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13 Attorneys for Plaintiff and Intervenor-Defendant,
14 HARPER ADVANCE, LLC

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 HARPER ADVANCE, LLC,

20 Plaintiff,

21 vs.

22 ARCHGATE TMS SOLUTIONS, LLC
23 d/b/a ARCHGATE TMS SOLUTIONS,
24 an Illinois limited liability company;
25 ARCHGATE TMS, LLC., a Illinois
26 limited liability company;
27 EFREIGHTSOLUTIONS, LLC d/b/a
28 EFREIGHTSOLUTIONS, a Georgia
limited liability company;
EFREIGHTSOLUTIONS HOLDINGS,
LLC d/b/a EFREIGHTSOLUTIONS
HOLDINGS, a Delaware limited liability
company; EFREIGHT LLC d/b/a
EFREIGHT, a Georgia limited company;
EFSWW ACQUISITION, LLC d/b/a
EFSWW ACQUISITION, a Georgia
limited liability company; EFSWW LLC
d/b/a EFSWW, a Georgia limited liability
company; CARTAGE NOW, LLC d/b/a
CARTAGE NOW, a Georgia limited
liability company; CARTAGE
SYSTEMS, LLC, d/b/a CARTAGE
SYSTEMS, a Georgia limited liability
company; POWER PAY, LLC d/b/a
POWER PAY, a Georgia limited liability
company; EXACTDIRECT, LLC d/b/a

Case No. 2:20-cv-07041

**FIRST AMENDED COMPLAINT
FOR:**

**(1) PATENT INFRINGEMENT
(2) BREACH OF CONTRACT;
(3) BREACH OF GUARANTY;
(4) OPEN BOOK ACCOUNT;
(5) ACCOUNT STATED;
(6) DECLARATORY RELIEF**

EXACTDIRECT, a Georgia limited liability company; COSCOEX USA, LLC d/b/a COSCOEX USA, a Georgia limited liability company; TECHKNOWLOGI HOLDINGS, LLC d/b/a TECHKNOWLOGI HOLDINGS, a Georgia limited liability company; and WILLIAM SPENCER ASKEW, an individual; TRANSPORTATION APPLIED INTELLIGENCE SOFTWARE, LLC d/b/a TAI, a Delaware limited liability company; VININGS BANK, a Georgia company

Defendants.

VININGS BANK,

Intervenor.

For its First Amended Complaint, Harper Advance, LLC (“Plaintiff” or “Harper Advance”) by and through its attorneys of record, bring this matter against Archgate TMS Solutions, LLC, Archgate TMS, LLC Efreightsolutions, LLC, Efreightsolutions Holdings, LLC, Efreight LLC, EFSWW Acquisitions, LLC, EFSWW, LLC, Cartage Now, LLC, Cartage Systems, LLC, Power Pay, LLC, ExactDirect, LLC, COSCOEX USA, LLC, Techknowlogi Holdings, LLC, William Spencer Askew (collectively, “Askew Defendants”), Transportation Applied Intelligence Software, LLC (“TAI Software”), and Vinings Bank (the Askew Defendants, TAI Software, and Vinings Bank shall collectively be referred to as “Defendants”). Upon knowledge, information and belief, Harper Advance alleges as follows:

Nature of the Action

1. This is an action that arises out of Askew Defendants’ unauthorized use and TAI Software’s continued use of U.S. Patent No. 10,565,537 (the “Patent”) (attached as Exhibit A) that Defendant William Spencer Askew (“Defendant Askew”) assigned and transferred to Harper Advance pursuant to a Patent Assignment Agreement (“Patent Assignment Agreement”). Defendant Askew

1 advised Harper Advance that the Patent was necessary for the Askew Defendants’
2 business operations and offered to assign and transfer the Patent to Harper Advance
3 in consideration for Harper Advance to provide further working capital financing to
4 the Askew Defendants. Pursuant to the Patent Assignment Agreement, Harper
5 Advance obtained all legal rights, title, and interest in the Patent.

6 2. Harper Advance provided said working capital to the Askew Defendants
7 pursuant to a Standard Merchant Cash Advance Agreement (“MCA Agreement”).
8 Under that MCA Agreement, Harper Advance provided the Askew Defendants with
9 \$700,000 of working capital by purchasing the Askew Defendants’ future accounts,
10 contract rights, and other obligations arising from or relating to the payment of
11 monies from the Askew Defendants’ customers and/or other third party payors (the
12 “Receivables”), as set forth in the MCA Agreement. Pursuant the MCA Agreement,
13 the Askew Defendants agreed to repurchase the Receivables upon the terms and
14 conditions set forth in the MCA Agreement. Under the Patent Assignment
15 Agreement (“Assignment”), Harper Advance agreed to re-assign and transfer the
16 Patent back to Defendant Askew upon the timely repurchase in full of all of the
17 Receivables defined in the MCA Agreement.

18 3. The Askew Defendants breached the MCA Agreement by failing to
19 repurchase the Receivables thereby extinguishing any obligation on the part of
20 Harper Advance to re-assign and transfer back the Patent to Defendant Askew.

21 4. Harper Advance is informed and believes, and on that basis alleges, the
22 Askew Defendants and TAI Software practice the invention covered by the claims of
23 the Patent. In light of the Assignment, Harper Advance owns all rights to the Patent,
24 including the right to exclude others, including the Askew Defendants and TAI
25 Software from practicing the invention.

26 5. The Askew Defendants’ and TAI Software’s use of the patents
27 post-Assignment constitutes an infringement of Harper Advance’s patent rights.
28

6. Further, there is an actual and justiciable controversy has arisen and now exists between Harper Advance and Defendant Vinings Bank concerning Defendant Vinings Bank's claim to the Patent.

7. By this action, Harper Advance seeks injunctive relief and damages against Defendants.

Jurisdiction and Venue

8. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, et seq.

9. This Court has subject matter jurisdiction over this Complaint pursuant to 15 U.S.C. §§ 1338 *et seq.* This Court has supplemental jurisdiction over the remaining claims alleged herein pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over Defendants because they are present, doing business and/or residing in this District, because they have committed tortious acts and violated Harper Advance's rights in this District, and they knew or should have known that such conduct would cause injury to Harper Advance in the State of California.

11. Venue is proper in the United States District Court for the Central District of California under 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

12. Harper Advance is a California company organized and existing under the laws of the State of California. Harper Advance maintains its principal place of business at 6420 Wilshire Blvd #860, Los Angeles, CA 90048.

13. Harper Advance is informed and believes, and on that basis alleges, Archgate TMS Solutions, LLC, doing business as Archgate TMS Solutions ("Archgate TMS Solutions") is a limited liability company headquartered in Illinois, with its principal place of business at 17W662 Butterfield Road, Suite 305, Oakbrook Terrace, Illinois, 60181. Harper Advance is informed and believes, and on that basis

1 alleges, that Defendant Askew was the managing member, manager, and/or principal
2 of Archgate TMS Solutions and authorized to act on its behalf.

3 14. Harper Advance is informed and believes, and on that basis alleges,
4 Archgate TMS, LLC (“Archgate TMS”) is an Illinois limited liability company
5 headquartered in Illinois, with its principal place of business at 17W662 Butterfield
6 Road, Suite 305, Oakbrook Terrace, Illinois, 60181. Harper Advance is informed and
7 believes, and on that basis alleges, that Defendant Askew was the managing member,
8 manager, and/or principal of Archgate TMS and authorized to act on its behalf.

9 15. Harper Advance is informed and believes, and on that basis alleges,
10 Efreightsolutions, LLC, doing business as Efreightsolutions (“Efreightsolutions”) is
11 a limited liability company headquartered in Georgia, with its principal place of
12 business at 975 Cobb Place Boulevard, Suite 109, Canton, Georgia, 30114. Harper
13 Advance is informed and believes, and on that basis alleges, that Defendant Askew
14 was the managing member, manager, and/or principal of Efreightsolutions and
15 authorized to act on its behalf.

16 16. Harper Advance is informed and believes, and on that basis alleges,
17 Efreightsolutions Holdings, LLC, doing business as Efreightsolutions Holdings
18 (“Efreightsolutions Holdings”) is a Delaware limited liability company
19 headquartered with its principal place of business at 975 Cobb Place Boulevard, Suite
20 109, Canton, Georgia, 30114. Harper Advance is informed and believes, and on that
21 basis alleges, that Defendant Askew was the managing member, manager, and/or
22 principal of Efreightsolutions and authorized to act on its behalf.

23 17. Harper Advance is informed and believes, and on that basis alleges,
24 Efreight LLC, doing business as Efreight (“Efreight”) is a limited liability company
25 headquartered in Georgia, with its principal place of business at 975 Cobb Place
26 Boulevard, Suite 109, Canton, Georgia, 30114. Harper Advance is informed and
27 believes, and on that basis alleges, that Defendant Askew was the managing member,
28 manager, and/or principal of Efreight and authorized to act on its behalf.

1 18. Harper Advance is informed and believes, and on that basis alleges,
2 EFSWW Acquisition, doing business as EFSWW Acquisition (“EFSWW
3 Acquisition”) is a limited liability company headquartered in Georgia, with its
4 principal place of business at 95 Chastain Road, Kennesaw, Georgia, 30144.

5 19. Harper Advance is informed and believes, and on that basis alleges,
6 EFSWW LLC, doing business as EFSWW (“EFSWW”) is a limited liability
7 company headquartered in Georgia, with its principal place of business at 975 Cobb
8 Place Boulevard, Suite 109, Canton, Georgia, 30114. Harper Advance is informed
9 and believes, and on that basis alleges, that Defendant Askew was the managing
10 member, manager, and/or principal of EFSWW and authorized to act on its behalf.

11 20. Harper Advance is informed and believes, and on that basis alleges,
12 Cartage Now, LLC, doing business as Cartage Now (“Cartage Now”) is a limited
13 liability company headquartered in Georgia, with its principal place of business at
14 975 Cobb Place Boulevard, Suite 109, Canton, Georgia, 30114. Harper Advance is
15 informed and believes, and on that basis alleges, that Defendant Askew was the
16 managing member, manager, and/or principal of Cartage Now and authorized to act
17 on its behalf.

18 21. Harper Advance is informed and believes, and on that basis alleges,
19 Cartage Systems, LLC, doing business as Cartage Systems (“Cartage Systems”) is a
20 limited liability company headquartered in Georgia, with its principal place of
21 business at 2451 Cumberland Parkway, Suite 3710, Canton, Georgia, 30114. Harper
22 Advance is informed and believes, and on that basis alleges, that Defendant Askew
23 was the managing member, manager, and/or principal of Cartage Systems and
24 authorized to act on its behalf.

25 22. Harper Advance is informed and believes, and on that basis alleges,
26 Power Pay, LLC, doing business as Power Pay (“Power Pay”) is a limited liability
27 company headquartered in Georgia, with its principal place of business at 2451
28 Cumberland Parkway, Suite 3710, Canton, Georgia, 30114. Harper Advance is

1 informed and believes, and on that basis alleges, that Defendant Askew was the
2 managing member, manager, and/or principal of Power Pay and authorized to act on
3 its behalf.

4 23. Harper Advance is informed and believes, and on that basis alleges,
5 ExactDirect, LLC, doing business as ExactDirect (“ExactDirect”) is a limited
6 liability company headquartered in Georgia, with its principal place of business at
7 975 Cobb Place Boulevard, Suite 109, Canton, Georgia, 30114. Harper Advance is
8 informed and believes, and on that basis alleges, that Defendant Askew was the
9 managing member, manager, and/or principal of ExactDirect and authorized to act
10 on its behalf.

11 24. Harper Advance is informed and believes, and on that basis alleges,
12 COSCOEX USA, LLC, doing business as COSCOEX USA (“COSCOEX USA”) is
13 a limited liability company headquartered in Georgia, with its principal place of
14 business at 975 Cobb Place Boulevard, Suite 109, Canton, Georgia, 30114. Harper
15 Advance is informed and believes, and on that basis alleges, that Defendant Askew
16 was the managing member, manager, and/or principal of COSCOEX USA and
17 authorized to act on its behalf.

18 25. Harper Advance is informed and believes, and on that basis alleges,
19 Techknowlogi Holdings, LLC, doing business as Techknowlogi Holdings
20 (“Techknowlogi Holdings”) is a limited liability company headquartered in Georgia,
21 with its principal place of business at 2451 Cumberland Parkway, Suite 3710,
22 Canton, Georgia, 30114. Harper Advance is informed and believes, and on that basis
23 alleges, that Defendant Askew was the managing member, manager, and/or principal
24 of Technknowlogi Holdings and authorized to act on its behalf.

25 26. Harper Advance is informed and believes, and on that basis alleges,
26 Defendant Askew was, and is, an individual residing and domiciled in the state of
27 Georgia and guaranteed the performance of the agreements at issue herein. At all
28 times mentioned herein, Harper Advance understood that Defendant Askew had full

1 authority to act on behalf of and contractually bind each of the Defendant entities
2 identified herein.

3 27. At all times mentioned herein, the Askew Defendants, and each of them,
4 provided Defendant Askew with actual and/or ostensible authority to act on their
5 behalf and contractually obligate each of them to enter into the agreements at issue
6 herein. At all times mentioned herein, Defendant Askew was a principal, officer,
7 managing agent, owner, and/or employee of each of the Askew Defendants, who was
8 authorized to act on their behalf. Each of the Askew Defendants were aware that
9 Defendant Askew was acting on their behalf, received benefits as a result of
10 Defendant Askew's actions taken on their behalf, and/or ratified Defendant Askew's
11 actions, as alleged herein. Accordingly, each of the Askew Defendants are legally
12 bound by the actions taken by Defendant Askew within the course and scope of
13 Defendant Askew's agency, employment, and/or ostensible authority to act on their
14 behalf, as applicable.

15 28. Each of the Askew Defendants are interrelated, share common
16 ownership, and conduct business for one another.

17 29. Harper Advance is informed and believes, and on that basis alleges,
18 Transportation Applied Intelligence Software, doing business as TAI is a Delaware
19 limited liability company, with its principal place of business at 9121 Atlanta
20 Avenue, Suite 331, Huntington Beach, California, 92627. Harper Advance is
21 informed and believes, and on that basis alleges, TAI Software is the successor-in-
22 interest to the Askew Defendants, and in particular but not limited to Defendants
23 Technknowlogi Holdings and Efreightsolutions. Harper Advance is further informed
24 and believes and thereon alleges TAI Software is continuing to conduct the business
25 operations of the Askew Defendants after acquiring said business operations through
26 a credit bid transaction that occurred in August 2020 and that TAI Software's
27 business operations include the unauthorized and infringing use of the Patent.
28

FACTUAL BACKGROUND

34. After entering into the MCA Agreement 1, the Askew Defendants sought additional working capital financing from Harper Advance. Because the Askew Defendants had not fully repurchased all of prior Receivables, as described in the MCA Agreement 1, Harper Advance was not interested in providing the Askew Defendants with any further working capital at that time. In an effort to induce Harper Advance to provide further working capital, Defendant Askew offered to assign and transfer all rights and interest in the Patent, which he owned individually. The Patent is more specifically identified in Paragraph 34, *infra*. In consideration and acceptance of Defendant Askew's offer, Harper Advance, on June 5, 2020, entered into a second MCA Agreement with the Askew Defendants ("MCA Agreement 2"), which superseded MCA Agreement 1. Similar to MCA Agreement 1, Harper Advance agreed to purchase the Askew Defendants' Receivables for \$700,000 under the

1 circumstances defined in the MCA Agreement 2. The Askew Defendants agreed to
 2 repurchase the Receivables for the Receivables Purchased Amount of \$1,049,300.00
 3 under the circumstances defined in the MCA Agreement 2. A copy of MCA
 4 Agreement 2 and its accompanying terms and conditions is attached hereto as
 5 **Exhibit “B”** and incorporated herein by reference.

6 35. As part of MCA Agreement 2, Defendant Askew executed a personal
 7 guarantee in favor of Harper Advance (the “Guarantee”). Defendant Askew
 8 “guarantees [the Askew Defendants’] performance of all of the representations,
 9 warranties, and covenants made by [the Askew Defendants] . . . [Askew’s]
 10 obligations are due (i) at the time of any breach by [the Askew Defendants] of any
 11 representation, warranty, or covenant made by [the Askew Defendants] in the
 12 Agreement” The Guarantee also states in the event that the Askew Defendants
 13 fail to make a payment or perform any obligation when due under the Agreement,
 14 Harper Advance “may enforce its rights under this Guarantee without first seeking to
 15 obtain payment from Merchant, any other guarantor, or any Collateral, Additional
 16 Collateral, or Cross Collateral may hold pursuant to this Guarantee or any other
 17 agreement or guarantee.”

18 36. Pursuant to Section 37 of MCA Agreement 2, “If [Harper Advance]
 19 prevails in any litigation or arbitration with [the Askew Defendants] and/or
 20 Guarantor, then [the Askew Defendants] and Guarantor must pay [Harper
 21 Advance’s] reasonable attorney fees, which may include a contingency fee of up to
 22 40% of the amount claimed, expert fees, costs of suit, and prejudgment interest at a
 23 rate of 16% per annum (or the maximum rate permitted by applicable law if lower).
 24 If [Harper Advance] obtains the entry of a money judgment against [the Askew
 25 Defendants] and/or Guarantor, then the judgment will accrue interest at a rate of 16%
 26 per annum, which rate will govern over the statutory rate of interest up until actual
 27 satisfaction of the judgment.”
 28

1 37. On February 18, 2020, United States Patent No. 10,565,537, entitled
 2 “Systems, Methods, and Apparatuses for Optimizing Outcomes in a Multi-factor
 3 System” (the “’537 Patent”), was duly and legally issued by the United States Patent
 4 and Trademark Office (the “USPTO”). Defendant Askew was identified as the
 5 inventor of the ‘537 Patent and sole owner.

6 38. On June 25, 2020, Defendant Askew, as promised, assigned to Harper
 7 Advance the entire and exclusive right, title, and interest in the “’537 Patent. Such
 8 assignment was duly recorded at the United States Patent and Trademark Office. A
 9 true and correct copy of that Patent Assignment Agreement is attached hereto as
 10 **Exhibit “C”** and is incorporated herein by reference.

11 39. Harper Advance is therefore the owner of all rights, title, and interests
 12 in and to the ‘537 Patent, including all right to recover for any and all infringement
 13 thereof.

14 40. The ‘537 Patent is valid and enforceable.

15 41. Despite Harper Advance fulfilling all conditions precedent, the Askew
 16 Defendants have failed to completely fulfill all its obligations under MCA Agreement
 17 2. As the Askew Defendants have failed to satisfy its obligations under the MCA
 18 Agreement 2, Harper Advance owns the ‘537 Patent.

19 42. Harper Advance is informed and believes, and on that basis alleges, TAI
 20 Software, is a company that was organized in or around August 2020 by the Askew
 21 Defendants’ largest creditor to use as an entity to credit bid on the business operations
 22 and assets of the Askew Defendants. Harper Advance is further informed and
 23 believes, on that basis alleges, that TAI Software acquired all of the assets and prior
 24 business operations of the Askew Defendants through a credit bid transaction that
 25 occurred in August 2020, and that TAI Software is the successor-in-interest to the
 26 Askew Defendants. TAI Software advertises itself as a company that offers “unique,
 27 envelope-pushing, instantly accessible products to the transportation management
 28 industry,” and its marketing materials tout its use of a system that infringes on the

1 Patent. Further, TAI Software's Chief Executive Officer Mr. Walter Mitchell was
 2 previously the Chief Technology Officer for Defendants Technknowlogi Holdings
 3 and Efreightsolutions. Likewise, TAI Software is marketed as a company with over
 4 15 years of experience in the freight brokers business and is described as having been
 5 re-branded from Defendants Technknowlogi Holdings and Efreightsolutions.

6 43. Harper Advance is entitled under the law and by the terms of the MCA
 7 Agreement 2 to seek the relief requested herein. Moreover, as the legal owner of the
 8 '537 Patent, Harper Advance is entitled under the law to preclude the Askew
 9 Defendants and TAI Software from further use of the '537 Patent and to obtain
 10 damages from the Askew Defendants and TAI Software for their unauthorized
 11 continued use/claimed ownership of the '537 Patent.

12 **FIRST CAUSE OF ACTION**

13 **(Patent Infringement)**

14 **(Against the Askew Defendants and TAI Software)**

15 44. Harper Advance re-alleges and incorporates herein by reference each
 16 and every foregoing paragraph.

17 45. This Cause of Action for Patent Infringement is asserted against the
 18 Askew Defendants and TAI Software.

19 46. The Askew Defendants have made, used, sold, and/or offered to sell,
 20 products and/or services for optimizing outcomes in logistics work-flows via a self-
 21 service computer application at an electronic computer device comprising all the
 22 steps reflected in at least Claims 1 and 6 of the '537 Patent, in the United States,
 23 including in this Judicial District.

24 47. Defendant TAI Software is a successor-in-interest to the Askew
 25 Defendants and advertises itself as a company that offers services that infringe at
 26 least Claims 1 and 6 of the '537 Patent. The '537 Patent focuses on applying a
 27 computer-based system for optimizing transportation management systems (TMS)
 28 and logistics processes. "At a high level, the present technology relates to an artificial

1 intelligence (AI) and machine learning platform for use in complicated multi-factor
 2 systems, such as those used in the shipping and logistics industries. In particular,
 3 the platform is able to assess, analyze and provide recommendations for a plurality
 4 of businesses and logistical situations that affect all involved entities (e.g., shippers,
 5 third-party logistics providers, freight forwarders, Less than FullLoad (LTL) brokers,
 6 truckload brokers, LTL carriers, truckload carriers, drayage carriers cartage agents,
 7 couriers, parcel carriers, etc..) within the shipping industry or any other appropriate
 8 industry.” ‘537 Patent, Col. 3: 57-67).

9 48. Harper Advance is informed and believes, and on that basis alleges, that
 10 Defendant TAI Software is another iteration of Defendants Techknowlogi Holding
 11 and Efrightsolutions, and is using a method and system that infringes on the ‘537
 12 Patent.

13 49. The TAI Software website promotes its “All in platform, built for speed
 14 and scalability.” and “TAI TMS automates the entire logistics journey, giving freight
 15 brokers unprecedented visibility and scale in less time and fewer man hours. Clients
 16 book both LTL and FTL shipments directly on TAI’s advances AI enabled platform,
 17 freeing you to recruit new customers.”

18 50. Independent claims 1 and 6 are method and system claims respectively
 19 and include largely identical claim limitations. Claim 1, for example, focuses on
 20 optimizing outcomes in logistics work flows via self-service computer application,
 21 which again is the same product offered by TAI and includes limitations that are all
 22 satisfied by the TAI Software.

23 51. As shown on TAI’s website, a user submits a request online via a
 24 computer and the system generates a quote or ticket, which appears on the graphical
 25 user interface. The artificial intelligence (AI) aspect of TAI’s software product then
 26 compares one or more task parameters, which are used to optimize the identified
 27 logistics task, using a task analyzer. [The language in the claim limitation referring
 28 to “machine learning” is synonymous with AI.]. Once the optimized task is

1 determined, it is presented to the user of the TAI system via the graphic user interface.
 2 Again, TAI depicts the graphic user interface on its website, which informs the user
 3 about the optimized logistics action, which can be selected by the user and acted
 4 upon, including notifying one or more third-party entities to modify a pre-existing
 5 logistics workflow.

6 52. Harper Advance is informed and believes, and on that basis alleges, the
 7 TAI Software satisfies all the limitation of Claims 1 and 6 of the '537 Patent, either
 8 literally or pursuant to the doctrine of equivalents.

9 53. The Askew Defendants and TAI Software have infringed and are
 10 infringing the '537 Patent and will continue to do so, unless enjoined by this Court.

11 54. The Askew Defendants and TAI Software directly infringe the '537
 12 Patent, and are also liable for contributory infringement and induced infringement
 13 thereof.

14 55. The Askew Defendants and TAI Software's infringement of the '537
 15 Patent has been and will continue to be willful, wanton and deliberate with full
 16 knowledge and awareness of Plaintiff's patent rights, unless enjoined by this Court.

17 56. Plaintiff has been damaged in an amount to be determined at trial, but
 18 which is no less than a reasonable royalty, and has been irreparably injured by the
 19 Askew Defendants and TAI Software's infringing activities. Plaintiff will continue
 20 to be so damaged and irreparably injured unless such infringing activities are
 21 enjoined by this Court.

22 **SECOND CAUSE OF ACTION**

23 **(Breach of Contract)**

24 **(Against the Askew Defendants)**

25 57. Harper Advance re-alleges and incorporates herein by reference each
 26 and every foregoing paragraph.

27 58. Harper Advance entered into a valid contract (MCA Agreement 2) with
 28 the Askew Defendants.

59. Harper Advance agreed to purchase the Askew Defendants' Receivables for \$700,000 under the circumstances defined in the MCA Agreement 2. The Askew Defendants agreed to repurchase the Receivables for the Receivables Purchased Amount of \$1,049,300.00 under the circumstances defined in the MCA Agreement 2.

60. Harper Advance has performed all of its obligations presently due and owing under MCA Agreement 2 except for those obligations excused by the acts and omissions of the Askew Defendants as alleged herein.

61. The Askew Defendants breached the terms of MCA Agreement 2 by failing and refusing to repurchase certain Receivables as required under MCA Agreement 2.

62. As a direct and proximate result of the Askew Defendants' breach of MCA Agreement 2, Harper Advance suffered damages in the sum of \$928,328.00, plus interest, attorney's fees and costs.

THIRD CAUSE OF ACTION

(Breach of Guarantee)

(Against Defendant Askew)

63. Harper Advance re-alleges and incorporates herein by reference each and every foregoing paragraph.

64. As set forth herein, the Askew Defendants have breached the MCA Agreement 2 with Harper Advance. As a direct and proximate result of their breach, Harper Advance has been damaged in an amount of at least \$928,328.00.

65. Under the Guarantee, Defendant Askew personally guaranteed performance of all of the representations, warranties, and covenants made by the Askew Defendants.

66. Defendant Askew breached the Guarantee by failing to promptly pay Harper Advance the sums owed by the Askew Defendants after the Askew Defendants' default.

68. As a direct and proximate result of Defendant Askew's breach of the Guarantee, Harper Advance suffered damages in the sum of \$928,328.00, plus interest, attorney's fees and costs.

8 (Open Book Account)

69. Harper Advance re-alleges and incorporates herein by reference each
and every foregoing paragraph.

71. Although due demand therefor has been made, said sum has not been paid and it is now due, owing, and unpaid with interest and/or late charges thereon.

20 (Account Stated)

72. Harper Advance re-alleges and incorporates herein by reference each
and every foregoing paragraph.

75. There is now due, owing, and unpaid from the Askew Defendants to Harper Advance the sum of \$928,328.00, together with interest and/or late charges thereon.

SIXTH CAUSE OF ACTION

(Against Defendant Vinings Bank)

77. Defendant Vinings Bank claims that it possesses security agreements with Defendant Askew and further claims that such security interest provide Defendant Vinings Bank with an security interest in the ‘537 Patent.

79. Harper Advance is informed and believes, and thereon alleges, that Defendant Vining Bank's security agreements with Defendant Askew, which predated the issuance of the '537 Patent, do not cover the '537 Patent. Likewise, Harper Advance is informed and believes, and thereon alleges, that Defendant Vinings Bank did not perfect any security interest in the '537 Patent, if any, by failing to record any security interest against the '537 Patent with the USPTO.

1 Patent and such title search did not reveal any security interests or claims by
2 Defendant Vinings Bank or any other person or entity against the '537 Patent.

3 81. Having failed to record its claimed security interest in the '537 Patent
4 with the USPTO, Harper Advance's bona fide purchase of the '537 Patent
5 extinguished Defendant Vinings Bank claimed security interest, if any, in the '537
6 Patent..

7 82. Harper Advance maintains that it is the sole owner of the '537 Patent
8 and that Defendant Vinings Bank has no ownership nor security interest in the '537
9 Patent.

10 83. After Harper Advance acquired ownership to the '537 Patent through
11 the aforementioned assignment and duly recorded the assignment with the USPTO,
12 Defendant Vinings Bank filed an action against some of the Askew Defendants in a
13 state court in Georgia. Harper Advance was not a party to that Georgia state court
14 action and the Georgia state court does not have jurisdiction over Harper Advance.
15 Notwithstanding the fact that the '537 Patent had previously been assigned to Harper
16 Advance, with the assignment duly recorded with the USPTO, the fact that Harper
17 Advance was the registered and lawful owner of the '537 Patent, and the fact that
18 Harper Advance was not a party to the Georgia state action, Defendant Vinings Bank
19 sought to obtain an order of a writ of possession over the '537 Patent in the Georgia
20 state court action. When the Askew Defendants failed to appear in that Georgia state
21 court action, as they have done in this present action, Defendant Vinings Bank
22 apparently secured an order of a writ of possession to the '537 Patent through a
23 default judgment against Defendant Askew. That default judgment writ of possession
24 to the '537 Patent, however, is invalid and unenforceable because the Georgia state
25 court had no jurisdiction over the '537 Patent because Harper Advance previously
26 acquired ownership of the '537 Patent through a bona fide assignment prior to
27 Defendant Vinings Bank instituting that state court action in Georgia.
28

85. In light of the facts alleged herein and Defendant Vining Bank's
invalid writ of possession obtained through a default judgment against Defendant
Askew, the dispute between Harper Advance and Defendant Vinings Bank is
definite, immediate, and substantial.

13 87. Harper Advance is entitled to a declaratory judgment of its rights
14 under 28 U.S.C. § 2201 in order to resolve the dispute existing between the parties
15 and afford relief from the uncertainty and harm that Defendant Vinings Bank's
16 conduct has caused.

18 WHEREFORE, Harper Advance respectfully requests that the Court enter a
19 judgment in Harper Advance favor and against Defendants as follows:

21 | **(Patent Infringement Against the Askew Defendants and TAI Software)**

25 2. Permanently enjoining the Askew Defendants and TAI Software, their
26 successors, officers, agents and employees, and anyone acting in concert or
27 participation with or at direction of any of them, from further infringing the Patents
28 by manufacturing, using, offering for sale, selling or importing any products that

1 infringe the Patents;

2 3. An award of damages to be paid by the Askew Defendants and TAI
3 Software adequate to compensate Harper Advance for the Askew Defendants and
4 TAI Software's past infringement and any continuing or future infringement up until
5 the date such judgment is entered, and in no event less than a reasonable royalty,
6 including interest, costs, and disbursements pursuant to 35 U.S.C. § 284.

7 4. Awarding Harper Advance treble damages based on any infringement
8 found to be willful pursuant to 35 U.S.C. § 284.

9 5. Adjudging that this case be exceptional under 35 U.S.C. § 285 and
10 awarding enhanced damages, including costs and attorneys' fees, to Harper Advance.

11 6. Awarding Harper Advance pre-judgment and post-judgment interest at
12 the maximum rate permitted by law on its damages.

13 7. Granting Harper Advance such further relief as this Court deems just
14 and proper under the circumstances.

15 **AS TO THE SECOND CAUSE OF ACTION**

16 **(Breach of Contract Against the Askew Defendants)**

17 8. For compensatory damages in the sum of \$928,328.00, or an amount
18 according to proof, together with interest thereon pursuant to MCA Agreement 2;

19 9. For attorney's fees and costs of suit herein incurred; and

20 10. For fees, including late fees, which continue to accrue.

21 **AS TO THE THIRD CAUSE OF ACTION**

22 **(Breach of the Guarantee Against Defendant Askew)**

23 11. For compensatory damages in the sum of \$928,328.00 or an amount
24 according to proof, together with interest thereon pursuant to MCA Agreement 2;

25 12. For attorney's fees and costs of suit herein incurred; and

26 13. For fees, including late fees, which continue to accrue.

AS TO THE FOURTH CAUSE OF ACTION

(Open Book Account Against the Askew Defendants)

14. For compensatory damages in the sum of \$928,328.00, or an amount according to proof, together with interest thereon pursuant to MCA Agreement 2; and;

15. For fees, including late fees, which continue to accrue.

AS TO THE FIFTH CAUSE OF ACTION

(Account Stated Against the Askew Defendants)

16. For compensatory damages in the sum of \$928,328.00, or an amount according to proof, together with interest thereon pursuant to MCA Agreement 2; and;

17. For fees, including late fees, which continue to accrue.

AS TO THE SIXTH CAUSE OF ACTION

(Account Stated Against Defendant Vinings Bank)

18. For declaratory judgment that Harper Advance is the bona fide purchaser of the '537 Patent which extinguished any security interest that Defendant Vinings Bank may have had in the '537 Patent.

19. For a declaratory judgment that Defendant Vinings Bank has no rights or interest in the '537 Patent.

20. Such Other relief as this Court deems just and proper.

AS TO ALL CAUSES OF ACTION

21. For costs of suit herein incurred;

22. For prejudgment interest; and

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1 23. For such other and further relief as this Court may deem just and proper.

2 DATED: May 10, 2021

BUCHALTER
A Professional Corporation

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5 By: 
6 GABRIEL G. GREEN
7 WILLMORE F. HOLBROW
8 WEISS B. HAMID
9 Attorneys for Plaintiff Harper Advance,
10 LLC
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