

ORIGINAL

*2-CP/ALL*

*8/14/12*

CAUSE NO. 12-8901

FILED

SPEAR MARKETING, INC.,

Plaintiff,

v.

BANCORPSOUTH BANK and  
ARGO DATA RESOURCE CORPORATION,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

2012 AUG 10 PM 12:00  
IN THE DISTRICT COURT OF  
GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
*Beryinda Walker*  
DALLAS COUNTY, TEXAS

*68th-C*

JUDICIAL DISTRICT

**SPEAR MARKETING INC.'S ORIGINAL PETITION**

**Preliminary Statement**

Spear Marketing, Inc. ("SMI") brings this lawsuit against BancorpSouth Bank ("BancorpSouth") and ARGO Data Resource Corporation ("ARGO") for maliciously stealing SMI's confidential know-how, ideas, procedures, processes, systems, methods of operation, concepts, and other trade secret information relating to VaultWorks, SMI's proprietary system for optimizing the amount of cash a banking institution needs on hand at its branch and ATM locations to satisfy customer demand and operate profitably. BancorpSouth is a wholly-owned subsidiary of BancorpSouth, Inc., a publicly-traded bank holding company that operates approximately 290 banking and mortgage locations in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas with over \$13 billion in assets. ARGO develops products that some of the largest banks in the country use to communicate.

Faced with a sudden loss of technical personnel within its organization, ARGO embarked upon a course of industrial espionage through which it misappropriated SMI's trade secrets and engaged in unfair competition. Those actions were carried out through a calculated scheme to

raid SMI of its largest customer, which also had knowledge of the very innovations that ARGO sought.

Ten years ago, BancorpSouth contracted with SMI for its proprietary cash management system known as VaultWorks. In March 2010, SMI approached ARGO about acquiring VaultWorks for about \$2 million. ARGO expressed an interest after representing that it had no product like VaultWorks and had not even considered developing one. During the VaultWorks demonstration presented to several ARGO representatives on April 6, 2010, SMI made it known that one of its largest customers was BancorpSouth. According to ARGO's V.P. of Marketing, this was an attractive selling point because BancorpSouth was using ARGO's product to process its daily teller window transactions. But by the end of May 2010, all communications from ARGO to SMI ceased.

Sometime after the demonstration, and in contravention of the confidentiality agreements between the parties, ARGO collaborated with BancorpSouth to misappropriate SMI's cash management system. In January 2012, BancorpSouth terminated the VaultWorks agreement, effective March 1, 2012. Currently, BancorpSouth and ARGO are using SMI's proprietary ideas, processes, and/or other methodologies of VaultWorks without SMI's consent. In addition to permanent injunctive relief and the equitable relief of disgorgement, SMI seeks its actual damages caused by BancorpSouth and ARGO's theft, their misappropriation of SMI's proprietary information and trade secrets, their conversion of SMI's property, their fraudulent conduct, BancorpSouth's breach of contract, ARGO's tortious interference with contract, ARGO's unfair business activity, and their conspiratorial conduct as well as exemplary damages for BancorpSouth and ARGO's intentional and malicious conduct.

### I. DISCOVERY

1. SMI asserts that discovery should be conducted under Level 2 of Texas Rule of Civil Procedure 190.

2. Pursuant to Texas Rule of Civil Procedure 194, BancorpSouth and ARGO are requested to disclose, within fifty days of the service of this Petition, the information or material described in Rule 194.2.

### II. PARTIES

3. Spear Marketing, Inc. ("SMI") is a family owned and operated Texas corporation with a place of business at 2807 Allen Street #329, Dallas, Texas 75204.

4. BancorpSouth Bank ("BancorpSouth") is a Mississippi bank with its principal place of business at One Mississippi Plaza, 201 South Spring Street, Tupelo, Mississippi 38804. BancorpSouth is authorized to conduct business in Texas and maintains branch locations in Tyler, Longview, Alto, Marshall, Garrison, and Nacogdoches. BancorpSouth may be served by delivering the citation and petition to BancorpSouth's registered agent for service of process CT Corporation System, 350 N. St. Paul, Suite 2900, Dallas, Texas 75201.

5. ARGO Data Resource Corporation ("ARGO") is a privately-held Texas corporation with its principal place of business at 1500 N. Greenville Avenue, Suite 500, Richardson, Texas 75081. ARGO may be served by delivering the citation and petition to ARGO's registered agent for service of process Max L. Martin, 1500 N. Greenville Avenue, Suite 500, Richardson, Texas 75081.

### III. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the Court's minimum jurisdictional amount.

7. This Court has general personal jurisdiction over BancorpSouth and ARGO because they conduct business in Texas on a systematic and continuous basis.

8. This Court has specific personal jurisdiction over BancorpSouth and ARGO because SMI's claims arise from BancorpSouth's and ARGO's contacts with Texas and from acts and omissions that BancorpSouth and ARGO committed in whole or in part in Texas.

9. Pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), venue is proper in this Court because a substantial part of the events or omissions giving rise to this action occurred in Dallas County, Texas.

#### **IV. FACTUAL BACKGROUND**

##### **A. SMI's proprietary cash management system for banks**

10. For years, banks managed their cash levels by relying on a single, but very important, principle: never run out of cash. With no clear idea of how much cash they actually needed, banks would keep far too much on hand, typically operating with a thirty to fifty percent cash surplus.

11. Bill Spear founded SMI in 1997 and still serves as its President. He is a banking and bank marketing veteran with over fifty years of experience.

12. SMI's primary focus has always been assisting banks in determining the right amount and denominations of cash to have on hand at their various branch and ATM locations.

13. In about 1997, SMI developed a cash management system that enabled banks to identify surplus cash sitting idle in vaults and ATMs, track daily cash inventory by denomination, and eliminate unnecessary cash deliveries to branch and ATM locations.

14. Later, in January of 2000, SMI introduced VaultWorks, an improved, proprietary system that provides banking institutions with a turnkey solution for branch cash management

over the Internet. This proprietary system (a) relieves banks of the time consuming effort of producing the information needed to maintain optimal cash levels and (b) delivers robust, multiple level reports that identify the levels of cash to be removed and the actual cash targets to be maintained by each branch.

15. VaultWorks provides many benefits. Its primary function is to enable banks to reduce the amount of cash held in bank branches, ATMs, and central vaults, thereby allowing for the repurposing of surplus cash. Holding excessive cash is wasteful for banks. However, when entrusted to the banks' investment departments, the surplus cash can generate revenue. A secondary, but not less important, function of VaultWorks is to provide information banks need to order the right amounts of cash by denomination from the Federal Reserve Bank. The costs associated with unnecessary cash orders and shipments (such as handling and delivery costs) are higher than those associated with holding surplus cash. By reducing the frequency and size of cash orders, banks are able to reduce their costs significantly. Simply put, optimizing cash levels has a direct and immediate impact on the profitability of banks.

**B. SMI's valuable trade secrets associated with VaultWorks**

16. SMI has expended considerable effort and money over the last fifteen years to develop and improve VaultWorks and to make it a successful, cost-saving solution for the banking industry. By working closely with its trusted bank customers over the years, SMI has gained insight into its customers' needs and tailored VaultWorks to meet those needs. VaultWorks is currently on its eighth generation.

17. Over this fifteen year period, SMI amassed a vast amount of know-how, ideas, procedures, processes, systems, methods of operation, concepts, and other information relating to VaultWorks, all of which constitute valuable trade secret information owned by SMI ("SMI's

Trade Secrets”). This information is highly confidential and proprietary to SMI and is used by SMI in its business. The information presents an opportunity to obtain an advantage over SMI’s competitors that do not know or use the information.

18. More specifically, SMI’s Trade Secrets constitute know-how, ideas, procedures, processes, systems, methods of operation, and concepts that fall into the following two general categories:

- Technical Data and Information, including but not limited to, the selection of categories of input data used by VaultWorks; “Black Box” formulas, algorithms, and methods of operation used in VaultWorks; selection of categories of output data to be generated by VaultWorks; customer preferences regarding key output data; customer preferences regarding output data to include in reports; and customer preferences regarding organization of output data in reports; and
- Business Information, including but not limited to, past, present and prospective customer lists; past, present and prospective customer contacts; marketing strategies; budgets, forecasts and business plans; cost and pricing information for VaultWorks; information about SMI personnel; and financial information about SMI.

19. SMI’s Trade Secrets comprise valuable information unknown to the general public. They are known to only a few people who work for or on behalf of SMI. Furthermore, SMI’s Trade Secrets are kept secure and are accessible only to Mr. Spear, his son, and an agent responsible for maintaining SMI’s servers. All information exchanged between a bank and VaultWorks over the Internet is encoded. Each connection receives a unique session key used only once for that single session. The output data generated by VaultWorks and made available to the bank customer is accessible only to those bank employees with a password.

**C. The VaultWorks Agreement between SMI and BancorpSouth**

20. On May 24, 2002, BancorpSouth and SMI entered into a written VaultWorks agreement (the “VaultWorks Agreement”). Under the VaultWorks Agreement, SMI, among other things, provided BancorpSouth with access to VaultWorks, including SMI’s Trade Secrets.

By executing the VaultWorks Agreement, BancorpSouth represented that it would keep SMI's proprietary information and trade secrets confidential. Specifically, BancorpSouth "agree[d] not to disclose any of [SMI's proprietary] . . . information to anyone except those with a need to know in order to perform" under the VaultWorks Agreement. BancorpSouth further agreed not to "allow any unauthorized party access to SMI's proprietary VaultWorks." A true and correct copy of the VaultWorks Agreement is attached to this Petition as exhibit "A."

21. Subsequently, BancorpSouth and SMI extended the term of the VaultWorks Agreement. The last extension occurred in March 2010, where the parties prolonged the term of their agreement for two years (the "Extension"). A true and correct copy of the Extension is attached to this Petition as exhibit "B."

**D. Confidential acquisition discussions between SMI and ARGO**

22. Toward the end of March 2010, Mr. Spear of SMI spoke with Todd Robertson, ARGO's V.P. of Marketing, about whether ARGO would be interested in acquiring VaultWorks. Mr. Robertson indicated an interest, but stated he needed approval from Max Martin, ARGO's CEO, before proceeding with such a discussion. Mr. Robertson also said that he needed to confirm ARGO did not already have a solution similar to VaultWorks somewhere in the company's development pipeline.

23. Mr. Robertson subsequently represented to Mr. Spear that ARGO had no product similar to VaultWorks and had nothing in development regarding the cash management task.

24. Unbeknownst to Mr. Spear, on March 31, 2010 after a six-week jury trial, a Dallas district court judge issued a Final Judgment requiring ARGO to issue an \$85 million dividend to its two shareholders and co-founders, Balkrishna Shagrithaya and Mr. Martin. Judge Lorraine Raggio increased the amount of the dividend that the jury had recommended by \$20 million. The jury found that Mr. Martin, ARGO's majority stockholder, had engaged in fraud,

suppressed ARGO's dividends, breached his fiduciary duties, and engaged in oppressive conduct in an attempt to squeeze out Mr. Shagrithaya from ARGO, the company they started together in 1980.

25. On information and belief, for over twenty-eight years, Mr. Shagrithaya developed ARGO's banking products that Mr. Martin marketed. After Mr. Martin installed his hand-picked subordinate on ARGO's Board of Directors, Mr. Shagrithaya resigned as a Board member, officer, and employee in 2009.

26. In addition to the \$85 million dividend, the Final Judgment also requires Mr. Martin to pay Mr. Shagrithaya substantial pre-judgment interest, more than \$1.3 million in back pay for breach of an implied compensation agreement, and more than \$500,000 in legal fees. Mr. Shagrithaya also brought claims against Mr. Martin on a derivative basis in the name of ARGO, and the Final Judgment requires ARGO to pay Mr. Shagrithaya more than \$1 million in legal fees and expenses as a result of the benefits that he secured for ARGO in bringing claims in the case for ARGO's benefit against Mr. Martin. The total amount of the Final Judgment, including prejudgment interest, exceeds \$90 million.<sup>1</sup> A true and correct copy of the Final Judgment is attached to this Petition as exhibit "C."

27. On April 1, 2010, per Mr. Robertson's request, Mr. Spear emailed Mr. Robertson an information sheet regarding VaultWorks to share with ARGO's senior management. Mr. Robertson later called Mr. Spear and informed him that ARGO was indeed interested in seeing a demonstration of VaultWorks right away. Mr. Spear requested a nondisclosure agreement from

---

<sup>1</sup> Mr. Martin (a named defendant) and ARGO (a company controlled by Mr. Martin) appealed the Final Judgment. The Fifth Court of Appeals in Dallas, Texas has yet to issue an opinion. On information and belief, Mr. Martin has stockpiled more than \$150 million in profits at ARGO yet refuses to distribute the company's profits and is trying to coerce Mr. Shagrithaya into accepting a lowball price for his shares in ARGO.



ARGO, and Mr. Robertson promised one. As a result of Mr. Robertson's representation, Mr. Spear believed that ARGO had agreed not to use or disclose any of SMI's Trade Secrets that would be shared with ARGO during the parties' acquisition discussions. Mr. Spear protected SMI's Trade Secrets by not disclosing any confidential information to anyone at ARGO until he had ARGO's assurance the acquisition discussions would be confidential and the discussions commenced. Under these circumstances, the acquisition discussions took place in confidence and placed ARGO under a duty to neither use nor disclose SMI's Trade Secrets.

28. On April 6, 2010, Mr. Spear demonstrated VaultWorks to Mr. Robertson and several other ARGO representatives during a nearly 1-hour Internet conference call. During the demonstration, Mr. Spear described how data from an automated teller system was interfaced into VaultWorks directly, thus saving a bank from having to input the data manually at each of its branches. During the demonstration, ARGO representatives questioned Mr. Spear about SMI's relationship with BancorpSouth, which at that time was SMI's largest customer.

29. On April 6, 2010, shortly after the demonstration, Mr. Robertson emailed Mr. Spear an unsigned nondisclosure agreement (the "NDA") that SMI signed and returned to ARGO. True and correct copies of the April 6, 2010 email and the NDA are attached to this Petition as exhibits "D" and "E" respectively.

30. On April 15, 2010, Messrs. Spear and Robertson met for lunch to discuss the acquisition further. The conversation focused on ARGO's integration of VaultWorks, SMI's current customers, SMI's prospective customers, and the structure of the potential acquisition, among other things. During the discussion, Mr. Robertson promised to provide SMI with an executed copy of the NDA after apologizing for having not done so already.

31. On April 21, 2010, in reliance on Mr. Robertson's representation that ARGO would sign the NDA, Mr. Spear emailed Mr. Robertson materials that disclosed information reserved exclusively for SMI's existing and prospective customers.

32. On May 17, 2010, in response to several emails from Mr. Spear requesting an executed copy of the NDA from ARGO, Mr. Robertson promised—again—that ARGO would sign and return the NDA. To advance the acquisition discussions, Mr. Robertson then represented: "Our initial thoughts are to understand the install base and where there is overlap with ARGO's existing customer base." A true and correct copy of the May 17, 2010 email is attached to this Petition as exhibit "F."

33. Mr. Robertson's May 17, 2010 email was the last communication SMI received from ARGO. Despite Mr. Robertson's repeated representations, upon which SMI reasonably relied, ARGO never signed and returned the NDA to SMI.

34. ARGO never disclosed the contents or existence of the March 31, 2010 Final Judgment to SMI. SMI would not have disclosed any of SMI's Trade Secrets to ARGO if SMI had known about the Final Judgment or that ARGO would not sign and return the NDA.

**E. ARGO and BancorpSouth's misappropriation of SMI's Trade Secrets**

35. On information and belief, ARGO knowingly and intentionally misappropriated SMI's Trade Secrets which it learned through its confidential acquisition discussions with SMI and, without SMI's knowledge or authorization, used SMI's Trade Secrets to create a cash management system to compete with SMI's VaultWorks. As a result of its wrongful conduct, ARGO is now a competitor of SMI. A true and correct copy of a page from ARGO's website describing ARGO's competing system is attached to this Petition as exhibit "G."

36. On information and belief, ARGO conferred and collaborated with BancorpSouth regarding VaultWorks and regarding ARGO's development of a cash management system to

compete with VaultWorks. On information and belief, BancorpSouth, without SMI's knowledge or authorization, improperly disclosed to ARGO SMI's Trade Secrets, including features and functionalities of VaultWorks, that ARGO then used to create a cash management system to compete with VaultWorks.

37. On information and belief, BancorpSouth disclosed SMI's Trade Secrets, including proprietary VaultWorks information, to ARGO without SMI's consent. On information and belief, BancorpSouth provided ARGO with access to SMI's Trade Secrets, including proprietary VaultWorks information, without SMI's consent. On information and belief, with BancorpSouth's consent, guidance and active participation, ARGO knowingly and intentionally created a cash management system to compete with VaultWorks using SMI's Trade Secrets.

38. On information and belief, with BancorpSouth's consent, guidance and active participation, ARGO beta-tested the cash management system it created to compete with VaultWorks at one or more of BancorpSouth's branch locations. On information and belief, BancorpSouth participated in ARGO's beta-test at the same time BancorpSouth was also using SMI's VaultWorks.

**F. BancorpSouth's termination of the VaultWorks Agreement**

39. On January 12, 2012, BancorpSouth notified SMI that it was terminating the VaultWorks Agreement, effective March 1, 2012. Prior to the termination, BancorpSouth was SMI's largest customer.

40. On information and belief, BancorpSouth and ARGO have in their possession, custody, or control, without SMI's consent, SMI's Trade Secrets, including physical property, documents, and confidential information pertaining to VaultWorks. On information and belief,

BancorpSouth and ARGO are using, without SMI's consent, SMI's Trade Secrets, including physical property, documents, and confidential information pertaining to VaultWorks.

**FIRST CAUSE OF ACTION—TEXAS THEFT LIABILITY ACT**

41. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-40 of this Petition as if fully set forth herein.

42. SMI is the owner of certain physical property, documents, and confidential information pertaining to VaultWorks. BancorpSouth and ARGO have knowingly and without SMI's effective consent: (a) stolen SMI's physical property, documents, and confidential information, in violation of Section 31.05(b)(1) of the Texas Penal Code; (b) copied objects, materials, devices or substances, including writings representing SMI's confidential information in violation of Section 31.05(b)(2) of the Texas Penal Code; and/or (c) communicated and transmitted SMI's confidential information in violation of Section 31.05(b)(3) of the Texas Penal Code.

43. SMI is also the owner of SMI's Trade Secrets. BancorpSouth and ARGO have knowingly and without SMI's effective consent: (a) stolen SMI's Trade Secrets in violation of Section 31.05(b)(1) of the Texas Penal Code; (b) copied objects, materials, devices or substances, including writings representing SMI's Trade Secrets in violation of Section 31.05(b)(2) of the Texas Penal Code; and/or (c) communicated and transmitted SMI's Trade Secrets in violation of Section 31.05(b)(3) of the Texas Penal Code.

44. As a result of BancorpSouth and ARGO unlawfully misappropriating SMI's property, SMI has suffered damages. Pursuant to Section 134.005(a)(1) of the Texas Civil Practice and Remedies Code, SMI is entitled to recover its actual damages resulting from BancorpSouth and ARGO's theft as described above and, in addition to actual damages, damages awarded by the trier of fact in a sum not to exceed \$1,000.

45. Pursuant to Section 134.005(b) of the Texas Civil Practice and Remedies Code, SMI is also entitled to recover its reasonable attorneys' fees and costs of suit.

**SECOND CAUSE OF ACTION—MISAPPROPRIATION OF TRADE SECRETS**

46. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-45 of this Petition as if fully set forth herein.

47. SMI is the owner of SMI's Trade Secrets, including certain confidential information and trade secrets pertaining to SMI's VaultWorks solution.

48. BancorpSouth and ARGO have acquired through tortious misappropriation, and have unlawfully and commercially used for their benefit, SMI's Trade Secrets. BancorpSouth and ARGO did not discover this information by independent means. Rather, BancorpSouth obtained the information in question solely from SMI under the VaultWorks Agreement and, on information and belief, surreptitiously retained the information after BancorpSouth terminated its agreement with SMI. ARGO improperly obtained the information in question by (a) inducing SMI to disclose SMI's Trade Secrets in connection with the acquisition discussions and (b) collaborating with BancorpSouth about SMI's Trade Secrets that SMI made available to BancorpSouth while performing its obligations under the VaultWorks Agreement. BancorpSouth and ARGO have been and are now using SMI's Trade Secrets through unauthorized and unlawful means.

49. BancorpSouth and ARGO's tortious misappropriation has proximately caused damage to SMI, including the lost value of the misappropriated information, lost profits, and the impairment of SMI's future earning capacity and goodwill. In addition to permanent injunctive relief, SMI seeks its actual damages caused by BancorpSouth and ARGO's misappropriation of SMI's Trade Secrets.

50. Further, as a result of BancorpSouth and ARGO's intentional and malicious conduct in tortiously misappropriating SMI's Trade Secrets, SMI seeks exemplary damages pursuant to Section 41.003 of the Texas Civil Practice and Remedies Code.

**THIRD CAUSE OF ACTION—CONVERSION**

51. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-50 of this Petition as if fully set forth herein.

52. SMI is the owner of certain physical property, documents, and confidential information pertaining to VaultWorks.

53. SMI is also the owner of certain trade secrets pertaining to SMI's proprietary ideas, processes, and/or other methodologies of VaultWorks.

54. BancorpSouth and ARGO have knowingly or intentionally, with malice, and without SMI's consent, exercised dominion and control over SMI's property.

55. SMI seeks its actual damages caused by BancorpSouth and ARGO's conversion of SMI's property in an amount to be determined at trial.

56. Further, as a result of BancorpSouth and ARGO's intentional and malicious conversion of SMI's property, SMI seeks exemplary damages.

**FOURTH CAUSE OF ACTION—UNJUST ENRICHMENT**

57. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-56 of this Petition as if fully set forth herein.

58. BancorpSouth and ARGO have been unjustly enriched as a result of their self-dealing, deceit, and other wrongful conduct described above and to the detriment of SMI.

59. BancorpSouth and ARGO should not be allowed to retain any portion of their ill-gotten gains, or the proceeds from those ill-gotten gains. BancorpSouth and ARGO should be required to disgorge and pay to SMI all such gains and profits on such gains.

**FIFTH CAUSE OF ACTION—FRAUD  
(ARGO ONLY)**

60. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-59 of this Petition as if fully set forth herein.

61. Beginning in March 2010 and ending in May 2010, ARGO (through Mr. Robertson) made multiple, significant misrepresentations to SMI (through Mr. Spear) to portray that ARGO was interested in acquiring VaultWorks when in fact it was not. Specifically, Mr. Robertson indicated an interest in VaultWorks but stated he needed approval from ARGO's CEO Max Martin before he could proceed with such a discussion. Mr. Robertson also said that he needed to confirm ARGO did not already have a solution similar to VaultWorks somewhere in the company's development pipeline. Mr. Robertson subsequently represented to Mr. Spear that ARGO had no product like VaultWorks and had not even considered developing one. These misrepresentations by ARGO were intended and designed to conceal from SMI ARGO's plot to misappropriate SMI's Trade Secrets, to which ARGO would gain access by representing it would not use or disclose SMI's confidential information and trade secrets that were made known to ARGO during the parties' acquisition discussions.

62. On multiple occasions, Mr. Robertson verbally promised Mr. Spear that ARGO would sign and return the NDA. SMI reasonably relied on ARGO's word. ARGO repeatedly broke these promises. On information and belief, ARGO never had the intention of signing the NDA or honoring the confidentiality provisions in that agreement.

63. On information and belief, at each step in this pattern of deception, Mr. Robertson knew that ARGO had no intention of acquiring VaultWorks.

64. As a direct and proximate cause of ARGO's fraudulent conduct, SMI has suffered and continues to suffer damages including, but not limited to the lost value of the misappropriated information, lost profits, loss of goodwill, loss of confidential trade-secret information, and dissipation in the competitive marketplace in an amount to be determined at trial.

#### **SIXTH CAUSE OF ACTION—CONSTRUCTIVE FRAUD**

65. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-64 of this Petition as if fully set forth herein.

66. Regardless of whether BancorpSouth and ARGO possessed the intent to defraud SMI in their numerous self-dealing and deceitful transactions described above, BancorpSouth and ARGO's conduct—in conjunction with the special fiduciary relationship that existed between SMI and the Defendants—justifies a finding of constructive fraud.

67. As a direct and proximate cause of BancorpSouth and ARGO's fraudulent conduct, SMI has suffered and continues to suffer damages, including but not limited to the lost value of the misappropriated information, lost profits, loss of goodwill, loss of confidential trade-secret information, and dissipation in the competitive marketplace in an amount to be determined at trial.

#### **SEVENTH CAUSE OF ACTION—BREACH OF CONTRACT (BANCORPSOUTH ONLY)**

68. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-67 of this Petition as if fully set forth herein.



69. As set forth above, a valid and enforceable contract existed between BancorpSouth and SMI. SMI performed all of its contractual obligations. By reasons of the foregoing acts, BancorpSouth breached or otherwise failed to perform its contractual obligations set forth in the VaultWorks Agreement. As a result of the breaches by BancorpSouth, SMI has suffered damages in excess of the minimum jurisdictional limits of this Court.

**EIGHTH CAUSE OF ACTION—TORTIOUS INTERFERENCE  
(ARGO ONLY)**

70. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-69 of this Petition as if fully set forth herein.

71. SMI had a valid contract with BancorpSouth, including but not limited to the VaultWorks Agreement.

72. ARGO willfully and intentionally interfered with the contract without privilege to do so.

73. SMI incurred actual damage or loss due to breach of the contract.

74. As a direct and proximate cause of ARGO's tortious conduct, SMI has suffered damages in excess of the minimum jurisdictional limits of this Court.

**NINTH CAUSE OF ACTION—UNFAIR COMPETITION  
(ARGO ONLY)**

75. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-74 of this Petition as if fully set forth herein.

76. ARGO has engaged in acts of unfair competition that have caused and will cause SMI severe and serious financial injury by losing its competitive advantage in the marketplace, by undermining legitimate opportunities within the marketplace, and by intentionally damaging SMI's goodwill.

77. ARGO purposefully misappropriated SMI's Trade Secrets to destroy SMI's competitive advantage in the marketplace and drive SMI out of business.

78. ARGO's actions have been willful and with the specific intent to harm SMI in the conduct of its business and to gain an unfair competitive advantage over SMI.

79. As a result of ARGO's conduct, SMI has suffered and will continue to suffer damages including the lost value of the misappropriated information, lost profits, and the impairment of SMI's future earning capacity and goodwill in an amount to be determined at trial.

#### **TENTH CAUSE OF ACTION—CIVIL CONSPIRACY**

80. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-79 of this Petition as if fully set forth herein.

81. BancorpSouth and ARGO have conspired and agreed, either directly or indirectly, either expressly or implicitly, and with a common purpose to misappropriate and undermine SMI's Trade Secrets for the purpose of (a) interfering with SMI's existing and potential contractual and business relations and (b) developing by unlawful means a cash management system for BancorpSouth and others to compete with SMI's VaultWorks.

82. In doing so, BancorpSouth and ARGO have taken actions, and continue to take actions, in furtherance of this conspiracy, including but not limited to communicating with each other about SMI's confidential, proprietary, and trade-secret information and using SMI's Trade Secrets pertaining to SMI's proprietary ideas, processes, and/or other methodologies of VaultWorks.

83. BancorpSouth and ARGO's acts constitute a wrongful combination or agreement to engage in unlawful acts, or alternatively, to engage in a wrongful combination or agreement to do otherwise lawful acts by unlawful means.

84. BancorpSouth and ARGO's numerous, concerted, overt acts include sending emails, conducting meetings, and otherwise communicating with each other about SMI's confidential, proprietary, and trade-secret information.

85. BancorpSouth and ARGO were at all times pertinent hereto fully aware of the conduct complained of in this Petition, and were further aware that such misconduct was tortious and otherwise unlawful.

86. As set forth in the preceding paragraphs, BancorpSouth and ARGO knowingly and substantially benefited from such misconduct.

87. As a direct and proximate cause of BancorpSouth and ARGO's conspiratorial conduct and overt acts in furtherance of the conspiracy, SMI has and continues to suffer damages including but not limited to the lost value of the misappropriated information, lost profits, loss of goodwill, loss of confidential trade-secret information, and dissipation in the competitive marketplace in an amount to be determined at trial.

88. Further, SMI seeks exemplary damages as the actions undertaken by BancorpSouth and ARGO in their conspiracy were intentional, malicious, willful and in blatant disregard for SMI's rights and with the intent to harm SMI.

#### **APPLICATION FOR PERMANENT INJUNCTION**

89. SMI hereby incorporates by reference each of its allegations contained in paragraphs 1-88 of this Petition as if fully set forth herein.

90. Unless the Court intervenes in a meaningful way, BancorpSouth and ARGO will continue to use SMI's Trade Secrets. BancorpSouth and ARGO's aforementioned conduct is completely without right and entitlement because it is directly contrary to the terms of the NDA and the confidentiality clause in the VaultWorks Agreement.

91. SMI has been and will continue to be irreparably damaged and injured by BancorpSouth and ARGO's conduct if they are not enjoined.

92. SMI has no adequate remedy at law for its injuries.

93. Accordingly, SMI requests that BancorpSouth and ARGO show cause why a permanent injunction should not be entered requiring BancorpSouth and ARGO and those persons and entities in active concert or participation with them to:

- A. Refrain from using or disclosing, directly or indirectly, SMI's Trade Secrets including, but not limited to, SMI's confidential know-how, ideas, procedures, processes, systems, methods of operation, concepts, and other information relating to VaultWorks;
- B. Refrain from secreting, concealing, disposing, destroying, discarding, erasing, damaging, or otherwise harming or reducing the value of SMI's property, documents, or materials (whether in hard copy, stored electronically, or otherwise); and
- C. Return all property, documents, or materials belonging to SMI or containing SMI's Trade Secrets, including all originals and all copies or replications of any such documents and data files, in every form.

#### **EXEMPLARY DAMAGES**

94. Pursuant to Texas Civil Practice & Remedies Code § 41.001 *et seq.*, SMI seeks exemplary damages because BancorpSouth and ARGO's actions were willful, intentional, malicious, and in blatant disregard of SMI's rights. Specifically, among other things, by their wrongful conduct described above BancorpSouth and ARGO intended to gain benefits for themselves at the expense of SMI and engaged in acts of self-dealing and deceit that offended the public's sense of justice and propriety.

#### **ATTORNEYS' FEES**

95. As a result of BancorpSouth and ARGO's wrongful conduct described above, SMI was forced to retain the undersigned counsel in relation to this action. Pursuant to Texas

Civil Practice & Remedies Code § 38.001 *et seq.*, SMI seeks an award of reasonable and necessary attorneys' fees and costs incurred through trial and appeal of this action.

**CONDITIONS PRECEDENT**

96. All conditions precedent necessary to the filing of this action have been performed, have occurred, or have been waived.

**DEMAND FOR JURY TRIAL**

97. Pursuant to Texas Rule of Civil Procedure 216(a), SMI demands a trial by jury on all issues so triable.

**REQUEST FOR RELIEF**

For the foregoing reasons, SMI requests that the Court enter a judgment against BancorpSouth and ARGO for the following relief:

- A. A permanent injunction as set forth above;
- B. Actual damages sustained by SMI in an amount to be proved during the trial;
- C. Exemplary damages in the maximum amount allowed by law to punish BancorpSouth and ARGO for their outrageous conduct and to deter them and others like them from similar conduct in the future;
- D. Reasonable attorneys' fees and costs of suit;
- E. Interest on the above amounts; and
- F. Such other and further relief as the Court may deem just and proper either in law or in equity.

DATED: August 10, 2012.

Respectfully submitted,

By: 

Steven E. Ross

Texas Bar No. 17305500

[ross@rossipg.com](mailto:ross@rossipg.com)

Samuel E. Joyner

Texas Bar No. 24036865

[sjoyner@rossipg.com](mailto:sjoyner@rossipg.com)

ROSS IP GROUP PLLC

1700 Pacific Avenue, Suite 3750

Dallas, Texas 75201

TELEPHONE: (214) 382-0894

FACSIMILE: (972) 661-9401

**ATTORNEYS FOR PLAINTIFF  
SPEAR MARKETING, INC.**



# Exhibit A

## VaultWorks™ Agreement

This Agreement, effective the date of execution, is by and between BancorpSouth Bank, (Customer), of Tupelo, Mississippi, and Spear Marketing, Inc., (SMI), of Dallas, Texas. Customer desires to put in place a methodology, VaultWorks™, to reduce, manage, and monitor the amount of cash held in Customer and its branches. SMI wishes to provide this VaultWorks™ service and methodology needed to collect, analyze and suggest the amount of surplus cash being held in Customer and its branches. SMI, in addition, will suggest the cash targets to be set for each branch and monitor the monthly activity, providing reports to Customer management on the results of the reduction efforts on a monthly basis.

This service will commence with the acceptance by both parties of this Agreement and will continue for twelve consecutive months, at which time, this Agreement will automatically renew for another full year upon notice in writing by Customer sixty days prior to the end of the initial term; otherwise, this Agreement will terminate.

### Confidentiality

**Generally.** SMI and Customer acknowledge that in the course of doing business, each may receive sensitive and/or proprietary information. SMI and Customer agree not to disclose any of the other's such information to anyone except those with a need to know in order to perform hereunder. Nor shall either SMI or Customer allow any unauthorized party access to SMI's proprietary VaultWorks™.

**Specifically.** SMI especially acknowledges that it will receive highly sensitive, secured, and regulated information from Customer, which SMI must and shall protect. SMI expressly acknowledges that branch cash data could cause serious security concerns for Customer if this obligation is breached. Thus, the specific individuals with SMI, which will have access to such data, are listed on attachment B hereto. Customer, in its discretion, is authorized to utilize an encrypted name or number for its branch so as to not disclose the location or other particulars thereof. Neither SMI nor Customer shall allow any unauthorized party access to Customer's login information. SMI specifically acknowledges that it may be subject to audit or examination by Customer's regulator and SMI will fully cooperate, including furnishing any and all information as to its security procedure of like information in order to meet the special obligation of confidentiality hereunder. Further, this special obligation of confidentiality shall be deemed covered by the insurance requirement below. This special obligation of confidentiality shall survive termination of this agreement.

### Proposal for Customer

SMI will direct the services at SMI's offices to process the monthly data to be supplied by Customer for each Customer branch. SMI will create the reporting that will enable Customer management to quickly analyze branch cash data and reduce cash held in its branches, set cash targets for each branch, and report monthly on the results in each branch.

## VaultWorks™

### Description of VaultWorks™ Service:

- SMI will supply the personnel, computer-server hardware, and a VeriSign encrypted secured internet password-protected connection to the VaultWorks website to perform the Services.
- SMI will provide Customer with the input formats for branch data.
- Customer will provide to SMI the required weekly data for each branch at the close of each week's business via the Internet, by the Automated Input Facility or by Fax to SMI's offices. The data is the property of the Customer and will be destroyed at the end of the agreement unless other arrangements are made with SMI in writing.
- SMI will process each branch's data and perform the necessary analysis.



## VaultWorks™ Agreement

- SMI will provide Customer the ability to setup User IDs and passwords for all Customer personnel that are allowed access to the VaultWorks Website.
- SMI will prepare the reporting functions appropriate to this Customer from those listed on Attachment A herein and make them available via the Internet to the appropriate designees of the Customer in a timely manner.
- SMI will consult with Customer on both the process and the results of this service plan as either desire without further cost.
- The first month to be processed will be June 2002, however, Customer may, at its own option, enter any prior month's data back to January 2002 without additional charge in order to build a larger historical file. Any months prior to that date will be charged at the normal monthly processing fee for each additional month added.
- Customer may request additional reporting at any time, and SMI will do its best to accommodate Customer's requests. Any charges for special requests will be mutually agreed upon.

### Warranties of SMI

**Performance.** SMI warrants that VaultWorks™ will perform as described. For any such failure, which may cause the breach of integrity of VaultWorks™, breach of any confidentiality, or other risks SMI shall notify Customer immediately and shut down VaultWorks™ as it relates to Customer. For any other breach of warranty, VaultWorks™ within a reasonable time, not to exceed 10 business days, shall re-perform the service at no charge to Customer.

**Infringement.** SMI warrants that VaultWorks™ is owned by it therefore SMI shall indemnify and hold Customer from any claim of infringement. If VaultWorks™, SMI, or Customer are enjoined from its use, Customer may terminate this Agreement immediately without obligation to SMI.

**Insurance.** Evidence of insurance to cover the confidentiality obligation hereunder, as well as errors and omissions of SMI and its agents and employees with limits of \$1,000,000 is attached hereto as Attachment C, which, prior to any such expiration of such insurance, SMI shall provide replacement evidence of insurance to Customer.

### VaultWorks™ Agreement

VaultWorks™ Agreement (Continued)

#### Service Fees (Year 1)

- Monthly Service fee for 250 Vaults \$ 6,090.00
- Additional branches may be added at any time for an additional fee of \$21 per Branch per month.
- Stand-alone ATMs may be added at any time for an additional fee of \$10 per ATM per month.

#### Payment Schedule

- Payment due upon Agreement execution \$ 12,180.00
- Monthly fee, if continued, is due monthly on the 10<sup>th</sup> of the month
- Late Fees will accrue at the rate of 1½% per month of the monthly fee for payments received after the 10 of the month.

#### Agreed:

For: **Spear Marketing, Inc.**  
 2001 Bryan Tower, #2120  
 Dallas, Texas 75201

For: **BancorpSouth Bank**  
 Spring & Troy Streets  
 Tupelo, Mississippi 38802

Signed: 

Signed: 

Print Name & Title: Bill Spear, President

Print Name & Title: Charles A Gages 1<sup>st</sup> VP

Date: 5/29/02

Date: 5/24/02

## VaultWorks™ Agreement

### Attachment A VaultWorks™ Reporting Hierarchy\*

Report Function

For:

#### State/Bank Summary Level

Senior Management

Monthly Bank Summary  
Bank/State Cash Profile  
YTD Monthly Bank/State Summary/Chart  
Monthly State Summary/Chart  
Branch Key Indicators  
Branch Key Indicators YTD Average  
Vault Ranking Report  
Suggested Surplus Analysis  
Monthly Bank/State Denomination Analysis  
YTD Denomination/Shipping Analysis  
Average Denomination Units Chart  
Average Denomination Cash Chart

#### Market Level

Senior Management  
Market Management

Market Cash Profile  
YTD Monthly Market Summary/Chart  
Monthly Market Summary/Chart  
Branch Key Indicators  
Branch Key Indicators YTD Average  
Vault Ranking Report  
Suggested Surplus Analysis  
Monthly Market Denomination Analysis  
YTD Monthly Denomination/Shipping Analysis  
Average Denomination Units Chart  
Average Denomination Cash Chart

#### District Level

Senior Management  
Market Management  
District Management

District Cash Profile  
YTD Monthly District Summary/Chart  
Monthly District Summary/Chart  
Branch Key Indicators  
Branch Key Indicators YTD Average  
Vault Ranking Report  
Suggested Surplus Analysis  
Cumulative Cash Gap  
Monthly District Denomination Analysis  
YTD Monthly Denomination/Shipping Analysis  
Average Denomination Units Chart  
Average Denomination Cash Chart

#### Branch Office Level

Senior Management  
Market Management  
District Management  
Branch Management

YTD Cash Reduction Performance Chart  
Branch Summary Bar Chart  
Denomination Report  
Den. Units Chart  
Den. Cash Chart

*\*The organizational hierarchy structure of the customer determines which of the above reports are provided.*

## **VaultWorks™ Agreement**

### **Attachment B**

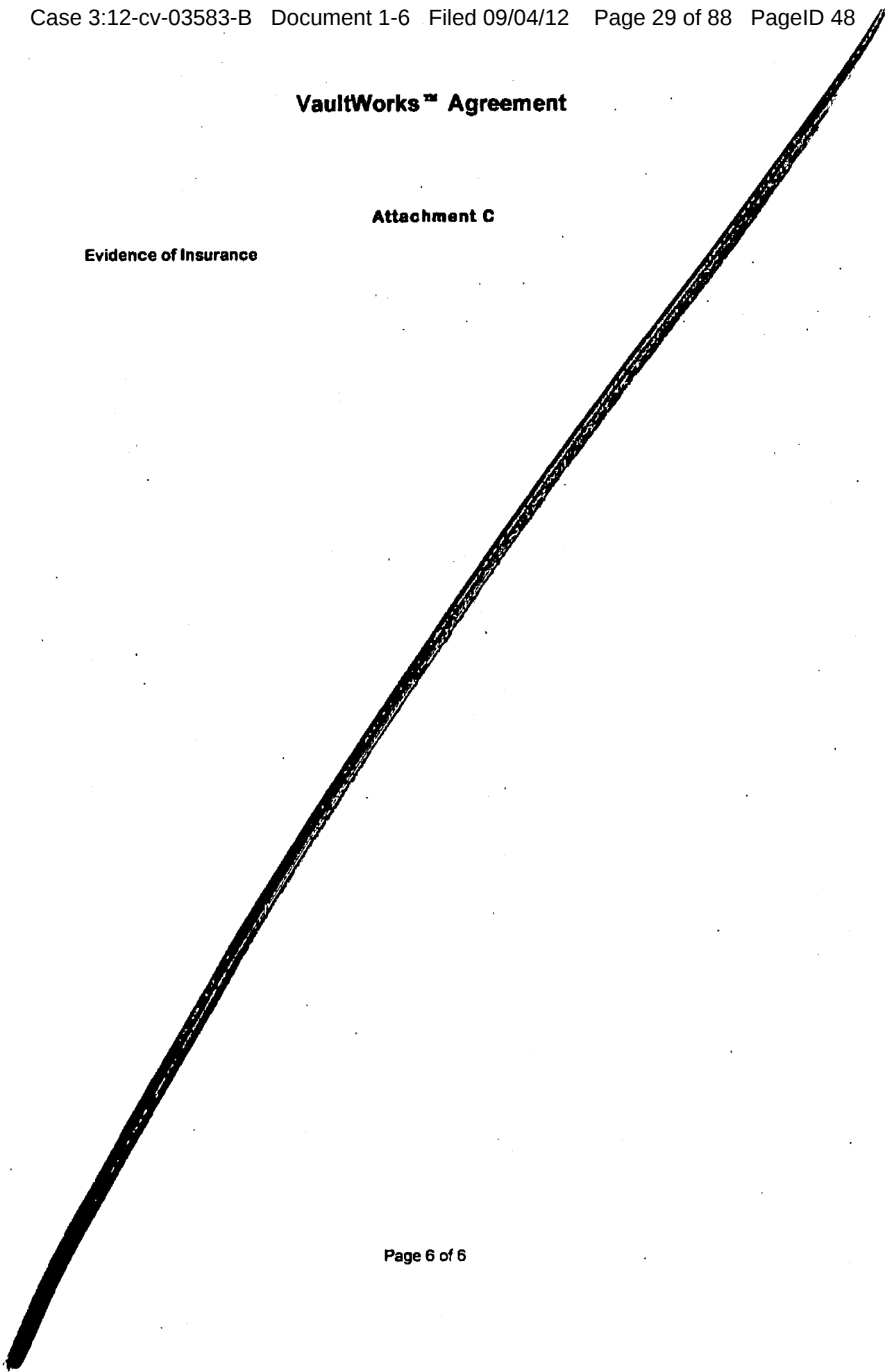
**SMI Individuals authorized to have access to BancorpSouth Bank data are as follows:**

- Bill Spear
- Chris Spear
- Chuck Lawson

**VaultWorks™ Agreement**

**Attachment C**

**Evidence of Insurance**




# Exhibit B

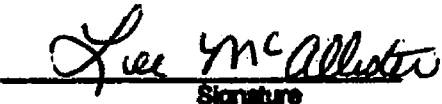
### VaultWorks® Extension of Agreement

THIS EXTENSION OF AGREEMENT ("Extension"), effective the day of execution, for the purpose of extending the VaultWorks® Agreement dated May 24, 2002, ("Original Agreement") by and between BancorpSouth Bank, (Customer), of Tupelo, Mississippi, and Spear Marketing, Inc., (SMI), of Dallas, Texas.

The parties agree to extend the Original Agreement for an additional period of Two Years, which will begin March 1, 2010.

This Extension binds and benefits both Parties and any successors or assigns. This document, including the Original Agreement, is the entire Agreement between the Parties. All terms and conditions of the Original Agreement remain unchanged.

  
\_\_\_\_\_  
Signature  
Bill Spear, President  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Signature  
Lee McAllister  
\_\_\_\_\_  
LEE McALLISTER  
Printed Name

Spear Marketing, Inc.  
2807 Allen Street, #328  
Dallas, Texas 75204

BancorpSouth Bank  
Spring & Troy Streets  
Tupelo, Mississippi 38802

Dated: 3-14- 2010

Dated: 3-15- 2010

# Exhibit C



000117

NO. 07-15149-I

BALKRISHNA SHAGRITHAYA,  
individually, and derivatively, in the name of  
ARGO DATA RESOURCE CORPORATION,

Plaintiff,

VS.

MAX MARTIN, and Intervenor Defendant  
ARGO DATA RESOURCE CORPORATION,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

162ND JUDICIAL DISTRICT

**FINAL JUDGMENT**

On September 8, 2009, this case was called for trial. Plaintiff Balkrishna Shagrithaya ("Shagrithaya"), individually, and derivatively in the name of ARGO Data Resource Corporation ("ARGO"), appeared in person and through his counsel of record and announced ready for trial. Defendant Max Martin ("Martin") also appeared in person and through his counsel of record and announced ready for trial. Defendant ARGO appeared through a representative and through its counsel of record and announced ready for trial.

After a jury was impaneled and sworn, the jury heard all of the evidence and arguments of counsel. In response to the Court's Charge, the jury returned a verdict that the Court received, filed, and entered of record. The questions submitted to the jury and the jury's verdict is attached as Exhibit 1 and incorporated by reference. It appears to the Court that the jury's verdict was for Plaintiff Shagrithaya and against the Defendants. Further, other matters in controversy were submitted to the Court for its determination. The Court heard evidence and argument on these matters and found for the Plaintiff. Based on the jury verdict and the Court's findings and conclusions in favor of the Plaintiff, a Final Judgment should be rendered in

000118

Shagrithaya's favor, individually, and derivatively in the name of ARGO, and against Defendants Martin and ARGO.

The Court concludes that Defendant Martin, the majority shareholder of ARGO, has engaged in conduct that was oppressive to the rights and minority ownership interest of Plaintiff Shagrithaya in ARGO and that such oppressive conduct by Martin is likely to continue in the future. Upon consideration of that conclusion and in consideration of the jury's verdict, the Court concludes that the most appropriate equitable remedy to address Martin's ongoing oppressive conduct toward Shagrithaya is to require and compel Martin to take all actions properly and legally required by him to arrange for the issuance and actual payment of a dividend by ARGO to its two shareholders in the amount of \$85 million (\$85,000,000.00) to be paid from ARGO's substantial retained earnings that are under Martin's control. The amount of this dividend reflects and includes the application of a \$5 million credit that is attributable to a post-trial dividend in that amount that ARGO declared in December 2009.

Therefore, the Court hereby **RENDERS** judgment for and in favor of Plaintiff Balkrishna Shagrithaya, individually, and for ARGO Data Resource Corporation derivatively.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** by this Court that Max Martin shall cause ARGO Data Resource Corporation to issue and pay a dividend to ARGO's shareholders in the total amount of \$85 million (\$85,000,000.00) on or before thirty (30) days from the date of this Final Judgment, with 47% of this dividend (the amount of \$39,950,000.00) to be distributed to Balkrishna Shagrithaya in accordance with his 47% ownership interest in ARGO.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** by this Court that Martin shall pay pre-judgment interest to Shagrithaya in the total amount of \$4,482,061.64, calculated

as simple interest at the rate of 5% on that portion of the dividend to be paid to Shagrithaya (\$39,950,000.00) for the period of December 28, 2007 to March 26, 2010, plus an additional \$5,472.60 per day in pre-judgment interest from March 27, 2010 until the date preceding the date this Final Judgment is signed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Martin shall pay Shagrithaya damages in the amount of \$1,361,100.00, plus pre-judgment interest in the amount of \$152,704.23, calculated as simple interest at the rate of 5% on the above award from December 28, 2007 to March 26, 2010, plus an additional \$186.45 per day in pre-judgment interest from March 27, 2010 until the date preceding the date this Final Judgment is signed, and court costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Shagrithaya shall recover from Martin attorneys' fees in the amount of \$560,000.00. In the event of an unsuccessful appeal to the Court of Appeals taken by Martin of this Final Judgment for Shagrithaya on his claim for breach of contract, Shagrithaya shall be entitled to recover the additional amount of \$25,000.00 as reasonable attorney's fees. In the event of an unsuccessful appeal to the Texas Supreme Court taken by Martin of this Final Judgment on Shagrithaya's claim for breach of contract, Shagrithaya shall be entitled to recover the additional amount of \$10,000.00 as reasonable attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Martin shall pay ARGO the amount of \$117,731.57, pre-judgment interest in the amount of \$13,208.51, calculated as simple interest at the rate of 5% on this award from December 28, 2007 to March 26, 2010, plus an additional \$16.13 per day in pre-judgment interest from March 27, 2010 until the date preceding the date the judgment is signed, with post-judgment interest on the total sum

000120

accruing at 5% (five percent) per annum, compounded annually from the date this Final Judgment is signed until it is satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Defendant Martin shall transfer title of the real property located at 142 High Meadow Drive, Dillon, CO 80435 to ARGO, and that ARGO shall return to Martin the sum of \$575,000.00 simultaneously with ARGO's receipt of the title to this property.

Shagrithaya has requested an award of attorney's fees and expenses to be paid to him by ARGO based on Article 21.561, of the Texas Business Organizations Code, formerly Article 5.14(J) of the Texas Business Corporations Act. Shagrithaya offered evidence at trial proving reasonable and necessary attorney's fees were incurred on a derivative basis in the amount of \$968,427.64, as well as litigation expenses in the amount of \$155,945.07.

Based on the findings and conclusions of this Court that this proceeding has resulted in substantial benefits to ARGO, IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that ARGO shall pay to Plaintiff Shagrithaya the amount of \$1,124,372.71 in attorneys' fees and litigation expenses and post-judgment interest on this amount at the rate of 5% (five percent) per annum, compounded annually from the date of entry of this Final Judgment. In the event that an unsuccessful appeal is taken to the Court of Appeals by Martin of the Final Judgment on the derivative claims that Shagrithaya alleged on ARGO's behalf or by ARGO of the judgment for fees and expenses awarded against ARGO, Shagrithaya shall be entitled to recover from ARGO the additional amount of \$85,000.00 as reasonable attorney's fees. In the event of an unsuccessful appeal to the Texas Supreme Court by Martin of the Final Judgment on the derivative claims that Shagrithaya alleged on ARGO's behalf, or by ARGO of

the judgment for fees and expenses against ARGO, Shagrithaya shall be entitled to recover from ARGO the additional amount of \$50,000.00 as reasonable attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that Martin shall pay to Shagrithaya post-judgment interest on (1) the above dividend as to that portion to be paid to Shagrithaya (\$39,950,000.00) plus the total pre-judgment interest on that amount, (2) the award of \$1,361,100.00, plus pre-judgment interest on that amount, and (3) the award of \$560,000.00 in attorney's fees, with such post-judgment interest to accrue at the rate of 5% (five percent) per annum, compounded annually, from the date this Final Judgment is signed until it is satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that post-judgment interest on the amount of the conditional appellate fees awarded to Shagrithaya for any appeal to the intermediate court of appeals shall run from the date of the Notice of Appeal is filed until the amount of the fees are paid in full and that this amount will bear interest at the rate of 5% (five percent) per annum, compounded annually.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that post-judgment interest on the amount of the conditional appellate fees awarded to Shagrithaya for any appeal to the Texas Supreme Court shall run from the date of filing of a petition of review until the fees are paid and that this amount will bear interest at the rate of 5% (five percent) per annum, compounded annually.

This is a judgment that is final in all respects; it disposes of all of the claims that were alleged in the lawsuit and all parties; and is appealable.

000122

The Court orders execution to issue for this Final Judgment.

SIGNED on March 31, 2010.

  
Lorraine A. Raggio  
Presiding Judge



000124

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss or concern yourselves with the effect of your answers.

5. You will not decide an issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing the number by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.



Received:

Mar 31 2010 02:13pm

03/31/2010 14:15

21438953

DMTFB&L

PAGE 04/34

000125

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

Received:

Mar 31 2010 02:13pm

03/31/2010 14:15

21438953

DMTFB&amp;L

PAGE 05/34

000126

### DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Received:

Mar 31 2010 02:14pm

03/31/2010 14:15

21438953

DMTFB&L

PAGE 05/34

000127

**QUESTION 1**

Regarding each item of the alleged conduct listed below, answer these questions:

(1) Did Martin engage in the specific conduct listed?

If your answer to subpart (1) is "Yes", then answer the following subparts (2) through (3) regarding the same conduct. Otherwise, do not answer subparts (2) and (3) and proceed to the next item of alleged conduct by Martin.

(2) Did such conduct substantially defeat the expectations that, objectively viewed, were both reasonable under the circumstances and were central to Shagrithaya's decision to join ARGO?

(3) Was such conduct burdensome, harsh, or wrongful conduct or did it involve a lack of probity in ARGO's affairs to Shagrithaya?

a. Reducing Shagrithaya's annual compensation at ARGO by 70 percent, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

b. Maintaining Martin's annual compensation at \$1 million, from July 1, 2005 to June 30, 2007, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

c. Engaging in a plan to retain ARGO's earnings to buy out Shagrithaya's interest in ARGO without disclosing this plan to Shagrithaya?

(1) Answer "Yes" or "No": Yes

Received:

Mar 31 2010 02:14pm

03/31/2010 14:15 214389539

DMTFB&L

PAGE 07/34

000128

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

d. Causing ARGO to retain earnings rather than paying a greater amount of dividends to its shareholders than it actually paid?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

e. Failing to disclose to ARGO's Board of Directors, if required, that the IRS had assessed a retained earnings tax against ARGO of approximately \$1.2 million?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

f. Making an offer for ARGO to purchase Shagrithaya's shares in ARGO for \$66 million?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

g. Requiring Shagrithaya to report to David Engchos after Martin appointed Engchos as President of ARGO without obtaining the approval of ARGO's Board of Directors?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

Received:

Mar 31 2010 02:14pm

03/31/2010 14:15

21438953f

DMTFB&L

PAGE 08/34

000129

h. Martin's sale to himself of ARGO's Colorado condominium without disclosing the sale to, or obtaining the approval of, the Board of Directors of ARGO?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

i. Using ARGO's funds to pay Martin's personal travel expenses or other personal expenses of Martin and his family?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

j. Maintaining Martin's wife on ARGO's payroll while she was performing no services to ARGO?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

k. Failing to disclose to ARGO's Board of Directors, if required, the retention of the Gardere law firm to challenge the IRS tax assessment against ARGO?

(1) Answer "Yes" or "No": Yes

(2) Answer "Yes" or "No": Yes

(3) Answer "Yes" or "No": Yes

000130

Answer the following Question 2 for any subpart (a) through (k) for which your answer is "Yes" to any subpart (l) of Question 1. Otherwise, do not answer Question 2 for any subpart for which your answer is "No" to subpart (l) of Question 1.

**QUESTION 2**

Was Martin's conduct, if any, an exercise of business judgment?

Conduct is an exercise of business judgment if Martin acted with due care, in good faith, and in furtherance of a rational business purpose. Business judgment can include an honest mistake of judgment.

- a. Reducing Shagrithaya's annual compensation at ARGO by 70 percent, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

Answer "Yes" or "No": No

- b. Maintaining Martin's annual compensation at \$1 million, from July 1, 2005 to June 30, 2007, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

Answer "Yes" or "No": No

- c. Engaging in a plan to retain ARGO's earnings to buy out Shagrithaya's interest in ARGO without disclosing this plan to Shagrithaya?

Answer "Yes" or "No": No

- d. Causing ARGO to retain earnings rather than paying a greater amount of dividends to its shareholders than it actually paid?

Answer "Yes" or "No": No

- e. Failing to disclose to ARGO's Board of Directors, if required, that the IRS had assessed a retained earnings tax against ARGO of approximately \$1.2 million?

Answer "Yes" or "No": No

- f. Making an offer for ARGO to purchase Shagrithaya's shares in ARGO for \$66 million.

Answer "Yes" or "No": No

- g. Requiring Shagrithaya to report to David Engebos after Martin appointed Engebos as President of ARGO without obtaining the approval of ARGO's Board of Directors?

Answer "Yes" or "No": No

Mar 31 2010 02:14pm

03/31/2010 14:15

Received:  
214389539

DMTFB&L

PAGE 10/34

000131

h. Martin's sale to himself of ARGO's Colorado condominium without disclosing the sale to, or obtaining the approval of, the Board of Directors of ARGO?

Answer "Yes" or "No": No

i. Using ARGO's funds to pay Martin's personal travel expenses or other personal expenses of Martin and his family?

Answer "Yes" or "No": No

j. Maintaining Martin's wife on ARGO's payroll while she was performing no services to ARGO?

Answer "Yes" or "No": No

k. Failing to disclose to ARGO's Board of Directors, if required, the retention of the Gardere law firm to challenge the IRS tax assessment against ARGO?

Answer "Yes" or "No": No

03/31/2010 14:15 Received: 21438953

Mar 31 2010 02:14pm

DMTFB&L

PAGE 11/34

000132

Answer Question 3(1), 3(2), and 3(3) for any subpart (a) through (k) for which your answer is "Yes" to any subpart (1) of Question 1. Otherwise, do not answer Question 3 for any subpart for which your answer is "No" to subpart (1) of Question 1.

QUESTION 3

(1) Did Shagrithaya waive his rights as a minority shareholder regarding Martin's conduct, if any?

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

(2) Did Shagrithaya ratify Martin's conduct?

Ratify means when a person or corporation, who by word or conduct, with knowledge of all material facts, confirms or recognizes an act, even if previously unauthorized, as valid. Ratification may also occur if a person retains the benefits of a transaction after acquiring full knowledge of any unauthorized acts involved in the transaction. Ratification may be express by word or deed or implied by a party's course of conduct.

(3) Did the ARGO Board of Directors ratify Martin's conduct?

Ratify means when a person or corporation, who by word or conduct, with knowledge of all material facts, confirms or recognizes an act, even if previously unauthorized, as valid. Ratification may also occur if a person retains the benefits of a transaction after acquiring full knowledge of any unauthorized acts involved in the transaction. Ratification may be express by word or deed or implied by a party's course of conduct.

a. Reducing Shagrithaya's annual compensation at ARGO by 70 percent, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

(3) Answer "Yes" or "No": No

b. Maintaining Martin's annual compensation at \$1 million, from July 1, 2005 to June 30, 2007, without the approval, if required, of ARGO's Board of Directors or ARGO's shareholders?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No



Mar 31 2010 02:15pm

03/31/2010 14:15

Received:  
214389539

DMTFB&L

PAGE 12/34

000133

(3) Answer "Yes" or "No": No

c. Engaging in a plan to retain ARGO's earnings to buy out Shagrithaya's interest in ARGO without disclosing this plan to Shagrithaya?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

(3) Answer "Yes" or "No": No

d. Causing ARGO to retain earnings rather than paying a greater amount of dividends to its shareholders than it actually paid?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

(3) Answer "Yes" or "No": No

e. Failing to disclose to ARGO's Board of Directors, if required, that the IRS had assessed a retained earnings tax against ARGO of approximately \$1.2 million?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

(3) Answer "Yes" or "No": No

f. Making an offer for ARGO to purchase Shagrithaya's shares in ARGO for \$66 million?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

(3) Answer "Yes" or "No": No

03/31/2010 14:15 Received: 21438953

Mar 31 2010 02:15pm DMTFB&L

PAGE 13/34

000134

g. Requiring Shagrithaya to report to David Engebos after Martin appointed Engebos as President of ARGO without obtaining the approval of ARGO's Board of Directors?

- (1) Answer "Yes" or "No": No
- (2) Answer "Yes" or "No": No
- (3) Answer "Yes" or "No": No

h. Martin's sale to himself of ARGO's Colorado condominium without disclosing the sale to, or obtaining the approval of, the Board of Directors of ARGO?

- (1) Answer "Yes" or "No": No
- (2) Answer "Yes" or "No": No
- (3) Answer "Yes" or "No": No

i. Using ARGO's funds to pay Martin's personal travel expenses or other personal expenses of Martin and his family?

- (1) Answer "Yes" or "No": No
- (2) Answer "Yes" or "No": No
- (3) Answer "Yes" or "No": No

j. Maintaining Martin's wife on ARGO's payroll while she was performing no services to ARGO?

- (1) Answer "Yes" or "No": No
- (2) Answer "Yes" or "No": No
- (3) Answer "Yes" or "No": No

k. Failing to disclose to ARGO's Board of Directors, if required, the retention of the Gardere law firm to challenge the IRS tax assessment against ARGO?

- (1) Answer "Yes" or "No": No
- (2) Answer "Yes" or "No": No

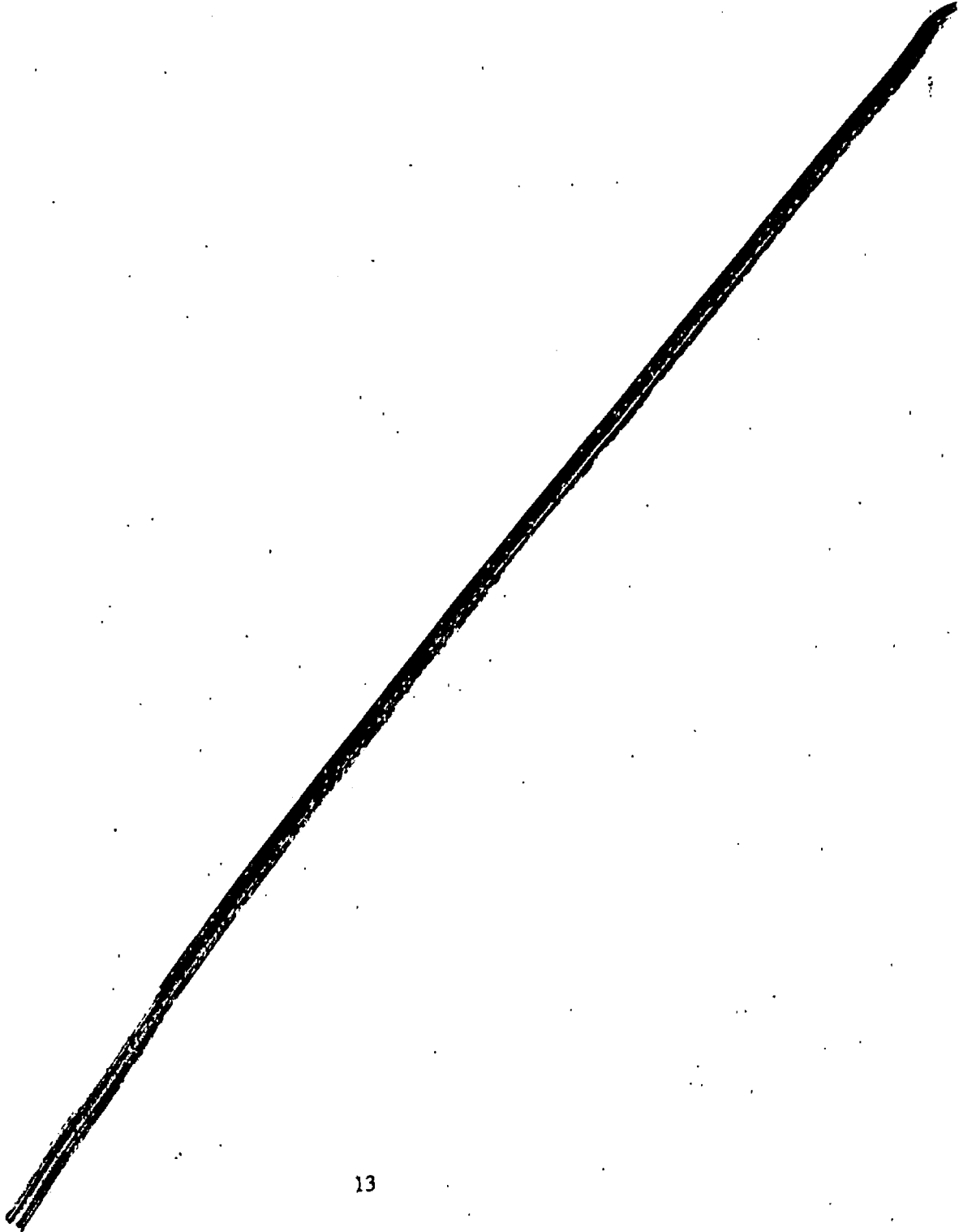
Received:  
03/31/2010 14:15 214389539j

Mar 31 2010 02:15pm  
DMTFB&L (

PAGE 14/34

000135

(3) Answer "Yes" or "No": No



Received:  
214389539

Mar 31 2010 02:15pm

03/31/2010 14:15

DMTFB&L

PAGE 15/34

000136

**QUESTION 4**

(a) Did Martin dominate and control the Board of Directors of ARGO with the actual result of suppressing the issuance of dividends to Shagrithaya?

Do not answer "Yes" for any decision or conduct that occurred before December 2003.

Answer "Yes" or "No": Yes

If you have answered "Yes" to subpart (a) of Question 4, then answer the following subparts (b) and (c). Otherwise, do not answer subparts (b) and (c):

(b) Did Martin suppress the issuance of dividends for the purpose of preventing Shagrithaya from sharing in the profits to be derived from the operation of ARGO?

Answer "Yes" or "No": Yes

(c) Did Martin suppress the issuance of dividends for the purpose of depreciating the value of the shares of stock in ARGO owned by Shagrithaya to a lower value than his shares of stock would otherwise have?

Answer "Yes" or "No": Yes

Received:

Mar 31 2010 02:15pm

03/31/2010 14:15

214389539f

DMTFB&L

PAGE 16/34

000137

Answer Question 5 if your answer is "Yes" to any subpart of Question 4. Otherwise, do not answer Question 5.

**QUESTION 5**

Was Martin's conduct, if any, an exercise of business judgment?

Conduct is in exercise of business judgment if Martin acted with due care, in good faith, and in furtherance of a rational business purpose. Business judgment can include an honest mistake of judgment.

Answer "Yes" or "No": No

Received:  
03/31/2010 14:15 21438953f

Mar 31 2010 02:15pm

DMTFB&L

PAGE 17/34

000138

Answer Question 6 if your answer is "Yes" to any subpart of Question 4. Otherwise, do not answer Question 6.

**QUESTION 6**

Did Shagrithaya ratify ARGO's policy to retain earnings in the corporation rather than pay dividends to the shareholders?

Ratify means when a person, who by word or conduct, with knowledge of all material facts, confirms or recognizes a policy, even if previously unauthorized, as valid. Ratification may also occur if a person retains the benefits of the policy after acquiring full knowledge of any unauthorized conduct involved in the transaction. Ratification may be express by word or deed or implied by a party's course of conduct.

Answer "Yes" or "No":     No

Received:

Mar 31 2010 02:16pm

03/31/2010 14:15

2143895397

DMTFB&L

PAGE 18/34

000139

**QUESTION 7**

Did Martin and Shagrithaya enter into an implied agreement prior to the formation of ARGO that their annual compensation would be equal while they both remained active in the business of ARGO?

An implied contract arises when the evidence of a mutual agreement between the parties is implied from their conduct and course of dealing with one another.

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing.

You may not consider the parties' unexpressed thoughts or intentions.

Answer "Yes" or "No": Yes

Received:  
03/31/2010 14:15 214389539

Mar 31 2010 02:16pm  
DMTFB&L

PAGE 19/34

000140

If your answer to Question 7 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 8**

Did Martin fail to comply with the agreement that Martin's and Shagrithaya's annual compensation would be equal while they both remained active in the business of ARGO?

Answer "Yes" or "No": Yes



Received:

Mar 31 2010 02:16pm

03/31/2010 14:15

2143895399

DMTFB&L

PAGE. 20/34

000141

If your answer to Question 8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 9**

Was Martin's failure to comply, if any, with an agreement between Martin and Shagrithaya, if any, excused?

Failure to comply with a term in an agreement is excused if -

- (a) Shagrithaya waived compliance, or

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

- (b) Shagrithaya previously failed to comply with a material obligation of the same agreement?

A failure to comply must be material. The circumstances to consider in determining whether a failure to comply is material include:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking into account the circumstances including any reasonable assurances;

- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

(a) Answer "Yes" or "No": No

(b) Answer "Yes" or "No": No

Received:

Mar 31 2010 02:16pm

03/31/2010 14:15

214389539

DMTFB&L

PAGE 21/34

000142

**QUESTION 10**

Did Shagrithaya and ARGO enter into an implied agreement that Shagrithaya's annual compensation would be equal to Martin's annual compensation while both of them remained active in the business of ARGO?

An implied agreement arises when the evidence of a mutual agreement between the parties is implied from their conduct and course of dealing with one another.

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing.

You may not consider the parties' unexpressed thoughts or intentions.

Answer "Yes" or "No": Yes

Received:

Mar 31 2010 02:16pm

03/31/2010 14:15

2143895399

DMTFB&L

PAGE 22/34

000143

If your answer to Question 10 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 11**

Did ARGO fail to comply with the agreement that Martin's and Shagrithaya's annual compensation would be equal while they both remained active in the business of ARGO?

Answer "Yes" or "No": Yes

Received:

Mar 31 2010 02:16pm

03/31/2010 14:15

214389539

DMTFB&L

PAGE 23/34

000144

If your answer to Question 11 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 12**

Was ARGO's failure to comply, if any, with an agreement between ARGO and Shagrithaya, if any, excused?

Failure to comply with a term in an agreement is excused if -

- (a) the parties agreed that a new term would take its place, or
- (b) Shagrithaya waived compliance, or

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

- (c) Shagrithaya previously failed to comply with a material obligation of the same agreement?

A failure to comply must be material. The circumstances to consider in determining whether a failure to comply is material include:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking into account the circumstances including any reasonable assurances;
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

- (a) Answer "Yes" or "No":     No
- (b) Answer "Yes" or "No":     No
- (c) Answer "Yes" or "No":     No

Received: 03/31/2010 14:15 2143895399

Mar 31 2010 02:18pm

DMTFB&L

PAGE 24/34

000145

QUESTION 13

Did Martin commit fraud against Shagrithaya by any of the following alleged conduct?

a. By providing Shagrithaya with false information that caused Shagrithaya to accept and agree with Martin's requests for ARGO to continue accumulating its earnings instead of issuing a greater amount of dividends to its shareholders?

Fraud occurs when -

- a. a party makes a material misrepresentation,
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

"Misrepresentation" means:

- a. a false statement of fact,
- b. A statement of opinion based on a false statement of fact; or
- c. A statement of opinion that the maker knows to be false.

Answer "Yes" or "No": Yes

b. By providing Shagrithaya with misleading information, and without disclosing all material information, which caused Shagrithaya to accept and agree with Martin's requests for ARGO to continue accumulating its profits instead of issuing a greater amount of dividends to its shareholders?

Fraud also occurs when -

- a. a party fails to disclose a material fact within the knowledge of that party,
- b. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,
- c. the party intends to induce the other party to take some action by failing to disclose the fact, and
- d. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Answer "Yes" or "No": Yes

03/31/2010 14:15 Received: 214389539

Mar 31 2010 02:17pm DMTFB&L

PAGE 25/34

000146

If your answer to any part of Questions 1, 4, or 13 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 14**

What is the amount of a reasonable dividend, if any, that should be issued by ARGO to its shareholders?

In determining the amount of a reasonable dividend, you should consider:

- a. the amount of accumulated surplus of the corporation, if any;
- b. the amount of the past dividends;
- c. the amount of ARGO's liquid assets;
- d. the reasonably anticipated business needs of the company; and
- e. the amount of a dividend, if any, that would not risk injuring ARGO.

Answer in dollars and cents, if any.

Answer: \$ 65,000,000<sup>00</sup>  
\$ 65 million

03/31/2010 14:15 Received: 2143895399

Mar 31 2010 02:17pm DMTFB&L

PAGE 26/34

000147

If your answer to Question 8 or Question 11 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION 15**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Shagrithaya for his damages, if any, that resulted from such failure to comply with the agreement that Martin's and Shagrithaya's annual compensation would be equal while they both remained active in the business of ARGU'?

Do not add any amount for interest on damages, if any. Do not add or subtract any taxes from your answer.

Consider the following element of damages, if any, and none other.

The difference, if any, between the amount of compensation ARGU paid Martin and the amount of compensation ARGU paid Shagrithaya. Answer separately in dollars and cents for damages, if any, in amounts paid for each of the following periods:

July 1, 2005 through June 30, 2006:	<u>568K</u>
July 1, 2006 through June 30, 2007:	<u>568K</u>
July 1, 2007 through June 30, 2008:	<u>568K</u>
July 1, 2008 through January 2009:	<u>390K</u>

03/31/2010 14:15 Received: 21438953

Mar 31 2010 02:17pm DMTFB&L

PAGE 27/34

000148

If you have answered "Yes" to Question 8 and with a sum of money to Question 15, then answer the subparts of Question 16. Otherwise, do not answer the subparts of Question 16.

**QUESTION 16**

What is the amount of a reasonable fee for the legal services of Shagrithaya's attorneys in this case, stated in dollars and cents, that were necessary to prosecute Shagrithaya's claim for breach of contract against Martin?

In determining a reasonable attorney's fee award, you must consider the following factors:

- a. the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- b. the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- c. the fee customarily charged in the locality for similar legal services;
- d. the amount involved and the results obtained;
- e. the time limitations imposed by the client or the circumstances;
- f. the nature and length of the professional relationship with the client;
- g. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- h. whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services had been rendered.

Answer the following subparts a through <sup>c</sup> separately in dollars and cents for each of the following as to Shagrithaya's claim for breach of contract against Martin. In answering this question, do not include any fees that relate solely to claims other than Shagrithaya's claim for breach of contract against Martin.

a. For preparation and trial.

Answer: 500K

b. For an appeal to the Court of Appeals.

Answer: 25K

c. For an appeal to the Supreme Court of Texas.

Answer: 10K



03/31/2010 14:15

Received:  
2143895399

Mar 31 2010 02:17pm

DMTFB&amp;L

PAGE 28/34

000149

## QUESTION 17

Did Martin fail to comply with his fiduciary duties to ARGO by engaging in any of the following alleged conduct and did that conduct, if any, result in harm to ARGO or in an improper or unfair benefit to Martin?

Do not answer "Yes" for any conduct that occurred before December 2003.

As an officer, and director of ARGO, Martin owed ARGO fiduciary duties. As a fiduciary, Martin owed ARGO the following duties:

- (1) a duty to act in the utmost good faith and most scrupulous honesty in dealings with ARGO;
- (2) a duty of candor to fully and fairly disclose to the Board of Directors of ARGO all material information within Martin's knowledge that relates to the business of ARGO; and
- (3) a duty of loyalty in matters concerning ARGO to place the interests of ARGO before his own, to not use the advantage of his position to gain any benefit for himself at the expense of ARGO, and to not place himself in any position where his self-interest might conflict with his obligations as a fiduciary.

Answer "Yes" or "No" regarding each of the following alleged conduct:

- a. Martin's failure, if any, to secure approval, if required, from ARGO's Board of Directors to reduce Shagrithaya's compensation at ARGO?

Answer "Yes" or "No": Yes

- b. Martin's decision, if any, to retain ARGO's earnings rather than issuing a larger amount of dividends to ARGO's shareholders than it actually issued?

Answer "Yes" or "No": Yes

- c. Martin's failure, if any, to disclose to ARGO's Board of Directors, if required, that the IRS had assessed a retained earnings tax against ARGO of approximately \$1.2 million?

Answer "Yes" or "No": Yes

- d. Martin's sale to himself of ARGO's Colorado condominium, if any, without obtaining the approval of ARGO's Board of Directors, if required?

Mar 31 2010 02:17pm

03/31/2010 14:15

Received:  
214389539

DMTFB&L

PAGE 29/34

000150

Answer "Yes" or "No": Yes

- e. Martin's use of ARGO's funds, if any, to pay for legal services rendered solely for his benefit from October 2006 to December 2007?

Answer "Yes" or "No": Yes

- f. Martin's failure, if any, to disclose to and discuss with ARGO's Board of Directors, if required, ARGO's retention of the Gardere law firm to challenge the IRS tax assessment against ARGO?

Answer "Yes" or "No": Yes

03/31/2010 14:15 Received: 2143895399

Mar 31 2010 02:17pm

DMTFB&L

PAGE 38/34

000151

Answer the following question if you answered "Yes" to any subpart of Question 17. Otherwise, *Yes* do not answer if your answer to all subparts of Question 17 is "No."

QUESTION 18

Was the failure to comply by Martin, if any, excused?

Failure to comply is excused if-

(1) waived by Shagrithaya on behalf of ARGO, or

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

(2) ratified by ARGO's Board of Directors?

Ratify means when a person or corporation, who by word or conduct, with knowledge of all material facts, confirms or recognizes an act, even if previously unauthorized, as valid. Ratification may also occur if a person retains the benefits of a transaction after acquiring full knowledge of any unauthorized acts involved in the transaction. Ratification may be express by word or deed or implied by a party's course of conduct.

a. Martin's failure, if any, to secure approval, if required, from ARGO's Board of Directors to reduce Shagrithaya's compensation at ARGO?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

b. Martin's decision, if any, to retain ARGO's earnings rather than issuing a larger amount of dividends to ARGO's shareholders than it actually issued?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

c. Martin's failure, if any, to disclose to ARGO's Board of Directors, if required, that the IRS had assessed a retained earnings tax against ARGO of approximately \$1.2 million?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

03/31/2010 14:15 Received: 214389539

Mar 31 2010 02:18pm DMTFB&L

PAGE 31/34

000152

d. Martin's sale to himself of ARGO's Colorado condominium, if any, without obtaining the approval of ARGO's Board of Directors, if required?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

e. Martin's use of ARGO's funds, if any, to pay for legal services rendered solely for his benefit from October 2006 to December 2007?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

f. Martin's failure, if any, to disclose to and discuss with ARGO's Board of Directors, if required, ARGO's retention of the Gardere law firm to challenge the IRS tax assessment against ARGO?

(1) Answer "Yes" or "No": No

(2) Answer "Yes" or "No": No

Received: 03/31/2010 14:15 2143895395

Mar 31 2010 02:18pm

DMTFB&L

PAGE 32/34

000153

**QUESTION 19**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ARGO for its damages, if any, that were proximately caused by any failure by Martin to comply with his fiduciary duties to ARGO?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

If your answer to Question 17(b), 17(c), or 17(f) is "Yes," then answer the following subpart. Otherwise, do not answer the following subpart.

- a. The amount of legal fees that ARGO paid to Gardere to challenge the tax assessment against ARGO.

Answer: \$ 45,731.57

If your answer to Question 17(d) is "Yes," then answer the following subpart. Otherwise, do not answer the following subpart.

- b. The reasonable amount of rental income resulting from Martin's ownership of the Colorado condominium throughout the period of his ownership after he sold ARGO'S condominium to himself in December 2005.

Answer: \$ 0.00

If your answer to Question 17(e) is "Yes," then answer the following subpart. Otherwise, do not answer the following subpart.

- c. The amount of ARGO's funds that were used to pay for legal services rendered solely for Martin's benefit from October 2006 to December 2007.

Answer: 72K

03/31/2010 14:15 Received:  
214389539

Mar 31 2010 02:18pm

DMTFB&amp;L

PAGE 33/34

000154

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and you will then deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during your deliberations;
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. to write out and hand to the bailiff any communication concerning the case which you desire to have delivered to the judge;
4. to vote on the questions;
5. to write your answers to the questions in the spaces provided; and
6. to certify to your verdict in the space provided for the presiding juror's signature or obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss this case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all of the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

  
JUDGE PRESIDING

Received: 03/31/2010 14:15 214389539'

Mar 31 2010 02:18pm DMTFB&L

PAGE 34/34

000155

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if the jury is unanimous.)

\_\_\_\_\_  
PRESIDING JUROR

\_\_\_\_\_  
Printed Name of Presiding Juror

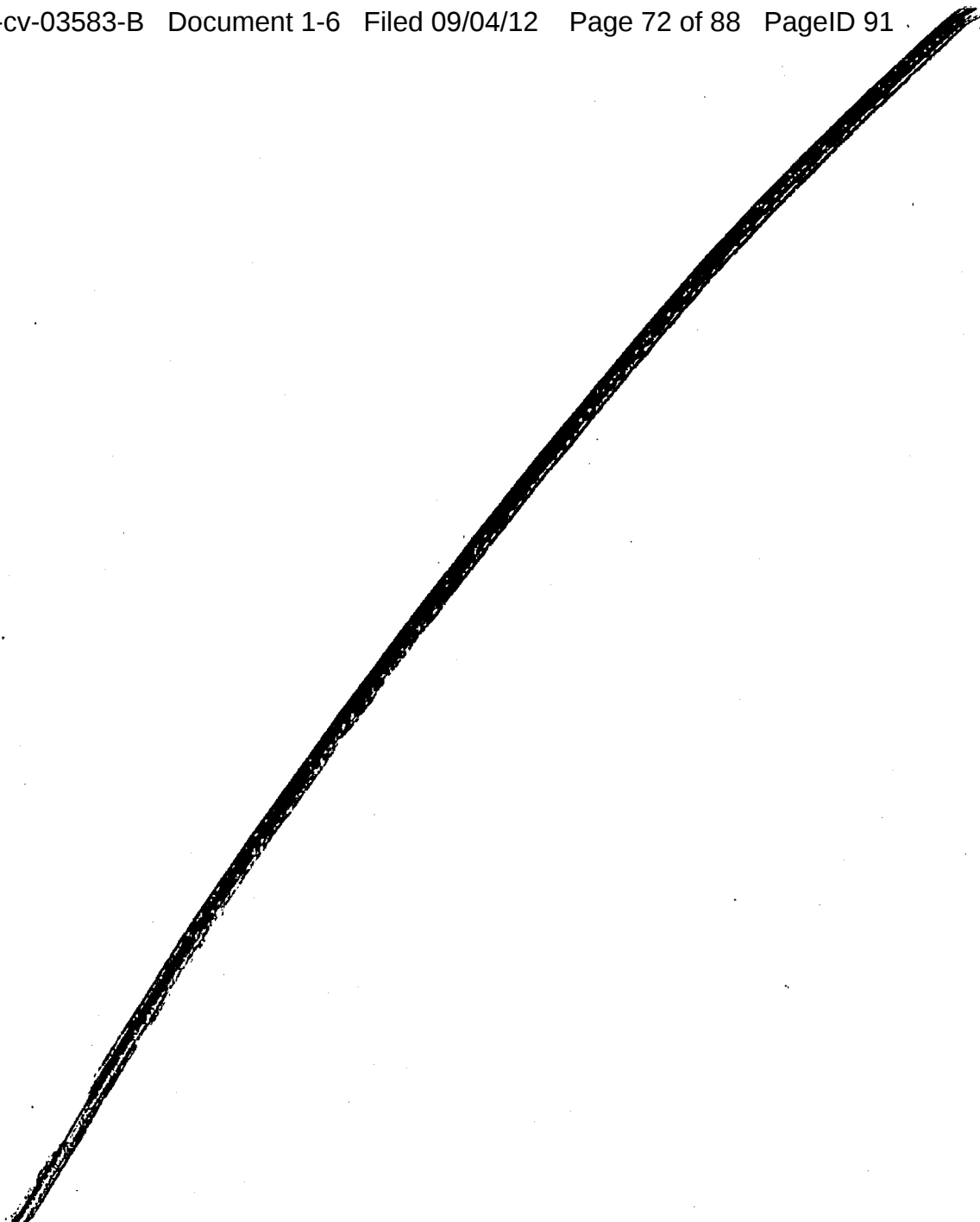
(To be signed by those rendering the verdict if the jury is not unanimous.)

Jurors' Signatures

Sharon Reich  
Chris Harris  
Steven Munoz  
Robert Gargan  
Duke Jones  
Debbie Adams  
Denise Strickland  
Virginia Brown  
Joanne Middleton  
Michael A. Moreau

Jurors' Printed Names

Sharon Reich  
Chris Harris  
Steven Munoz  
ROBERT GARGAN  
Duke Jones  
Debbie Adams  
Denise Strickland  
Virginia Brown  
Joanne Middleton  
Michael A. Moreau



STATE OF TEXAS }  
COUNTY OF DALLAS }

I, GARY FITZSIMMONS, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears of record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 8th day of August, A.D., 2012



GARY FITZSIMMONS, DISTRICT CLERK,  
DALLAS COUNTY, TEXAS

By [Signature] Deputy





# Exhibit D

From: "Todd Robertson" <Todd.Robertson@argodata.com>    
Subject: RE: VW Demo  
Date: April 6, 2010 10:28:21 AM CDT  
To: "Mr. Bill Spear" <bspear@spearmktg.com>

1 Attachment, 17 KB

Bill,  
Thanks for your time this morning. please see the attached Mutual NDA.

Todd Robertson  
Vice President  
ARGO

-----Original Message-----

From: Mr. Bill Spear [mailto:bspear@spearmktg.com]  
Sent: Monday, April 05, 2010 4:33 PM  
To: Todd Robertson  
Subject: VW Demo

Hi Todd

look forward to our meeting at 9am tomorrow. Please call me on  
972-772-8641 (different than original) and have your browser pointed to  
[www.vaultworks.com](http://www.vaultworks.com).

Thanks

Bill Spear

---

Confidentiality Notice: This electronic mail transmission is confidential,  
may be privileged and should be read or retained only by the intended  
recipient. If you have received this transmission in error, please  
immediately notify the sender and delete it from your system.

**MUTUAL NON-DISCLOSURE AGREEMENT**

This **Mutual Non-Disclosure Agreement** (the "Agreement") is entered into effective as of this date: \_\_\_\_\_, by and between ARGO Data Resource Corporation ("ARGO"), having a principal address at 1500 North Greenville Avenue, Suite 500, Richardson, Texas 75081, and:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WHEREAS**, the parties are discussing existing products, product development, services, delivery specifications and said discussions necessitate an exchange of information considered confidential and proprietary by each of them.

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. "Proprietary Information" means all information, including, but not limited to, proprietary, technical, developmental, operating, performance, cost, know-how and process information, and all samples, models and prototypes containing or disclosing such information, that is disclosed either (i) in a writing or other tangible form bearing a label or stamp identifying the information as secret, confidential or proprietary or (ii) orally with a designation of such information as secret, confidential or proprietary prior to or during the oral disclosure and a subsequent reduction of such information to a writing labeled secret, confidential or proprietary and is sent to the party to whom the disclosure was made within thirty (30) days after the oral disclosure.

2. The recipient of Proprietary Information disclosed under this Agreement (the "Receiving Party") shall (i) treat such information with the same degree of care (provided that such is at least a reasonable degree of care) to avoid disclosure to third parties as it normally uses to protect its own confidential or proprietary information; and (ii) use the Proprietary Information only for the purposes set forth in the WHEREAS clause above, unless otherwise agreed to in writing by the party disclosing the Proprietary Information (the "Disclosing Party"). In the event of a dispute, the burden will be on the Receiving Party to demonstrate that the standard of care described herein was used.

Without limiting the generality of the foregoing:

- (a) The Receiving Party shall disclose Proprietary Information only to those of the Receiving Party's employees, directors, advisors, and agents who need access to such Proprietary Information for the purposes set forth in the WHEREAS clause above and no one else; and
- (b) The Receiving Party shall assure that all persons who receive any of the Proprietary Information directly or indirectly from it will abide by the terms and conditions of this Proprietary Agreement as if such persons were parties hereto.

3. There shall be no liability for breach of the restrictions contained in Paragraph 2 on use and disclosure of Proprietary Information:

- (a) if the Receiving Party can demonstrate from written records that such information was already in the public domain or became publicly available through no breach of this Agreement by the Receiving Party;
- (b) if the Receiving Party can demonstrate from written records that the information was rightfully in the Receiving Party's possession without obligation of confidence prior to receipt from the Disclosing Party or that the Receiving Party lawfully obtained said information from a third party who was under no obligation of confidence;
- (c) if the Receiving Party can demonstrate from written records that such information was independently developed by employees of the Receiving Party who had no had access to the Disclosing Party's Proprietary Information;
- (d) If such information is required to be disclosed by the Receiving Party to comply with a judicial order or decree; provided, however, that the Receiving Party gives prior written notice of such disclosure to the Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure; or
- (e) if such information is disclosed with the prior written consent of the Disclosing Party.

4. This Agreement shall be effective as of the date first set forth above (the "Effective Date" and may be terminated with respect to subsequent disclosures upon thirty (30) days' prior written notice to the other party. This Agreement shall automatically terminate two (2) years after its Effective Date. The rights and obligations accruing prior termination as set forth herein shall survive the termination of this Agreement for a period of five (5) years.

5. Upon any termination of this Agreement in accordance with its terms, each party within a reasonable period of time after receipt of written request from the other party hereto, will return all Proprietary Information and copies thereof received from the other party under this Agreement, except a single archival copy that may be retained by the Receiving Party's legal department for dispute resolution purposes only.

6. The Receiving Party shall not be obligated to compensate the Disclosing Party for Proprietary Information (except as may result from a breach of this Agreement) and the Receiving Party acknowledges and understands that no warranties of any kind are given by the Disclosing Party with respect to the accuracy or completeness of the Proprietary Information.

7. Proprietary Information shall remain the sole and exclusive property of the Disclosing Party. Nothing in this Agreement shall be construed as granting to the Receiving Party any right, title or interest in or to any patent, trademark, license, copyright or other right of the Disclosing Party.

8. Nothing in this Agreement shall be deemed to create, either express or implied, the power in either party to bind the other. Neither party shall be bound by the actions of the other, shall be liable for the debts of the other, or shall have a right to share in the profits of the other. This Agreement is not intended to be a joint venture, partnership or other formal business organization, and neither party is under any obligation to enter into any further agreement with the other party.

9. This Agreement shall not be construed in any manner to be an obligation to enter into a subcontract or contract or to result in any claim whatsoever by one party against the other for reimbursement of cost for efforts expended.

10. Except as specifically set forth herein, this Agreement does not: (i) restrict either party from developing new products, improving existing products, or marketing any new, improved or existing products; or (ii) commit either party to disclose any particular information, or to develop, make, use, buy, sell, or otherwise dispose of any existing or future products, or to favor or recommend any product or service of the other. To be binding, any such restriction or commitment must be in writing and signed by both parties.

11. No waiver of any provision of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any provision hereof, nor shall such waiver constitute a waiver in any other instance. No waiver shall be binding unless executed in writing by the party making the waiver.

12. Each party represents that it has the right to disclose its Proprietary Information in furtherance of the purpose set forth in the WHEREAS clause above without violating any agreement with or right of any other person. Proprietary Information may include information of a third party provided that the third party has authorized such disclosure.

13. This Agreement shall be binding on and shall inure to the benefit of the parties hereto, their respective successors and assigns. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party. Any attempted assignment without such prior written consent shall be void and unenforceable. Notwithstanding the foregoing, either party, without the prior written approval of the other party, may assign its rights and obligations hereunder to a successor in ownership of substantially all of the assets of the business, provided that the successor expressly assumes in writing the performance of the terms and conditions of this Agreement.

14. This Agreement is the only agreement between the parties concerning the Proprietary Information and it supersedes and replaces any and all existing Agreements, written, oral, or otherwise, concerning the disclosure of Proprietary Information.

15. If any provision of this Agreement is determined to be in violation of applicable law, then such provision shall be void and the other provisions of this Agreement shall remain in full force and effect.

16. No modifications to this Agreement shall be binding on either party unless such modification is in writing and signed by an authorized representative of each of the parties.

17. All notices or other communications contemplated by this Agreement shall be in writing and shall be deemed properly delivered when (i) delivered personally or (ii) mailed by registered or certified mail, postage prepaid, to the address of the other party set forth in the first paragraph of this Agreement.

18. This Agreement shall be governed by and interpreted according to the laws of the State of Texas.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

**ARGO Data Resource Corporation**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



# Exhibit E

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "Agreement") is entered into effective as of this date: APRIL 28, 2010, by and between ARGO Data Resource Corporation ("ARGO"), having a principal address at 1500 North Greenville Avenue, Suite 500, Richardson, Texas 75081, and:

SPACE MARKETING INC  
2807 ALLEN ST. #329  
DALLAS, TX 75204

WHEREAS, the parties are discussing existing products, product development, services, delivery specifications and said discussions necessitate an exchange of information considered confidential and proprietary by each of them.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. "Proprietary Information" means all information, including, but not limited to, proprietary, technical, developmental, operating, performance, cost, know-how and process information, and all samples, models and prototypes containing or disclosing such information, that is disclosed either (i) in a writing or other tangible form bearing a label or stamp identifying the information as secret, confidential or proprietary or (ii) orally with a designation of such information as secret, confidential or proprietary prior to or during the oral disclosure and a subsequent reduction of such information to a writing labeled secret, confidential or proprietary and is sent to the party to whom the disclosure was made within thirty (30) days after the oral disclosure.

2. The recipient of Proprietary Information disclosed under this Agreement (the "Receiving Party") shall (i) treat such information with the same degree of care (provided that such is at least a reasonable degree of care) to avoid disclosure to third parties as it normally uses to protect its own confidential or proprietary information; and (ii) use the Proprietary Information only for the purposes set forth in the WHEREAS clause above, unless otherwise agreed to in writing by the party disclosing the Proprietary Information (the "Disclosing Party"). In the event of a dispute, the burden will be on the Receiving Party to demonstrate that the standard of care described herein was used.

Without limiting the generality of the foregoing:

- (a) The Receiving Party shall disclose Proprietary Information only to those of the Receiving Party's employees, directors, advisors, and agents who need access to such Proprietary Information for the purposes set forth in the WHEREAS clause above and no one else; and
- (b) The Receiving Party shall assure that all persons who receive any of the Proprietary Information directly or indirectly from it will abide by the terms and conditions of this Proprietary Agreement as if such persons were parties hereto.



7. Proprietary Information shall remain the sole and exclusive property of the Disclosing Party. Nothing in this Agreement shall be construed as granting to the Receiving Party any right, title or interest in or to any patent, trademark, license, copyright or other right of the Disclosing Party.

8. Nothing in this Agreement shall be deemed to create, either express or implied, the power in either party to bind the other. Neither party shall be bound by the actions of the other, shall be liable for the debts of the other, or shall have a right to share in the profits of the other. This Agreement is not intended to be a joint venture, partnership or other formal business organization, and neither party is under any obligation to enter into any further agreement with the other party.

9. This Agreement shall not be construed in any manner to be an obligation to enter into a subcontract or contract or to result in any claim whatsoever by one party against the other for reimbursement of cost for efforts expended.

10. Except as specifically set forth herein, this Agreement does not: (I) restrict either party from developing new products, improving existing products, or marketing any new, improved or existing products; or (ii) commit either party to disclose any particular information, or to develop, make, use, buy, sell, or otherwise dispose of any existing or future products, or to favor or recommend any product or service of the other. To be binding, any such restriction or commitment must be in writing and signed by both parties.

11. No waiver of any provision of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any provision hereof, nor shall such waiver constitute a waiver in any other instance. No waiver shall be binding unless executed in writing by the party making the waiver.

12. Each party represents that it has the right to disclose its Proprietary Information in furtherance of the purpose set forth in the WHEREAS clause above without violating any agreement with or right of any other person. Proprietary Information may include information of a third party provided that the third party has authorized such disclosure.

13. This Agreement shall be binding on and shall inure to the benefit of the parties hereto, their respective successors and assigns. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party. Any attempted assignment without such prior written consent shall be void and unenforceable. Notwithstanding the foregoing, either party, without the prior written approval of the other party, may assign its rights and obligations hereunder to a successor in ownership of substantially all of the assets of the business, provided that the successor expressly assumes in writing the performance of the terms and conditions of this Agreement.

14. This Agreement is the only agreement between the parties concerning the Proprietary Information and it supersedes and replaces any and all existing Agreements, written, oral, or otherwise, concerning the disclosure of Proprietary Information.

15. If any provision of this Agreement is determined to be in violation of applicable law, then such provision shall be void and the other provisions of this Agreement shall remain in full force and effect.

16. No modifications to this Agreement shall be binding on either party unless such modification is in writing and signed by an authorized representative of each of the parties.

17. All notices or other communications contemplated by this Agreement shall be in writing and shall be deemed properly delivered when (i) delivered personally or (ii) mailed by registered or certified mail, postage prepaid, to the address of the other party set forth in the first paragraph of this Agreement.

18. This Agreement shall be governed by and interpreted according to the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

ARGO Data Resource Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SPEAR MARKETING, INC


By: Bill Spear →

Name: Bill Spear

Title: PRESIDENT



# Exhibit F

From: "Mr. Bill Spear" <bspear@spearmktg.com>   
Subject: Re: VaultWorks Prospect trial  
Date: May 17, 2010 8:02:31 PM CDT  
To: Todd Robertson <todd.robertson@argodata.com>

OK. Give me a call on 214-675-5300 when you get a chance Wednesday.

Good to hear from you.

B

On May 17, 2010, at 6:20 AM, Todd Robertson wrote:

Bill,  
I will have the executed NDA back to you on Wednesday when I return to Dallas. Our initial thoughts are to understand the install base and where there is overlap with ARGO's existing customer base. Can I get you to mail 2 original copies of the NDA and we will send you an original back as well?

Thanks.

Todd

-----Original Message-----

From: Mr. Bill Spear [mailto:bspear@spearmktg.com]  
Sent: Friday, May 14, 2010 9:48 AM  
To: Todd Robertson  
Subject: VaultWorks Prospect trial

Todd

We have another vendor interested in our product that is asking us to implement VW for one of their new clients (a very large bank) so that they can get a feel of the value to their company. Our projections appear to point to huge savings for the bank which is not practicing good cash management.

We would love to do the same for you. You had identified some accounts for which this could be very impressive to your prospect. As you recall, I indicated that many of those you identified appeared also to be weak cash managers by our analysis. A new vendor of our product will soon be able to identify these accounts and I am sure will pursue them.

I would like to offer you this same opportunity that we are offering to one of your major competitors.

Please contact me as soon as possible I am trying to follow up on your initial enthusiasm. We are very interested in working with you.

bill  
214-675-5300

---

Confidentiality Notice: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

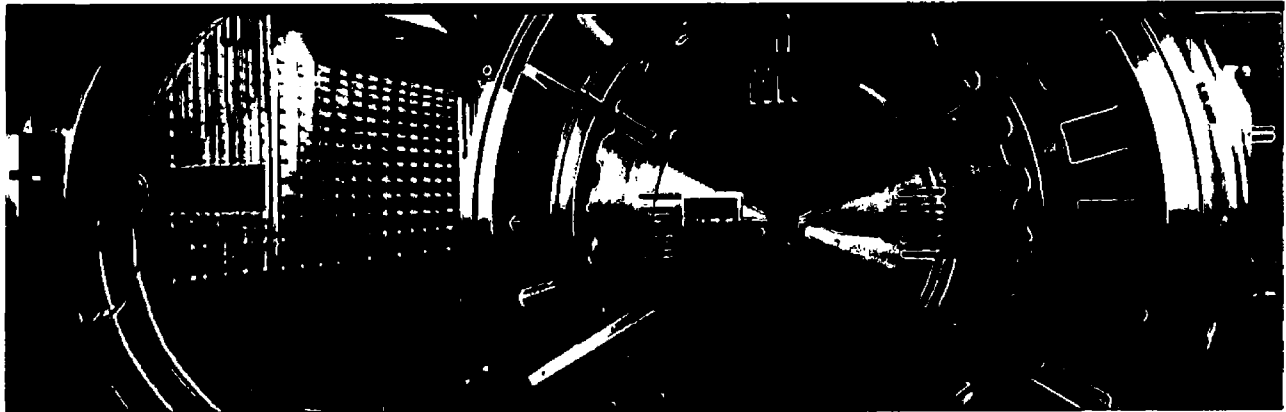


# Exhibit G



Contact Us | Customer Care

How We Help You Industries Solutions Technology Services About Us Careers Enter keyword(s) Q



- Teller Payments
- Overview
- Teller Image Capture
- Back-Office Data Perfection
- Cash Inventory Optimization

## Cash Inventory Optimization

Effectively manage cash levels.

ARGO Cash Inventory Optimization provides systematic, denominational order recommendations, monitoring in real time and versatility for last-minute changes. This powerful solution seamlessly integrates with ARGO Teller Payments to effectively manage ATM and branch levels.

### Optimize Cash Orders

Advanced real-time analytics produce optimized cash orders and inventory levels down to denominations. Forecast and Recommendation engines combine data with business rules and parameters set up by each location to create forecasts and generate order recommendations. The result: optimal amounts of currency on hand to provide a superior customer experience.

### Minimize Costs

Financial institution managers use in-depth reporting to identify trends as well as to analyze forecasts, cash usage, and balances. They apply goal-driven order recommendations to maintain appropriate inventory levels, decrease courier costs, and reduce emergency shipments.

### Meet Reduction Goals

Cash Inventory Optimization continually tracks and displays the status on cash point configurations, order compliance, and service-level agreement adherence to optimize cash levels without affecting customers' needs.

### Streamline Operations

An intuitive interface and streamlined workflow enables managers to continuously monitor cash processes to detect areas that need immediate attention. The solution helps them quickly identify issues, such as employees needing retraining, locations requiring increased deliveries or inventories, or delivery schedules conflicting with holiday closings.

Copyright 2012 © ARGO Data Resource Corporation. All rights reserved. Privacy Policy

STATE OF TEXAS }  
COUNTY OF DALLAS }

I, GARY FITZSIMMONS, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears of record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 30th day of August, A.D., 2012.

GARY FITZSIMMONS, DISTRICT CLERK  
DALLAS COUNTY, TEXAS

By Mary Teva Deputy