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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057201
Party	Plaintiff NexPay, Inc.
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Submission	Response to Board Order/Inquiry
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Signature	/Dyan House/
Date	10/29/2014
Attachments	2014.10-29 Joint Status of Civil Action re Order (10-03-14).pdf(76554 bytes ) Exhibit A.pdf(73262 bytes ) Exhibit B.pdf(164706 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NexPay, Inc.,

Petitioner,

v.

StoneEagle Services, Inc.,

Registrant.

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Cancellation No. 92057201

**JOINT STATUS OF CIVIL ACTION**

Pursuant to the Board's Order dated October 3, 2014, Petitioner NexPay, Inc. and Registrant StoneEagle Services, Inc. hereby inform the Board that the action which occasioned the suspension of this proceeding, *StoneEagle Services, Inc. v. David Gillman, et al*, Case No. 3:11-cv-02408-P in the United States District Court for the Northern District of Texas, Dallas Division (the "First Action"), has been dismissed by the District Court. Attached as Exhibit A is a copy of the Court's Order dated August 29, 2014.

On August 29, 2014, the same day as the Order dismissing the First Action, Registrant filed a new lawsuit in the United States District Court for the Northern District of Texas, Dallas Division, styled *StoneEagle Services, Inc. v. Talon Transaction Technologies, Inc., et al*, Case No. 3:14-cv-03120-M (the "Second Action"). A copy of Registrant's Original Complaint and Request for Preliminary Injunction in the Second Action is attached as Exhibit B. The trademark issues raised in the Second Action are identical to those raised in the lawsuit that is the basis for the suspension of this proceeding. As with the First Action, the determination of these issues by the District Court in the Second Action will be

dispositive of the issues involved in this proceeding. Petitioner is a defendant in the Second Action.

The parties therefore respectfully request the continued suspension of this proceeding pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a). *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB 1971) (suspending Cancellation proceeding in light of pending federal litigation because “the outcome of the civil action will have a direct bearing on the question of the rights of the parties herein and may in fact completely resolve all the issues.”).

Dated this 29<sup>th</sup> day of October 2014.

Respectfully submitted,

/s/ Dyan M. House

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Status of Civil Action to has been served on Registrant's Attorney, Registrant's Attorney, Andriy Lytvyn, Smith & Hopen, P.A., 180 Pine Avenue North, Oldsmar, Florida 34677, via email (by agreement) on this 29<sup>th</sup> day of October 2014.

/s/ Dyan M. House

Dyan M. House

## EXHIBIT A



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