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18 Attorneys for Defendant
19 DATATEL, INC.

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 OAKLAND DIVISION

23 THINKEQUITY PARTNERS, LLC, a
24 Delaware limited liability company,

25 Plaintiff,

26 v.

27 DATATEL, INC., a Virginia Corporation,

28 Defendant.

CASE NO. C 05-02810 SBA

**DEFENDANT'S ANSWER TO
COMPLAINT**

COMPLAINT FILED: July 11, 2005
TRIAL DATE: No date set.

ANSWER

The Defendant, Datatel, Inc. ("Datatel"), by counsel and pursuant to Fed. R. Civ. P. 12(a), answers the averments contained in the Complaint filed by the Plaintiff, ThinkEquity Partners, LLC ("ThinkEquity"), as follows:

1. Datatel does not know whether the factual averments made in Paragraph 1 of the Complaint are true or not.

1 2. In response to the factual averments made in Paragraph 2 of the
2 Complaint, Datatel states that it is a corporation incorporated under the laws of the
3 Commonwealth of Virginia, and that its headquarters are also in the Commonwealth of
4 Virginia. Datatel also acknowledges that it does business in the State of California, and
5 that it has offices in the City and County of San Francisco.

6 3. The averments made in Paragraph 3 of the Complaint consist of
7 legal conclusions, not factual averments, and, therefore, require no response.

8 4. Datatel denies that venue is proper in the Northern District of
9 California, and denies that any of the events or omissions giving rise to the claims made
10 in the Complaint occurred in either the State of California or in this District.

11 5. The averments made in Paragraph 5 of the Complaint consist of
12 legal conclusions, not factual averments, and, therefore, require no response.

13 6. Datatel does not know whether the factual averments made in
14 Paragraph 6 of the Complaint are true or not.

15 7. In response to the factual averments made in Paragraph 7 of the
16 Complaint, Datatel states that its business involves the field of the higher education and,
17 specifically, education administration ERP systems in the higher education field
18 throughout the United States (including Puerto Rico), as well as in Canada, Guam and
19 Bermuda.

20 8. In response to the averments made in Paragraph 8 of the
21 Complaint, Datatel states that on July 18, 2003, Susan E. Cates, a "Principal" of
22 ThinkEquity, sent a proposed letter agreement to H. Russell Griffith, the President and
23 Chief Executive Officer of Datatel. This letter was sent from ThinkEquity's office at 28
24 West 44th Street, Suite 1202, New York, New York 10036 to Datatel's headquarters in
25 Virginia, located at 4375 Fair Lakes Court, Fairfax, Virginia 22033 (the "Engagement
26 Letter"). On behalf of Datatel, Mr. Griffith agreed to the terms of the Engagement Letter,
27 signed it and sent it back to Ms. Cates at her office in New York City.

28

1 9. In response to the factual averments made in Paragraph 9 of the
2 Complaint, the document referred to says what it says, so no recharacterization of its
3 contents is necessary.

4 10. In response to the factual averments made in Paragraph 10 of the
5 Complaint, Datatel states that it received a few limited documents from ThinkEquity prior
6 to Susan E. Cates' departure in March of 2004. Following Ms. Cates' departure,
7 however, Datatel received nothing further from ThinkEquity.

8 11. Datatel denies the factual averments made in Paragraph 11 of the
9 Complaint, but acknowledges that a closing did occur on a Stock Purchase Agreement
10 involving Datatel on April 5, 2005. ThinkEquity had nothing whatsoever to do with this
11 transaction, however, and was not involved in it in any way.

12 12. In response to the factual averments made in Paragraph 12 of the
13 Complaint, Datatel denies that it breached the Engagement Letter, and states that it was
14 ThinkEquity that breached the Engagement Letter by divesting itself of the ability to
15 perform its obligations after all of its personnel who might have been qualified or able to
16 perform those obligations left the employ of ThinkEquity, and were not replaced. It was
17 because of this that the Engagement Letter was terminated by written notice dated July
18 28, 2004. An accurate and authentic copy of Datatel's July 28, 2004 letter to
19 ThinkEquity, terminating the Engagement Letter (the "Termination Letter") at issue, is
20 attached as Exhibit "A." Datatel never received any written response to this Termination
21 Letter and ThinkEquity has never returned to Datatel any unearned portion of the
22 \$50,000 Retainer Fee initially paid to ThinkEquity by Datatel, as requested in the
23 Termination Letter.

24 13. In response to the factual averments made in Paragraph 13 of the
25 Complaint, Datatel acknowledges that the Stock Purchase Agreement referred to in
26 Paragraph 11 above involved an aggregate purchase price of \$265 million. Datatel
27 denies, however, that ThinkEquity was entitled to any "fee" in connection with this
28 transaction because ThinkEquity breached its obligations set out in the Engagement

1 Letter and the engagement was terminated by Datatel as a result. In addition,
2 ThinkEquity had nothing to do with the Stock Purchase Agreement referred to in this
3 Paragraph.

4 14. In response to the factual averments made in Paragraph 14 of the
5 Complaint, Datatel acknowledges that, on April 28, 2005, it received a two-line letter
6 from someone called Paul A. Pittman, an accurate and authentic copy of which is
7 attached as Exhibit "B." Datatel has never heard of Mr. Pittman, and denies that it is
8 indebted in any way to ThinkEquity as asserted in this two-line letter. Datatel also
9 denies that it did not respond to the April 28, 2005 letter from Mr. Pittman, or to
10 subsequent correspondence from counsel of record for ThinkEquity, as alleged, and
11 states that it did, in fact, respond to these demands, after having performed the
12 necessary factual investigation.

13 15. Datatel denies the factual averments made in Paragraph 15 of the
14 Complaint.

15 16. Datatel denies any remaining allegation of fact contained in the
16 Complaint that is not expressly admitted in Paragraphs 1-15 above.

17 **AFFIRMATIVE DEFENSES**

18 17. The Complaint fails to state a legally viable claim upon which relief
19 can be granted.

20 18. ThinkEquity is estopped by its own actions from claiming any of the
21 relief sought in the Complaint, because it divested itself of all personnel who had
22 knowledge of, or experience in, Datatel's line of business, thus rendering itself incapable
23 of performing the services delineated in the July 18, 2003 Engagement Letter.

24 19. ThinkEquity breached its covenant of good faith and fair dealing,
25 under New York law, by acting in a manner that deprived Datatel of its right to receive
26 the benefit of the services required of ThinkEquity in the July 18, 2003 Engagement
27 Letter. By failing to keep appropriately qualified people employed, ThinkEquity divested
28

1 itself of the ability to perform under the Engagement Letter, and Datatel acted
2 reasonably in terminating the Engagement Letter as a result.

3 20. ThinkEquity cannot assert claims under the July 18, 2003
4 Engagement Letter because there has been a failure of consideration caused by
5 ThinkEquity's divestiture of all personnel with experience in Datatel's line of business,
6 and who were capable of performing the obligations set out in the Engagement Letter,
7 as stated in Datatel's Termination Letter, a copy of which is attached as Exhibit "A."

8 21. As a result of the actions taken by ThinkEquity, Datatel's entire
9 purpose for entering into the July 18, 2003 Engagement Letter was commercially
10 frustrated, under New York law. ThinkEquity divested itself of all qualified persons who
11 may have been able to perform the commitments it undertook in the July 18, 2003
12 Engagement Letter. Ms. Susan E. Cates, a Principal of ThinkEquity, was the Supervisor
13 of ThinkEquity's New York office and the Head of its Education Investment Banking
14 Division. She made the initial contacts with Datatel in late 2002 and early 2003. She
15 was the primary contact between ThinkEquity and Datatel. It was exclusively a result of
16 Ms. Cates' individual knowledge, experience and expertise in the higher education field
17 and, specifically, in the area of higher education administration ERP systems, that
18 ThinkEquity was initially retained with a view to arranging potential mergers or
19 acquisitions, and providing a variety of related services. At the time the July 18, 2003
20 Engagement Letter was signed, ThinkEquity had no personnel other than Ms. Cates who
21 were able to perform the services specified in that Engagement Letter. Ms. Cates had
22 left ThinkEquity in March of 2004. This left ThinkEquity unable to perform the obligations
23 outlined in the Engagement Letter. She unsuccessfully attempted to work out an
24 arrangement with ThinkEquity following her departure, whereby she could continue to
25 advise Datatel in connection with ThinkEquity's obligations under the Engagement
26 Letter. Ms. Cates continued to consult with Datatel, free of charge, for a number of
27 months following her departure from ThinkEquity, but ThinkEquity never reached any
28 agreement with Ms. Cates pursuant to which ThinkEquity would be able to continue to

1 fulfill its obligations under the Engagement Letter. As of the date that Datatel's
2 Termination Letter was sent, therefore, ThinkEquity had no personnel left who could
3 perform the obligations prescribed in the Engagement Letter. As a result, ThinkEquity
4 was incapable of determining appropriate values to be received or paid in a
5 "Transaction," and it never did so. ThinkEquity was incapable of advising or assisting
6 Datatel as to the form and structure of a proposed "Transaction" and, if applicable, the
7 financing thereof, and it never did so. ThinkEquity was incapable of advising or assisting
8 Datatel's management in making presentations to its Board of Directors about the
9 proposed "Transaction," and it never did so. ThinkEquity was incapable of advising or
10 assisting Datatel in negotiating a definitive transaction agreement, in fact, and, never did
11 so. ThinkEquity was incapable of assisting Datatel in any proceedings relating to
12 regulatory approvals required for a proposed "Transaction," and, in fact, it never did so.
13 ThinkEquity was incapable of rendering any other financial advisory or investment
14 banking services as would, from time to time, be agreed upon by ThinkEquity and
15 Datatel, and, in fact, no such services were ever provided by ThinkEquity. Finally,
16 ThinkEquity was incapable of identifying or evaluating companies in higher education, or
17 leveraging ThinkEquity's relationship with other higher education oriented companies,
18 and, in fact, never did so. As a result of these and other failures on ThinkEquity's part,
19 the Engagement Letter was properly terminated by Datatel on July 28, 2004, and a
20 return of the unearned portion of the Retainer Fee was properly requested. Despite this
21 request, however, ThinkEquity has never returned the unearned portion of the \$50,000
22 "Retainer Fee."

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EXHIBIT A



July 28, 2004

Michael Moe
CFA Chairman & CEO
ThinkEquity Partners
475 Sansome St.
Suite 800
San Francisco, CA 94111

Dear Mr. Moe:

Datatel is terminating its engagement of ThinkEquity Partners LLC, pursuant to the terms of the letter sent to Datatel on July 18, 2003. Everyone at ThinkEquity with knowledge of our account and the Higher Education Market has left your firm and we believe that your firm is, therefore, unable to perform its obligations as outlined in that letter.

We are not contemplating any transactions as a result of your staff's work so Datatel does not anticipate any payments to your firm beyond those already made. Accordingly, we would be grateful if ThinkEquity could return any unearned portion of the \$50,000 retainer at your earliest possible convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. Russell Griffith".

H. Russell Griffith
President & CEO

Dallas
1231 Greenway Drive
13th Floor, Suite 1080
Irving, TX 75038
972.871.0656

Corporate Headquarters
4575 Fair Lakes Court
Fairfax, VA 22033
703.968.9000
www.datatel.com

San Francisco
100 Spear Street
Suite 1410
San Francisco, CA 94105
415.957.9002

EXHIBIT B

Wainwright
P A R T N E R S

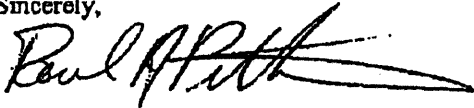
April 28, 2005

Mr. H. Russell Griffith
President & CEO
Datatel
4375 Fair Lakes Court
Fairfax, VA 22033

Mr. Griffith:

Attached please find our bill for \$1,943,594.44 (assumes a \$265 million transaction value) as per the terms of our engagement letter dated July 18, 2003.

Sincerely,



Paul A. Pittman
Partner

PAP/cm
Attachment

cc: Seth Gersch