

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

COLLECTIONS MARKETING CENTER, INC., )		
and BRIDGEFORCE, INC., )		
	)	C.A. No. 1:10-cv-00870-UNA
Plaintiffs,	)	
	)	
vs.	)	
	)	
APOLLO ENTERPRISE SOLUTIONS, INC., )		
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT  
PURSUANT TO TITLE 28 U.S.C. §2201(a)**

Plaintiffs Collections Marketing Center, Inc. (“CMC”) and Bridgeforce, Inc. (“BRIDGEFORCE”) (collectively “Plaintiffs”) bring this First Amended Complaint against Defendant Apollo Enterprise Solutions, Inc. (“APOLLO”) for a Declaratory Judgment that Plaintiffs have: (1) not infringed United States Patent Nos. 7814005 and 7818229; (2) that United States Patent Nos. 7814005 and 7818229 are invalid pursuant to Title 35 U.S.C. §§ 101, 102, 103, and 112; and (3) that this is an “exceptional” case under Title 35 U.S.C. § 285 and for an award of all of the Plaintiffs’ attorneys’ fees and costs.

**THE PARTIES**

1. Plaintiff Collections Marketing Center, Inc. is a Delaware Corporation with a principal place of business at 300 Water Street, Wilmington, Delaware 19801.
2. Plaintiff Bridgeforce, Inc. is a Delaware Corporation with a principal place of business at 155 Stanton Christiana Road, Newark, Delaware 19702.
3. Defendant Apollo Enterprise Solutions, Inc. is a Delaware Corporation with a principal place of business at 111 West Ocean Boulevard, Suite 1750, Long Beach, California

90802, formerly 2101 Business Center Drive, Suite 215, Irvine, California 92612, and Registered Agent in the State of Delaware at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

### **JURISDICTION AND VENUE**

4. Plaintiffs bring this action under the Federal Declaratory Judgment Act, Title 28 U.S.C. § 2201.

5. This Court has Subject Matter Jurisdiction over this matter under Title 28 U.S.C. § 1331 (Federal Question) and § 1338(a) (Patent).

6. Venue is proper in this District pursuant to Title 28 U.S.C. §§ 1391(b)(1)-(2) and (c) because APOLLO is a Delaware Corporation, a substantial part of the events giving rise to this action occurred within this Judicial District, and because a corporation defendant shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction.

### **FACTUAL BACKGROUND**

7. Plaintiff CMC offers fully integrated, multi-channel, adaptive collections services to maximize client cost-performance.

8. Plaintiff CMC offers a browser-accessible credit and collections software on a Software-as-a-Service basis, marketed directly to various financial institutions and credit card companies as well as through third-party reseller partners.

9. Plaintiff BRIDGEFORCE is a consulting company and provider of consumer and small business advisory services, including advisory on first and second mortgages, home equity loans, auto and personal loans, credit card services, and overdraft to financial institutions.

10. Plaintiff BRIDGEFORCE shares a limited common ownership and financial relationship with CMC whereby certain license commissions are paid to BRIDGEFORCE by CMC and where CMC has acted as a subcontractor of services for a BRIDGEFORCE client.

11. On March 9, 2006, APOLLO filed U.S. Patent Application No. 11/372767 for the invention, a “Dynamic Credit Score Alteration.” Said Patent Application was Published on July 5, 2007 (Publ. No. US 2007-0156576 A1), was granted on October 12, 2010, and assigned issue No. 7814005 (the “‘005 Patent”). *See* Patent attached hereto as Exhibit “A”.

12. The ‘005 Patent discloses an invention for discrete components of a web-based debt collections software.

13. On March 9, 2006, APOLLO filed U.S. Patent Application No. 11/372850 for the invention, a “Method for Future Payment Transactions”. Said Patent Application was Published on July 5, 2007 (Publ. No. US 2007-0156581 A1), was granted on October 19, 2010, and assigned issue No. 7818229 (the “‘229 Patent”). *See* Issue Notification, Notice of Allowance, Amendment, and Patent Application Publication attached hereto as Exhibit “B”.

14. The ‘229 Patent discloses an invention for discrete components of a web-based debt collections software.

#### **APOLLO’S KNOWLEDGE OF CMC’S SOFTWARE**

15. As part of CMC’s business model, it offers its browser-accessible credit and collections software solutions directly to customers (banks, credit card companies, etc.) on a managed service basis from its own hosted computers, providing a standard “out-of-the-box” specified service level and feature set and making further custom modifications to its products as necessary to meet the particular needs of its customers.

16. CMC also offers, via the same managed service method, the same software-based solutions to banks through third party reseller partners who contract with their clients to bring CMC’s services to them. One such vendor is Total System Services, Inc. (“TSYS”), a customer and partner with CMC since at least as early as July 2009.

17. CMC does not sell its browser-accessible credit and collections software to the general public nor is it accessible to the general public by potential customers.

18. Upon information and belief, APOLLO representatives have viewed the CMC software at trade shows and industry conventions.

19. Upon information and belief, based on the APOLLO representatives' review of the CMC software, APOLLO knew or should have known that the CMC software does not contain a method for causing a server to provide a user with an estimate of an amount that the user's credit score will increase if a debt is resolved based on a settlement offer based on a collections processing system contracting a credit bureau to obtain credit score information as claimed in the '005 Patent.

20. Upon information and belief, based on the APOLLO representative's review of the CMC software, APOLLO knew or should have known that the CMC software does not contain a method for implementing a future payment transaction relating to payments owed by processing a future payment request from a user at a server to determine whether to accept or deny the future payment request as claimed in the '229 Patent.

#### **APOLLO'S THREATS OF PATENT LITIGATION**

21. On September 9, 2010, Apollo's Counsel sent a Cease and Desist letter (the "Cease and Desist Letter") to TSYS, advising TSYS of the **Orange County California Action and Delaware Chancery Court Action** between APOLLO and both Plaintiffs. *See* Letter attached hereto as Exhibit "C".

22. The Cease and Desist Letter also advised TSYS of six pending Apollo U.S. Patent Applications, listing the Application Numbers and titles of the inventions.

23. The Cease and Desist Letter warned TSYS that it may also be subject to “significant liability” and that “Apollo vigorously enforces its intellectual property rights and shall be forced to pursue any and all available legal remedies against TSYS if you chose to ignore this letter.”

24. The Cease and Desist Letter also appeared to require TSYS to enter into an agreement to pay “adequate consideration” to APOLLO.

25. Upon information and belief, APOLLO’s Cease and Desist Letter threatens TSYS that unless it makes payment to APOLLO for what it believes to be infringing use of the APOLLO Patents, APOLLO will file a Patent Infringement lawsuit against TSYS.

26. Subsequently, a Cease and Desist Letter was also sent to Barclay’s US, a joint client of CMC and TSYS, making same threats of Patent Infringement.

27. As a result of the Cease and Desist Letter, TSYS contacted CMC about the condition of CMC’s software and the basis for APOLLO’s claims for infringement.

28. In addition, Plaintiffs are aware of APOLLO salespeople warning at least two separate CMC customers and clients that APOLLO plans to sue CMC and others for Patent Infringement when their Patents issue.

29. The instant action is necessary to address the specific issue as to whether CMC’s actions in the development, distribution, offer for sale and sale of its browser-accessible credit and collections software solutions (and whether because of BRIDGEFORCE’s relationships with CMC), Plaintiffs’ actions are lawful and not violative of any of Defendant’s rights, as there now exists a substantial controversy as to Plaintiffs’ ability to continue with its business, offering CMC’s software and maintaining accounts with customers such as TSYS, Barclays, and others, in light of said claims.

30. Defendant has placed Plaintiffs in a position of either pursuing allegedly illegal behavior or abandoning that activity which Plaintiffs claim a right to pursue, that is continuing to offer CMC's competing browser-accessible debt collection software.

31. Defendant's claims of Patent Infringement directed at TSYs, Barclays, and others, and indirectly at CMC and BRIDGEFORCE, are made in bad faith, as no representative of APOLLO has ever examined the CMC browser-accessible credit and collections software solutions (accused product), nor compared it to the APOLLO competing software, and from APOLLO's reviews of the CMC software, it knew or should have known that the CMC software does not contain any of the claimed inventions in the '005 and '229 Patents.

32. Absent mere speculation, there exists no reasonable basis to conclude that CMC's browser-accessible credit and collections software solutions have infringed the APOLLO software product.

33. Defendant's bad faith threats and claims of patent infringement, without a reasonable basis for same, constitute bad faith, entitling Plaintiffs to all of their attorneys' fees and costs in bringing/defending this action.

#### **FEDERAL DECLARATORY JUDGMENT ACT**

34. Pursuant to the Federal Declaratory Judgment Act, Title 28 U.S.C. § 2201, this Court may declare the rights and other legal relations of any interested party.

35. As set forth above, Defendant has asserted that Plaintiffs infringed Defendant's '005 Patent (Dynamic Credit Score Alteration) and '299 Patent (Method for Future Payment Transactions).

36. There exists a real and actual substantial controversy between Plaintiffs and Defendant.

37. Plaintiffs and APOLLO have adverse legal interests with respect to the threats of Patent Infringement made by APOLLO against CMC reseller-partners and customers, and CMC and BRIDGEFORCE indirectly.

38. There exist antagonistic claims indicating sufficient immediacy, and imminent and inevitable litigation.

39. The interests of the parties will be best served if this Court will enter a Declaratory Judgment setting forth the rights of the parties with respect to this dispute.

40. The relief sought by Plaintiffs will resolve the controversy relative to the respective interests of Plaintiffs and Defendant.

41. Plaintiffs seek a Declaratory Judgment from this Court that Plaintiffs have not infringed the '005 and '229 Patents, and that the '005 and '229 Patents are invalid, and that Plaintiffs be awarded their fees and costs.

**COUNT I**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '005 PATENT**

42. Each of paragraphs 1 through 41 are incorporated herein by reference.

43. APOLLO alleges that it is the owner of the '005 Patent.

44. Neither CMC nor BRIDGEFORCE have infringed and do not infringe any valid claim of the '005 Patent.

45. There is an actual, substantial and immediate controversy between the adverse interests of Plaintiffs and the Defendant as to whether Plaintiffs' use, making, sale, or offering for sale of its browser-accessible credit and collections software solutions infringe the claims of the '005 Patent.

46. Defendant's policy of aggressively pursuing allegations of infringement of the '005 Patent against CMC and BRIDGEFORCE via their customers, and the threatening

statements by APOLLO's attorneys directed to CMC reseller-partners, CMC and BRIDGEFORCE via the Cease and Desist Letter, demonstrate sufficient immediacy of the controversy to warrant issuance of a Declaratory Judgment.

47. Plaintiffs are entitled to a Judicial Declaration and Order that Plaintiffs have not infringed and do not infringe, directly, by inducement or by contribution, any valid claim of the '005 Patent.

**COUNT II**  
**DECLARATION OF INVALIDITY OF THE '005 PATENT**

48. Each of paragraphs 1 through 47 are incorporated herein by reference.

49. APOLLO alleges that it is the owner of the '005 Patent.

50. The '005 Patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

51. An actual, substantial and immediate controversy exists between Plaintiffs and Defendant as to whether the claims of the '005 Patent are valid.

52. Plaintiffs are entitled to a Judicial Declaration and order that the '005 Patent is invalid.

**COUNT III**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '229 PATENT**

53. Each of paragraphs 1 through 52 are incorporated herein by reference.

54. APOLLO alleges that it is the owner of the '229 Patent.

55. Neither CMC nor BRIDGEFORCE have infringed and do not infringe any valid claim of the '229 Patent.



56. There is an actual, substantial and immediate controversy between the adverse interests of Plaintiffs and the Defendant as to whether Plaintiffs' use, making, sale, or offering for sale of its browser-accessible credit and collections software solutions infringe the claims of the '229 Patent.

57. Defendant's policy of aggressively pursuing allegations of infringement of the '229 Patent against CMC and BRIDGEFORCE via customers, and the threatening statements by APOLLO's attorneys directed to CMC reseller-partners, CMC and BRIDGEFORCE via the Cease and Desist Letter, demonstrate sufficient immediacy of the controversy to warrant issuance of a Declaratory Judgment.

58. Plaintiffs are entitled to a Judicial Declaration and Order that Plaintiffs have not infringed and do not infringe, directly, by inducement or by contribution, any valid claim of the '229 Patent.

**COUNT IV**  
**DECLARATORY JUDGMENT OF INVALIDITY OF THE '229 PATENT**

59. Each of paragraphs 1 through 58 are incorporated herein by reference.

60. APOLLO alleges that it is the owner of the '229 Patent.

61. The '229 Patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

62. An actual, substantial and immediate controversy exists between Plaintiffs and Defendant as to whether the claims of the '229 Patent are valid.

63. Plaintiffs are entitled to a Judicial Declaration and order that the '229 Patent is invalid.

**DEMAND FOR JURY TRIAL**

64. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully requests trial by jury of all issues triable of right by a jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully requests that the Court enter judgment in their favor and against the Defendant as follows:

- A. The Court enter judgment that the '005 Patent is invalid;
- B. The Court enter judgment that the '229 Patent is invalid;
- C. The Court enter judgment that the '005 Patent is not infringed by CMC;
- D. The Court enter judgment that the '005 Patent is not infringed by BRIDGEFORCE;
- E. The Court enter judgment that the '229 Patent is not infringed by CMC;
- F. The Court enter judgment that the '229 Patent is not infringed by BRIDGEFORCE;
- G. The Court enjoin APOLLO, its officers, agents, attorneys, employees and those in active concert with them from interfering in any way with the marketing and sale and/or continued maintenance of Plaintiffs' accounts for its browser-accessible credit and collections software solutions, based on any alleged infringement of the '005 and '229 Patents;
- H. The Court find this case to be an exceptional case pursuant to 35 U.S.C. § 285 and award Plaintiffs their attorneys' fees in this action; and
- I. The Court enter an Order for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Of Counsel

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\*Pro Hac Vice Motions to be filed

Dated: October 19, 2010

/s/ James H. S. Levine

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