

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DataTreasury Corporation §
Plaintiff §

v. §

**CIVIL ACTION NO:
JURY DEMANDED**

Jack Henry & Associates, Inc; Symitar §
Systems, Inc.; ProfitStars, LLC; Steele §
Holdings, Inc.; American State Bank; Citizens §
Bancorp, Inc.; Citizens National Bank; §
Collin Bank; Grapeland State Bank; Justin §
State Bank; Sulphur Springs Bancshares, §
Inc.; The City National Bank of Sulphur §
Springs; East Texas Bancshares, Inc.; §
First National Bank of Jasper; §
First State Bank (Livingston); §
Overton Financial Corporation; First State §
Bank (Overton); Lindale State Bank; §
Henderson Citizens Bancshares, Inc.; §
Citizens National Bank; §
Emory Bancshares, Inc.; The First §
National Bank of Emory; FNB Company; §
The First National Bank of Livingston; §
Van Alstyne Financial Corporation; §
Texas Star Bank; Paris Bancshares, Inc.; §
The Liberty National Bank in Paris; §
Independent Bank Group, Inc.; Independent §
Bank; South Plains Financial, Inc.; City Bank; §
SB&T Holding, Inc.; State Bank and Trust §
Company; Third Coast Bancshares, Inc.; §
Third Coast Bank, SSB; NexBank §
Capital, Inc.; NexBank, S.S.B.; §
WCM Holdings, Inc.; Veritex Community §
Bank; First Private Holdings, Inc.; §
First Private Bank of Texas; §
Golden Bank, N.A.; Green Bancorp, Inc.; §
GreenBank, N.A.; MidSouth Bancorp; §
MidSouth Bank, N.A.; Cherokee County §
Federal Credit Union; DATCU Credit Union; §
Advancial Federal Credit Union; United §
Heritage Credit Union, §
Defendants. §

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

I. BACKGROUND

1. The patents in suit – U.S. Patent No. 5,910,988 (“the ’988 Patent”) and 6,032,137 (“the ’137 Patent”) (collectively the “Ballard Patents”) – are among the most thoroughly validated and valuable patents in the United States. The Ballard Patents have been credited as being foundational to modern day, image-based check processing, enabling technological improvements that save the banking industry billions of dollars annually.

2. A vast majority of the top twenty-five banking institutions in America – including Bank of America, Citibank, J.P. Morgan Chase Bank, Wells Fargo Bank, and many others – have licensed the Ballard Patents in recognition of the significant contribution of the Ballard Patents to modern image-based check processing, including prime pass image capture, branch capture, and remote deposit capture processes. It has been publicly reported that these banks have collectively paid more than \$350 million to license the Ballard Patents.

3. Industry leading J.P. Morgan Chase Bank has agreed to a Consent Judgment, confessing in Federal Court that the Ballard Patents are valid, enforceable, and infringed. Other large financial institutions such as PNC Bank have made similar confessions of validity in open court.

4. Dozens of prior litigants have spent hundreds of millions of dollars attempting to invalidate the Ballard Patents or to prove them unenforceable. Despite this concerted joint effort by the banking industry, not a single bank has ever prevailed against the Ballard Patents.

5. The only bank in the nation that has been sued for infringing the Ballard Patents and then refused to pay for a license to use the patents all the way through a jury trial was U.S.

Bank. In March 2010, U.S. Bank was found guilty of willfully infringing the Ballard Patents by a federal jury, and subsequently ordered to pay over \$50 million dollars for its willful infringement of the patents. The same federal jury also unanimously found that the Ballard Patents were not invalid.

6. The Ballard Patents have been re-examined by the United States Patent and Trademark Office (“USPTO”), to determine their validity. Ultimately, each and every claim of the Ballard Patents was upheld in full, and issued as valid for a second time by the USPTO.

7. The Ballard Patents have had press coverage ranging from *The Wall Street Journal* and *The Washington Post* to industry publications such as *The American Banker*. Claudio Ballard, inventor of the Ballard Patents was recognized as the 2010 Inventor of the Year by the United States Business and Industry Council in Washington, D.C.

8. The United States Congressional Budget Office has independently determined the value of the Ballard Patents to be more than \$1 billion.

9. Despite this unimpeachable validity, significant financial value, and widespread recognition as the cornerstone intellectual property underlying modern image-based check processing, the Ballard Patents are being willfully infringed by one or more of the Defendants in this case. DataTreasury files this lawsuit to continue to protect its intellectual property and prevent these Defendants from continuing to willfully violate DataTreasury’s intellectual property rights and the U.S. patent laws.

10. Jack Henry & Associates, Inc. (“Defendant Jack Henry”) is in the business of providing banking systems and services to entities such as the other defendants in this lawsuit. Based on information and belief, Defendant Jack Henry makes, offers, and sells its banking systems through its divisions and subsidiaries such as ProfitStars, LLC, a Jack Henry Company

(“ProfitStars”); Jack Henry Banking, a division of Defendant Jack Henry; and Symitar Systems, Inc., a Jack Henry Company (“Symitar”). All of the foregoing defendants are collectively referred to as “the Jack Henry Defendants”. These banking systems and services include check image capture and processing systems and services, including but not limited to those listed herein.

11. Based on information and belief, and by way of example and without limitation, the Jack Henry Defendants, by and through ProfitStars, offer a variety of imaging and payments processing solutions as part of multiple product and service offerings such as Alogent Deposit Automation Solutions, Enterprise Payment Solutions, Image Solutions, and RemitPlus Solutions.

- a. Based on information and belief, Alogent Deposit Automation Solutions “help financial institutions advance beyond basic image capture by simplifying and streamlining paper-based transaction processes across branch, remote deposit and other service channels, as well as the back office.” Alogent Deposit Automation Solutions include, but are not limited to Alogent Front Counter (a full-featured teller image capture solution that scans and converts paper checks, deposit slips, and other items to electronic images upon receipt by the teller in the branch, and automates manual processing tasks), Alogent Back Counter (an image capture solution that supports standalone branches and regional image capture), Alogent Mobile Remote Deposit (a mobile remote deposit solution allowing deposits any time and anywhere using a mobile smartphone), Alogent Retail Remote Deposit (a allows consumers and small businesses to make bank deposits directly from the financial institution’s Website from the convenience of their home or office), Alogent Commercial Remote Deposit (a full featured remote deposit solution for

large depositors), and Alogent Image ATM (a provides for image capture at image enabled ATM machines and provides consolidation, processing, and routing for all image ATM deposits).

- b. Based on information and belief, Enterprise Payment Solutions is an integrated suite of products and services, including remote deposit products (*i.e.*, Remote Deposit Complete, Remote Deposit Now, Remote Deposit Express, Remote Deposit Anywhere, and Remote Deposit Scan) that provide a variety of image based check processing solutions to financial institutions of all sizes.
- c. Based on information and belief, Image Solutions products and services offer a suite of solutions that effectively handle any aspects of imaging through the Genesys Check Imaging & Branch Capture Product as well as the ImageCenter Product. The Genesys Check Imaging Suite is an all-inclusive check processing and imaging platform. It is a tightly integrated suite of products that capture, manage, store, preserve, and deliver information across a customer's organization. For customer bank branches' items, check processing can be centralized with ImageCenter Image Capture by creating a collection point for transactions originating from multiple channels including branches, image-based ATMs, and conventional ATMs. Upon information and belief, this product or service contains at least three products or services: Genesys Proof of Deposit, which features proof of deposit and clearing, item sorting, and reporting; Genesys Proof of Deposit Remote, which allows a branch or remote location to capture, perform reject/re-entry, and balance items; and Genesys Branch Capture, which gives financial institutions the ability to capture images of checks at the branch and

convert them into files that can be easily transmitted to the central processing facility. ImageCenter is a similarly comprehensive image capture solution that supports five capture methods (teller, branch, central, image ATM, and remote deposit) and electronically processes multiple transaction types for credit unions and banks.

- d. Based on information and belief, RemitPlus Solutions is a product or service that provides image based remittance and lockbox processing services.

12. Based on information and belief, and by way of further example and without limitation, The Jack Henry Defendants by and through Jack Henry Banking, offer imaging platforms that convert paper-based checks into electronically processed digital transactions, and streamline enterprise content management by converting virtually any paper-based document into a digital document that is electronically stored and can be immediately retrieved and efficiently delivered. These item and document imaging platforms are offered under at least the following brand names: 4|sight™ Item Imaging, Genesys Check Imaging Suite, and Check 21 Solutions.

- a. Based on information and belief, 4|sight™ Item Imaging is a product or service that provides a “check imaging platform that simplifies item processing by converting paper checks into digital images and processing them electronically.” It further “supports centralized and distributed processing environments, allowing image capture and archiving across multiple locations, and can be easily configured and modified to support dynamic operational and volume requirements.” “Banks have the option of creating regional capture centers or the option to capture checks at individual branches or both. The regional and branch

capture locations can be fully functional POD operations that scan, enter amounts, balance, and transmit images to the main check operations center.”

- b. Based on information and belief, Genesys Check Imaging Suite is a product or service offered through Jack Henry Banking and provided or supported by Jack Henry through ProfitStars as detailed above.

13. Based on information and belief, and by way of example and without limitation, The Jack Henry Defendants by and through Symitar, offer a variety of imaging and payments processing solutions to banking customers such as credit unions as part of multiple product and service offerings including without limitation ImageCenter, Synergy Document Management, Remote Deposit Capture, Merchant Deposit Capture, and Enterprise Conversion Solutions. These item and document imaging product and service suites provide a way to convert paper-based checks into digital checks and process them electronically.

- a. Based on information and belief, ImageCenter is believed to be a ProfitStars product or service as detailed above that is also offered by The Jack Henry Defendants through Symitar. ImageCenter Image Capture is available for in-house installation or through strategically located item processing centers and leverages four integrated modules – Central Capture, Remote Capture, Teller Capture and Remittance – to operate as the collection point for transactions that originate from multiple channels including branches and both image-based and conventional ATMs.
- b. Based on information and belief, Synergy Document Management enables institutions to securely capture, archive, retrieve, and distribute report data and check images, as well as other documents. This product or service can be

integrated with existing check image capture solutions or check image capture solutions offered by The Jack Henry Defendants.

- c. Based on information and belief, Remote Deposit Capture “is a Web-based, check image capture, storage, and processing solution that enables financial institutions to provide commercial members the ability to deposit paper checks of all types electronically.”
- d. Based on information and belief, Merchant Deposit Capture is a “Web-based, single-check image capture, storage, and processing solution that enables financial institutions to provide commercial merchant members the ability to deposit paper checks of all types electronically.”
- e. Based on information and belief, Enterprise Conversion Solutions is a product or service offered by Symitar but provided by The Jack Henry Defendants through ProfitStars as detailed above.

14. The products and services offered by The Jack Henry Defendants through ProfitStars, Symitar, and Jack Henry Banking as detailed above are individually and/or collectively hereafter referred to as the “Accused Instrumentalities.” The Accused Instrumentalities are provided as examples of products and/or services that DataTreasury contends infringe the Ballard Patents based on its current understanding and belief and are in no way meant to be a limitation on the scope of infringing products or services offered by the Jack Henry Defendants.

15. Each of the Accused Instrumentalities can be deployed individually or in combination and are listed here as examples of the systems and services offered by The Jack Henry Defendants to the Banking Defendants, who in turn offer some or all of them to their

banking customers. The following allegations apply equally, however, to any and all similar systems and services now offered or ever offered by Defendants regardless of the specific brand names applied to the systems and services.

II. THE PARTIES

16. The allegations of paragraphs 1-15 above are incorporated by reference as if fully set forth herein.

17. Plaintiff **DataTreasury Corporation** ("DataTreasury") is a Delaware corporation that maintains its principal place of business at 2301 W. Plano Parkway, Ste. 106, Plano, Texas 75074.

18. Defendant **Jack Henry & Associates, Inc.** ("Defendant Jack Henry") is a Delaware corporation that maintains its principal place of business at 663 Highway 60, Monett, Missouri 65708. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service, National Registered Agents, Inc., 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

19. Defendant **Symitar Systems, Inc.** is a wholly owned subsidiary of Defendant Jack Henry, and it maintains its principal place of business at 8985 Balboa Ave., San Diego, California 92123. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service, National Registered Agents, Inc., 818 W. Seventh St., Los Angeles, California 90017.

20. Defendant **ProfitStars, LLC** is a Missouri limited liability company that maintains its principal place of business at 1025 Central Expressway South, Dallas Texas 75013. This Defendant does business in Texas and this District and can be served with process through

its Registered Agent for Service, National Registered Agents, Inc., 120 South Central Avenue, Clayton, Missouri 63105.

21. Defendant **Steele Holdings, Inc.** is a Texas corporation with its principal place of business at 909 ESE Loop 323, Tyler, Texas 75701. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Brandon Steele, 909 ESE Loop 323, Suite 777, Tyler, Texas 75701.

22. Defendant **American State Bank** is a subsidiary of Steele Holdings, Inc. with its principal place of business located at 120 Front Street, Arp, Texas 75750. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 120 Front Street, Arp, Texas 75750.

23. Defendant **Citizens Bancorp, Inc.** is a Texas corporation with its principal place of business at 1320 Loop 304 East, Crockett, Texas 75835.. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Burl D. Hobson, 1320 Loop 304 East, Crockett, Texas 75835.

24. Defendant **Citizens National Bank** is a subsidiary of Citizens Bancorp, Inc. with its principal place of business located at 1320 Loop 304 East, Crockett, Texas 75835. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 1320 Loop 304 East, Crockett, Texas 75835.

25. Defendant **Collin Bank** is a Texas state-chartered bank with its principal place of business located at 2701 Dallas Parkway, Ste. 100, Plano, Texas 75093. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process Samuel L. Baughman, 2701 Dallas Parkway, Ste. 100, Plano Texas 75093.

26. Defendant **Grapeland State Bank** is a Texas state-chartered bank with its principal place of business located at 122 South Main Street, Grapeland, Texas 75844. This defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 122 South Main, Grapeland, Texas 75844.

27. Defendant **Justin State Bank** is a Texas state-chartered bank with its principal place of business located at 412 South Highway 156, Justin, Texas 76247. This defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 412 South Highway 156, Justin, Texas 76247.

28. Defendant **Sulphur Springs Bancshares, Inc.** is a Texas corporation with its principal place of business at 201 Connally Street, Sulphur Springs, Texas 75482. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Lee R. Teetes, 201 Connally Street, Sulphur Springs, Texas 75482.

29. Defendant **The City National Bank of Sulphur Springs** is a subsidiary of Sulphur Springs Bancshares, Inc. with its principal place of business located at 201 Connally Street, Sulphur Springs, Texas. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Lee R. Teetes, 201 Connally Street, Sulphur Springs, Texas 75482.

30. Defendant **East Texas Bancshares, Inc.** is a Texas corporation with its principal place of business at 112 W. Polk, Livingston, Texas 77351. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, P.E. Lindsay, 112 W. Polk, Livingston, Texas 77351.

31. Defendant **First National Bank of Jasper** is a subsidiary of East Texas Bancshares, Inc. with its principal place of business located at 301 E. Houston, Jasper, Texas 75951. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 301 E. Houston, Jasper, Texas 75951.

32. Defendant **First State Bank** is a subsidiary of East Texas Bancshares, Inc. with its principal place of business located at 112 W. Polk, Livingston, Texas 77351. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, P.E. Lindsay, 112 W. Polk, Livingston, Texas 77351.

33. Defendant **Overton Financial Corporation** is a Texas corporation with its principal place of business at 115 E. Henderson, Overton, Texas 75684. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Rogers Pope, 300 E. Whatley, Longview, Texas 75606.

34. Defendant **First State Bank** is a subsidiary of Overton Financial Corporation with its principal place of business located at 115 E. Henderson, Overton, Texas 75684. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 115 E. Henderson, Overton, Texas 75684.

35. Defendant **Lindale State Bank** is a subsidiary of Overton Financial Corporation with its principal place of business located at 101 S. Main Street, Lindale, Texas 75771. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Carroll R. Andersin, 101 S. Main Street, Lindale, Texas 75771.

36. Defendant **Henderson Citizens Bancshares, Inc.** is a Texas corporation with its principal place of business at 201 West Main Street, Henderson, Texas 75652. This Defendant

does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Kenneth Black, 201 West Main Street, Henderson, Texas 75652.

37. Defendant **Citizens National Bank** is a subsidiary of Henderson Citizens Bancshares, Inc. with its principal place of business located at 201 West Main Street, Henderson, Texas 75652. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Kenneth Black, 201 West Main Street, Henderson, Texas 75652.

38. Defendant **Emory Bancshares, Inc.** is a Texas corporation with its principal place of business at 501 Quitman Street, Emory, Texas 75440. This defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Steve E. Beaver at P.O Box 67, Emory, Texas 75440.

39. Defendant **The First National Bank of Emory** is a subsidiary of Emory Bancshares, Inc. with its principal place of business located at 107 East Quitman Street, Emory, Texas 75440. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Dalthene Russell, 107 East Quitman Street, Emory, Texas 75440.

40. Defendant **FNB Company** is a Texas corporation with its principal place of business at 2121 Highway 190 West, Livingston, Texas 77351. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, A. C. Evans, 2121 Highway 190 West, Livingston, Texas 77351.

41. Defendant **The First National Bank of Livingston** is a subsidiary of FNB Company with its principal place of business located at 2121 Highway 190 West, Livingston, Texas 77351. This Defendant does business in Texas and this District and can be served with

process through its Registered Agent for Service of Process, A. C. Evans, 2121 Highway 190 West, Livingston, Texas 77351.

42. Defendant **Van Alstyne Financial Corporation** is a Texas corporation with its principal place of business at 177 East Jefferson Street, Van Alstyne, Texas 75495. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Randle Jones, 110 E. Jefferson, Van Alstyne, Texas 75495.

43. Defendant **Texas Star Bank** is a subsidiary of Van Alstyne Financial Corporation with its principal place of business located at 177 East Jefferson, Van Alstyne, Texas 75495. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Randle Jones, 110 E. Jefferson, Van Alstyne, Texas 75495.

44. Defendant **Paris Bancshares, Inc.** is a Texas corporation with its principal place of business at 305 Lamar Avenue, Paris, Texas 75460. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Philip R. Cecil, 305 Lamar Avenue, Paris, Texas 75460.

45. Defendant **The Liberty National Bank of Paris** is a subsidiary of Paris Bancshares, Inc. with its principal place of business located at 305 Lamar Avenue, Paris, Texas 75460. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Car T. Cecil, 305 Lamar Avenue, Paris, Texas 75460.

46. Defendant **Independent Bank Group, Inc.** is a Texas corporation with its principal place of business at 1600 Redbud Blvd., Ste. 400, McKinney, Texas 75069. This

Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, David R. Brooks, 1600 Redbud Blvd., Ste., 400, McKinney, Texas 75069.

47. Defendant **Independent Bank** is a subsidiary of Independent Bank Group, Inc. with its principal place of business located at 3090 Craig Drive, McKinney, Texas 75070. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Julie Crump, 3090 Craig Drive, McKinney, Texas 75070.

48. Defendant **South Plains Financial, Inc.** is a Texas corporation with its principal place of business at 5219 City Bank Parkway, Lubbock, Texas 79407. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Curtis Griffith, 5219 City Bank Parkway, Lubbock, Texas 79407.

49. Defendant **City Bank** is a subsidiary of South Plains Financial, Inc. with its principal place of business located at 5219 City Bank Parkway, Lubbock, Texas 79407. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Paul Ehlers, 5219 City Bank Parkway, Lubbock, Texas 79407.

50. Defendant **SB&T Holdings, Inc.** is a Texas corporation with its principal place of business at 2517 Midway Road, Carrollton, Texas 75006. This defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Clay V. N. Bright, 2517 Midway Road, Carrollton, Texas 75006.

51. Defendant **State Bank and Trust Company** is a subsidiary of SB&T Holdings, Inc., with its principal place of business located at 2517 Midway Road, Carrollton, Texas 75006.

This Defendant does business in Texas and can be served with process by serving any officer, member or managing agent at 2517 Midway Road, Carrollton, Texas 75006.

52. Defendant **Third Coast Bancshares, Inc.** is a Texas corporation with its principal place of business at 20202 Highway 59 North, Ste. 190, Humble, Texas 77338. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Bart Caraway, 20202 Highway 59 North, Ste. 190, Humble, Texas 77338.

53. Defendant **Third Coast Bank, SSB** is a subsidiary of Third Coast Bancshares, Inc. with its principal place of business located at 20202 Highway 59 North, Ste. 190, Humble, Texas 77338. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 20202 Highway 59 North, Ste. 190, Humble, Texas 77338.

54. Defendant **NexBank Capital, Inc.** is a Delaware corporation with its principal place of business at 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, CT Corporation System, 350 North St. Paul, Ste. 2900, Dallas, Texas 75201.

55. Defendant **NexBank, SSB** is a subsidiary of NexBank Capital, Inc. with its principal place of business located at 2515 McKinney, 11th Flr., Dallas, Texas 75201. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, John L. Holt, 2515 McKinney, 11th Flr., Dallas, Texas 75201.

56. Defendant **WCM Holdings, Inc.** is a Texas corporation with its principal place of business at 3412 Caruth Blvd., Dallas, Texas 75225. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, William C. Murphy, 3412 Caruth Blvd., Dallas, Texas 75225.

57. Defendant **Veritex Community Bank** is a subsidiary of WCM Holdings, Inc. with its principal place of business located at 8214 Westchester Drive, Suite 400, Dallas, Texas 75225. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 8214 Westchester Drive, Ste. 400, Dallas, Texas 75225.

58. Defendant **First Private Holdings, Inc.** is a Texas corporation with its principal place of business at 8201 Preston Road, Ste. 200, Dallas, Texas 75225. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Daryl Kirkham, 8201 Preston Road, Ste. 200, Dallas, Texas 75225.

59. Defendant **First Private Bank of Texas** is a subsidiary of First Private Holdings, Inc. with its principal place of business located at 8201 Preston Road, Ste 200, Dallas, Texas 75225. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 8201 Preston Road, Ste. 200, Dallas, Texas 75225.

60. Defendant **Golden Bank, N.A.** is a national bank with its principal place of business at 3315 Bellaire Blvd., Houston, Texas 77036. This Defendant does business in Texas and this District and can be served with process by serving any officer, member or managing agent at 3315 Bellaire Blvd., Houston, Texas 77036.

61. Defendant **Green Bancorp, Inc.** is a Texas corporation with its principal place of business at 4000 Greenbrier Street, Houston, Texas 77098. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, John P. Durie, 4000 Greenbrier Street, Houston, Texas 77098.

62. Defendant **GreenBank, N.A.** is a subsidiary of Green Bancorp, Inc. with its principal place of business located at 4000 Greenbrier Street, Houston, Texas 77098. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, John P. Durie, 4000 Greenbrier Street, Houston, Texas 77098.

63. Defendant **MidSouth Bancorp** is a Louisiana corporation with its principal place of business at 102 Versailles, Lafayette, Louisiana 70501. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Clive R. Cloutier, 102 Versailles, Lafayette, Louisiana 70501.

64. Defendant **MidSouth Bank, N.A.** is a subsidiary of MidSouth Bancorp with its principal place of business located at 102 Versailles, Lafayette, Louisiana 70501. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, J. Hoke Peacock, 470 Orleans, Ste. 400, Beaumont, Texas 77701.

65. Defendant **Cherokee County Federal Credit Union** is a federal credit union with its principal place of business located at 144 N. Henderson Street, Rusk, Texas 75785. This defendant does business in Texas and in this District and can be served with process by serving any officer or managing agent at 144 N. Henderson Street, Rusk, Texas 75785.

66. Defendant **DATCU Credit Union** is a Texas state chartered credit union with its principal place of business located at 215 W. Hickory Street, Denton, Texas 76201. This defendant does business in Texas and in this District and can be served with process by serving any officer or managing agent at 215 W. Hickory Street, Denton, Texas 76201.

67. Defendant **Advancial Federal Credit Union** is a federal credit union with its principal place of business located at 1845 Woodall Rodgers Fwy, Ste 1300, Dallas, Texas 75201. This defendant does business in Texas and in this District and can be served with process by serving any officer or managing agent at 1845 Woodall Rodgers Fwy, Ste 1300, Dallas, Texas 75201.

68. Defendant **United Heritage Credit Union** is a Texas state chartered credit union with its principal place of business located at 12208 N. Mo Pac Expressway, Austin, Texas 78758. This defendant does business in Texas and in this District and can be served with process by serving any officer or managing agent at 144 N. Henderson Street, Rusk, Texas 75785.

69. Defendants Steele Holdings, Inc., American State Bank, Citizens Bancorp, Inc., Citizens National Bank, Collin Bank, Grapeland State Bank, Justin State Bank, Sulphur Springs Bancshares, Inc., The City National Bank of Sulphur Springs, East Texas Bancshares, Inc., First National Bank of Jasper, First State Bank (Livingston), Overton Financial Corporation, First State Bank (Overton), Lindale State Bank, The American National Bank of Mount Pleasant, Henderson Citizens Bancshares, Inc., Citizens National Bank, Emory Bancshares, Inc., The First National Bank of Emory, FNB Company, The First National Bank of Livingston, Van Alstyne Financial Corporation, Texas Star Bank, Paris Bancshares, Inc., The Liberty National Bank of Paris, Independent Bank Group, Inc., Independent Bank, South Plains Financial, Inc., City Bank, SB&T Holdings, State Bank and Trust Company, Third Coast Bancshares, Inc., Third Coast

Bank, SSB, NexBank Capital, Inc., NexBank, SSB, WCM Holdings, Inc., Veritex Community Bank, First Private Holdings, Inc., First Private Bank of Texas, Golden Bank, N.A., Green Bancorp, Inc., GreenBank, N.A., MidSouth Bancorp, MidSouth Bank, N.A., Cherokee County Federal Credit Union, DATCU Credit Union, Advancial Federal Credit Union, and United Heritage Credit Union are hereinafter referred to collectively as the “Banking Defendants.”

III. JURISDICTION AND VENUE

70. The allegations of paragraphs 1-69 above are incorporated by reference as if fully set forth herein.

71. This action for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271 *et seq.*, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

72. Personal jurisdiction exists generally over Defendants pursuant to 28 U.S.C. § 1391 because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this District. Personal jurisdiction also exists specifically over Defendants because of Defendants’ conduct in making, using, selling, offering to sell, and/or importing, directly, contributorily, and/or by inducement, infringing systems, products, and services within the State of Texas and within this district. At least one of each of those products and/or services sold in this District in an infringing manner is set forth in this Complaint. In addition, upon information and belief Defendants have provided systems and services in this District separately and independently, and with or for other infringing companies that were Defendants in related litigation in the United States District Court for the Eastern District of Texas.

73. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d), as well as 28 U.S.C., § 1400(b) for the reasons set forth above and below.

74. Each of the Defendants identified in paragraphs 18-68 are current users of the Jack Henry Defendants' check processing systems and services including by way of example only and without limitation at least one or more of the Accused Instrumentalities.

75. Each of the Banking Defendants are subject to personal jurisdiction, in addition to the reasons set forth above and below, because each Banking Defendant engages in infringing activities by using within this district at least one of the Accused Instrumentalities provided by the Jack Henry Defendants. Each Defendant has authorized, participated in, or facilitated transactions occurring in whole or in part within this District that, in whole or in part, infringe the '988 and '137 Patents asserted herein.

IV. JOINDER PUSUANT TO 35 U.S.C. § 299

76. Joinder is proper under 35 U.S.C. § 299

77. Joinder is proper under and in accordance with 35 U.S.C. § 299(a) because (1) DataTreasury is asserting its right to relief from Defendants for patent infringement jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the using, importing into the Unites States, offering for sale, or selling the same accused product or process, and (2) questions of fact common to all defendants will arise in this action.

78. Upon information and belief, each of the Banking Defendants identified in paragraphs 18-68 are current or former users of the Accused Instrumentalities, which are made, used, sold, or offered for sale by the Jack Henry Defendants. Further the Jack Henry Defendants engage in a concert of action to offer the Accused Instrumentalities. As detailed herein, there is

a clear relationship between the Jack Henry Defendants and an overlap of offering of the Accused Instrumentalities between and among the Jack Henry Defendants. Additionally, based on information and belief, multiple Accused Instrumentalities offered by and among the Jack Henry Defendants rely on the same underlying platforms. Upon information and belief, the Defendants' use of the Accused Instrumentalities infringe one or more claims of the '988 Patent and '137 Patent jointly, severally, or in the alternative. Because Defendants use the Accused Instrumentalities, which upon information and belief rely on the same underlying platform, systems, and services, questions of fact common to all Defendants will arise in this action.

V. PATENT INFRINGEMENT

79. The allegations of paragraphs 1-78 above are incorporated by reference as if fully set forth herein.

80. This is an exceptional case within the meaning of 35 U.S.C. §285.

81. DataTreasury is the owner as assignee of all rights, title and interest in and under the '988 Patent (attached as **Exhibit A**), which duly and legally issued on June 8, 1999, with Claudio Ballard as the named inventor, for an invention in remote image capture with centralized processing and storage. This patent went through re-examination with the United States Patent and Trademark Office ("USPTO") and was duly and legally reissued under the '988 Patent on October 23, 2007. Despite surviving a previous reexamination and a previous jury trial, an unidentified party has requested another reexamination some of the claims of the '988 Patent. That reexamination is currently ongoing.

82. DataTreasury is the owner as assignee of all rights, title, and interest in and under the '137 Patent (attached as **Exhibit B**), which duly and legally issued on February 29, 2000, with Claudio Ballard as the named inventor, for an invention in remote image capture with

centralized processing and storage. Similar to the '988 Patent, the '137 Patent went through re-examination with the USPTO and was duly and legally reissued under the '137 Patent on December 25, 2007.

VI. COUNT ONE – THE '988 PATENT

83. The allegations of paragraphs 1-82 above are incorporated by reference as if fully set forth herein.

84. The Defendants have been and are infringing the '988 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '988 Patent, including the Accused Instrumentalities. Such infringement is direct, contributory, and/or by inducement.

A. Direct Infringement of the '988 Patent

85. Defendants directly infringe the '988 Patent by making, using, selling, and/or offering to sale infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. Defendants make these systems and methods to capture images of paper checks and process those checks using the electronic images.

86. Specifically the Jack Henry Defendants directly infringe the '988 Patent by making, using, selling, and/or offering to sell systems and methods for image-based check processing such as the Accused Instrumentalities. By way of example only, and without limitation, the Jack Henry Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 1 of the '988 Patent by making, selling, and/or offering to sell systems and methods such as the Accused Instrumentalities.

87. Further and in the alternative, the Banking Defendants directly infringe the '988 Patent by making, using, selling, and/or offering to sell infringing systems and methods for

image-based check processing, such as by way of example the Accused Instrumentalities. By way of example only, and without limitation, the Banking Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 1 of the '988 Patent by using and/or offering to sell systems and methods such as the Accused Instrumentalities.

B. Contributory Infringement of the '988 Patent

88. Further and in the alternative and in addition to the direct infringement described above, each Defendant is liable for contributory infringement of the '988 Patent. Defendants knowingly contribute to infringement of the '988 Patent by making, selling, or offering for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

89. DataTreasury contends that collectively and/or individually the Jack Henry Defendants are liable for contributory infringement of the '988 Patent. The Jack Henry Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. The Jack Henry Defendants were aware of the '988 Patent because of their involvement in prior litigation with DataTreasury when they indemnified, defended, and obtained licenses on behalf of other banking customers. The Jack Henry Defendants were also aware of the '988 Patent because of general and industry-specific media coverage and industry meetings and seminars. The Jack Henry Defendants are also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 1, of the '988 Patent. The Jack Henry Defendants further know that use of the components

as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '988 Patent.

90. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for contributory infringement of the '988 Patent. The Banking Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Upon information and belief, DataTreasury contends that the Banking Defendants were aware of the '988 Patent because of general media coverage, banking industry publications that followed DataTreasury and its prior litigation, communications with prior defendants involved in DataTreasury litigation, communications with the Jack Henry Defendants prior to commencement of the current litigation, publicly available documents such as those available at the United States Patent Office and/or in the public records of DataTreasury's prior litigation, and/or information discussed at industry meetings, seminars, and/or conventions. The Banking Defendants are also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 1, of the '988 Patent. The Banking Defendants further know that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '988 Patent.

C. Inducement of Infringement of the '988 Patent

91. Further and in the alternative, Defendants have induced infringement of the '988 Patent. Defendants induced such infringement through their making, using, selling, and/or

offering to sell systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

92. DataTreasury contends that the Jack Henry Defendants are liable for inducement infringement of the '988 Patent. The Jack Henry Defendants have intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '988 Patent by others, namely the Banking Defendants. Such intentional action was and is the selling and/or offering for sale systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, the Jack Henry Defendants induced their customers such as the Banking Defendants and the Banking Defendants' customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, the Jack Henry Defendants induced the Banking Defendants and the Banking Defendants' customers to perform additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '988 Patent such as by way of example at least claim 26. The Jack Henry Defendants engaged in this conduct while they were aware of the '988 Patent as discussed in this Complaint. Because of their knowledge of the '988 Patent and their prior involvement in litigation with DataTreasury, the Jack Henry Defendants knew the acts they were inducing would infringe the '988 Patent.

93. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for inducement of infringement of the '988 Patent. The Banking Defendants have intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '988 Patent by others, namely the use of image-based check processing systems and methods such as the Accused Instrumentalities by the

Banking Defendants' customers and/or the sale of image-based check processing systems and methods such as the Accused Instrumentalities provided by the Jack Henry Defendants. Such intentional action was and is causing, urging, encouraging, and/or aiding use of the Accused Instrumentalities by bank customers, and selling and/or offering for sale the Accused Instrumentalities to bank customers. Further and in the alternative, such intentional action was and is purchasing and/or offering to purchase from the Jack Henry Defendants the systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of their conduct, the Banking Defendants induced their customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, the Banking Defendants induced the Jack Henry Defendants to sell systems and methods such as the Accused instrumentalities, which infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, the Banking Defendants induced their customers and/or induced the Jack Henry Defendants to carry out additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '988 Patent, by way of example at least claim 26. The Banking Defendants engaged in this conduct while they were aware of the '988 Patent as discussed elsewhere in this Complaint. Because of their knowledge of the '988 Patent and/or as a result of this lawsuit, the Banking Defendants knew the acts they were inducing would infringe the '988 Patent.

94. Unless the Defendants are enjoined by this Court, DataTreasury is without an adequate remedy at law.

D. Joint Infringement of the '988 Patent

95. Further an in the alternative, DataTreasury contends that Defendants have committed the above-described acts of direct infringement, contributory infringement, and/or inducement of infringement jointly. DataTreasury contends that as a result of such joint infringement, Defendants are jointly and severally liable for the infringing acts engaged in by each other.

96. DataTreasury contends that the Jack Henry Defendants are responsible for joint infringement because through their contractual obligations and instructions to the Banking Defendants, they directed and controlled the Banking Defendants infringing conduct.

97. Further and in the alternative, DataTreasury contends that the Banking Defendants are responsible for joint infringement because through their contractual obligations and instructions to the Jack Henry Defendants, the Banking Defendants directed and controlled the Jack Henry Defendants' infringing conduct.

VII. COUNT TWO – THE '137 PATENT

98. The allegations of paragraphs 1-97 above are incorporated by reference as if fully set forth herein.

99. The Defendants have been and are infringing the '137 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '137 Patent, including the Accused Instrumentalities. Such infringement is direct, contributory, and/or by inducement.

A. Direct Infringement of the '137 Patent

100. Defendants directly infringe the '137 Patent by making, using, selling, and/or offering to sale infringing systems and methods for image-based check processing, such as by

way of example the Accused Instrumentalities. Defendants make these systems and methods to capture images of paper checks and process those checks using the electronic images.

101. Specifically the Jack Henry Defendants directly infringe the '137 Patent by making, using, selling, and/or offering to sell systems and methods for image-based check processing such as the Accused Instrumentalities. By way of example only, and without limitation, the Jack Henry Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 42 of the '137 Patent by making, selling, and/or offering to sell systems and methods such as the Accused Instrumentalities.

102. Further and in the alternative, the Banking Defendants directly infringe the '137 Patent by making, using, selling, and/or offering to sell infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. By way of example only, and without limitation, the Banking Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 42 of the '137 Patent by using and/or offering to sell systems and methods such as the Accused Instrumentalities.

B. Contributory Infringement of the '137 Patent

103. Further and in the alternative and in addition to the direct infringement described above, each Defendant is liable for contributory infringement of the '137 Patent. Defendants knowingly contribute to infringement of the '137 Patent by making, selling, or offering for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

104. DataTreasury contends that the Jack Henry Defendants are liable for contributory infringement of the '137 Patent. The Jack Henry Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of

example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. The Jack Henry Defendants were aware of the '137 Patent because of their involvement in prior litigation with DataTreasury. The Jack Henry Defendants were also aware of the '137 Patent because of general and industry-specific media coverage and industry meetings and seminars. The Jack Henry Defendants are also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 42, of the '137 Patent. The Jack Henry Defendants further know that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 42, of the '137 Patent.

105. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for contributory infringement of the '137 Patent. The Banking Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Upon information and belief, DataTreasury contends that the Banking Defendants were aware of the '137 Patent because of general media coverage, banking industry publications that followed DataTreasury and its prior litigation, communications with prior defendants involved in DataTreasury litigation, communications with the Jack Henry Defendants prior to commencement of the current litigation, publicly available documents such as those available at the United States Patent Office and/or in the public records of DataTreasury's prior litigation, and/or information discussed at industry meetings, seminars, and/or conventions. The Banking Defendants are also aware that the components of the systems and methods for image-based

check processing satisfy at least one element of one claim, such as by way of example claim 42, of the '137 Patent. The Banking Defendants further know that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 42, of the '137 Patent.

C. Inducement of Infringement of the '137 Patent

106. Further and in the alternative, Defendants have induced infringement of the '137 Patent. Defendants induced such infringement through their making, using, selling, and/or offering to sell systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

107. DataTreasury contends that the Jack Henry Defendants are liable for inducement infringement of the '137 Patent. The Jack Henry Defendants have intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '137 Patent by others, namely the Banking Defendants. Such intentional action was and is the selling and/or offering for sale systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, the Jack Henry Defendants induced their customers such as the Banking Defendants and the Banking Defendants' customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, the Jack Henry Defendants induced the Banking Defendants and the Banking Defendants' customers to perform additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '137 Patent such as by way of example at least claim 43. The Jack Henry Defendants engaged in this conduct while they were aware of the '137 Patent as discussed in this Complaint. Because of their knowledge of the '137 Patent and their prior

involvement in litigation with DataTreasury, the Jack Henry Defendants knew the acts they were inducing would infringe the '137 Patent.

108. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for inducement of infringement of the '137 Patent. The Banking Defendants have intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '137 Patent by others, namely the use of image-based check processing systems and methods such as the Accused Instrumentalities by the Banking Defendants' customers and/or the sale of image-based check processing system and methods such as the Accused Instrumentalities by the Jack Henry Defendants. Such intentional action was and is causing, urging, encouraging, and/or aiding use of the Accused Instrumentalities by customers, and selling and/or offering for sale the Accused Instrumentalities to customers. Further and in the alternative, such intentional action was and is purchasing and/or offering to purchase from the Jack Henry Defendants the systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of their conduct, the Banking Defendants induced their customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, the Banking Defendants induced the Jack Henry Defendants to sell systems and methods such as the Accused instrumentalities, which infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, the Banking Defendants induced their customers and/or induced the Jack Henry Defendants to carry out additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '137 Patent, by way of example at least claim 43. The Banking Defendants engaged in this conduct while they were aware of the '137

Patent as discussed elsewhere in this Complaint. Because of their knowledge of the '137 Patent and/or as a result of this lawsuit, the Banking Defendants knew the acts they were inducing would infringe the '137 Patent.

109. Unless the Defendants are enjoined by this Court, DataTreasury is without an adequate remedy at law.

D. Joint Infringement of the '137 Patent

110. Further an in the alternative, DataTreasury contends that Defendants have committed the above-described acts of direct infringement, contributory infringement, and/or inducement of infringement jointly. DataTreasury contends that as a result of such joint infringement, Defendants are jointly and severally liable for the infringing acts engaged in by each other.

111. DataTreasury contends that the Jack Henry Defendants are responsible for joint infringement because through their contractual obligations and instructions to the Banking Defendants, they directed and controlled the Banking Defendants infringing conduct.

112. Further and in the alternative, DataTreasury contends that the Banking Defendants are responsible for joint infringement because through their contractual obligations and instructions to the Jack Henry Defendants, the Banking Defendants directed and controlled the Jack Henry Defendants' infringing conduct.

VIII. WILLFULNESS

113. The Defendants' infringement of the '988 Patent and the '137 Patent has been and is willful. Each Defendant listed herein has had notice and knowledge of the DTC patents and their infringement of the patents for years, including by way of the public notice set forth in paragraphs 1-9. Upon information and belief, the Defendants have known for years about the

Ballard Patents and their affirmation in re-examination, success in court, and multiple consent judgments and licenses through the widespread press coverage, industry organization meetings, and/or Congressional activities discussed herein.

114. Additionally, the Jack Henry Defendants have been involved in prior litigation with DataTreasury in which the Ballard Patents were asserted. In those actions, the Jack Henry Defendants indemnified, defended, and obtained licenses on behalf of their customer banks. While acting on behalf of their customer banks who used the same or similar systems as those at issue in this action, the Jack Henry Defendants obtained licenses to the Ballard Patents on behalf of their customers and had an opportunity to purchase a license that would inure to the benefit of the Jack Henry Defendants and all of their customers. The Jack Henry Defendants were also aware of the '988 and '137 Patents because of general and industry-specific media coverage and industry meetings and seminars. Through those interactions, the Jack Henry Defendants became well-aware of how their systems and methods, such as the Accused Instrumentalities infringed the Ballard Patents, yet they continued to make, use, sell, and/or offer for sell those systems and methods.

115. Defendants engaged in the above described conduct despite a high likelihood that their actions infringed the '988 Patent and/or the '137 Patent. Further Defendants knew or should have known that their actions constituted a high risk of infringement of the '988 Patent and/or the '137 Patent.

IX. VICARIOUS LIABILITY

116. The allegations of paragraphs 1-115 above are incorporated by reference as if fully set forth herein.

117. In addition to liability for their own independent conduct, the Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of alter ego and single business enterprise, and under applicable state and federal statutes and regulations. Specifically, each parent company or holding company entity identified herein is the alter ego of its operating entity Defendant identified herein. For example, they have common stock ownership (i.e., parent companies owning all stock of the operating subsidiaries), common directors and officers, common business departments and headquarters; the parent or holding company finances and pays the expenses of the subsidiary; and the daily operations, board meetings, books and/or records of the two companies are not kept separate.

118. Further and in the alternative, Defendants are liable for infringement committed by their subsidiaries, affiliates, and related entities under the doctrine of joint infringement. Specifically, each parent company or holding company entity identified herein directs and controls the conduct of its subsidiaries, affiliates, and related entities to the extent that they are jointly responsible for any infringement, whether infringement be direct infringement, contributory infringement, or inducement of infringement as alleged above.

X. DAMAGES

119. The allegations of paragraphs 1-118 above are incorporated by reference as if fully set forth herein.

120. For the above-described infringement, DataTreasury has been injured and seeks damages to adequately compensate it for Defendants' infringement of the Ballard Patents. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

121. DataTreasury contends that Defendants willfully infringed the Ballard Patents. DataTreasury requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

122. DataTreasury further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. §285. Pursuant to such an order DataTreasury seeks recovery of its reasonable attorneys' fees and expenses.

XI. JURY DEMAND

123. The allegations of paragraphs 1-122 above are incorporated by reference as if fully set forth herein.

124. DataTreasury requests a jury trial for all issues triable to a jury.

XII. PRAYER FOR RELIEF

125. The allegations of paragraphs 1-124 above are incorporated by reference as if fully set forth herein.

126. DataTreasury respectfully requests the following relief:

A. That the Court declare that the '988 and '137 Patents are valid and enforceable and that they are infringed by Defendants as described herein;

B. That the Court enter a permanent injunction against Defendants' direct infringement of the '988 and '137 Patents;

C. That the Court enter a permanent injunction against Defendants' active inducement of infringement and/or contributory infringement of the '988 and '137 Patents among themselves and by others;

D. That the Court award damages of no less than a reasonable royalty to DataTreasury to which it is entitled for patent infringement;

- E. That the Court award pre-judgment and post-judgment interest on the damages to DataTreasury;
- F. That the Court treble all damages and interest for willful infringement;
- G. That the Court award to DataTreasury its costs and attorneys' fees incurred in this action; and
- H. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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