casey worked with Mr. Livingston in preparation of all of these pro forma statements. (36)

In preparing the pro forma statements, Mr. Livingston talk to a lot of car dealers and a lot of financial institutions and receive some data from the State of Arkansas that told them how many titles were processed each year in the State of Arkansas. It was this information used to provide the assumptions that Mr. Livingston came up with in creating the pro forma statements. Some banks told him they would do 100 transactions a month, and some did 400 a month. (37-38) Mr. Livingston determined that the State of Arkansas had over 900,000 title transactions per year. (38)

After the contract with the State of Arkansas was signed in November 2010, Mr. Livingston met with Summit Bank, Texar Federal Credit Union in Texarkana, and Robbins Toyota of Texarkana. (40) His company also sent out letters and made phone calls to approach potential customers to use the service. (40). His company approached more than 25 potential customers. (41) They included banks, credit you, and car dealers. Lien Tech signed four agreements with customer after the November 2010 contract was signed, with Robbins Toyota, First Security Bank, Commercial National Bank, Harry Robinson GMC, and Robbins Toyota. (42) Attached as exhibits six and seven respectfully to Mr. Livingston's deposition were Lien Technology's service agreements with Robbins Toyota and Harry Robinson Buick GMC, both were executed 2012.(42) Exhibit 8 is a service agreement between Lien Technologies and First Security Bank on January 5, 2013. (43)

Exhibit 9 to Mr. Livingston's deposition was a service agreement between Lien Technology, Inc. and Commercial National Bank dated January 8, 2013.(43)

Richard and Melissa Doty pledge \$100,000 to Lien Tech, and put \$50,000 upfront into the company with agreement that would put in more money at specific times. In April 2007 there was a \$50,000 deposit into Lien Tech's bank account, representing the Doty's contribution. (49)

Lien Tech also entered into a shared earned equity agreement with Datacast, Inc. in the year 2011. (50) Data Cast's principal owners Greg Ashby and Mary Bird received stock in Lien Technology as a result of this agreement.

Mr. Livingston stated that he and his wife and he loaned company approximately ten thousand dollars. (51) Lien Technology has not paid he and his wife back any of the money. (51)

Exhibit 10 to Mr. Livingston's deposition contains all the profit and loss statements for the company Lien Technologies. (55)

Although the contract was signed in November 2010, Lien Technologies did not go live with the service until March of April 2012, which indicates the large amount of time and effort it took to get the company up and running after the contract was signed. (56) When Lien Technologies went live after the contract was signed, they ran the business in an office. They had a lady named Marcy Templeton was a title clerk on a full-time basis. They had a lady named Garth Burns, who was formerly a 30 year veteran with state of Arkansas who managed to Texarkana Revenue Department. (60) Lien Technologies thereafter hired Lakesha Burns and Samantha Drabble as employees. (61)

Lien Technologies is still in good standing with the State of Arkansas, and a viable company. It is not operating. (59)

In August 2013 the company ceased operations. (59) Mr. Livingston received a phone call and voicemail from Roger Duren and David Foster of the DFA in July 2013, and when he called back David Foster he was on speaker phone and Roger Duren was present. Mr. Livingston was informed by Mr. Foster that the DFA was not going to be able to do business anymore under the contract. (59) Mr. Livingston received an email from Mr. Foster in August 9, 2013, with a copy of the letter revoking the contract by the DFA. (60)

When Mr. Livingston got the call from the State of Arkansas in 2013 advising the contract would be revoked, Mr. Livingston have been negotiating with Summit Bank and Texar Federal Credit Union in Texarkana as potential new clients. The week that the State called to cancel the contract, Summit Bank had called him and said they were going to train and use the product, the following week Texar Federal Credit Union had some meetings and advised Mr. Livingston they were going to begin using the product. (70) Of course, because the state had revoked the contract, these clients were not able to be secured by Lien Technologies.

Mr. Livingston estimated that he had at least 4000 hours of his own time at a rate of \$75 an hour in starting at the company. (74) Approximately 40% of that time was spent prior to the signing of the contract in 2010. (76) Mr. Livingston was never informed specifically why the DFA was canceling the contract. (77-78)

**2. Deposition of Ken Williams of the DFA (numbers in parenthesis are the page numbers of Mr. Williams' deposition testimony)**

Mr. Ken Williams was the witness for the Department of Finance and Administration who was produced per agreement between counsel for the parties as the designated witness for the DFA who could testify as to all six of the noticed topics contained in an email dated June 13, 2014 from counsel for Lien technologies to counsel for the DFA, which can be seen on page 3 of Exhibit 1 to Mr. Williams' deposition transcript which is being provided to the Commission with Lien Technologies' brief. Therefore, Mr. Williams is an individual who has bound the DFA to its legal positions on the topics set out in exhibit 1, pursuant to Arkansas Rules of Civil Procedure, Rule 30 (b) (6) notice.

Mr. Williams is the administrator over the Office of Information Services, which is the IT department of the Department of Finance and Administration. (5)

Mr. Williams has been employed by the State of Arkansas for 15 years. (6) His first job for the State in 1999 was in the IT department for revenue. The department that he is currently in was a consolidation of all the IT offices within the DFA. (8)

A key area for the Commission to look at is contained in paragraph three of the DFA's letter of August 9, 2013. In this paragraph, the DFA advised Lien Technologies, that it had spent approximately a year working with developers to develop a entirely new motor vehicle system to prepare to make it operational. The letter states that the new system was being designed with security features that are required by certain provisions of federal law, as well as enhance customer support capabilities. The DFA's letter of August 9, 2013 includes in paragraph 3 the statement that "among other changes" the security features require significant limitations and access to the system by persons who are not DFA employees.

When Mr. Williams was asked about any provisions of federal law that were cited in the August 9, 2013 letter that have the security features that require significant limitations and access to the system, he responded that would be the DPPA. Mr. Williams could not explain what this acronym stood for. However when questioned about the law, he stated that it was not "brand-new". He stated it has been out there for a while and did not know when it was first in active. (16) However Mr. Williams admitted that there was nothing substantial that happened after the date of November 22, 2010, the date that the contract between Lien Technologies and the DFA was signed, that happened regarding the DPPA and any other security restrictions. (19)

The topics upon which Mr. Williams was produced to testify, as can be seen on page 3 of Exhibit 1 to his deposition, refer to and integrate particularly the substance of the letter from the DFA to Lien Technologies, dated August 9, 2013, which is attached as Exhibit 3 to Mr. Williams' deposition. This is an important fact because the grounds given by the DFA in the letter dated August 9, 2013, set out the "defenses" of the DFA to the contract, and provides the only argument available to the DFA that it had a right to terminate the contract. However, the testimony of Mr. Williams, as a designated spokesman for the DFA on the issues set out in exhibit 1 to his deposition, show that the DFA has no valid argument whatsoever allowing it to cancel the contract.

Mr. Williams further admitted that the DPPA, and the concerns he had with security of the state system, were all present before November 22, 2010. (19) No change in law occurred after the contract was signed to allow for the DFA to revoke the contract, pursuant to paragraph 10.2 of the Contract as discussed further below. Mr. William admitted that all the concerns that he personally had with security of the DFA system were all present before November 22, 2010. (19)

When looking at the Contract between the DFA and Lien Technologies which is at issue in this case, the Commission will note that there are very limited grounds for the DFA to cancel or terminate the contract, none of which are present in this case.

These grounds include paragraph 10, entitled "Miscellaneous", subparagraph 10 point 2, entitled Force Majeure.

Paragraph 10.2 provides an "out" for the DFA, for the reasons stated therein but most particularly if there is "... Government (other than DFA) action, order, statute, ordinance, rule, or regulation, or any other causes not within the reasonable control of lien or DFA through the exercise of reasonable diligence.

Mr. Williams' testimony clearly establishes that there was no government action, order, statute, ordinance, rule, regulation that arose after the contract was signed that prevented the continued operation of the contract.

Mr. William stated that he first became aware of the Lien Technologies contract, Exhibit 2 to his deposition, when there were conversations going on about the contract and he was brought in when the DFA was considering the contract, and before it was signed. Mr. Williams was asked to determine and look at it from a systematic standpoint. (20) Mr. William stated Mike Munns talked to him about the contract before it was signed. (20). Mr. William stated that he provided oversight when Lien Technologies was developing the system to connect with the then existing ROA system of the DFA. (20)

When asked specifically why the contract with Lien Technologies was canceled, Mr. William stated it was due to the DPPA and "security in general". Mr. Williams stated that the DPPA was one of the things that did not relate to motor vehicle. (21) Again, this law existed before the execution of the contract, and cannot be relied upon by the DFA to cancel the contract with impunity.

Mr. Williams agreed that the Lien Technologies program would cut the time it took to have liens filed upon the sale of a vehicle. (36)

Mr. Williams was part of the decision, and was consulted by David Foster and others at the DFA, when the August 9, 2013 termination letter was written to Lien Technologies. (38) When asked why Lien Technology was not given the opportunity to adapt its system to do the same thing the contract provided, under the new computer system that the DFA was implementing, Mr. Williams stated the discussions at that time of the DFA surrounded security.

Mr. William stated that in regards to the preparation of the August 9, 2013 letter to the Lien Technologies, that to his knowledge no one ever notified Lien Technologies of the pending cancellation. (45) He stated that he remembered people saying during these conversations that they ought to let Lien Technologies know there was a possibility of having their contract canceled. (46). The letter of August 9, 2013 states that the new system that Mr. Williams testified about, that removed the Lien Technologies system from operation, had been under design for approximately a year. (See paragraph three of Exhibit 3) Mr. William stated that he understood that the individuals with Lien Technologies are upset, that when they received the letter of August 9, 2013, and found that it been something contemplated for over a year while they had been working on the contract. (46) This demonstrates that the position of Lien Technologies in this claim is reasonable when they request that they be compensated for the losses they incurred.

Mr. William stated that he would not be able to testify that Lien Technologies was ever given any pre-warning that the contract would be canceled before the August 9, 2013 letter was written. (46-47). Because Mr. Williams is the only person for the DFA who can testify as to this issue, as noted in Exhibit 1 to his deposition and the stipulation as to the topics he would testify about, the DFA is barred from advancing any such argument that any notice was given to Mr. Livingston or anyone else at Lien Technologies, and therefore their actions in relying upon the contract that it been entered into almost a year earlier is reasonable.

The contract between Lien Technologies and DFA also provides the right to terminate the agreement for cause. However Mr. Williams, the designated representative of the DFA to testify as to the reasons why the contract was terminated, stated that there was no discussion at the DFA after the contract was signed indicating that Lien Technologies was not upholding its end of the bargain. (52)

Mr. William stated that the reason the Lien Technologies contract was canceled was for security concerns. (52) He stated he cannot think of any other reasons why the contract with Lien Technologies was rescinded by the State. (54) However, Mr. William stated that the individuals at the DFA had concerns about security before the contract with Lien Technologies was ever signed. (54)

Mr. William stated there was no notice given to him of any change in the law after the contract with Lien Technologies was signed. This further solidifies that the DFA did not have any ground to cancel the contract under paragraph 10.2. (55)

Mr. William stated that after the contract was signed, Lien Technologies nor any other agents or employees did anything to cause trouble for the DFA that required the DFA to fix anything. (56) Again, there is no evidence that the Lien Technologies breached the contract under paragraph 7.

In summation, Mr. Williams' testimony, as the representative of the DFA, establishes that the DFA had no lawful or contractual right to terminate the contract with Lien Technologies before the 7 year period life of the contract expired.



3. **Deposition of Dr. Mike Casey (numbers in parenthesis are the page numbers of Dr. Casey's deposition testimony)**

Dr. Casey is an expert witness for Lien Technologies in this case, on the issue of its lost profits due to the cancellation of the contract and the overall evaluation of the company assuming the contract with the State had not been breached.

Dr. Casey is employed by the University of Central Arkansas, having worked there for 11 years. His resume is attached as Exhibit 1 to his deposition.

Dr. Casey obtained his undergraduate degree at University of Central Arkansas. (7) He received a degree in Finance in 1990. (1) he received his MBA from Louisiana Tech University in 1992. He received his PHD from Louisiana Tech. (8)

Toney and Sandy Livingston were his students at Henderson State University when Dr. Casey top there from 1998 through 2003. (8-9)

Dr. Casey stated that Toney contacted him about the Lien Technologies idea sometime between 2005 and 2007. (9) He testified that Mr. Livingston was working at a bank in Texarkana at the time, and they were having problems with un-perfected liens when making a motor vehicle loans. Mr. Livingston told Dr. Casey that he had an idea for a technology company which could immediately perfect liens, collected taxes for the state, etc., essentially what Lien Technologies ultimately became (9)

Dr. Casey testified that Toney and Sandy Livingston were both very good students. Toney wanted Dr. Casey to "poke holes in his idea to see if it was feasible", and to bounce things around, and he trusted Dr. Casey. (10)

Dr. Casey testified that Toney had done due diligence on the project before contacting him, determining the number of titles that were being processed yearly in the state, by talking to a few lenders, credit unions, banks, and asking them if they would be receptive to the idea of the company. (10)

Dr. Casey stated that he is typically fairly skeptical of new business ideas, but felt that Mr. Livingston had a really good idea. The idea essentially had three components, it has the person that wants their vehicle titled, it has the bank that would like to have the lien perfected, and it has a State of Arkansas that would like to roll state taxes forward 30 days. (11) Dr. Casey stated when you look at all three of these pieces, he did not see anything negative other then he knew it be time-consuming to get that thing together and off the ground. Dr. Casey stated he was not a computer programmer, and programming could possibly have been difficult. He was not aware of the feasibility on that issue. (11)

Dr. Casey testified that he had talked to Toney about the project on a few times over the years after it was first brought out to him, and Dr. Casey was involved in some of the meetings with the State when the contract was being negotiated. (11-12)

Dr. Casey testified that he decided to become involved with the company very early on. Mr. Livingston asked Dr. Casey if he is willing to try to help them launch the company. Dr. Casey stated that he has operated as an advisor throughout his time affiliated with the company. He is a stockholder in the company. Mr. Dr. Casey had no concerns about investing in the company, and felt the most difficult thing would be to get the audience with the State and stating to get it off the ground. He felt like once that occurred he thought the company was a feasible operation, and after the contract with the state was established he felt like it was pretty solid. (13-14)

Dr. Casey does not receive any employment compensation for his duties with the company. (16) He stated that his involvement with the company was not about money or equity, but about two former students that he thought were going to do extremely well. (16)

Dr. Casey stated that he delivered a check in the amount of either \$2000 or \$2500 to Toney and his wife to get the company incorporated. He considered this a very minimal investment on his part. (70) Dr. Casey testified that he had contributed a couple of hundred hours of his time in assisting in the company. (18)

Dr. Casey stated that he believed Mr. Livingston's idea has great potential. He stated with any small business startup has risk, and he was aware of that, but his expectations were that Mr. Toney Livingston would get the business up and running and potentially sell it within two, three, four, five years. (18-19)

Dr. Casey explained the revenue nature of the company, how customers would pay and how it would operate. He showed great knowledge with the operation of the business. (19)

Dr. Casey stated marketing for the company was significantly limited, until after the contract was signed in November 2010. He stated you do not want to go get customers for a company until you have a product and a contract. (21)

Dr. Casey stated he knew the amount that Lien Technologies has lost in profits due to the breach of the contract by the State, in the range of \$3,066,650. (27)

Dr. Casey was questioned a great deal by the attorneys for the DFA concerning the number of clients that Lien Technologies had during its existence, trying to make a point with Dr. Casey that because Lien Technologies had so few clients it was not expected to make a profit in the future. Dr. Casey pointed out the fallacy of this argument is testimony on page 34 and throughout his deposition testimony. He was further asked about the drop in the number of transactions for Lien Technologies from the year 2012 to 2013. (37-38) Dr. Casey testified this was not relevant to his projections, because whenever you have a business it takes a lot of time to get it off the ground. (37-39) He testified that it could be based upon the loss of one key client. (40). Dr. Casey pointed out that the existing transactions are not the relevant issue when looking at the future profitability of the company. He testified that what values a firm, which can be verified with anyone who teaches principles of finance, are the expected future cash flows. (40-41) Dr. Casey stated that the number of past transactions of Lien Technologies have no bearing on what expected future cash flows are. The expected future cash flows are how many customers can the client lineup, not how many they had in the past. (41). He testified that a

company such as Lien Technologies that was such an early developing company, with only four customers, does not give you enough information as to whether or not they cannot succeed in the future. (41)

Dr. Casey testified about exhibit number eight with deposition, a pro forma statement prepared for Lien Technologies. He testified it was prepared in January 2009. (42) It was a forecast of what revenues and expenses were expected to be for the company. He did not know if it was provided to any financial institutions in connection with an application for financing for Lien Technologies. (42) Dr. Casey testified that the number of banks that were shown on the pro forma, projected to increase by two per month for the first year, was based upon the survey performed of banks and folks in the community. (43) When cross-examined about the projections in his deposition, Dr. Casey again testified that the real issue is the potential for the number of transactions that would be available for the company in the future. He testified that when you look at the total number of automobile transactions in the State of Arkansas, which are over 900,000 a year, it did not seem unreasonable to Dr. Casey that Lien Technologies would reach further success in the future. (45)

Dr. Casey testified that Lien Technologies had reached momentum when First Security Bank stated they would pilot the program in Conway Arkansas, and if it worked would roll it out to other branches. (46). Dr. Casey further testified that when Summit Bank had contacted Mr. Livingston, there was a potential that if Ross Whipple at Summit Bank adopted the program, others would follow. (46)

Dr. Casey testified about exhibit number nine, an alternative pro forma statement, that envisioned a monthly subscription fee instead of a per transaction fee. (49-50) He stated this document was prepared to determine alternative manners for generating income for the company. (50) He testified that this was an internal document for the company. (51)

When asked if the decrease the number of transactions for Lien Technologies in year 2013 from the year 2012 was an indicator that the company was not going to succeed, Dr. Casey testified this was not the case. (53) He stated do you have to go back to look at the number of transactions they generated by one client that was lost, and the testimony of Mr. Livingston will be that the loss of a client from the year 2012 was a reason why the number of sales did decrease in 2013. (53) Dr. Casey stated that because Lien Technologies had signed First Security Bank as a client, that it was expected the company would continue to increase in the growth of sales. They had discussions with Summit Bank to come back and do a presentation, and therefore the company was at a turning point, on the cusp of business and it was going to generate enough customers that would allow Toney Livingston to devote 100% of his time and energy to the company. (54)

Dr. Casey testified that his opinion Lien Technologies cannot use the software developed for the State of Arkansas in any other state, therefore an argument that the companies did have value without the contract with the State of Arkansas is not valid. (62) Dr. Casey testified that the business model for Lien Technologies relies upon having its computer system interface with the State of Arkansas, and without a continued contract with the state, the company that had a worth of approximately \$3 million was to zero value by the State's breach of the contract. (66) Dr. Casey testified that he read the contract between Lien Technologies and

the State of Arkansas and did not see any reason why the State would allow someone to spend the kind of time, energy, and effort that Lien Technologies did in developing the program and then simply pull the rug out from under them. (66)

Dr. Casey testified that he would provide expert at the hearing in this case as to the valuation of the company and what it should be worth, which he believes is over \$3 million. He believed this was a very conservative estimate. (67) The basis of his opinion of the value of the company is the present value of the expected future cash flows. He testified that the company had reached a turning point where it was beginning to add clients to process customers, even though it does not appear that this may have been occurring on paper. He stated the company was at a place once it required a couple of more clients, and they began actually using the system, that the expectation of future cash flows would be realized. (67-68)

When asked by the attorney for the DFA if Dr. Casey was merely speculating, he stated that he was but that was the method would you use when valuing tech companies. He stated when you look at most tech startup companies, they do not make money for several years, and that is not uncommon. (68)

Dr. Casey testified that other facts upon which he would base his opinion was that the company had a product, that it had a functioning system, and it did have clients. He testified that any company, even Walmart, is based on forecasted cash flows in the future. That is how he forecasted the value of Lien Technologies (68)

Dr. Casey testified under cross-examination of the DFA's attorneys on the issue of what whether you have to look at what happened in the current or past year for the company when projecting its value, and he stated you would if it was a going concern. However he stated that if you are a young startup company, what happened in the current or past years is not as relevant until you develop a history and begin moving forward. (68)

Dr. Casey stated that you have to have a consistent history to rely upon, that a two-year period is not enough history that when you are talking about a start up that is just beginning to gain a foothold in the business. (69)

Dr. Casey testified that he used a 20% discount rate to value the company, to take into account potential risk of it being a start up. He testified that if you use a 12% discount rate, or a 10% discount rate, the company would have closer to \$4,000,000 in value. (69) Dr. Casey pointed out that there was risk with the company making the money that he projects, but the risk that was not considered was that the state would terminate the contract. Dr. Casey testified the risk would be whether they could get someone to code the system properly, and get all the bugs worked out. He testified that all these items were accomplished, so the company had reached a point where it was going to be okay. (69) He testified that if the company had been able to stay in business, it was building the momentum and the word was getting out and if Summit Bank it started using the program, and First Security had really started processing transactions, the company would have gained momentum. (70)

It is Dr. Casey's opinion that the present value of Lien Technologies is \$3,066,650. (91) He bases this on the expected cash flows and the discount rate used. (91)

**4. Deposition of Greg Ashby (numbers in parenthesis are the page numbers of Mr. Ashby's deposition testimony)**

Greg Ashby is a resident of Texarkana Texas. He works for the McCasland Corporation, a drug wholesale company. He received an electrical engineering degree from the University of Arkansas.(6)

He is one of the principal owners in a company called Datacast, Inc. He and Mary Bird started the company in the year 2006. He is the Secretary of DataCast and Mary Bird runs to company. (7) Datacast currently has 100 customers. (7)

Greg Ashby first met Mr. Toney Livingston in the year 2010. They met through a mutual friend. (9) This friend told Mr. Ashby that Toney Livingston had an idea to build a software application that would end up basically doing what Eperfector, the software system developed Datacast for Lien Technologies in its contract with the State of Arkansas, ended up doing. This friend told Greg Ashby that Mr. Livingston was having trouble finding the right technology partner to bring it to life. (9). Mr. Ashby was asked if he would be interested, so he and Mary Bird met with Mr. Livingston. Mr. Livingston explained the objectives of the company and wanted to know if they were interested in trying to help. Greg Ashby was aware of Mr. Livingston's approach of the State of Arkansas Department of Finance and administration. He stated he knew Mr. Livingston was involved in those meetings before Greg became involved with Mr. Livingston. (9)

Greg Ashby stated that when he and Ms. Bird agreed to do the project for Lien Technologies in developing the software program to use with the State, in lieu of cash he and Ms. Bird gained a percentage ownership in the Lien Technologies. (10)

Mr. Ashby is a shareholder of Lien Technologies.(12)

Mr. Ashby was aware of the notification by the State of Arkansas to Lien Technologies of the termination of the agreement that is the subject of this claim. Mr. Ashby became aware of this notice the day that Mr. Livingston received it. Mr. Ashby has read the letter, and recalled that it basically said the State was terminating the contract. (13) Mr. Ashby reviewed the letter when presented to him in his deposition. His recollection on this was that Mr. Livingston actually received a phone call telling him that it was being terminated, and then he tried to call some folks at the State and maybe send a notice or something. Mr. Ashby recalled from the wording of the letter that Mr. Livingston must have been verbally notified before July 25, and that he followed up with the State and the State sent him the letter of termination. (14)

Mr. Ashby recalled Toney Livingston telling him about customers that Toney had visited, including Texas Federal Credit Union in Texarkana being one of them specifically. He knew there was some ongoing conversation with Robin's Toyota in Texarkana. (14)

Mr. Ashby stated that Datacast went full gear on the contract in early 2011, or the first quarter of 2011. He knew that they worked on the program for considerable amount of time prior to that but thought it was actually executed in the first quarter of 2011.(15)

Mr. Ashby was asked specifically about Lien Technologies' answer to interrogatory number 37, which discusses the number of hours Datacast put into the project, at 2000 hours at \$75 per hour. (18) Mr. Ashby stated that Datacast keeps track of hours work for each customer, as that is how they make money. He testified that 2000 hours is probably even low compared to actual time spent by Datacast on the project. (19) Mr. Ashby stated the two primary developers, Mary Bird, and then other network tech, probably two or three of them would have been involved in establishing the data center production environment for the project for Lien Technologies' contract with the State. He would say approximately six or seven employees of Datacast worked on the Lien Technology application. (19)

Mr. Ashby stated that the \$75 per hour billing rate was a discounted rate. He stated that if Mary Bird was charging the customer, she was a lot more expensive than any of their other entry-level technicians. However rather than billing different rates, they blended them altogether. He stated that \$75 was a fair rate. (20)

Mr. Ashby stated that Lien Technologies had a number of agreements with Datacast. The first agreement was the actual software development and implementation agreement. Another agreement they have was what was called an application hosting agreement, in which Datacast operates a data center. (20) Datacast launched the application for Lien Technologies, and then also was hired to host the application the data center. A third agreement with Lien Technologies is what is typically called a managed service agreement, where businesses might get a server, and have three printers and a number of PCs and do not have anyone to staffing. Their company would make sure that these things are free of viruses and updated. (21.) He stated that Lien Technologies hired Datacast do that also. He stated the equity agreement that he and Mary Bird had with Lien Technologies was because of the software development, where they cut a deal with Mr. Livingston because he did not have \$100,000 to pay them, so he gave them stock in the company. (21)

The software developed for Lien Technologies was called eperfector. (20). The customer owns the software. He stated the software cannot be re-sold without a significant modification. He stated this is because the software was developed at the State of Arkansas's request, and they were very propriety and how it interface with their system.(22) He stated that because it was specific to the requirements of the State of Arkansas, you could not just go put shrink wrap on it and sell it to another state. (23)

Mr. Ashby testified that the software that Datacast created for Lien Technologies went live in March 2012.(34)

Mr. Ashby testified that Datacast compensation from Lien Technolgies for the managed services agreement, which was about \$300 a month, and the maintenance on the software, which was about \$800 a month. He said the hosting cost about \$500 a month. He stated that he expected those for a long-term relationship. (36)

He testified that the agreement between Datacast and Lien Technologies are still in effect technically, and that he has not served the termination notice.(36)

Mr. Ashby testified that the subject matter of his testimony would be that the Eperformer system was functioning and doing exactly what it was designed to do for the State of Arkansas. (41)

Mr. Ashby testified that the number of hours provided by Datacast for the services on the contract was probably 2500 hours, much of which was work done after they launched the software.(44) He testified that some of the invoices of Datacast to Lien Technologies were paid, but there were some outstanding invoices from Datacast to Lien Technologies that have not been forgiven.(44)

#### V. Conclusion and Damage Claims of Lien Technologies, Inc.

A. The DFA breached the Contract with Lien Technologies, Inc. and is responsible for the damages suffered by Lien Technologies. There was no justification for the termination of the Contract. The State effectively became “spooked” about the access to data that third parties might be able to gain to the State’s system via the Contract at issue between the parties, however the State knew of these potential issues before entering into the Contract. The State did not have a 30 day out on the contract, and did not have any stated ground in the Contract which would have allowed it to terminate the contract, as set out in the deposition of Mr. Williams above.

B. Based upon the Testimony of Dr. Michael Casey, Lien Technologies, Inc. has lost profits that will not be realized since the contract was breached by the State, in the amount of \$3,066,650.32.

C. Alternatively, Lien Technologies, Inc. has the right to recover reliance damages incurred in pursuing the contract, in the event the Commission does not award its full expectation damages for lost profits that would have been earned if the contract had not been violated. This position is supported by the 2d Restatements of Contracts, section 349, which provides: **As an alternative to the measure of damages stated in section 347 (loss in profits), the injured party has a right to damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can proved with reasonable certainty the injured party would have suffered had the contract been performed.** (It is Lien Technologies, Inc.’s position that the State cannot show with any reasonable certainty that Lien Technologies would have suffered losses if the contract had been allowed to be performed over the entire 7 year period)

The reliance damages incurred by Lien Technologies, Inc. are calculated as follows:

1. The losses they incurred in the years 2011-2013, not including depreciation losses, as shown on the Company's Profit and Loss Statements for the years 2011-2013. These are attached as Exhibit 10 to Toney Livingston's deposition. These totals are as follows:

2011: (\$10,657.34)  
2012: (\$39,421.91)  
2013: (\$13,562.16)  
**TOTAL: (\$63,641.41)**

Lien Technologies, Inc. incurred these expenses without any meaningful ability to recover them in the future, based solely upon the breach of the contract by the DFA.

2. Additionally, Lien Technologies, Inc. is entitled to recover the amount of money representing the outstanding invoices owed by Lien Technologies, Inc. to third parties, as can be seen by the documents attached as referenced by Part II. 8. above, namely.

Datacast, Inc. invoice 2594	\$1283.84
Datacast, Inc. invoice 2213	\$3438.25
Datacast, Inc. invoice 2697	\$6750.00
Datacast, Inc. invoice 2786	\$6750.00
Datacast, Inc. invoice 3251	\$6000.00
Datacast, Inc. invoice 2677	\$652.50
Datacast, Inc. invoice 2757	\$652.50
Datacast, Inc. invoice 2834	\$652.50
Datacast, Inc. invoice 2917	\$652.50
Datacast, Inc. invoice 2997	\$652.50
Datacast, Inc. invoice 3074	\$652.50
Datacast, Inc. invoice 3153	\$652.50
Datacast, Inc. invoice 3226	\$522.50
Datacast, Inc. invoice 3395	\$560.00
Datacast, Inc. invoice 3481	\$522.50
Datacast, Inc. invoice 3565	\$522.50
Datacast, Inc. invoice 3653	\$522.50
Kockett Software/Zephyr Development Corp Invoice 2129100160	\$4900.00 (paid with credit card, still not recovered)

**Total Outstanding Invoices: \$36,339.59**

3. Loan of Toney and Sandy Livingston to Lien Technologies, Inc. **-\$10,000** (see page 51 of Toney Livingston's deposition cited above).
4. Value of services provided by Toney and Sandy Livingston, and Datacast, Inc. (see interrogatory answer 37 of Lien Technologies, Inc., and the depositions of Toney Livingston and Greg Ashby)



a. Data Cast – 2500 hours at \$75/hour -	\$187,500
b. Toney Livingston – 4000 hours at \$75/hour -	\$300,000
c. Sandy Livingston – 4000 hours at \$75/hour -	\$300,000

**Total value of services** \$787,500

**5. Total Reliance Damages: (1-4): \$897,481**

D. Attorneys Fees: Lien Technologies, Inc. is entitled to recover attorney's fees for its breach of contract claim based upon the hourly rate of \$300 per hour for all time shown to have been expended through the time of the hearing.

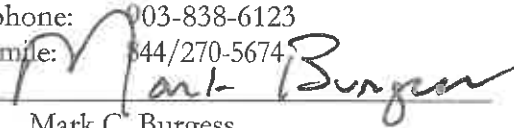
WHEREFORE, PREMISES CONSIDERED, Lien Technologies, Inc. respectfully requests that upon the conclusion of the Hearing before this Commission, that the Commission award it all damages which it would show itself justly entitled, attorneys fees, and pre-judgment and post-judgment interest as allowed by law, and should the Commission so find for Lien Technologies, Inc. that it provide the DFA the appropriate fund code for payment of the claim.

Respectfully submitted,

Mark C. Burgess  
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 Texarkana, Texas 75503

Telephone: 803-838-6123

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By: 

Mark C. Burgess  
 Arkansas State Bar No. 9307

ATTORNEY FOR CLAIMANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to the following attorney of record on this 7<sup>th</sup> day of July, 2014:

Todd G. Cockrill  
Revenue Legal Counsel  
P. O. Box 1272  
Little Rock, Arkansas 72203

Attorney for Respondent

- Via First Class Mail
- Via Electronic Mail
- Via Facsimile
- Via Hand-Delivery
- Via CM/RRR
- Via CM/ECF



Mark C. Burgess

**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**LIEN TECHNOLOGIES, INC.**

**CLAIMANT**

**VS.**

**CLAIM NO. 14-0631-CC**

**STATE OF ARKANSAS,  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION**

**RESPONDENT**

**RESPONDENT'S TRIAL BRIEF**

Comes now the Respondent, State of Arkansas, Department of Finance and Administration, by and through its attorney, Todd G. Cockrill, who submits the following Trial Brief:

**I. Factual Background**

Sometime in 2007, Toney Livingston came up with an idea to start a business that would assist banks in perfecting liens on vehicle titles. As a territory manager for Wells Fargo, Mr. Livingston believed he could provide a benefit to bankers by setting up a system whereby they could register a vehicle upon approval of financing without having to physically go to the local state revenue office. Mr. Livingston consulted with his former finance professor, Mike Casey, and eventually approached the Department of Finance and Administration (DFA) about the possibility of obtaining access to the state's motor vehicle revenue system. Lien Technologies, Inc. (Lien Tech) was subsequently formed and incorporated in November of 2007.

Subsequent conversations and meetings between Lien Tech and DFA related to whether, how, and to what extent DFA would agree to allow Lien Tech access to its system, which was

known as the Revenue Office Accounting System (ROAS). Lien Tech represented to DFA in meetings that Lien Tech would “act like a revenue office” and would do a part of DFA’s work for DFA, without cost to DFA. On November 22, 2010, DFA signed an agreement (drafted by Lien Tech) to allow Lien Tech access to the ROAS.

Following the signing of the Agreement with Lien Tech, DFA became aware that Lien Tech did not have a system that was compatible with the DFA ROAS so that it could perform under the agreement. Not only did Lien Tech not have a system, but also it did not appear to DFA employees who worked with Lien Tech to implement Lien Tech’s access to the ROAS that Lien Tech had the expertise to develop such a system. DFA employees, particularly those in the information technology sections, were required to spend in excess of 500 hours to assist Lien Tech with development of Lien Tech’s system.

#### The Replacement of the ROAS

DFA replaced the information technology system in which the motor vehicle records were maintained with a new system using modern technology on October 1, 2013. Prior to the replacement of the system, the records maintained by the Motor Vehicle Section of DFA for titling and registration of motor vehicles had been maintained on a system whose technology dated back to the 1960s or 1970s. The age of the technology made it increasingly difficult, if not impossible, for DFA to find programmers and information technology experts who could make changes to the system or even maintain the system.

Additionally, as technology advanced, DFA became increasingly concerned regarding the security of the system that contains information that is protected from disclosure under both federal and state law, except for certain purposes and to certain persons or entities. DFA’s concern was that a data breach could occur, or that a user who was allowed to access information

in the system might misuse the privilege, either of which could result in unlawful disclosure of confidential information.

As DFA weighed these concerns during the 1990s and following, DFA was aware of the significant costs of implementing an entirely new system and was not able to see an opportunity to seek approval through the budget process for an appropriation sufficient to fund a new system. In the early 2000s, DFA's similar technology and security concerns for its tax systems led DFA to seek funding through the state budget process to purchase a new computer system for the taxes administered by DFA, in part because tax information is subject to at least the same confidentiality requirements, if not greater, than that of motor vehicle information.

The bid process (request for proposal) for a new tax system was completed, and the bid was awarded to Fast Enterprises, Inc. (Fast). In 2008 Fast employees came to Arkansas and began preparing the system for the gradual "rollout" of the taxes, including the conversion of the tax data and information from the antiquated tax system to the new system. The conversion of the sales and use tax data to the new system occurred first and the system "went live" for sales and use taxes in February 2009. The other taxes administered by DFA were integrated into the new system in successive rollouts - withholding tax in 2010, income tax in 2011, various miscellaneous taxes in 2012, and the final group of taxes in 2013.

Sometime before the final rollout of the last group of taxes Fast, who at that time served as a vendor of only tax systems and not motor vehicle or driver services systems, approached DFA officials regarding the possibility of developing a driver's service system and motor vehicle system (DSMV) to be sold to DFA to replace the existing system. The existing system was referred to as the ROA or ROAS (Revenue Office Accounting System), likely because the majority of transactions involving driver's services and motor vehicles (issuance, renewal,

suspension, or cancellation of driver's licenses, and titling, registration, liens, and other transactions involving motor vehicles) occurred in revenue offices.

As the proposal developed, it gradually became apparent to DFA that Fast's proposal would allow DFA to replace its DSMV system for a cost that was significantly lower than DFA had anticipated based upon discussions with other vendors. For the first time, DFA saw an opportunity to be able to implement its need for a new system on a more rapid timetable than previously anticipated.

Designated Fast employees continued discussions with designated DFA employees over a period of time from the initial contact until May of 2011 when Fast and DFA entered into an arrangement similar to the Fast agreement to develop the new DFA tax system. The driver's services portion of the system was implemented first and went live in September of 2012. The motor vehicle portion of the system was implemented and went live on September 30, 2013.

There were a number of entities, primarily governmental entities, that were allowed access to the old ROAS for various purposes, depending upon the nature of the entity. These entities were allowed access at various points in time depending upon, for example, the date that legislation was passed that specified the access that DFA should allow to an entity or group of entities. Two companies that were nongovernmental entities that were allowed access to the ROAS were CVR and Lien Tech. CVR was first allowed access on April 21, 1999 under an agreement that allowed CVR to access the ROAS in order to establish an electronic filing system which would enable licensed new car dealers and short term rental companies to file, for themselves or on behalf of their customers, certificates of title and vehicle registrations with DFA through CVR's interface to DFA's ROAS. Lien Tech was first allowed access under the agreement signed in November 2010 that allowed Lien Tech to access the ROAS in order to

establish an Electronic Filing User Interface (EFUI) through which car dealers, financial institutions, and vehicle purchase lenders could file title applications and vehicle registrations, issue registrations and titles, and create and update lien and other records for registrations and titles.

In the time interval during the development of the Fast DSMV system for DFA, a steering committee made up of DFA officials from the management and information technology divisions met periodically to consider the many issues that required decision in order to implement the new system. Of primary importance to those discussions was the necessity to provide the maximum amount of security for the data in the system while at the same time assuring that the system would function to provide the services required to the citizens of Arkansas and to those entities to whom DFA is mandated to provide access and service such as the courts, the Office of Child Support, the Arkansas Crime Information Center, and the Arkansas State Police, among others. Also of importance were the technology aspects of the new system that would solve the issue of the existing inability to upgrade the system easily and efficiently as technology evolved.

Included in the discussions was the issue of whether to continue to allow CVR and Lien Tech to continue to have access to the new system. There were multiple factors that influenced that decision, including security concerns, because CVR and Lien Tech were the only nongovernmental entities whose access was not mandated by law that could access the system to change data in the system and whose access to data was broad.<sup>1</sup> After due consideration, the steering committee decided that the access of both CVR and Lien Tech should not be allowed in

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<sup>1</sup>Heightened levels of security are required of those entities that can access the DSMV system. Each person who is allowed access must undergo a criminal background check and must read and sign an acknowledgment regarding the confidentiality of the information in the system and the legal provisions prohibiting unlawful disclosure of any of the protected information.

the new system. Accordingly, both CVR and Lien Tech were notified in writing that the agreements between DFA and each entity would terminate on the last day before the new system would go live, September 30, 2013. Unlike most agreements to which DFA enters, the Lien Tech agreement failed to include the typical 30-day "opt-out" clause that allows either party to cancel the agreement without fault upon 30 days' notice in writing to the other party. The ROAS was gradually decommissioned following September 30, 2013, and no entity was able to access the ROAS after that time to change the data or information or to perform transactions in the system.

On February 20, 2014, Lien Tech filed its Complaint against DFA with the Commission. Lien Tech alleges that a valid contract existed with DFA and that DFA breached that contract without justification. Lien Tech seeks damages based on both the value of labor, ideas and services that were invested in Lien Tech's host system and the negotiations with DFA, and the loss of future profits. DFA timely answered the Complaint and denied that a valid contract existed, raising defenses of estoppel, failure of consideration, failure to properly mitigate damages, impossibility, intervening or supervening cause, and lack or failure of mutual obligations. DFA also moved to dismiss the claim pursuant to Arkansas Claims Commission Rule 1.5 and Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

**II. No valid contract existed because there was no consideration.**

As explained above, the Agreement granted permission to Lien Tech to access the old ROAS. It provided that Lien Tech could develop an electronic interface at its own expense in order to conduct transactions; however, the access and authorization granted to Lien Tech was limited by certain provisions, mostly related to technical and security requirements. In order for a contract to exist, there must be competent parties, subject matter, legal consideration, mutual



agreement, and mutual obligations. *Kearney v. Shelter Ins. Co.*, 71 Ark. App. 302, 29 S.W.3d 747 (2000). Consideration means something of value that must be bargained for and given in exchange for a promise. *Arkansas Model Jury Instruction 2406*.

The purpose of the Agreement between Lien Tech and DFA was to provide Lien Tech with access to the DFA's ROAS so that Lien Tech could establish an Electronic Filing User Interface (EFUI). The provisions contained therein relate to the procedures by which Lien Tech would be able to obtain that access as well as the limits and requirements of an EFUI. However, the Agreement does *not* contain a promise that Lien Tech would actually establish an EFUI:

WHEREAS, LIEN wishes to establish an Electronic Filing User Interface ("EFUI") that allows car dealers, financial institutions, and/or vehicle purchase lenders (collectively, "Dealers") to file car dealer, lender, and customer applications for certificates of titles and vehicle registration with DFA, to issue indicia of registration and title in connection therewith, and to create and update lien and other records for vehicle registrations and titles ("Electronic Filing Services"), such EFUI to interface with DFA's Revenue Office Automation System ("ROAS"), as maintained and operated for DFA by the Arkansas Department of Information Systems ("DIS");

Agreement, p. 1 (emphasis added).

While mutual promises can constitute consideration, there is no valid agreement if there is no promise by one party as a consideration for the other's promise. *Eustice v. Metrott*, 100 Ark. 510, 140 S.W. 590 (1911). Not only did the Agreement include no deadline by which Lien Tech would establish an EFUI, it included no requirement that Lien Tech would ever actually establish an EFUI. Lien Tech's failure to establish an EFUI would not have constituted a breach because Lien Tech never made such a promise. In addition, the Agreement contained no requirement that Lien Tech's establishment of an EFUI would benefit DFA in any way. In other words, the Agreement contained no promise by Lien Tech as consideration for DFA's promise to allow Lien Tech access to the ROAS. As such there is no valid agreement, and there can be no

breach of contract. A contract that leaves it entirely optional with one of the parties as to whether he will perform his promise is not binding on the other party. *Odom Antennas, Inc. v. Stevens*, 61 Ark. App. 182, 186-87, 966 S.W.2d 279, 281 (1988) (citing *Townsend v. Standard Indus., Inc.*, 235 Ark. 951, 954, 363 S.W.2d 535, 537 (1962)).

When asked in discovery to define the legal consideration received by DFA in support of the Agreement, Lien Tech responded as follows:

The ideas and process by which the services governed by the Contract provided the State. The promise made by Petitioner to provide the services covered by the Agreement. The receipt of benefits under transactions performed between Petitioner and its customers pursuant to the contract between Petitioner and Respondent, which includes among other things the time value of money in the expedition of payments to the State by purchasing citizens.<sup>2</sup>

As stated above, and as set forth in the Agreement, Lien Tech did **not** promise to provide the services covered by the Agreement, thus there was no consideration to be received by DFA.

The Agreement does include the following language:

WHEREAS, DFA wishes to allow the use of such EFUI to streamline the vehicle registration and titling process in the State of Arkansas, and thus wishes to grant LIEN access to ROAS for the purpose of creating and updating vehicle registration records for the State of Arkansas:

Although Claimant may argue that this language indicates that DFA anticipated some streamlining of vehicle registrations and titling should Lien Tech develop an EFUI, any such scant consideration clearly failed. Lien Tech's purpose in accessing the ROAS was so that it could charge customers a fee for transactions; no part of that fee went to DFA. On the contrary, the DFA ended up expending extensive resources just to assist Lien Tech in accessing the ROAS. Further, the small number of transactions that were actually completed by Lien Tech in no way streamlined vehicle registration or titling for DFA and did not appear likely to ever do so.

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<sup>2</sup> Answer to Interrogatory No. 57, Lien Technologies, Inc.'s Answers to Respondent's First Interrogatories to Claimant.

From the time the Agreement was signed in November of 2010 until Lien Tech was notified that DFA would no longer be using the ROAS in August of 2013, Lien Tech conducted a total of 285 transactions, all of which took place in 2012 and 2013. In 2012 and 2013, a total of 5,682,401 transactions were conducted in state revenue offices, meaning that Lien Tech's transactions amounted to approximately .005% of the total amount conducted in state revenue offices. Clearly, DFA derived no benefit from the Agreement. To the extent that the above statement in the Agreement could possibly have constituted consideration in the form of a benefit to DFA, that consideration failed.

**III. It became impossible for DFA to allow Lien Tech to have access to the ROAS once the ROAS was replaced.**

The Agreement contemplated allowing Lien Tech the ability to access and interface with DFA's ROAS. The ROAS is referenced throughout the Agreement with respect to Lien Tech's access, authorization, permissible, and impermissible uses. It is clear from the Agreement that the parties did not anticipate Lien Tech being granted access to any other DFA system. As explained previously, the antiquated ROAS was replaced by the new Fast DSMV system on September 30, 2013, and no entity was able to access the ROAS after that time to change data or information or to perform transactions in the system. Once the ROAS was no longer being used by DFA, the purpose of the Agreement with Lien Tech was frustrated and performance became impossible.

The Arkansas Supreme Court has recognized impossibility of performance as an excuse for failure to perform a contract. *Frigillana v. Frigillana*, 266 Ark. 296, 584 S.W.2d 30 (1979). Impossibility excuses what would otherwise be a breach of contract. *Smith v. Decatur School Dist.*, 2011 Ark. App. 126, \*\*2. The law of impossibility has evolved into a broader, more equitable rule of impracticability, which may also excuse a party from performing contractual

obligations. See *Miller v. Mills Constr., Inc.*, 352 F.3d 1166 (8<sup>th</sup> Cir. 2003). Here, not only did DFA discontinue use of the ROAS, so that continued access by Lien Tech would be unfeasible, DFA determined that it would no longer allow the kind of access given to Lien Tech for the multiple reasons explained herein. The Agreement between DFA and Lien Tech thereafter become not only impracticable, but impossible, negating any issue of damages for failure to perform. See *Mathews v. Garner*, 25 Ark. App. 27, 751 S.W.2d 359 (1988).

**IV. The damages sought by Claimant in this case are based on pure speculation.**

Lien Tech's Complaint appears to seek, alternatively, reliance damages and lost profits. Reliance damages give the injured party compensation for losses suffered by changing its position in reliance on the other party's promise. This type of recovery does not provide for lost profits, but returns the injured party to the status quo. In its Complaint, Lien Tech alleges as follows:

Lien spent a great deal of time and financial resources designing the System, and making specific and detailed changes to the System after negotiations with the DFA began, as requested by the DFA. Such an outlay of financial resources easily exceeds \$300,000 in value.<sup>3</sup>

In order to determine what specific damages were sought by Lien Tech under this theory, DFA propounded Interrogatory No. 28 asking Lien Tech to identify all employees and contractors whose work was being included in the calculation, including dates, times, and total hours worked; duties and jobs performed; amounts paid to each employee and contractor; and any additional job-related expenditures. In response, Lien Tech provided an Answer that listed the alleged value of services provided by Toney and Sandy Livingston and Datacast, Inc.<sup>4</sup>

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<sup>3</sup> As set forth in Respondent's Answer, Claimant's failure to provide an itemized outline of the damages sought and the overall total claimed violates Arkansas Claims Commission Rule 1.5(e) and warrants dismissal of the Complaint.

<sup>4</sup> See Answer to Interrogatory No. 28, Lien Tech's Answers to Respondent's First Interrogatories to Claimant.

Lien Tech claimed that both Toney and Sandy Livingston each expended at least 4000 hours at a rate of \$75.00 per hour, valuing their services equally at \$300,000 each. Toney Livingston provided business and marketing services, and Sandy Livingston acted as office manager. With respect to Sandy Livingston, an alternative measure of the value of her services was identified as "the loss in salary she was earning at her former job, plus benefits." Lien Tech's discovery response also included a value of services for Datacast, Inc. in the amount of \$150,000 (2000 hours at \$75.00 per hour).

Evidence of damages must consist of proven facts and not mere conjecture. *Christmas v. Raley*, 260 Ark. 150, 539 S.W.2d 405 (1976). The reliance damages sought by Lien Tech have no factual basis and cannot support an award for damages. For example, Mr. Livingston testified that approximately 40% of the estimated 4,000 hours he allegedly put into Lien Tech was *prior* to the signing of the Agreement.<sup>5</sup> He further testified that he came up with the \$75 per hour rate because that is what he was making at his job at Wells Fargo, where he continued to work full time during the time period he claims to have worked 4000 hours for Lien Tech.<sup>6</sup> With respect to the damages that are supposed to represent the value of Sandy Livingston's services, Ms. Livingston testified that she believed that the \$75 per hour figure came from the bookkeeping services that she was previously providing for Chicken Express and that Chicken Express had paid her \$350 per month for each of their three stores.<sup>7</sup> As for the 4,000 hours, she too testified that the figure was an estimate.<sup>8</sup>

The number of hours and rate per hour listed for Datacast also appear to be pulled out of the air. The figures are unsupported by the documents provided by Lien Tech, which contain

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<sup>5</sup> Toney Livingston's deposition, p. 74, l. 19 - p. 76, l. 22.

<sup>6</sup> *Id.*

<sup>7</sup> Sandy Livingston's deposition, p. 19, l. 5 - 12, p. 23, l. 15-23.

<sup>8</sup> Sandy Livingston's deposition, p. 19, l. 21 - p. 20, l. 2

inconsistent information. In fact, none of the witnesses who testified in this case could corroborate the figures provided in Lien Tech's discovery response.

Not only are the reliance damages claimed by Lien Tech unsupported by any proven facts, the witness testimony and the documents received from Lien Tech indicate that Lien Tech never paid Toney Livingston or Sandy Livingston for any services. In addition, the only monetary payments Lien Tech made to Datacast were reimbursements for some equipment purchased and fees paid for managed network services. Although Datacast did enter into a contract to develop and implement software for Lien Tech, Greg Ashby and Mary Bird, the owners of Datacast, agreed to, and did, accept shares of Lien Tech stock in exchange for providing those services. Thus, the entire \$750,000 in reliance damages claimed by Lien Tech is not only based on conjecture, rather than proven facts, but Lien Tech has never actually incurred any of those damages.

Lien Tech's Complaint also alleges damages in the form of lost profits. When a party seeks recovery of anticipated profits due to a breach of contract, he must present a reasonably complete set of figures to the fact-finder and should not leave the fact-finder to speculate as to whether there could have been any profits. *Boellner v. Clinical Study Centers, LLC*, 2011 Ark. 82, 14, 378 S.W.3d 745, 755(citing *Interstate Oil & Supply Co. v. Troutman Oil Co.*, 334 Ark. 1, 972 S.W.2d 941 (1998)). In support of its lost profits damages claim, Lien Tech produced a pro forma spreadsheet<sup>9</sup> prepared by Toney Livingston and Mike Casey.<sup>10</sup> However, as explained below, the valuation is based solely on speculation and cannot provide a valid basis for damages in this case.

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<sup>9</sup> See Exhibit 15 to Mike Casey's deposition and Exhibit 2 to Toney Livingston's deposition (Lien Tech Valuation).

<sup>10</sup> Mike Casey is a finance professor at the University of Central Arkansas and was disclosed as an expert witness in this matter on the subject of lost profits. His opinions are contained in the Lien Tech Valuation. Dr. Casey is also vice-president of Lien Tech holding 100 shares of stock. He testified that his stake in the outcome of these proceedings would exceed \$200,000.

In order to fully understand the extent of the pure conjecture on which Lien Tech's lost profits claim is based, it is important to consider the facts regarding Lien Tech's actual business activities. Between the signing of the Agreement with DFA in November of 2010 and the cancellation of Lien Tech's access effective September 26, 2013 due to the replacement of the ROAS, Lien Tech obtained four customers: Robbins Motor Co. signed a contract with Lien Tech on February 17, 2012; Harry Robinson Buick GMC on September 7, 2012; Commercial National Bank on January 8, 2013; and First Security Bank on January 22, 2013. Robbins Motors Co. terminated its contract prior to August of 2013, so at the time DFA informed Lien Tech that the Agreement would be terminated, Lien Tech had three customers, two of which were banks.

Despite the facts set forth above, which Dr. Casey determined were not relevant to his opinions, the Lien Tech Valuation bases Lien Tech's profits on having two customers in month one following the termination of the Agreement, four in month two, and twelve by the end of one year. Although Lien Tech had signed only two customers in 2012, one of whom terminated its agreement, and two in 2013, Mike Casey believed the customer projections to be realistic. When asked about the basis for that belief, Dr. Casey testified that he had heard that two other banks had seen the product and wanted to see it again; thus he believed they were "gaining momentum."<sup>11</sup> However, he admitted that this opinion was based on "anecdotal evidence."<sup>12</sup> He further admitted that no market studies had been conducted, no economic conditions were considered, and he did not contemplate competitors for Lien Tech's business.<sup>13</sup>

The anticipated lost profits amount claimed by Lien Tech also relies on an assumption as to the average number of title transactions conducted by each customer per month. Lien Tech

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<sup>11</sup> Mike Casey's deposition, p. 82, l. 15 - 17.

<sup>12</sup> Mike Casey's deposition, p. 82, l. 18-23.

<sup>13</sup> Mike Casey's deposition, p. 82, l. 18-23, p. 83, l. 12-25, p. 90, l. 14-18.

did 278 transactions in 2012 and seven in 2013. Yet Lien Tech's valuation anticipated 100 transactions per customer in month one. When asked to explain how Lien Tech could go from an average of less than one transaction per month to 200 per month, Dr. Casey admitted that the figure may be a little high for month one and might be adjusted downward.<sup>14</sup> Dr. Casey again confirmed that he had no documentary evidence or actual facts to back up his figures and that the projection was his best guess.<sup>15</sup> With regard to the remaining figures on the spreadsheet, Dr. Casey also admitted that he had not seen any documentation to support the expense amounts provided by Mr. Livingston, but concluded that they were not really relevant to the overall situation anyway.<sup>16</sup>

Proof of lost profits must be sufficient to remove the question of profits from the realm of speculation and conjecture, and the evidence must establish the alleged anticipated profits with reasonable certainty. *Smith v. Walt-Bennett Ford, Inc.*, 314 Ark. 591, 605, 864 S.W.2d 817, 825 (1993) (citing *Robertson v. Ceola*, 255 Ark. 703, 501 S.W.2d 764 (1973)). Here, the evidence shows that at the time DFA terminated the Agreement, Lien Tech had never made a profit, had seen its gross income drop from \$11,950 in 2012 to \$87.50 in 2013, had only three customers, and had completed seven transactions so far for the year. This is a very different picture from that envisioned by Dr. Casey to take place only one month later. Without any factual basis for the miraculous turnaround he predicted, Dr. Casey's opinion that the present value of Lien Tech is \$3,066,650.32 can only be based upon pure speculation and an overly optimistic outlook. "The element of doubt is inherent in future profits in almost any character of business, and, on that account, courts are slow to adopt the profit rule as a measure of damages on account of contractual breaches, and will never do so if a more certain and definite rule can be fixed, and *in*

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<sup>14</sup> Mike Casey's deposition, p. 85, l. 24 – p. 86, l. 2, p. 88, l. 10-20.

<sup>15</sup> Mike Casey's deposition, p. 88, l. 21 – p. 89, l. 5.

<sup>16</sup> Mike Casey's deposition, p. 89, l. 6 – 90, l. 13, p. 93, l. 21 – p. 94, l. 7.



no event will allow purely speculative damages.” *Layne-Arkansas Co. v. Seeman*, 173 Ark. 1062, 294 S.W. 382 (1927) (emphasis added) (citing *Selig v. Botts*, 128 Ark. 167, 172, 193 S.W. 534, 535 (1917)). There is no evidence showing that it was reasonably certain the claimed profits would have been realized even if Lien Tech had been able to continue to operate under the Agreement. *Boellner v. Clinical Study Centers, LLC*, 2011 Ark. 82, 15, 378 S.W.3d 745, 755. Not only are there too many unknown variables to make an accurate projection, but Lien Tech’s expert witness has admitted that the question of whether there could have been any profits is purely a guess.

V. **The expert witness testimony in this case is unreliable.**

It is DFA’s position that Dr. Casey cannot provide a reliable expert opinion in this case based upon the speculative responses in his deposition. DFA will not be presenting an expert witness at the hearing of this case to rebut his opinions. Nevertheless, the Commission is not bound to accept the testimony of any witness, even if uncontradicted. *Nix v. Wilson World Hotel*, 46 Ark.App. 303, 879 S.W.2d 457 (1994). Further, it is well-settled that the testimony of an interested party is taken as disputed as a matter of law. *Knoles v. Salazar*, 298 Ark. 281, 766 S.W.2d 613 (1989); *Waterfield v. Quimby*, 277 Ark. 472, 644 S.W.2d 241 (1982). As previously stated, Dr. Casey, in addition to being a professor of finance at University of Central Arkansas, is an officer and shareholder in Lien Tech. Dr. Casey in his deposition testimony verified that he expects to receive a monetary benefit if Lien Tech is awarded damages by the Commission herein, said benefit to be based upon the amount of damages awarded.<sup>17</sup> Mary Bird and Greg Ashby, both disclosed as expert witnesses as to the workability of the system implemented by Lien Tech, also own stock in Lien Tech and have a pecuniary interest in the outcome of this

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<sup>17</sup> See Mike Casey’s deposition, p. 27, l. 22 – p. 28, l. 15.

litigation.<sup>18</sup> Therefore, Mike Casey, Mary Bird, and Greg Ashby are all interested parties within the contemplation of the *Knoles* case, and their expert testimony must be taken as disputed as a matter of law.

**VI. Conclusion**

The Agreement between Lien Tech and DFA was unenforceable due to the lack of consideration and mutuality of promises. In addition, any scant amount of consideration that might have been gleaned from Lien Tech's development of a user interface failed due to the very small number of customers and transactions Lien Tech actually accomplished. To the extent the Commission finds that a valid contract did exist, DFA's performance was excused due to the impossibility of allowing Lien Tech access to a system that was no longer in use. Finally the Complaint alleges non-specific damages that are not supported by the evidence in this case. For these reasons, and based on the analysis set forth above, Lien Tech's claim should be dismissed in its entirety.

Respectfully Submitted,

DFA/REVENUE DIVISION  
STATE OF ARKANSAS

By:



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<sup>18</sup> See Mary Bird's deposition, p. 15, l. 8-24, Greg Ashby's deposition, p. 12, l. 13 - p. 13, l. 9 and p. 27, l. 4-15.

**CERTIFICATE OF SERVICE**

I, Todd G. Cockrill, on this 7<sup>th</sup> day of July, 2014, do hereby certify that I have served a true and correct copy of the above and foregoing document upon the Claimant's attorney by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

Mark Burgess  
Attorney at Law  
2301 Moores Lane  
Texarkana, TX 75503



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Todd G. Cockrill  
Attorney for Respondent

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 750,000.00

Claim No. 14-0631-CC

Lien Technologies, Inc. Claimant

Attorneys  
Mark Burgess, Attorney Claimant

vs.

Department of Finance & Administration  
State of Arkansas Respondent

Todd Cockrill, Attorney Respondent

Date Filed June 20, 2014

Type of Claim Breach of Contract

FINDING OF FACTS

This claim was filed for breach of contract in the amount of \$750,000.00 against the Department of Finance and Administration. Present at a hearing August 14, 2014, was the Claimant, represented by Mark Burgess, Attorney and the Respondent, represented by Ted Cockrill, Attorney.

The Arkansas State Claims Commission unanimously finds that the Respondent entered into a contract with the Claimant. The contract provided that the Claimant would be allowed access to the Respondent's motor vehicle revenue system in order to create a program that would assist the Respondent in the collection of tax revenue coming from the sale of motor vehicles to Arkansas citizens and for expediting the filing of motor vehicles titles and liens with the State of Arkansas. The contract was signed on November 10, 2010. Without such a signed document the Claimant would not have begun raising the funds to create and implement the new program. The project was not to cost the State of Arkansas any money and would likely, when implemented, significantly increase revenue to the State's coffers and make monies for the Claimant. The contract was for a period of seven years and contained no standard provision for terminating the contract without fault on a certain number of days. Within the contract were very limited grounds upon which the Respondent could cancel or terminate the contract. None of those grounds were a part of an August 9, 2013, letter to the Claimant from the Respondent.

On August 9, 2013, the Claimant received a letter from the Respondent which unilaterally rescinded and terminated the contract. There had not been, based on testimony of a senior employee of the Respondent, any advance notice of the intent to cancel the contract given to the Claimant. No reasons were given by the Respondent for the termination of the contract in the letter of August 9, 2013.

For the unilateral and egregious breach of a valid contract the Arkansas State Claims Commission unanimously finds liability on the part of the Respondent and unanimously awards the Claimant the amount of \$250,000.00.

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously awards this claim in the amount of \$250,000.00 and will include the claim in a claims bill to be submitted to the 90<sup>th</sup> General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

IT IS SO ORDERED

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously awards this claim in the amount of \$250,000.00 and will include the claim in a claims bill to be submitted to the 90<sup>th</sup> General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

Date of Hearing August 14, 2014

Date of Disposition August 14, 2014

Subul May Chairman  
Bill Lancaster Commissioner  
Jim Baker Commissioner

\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

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