

07-1351-CD
Denny's vs Action Systems Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. - - CD

Action Systems, Inc, *
Defendant. *

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. - - CD.

Action Systems, Inc, *
Defendant. *

COMPLAINT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Denny's Beer Barrel Pub, Inc., is a corporation, and has its principal place of business at 1423 Dorey Street, Clearfield, Pennsylvania, 16830.

2. That the Defendant, Action Systems, Inc., is a corporation and has a principal place of business at 1734 Elton Road, Suite 219, Silver Spring, Maryland, 20903.

3. That defendant Action Systems, Inc. (hereinafter "ASI") is in the business of developing and marketing restaurant management software systems.

4. That at all times alleged herein Batcho Office Systems (hereinafter "Batcho"), was an authorized dealer of ASI with its principal place of business located at 110 East Market Street, Clearfield, Pennsylvania, 16830.

5. That specifically Jason Unch, an employee of Batcho was trained and certified as an authorized installer of ASI software and presented Denny's Beer Barrel Pub, Inc. (hereinafter "Denny's") with proof and documentation of said authorization of Batcho by ASI.

6. That plaintiff purchased the necessary hardware and the ASI restaurant management software system (including the license in order to use the purchased software) from Batcho which also included installation costs for a total purchase price of \$13,103.00. True and correct copies of Invoice and Records of Payment by Denny's are attached collectively hereto as Exhibit "A."

7. That with the purchase of the ASI software system the purchaser must be issued a license to use the software.

8. Batcho installed the hardware and software at plaintiff's place of business.

9. That the software and hardware system is such that as upgrades and "patches" to the system are made they must be incorporated into one's existing system or the system will fail and be inoperable.

10. That the restaurant management software system plaintiff purchased is failing and inoperable due to the absence of necessary and critical upgrades and patches.

11. That despite plaintiff's purchase of the software and license and payment in full to defendant's dealer and agent, defendant refuses to provide plaintiff with ongoing and necessary upgrades and patches to the system.

COUNT I - Equity

12. That plaintiff incorporates by reference paragraphs one through 11 above as if set forth in full herein.

13. That plaintiff having paid in full to defendant's authorized dealer and agent the cost of the ASI hardware, software and installation is owed the issuance of a license from ASI.

14. That plaintiff has demanded defendant issue said license as described in paragraph 13 and that the critical upgrades and patches be provided to plaintiff and defendant refuses to issue any of the same.

15. That the system plaintiff purchased from ASI is so unique that plaintiff is unable to replace it with a comparable system.

16. That plaintiff has no adequate remedy at law.

17. That in order to make plaintiff whole defendant must be ordered to issue plaintiff a license and provide the critical upgrades and patches to the software system.

18. That this order will require little to no supervision or intervention by the Court and is easily enforced.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment against defendant and respectfully requests this Court to issue an Order directing Defendant, Action Systems, Inc. to issue plaintiff a license and provide plaintiff with the necessary software upgrades and patches to render plaintiff's purchased software system operable and maintain said operability.

COUNT II

19. Plaintiff incorporates by reference paragraphs one through eighteen above as if set forth in full herein.

20. That defendant's authorized dealer and agent, Batcho, failed to properly install the ASI software system at plaintiff's restaurant.

21. That proper and adequate installation of the software system was paid for by plaintiff as part of the purchase price paid as described in paragraph six above.

22. That the improper installation by defendant's agent renders the ASI software system purchased by Denny's from ASI inoperable.

23. That plaintiff has obtained an estimate for reinstallation of the ASI software system at approximately \$3,100.00 (Three thousand one hundred dollars). True and correct copy of evidence of the same is attached hereto as Exhibit "B."

24. That plaintiff has demanded that defendant pay for the reinstallation costs of the software system and defendant refuses to pay for said reinstallation costs.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgement against Defendant and in its favor for the reinstallation costs of the ASI software system it purchased with costs and interest thereon.

COUNT III

25. Plaintiff incorporates by reference paragraphs one through 24 above as if set forth in full herein.

26. That plaintiff paid \$13,103.00 for a software system that is inoperable due to defendant's failure to provide necessary and critical upgrades.

27. That plaintiff when it purchased and paid in full for an operable installed ASI software system (that would remain operable) expected the same from the benefit of its bargain with defendant.

28. That defendant by refusing to provide plaintiff with an operable software system as expected and refusing to provide critical updates necessary to render the ASI software system operable at plaintiff's place of business has breached the purchase contract between plaintiff and defendant.

29. That the cost to replace the software system which is now inoperable and described supra in paragraph six is

\$40,000.00 (Forty thousand dollars) to \$45,000.00 (Forty-five thousand dollars).

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment against defendant in an amount in excess of \$25,000.00 (Twenty five thousand dollars) with costs and interest thereon.

NADDEO & LEWIS, LLC.

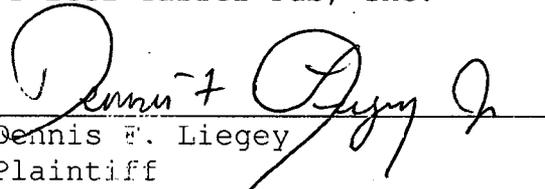
By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Dennis F. Liegey, verify that I am the President of Denny's Beer Barrel Pub, Inc., and that I am authorized to execute this verification and further that the statements made in the foregoing Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Denny's Beer Barrel Pub, Inc.

By:


Dennis F. Liegey
Plaintiff

Dated:

7/3/07

ASS
 Batcho\Office Systems

110 East Market Street
 Clearfield, PA 16830

Invoice

Date	Invoice #
7/8/2005	114631

Bill To
DENNY'S Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
Total						\$11,159.18

THREE HANDHELDS RETURNED 4500- 1500 each
 NO TRAINING - NO COMPLETED PROGRAMMING
 Exhibit "A"
 17603.00
 4500.00
 13103.00 actual

WELLS FARGO FINANCIAL LEASING

Phone: (866) 497-6661

Fax: (800) 242-7252

Fax to: (814) 765-3411

Deliver To: GLEN BATCHO SR

From: BARBARA CRONIN

Decision: APPROVED

Credit Decision

Company: BATCHO BUSINESS MACHINES, INC

Cust Nm: DENNYS BEAR BARREL PUB INC

Application No.: 483271

Approved Amount: 11550

Documentation Required:

TERM/RESIDUAL

FACTOR/YIELD/GDA

ORIGINAL EQUIP COST

SIGNER

EQUIPMENT

36 MONTHS

\$ OUT 0.0331

\$10500.00

CORPORATE OFFICER

NOT LISTED

Comments:

Thank you for the business. Maximum funding is subject to MSRP limits and current rates established for your program. Funding is contingent upon our receipt and acceptance of all proper customer, vendor and other documentation (including without limitation the documents identified above), all as determined and required by Wells Fargo Financial Leasing, and the customer's verbal verification of acceptance of the equipment. Wells Fargo Financial Leasing may revoke this approval at any time prior to the complete satisfaction of all such requirements or in the event of fraud or a material adverse change in the customer's financial condition. This approval will automatically expire in ninety (90) days.

Please contact your Program Representative with any questions.

ADDITIONAL CREDIT AVAILABLE

DENNYS BEAR BARREL PUB INC may qualify for additional credit of \$****63,400. Please contact your Program Representative for terms and conditions.

Quotation Prepared for



Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase

6/6/2007

Qty	Description	Price
1	USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5	Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1	RM Table Service License	\$175.00
1	RM Tabs License	\$175.00
1	RM Accounts Module (Gift Cards)	\$800.00
1	RM Customer Loyalty	\$800.00
1	RM Inventory Control Module	\$800.00
1	RM Credit Card Authorization Interface	\$600.00
1	Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax		\$3,700.00
Sales Tax*		\$273.00
Total Investment**		\$4,173.00

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year	\$367.50 per month
Software Subscription for the Second Year	\$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7863 Steubenville Pike • Oakdale, PA 15071
Phone: 724-695-2540
phspos@comcast.net

Exhibit "B"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Alex Malison
Action Systems, Inc.
1734 Elton Road, Suite 219
Silver Spring, MD 20903

2. Article Number

(Transfer from service label)

7003 3110 0001 9382 2611

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

P. Serp

Agent

Addressee

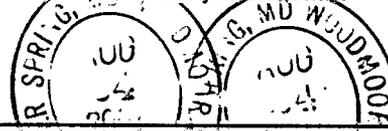
B. Received by (Printed Name)

P. Serp

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No



3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please enter my appearance on behalf of Defendant, ACTION SYSTEMS, INC.,
in the aforementioned action.

GATES & SEAMAN

BY: 

Laurance B. Seaman, Esquire

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

Date: September 13, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that service was made by mailing a true and correct copy of the original Praecipe for Appearance on the 13th day of September, 2007 by regular mail, postage prepaid to:

James A. Naddeo, Esquire
Attorney for Plaintiff
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By


Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please request the Court Administrator to schedule an Argument Date for consideration of the Preliminary Objections which we have filed on behalf of Defendant, Action Systems, Inc., contemporaneously with this Praecipe.

GATES & SEAMAN

BY: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

Date: September 13, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that service was made by mailing a true and correct copy of the original Praecept to Schedule Argument Date (Preliminary Objections) on the 13th day of September, 2007 by regular mail, postage prepaid to:

James A. Naddeo, Esquire
Attorney for Plaintiff
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN
By 
Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

NOTICE

TO: Denny's Beer Barrel Pub, Inc.
c/o James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED
PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A
JUDGMENT MAY BE ENTERED AGAINST YOU.**

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire,
Attorney for Defendant, Action Systems, Inc.

Date: September 13, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
 :
-vs- :
 :
ACTION SYSTEMS, INC., :
Defendant :

**DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT**

Defendant, Action Systems, Inc., by its undersigned counsel, preliminarily objects to Plaintiff's Complaint as follows:

I. **Preliminary Objection Raising Legal Insufficiency of Plaintiff's Complaint (Demurrer) under Pa.R.C.P. 1028(a)(4).**

1. Plaintiff's Complaint is based upon its claim that it purchased, not from Defendant, but from Batcho Business Machines, Inc., t/d/b/a Batcho Office Systems ("Batcho"), a Restaurant Management System ("System") consisting of "hardware" (computers with operating systems and subsystems and accessories manufactured by some other third parties and obtained by Batcho) and restaurant management "software" with a license for the same, (produced by Defendant and sold to Batcho), all of which was alleged by Plaintiff to have been improperly installed by Batcho. (Paragraphs 6, 8, 20 and 22 of the Complaint).

2. Plaintiff attached to the Complaint as a part of Exhibit "A" an invoice from Batcho to Plaintiff for the System, which invoice Plaintiff alleges it has paid.

3. Plaintiff made no payments of money to Defendant.

4. Plaintiff makes no allegations that Batcho has paid any money to Defendant for said software and/or license.

5. Plaintiff makes no allegation of there being any breach of any type of warranty and thus Plaintiff has no right to sue Defendant directly because there is no privity of contract between Plaintiff and Defendant.

6. Even if Plaintiff subsequently alleges a breach of warranty, such a claim must also fail, because of the warranty limitations contained in the End User License Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A", which is required by Defendant to be accepted by the end user, Plaintiff, before the end user can enable the software to be utilized. If Plaintiff did not accept the End User Agreement, by its terms, Plaintiff was required to return the software and security key to Batcho for a full refund.

7. This End User License Agreement provides, in part, that: "Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, express or implied. Action Systems, Inc. makes no representation or warranties with respect to the merchantability or fitness of software for any particular purpose, business or

application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the user or any other person in excess of the price paid to Action Systems, Inc. or the license to use the software, regardless of the form of any claim.”.

8. Plaintiff alleges in Paragraph 4 of the Complaint that Batcho was an authorized dealer of Defendant, but Plaintiff makes no specific allegation that Batcho was an agent of Defendant.

9. While the Complaint does occasionally use the word “agent” when referring to Batcho, there are no allegations of any facts which would support the existence of an agency, nor are there any allegations of a written agreement between Batcho and Defendant creating an agency.

10. The use of the term “dealer” carries no legal significance and cannot be equated with that of an “agent”, who would have the authority to bind or obligate another party.

11. Batcho was actually only a Reseller of Defendant and as such had no authority to bind or obligate the Defendant in any manner to any end user or third party, such as Plaintiff.

12. Without any privity of contract between Plaintiff and Defendant, Plaintiff’s claim must fail because it has not stated a valid cause of action against Defendant.

WHEREFORE, Defendant respectfully requests this Honorable Court grant its Preliminary Objection by way of Demurrer and dismiss the Complaint with prejudice.

II. Preliminary Objection Raising an Issue of Insufficient Specificity of the Complaint under Pa. R.C.P. 1028 (a)(3).

1. Plaintiff's Complaint is based upon general allegations that the System consisting of hardware and software, which Plaintiff purchased from Batcho ". . . will fail and be inoperable...", if upgrades and patches are not incorporated into the existing system, (Paragraph 9 of the Complaint) and that the system ". . . is failing and inoperable. . ." due the absence of upgrades and patches. (Paragraph 10 of the Complaint).

2. Pa. R.C.P. 1019(a) requires that the material facts on which a cause of action is based shall be stated in a concise and summary form.

3. The Complaint fails to set forth with sufficient specificity the problems encountered by Plaintiff which allegedly will result or have resulted in the System failing and being inoperable, and thus being unable to utilize the hardware and software purchased from Batcho, so as to enable Defendant to determine whether said problems are actually caused by the lack of upgrades and patches, as alleged, or by the hardware with operating systems and subsystems, which was obtained from third parties and sold by Batcho, or as a result of Batcho's improper installation of the hardware and/or software.

4. Plaintiff alleges that Batcho was an authorized dealer of Defendant (Paragraph 4 of the Complaint), but the Complaint fails to allege or to make any allegations of fact that Batcho was an agent of Defendant, other than an occasional reference which merely uses the word "agent", when referring to Batcho.

5. The word “dealer” carries no legal significance, as would the word “agent”.

6. Batcho was actually only a Reseller of Defendant and as such had no authority to bind or obligate the Defendant in any manner to any end user or third party, such as Plaintiff.

7. Plaintiff’s Complaint lacks sufficient specificity of the problems with the hardware, software and installation, and sets forth no factual basis to support an allegation of agency, which would apprise Defendant of the issues to be litigated and to allow it to adequately prepare and assert defenses to Plaintiff’s allegations.

8. The Complaint fails to set forth in its allegations the relevant times and dates when any of the transactions took place, such as the purchase, delivery of hardware and software by Batcho, date of installation by Batcho of hardware and software, alleged discovery of system failing or being inoperable, Plaintiff’s demand and Defendant’s refusal to pay for reinstallation costs, and the payment of the balance due on the Invoice from Batcho (Exhibit “A” to the Complaint).

9. Pa.R.C.P. 1019(f) requires that averments of time be specifically stated.

WHEREFORE, Defendant respectfully requests this Honorable Court dismiss the Complaint with prejudice, or alternatively, order Plaintiff to more specifically plead the averments of “failing and inoperable”, and the facts which Plaintiff may claim support the allegations of Batcho being an agent of Defendant.

III. **Preliminary Objection Raising Non-Joinder of a Necessary Party Under Pa.R.C.P. 1028(a)(5)**

1. I and II above are incorporated herein by reference.

2. Plaintiff alleges that it purchased a System consisting of hardware and software from Batcho. (Paragraph 6 of the Complaint).

3. Plaintiff alleges Batcho installed the hardware and software at Plaintiff's place of business. (Paragraph 8 of the Complaint).

4. Plaintiff alleges it paid Batcho for the hardware and software, including the license to use the software. (Paragraph 6 of the Complaint).

5. Plaintiff alleges Batcho failed to properly install the software. (Paragraph 20 of the Complaint).

6. Plaintiff alleges that the improper installation by Batcho rendered the software inoperable. (Paragraph 22 of the Complaint).

7. Plaintiff alleges that the system will fail and be inoperable and is failing and inoperable (Paragraphs 9 and 10 of the Complaint) because Plaintiff has not been issued a license for which it has made full payment to Batcho.

8. Plaintiff has not joined Batcho in this action against Defendant and no reason appears in the Complaint for the omission of Batcho as a party to this action.

9. Batcho is a necessary and indispensable party to this action and its absence requires that the Complaint be dismissed.

WHEREFORE, Defendant requests this Honorable Court to dismiss the Complaint with prejudice.

IV. **Preliminary Objection Raising Issue of Plaintiff Having a Full, Complete and Adequate Remedy at Law**

1. I, II and III above are incorporated herein by reference.

2. Plaintiff's Complaint consists of eleven (11) paragraphs of allegations followed by three (3) Counts of relief requested, the first being in Equity, requesting the issuance of an Order directing Defendant to issue Plaintiff a license and provide software upgrades and patches to render Plaintiff's purchased hardware and software system operable and maintain operability.

3. The alleged problems with the hardware and software system purchased by Plaintiff and installed by Batcho may actually be caused by the hardware and/or the installation done by Batcho.

4. Even if Defendant did issue Plaintiff a license and provided upgrades and patches, as requested by Plaintiff, if the hardware and software system remains inoperable (which allegation of inoperability is specifically denied), how would the Court know the cause of the inoperability and whether the same was caused by the Defendant's software, the upgrades and patches, or the hardware with operating systems and subsystems, or the installation of the same by Batcho?

5. Even if Defendant did issue Plaintiff a license and provided upgrades and patches, and the system became operable for a time, and later became inoperable, how would the Court know who or what was responsible for the same?

6. Plaintiff's request would require continual supervision by the Court.

7. Count II of the Complaint alleges a monetary amount that Plaintiff has been advised would be required to reinstall the software and be provided software subscriptions, which constitutes an adequate remedy at law.

8. Plaintiff sets forth in Court III allegations of the amount of money it would cost to replace the system, and provide Plaintiff with a new system, which constitutes an adequate remedy at law.

WHEREFORE, Defendant requests this Honorable Court to dismiss Count I of the Complaint.

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: September 13, 2007.

END USER LICENSE AGREEMENT

This is a legal agreement between you, the end user and purchaser ("User"), and Action Systems, Inc. By accepting this license, you are agreeing to become bound by the terms and conditions set forth below. If you do not agree to these terms and conditions, please return the complete software application and security key to the place of purchase within thirty (30) days from the date of purchase for a full refund.

1. DEFINITIONS

Software shall mean the computer program contained on the disks in this package, together with any updates subsequently provided by Action Systems, Inc. Documentation shall mean all of the printed materials provided in this package or later supplied by Action Systems, Inc. Software Copies shall mean actual copies of all or any portion of the Software and shall include updates and backups.

2. LICENSE

Action Systems, Inc. agrees to grant the User a non-exclusive and non-transferable license to use the Software contained herein for an unlimited duration except in the case that the User has registered for a software subscription in which case, the terms of the subscription agreement supercede this End User License Agreement. The User may only use this software on the number of machines specified at purchase time, and the software may only be installed on computers owned or leased by the User. Action Systems does not allow Users to copy, modify, decompile, adapt, translate or distribute the software or its documentation, or create derivative works based upon the software or its documentation except for back-up purposes. The rights granted herein are limited to use of the Software, Software Copies and Documentation as defined within the Agreement. All rights not specifically granted in this Agreement are reserved by Action Systems, Inc.

3. LIMITED WARRANTY AND LIABILITY

Action Systems, Inc. warrants to the original User, that the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from the date of purchase as evidenced by Receipt or Invoice. Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied. Action Systems, Inc. makes no representations or warranties with respect to the merchantability or fitness of Software for any particular purpose, business or application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the User or any other person in excess of the price paid to Action Systems, Inc. for the license to use the Software, regardless of the form of any claim.

4. UPDATES AND REVISIONS

Action Systems, Inc. reserves the right to modify and/or enhance Software and Its Documentation without obligation to notify any person or organization of such changes.

U.S. GOVERNMENT RESTRICTED RIGHTS

This software and documentation is provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subdivision (b) (3) (ii) of the Right in Technical Data and Computer Software clause at 252.227.7013. This agreement is governed by the laws of the State of Maryland and United States law and international treaties with respect to patents, copyrights, and trademarks.

VERIFICATION

The undersigned verifies that he is counsel for Defendant, that the authorized officers of Defendant are out of the jurisdiction of the Court and cannot be available to timely file the within pleading, that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief, and the source of the undersigned's information is, Smiley Hsu, the President of Defendant. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Laurance B. Seaman, Esquire
Attorney for Defendant, Action Systems, Inc.

Date: September 13, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT was forwarded by U. S. Mail, postage prepaid, on the 13 day of September, 2007, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

AMENDED COMPLAINT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Denny's Beer Barrel Pub, Inc., is a corporation, and has its principal place of business at 1423 Dorey Street, Clearfield, Pennsylvania, 16830.

2. That the Defendant, Action Systems, Inc., is a corporation and has a principal place of business at 1734 Elton Road, Suite 219, Silver Spring, Maryland, 20903.

3. That defendant Action Systems, Inc. (hereinafter "ASI") is in the business of developing and marketing restaurant management software systems.

4. That at all times alleged herein Batcho Office Systems (hereinafter "Batcho"), was an authorized dealer and/or agent of ASI with its principal place of business located at 110 East Market Street, Clearfield, Pennsylvania, 16830.

5. That at all times referred to herein Defendant, Action Systems, Inc., clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products.

6. That plaintiff purchased the ASI restaurant management software system (including the license in order to use the purchased software) from Batcho which also included installation costs for a total purchase price of \$13,103.00. True and correct copies of Invoice and Records of Payment by Denny's are attached collectively hereto as Exhibit "A."

7. That with the purchase of the ASI software system the purchaser must be issued a license to use the software.

8. That in furtherance of said purchase by plaintiff of the ASI product, Batcho installed the hardware and software at plaintiff's place of business.

9. That the software system is such that as upgrades and "patches" to the system are made they must be incorporated into one's existing system or the system will fail and be inoperable.

10. That the restaurant management software system plaintiff purchased is failing and inoperable due to the absence of necessary and critical upgrades and patches.

11. That despite plaintiff's purchase of the software and license and payment in full for the product, defendant refuses to provide plaintiff with ongoing and necessary upgrades and

patches to the system and refuses to issue a license to use the product to plaintiff.

COUNT I

12. Plaintiff incorporates by reference paragraphs one through eleven above as if set forth in full herein.

13. That plaintiff paid \$7,775.00 for a software system that is inoperable due to defendant's failure to provide necessary and critical upgrades and failure to issue to plaintiff a license to use said product. Attached hereto as Exhibit "B" is software cost itemization.

14. That plaintiff when it purchased and paid in full for an operable ASI software system (that would remain operable) expected the same from the benefit of its bargain with defendant.

15. That defendant by refusing to provide plaintiff with an operable software system as expected and by refusing to provide critical updates necessary to render the ASI software system operable at plaintiff's place of business and by refusing to issue a license to use said software to plaintiff has breached the purchase contract between plaintiff and defendant.

16. That plaintiff has paid for a software system that it never in effect received due to defendant's refusal to issue a license and the critical updates to plaintiff.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment against defendant in the amount of \$7,775.00 with costs and interest thereon.

COUNT II

17. Plaintiff incorporates by reference paragraphs one through sixteen above as if set forth in full herein.

18. That defendant through its representative, Lisa Wilson, directly offered to plaintiff that if plaintiff agreed to be a "showcase site" of defendant's product, plaintiff would be afforded certain benefits from defendant (including but not limited to certain restaurant management software systems being provided at no cost).

19. That in reliance upon the representations made to plaintiff by Lisa Wilson, plaintiff agreed to become a showcase site.

20. That in reliance upon the agreement and promise that plaintiff would be made a showcase site and receive certain benefits, plaintiff purchased the basic ASI restaurant management software system from Batcho which also included installation costs for a total purchase price of \$13,103.00. See Exhibit A.

21. That the local agent of defendant did bring potential customers of defendant through the restaurant site of plaintiff

and showcased the site and the ASI product at plaintiff's site to potential customers.

22. That plaintiff was never provided the benefits (including but not limited to accounting and restaurant control software systems) agreed to and represented to plaintiff that it would receive upon becoming a showcase site.

23. That after plaintiff purchased the ASI software and paid for installation of the same in reliance upon defendant's agreement and promise to make it a showcase site, defendant refused to issue a license to use the ASI software to plaintiff, refused to issue critical patches and updates necessary to operate the software, and ultimately withdrew plaintiff as a showcase site.

WHEREFORE, plaintiff demands judgment in its favor and against defendant in an amount in excess of \$25,000.00 exclusive of costs and interests thereon.

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Dennis F. Liegey, verify that I am the President of Denny's Beer Barrel Pub, Inc., and that I am authorized to execute this verification and further that the statements made in the foregoing Amended Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Denny's Beer Barrel Pub, Inc.

By:


Dennis F. Liegey
Plaintiff

Dated:

9/26/07

ASS
Batch/Office Systems

110 East Market Street
Clearfield, PA 16830

Invoice

Date	Invoice #
7/8/2005	114631

Bill To
DENNY'S Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
Total						\$11,159.18

THREE Handhelds Returned 4500 - 1500 each
 NO Training - NO - Completed programming
 Exhibit "A"
 17603.00
 4500.00
 13103.00 actual

WELLS FARGO FINANCIAL LEASING

Phone: (866) 497-6661

Fax: (800) 242-7252

Fax to: (814) 765-3411

Deliver To: GLEN BATCHO SR

From: BARBARA CRONIN

Decision: APPROVED

Credit Decision

Company: BATCHO BUSINESS MACHINES, INC

Cust Nm: DENNYS BEAR BARREL PUB INC

Application No.: 483271

Approved Amount: 11550

Documentation Required:

TERM/RESIDUAL

FACTOR/YIELD/GDA

ORIGINAL EQUIP COST

SIGNER

EQUIPMENT

36 MONTHS

\$ OUT 0.0331

\$10500.00

CORPORATE OFFICER

NOT LISTED

Comments:

Thank you for the business. Maximum funding is subject to MSRP limits and current rates established for your program. Funding is contingent upon our receipt and acceptance of all proper customer, vendor and other documentation (including without limitation the documents identified above), all as determined and required by Wells Fargo Financial Leasing, and the customer's verbal verification of acceptance of the equipment. Wells Fargo Financial Leasing may revoke this approval at any time prior to the complete satisfaction of all such requirements or in the event of fraud or a material adverse change in the customer's financial condition. This approval will automatically expire in ninety (90) days.

Please contact your Program Representative with any questions.

ADDITIONAL CREDIT AVAILABLE

DENNYS BEAR BARREL PUB INC may qualify for additional credit of \$****63,400.

Please contact your Program Representative for terms and conditions.

Quotation Prepared for



Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase

6/6/2007

Qty	Description	Price
1	USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5	Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1	RM Table Service License	\$175.00
1	RM Tabs License	\$175.00
1	RM Accounts Module (Gift Cards)	\$800.00
1	RM Customer Loyalty	\$800.00
1	RM Inventory Control Module	\$800.00
1	RM Credit Card Authorization Interface	\$600.00
1	Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax		\$4,173.00
Sales Tax*		\$273.00
Total Investment**		\$4,173.00

Software Cost

\$7775.00

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year \$367.50 per month
 Software Subscription for the Second Year \$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7863 Steubenville Pike • Oakdale, PA 15071

Phone: 724-695-2540
phspos@comcast.net

Exhibit "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Amended Complaint was served on the following and in the following manner on the 30th day of August, 2007:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

NOTICE

TO: Denny's Beer Barrel Pub, Inc.
c/o James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED
PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A
JUDGMENT MAY BE ENTERED AGAINST YOU.

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire,
Attorney for Defendant, Action Systems, Inc.

Date: 10/23/2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S AMENDED COMPLAINT

Defendant, Action Systems, Inc., by its undersigned counsel, preliminarily objects to Plaintiff's Amended Complaint as follows:

I. **Preliminary Objection Raising Legal Insufficiency of Plaintiff's Amended Complaint (Demurrer) under Pa.R.C.P. 1028(a)(4).**

1. Plaintiff's Amended Complaint is based upon its claim that it purchased, not from Defendant, but from Batcho Business Machines, Inc., t/d/b/a Batcho Office Systems ("Batcho"), a Restaurant Management System ("System") consisting of "hardware" (four (4) computers with operating systems and subsystems and accessories manufactured by some other third parties and obtained by Batcho) and "software" (restaurant management software) with a license for the same, (produced by Defendant and sold to Batcho), all being installed by Batcho. (Paragraphs 6 and 8 of the Amended Complaint).

2. Plaintiff attached to the Amended Complaint as a part of Exhibit "A" an invoice from Batcho to Plaintiff for the System, which invoice Plaintiff alleges it has paid.

3. The Complaint makes no allegation that Plaintiff had paid any money to Defendant for said software and/or license.

4. The Complaint makes no allegation that Batcho has paid any money to Defendant for said software and/or license.

5. The Complaint makes no allegation of there being any breach of any type of warranty and thus Plaintiff has no right to sue Defendant directly because there is no privity of contract between Plaintiff and Defendant.

6. Even if Plaintiff subsequently alleges a breach of warranty, such a claim must also fail, because of the warranty limitations contained in the End User License Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A", which is required by Defendant to be accepted by the end user, Plaintiff, before the end user can enable the software to be utilized. If Plaintiff did not accept the End User Agreement, by its terms, Plaintiff was required to return the software and security key to Batcho for a full refund.

7. This End User License Agreement provides, in part, that: "Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, express or

implied. Action Systems, Inc. makes no representation or warranties with respect to the merchantability or fitness of software for any particular purpose, business or application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the user or any other person in excess of the price paid to Action Systems, Inc. or the license to use the software, regardless of the form of any claim.”.

8. Plaintiff alleges in Paragraph 4 of the Amended Complaint that Batcho “was an authorized dealer and/or agent” of Defendant, but Plaintiff makes no specific supporting factual allegations that Batcho was an agent of Defendant.

9. Plaintiff alleges in Paragraph 5 of the Amended Complaint that Defendant “clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products”. These allegations amount to nothing more than an allegation that Batcho was a dealer or reseller of Defendant, and contain no factual allegations that Batcho had any authority to bind or obligate Defendant and/or make Defendant liable for actions of Batcho.

10. The Amended Complaint makes no allegations of the existence of a written agreement between Batcho and Defendant creating an agency.

11. The use of the term “dealer” carries no legal significance and cannot be equated with that of an “agent”, who would have the authority to bind or obligate another party.

12. Batcho was actually only a Reseller of Defendant and as such had no authority to bind or obligate the Defendant in any manner to any end user or third party, such as Plaintiff.

13. Without any privity of contract between Plaintiff and Defendant, Plaintiff's claim must fail because it has not stated a valid cause of action against Defendant.

WHEREFORE, Defendant respectfully requests this Honorable Court grant its Preliminary Objection by way of Demurrer and dismiss the Amended Complaint with prejudice.

II. **Preliminary Objection Raising an Issue of Insufficient Specificity of the Amended Complaint under Pa. R.C.P. 1028 (a)(3).**

1. I. above is incorporated herein by reference.

2. Plaintiff's Amended Complaint is based upon general allegations that the System, consisting of hardware and software which Plaintiff purchased from Batcho ". . . will fail and be inoperable...", if upgrades and patches are not incorporated into the existing system, (Paragraph 9 of the Amended Complaint) and that the system ". . . is failing and inoperable. . ." due the absence of upgrades and patches. (Paragraph 10 of the Amended Complaint).

3. Pa. R.C.P. 1019(a) requires that the material facts on which a cause of action is based shall be stated in a concise and summary form.

4. The Amended Complaint fails to set forth with sufficient specificity the problems encountered by Plaintiff which allegedly will result or have resulted in the System failing and being inoperable, and thus being unable to utilize the hardware

and software purchased from Batcho, so as to enable Defendant to determine whether said problems are actually caused by the lack of upgrades and patches, as alleged, or by the hardware with operating systems and subsystems, which were obtained by Batcho from third parties and sold by Batcho to Plaintiff, or as a result of Batcho's improper installation of the hardware and/or software.

5. Plaintiff's Amended Complaint lacks sufficient specificity of any problems with the hardware, software and/or installation which would apprise Defendant of the issues to be litigated and to allow it to adequately prepare and assert defenses to Plaintiff's allegations.

6. Paragraph 13 of the Amended Complaint alleges Plaintiff paid \$7,775.00 for a software system and in support thereof alleges that Exhibit "B", a software cost itemization, is attached to the Amended Complaint.

7. There is no Exhibit "B" attached to the Amended Complaint served on Defendant.

8. The Amended Complaint fails to set forth in its allegations the relevant times and dates when any of the transactions took place, such as the purchase, delivery of hardware and software by Batcho, installation by Batcho of hardware and software, alleged discovery of system failing or being inoperable, and the payment of the balance due on the Invoice from Batcho (Exhibit "A" to the Amended Complaint).

9. Pa.R.C.P. 1019(f) requires that averments of time be specifically stated.

WHEREFORE, Defendant respectfully requests this Honorable Court dismiss the Amended Complaint with prejudice, or alternatively, order Plaintiff to more specifically plead the averments of “failing and inoperable”, the facts which Plaintiff may claim support the allegations of Batcho being an agent of Defendant, the dates and times when the alleged transactions occurred, and Order Plaintiff to attach to another Amended Complaint, said Exhibit “B”.

III. Preliminary Objection Raising Non-Joinder of a Necessary Party Under Pa.R.C.P. 1028(a)(5)

1. I and II above are incorporated herein by reference.
2. Plaintiff alleges that it purchased a System consisting of hardware and software from Batcho. (Paragraph 6 of the Amended Complaint).
3. Plaintiff alleges Batcho installed the hardware and software at Plaintiff’s place of business. (Paragraph 8 of the Amended Complaint).
4. Plaintiff alleges it paid Batcho for the hardware and software, including the license to use the software. (Paragraphs 6, 11, 13 of the Amended Complaint).
5. Plaintiff alleges that the system will fail and be inoperable and is failing and inoperable (Paragraphs 9 and 10 of the Amended Complaint) because Plaintiff has not been issued a license for which it has made full payment to Batcho.
6. Plaintiff has not joined Batcho in this action against Defendant and no reason appears in the Amended Complaint for the omission of Batcho as a party to this action.

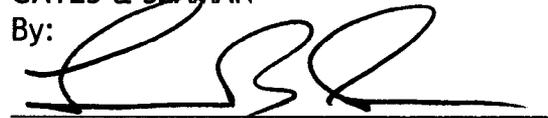
7. Batcho is a necessary and indispensable party to this action and its absence requires that the Amended Complaint be dismissed.

WHEREFORE, Defendant requests this Honorable Court to dismiss the Amended Complaint with prejudice.

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: October 13, 2007.

VERIFICATION

The undersigned verifies that he is counsel for Defendant, that the authorized officers of Defendant are out of the jurisdiction of the Court and cannot be available to timely file the within pleading, that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief, and the source of the undersigned's information is, Smiley Hsu, the President of Defendant. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Laurance B. Seaman, Esquire
Attorney for Defendant, Action Systems, Inc.

Date: October 23, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT was forwarded by U. S. Mail, postage prepaid, on the 23 day of October, 2007, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

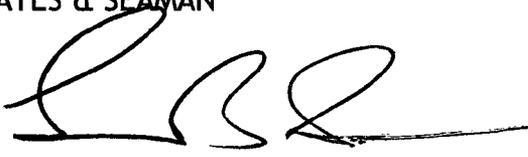
DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

PRAECIPE AND SCHEDULING ORDER

TO WILLIAM A. SHAW, PROTHONOTARY:

Please request the Court Administrator to schedule an Argument Date for consideration of the Preliminary Objections which we have filed on behalf of Defendant, Action Systems, Inc., contemporaneously with this Praecipe.

GATES & SEAMAN

BY: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

Date: October 23, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

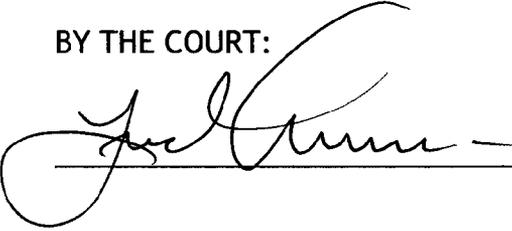
DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

ORDER

AND NOW, this 24 day of October, 2007, upon consideration of the foregoing Preliminary Objections to Plaintiff's Amended Complaint, IT IS HEREBY ORDERED THAT Argument shall be held on the 10th day of December, 2007, at 9:00 o'clock A.m. in Courtroom No. 1 of the Clearfield County Courthouse.

Notice of the entry of this Order shall be provided by Defendant to Plaintiff.

BY THE COURT:



Judge

FILED *icc*
01/11/2007
OCT 25 2007 *Atty Seaman*
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that service was made by mailing a true and correct copy of the original Praecipe and Scheduling Order on the 23 day of October, 2007 by regular mail, postage prepaid to:

James A. Naddeo, Esquire
Attorney for Plaintiff
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN
By 
Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
 :
-vs- :
 :
ACTION SYSTEMS, INC., :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that service was made on the 30th day of October, 2007, by mailing a true and correct copy of the original Praecipe and Scheduling Order dated October 24, 2007, scheduling Argument on December 10, 2007 at 9:00 A.M., by regular mail, postage prepaid to:

James A. Naddeo, Esquire
Attorney for Plaintiff
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

FILED

01312764
OCT 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

No. 07-1351-CD

-vs-

ACTION SYSTEMS, INC.,
Defendant

FILED

NOV 02 2007
6/10:45/2
William A. Shaw
Prothonotary/Clerk of Courts
No 46

AMENDED CERTIFICATE OF SERVICE

I hereby certify that service was made on the 31st day of October, 2007, by mailing a true and correct copy of the original Praecipe and Scheduling Order dated October 24, 2007, scheduling Argument on December 10, 2007 at 9:00 A.M., by regular mail, postage prepaid to:

James A. Naddeo, Esquire
Attorney for Plaintiff
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By


Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

ANSWER TO PRELIMINARY OBJECTIONS FILED BY DEFENDANT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following in response to the preliminary objections filed by defendant:

I. **Response to Preliminary Objection Raising Legal Insufficiency of Plaintiff's Amended Complaint (Demurrer) under Pa.R.C.P. 1028 (a) (4)**

Plaintiff first states generally that while defendant has filed this preliminary objection as stated in "I" as to the entire amended complaint filed by plaintiff, it essentially only speaks to Count I of plaintiff's Amended Complaint. Count II is based upon direct acts of the defendant and nothing in defendant's preliminary objection as stated in "I" would serve to discount said Count II as pled by plaintiff.

1. Denied as stated. Plaintiff's amended complaint is based upon a purchase of a restaurant management system, including items as stated in plaintiff's amended complaint, from

an agent of defendant. Said agent being named as Batcho Office Systems (hereinafter "Batcho").

2. Admitted in so far as defendant accurately represents what documents Plaintiff attached to its amended complaint and that plaintiff paid the invoice attached. Plaintiff requests that the documents attached to its amended complaint speak for themselves, as well as, the statements averred therein.

3. Denied. Plaintiff states in paragraph 4 of its amended complaint that at all times alleged therein Batcho was an agent of defendant. It is not necessary for plaintiff to plead the legal conclusion behind such fact. In addition, at paragraph 15 plaintiff states "...the system plaintiff purchased **from ASI...**;" paragraph 27 states "That plaintiff when it purchased and paid in full for an operable installed ASI software system ...expected the same from the benefit of its bargain **with defendant.**;" at paragraph 28 plaintiff continues and states that "defendant has breached the purchase contract between plaintiff and defendant."

4. Admitted that the amended complaint does not make a statement as to what Batcho may have paid to ASI. In further answer thereto such an allegation by plaintiff would be unnecessary as plaintiff has averred that Batcho is the agent and/or dealer of ASI. Furthermore, plaintiff is without knowledge or information sufficient to form a belief as to the

truth of any said statement as to what Batcho may or may not have paid to defendant.

5. Admitted in part and denied in part. It is admitted that there is no claim for a breach of warranty in plaintiff's amended complaint. The remainder of said averments state conclusions of law to which no answer is required. To the extent an answer may be required plaintiff denies the conclusions of law therein stated.

6. States conclusions of law that are inapplicable in this matter and to which no answer is required by plaintiff. To the extent an answer may be required said averment is denied. Plaintiff objects to the attachment of additional evidence by defendant in this paragraph as defendant is not stating a preliminary objection in the form of a demurrer but rather an affirmative defense to a cause of action plaintiff has not even pled. Additional evidence pled by the defendant requesting a demur is improper as the court must accept as true all the well pleaded material facts set forth in the amended complaint and all reasonable inferences deducible from those facts. Dercoli v. Pennsylvania National Mutual Insurance Co., 520 Pa. 471, 554 A.2d 906 (1989). Accepting these facts and inferences, the court then determines whether the pleader has failed to state a claim for which relief may be granted, and should affirm the grant of a demurrer only if there is certainty that no recovery

is possible. Creeger Brick & Building Supply Inc. v. Mid-State Bank and Trust Co., 385 Pa. Super 30, 560 A.2d 151 (1989). All doubts are resolved in favor of the pleader. Therefore, plaintiff requests that the exhibits pled by defendant be stricken.

7. Plaintiff restates its objection to the document pled by defendant as Exhibit A to its Preliminary Objections as stated supra in paragraph 6 and incorporates the same by reference as if set forth in full herein.

8. Denied. Plaintiff averred at paragraph 5 that defendant "clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products." Nothing more is required to be pled by plaintiff as this sets forth the operative fact as required to be pled pursuant to case precedent. D'Antona v. Hampton Grinding Wheel Company, Inc., 225 Pa. Super 120, 310 A.2d 307 (1973). Plaintiff is not required to plead evidentiary facts as suggested by defendant in this paragraph. Id.

9. States a conclusion of law with regard to a factual statement of plaintiff to which no answer is required. To the extent an answer may be required said averment is denied. In further answer thereto, the allegation that one clothed another with actual, implied and/or apparent authority to sell, service and install ASI products is not equal to the allegation that one

is a dealer or reseller of the other. Defendant is misconstruing plaintiff's averments and plaintiff requests that its averments in the amended complaint speak for themselves.

10. Admitted that plaintiff did not allege a written agreement between Batcho and ASI. In further answer thereto such an allegation or pleading by plaintiff would be unnecessary as plaintiff has averred that Batcho is the agent and/or dealer of ASI sufficiently, said agency and/or dealership as pled does not require a written agreement.

11. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied. In further answer thereto, plaintiff has pled alternatively that Batcho was the agent and the dealer of defendant. It is inconsequential that one does not equal the other.

12. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

13. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., respectfully request this Honorable Court overrule the preliminary objection filed by defendant and further that the

exhibit as filed and attached to this preliminary objection be stricken from the record.

II. **Response to Preliminary Objection Raising an Issue of Insufficient Specificity of the Amended Complaint under Pa.R.C.P. 1028(a) (3)**

Plaintiff again first states generally that while defendant has filed this preliminary objection as stated in "II" as to the entire amended complaint filed by plaintiff, it essentially only speaks to Count I of plaintiff's Amended Complaint.

1. "I." Above is incorporated herein by reference by plaintiff and made a part hereof.

2. Denied that the allegations pled by plaintiff are "general" allegations. In further answer thereto this statement is a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied and plaintiff requests the averments as pled by plaintiff in its amended complaint speak for themselves. In further answer thereto, at paragraph 16 plaintiff states "That plaintiff has paid for a software system that it never in effect received due to defendant's refusal to issue a license and the critical updates to plaintiff." Thereby mooting the operable or inoperable status of the software.

3. States a conclusion of law to which no answer is required. In further answer thereto it is admitted that

Pa.R.C.P. 1019 (a) **states** as follows "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form."

4. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied and plaintiff incorporates by reference paragraph 2 above as if set forth in full herein.

5. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied and plaintiff incorporates by reference paragraph 2 above as if set forth in full herein.

6. This averment by defendant merely restates plaintiff's paragraph 13, plaintiff therefore requests that said averment in its amended complaint speaks for itself and no specific answer is required to this paragraph.

7. Admitted that paragraph 13 of plaintiff's amended complaint refers to Exhibit "B." If said original amended complaint filed with this Honorable Court and/or defendant's copy did not contain Exhibit B, this was inadvertent and plaintiff has attached hereto the same software cost itemization as referred to in its amended complaint as Exhibit B as Exhibit "A."

8. Denied. Plaintiff attached at paragraph 6 of its amended complaint the invoice which includes thereon a date of purchase and shipment, both being July 8, 2005.

9. Admitted that Pa.R.C.P. 1019 (f) states as follows "Averments of time, place and items of special damage shall be specifically stated."

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule defendant's preliminary objection regarding insufficient specificity as the date and time of the purchase and shipment of the product is pled and is sufficient. Furthermore, the specific failings of the system and exact manner in which it is inoperable are not required operative facts, but rather are evidentiary facts that should be left to discovery.

III. Response to Preliminary Objection Raising Non-Joinder of a Necessary Party Under Pa. R.C.P. 1028(a) (5)

1. I and II above as stated by plaintiff are incorporated by reference herein.

2. Denied and plaintiff requests that paragraph 6 of its amended complaint be permitted to speak for itself.

3. Admitted in so far as it accurately states plaintiff's amended complaint. Plaintiff again requests its amended complaint speak for itself.

4. Denied as stated. Plaintiff requests that again the paragraphs referenced by defendant of plaintiff's amended complaint speak for themselves.

5. Denied as stated. Plaintiff requests that again its amended complaint speak for itself as a whole and cannot be spliced and diced by defendant.

6. Admitted.

7. States a conclusion of law to which no answer is required. To the extent an answer may be required said allegation is denied.

WHEREFORE, plaintiff respectfully requests that defendants preliminary objection as to failure to join an indispensable party be overruled.

NADDEO & LEWIS, LLC

By 
James A. Naddeo
Attorney for Plaintiff

**Quotation
Prepared for**



**Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase**

6/6/2007

Qty	Description	Price
1	USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5	Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1	RM Table Service License	\$175.00
1	RM Tabs License	\$175.00
1	RM Accounts Module (Gift Cards)	\$800.00
1	RM Customer Loyalty	\$800.00
1	RM Inventory Control Module	\$800.00
1	RM Credit Card Authorization Interface	\$600.00
1	Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax		\$3,900.00
Sales Tax*		\$273.00
Total Investment**		\$4,173.00

*Software Cost
\$7775.00*

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year \$367.50 per month
Software Subscription for the Second Year \$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7863 Steubenville Pike • Oakdale, PA 15071
Phone: 724-695-2540
phspos@comcast.net

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

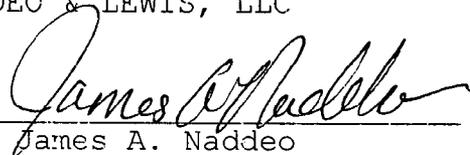
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Answer to Preliminary Objections Filed by Defendant was served on the following and in the following manner on the 13th day of November, 2007:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:



James A. Naddeo
Attorney for Plaintiff

CA

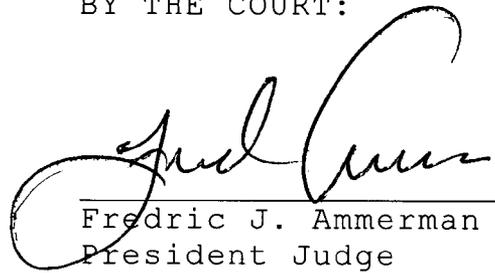
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., *
Plaintiff *
vs. *
ACTION SYSTEMS, INC., *
Defendant * NO. 07-1351-CD

ORDER OF COURT

NOW, this 10th day of December, 2007, following argument on the defendant's preliminary objections to plaintiff's complaint, IT IS THE ORDER OF THIS COURT that counsel for both parties provide a letter brief to the Court within no more than 15 days from this date.

BY THE COURT:


Fredric J. Ammerman
President Judge

FILED *cc: Atty's:*
04:00/57
DEC 10 2007 *Naddes*
Seaman
William A. Shaw *(GR)*
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

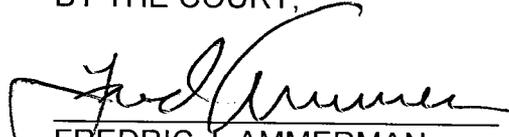
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*
*
*

NO. 07-1351-CD

ORDER

NOW, this 14th day of January, 2008, following argument on the Defendant's Preliminary Objections to Plaintiff's Amended Complaint, it is the ORDER of this Court that said Preliminary Objections be and are hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 100 Atty's:
079:36811 Nadeo
JAN 15 2008 Seaman

William A. Shaw
Prothonotary/Clerk of Courts 

FILED

JAN 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/15/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

NOTICE

TO: Denny's Beer Barrel Pub, Inc.
c/o James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW
MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY
BE ENTERED AGAINST YOU.

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire,
Attorney for Defendant, Action Systems, Inc.

Date: 2/1/2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

ANSWER TO AMENDED COMPLAINT

AND NOW, Defendant, Action Systems, Inc., by and through its attorneys, Gates & Seaman, hereby answers Plaintiff's Amended Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied as stated. In answer thereto, it is averred that Batcho Office Systems is a non-registered fictitious name of one or more of the following: Batcho Business Machines, Inc., Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr., and Linda L. Batcho, husband and wife, (hereinafter collectively referred to as "Batcho"). In further answer thereto, it is averred that Batcho was not an authorized dealer and/or agent of Defendant, Action Systems, Inc. (hereinafter "ASI"), but was an authorized reseller of products of ASI, with Batcho's principal place of business now being located at 115 East Market Street, Clearfield, Pennsylvania 16830.
5. Denied as stated. In answer thereto, it is averred that Batcho was a reseller of ASI, with authority to resell, install and service ASI products. However, any implication therefrom that Batcho was an agent of ASI is denied. In answer thereto, it is averred that Batcho had no authority, actual, implied and/or apparent, to bind or obligate ASI in any way.
6. Denied as stated. It is admitted that Plaintiff purchased from Batcho the ASI restaurant management software (hereafter "Software"), including the license in order to use the purchased Software, which purchase included the installation of

four (4) computers (with operating systems and subsystems, cables and accessories manufactured by some other third parties and obtained by Batcho and sold to Plaintiff) (hereinafter "Hardware"), all as a part of a whole system (hereafter "System"). The amount of the purchase price for all of the above is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations. Also denied is the accuracy of Exhibit "A" to the Complaint since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of the same. In further answer thereto, it is averred that Batcho never paid ASI for the Software and license which it purchased from ASI and resold to Plaintiff. In further answer thereto, it is averred that Plaintiff never paid any money to ASI.

7. Denied as stated. In answer thereto, it is averred that when the Software was sold by ASI to Batcho, it included a license, which included a hardware security key (dongle) and serial number (N6703-0507), to use the Software. In further answer thereto, it is averred that when Batcho sold the Software to Plaintiff, Batcho provided Plaintiff with the license and security key. In further answer thereto, it is averred that Plaintiff could not have utilized the Software at all without the license and security key and agreeing to the terms of the "END USER LICENSE AGREEMENT", a photocopy of which is attached hereto and made a part hereof as Exhibit "A".

8. Admitted.

9. Denied. In answer thereto, it is averred that the Software will not fail nor become inoperable just because upgrades and patches to the Software are made, but not incorporated into the Software. In further answer thereto, it is averred that if the Software was operable upon installation by Batcho that it would have continued to be operable without the necessity of incorporating any upgrades or patches as they were made. In further answer thereto, it is averred that if the System (Hardware and Software) did become inoperable, which is denied, it was not because of the ASI Software. System malfunctions can be caused by a variety of

reasons, including, but not limited to, hardware malfunctions, faulty cables, dirty power, viruses and network problems.

10. Denied. In answer thereto, it is averred that the Software sold by Batcho to Plaintiff was not and is not failing and inoperable due to the absence of any upgrades and patches. In further answer thereto, Paragraph 9 hereof is incorporated herein by reference.

11. The allegation that Plaintiff made payment in full is denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations. The remaining averments of Paragraph 11 are denied. In answer thereto, it is averred that no upgrades and patches were necessary for Plaintiff to continue to utilize the Software. In further answer thereto, it is averred that Software updates and patches are posted on ASI's website and it is the responsibility of ASI resellers to download and install the updates and patches in their customer's Systems. ASI does not take part in these updating and installation services. In further answer thereto, Paragraphs 6, 7, 9 and 10 hereof are incorporated herein by reference.

COUNT I

12. Paragraphs 1 through 11 hereof are incorporated herein by reference.

13. Denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff paid the alleged sum and that Exhibit "B", is true and accurate and represents any payment made by Plaintiff. (Exhibit "B" was not attached to the Amended Complaint but was subsequently attached to Plaintiff's Answer to Preliminary Objections as Exhibit "A" thereto.). Relative to the remaining allegations of Paragraph 13, the same are denied. In answer thereto, it is averred that the Software system was not inoperable. In further answer thereto, Paragraphs 6, 7, 9, 10 and 11 hereof are incorporated herein by reference.

14. The allegation that Plaintiff paid in full for the Software is denied since, after reasonable investigation, Defendant is without knowledge or information

sufficient to form a belief as to the truth or accuracy of said allegation. It is admitted that Plaintiff purchased the Software from Batcho. The remaining allegations of Paragraph 14 are denied. In answer thereto, it is denied that there was any bargain made between Plaintiff and ASI, and there was no privity of contract between them. In further answer thereto, it is averred that when the Software was installed by Batcho, it was operable and remained operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13 and 18 through 23 hereof are incorporated herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

15. Denied. In answer thereto, it is averred that there was no purchase contract between Plaintiff and ASI, but rather Plaintiff purchased everything from Batcho. In further answer thereto, it is averred that no updates were critical or necessary to render the Software operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14 and 18 through 23 hereof are incorporated herein by reference.

16. The allegation that Plaintiff has paid for a Software system is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegation. The remaining allegations of Paragraph 16 are denied. In answer thereto, it is averred that when Plaintiff received the Software, it was operable and that if it became inoperable at any time thereafter, it was not through any fault of ASI. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15 and 18 through 23 hereof are incorporate herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

COUNT II

17. Paragraphs 1 through 16 hereof are incorporated herein by reference.

18. Denied. In answer thereto, it is averred that ASI's employee, Lisa Wilson, never made any such direct offer to Plaintiff regarding Plaintiff becoming a

“showcase site” and any such proposal would have been made directly by Batcho to Plaintiff. In further answer thereto, it is averred that ASI made a proposal to Batcho that if certain conditions were met, Plaintiff could be a reference site for Batcho, and ASI would waive the entire invoice to Batcho for the Software Batcho sold to Plaintiff, upon the following conditions: (i) ASI would invoice Batcho the full value of the Software, but the invoice would be issued whatever number of days net would make the payment not due until December 31, 2005; and (ii) Batcho had to order an additional five (5) Software site licenses by December 31, 2005. In further answer thereto, it is averred that Batcho would have discussed this condition directly with Plaintiff. In further answer thereto, it is averred that because Plaintiff was replacing a competitive POS System within twelve (12) months of purchase, Batcho (and thus Plaintiff) would be eligible for a fifty (50%) percent competitive upgrade discount upon Batcho submitting to ASI: (1) the invoice where Plaintiff paid to purchase the competitive software; and (2) the competitive software key of hard-drive, or whatever represented the license Plaintiff had purchased for that other system, and this competitive upgrade discount was applicable regardless of the number of future sales Batcho may or may not make in 2005. In further answer thereto, it is averred that Batcho did not order an additional five (5) software site licenses by December 31, 2005 and did not submit to ASI those items required for eligibility for the fifty (50%) percent competitive upgrade discount.

19. Denied. In answer thereto, it is averred that Lisa Wilson made no representations to Plaintiff. In further answer thereto, Paragraph 18 hereof is incorporated herein by reference.

20. It is admitted that Plaintiff purchased the Software of ASI from Batcho and that Batcho installed the same. The amount of the purchase price and whether Plaintiff paid Batcho is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth of these allegations. The remaining allegations of Paragraph 20 are denied. In answer thereto, Paragraphs 18 and 19 hereof are incorporated herein by reference.

21. It is specifically denied that Batcho was an agent of ASI. In answer thereto, Paragraphs 5 and 6 hereof are incorporated herein by reference. The allegations that Batcho brought potential customers of Batcho or ASI through Plaintiff's restaurant site and showcased the site and the ASI product to potential customers is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations. In further answer thereto, Paragraphs 18, 19 and 20 hereof are incorporated herein by reference.

22. Denied as stated. In answer thereto, it is averred that ASI never represented to Plaintiff that Plaintiff would receive any benefits upon becoming a showcase site. In answer thereto, Paragraphs 18, 19, 20 and 21 hereof are incorporated herein by reference.

23. Denied. In answer thereto, it is averred that ASI had no agreement with Plaintiff and never promised to make it a showcase site and never refused to issue a license to use the Software of ASI. In answer thereto, it is averred that ASI provided Batcho with the Software license or key that allowed Plaintiff to use the Software, for which Batcho never made any payment to ASI. In further answer thereto, it is averred that ASI made no attempt to recover the Software key from Batcho or Plaintiff. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15, 16 and 18 through 23 hereof are incorporated herein by reference.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

NEW MATTER

24. Paragraphs 1 through 23 hereof are incorporated herein by reference.

25. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

26. Plaintiff failed to join Batcho, an indispensable party to this action.

27. Plaintiff's claims in this case are limited by and subject to the terms of the End User License Agreement (Exhibit "A"), which is incorporated herein by

reference, thus negating and limiting ASI's liability, as provided therein, which liability of ASI is denied.

28. Plaintiff has not paid, nor has Plaintiff alleged to have paid, ASI anything for the Software.

29. The only contract for purchase and sale of the Software is between Plaintiff and Batcho.

30. There is no privity of contract between Plaintiff and ASI.

WHEREFORE, Defendant demands judgment in its favor against Plaintiff, with costs.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: February 1, 2008.

END USER LICENSE AGREEMENT

This is a legal agreement between you, the end user and purchaser ("User"), and Action Systems, Inc. By accepting this license, you are agreeing to become bound by the terms and conditions set forth below. If you do not agree to these terms and conditions, please return the complete software application and security key to the place of purchase within thirty (30) days from the date of purchase for a full refund.

1. DEFINITIONS

Software shall mean the computer program contained on the disks in this package, together with any updates subsequently provided by Action Systems, Inc. Documentation shall mean all of the printed materials provided in this package or later supplied by Action Systems, Inc. Software Copies shall mean actual copies of all or any portion of the Software and shall include updates and backups.

2. LICENSE

Action Systems, Inc. agrees to grant the User a non-exclusive and non-transferable license to use the Software contained herein for an unlimited duration except in the case that the User has registered for a software subscription in which case, the terms of the subscription agreement supercede this End User License Agreement. The User may only use this software on the number of machines specified at purchase time, and the software may only be installed on computers owned or leased by the User. Action Systems does not allow Users to copy, modify, decompile, adapt, translate or distribute the software or its documentation, or create derivative works based upon the software or its documentation except for back-up purposes. The rights granted herein are limited to use of the Software, Software Copies and Documentation as defined within the Agreement. All rights not specifically granted in this Agreement are reserved by Action Systems, Inc.

3. LIMITED WARRANTY AND LIABILITY

Action Systems, Inc. warrants to the original User, that the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from the date of purchase as evidenced by Receipt or Invoice. Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied. Action Systems, Inc. makes no representations or warranties with respect to the merchantability or fitness of Software for any particular purpose, business or application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the User or any other person in excess of the price paid to Action Systems, Inc. for the license to use the Software, regardless of the form of any claim.

4. UPDATES AND REVISIONS

Action Systems, Inc. reserves the right to modify and/or enhance Software and Its Documentation without obligation to notify any person or organization of such changes.

U.S. GOVERNMENT RESTRICTED RIGHTS

This software and documentation is provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subdivision (b) (3) (ii) of the Right in Technical Data and Computer Software clause at 252.227.7013. This agreement is governed by the laws of the State of Maryland and United States law and international treaties with respect to patents, copyrights, and trademarks.

VERIFICATION

The undersigned verifies that he is the President of ACTION SYSTEMS, INC., Defendant, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Smiley Hsu, President
ACTION SYSTEMS, INC.

DATE: 1/30/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of ANSWER TO AMENDED COMPLAINT AND NEW MATTER was forwarded by U. S. Mail, postage prepaid, on the 1st day of February, 2008, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FILED

FEB 01 2008

0 12:20/W
William A. Shaw
Prothonotary/Clerk of Courts

3 CAPT TO ATT

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: COMPLAINT TO
JOIN ADDITIONAL DEFENDANTS

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DANIEL NELSON, COURT ADMINISTRATOR
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC.,
AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO,
a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO,
husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS

NOW COMES, Defendant, Action Systems, Inc., by and through its attorneys,
Gates & Seaman, and sets forth the following:

1. Additional Defendant, Batcho Business Machines, Inc., t/d/b/a BATCHO
OFFICE SYSTEMS (an unregistered fictitious name) is a Pennsylvania corporation with
its principal office and place of business at 115 East Market Street, Clearfield,
Pennsylvania 16830.

2. Additional Defendants, Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr.,
and Linda L. Batcho, husband and wife, of 45 Rocky Bend Road, Clearfield, PA
16830, are individuals and are trading and doing business under the unregistered
fictitious name of Batcho Office Systems, with offices at 45 Rocky Bend Road,

Clearfield, PA 16830, and a principal place of business at 115 East Market Street, Clearfield, PA 16830.

3. Plaintiff instituted this action against Action Systems, Inc., (hereafter "ASI"), a copy of Plaintiff's Amended Complaint being attached hereto as Exhibit "A". (Exhibit "B" to the Amended Complaint was not attached to the Amended Complaint, but was later provided by Plaintiff as Exhibit "A" to Plaintiff's Answer to Preliminary Objections. A photocopy of that Exhibit is attached hereto as Exhibit "B"). ASI filed an Answer to Amended Complaint and New Matter, a copy of which are attached hereto as Exhibit "C" and are incorporated herein by reference.

4. According to Plaintiff's Amended Complaint, Plaintiff purchased from Batcho Office Systems, which is believed to be an unregistered fictitious name made up of one or more of the Additional Defendants (hereinafter "Batcho"), restaurant management software of ASI (hereafter "Software"), including the license to use the same, and four (4) computers (with operating systems and subsystems, cables and accessories manufactured by some other third parties and obtained by Batcho and sold to Plaintiff) (hereinafter "Hardware"), all of which was installed by Batcho, as a part of a whole system (hereafter "System").

5. Plaintiff's Amended Complaint also alleges that the System was failing and becoming inoperable or failed and became inoperable.

6. ASI and Batcho had entered into a Reseller Agreement, whereby Batcho would purchase software products from ASI and resell to, install and service the same for, Batcho's customers and End Users of ASI's software products, like Plaintiff. ASI's fully executed copy of this Reseller Agreement was kept in ASI's file

for Batcho, which file is now missing. The form of this Reseller Agreement, which was fully executed on behalf of ASI and Plaintiff, is attached hereto and made a part hereof as Exhibit "D".

7. Batcho notified ASI that Batcho wanted to purchase from ASI to resell to Plaintiff, the Software set forth on Invoice No. 13605, which is attached hereto and made a part hereof as Exhibit "E", and ASI and Batcho made that sale and purchase between them.

8. Batcho wanted to use Plaintiff as a reference site to generate other sales by Batcho of ASI software and licenses and ASI agreed with Batcho to waive the entire invoice for the Software which Batcho would sell to Plaintiff and install at Plaintiff's place of business, upon the following conditions: (i) ASI would invoice Batcho the full value of the Software, but the invoice would be issued whatever number of days net would make the payment not due until December 31, 2005; and (ii) Batcho had to order from ASI an additional five (5) Software site licenses by December 31, 2005.

9. ASI alternatively offered Batcho a fifty (50%) percent competitive upgrade discount for Plaintiff because Plaintiff was replacing a competitive POS System within twelve (12) months of purchase, provided Batcho would submit to ASI: (i) the invoice Plaintiff paid to purchase the competitive software; and (ii) the competitive software key of hard-drive, or whatever represented the license purchased.

10. Batcho did not order five (5) additional Software site licenses from ASI by December 31, 2005.

11. Batcho did not submit to ASI those required items set forth in Paragraph 9 hereof.

12. ASI delivered to Batcho all of the items set forth on Invoice No. 13605 (Exhibit "E" herein).

13. ASI never received any payment on this Invoice, from Batcho or any other party.

14. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was not the result of anything done or not done by ASI, but rather through the action or inaction of Batcho, and its or their principals, owners, shareholders, directors, employees, agents, contractors or representatives (hereafter "Workers"), by and through whom Batcho acted at all times relevant hereto.

15. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was the result of Batcho's negligence, carelessness or intentional acts, and/or breach of its contract with Plaintiff, which consisted of, among other things, the purchase from other third parties and resale to Plaintiff of Hardware that was not capable of or could not properly run the Software Batcho sold to Plaintiff and/or the faulty or improper installation and/or maintenance of the System by Batcho.

16. Batcho has only ever been an independent contractor reseller of ASI and has never been an agent of ASI and never had any authorization to legally bind or obligate ASI.

17. If it is judicially determined that there was any negligence, carelessness, intentional act or breach by Batcho of Batcho's contract with Plaintiff, then it is averred that Batcho is responsible solely to Plaintiff for any and all damages suffered by Plaintiff, which damages are denied by ASI.

18. In accordance with the Reseller Agreement, Batcho was required to maintain adequate insurance protection for its employees, contractors and agents, and required to defend, indemnify and hold ASI harmless from and against any and all claims, including, but not limited to, those brought by a third party, where such claim arises out of the reseller's performance or breach of its responsibilities under the Reseller Agreement and claims attributable to the negligent or intentional acts of the reseller and its employees, contractors and agents.

19. Under the Reseller Agreement, ASI made no warranty or assurance of any kind concerning the actual performance or functionality of ASI products nor that they would be free from error or defect and disclaimed with respect to all services, Software products, updates, enhancements, etc. all implied warranties, including any implied warranties of marketability, title or fitness for a particular purpose.

20. If it is judicially determined that Plaintiff suffered any loss and that ASI was in any way responsible for the same and/or any judgment is entered in favor of Plaintiff against ASI, then it is averred that Batcho is responsible solely to Plaintiff for the same and liable over to ASI for indemnification and/or contribution, any and all liability on the part of ASI being expressly denied.

21. If it is judicially determined that Plaintiff suffered any loss and that ASI and Batcho were in any way responsible for the same and/or any judgment is

entered in favor of Plaintiff against ASI and Batcho, then it is averred that Batcho is responsible solely to Plaintiff for the same and liable over to ASI for indemnification and/or contribution; any and all liability on the part of ASI being expressly denied.

WHEREFORE, Defendant, Action Systems, Inc., demands:

1. Judgment in its favor against Plaintiff, together with costs of suit and any other relief which the Court deems appropriate, including an award of attorneys fees and expenses against Additional Defendants Batcho;

2. Judgment that, if there was any liability to Plaintiff, Additional Defendants Batcho are solely liable to Plaintiff;

3. In the event that a verdict is recovered by Plaintiff against ASI, or ASI and Batcho, that ASI may have judgment over and against Additional Defendants Batcho by way of indemnification and/or contribution for the amount recovered by Plaintiff against ASI, together with costs, attorneys' fees and interest.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: 2/1/2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

AMENDED COMPLAINT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Denny's Beer Barrel Pub, Inc., is a corporation, and has its principal place of business at 1423 Dorey Street, Clearfield, Pennsylvania, 16830.

2. That the Defendant, Action Systems, Inc., is a corporation and has a principal place of business at 1734 Elton Road, Suite 219, Silver Spring, Maryland, 20903.

3. That defendant Action Systems, Inc. (hereinafter "ASI") is in the business of developing and marketing restaurant management software systems.

4. That at all times alleged herein Batcho Office Systems (hereinafter "Batcho"), was an authorized dealer and/or agent of ASI with its principal place of business located at 110 East Market Street, Clearfield, Pennsylvania, 16830.

5. That at all times referred to herein Defendant, Action Systems, Inc., clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products.

6. That plaintiff purchased the ASI restaurant management software system (including the license in order to use the purchased software) from Batcho which also included installation costs for a total purchase price of \$13,103.00. True and correct copies of Invoice and Records of Payment by Denny's are attached collectively hereto as Exhibit "A."

7. That with the purchase of the ASI software system the purchaser must be issued a license to use the software.

8. That in furtherance of said purchase by plaintiff of the ASI product, Batcho installed the hardware and software at plaintiff's place of business.

9. That the software system is such that as upgrades and "patches" to the system are made they must be incorporated into one's existing system or the system will fail and be inoperable.

10. That the restaurant management software system plaintiff purchased is failing and inoperable due to the absence of necessary and critical upgrades and patches.

11. That despite plaintiff's purchase of the software and license and payment in full for the product, defendant refuses to provide plaintiff with ongoing and necessary upgrades and

patches to the system and refuses to issue a license to use the product to plaintiff.

COUNT I

12. Plaintiff incorporates by reference paragraphs one through eleven above as if set forth in full herein.

13. That plaintiff paid \$7,775.00 for a software system that is inoperable due to defendant's failure to provide necessary and critical upgrades and failure to issue to plaintiff a license to use said product. Attached hereto as Exhibit "B" is software cost itemization.

14. That plaintiff when it purchased and paid in full for an operable ASI software system (that would remain operable) expected the same from the benefit of its bargain with defendant.

15. That defendant by refusing to provide plaintiff with an operable software system as expected and by refusing to provide critical updates necessary to render the ASI software system operable at plaintiff's place of business and by refusing to issue a license to use said software to plaintiff has breached the purchase contract between plaintiff and defendant.

16. That plaintiff has paid for a software system that it never in effect received due to defendant's refusal to issue a license and the critical updates to plaintiff.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment against defendant in the amount of \$7,775.00 with costs and interest thereon.

COUNT II

17. Plaintiff incorporates by reference paragraphs one through sixteen above as if set forth in full herein.

18. That defendant through its representative, Lisa Wilson, directly offered to plaintiff that if plaintiff agreed to be a "showcase site" of defendant's product, plaintiff would be afforded certain benefits from defendant (including but not limited to certain restaurant management software systems being provided at no cost).

19. That in reliance upon the representations made to plaintiff by Lisa Wilson, plaintiff agreed to become a showcase site.

20. That in reliance upon the agreement and promise that plaintiff would be made a showcase site and receive certain benefits, plaintiff purchased the basic ASI restaurant management software system from Batcho which also included installation costs for a total purchase price of \$13,103.00. See Exhibit A.

21. That the local agent of defendant did bring potential customers of defendant through the restaurant site of plaintiff

and showcased the site and the ASI product at plaintiff's site to potential customers.

22. That plaintiff was never provided the benefits (including but not limited to accounting and restaurant control software systems) agreed to and represented to plaintiff that it would receive upon becoming a showcase site.

23. That after plaintiff purchased the ASI software and paid for installation of the same in reliance upon defendant's agreement and promise to make it a showcase site, defendant refused to issue a license to use the ASI software to plaintiff, refused to issue critical patches and updates necessary to operate the software, and ultimately withdrew plaintiff as a showcase site.

WHEREFORE, plaintiff demands judgment in its favor and against defendant in an amount in excess of \$25,000.00 exclusive of costs and interests thereon.

NADDEO & LEWIS, LLC

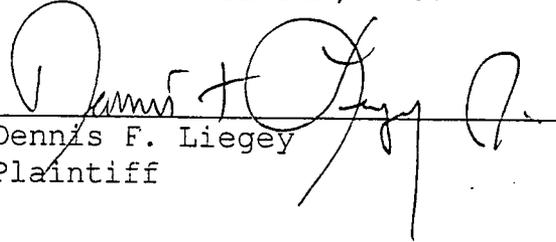
By 
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Dennis F. Liegey, verify that I am the President of Denny's Beer Barrel Pub, Inc., and that I am authorized to execute this verification and further that the statements made in the foregoing Amended Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Denny's Beer Barrel Pub, Inc.

By:


Dennis F. Liegey
Plaintiff

Dated:

9/26/07

Batcho ^{ASS} Office Systems

110 East Market Street
Clearfield, PA 16830

Invoice

Date	Invoice #
7/8/2005	114631

Bill To
DENNY'S Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
					Total	\$11,159.18

THREE Handhelds Returned 4500- 1500 each
 NO Training - No-completed programming
 17603.00
 4500.00
 13,103.00 actual

WELLS FARGO FINANCIAL LEASING

Phone: (866) 497-6661
Deliver To: GLEN BATCHO SR
From: BARBARA CRONIN
Decision: APPROVED

Credit Decision

Fax: (800) 242-7252 Fax to: (814) 765-3411
Company: BATCHO BUSINESS MACHINES, INC
Cust Nm: DENNYS BEAR BARREL PUB INC
Application No.: 483271
Approved Amount: 11550

Documentation Required:

TERM/RESIDUAL
FACTOR/YIELD/GDA
ORIGINAL EQUIP COST
SIGNER
EQUIPMENT

36 MONTHS
\$ OUT 0.0331
\$10500.00
CORPORATE OFFICER
NOT LISTED

Comments:

Thank you for the business. Maximum funding is subject to MSRP limits and current rates established for your program. Funding is contingent upon our receipt and acceptance of all proper customer, vendor and other documentation (including without limitation the documents identified above), all as determined and required by Wells Fargo Financial Leasing, and the customer's verbal verification of acceptance of the equipment. Wells Fargo Financial Leasing may revoke this approval at any time prior to the complete satisfaction of all such requirements or in the event of fraud or a material adverse change in the customer's financial condition. This approval will automatically expire in ninety (90) days.

Please contact your Program Representative with any questions.

ADDITIONAL CREDIT AVAILABLE

DENNYS BEAR BARREL PUB INC may qualify for additional credit of \$****63,400.
Please contact your Program Representative for terms and conditions.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Amended Complaint was served on the following and in the following manner on the 30th day of August, 2007:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:



James A. Naddeo
Attorney for Plaintiff

Quotation
Prepared for



Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase

6/6/2007

Qty	Description	Price
1	USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5	Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1	RM Table Service License	\$175.00
1	RM Tabs License	\$175.00
1	RM Accounts Module (Gift Cards)	\$800.00
1	RM Customer Loyalty	\$800.00
1	RM Inventory Control Module	\$800.00
1	RM Credit Card Authorization Interface	\$600.00
1	Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax		\$4,173.00
Sales Tax*		\$273.00
Total Investment*		\$4,173.00

Software cost
\$7775.00

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year \$367.50 per month
Software Subscription for the Second Year \$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7863 Steubenville Pike • Oakdale, PA 15071
Phone: 724-695-2540
phspos@comcast.net

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: ANSWER TO
AMENDED COMPLAINT AND
NEW MATTER

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

No. 07-1351-CD

-vs-

ACTION SYSTEMS, INC.,
Defendant

NOTICE

TO: Denny's Beer Barrel Pub, Inc.
c/o James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW
MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY
BE ENTERED AGAINST YOU.

GATES & SEAMAN

By:


Laurance B. Seaman, Esquire,
Attorney for Defendant, Action Systems, Inc.

Date:

2/1/2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

ANSWER TO AMENDED COMPLAINT

AND NOW, Defendant, Action Systems, Inc., by and through its attorneys, Gates & Seaman, hereby answers Plaintiff's Amended Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied as stated. In answer thereto, it is averred that Batcho Office Systems is a non-registered fictitious name of one or more of the following: Batcho Business Machines, Inc., Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr., and Linda L. Batcho, husband and wife, (hereinafter collectively referred to as "Batcho"). In further answer thereto, it is averred that Batcho was not an authorized dealer and/or agent of Defendant, Action Systems, Inc. (hereinafter "ASI"), but was an authorized reseller of products of ASI, with Batcho's principal place of business now being located at 115 East Market Street, Clearfield, Pennsylvania 16830.
5. Denied as stated. In answer thereto, it is averred that Batcho was a reseller of ASI, with authority to resell, install and service ASI products. However, any implication therefrom that Batcho was an agent of ASI is denied. In answer thereto, it is averred that Batcho had no authority, actual, implied and/or apparent, to bind or obligate ASI in any way.
6. Denied as stated. It is admitted that Plaintiff purchased from Batcho the ASI restaurant management software (hereafter "Software"), including the license in order to use the purchased Software, which purchase included the installation of

four (4) computers (with operating systems and subsystems, cables and accessories manufactured by some other third parties and obtained by Batcho and sold to Plaintiff) (hereinafter "Hardware"), all as a part of a whole system (hereafter "System"). The amount of the purchase price for all of the above is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations. Also denied is the accuracy of Exhibit "A" to the Complaint since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of the same. In further answer thereto, it is averred that Batcho never paid ASI for the Software and license which it purchased from ASI and resold to Plaintiff. In further answer thereto, it is averred that Plaintiff never paid any money to ASI.

7. Denied as stated. In answer thereto, it is averred that when the Software was sold by ASI to Batcho, it included a license, which included a hardware security key (dongle) and serial number (N6703-0507), to use the Software. In further answer thereto, it is averred that when Batcho sold the Software to Plaintiff, Batcho provided Plaintiff with the license and security key. In further answer thereto, it is averred that Plaintiff could not have utilized the Software at all without the license and security key and agreeing to the terms of the "END USER LICENSE AGREEMENT", a photocopy of which is attached hereto and made a part hereof as Exhibit "A".

8. Admitted.

9. Denied. In answer thereto, it is averred that the Software will not fail nor become inoperable just because upgrades and patches to the Software are made, but not incorporated into the Software. In further answer thereto, it is averred that if the Software was operable upon installation by Batcho that it would have continued to be operable without the necessity of incorporating any upgrades or patches as they were made. In further answer thereto, it is averred that if the System (Hardware and Software) did become inoperable, which is denied, it was not because of the ASI Software. System malfunctions can be caused by a variety of

reasons, including, but not limited to, hardware malfunctions, faulty cables, dirty power, viruses and network problems.

10. Denied. In answer thereto, it is averred that the Software sold by Batcho to Plaintiff was not and is not failing and inoperable due to the absence of any upgrades and patches. In further answer thereto, Paragraph 9 hereof is incorporated herein by reference.

11. The allegation that Plaintiff made payment in full is denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations. The remaining averments of Paragraph 11 are denied. In answer thereto, it is averred that no upgrades and patches were necessary for Plaintiff to continue to utilize the Software. In further answer thereto, it is averred that Software updates and patches are posted on ASI's website and it is the responsibility of ASI resellers to download and install the updates and patches in their customer's Systems. ASI does not take part in these updating and installation services. In further answer thereto, Paragraphs 6, 7, 9 and 10 hereof are incorporated herein by reference.

COUNT I

12. Paragraphs 1 through 11 hereof are incorporated herein by reference.

13. Denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff paid the alleged sum and that Exhibit "B", is true and accurate and represents any payment made by Plaintiff. (Exhibit "B" was not attached to the Amended Complaint but was subsequently attached to Plaintiff's Answer to Preliminary Objections as Exhibit "A" thereto.). Relative to the remaining allegations of Paragraph 13, the same are denied. In answer thereto, it is averred that the Software system was not inoperable. In further answer thereto, Paragraphs 6, 7, 9, 10 and 11 hereof are incorporated herein by reference.

14. The allegation that Plaintiff paid in full for the Software is denied since, after reasonable investigation, Defendant is without knowledge or information

sufficient to form a belief as to the truth or accuracy of said allegation. It is admitted that Plaintiff purchased the Software from Batcho. The remaining allegations of Paragraph 14 are denied. In answer thereto, it is denied that there was any bargain made between Plaintiff and ASI, and there was no privity of contract between them. In further answer thereto, it is averred that when the Software was installed by Batcho, it was operable and remained operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13 and 18 through 23 hereof are incorporated herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

15. Denied. In answer thereto, it is averred that there was no purchase contract between Plaintiff and ASI, but rather Plaintiff purchased everything from Batcho. In further answer thereto, it is averred that no updates were critical or necessary to render the Software operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14 and 18 through 23 hereof are incorporated herein by reference.

16. The allegation that Plaintiff has paid for a Software system is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegation. The remaining allegations of Paragraph 16 are denied. In answer thereto, it is averred that when Plaintiff received the Software, it was operable and that if it became inoperable at any time thereafter, it was not through any fault of ASI. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15 and 18 through 23 hereof are incorporate herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

COUNT II

17. Paragraphs 1 through 16 hereof are incorporated herein by reference.

18. Denied. In answer thereto, it is averred that ASI's employee, Lisa Wilson, never made any such direct offer to Plaintiff regarding Plaintiff becoming a

“showcase site” and any such proposal would have been made directly by Batcho to Plaintiff. In further answer thereto, it is averred that ASI made a proposal to Batcho that if certain conditions were met, Plaintiff could be a reference site for Batcho, and ASI would waive the entire invoice to Batcho for the Software Batcho sold to Plaintiff, upon the following conditions: (i) ASI would invoice Batcho the full value of the Software, but the invoice would be issued whatever number of days net would make the payment not due until December 31, 2005; and (ii) Batcho had to order an additional five (5) Software site licenses by December 31, 2005. In further answer thereto, it is averred that Batcho would have discussed this condition directly with Plaintiff. In further answer thereto, it is averred that because Plaintiff was replacing a competitive POS System within twelve (12) months of purchase, Batcho (and thus Plaintiff) would be eligible for a fifty (50%) percent competitive upgrade discount upon Batcho submitting to ASI: (1) the invoice where Plaintiff paid to purchase the competitive software; and (2) the competitive software key of hard-drive, or whatever represented the license Plaintiff had purchased for that other system, and this competitive upgrade discount was applicable regardless of the number of future sales Batcho may or may not make in 2005. In further answer thereto, it is averred that Batcho did not order an additional five (5) software site licenses by December 31, 2005 and did not submit to ASI those items required for eligibility for the fifty (50%) percent competitive upgrade discount.

19. Denied. In answer thereto, it is averred that Lisa Wilson made no representations to Plaintiff. In further answer thereto, Paragraph 18 hereof is incorporated herein by reference.

20. It is admitted that Plaintiff purchased the Software of ASI from Batcho and that Batcho installed the same. The amount of the purchase price and whether Plaintiff paid Batcho is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth of these allegations. The remaining allegations of Paragraph 20 are denied. In answer thereto, Paragraphs 18 and 19 hereof are incorporated herein by reference.

21. It is specifically denied that Batcho was an agent of ASI. In answer thereto, Paragraphs 5 and 6 hereof are incorporated herein by reference. The allegations that Batcho brought potential customers of Batcho or ASI through Plaintiff's restaurant site and showcased the site and the ASI product to potential customers is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations. In further answer thereto, Paragraphs 18, 19 and 20 hereof are incorporated herein by reference.

22. Denied as stated. In answer thereto, it is averred that ASI never represented to Plaintiff that Plaintiff would receive any benefits upon becoming a showcase site. In answer thereto, Paragraphs 18, 19, 20 and 21 hereof are incorporated herein by reference.

23. Denied. In answer thereto, it is averred that ASI had no agreement with Plaintiff and never promised to make it a showcase site and never refused to issue a license to use the Software of ASI. In answer thereto, it is averred that ASI provided Batcho with the Software license or key that allowed Plaintiff to use the Software, for which Batcho never made any payment to ASI. In further answer thereto, it is averred that ASI made no attempt to recover the Software key from Batcho or Plaintiff. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15, 16 and 18 through 23 hereof are incorporated herein by reference.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

NEW MATTER

24. Paragraphs 1 through 23 hereof are incorporated herein by reference.

25. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

26. Plaintiff failed to join Batcho, an indispensable party to this action.

27. Plaintiff's claims in this case are limited by and subject to the terms of the End User License Agreement (Exhibit "A"), which is incorporated herein by

reference, thus negating and limiting ASI's liability, as provided therein, which liability of ASI is denied.

28. Plaintiff has not paid, nor has Plaintiff alleged to have paid, ASI anything for the Software.

29. The only contract for purchase and sale of the Software is between Plaintiff and Batcho.

30. There is no privity of contract between Plaintiff and ASI.

WHEREFORE, Defendant demands judgment in its favor against Plaintiff, with costs.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: February 1, 2008.

END USER LICENSE AGREEMENT

This is a legal agreement between you, the end user and purchaser ("User"), and Action Systems, Inc. By accepting this license, you are agreeing to become bound by the terms and conditions set forth below. If you do not agree to these terms and conditions, please return the complete software application and security key to the place of purchase within thirty (30) days from the date of purchase for a full refund.

1. DEFINITIONS

Software shall mean the computer program contained on the disks in this package, together with any updates subsequently provided by Action Systems, Inc. Documentation shall mean all of the printed materials provided in this package or later supplied by Action Systems, Inc. Software Copies shall mean actual copies of all or any portion of the Software and shall include updates and backups.

2. LICENSE

Action Systems, Inc. agrees to grant the User a non-exclusive and non-transferable license to use the Software contained herein for an unlimited duration except in the case that the User has registered for a software subscription in which case, the terms of the subscription agreement supercede this End User License Agreement. The User may only use this software on the number of machines specified at purchase time, and the software may only be installed on computers owned or leased by the User. Action Systems does not allow Users to copy, modify, decompile, adapt, translate or distribute the software or its documentation, or create derivative works based upon the software or its documentation except for back-up purposes. The rights granted herein are limited to use of the Software, Software Copies and Documentation as defined within the Agreement. All rights not specifically granted in this Agreement are reserved by Action Systems, Inc.

3. LIMITED WARRANTY AND LIABILITY

Action Systems, Inc. warrants to the original User, that the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from the date of purchase as evidenced by Receipt or Invoice. Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied. Action Systems, Inc. makes no representations or warranties with respect to the merchantability or fitness of Software for any particular purpose, business or application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the User or any other person in excess of the price paid to Action Systems, Inc. for the license to use the Software, regardless of the form of any claim.

4. UPDATES AND REVISIONS

Action Systems, Inc. reserves the right to modify and/or enhance Software and Its Documentation without obligation to notify any person or organization of such changes.

U.S. GOVERNMENT RESTRICTED RIGHTS

This software and documentation is provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subdivision (b) (3) (ii) of the Right in Technical Data and Computer Software clause at 252.227.7013. This agreement is governed by the laws of the State of Maryland and United States law and international treaties with respect to patents, copyrights, and trademarks.

VERIFICATION

The undersigned verifies that he is the President of ACTION SYSTEMS, INC., Defendant, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Smiley Hsu, President
ACTION SYSTEMS, INC.

DATE: 1/30/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

No. 07-1351-CD

-vs-

ACTION SYSTEMS, INC.,
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of ANSWER TO AMENDED COMPLAINT AND NEW MATTER was forwarded by U. S. Mail, postage prepaid, on the 1st day of February, 2008, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.



RESELLER AGREEMENT

THIS RESELLER AGREEMENT ("Agreement") is entered into between Action Systems, Inc ("ASI") and _____ ("RESELLER") on the following terms and conditions:

1. Appointment and Acceptance

Subject to the terms and conditions of this Agreement, ASI appoints RESELLER as an Authorized Reseller of ASI label products. RESELLER is thereby authorized to promote the direct licensing by ASI to prospective end-users ("End-Users") of ASI's software and online services ("ASI Products and Services") identified in Addendum A attached hereto. RESELLER hereby accepts such appointment and agrees that all orders for the Products placed by the RESELLER with ASI and the relationship of the parties generally shall be subject to the terms and conditions of this Agreement.

- (a) Direct Contact. RESELLER has represented and ASI has relied on the representation that RESELLER is engaged in the market for ASI Products and Services only at the functional level of a RESELLER selling to End-Users through direct fact-to-face contact between RESELLER's customers and RESELLER's personnel.
- (b) Sales Quota. In order to maintain status as an active reseller, RESELLER must meet the minimum sales quota detailed in the Addendum(s) to this agreement. (Quotas are reviewed on a quarterly basis.)
- (c) Territorial exclusivity. Territorial exclusivity in any Target Market must be agreed to by both parties and signed in writing in an Exclusivity Addendum to this document.
- (d) Competing Products. If during the Term hereof RESELLER elects to promote or service other open architecture software products or services that compete with the Software ASI Products or Services in the hospitality market, all such competitive products must be disclosed in an Addendum to this document. RESELLER agrees to notify ASI in writing each time a decision is made to take on any such competing products after the execution of this agreement.
- (e) Source on ASI Label Products. RESELLER agrees that it will not purchase ASI label Products or Services from any source other than ASI without prior written consent from ASI.

2. Independent Contractor Status

Each party and its employees and agents are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Neither party shall have any authority to enter into agreements of any kind on behalf of the other party. And neither party shall have the power or authority to bind or obligate the other party in any manner to any End-User or third party.

3. License of Software Product to Reseller

ASI hereby grants to RESELLER a non-exclusive, non-supported license for a limited function demonstration version of the Software Products that RESELLER may make available to prospective End-Users without charge for evaluation and marketing purposes. Except for the demonstration version, RESELLER may not use, copy, disassemble, decompile, or reverse engineer the Software Products, or allow others to do so, directly or indirectly.

4. License of Software Product and Web Services to End-Users

ASI Software Products and Web Services shall be licensed by ASI directly to End-Users under ASI's standard License Agreements then in effect. RESELLER shall not be a party to any such End-User License Agreement. ASI shall have exclusive authority to modify the provisions of any End-User License Agreements. The End-User License Agreements constitute the entire contractual agreement between ASI and the End-User. ASI assumes no responsibility for any agreements either written or verbal between the RESELLER and the End-User. RESELLER has no authority to make any contractual agreements between the End-User and ASI on behalf of ASI. Any such agreement, either written, verbal or implied, shall be deemed null and void per this Agreement.

5. Marketing Rights

During the Term hereof, and subject to the provisions of this Agreement, RESELLER shall have the right to market ASI Products and Services in the market within 50 miles of their company headquarters under the following terms:

- (a) RESELLER will provide to ASI in electronic format any advertising materials or technical documentation that have been prepared to promote ASI Products or Services prior to publication or use.
- (b) During the term of this agreement RESELLER may advertise ASI Products and Services on the Internet in accordance with the terms detailed in ASI's Reseller Policy Manual.

6. Limited Warranty and Disclaimer of Warranties

(a) Limited Warranty. ASI represents and warrants that it will, during the Term hereof, provide ASI Products and Services that operate substantially in accordance with the then current documentation if properly used in the operating environment and on the computers specified in the documentation. However, ASI makes no warranty or assurance of any kind concerning the actual performance or functionality of ASI Products or Services, or that they will be free from error or defect.

(b) Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ASI HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ALL SERVICES, SOFTWARE PRODUCTS, UPDATES, ENHANCEMENTS OR OTHER DELIVERABLES PROVIDED HEREUNDER, ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE.

7. Fees and Payments

(a) ASI shall invoice, and RESELLER agrees to pay upon receipt all invoices for ASI Products or Services sold through the RESELLER and to an End-User. The fee and subscription rates charged for ASI Products and Services are subject to change by ASI without notice to RESELLER.

(b) RESELLER shall pay accrued interest at a rate equal to 1.5 % per month upon any unpaid, undisputed amounts not paid when due. ASI reserves the right to discontinue providing ASI Products and Services hereunder and technical support to RESELLER in the event RESELLER defaults in payment of any undisputed invoice.

8. Support Services to End Users

(a) Installation. RESELLER shall manage every aspect of the system installation. These installation services shall be managed in a professional and workmanlike manner by a staff person who is a licensed MCSE (Microsoft Certified Software Engineer) or who has otherwise been trained and approved by ASI to install ASI Products. The installation services must include but are not limited to the services described in ASI's Reseller Policy Manual.

(b) Training. RESELLER shall perform all training of End-Users in the features, use and operation of the Products in a professional and workmanlike manner.

(c) End-User Software Support. RESELLER shall provide a "help desk" to receive and respond to End-User questions or complaints about ASI Products. ASI is not responsible for supporting the End-User, though it may offer telephone support to the End-User at its sole discretion. Such support, if given, shall be billed to the end-user directly by ASI. Rates for end-user support are updated and published periodically by ASI.

(d) End-User Hardware Support. RESELLER shall provide telephone and on-site support to End-Users for all hardware, including, without limitation, computers, touch screens, printers, cabling, power protection devices, and any other peripheral equipment attached to the system. In the event of a hardware failure, RESELLER shall provide timely repair and/or replacement services as required.

(e) RESELLER Support. ASI shall provide technical support to RESELLER for questions relating to ASI Products. ASI is NOT responsible for any of the RESELLER services outlined in sections 8 (a-d) above.

(f) Non-Compete Clause. RESELLER agrees not to solicit service contracts or other support business from foodservice operators who have purchased ASI Products from other ASI resellers.

9. Returns

RESELLER shall return any defective Products to ASI for replacement within thirty (30) days after receipt. Any other returns of inventory must be authorized by ASI and shall result in a credit to the account of the RESELLER for the price paid by the RESELLER (taking into account any discounts or other credits claimed) less the current ASI restocking charge. Upon termination of this Agreement, returns will be accepted upon the same terms. Credits will be given only for usable, current inventory.

10. Compliance with Export Regulations

RESELLER has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall defend, indemnify and hold ASI harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology or technical data to be marketed hereunder. RESELLER shall take no action, nor omit to take any required action, which would cause either party to violate the Foreign Corrupt Practices Act of 1977 or the U.S. Export Administration Regulations.

11. Insurance, Indemnity

RESELLER shall maintain during the Term hereof commercially adequate insurance protection for its employees, contractors and agents ("Workers") and shall defend, indemnify and hold ASI harmless from and against any and all claims

- (a) for bodily injury and physical property damage to such Workers, or
- (b) attributable to the negligent or intentional acts of RESELLER's Workers occurring within the scope of their work, or
- (c) brought by a third party, where such claim arises out of RESELLER's performance or breach of its responsibilities hereunder, except to the extent ASI has specifically assumed responsibility for such claim under this Agreement, or
- (d) with respect to any other products sold or marketed by RESELLER, or any actions or omissions of RESELLER.

12. Confidential Information

(a) Acknowledgment of Confidentiality. RESELLER acknowledges that it has learned or may learn confidential and proprietary information belonging to ASI including, without limitation, any ASI Product or Service, programming techniques, know-how, database format, or other technical information. RESELLER also acknowledges that it has learned or may learn confidential information relating to pricing, marketing strategies and promotional activities of ASI.

(b) Covenant Not to Disclose. RESELLER agrees that during the Term hereof and at all times thereafter, except as specifically permitted herein or in a separate writing signed by ASI, RESELLER shall not use, commercialize or disclose ASI's Confidential Information to any person or entity, except to its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions). This Covenant Not to Disclose covers all particulars of the relationship between ASI and the RESELLER, including but not limited to any special terms or pricing that may be agreed upon in an addendum to this agreement.

(c) Injunctive Relief. The parties acknowledge that RESELLER'S violation of the provisions of this Section 12 would cause irreparable harm to ASI not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available to prevent any actual or threatened violation of such provisions.

13. Term and Termination

This Agreement shall become effective on the date it is executed by both parties, and shall continue for a term of twelve (12) months. The Term shall automatically be renewed for successive like periods unless:

- (a) RESELLER has failed to meet any of the stipulations of this agreement, or if
- (b) RESELLER has failed to meet the sales quotas set forth in the Addendum to this agreement

Any commissions or residual payments resulting from the sale of Software Products or Services by the Reseller will cease upon termination of the Agreement.

This Agreement may be terminated by either party upon giving 30 days written notice of termination to the other. Either party may terminate this Agreement immediately if the other party becomes the subject of an involuntary bankruptcy proceeding and fails to discharge or terminate such proceeding within 60 days, voluntarily files for bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or ceases business operations. Upon termination, Reseller shall, if requested by ASI to do so, return within thirty (30) days all unsold and unopened inventory of ASI Products to ASI. The provisions of this Agreement relating to confidentiality, indemnities, payment, and return of materials shall survive any termination of this Agreement.

14. Disputes, Choice of Law

Any dispute shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association. The award of the arbitrators shall be binding upon the parties and enforceable in any court of competent jurisdiction. The prevailing party shall be entitled to an award of reasonable attorney's fees, expenses and costs in addition to such other relief as may be awarded in such arbitration. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF MARYLAND, DISREGARDING CONFLICT OF LAW PRINCIPLES, AND ANY ARBITRATION PROCEEDING SHALL BE INITIATED AND MAINTAINED IN SUCH STATE.

15. Force Majeure

ASI shall not be liable for delays or failure to perform as a result of causes beyond its reasonable control, including acts of god (such as fire, storm, earthquake), electrical outages, labor disputes or delay or failure by RESELLER or any End-User in the timely performance of its obligations hereunder or under any End-User Software License Agreement.

16. Notices

Notices sent to either party shall be effective when delivered in person or by "fax" machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the main business address of both parties or at such other address as the parties may from time to time give notice.

17. Entire Agreement; Amendment

This Agreement and its Addendum(s) constitute the entire agreement between the parties and supersedes all prior representations, understandings or communications, whether written or verbal, with respect to the subject matter hereof.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Company:

Action Systems, Inc (ASI)

1734 Elton Road

Suite 219

Silver Spring, MD 20910

EIN: 51-0310354

EIN (Tax) #:

Signature:

Signature: _____

Name:

Name: _____

Title:

Title: _____

Date:

Date: _____

ADDENDUM A

1. Description of Software Products (per Section 1)

- (a) All versions of Restaurant Manager POS and all related modules and utilities
- (b) All versions of the Write-On Handheld POS System and related modules and utilities
- (c) All web based (on-line) software and applications created by ASI

ADDENDUM B

During the term of this agreement, (per Section 1 (b)) the RESELLER must meet a minimum sales quota of:

\$ _____ per year.

ADDENDUM C

1. During the term of this agreement, (per Section 1(d)) ASI recognizes that RESELLER will also sell and/or service the following Point-of-Sale software products for the foodservice industry (and only those software products) listed below:

(a) _____

(b) _____

2. During the term of this agreement, (per Section 1(d)) ASI recognizes that RESELLER will also sell and/or service the following online services for the foodservice industry (and only those online services) listed below:

Initials: _____

Date: _____



ASI 2005
 1734 Elton Road, Suite 219
 Silver Spring, MD 20903
 USA

Voice: (301) 445-6100
 Fax: (301) 445-6104

Invoice

Invoice Number:
 13605

Invoice Date:
 Jul 18, 2005

Page:
 1

Sold To:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Ship to:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Customer PO	Shipping Method	Payment Terms	Ship Date	Sales Rep
	UPS Ground	Net 160	7/18/05	PHS

Quantity	Description	Unit Price	Extension
1	6 POS license for S/N:N6703-0507 (Denny's Beer Barrel Pub Inc.)	2,800.00	2,800.00
3	HandHeld Stn License for S/N:N6703-0507	300.00	900.00
1	HandHeld Interface	600.00	600.00
1	Table Service (includes Quick Service)	100.00	100.00
1	Tabs Module (includes Quick Service)	100.00	100.00
2	Any three Add-On modules	700.00	1,400.00
1	Guest Accounts, Gift Certificates, Prepaid Cards, etc.		
1	Customer Loyalty		
1	Employee Scheduling Module		
1	Inventory Control Module		
1	Datatran or PC Charge (Datacap/Modem NOT included)		
1	Fingerprint, Caller ID, Scanner, Video Overlay, Scale, Coin Dispenser, Berg Liquor Control, Real Time KDS		
1	Advance Ordering Module	200.00	200.00
1	Shipping & Handling	15.00	15.00

Invoice to Batcho

Note: This invoice is still outstanding

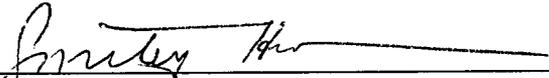
TOTAL 6,115.00

Late fee of 1.5% per month on overdue invoices. \$50 return check fee.

EXHIBIT "E"

VERIFICATION

The undersigned verifies that he is the President of ACTION SYSTEMS, INC., Defendant, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Smiley Hsu, President
ACTION SYSTEMS, INC.

DATE: 1/30/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC., AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC., t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO, a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO, husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS, was forwarded by U. S. Mail, postage prepaid, on the 1st day of February, 2008, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: _____



Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 2007 - 1351 - CD

Action Systems, Inc, *
Defendant. *

REPLY TO NEW MATTER

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, hereby replies to the new matter filed by Defendant, Action Systems, Inc., as follows:

24. No answer is required to Paragraph 24.

25. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

26. Admitted that Plaintiff did not join Batcho. The remainder of the averment states a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

27. States conclusions of law to which no answer is required. To the extent an answer may be required said averment is denied.

28. Denied. Plaintiff made payment to Batcho, the agent of ASI, which would constitute a payment to the principal, ASI.

29. Denied as stated. It is admitted only to the extent that the invoice for software was issued by and between Batcho and Plaintiff. In further answer thereto, Plaintiff states an independent cause of action against ASI at Count II of its Amended Complaint and incorporates it herein by reference.

30. States a conclusion of law to which no answer is required. To the extent an answer may be required said averment is denied.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment in its favor and against defendant with costs and interest thereon.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Reply to New Matter was served on the following and in the following manner on the 19th day of February, 2008:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEC & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.
Plaintiff

No. 07-1351-CD

ACTION SYSTEMS, INC.
Defendant

BATCHO OFFICE SYSTMES
Defendant

ANSWER TO AMENDED COMPLANT

AND NOW, Defendant, Batcho Office Systems hereby answers Plaintiff's Amended
Complaint as follows:

FILED ⁽²⁾

MAR 10 2008

0/2:15/2

William A. Shaw

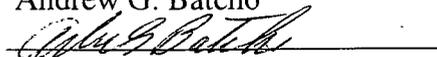
Prothonotary/Clerk of Courts

no c/c

1. Denied Batcho Office Systems and Batcho Inc. have no common interest. Batcho Office Systems was a partnership between Andrew G Batcho Andrew G Batcho Jr. and Jason Unch.
2. Denied Linda Batcho has no common interest to Batcho Office , office is not located at 45 Rocky Bend Road, office is located at 115 East Market Street. Clearfield, PA
3. Admitted.
4. Denied Denny's Software was purchased in June 2005 and installed on existing hardware and wiring. Computer systems were purchased in 6/2006 after Denny's own equipment not purchased from Batcho's failed regularly.
5. Batcho's ended servicing system July 2006 after paying Pittsburgh hospitality to do required patches from ASI.
6. Denied Batchos has no knowledge of reseller agreement
7. Admitted.
8. Denied Batcho's was told by Lisa Wilson of ASI that part of paying ASI \$5,000 to be a dealer that Batcho's would have a copy of software to put in a site that Batcho's and ASI agreed to be a good showcase location at no charge. Lisa Wilson also told Batcho's that she understood the area in which we live, and told Batcho's ASI would not have to order a set number of licenses from ASI. Batcho's received an email from Lisa Wilson confirming this.
9. Denied invoice was faxed to Lisa Wilson prior to purchase of software. No hardware key was available.
10. Admitted
11. Admitted
12. Admitted
13. Admitted
14. Denied system regularly required updates and patches from ASI , as changes were made to correct problem with version upgrades as they became apparent.
15. Denied system worked for 2 years with no failure.
16. Admitted
17. Denied ASI did not provide support to Batcho
18. Denied Batcho's has no knowledge of a reseller agreement.
19. Denied Batcho's has no knowledge of a reseller agreement.
20. Denied ASI is solely at fault due to lack of support to Batcho
21. Denied ASI is solely at fault due to lack of support to Batcho

Respectfully submitted:

Andrew G. Batcho



Batcho Office Systems
115 East Market Street
Clearfield, PA 16830 (814) 765-8522

I hereby certify this to be a true and attested copy of the original statement filed in this case.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FEB 01 2008

Attest.

William L. Seaman
Prothonotary/
Clerk of Courts

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: COMPLAINT TO
JOIN ADDITIONAL DEFENDANTS

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DANIEL NELSON, COURT ADMINISTRATOR
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
: :
-vs- :
: :
ACTION SYSTEMS, INC., :
Defendant :
: :
-vs- :
: :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

**COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC.,
AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO,
a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO,
husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS**

NOW COMES, Defendant, Action Systems, Inc., by and through its attorneys,
Gates & Seaman, and sets forth the following:

1. Additional Defendant, Batcho Business Machines, Inc., t/d/b/a BATCHO
OFFICE SYSTEMS (an unregistered fictitious name) is a Pennsylvania corporation with
its principal office and place of business at 115 East Market Street, Clearfield,
Pennsylvania 16830.

2. Additional Defendants, Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr.,
and Linda L. Batcho, husband and wife, of 45 Rocky Bend Road, Clearfield, PA
16830, are individuals and are trading and doing business under the unregistered
fictitious name of Batcho Office Systems, with offices at 45 Rocky Bend Road,

Clearfield, PA 16830, and a principal place of business at 115 East Market Street, Clearfield, PA 16830.

3. Plaintiff instituted this action against Action Systems, Inc., (hereafter "ASI"), a copy of Plaintiff's Amended Complaint being attached hereto as Exhibit "A". (Exhibit "B" to the Amended Complaint was not attached to the Amended Complaint, but was later provided by Plaintiff as Exhibit "A" to Plaintiff's Answer to Preliminary Objections. A photocopy of that Exhibit is attached hereto as Exhibit "B"). ASI filed an Answer to Amended Complaint and New Matter, a copy of which are attached hereto as Exhibit "C" and are incorporated herein by reference.

4. According to Plaintiff's Amended Complaint, Plaintiff purchased from Batcho Office Systems, which is believed to be an unregistered fictitious name made up of one or more of the Additional Defendants (hereinafter "Batcho"), restaurant management software of ASI (hereafter "Software"), including the license to use the same, and four (4) computers (with operating systems and subsystems, cables and accessories manufactured by some other third parties and obtained by Batcho and sold to Plaintiff) (hereinafter "Hardware"), all of which was installed by Batcho, as a part of a whole system (hereafter "System").

5. Plaintiff's Amended Complaint also alleges that the System was failing and becoming inoperable or failed and became inoperable.

6. ASI and Batcho had entered into a Reseller Agreement, whereby Batcho would purchase software products from ASI and resell to, install and service the same for, Batcho's customers and End Users of ASI's software products, like Plaintiff. ASI's fully executed copy of this Reseller Agreement was kept in ASI's file

for Batcho, which file is now missing. The form of this Reseller Agreement, which was fully executed on behalf of ASI and Plaintiff, is attached hereto and made a part hereof as Exhibit "D".

7. Batcho notified ASI that Batcho wanted to purchase from ASI to resell to Plaintiff, the Software set forth on Invoice No. 13605, which is attached hereto and made a part hereof as Exhibit "E", and ASI and Batcho made that sale and purchase between them.

8. Batcho wanted to use Plaintiff as a reference site to generate other sales by Batcho of ASI software and licenses and ASI agreed with Batcho to waive the entire invoice for the Software which Batcho would sell to Plaintiff and install at Plaintiff's place of business, upon the following conditions: (i) ASI would invoice Batcho the full value of the Software, but the invoice would be issued whatever number of days net would make the payment not due until December 31, 2005; and (ii) Batcho had to order from ASI an additional five (5) Software site licenses by December 31, 2005.

9. ASI alternatively offered Batcho a fifty (50%) percent competitive upgrade discount for Plaintiff because Plaintiff was replacing a competitive POS System within twelve (12) months of purchase, provided Batcho would submit to ASI: (i) the invoice Plaintiff paid to purchase the competitive software; and (ii) the competitive software key of hard-drive, or whatever represented the license purchased.

10. Batcho did not order five (5) additional Software site licenses from ASI by December 31, 2005.

11. Batcho did not submit to ASI those required items set forth in Paragraph 9 hereof.

12. ASI delivered to Batcho all of the items set forth on Invoice No. 13605 (Exhibit "E" herein).

13. ASI never received any payment on this Invoice, from Batcho or any other party.

14. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was not the result of anything done or not done by ASI, but rather through the action or inaction of Batcho, and its or their principals, owners, shareholders, directors, employees, agents, contractors or representatives (hereafter "Workers"), by and through whom Batcho acted at all times relevant hereto.

15. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was the result of Batcho's negligence, carelessness or intentional acts, and/or breach of its contract with Plaintiff, which consisted of, among other things, the purchase from other third parties and resale to Plaintiff of Hardware that was not capable of or could not properly run the Software Batcho sold to Plaintiff and/or the faulty or improper installation and/or maintenance of the System by Batcho.

16. Batcho has only ever been an independent contractor reseller of ASI and has never been an agent of ASI and never had any authorization to legally bind or obligate ASI.

17. If it is judicially determined that there was any negligence, carelessness, intentional act or breach by Batcho of Batcho's contract with Plaintiff, then it is averred that Batcho is responsible solely to Plaintiff for any and all damages suffered by Plaintiff, which damages are denied by ASI.

18. In accordance with the Reseller Agreement, Batcho was required to maintain adequate insurance protection for its employees, contractors and agents, and required to defend, indemnify and hold ASI harmless from and against any and all claims, including, but not limited to, those brought by a third party, where such claim arises out of the reseller's performance or breach of its responsibilities under the Reseller Agreement and claims attributable to the negligent or intentional acts of the reseller and its employees, contractors and agents.

19. Under the Reseller Agreement, ASI made no warranty or assurance of any kind concerning the actual performance or functionality of ASI products nor that they would be free from error or defect and disclaimed with respect to all services, Software products, updates, enhancements, etc. all implied warranties, including any implied warranties of marketability, title or fitness for a particular purpose.

20. If it is judicially determined that Plaintiff suffered any loss and that ASI was in any way responsible for the same and/or any judgment is entered in favor of Plaintiff against ASI, then it is averred that Batcho is responsible solely to Plaintiff for the same and liable over to ASI for indemnification and/or contribution, any and all liability on the part of ASI being expressly denied.

21. If it is judicially determined that Plaintiff suffered any loss and that ASI and Batcho were in any way responsible for the same and/or any judgment is

entered in favor of Plaintiff against ASI and Batcho, then it is averred that Batcho is responsible solely to Plaintiff for the same and liable over to ASI for indemnification and/or contribution; any and all liability on the part of ASI being expressly denied.

WHEREFORE, Defendant, Action Systems, Inc., demands:

1. Judgment in its favor against Plaintiff, together with costs of suit and any other relief which the Court deems appropriate, including an award of attorneys fees and expenses against Additional Defendants Batcho;
2. Judgment that, if there was any liability to Plaintiff, Additional Defendants Batcho are solely liable to Plaintiff;
3. In the event that a verdict is recovered by Plaintiff against ASI, or ASI and Batcho, that ASI may have judgment over and against Additional Defendants Batcho by way of indemnification and/or contribution for the amount recovered by Plaintiff against ASI, together with costs, attorneys' fees and interest.

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: 2/1/2008.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

AMENDED COMPLAINT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Denny's Beer Barrel Pub, Inc., is a corporation, and has its principal place of business at 1423 Dorey Street, Clearfield, Pennsylvania, 16830.

2. That the Defendant, Action Systems, Inc., is a corporation and has a principal place of business at 1734 Elton Road, Suite 219, Silver Spring, Maryland, 20903.

3. That defendant Action Systems, Inc. (hereinafter "ASI") is in the business of developing and marketing restaurant management software systems.

4. That at all times alleged herein Batcho Office Systems (hereinafter "Batcho"), was an authorized dealer and/or agent of ASI with its principal place of business located at 110 East Market Street, Clearfield, Pennsylvania, 16830.

5. That at all times referred to herein Defendant, Action Systems, Inc., clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products.

6. That plaintiff purchased the ASI restaurant management software system (including the license in order to use the purchased software) from Batcho which also included installation costs for a total purchase price of \$13,103.00. True and correct copies of Invoice and Records of Payment by Denny's are attached collectively hereto as Exhibit "A."

7. That with the purchase of the ASI software system the purchaser must be issued a license to use the software.

8. That in furtherance of said purchase by plaintiff of the ASI product, Batcho installed the hardware and software at plaintiff's place of business.

9. That the software system is such that as upgrades and "patches" to the system are made they must be incorporated into one's existing system or the system will fail and be inoperable.

10. That the restaurant management software system plaintiff purchased is failing and inoperable due to the absence of necessary and critical upgrades and patches.

11. That despite plaintiff's purchase of the software and license and payment in full for the product, defendant refuses to provide plaintiff with ongoing and necessary upgrades and

patches to the system and refuses to issue a license to use the product to plaintiff.

COUNT I

12. Plaintiff incorporates by reference paragraphs one through eleven above as if set forth in full herein.

13. That plaintiff paid \$7,775.00 for a software system that is inoperable due to defendant's failure to provide necessary and critical upgrades and failure to issue to plaintiff a license to use said product. Attached hereto as Exhibit "B" is software cost itemization.

14. That plaintiff when it purchased and paid in full for an operable ASI software system (that would remain operable) expected the same from the benefit of its bargain with defendant.

15. That defendant by refusing to provide plaintiff with an operable software system as expected and by refusing to provide critical updates necessary to render the ASI software system operable at plaintiff's place of business and by refusing to issue a license to use said software to plaintiff has breached the purchase contract between plaintiff and defendant.

16. That plaintiff has paid for a software system that it never in effect received due to defendant's refusal to issue a license and the critical updates to plaintiff.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., demands judgment against defendant in the amount of \$7,775.00 with costs and interest thereon.

COUNT II

17. Plaintiff incorporates by reference paragraphs one through sixteen above as if set forth in full herein.

18. That defendant through its representative, Lisa Wilson, directly offered to plaintiff that if plaintiff agreed to be a "showcase site" of defendant's product, plaintiff would be afforded certain benefits from defendant (including but not limited to certain restaurant management software systems being provided at no cost).

19. That in reliance upon the representations made to plaintiff by Lisa Wilson, plaintiff agreed to become a showcase site.

20. That in reliance upon the agreement and promise that plaintiff would be made a showcase site and receive certain benefits, plaintiff purchased the basic ASI restaurant management software system from Batcho which also included installation costs for a total purchase price of \$13,103.00. See Exhibit A.

21. That the local agent of defendant did bring potential customers of defendant through the restaurant site of plaintiff

and showcased the site and the ASI product at plaintiff's site to potential customers.

22. That plaintiff was never provided the benefits (including but not limited to accounting and restaurant control software systems) agreed to and represented to plaintiff that it would receive upon becoming a showcase site.

23. That after plaintiff purchased the ASI software and paid for installation of the same in reliance upon defendant's agreement and promise to make it a showcase site, defendant refused to issue a license to use the ASI software to plaintiff, refused to issue critical patches and updates necessary to operate the software, and ultimately withdrew plaintiff as a showcase site.

WHEREFORE, plaintiff demands judgment in its favor and against defendant in an amount in excess of \$25,000.00 exclusive of costs and interests thereon.

NADDEO & LEWIS, LLC

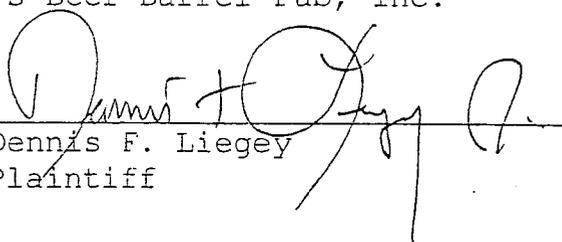
By 
James A. Naddeo
Attorney for Plaintiff

V E R I F I C A T I O N

I, Dennis F. Liegey, verify that I am the President of Denny's Beer Barrel Pub, Inc., and that I am authorized to execute this verification and further that the statements made in the foregoing Amended Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Denny's Beer Barrel Pub, Inc.

By:


Dennis F. Liegey
Plaintiff

Dated:

9/26/07

Batcho^{ASS} Office Systems

110 East Market Street
Clearfield, PA 16830

Invoice

Date	Invoice #
7/8/2005	114631

Bill To
DENNYS Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
Total						\$11,159.18

THREE Handhelds Returned 4500- 1500s each
 NO Training - No-completed programming
 17603.00
 4500.00
 123,103.00 actual

WELLS FARGO FINANCIAL LEASING
Phone: (866) 497-6661 Fax: (800) 242-7252
Deliver To: GLEN BATCHO SR
From: BARBARA CRONIN
Decision: APPROVED

Credit Decision
Fax to: (814) 765-3411
Company: BATCHO BUSINESS MACHINES, INC
Cust Nm: DENNYS BEAR BARREL PUB INC
Application No.: 483271
Approved Amount: 11550

Documentation Required:
TERM/RESIDUAL
FACTOR/YIELD/GDA
ORIGINAL EQUIP COST
SIGNER
EQUIPMENT

36 MONTHS
\$ OUT 0.0331
\$10500.00
CORPORATE OFFICER
NOT LISTED

Comments:

Thank you for the business. Maximum funding is subject to MSRP limits and current rates established for your program. Funding is contingent upon our receipt and acceptance of all proper customer, vendor and other documentation (including without limitation the documents identified above), all as determined and required by Wells Fargo Financial Leasing, and the customer's verbal verification of acceptance of the equipment. Wells Fargo Financial Leasing may revoke this approval at any time prior to the complete satisfaction of all such requirements or in the event of fraud or a material adverse change in the customer's financial condition. This approval will automatically expire in ninety (90) days.

Please contact your Program Representative with any questions.

ADDITIONAL CREDIT AVAILABLE

DENNYS BEAR BARREL PUB INC may qualify for additional credit of \$***63,400. Please contact your Program Representative for terms and conditions.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

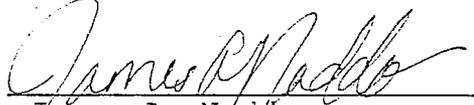
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Amended Complaint was served on the following and in the following manner on the 30th day of August, 2007:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: 

James A. Naddeo
Attorney for Plaintiff

Quotation
Prepared for



Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase

6/6/2007

Qty	Description	Price
1	USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5	Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1	RM Table Service License	\$175.00
1	RM Tabs License	\$175.00
1	RM Accounts Module (Gift Cards)	\$800.00
1	RM Customer Loyalty	\$800.00
1	RM Inventory Control Module	\$800.00
1	RM Credit Card Authorization Interface	\$600.00
1	Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax		\$4,175.00
Sales Tax*		\$273.00
Total Investment		\$4,448.00

Software cost
\$7775.00

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year \$367.50 per month
Software Subscription for the Second Year \$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7863 Steubenville Pike • Oakdale, PA 15071
Phone: 724-695-2540
phspos@comcast.net

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

NOTICE

TO: Denny's Beer Barrel Pub, Inc.
c/o James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW
MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY
BE ENTERED AGAINST YOU.

GATES & SEAMAN

By:


Laurance B. Seaman, Esquire,
Attorney for Defendant, Action Systems, Inc.

Date:

2/11/2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

ANSWER TO AMENDED COMPLAINT

AND NOW, Defendant, Action Systems, Inc., by and through its attorneys, Gates & Seaman, hereby answers Plaintiff's Amended Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.

4. Denied as stated. In answer thereto, it is averred that Batcho Office Systems is a non-registered fictitious name of one or more of the following: Batcho Business Machines, Inc., Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr., and Linda L. Batcho, husband and wife, (hereinafter collectively referred to as "Batcho"). In further answer thereto, it is averred that Batcho was not an authorized dealer and/or agent of Defendant, Action Systems, Inc. (hereinafter "ASI"), but was an authorized reseller of products of ASI, with Batcho's principal place of business now being located at 115 East Market Street, Clearfield, Pennsylvania 16830.

5. Denied as stated. In answer thereto, it is averred that Batcho was a reseller of ASI, with authority to resell, install and service ASI products. However, any implication therefrom that Batcho was an agent of ASI is denied. In answer thereto, it is averred that Batcho had no authority, actual, implied and/or apparent, to bind or obligate ASI in any way.

6. Denied as stated. It is admitted that Plaintiff purchased from Batcho the ASI restaurant management software (hereafter "Software"), including the license in order to use the purchased Software, which purchase included the installation of

four (4) computers (with operating systems and subsystems, cables and accessories manufactured by some other third parties and obtained by Batcho and sold to Plaintiff) (hereinafter "Hardware"), all as a part of a whole system (hereafter "System"). The amount of the purchase price for all of the above is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations. Also denied is the accuracy of Exhibit "A" to the Complaint since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth or accuracy of the same. In further answer thereto, it is averred that Batcho never paid ASI for the Software and license which it purchased from ASI and resold to Plaintiff. In further answer thereto, it is averred that Plaintiff never paid any money to ASI.

7. Denied as stated. In answer thereto, it is averred that when the Software was sold by ASI to Batcho, it included a license, which included a hardware security key (dongle) and serial number (N6703-0507), to use the Software. In further answer thereto, it is averred that when Batcho sold the Software to Plaintiff, Batcho provided Plaintiff with the license and security key. In further answer thereto, it is averred that Plaintiff could not have utilized the Software at all without the license and security key and agreeing to the terms of the "END USER LICENSE AGREEMENT", a photocopy of which is attached hereto and made a part hereof as Exhibit "A".

8. Admitted.

9. Denied. In answer thereto, it is averred that the Software will not fail nor become inoperable just because upgrades and patches to the Software are made, but not incorporated into the Software. In further answer thereto, it is averred that if the Software was operable upon installation by Batcho that it would have continued to be operable without the necessity of incorporating any upgrades or patches as they were made. In further answer thereto, it is averred that if the System (Hardware and Software) did become inoperable, which is denied, it was not because of the ASI Software. System malfunctions can be caused by a variety of

reasons, including, but not limited to, hardware malfunctions, faulty cables, dirty power, viruses and network problems.

10. Denied. In answer thereto, it is averred that the Software sold by Batcho to Plaintiff was not and is not failing and inoperable due to the absence of any upgrades and patches. In further answer thereto, Paragraph 9 hereof is incorporated herein by reference.

11. The allegation that Plaintiff made payment in full is denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations. The remaining averments of Paragraph 11 are denied. In answer thereto, it is averred that no upgrades and patches were necessary for Plaintiff to continue to utilize the Software. In further answer thereto, it is averred that Software updates and patches are posted on ASI's website and it is the responsibility of ASI resellers to download and install the updates and patches in their customer's Systems. ASI does not take part in these updating and installation services. In further answer thereto, Paragraphs 6, 7, 9 and 10 hereof are incorporated herein by reference.

COUNT I

12. Paragraphs 1 through 11 hereof are incorporated herein by reference.

13. Denied, since after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff paid the alleged sum and that Exhibit "B", is true and accurate and represents any payment made by Plaintiff. (Exhibit "B" was not attached to the Amended Complaint but was subsequently attached to Plaintiff's Answer to Preliminary Objections as Exhibit "A" thereto.). Relative to the remaining allegations of Paragraph 13, the same are denied. In answer thereto, it is averred that the Software system was not inoperable. In further answer thereto, Paragraphs 6, 7, 9, 10 and 11 hereof are incorporated herein by reference.

14. The allegation that Plaintiff paid in full for the Software is denied since, after reasonable investigation, Defendant is without knowledge or information

sufficient to form a belief as to the truth or accuracy of said allegation. It is admitted that Plaintiff purchased the Software from Batcho. The remaining allegations of Paragraph 14 are denied. In answer thereto, it is denied that there was any bargain made between Plaintiff and ASI, and there was no privity of contract between them. In further answer thereto, it is averred that when the Software was installed by Batcho, it was operable and remained operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13 and 18 through 23 hereof are incorporated herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

15. Denied. In answer thereto, it is averred that there was no purchase contract between Plaintiff and ASI, but rather Plaintiff purchased everything from Batcho. In further answer thereto, it is averred that no updates were critical or necessary to render the Software operable. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14 and 18 through 23 hereof are incorporated herein by reference.

16. The allegation that Plaintiff has paid for a Software system is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth or accuracy of said allegation. The remaining allegations of Paragraph 16 are denied. In answer thereto, it is averred that when Plaintiff received the Software, it was operable and that if it became inoperable at any time thereafter, it was not through any fault of ASI. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15 and 18 through 23 hereof are incorporate herein by reference, as well as Paragraphs 28 through 30 of ASI's New Matter.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

COUNT II

17. Paragraphs 1 through 16 hereof are incorporated herein by reference.

18. Denied. In answer thereto, it is averred that ASI's employee, Lisa Wilson, never made any such direct offer to Plaintiff regarding Plaintiff becoming a

“showcase site” and any such proposal would have been made directly by Batcho to Plaintiff. In further answer thereto, it is averred that ASI made a proposal to Batcho that if certain conditions were met, Plaintiff could be a reference site for Batcho, and ASI would waive the entire invoice to Batcho for the Software Batcho sold to Plaintiff, upon the following conditions: (i) ASI would invoice Batcho the full value of the Software, but the invoice would be issued whatever number of days net would make the payment not due until December 31, 2005; and (ii) Batcho had to order an additional five (5) Software site licenses by December 31, 2005. In further answer thereto, it is averred that Batcho would have discussed this condition directly with Plaintiff. In further answer thereto, it is averred that because Plaintiff was replacing a competitive POS System within twelve (12) months of purchase, Batcho (and thus Plaintiff) would be eligible for a fifty (50%) percent competitive upgrade discount upon Batcho submitting to ASI: (1) the invoice where Plaintiff paid to purchase the competitive software; and (2) the competitive software key of hard-drive, or whatever represented the license Plaintiff had purchased for that other system, and this competitive upgrade discount was applicable regardless of the number of future sales Batcho may or may not make in 2005. In further answer thereto, it is averred that Batcho did not order an additional five (5) software site licenses by December 31, 2005 and did not submit to ASI those items required for eligibility for the fifty (50%) percent competitive upgrade discount.

19. Denied. In answer thereto, it is averred that Lisa Wilson made no representations to Plaintiff. In further answer thereto, Paragraph 18 hereof is incorporated herein by reference.

20. It is admitted that Plaintiff purchased the Software of ASI from Batcho and that Batcho installed the same. The amount of the purchase price and whether Plaintiff paid Batcho is denied since, after reasonable investigation, ASI is without knowledge or information sufficient to form a belief as to the truth of these allegations. The remaining allegations of Paragraph 20 are denied. In answer thereto, Paragraphs 18 and 19 hereof are incorporated herein by reference.

21. It is specifically denied that Batcho was an agent of ASI. In answer thereto, Paragraphs 5 and 6 hereof are incorporated herein by reference. The allegations that Batcho brought potential customers of Batcho or ASI through Plaintiff's restaurant site and showcased the site and the ASI product to potential customers is denied since, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations. In further answer thereto, Paragraphs 18, 19 and 20 hereof are incorporated herein by reference.

22. Denied as stated. In answer thereto, it is averred that ASI never represented to Plaintiff that Plaintiff would receive any benefits upon becoming a showcase site. In answer thereto, Paragraphs 18, 19, 20 and 21 hereof are incorporated herein by reference.

23. Denied. In answer thereto, it is averred that ASI had no agreement with Plaintiff and never promised to make it a showcase site and never refused to issue a license to use the Software of ASI. In answer thereto, it is averred that ASI provided Batcho with the Software license or key that allowed Plaintiff to use the Software, for which Batcho never made any payment to ASI. In further answer thereto, it is averred that ASI made no attempt to recover the Software key from Batcho or Plaintiff. In further answer thereto, Paragraphs 6, 7, 9, 10, 11, 13, 14, 15, 16 and 18 through 23 hereof are incorporated herein by reference.

WHEREFORE, Defendant, Action Systems, Inc., demands judgment in its favor and against Plaintiff, with costs.

NEW MATTER

24. Paragraphs 1 through 23 hereof are incorporated herein by reference.

25. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

26. Plaintiff failed to join Batcho, an indispensable party to this action.

27. Plaintiff's claims in this case are limited by and subject to the terms of the End User License Agreement (Exhibit "A"), which is incorporated herein by

reference, thus negating and limiting ASI's liability, as provided therein, which liability of ASI is denied.

28. Plaintiff has not paid, nor has Plaintiff alleged to have paid, ASI anything for the Software.

29. The only contract for purchase and sale of the Software is between Plaintiff and Batcho.

30. There is no privity of contract between Plaintiff and ASI.

WHEREFORE, Defendant demands judgment in its favor against Plaintiff, with costs.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: February 1, 2008.

END USER LICENSE AGREEMENT

This is a legal agreement between you, the end user and purchaser ("User"), and Action Systems, Inc. By accepting this license, you are agreeing to become bound by the terms and conditions set forth below. If you do not agree to these terms and conditions, please return the complete software application and security key to the place of purchase within thirty (30) days from the date of purchase for a full refund.

1. DEFINITIONS

Software shall mean the computer program contained on the disks in this package, together with any updates subsequently provided by Action Systems, Inc. Documentation shall mean all of the printed materials provided in this package or later supplied by Action Systems, Inc. Software Copies shall mean actual copies of all or any portion of the Software and shall include updates and backups.

2. LICENSE

Action Systems, Inc. agrees to grant the User a non-exclusive and non-transferable license to use the Software contained herein for an unlimited duration except in the case that the User has registered for a software subscription in which case, the terms of the subscription agreement supercede this End User License Agreement. The User may only use this software on the number of machines specified at purchase time, and the software may only be installed on computers owned or leased by the User. Action Systems does not allow Users to copy, modify, decompile, adapt, translate or distribute the software or its documentation, or create derivative works based upon the software or its documentation except for back-up purposes. The rights granted herein are limited to use of the Software, Software Copies and Documentation as defined within the Agreement. All rights not specifically granted in this Agreement are reserved by Action Systems, Inc.

3. LIMITED WARRANTY AND LIABILITY

Action Systems, Inc. warrants to the original User, that the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from the date of purchase as evidenced by Receipt or Invoice. Action Systems, Inc.'s entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied. Action Systems, Inc. makes no representations or warranties with respect to the merchantability or fitness of Software for any particular purpose, business or application. Implied warranties of merchantability are expressly and specifically disclaimed. In no event shall Action Systems, Inc. have liability for damages to the User or any other person in excess of the price paid to Action Systems, Inc. for the license to use the Software, regardless of the form of any claim.

4. UPDATES AND REVISIONS

Action Systems, Inc. reserves the right to modify and/or enhance Software and Its Documentation without obligation to notify any person or organization of such changes.

U.S. GOVERNMENT RESTRICTED RIGHTS

This software and documentation is provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subdivision (b) (3) (ii) of the Right in Technical Data and Computer Software clause at 252.227.7013. This agreement is governed by the laws of the State of Maryland and United States law and international treaties with respect to patents, copyrights, and trademarks.

VERIFICATION

The undersigned verifies that he is the President of ACTION SYSTEMS, INC., Defendant, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Smiley Hsu, President
ACTION SYSTEMS, INC.

DATE: 1/30/08



RESELLER AGREEMENT

THIS RESELLER AGREEMENT ("Agreement") is entered into between Action Systems, Inc ("ASI") and _____ ("RESELLER") on the following terms and conditions:

1. Appointment and Acceptance

Subject to the terms and conditions of this Agreement, ASI appoints RESELLER as an Authorized Reseller of ASI label products. RESELLER is thereby authorized to promote the direct licensing by ASI to prospective end-users ("End-Users") of ASI's software and online services ("ASI Products and Services") identified in Addendum A attached hereto. RESELLER hereby accepts such appointment and agrees that all orders for the Products placed by the RESELLER with ASI and the relationship of the parties generally shall be subject to the terms and conditions of this Agreement.

- (a) Direct Contact. RESELLER has represented and ASI has relied on the representation that RESELLER is engaged in the market for ASI Products and Services only at the functional level of a RESELLER selling to End-Users through direct fact-to-face contact between RESELLER's customers and RESELLER's personnel.
- (b) Sales Quota. In order to maintain status as an active reseller, RESELLER must meet the minimum sales quota detailed in the Addendum(s) to this agreement. (Quotas are reviewed on a quarterly basis.)
- (c) Territorial exclusivity. Territorial exclusivity in any Target Market must be agreed to by both parties and signed in writing in an Exclusivity Addendum to this document.
- (d) Competing Products. If during the Term hereof RESELLER elects to promote or service other open architecture software products or services that compete with the Software ASI Products or Services in the hospitality market, all such competitive products must be disclosed in an Addendum to this document. RESELLER agrees to notify ASI in writing each time a decision is made to take on any such competing products after the execution of this agreement.
- (e) Source on ASI Label Products. RESELLER agrees that it will not purchase ASI label Products or Services from any source other than ASI without prior written consent from ASI.

2. Independent Contractor Status

Each party and its employees and agents are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Neither party shall have any authority to enter into agreements of any kind on behalf of the other party. And neither party shall have the power or authority to bind or obligate the other party in any manner to any End-User or third party.

3. License of Software Product to Reseller

ASI hereby grants to RESELLER a non-exclusive, non-supported license for a limited function demonstration version of the Software Products that RESELLER may make available to prospective End-Users without charge for evaluation and marketing purposes. Except for the demonstration version, RESELLER may not use, copy, disassemble, decompile, or reverse engineer the Software Products, or allow others to do so, directly or indirectly.

4. License of Software Product and Web Services to End-Users

ASI Software Products and Web Services shall be licensed by ASI directly to End-Users under ASI's standard License Agreements then in effect. RESELLER shall not be a party to any such End-User License Agreement. ASI shall have exclusive authority to modify the provisions of any End-User License Agreements. The End-User License Agreements constitute the entire contractual agreement between ASI and the End-User. ASI assumes no responsibility for any agreements either written or verbal between the RESELLER and the End-User. RESELLER has no authority to make any contractual agreements between the End-User and ASI on behalf of ASI. Any such agreement, either written, verbal or implied, shall be deemed null and void per this Agreement.

5. Marketing Rights

During the Term hereof, and subject to the provisions of this Agreement, RESELLER shall have the right to market ASI Products and Services in the market within 50 miles of their company headquarters under the following terms:

- (a) RESELLER will provide to ASI in electronic format any advertising materials or technical documentation that have been prepared to promote ASI Products or Services prior to publication or use.
- (b) During the term of this agreement RESELLER may advertise ASI Products and Services on the Internet in accordance with the terms detailed in ASI's Reseller Policy Manual.

6. Limited Warranty and Disclaimer of Warranties

(a) Limited Warranty. ASI represents and warrants that it will, during the Term hereof, provide ASI Products and Services that operate substantially in accordance with the then current documentation if properly used in the operating environment and on the computers specified in the documentation. However, ASI makes no warranty or assurance of any kind concerning the actual performance or functionality of ASI Products or Services, or that they will be free from error or defect.

(b) Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ASI HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ALL SERVICES, SOFTWARE PRODUCTS, UPDATES, ENHANCEMENTS OR OTHER DELIVERABLES PROVIDED HEREUNDER, ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE.

7. Fees and Payments

(a) ASI shall invoice, and RESELLER agrees to pay upon receipt all invoices for ASI Products or Services sold through the RESELLER and to an End-User. The fee and subscription rates charged for ASI Products and Services are subject to change by ASI without notice to RESELLER.

(b) RESELLER shall pay accrued interest at a rate equal to 1.5 % per month upon any unpaid, undisputed amounts not paid when due. ASI reserves the right to discontinue providing ASI Products and Services hereunder and technical support to RESELLER in the event RESELLER defaults in payment of any undisputed invoice.

8. Support Services to End Users

(a) Installation. RESELLER shall manage every aspect of the system installation. These installation services shall be managed in a professional and workmanlike manner by a staff person who is a licensed MCSE (Microsoft Certified Software Engineer) or who has otherwise been trained and approved by ASI to install ASI Products. The installation services must include but are not limited to the services described in ASI's Reseller Policy Manual.

(b) Training. RESELLER shall perform all training of End-Users in the features, use and operation of the Products in a professional and workmanlike manner.

(c) End-User Software Support. RESELLER shall provide a "help desk" to receive and respond to End-User questions or complaints about ASI Products. ASI is not responsible for supporting the End-User, though it may offer telephone support to the End-User at its sole discretion. Such support, if given, shall be billed to the end-user directly by ASI. Rates for end-user support are updated and published periodically by ASI.

(d) End-User Hardware Support. RESELLER shall provide telephone and on-site support to End-Users for all hardware, including, without limitation, computers, touch screens, printers, cabling, power protection devices, and any other peripheral equipment attached to the system. In the event of a hardware failure, RESELLER shall provide timely repair and/or replacement services as required.

(e) RESELLER Support. ASI shall provide technical support to RESELLER for questions relating to ASI Products. ASI is NOT responsible for any of the RESELLER services outlined in sections 8 (a-d) above.

(f) Non-Compete Clause. RESELLER agrees not to solicit service contracts or other support business from foodservice operators who have purchased ASI Products from other ASI resellers.

9. Returns

RESELLER shall return any defective Products to ASI for replacement within thirty (30) days after receipt. Any other returns of inventory must be authorized by ASI and shall result in a credit to the account of the RESELLER for the price paid by the RESELLER (taking into account any discounts or other credits claimed) less the current ASI restocking charge. Upon termination of this Agreement, returns will be accepted upon the same terms. Credits will be given only for usable, current inventory.

10. Compliance with Export Regulations

RESELLER has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall defend, indemnify and hold ASI harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology or technical data to be marketed hereunder. RESELLER shall take no action, nor omit to take any required action, which would cause either party to violate the Foreign Corrupt Practices Act of 1977 or the U.S. Export Administration Regulations.

11. Insurance, Indemnity

RESELLER shall maintain during the Term hereof commercially adequate insurance protection for its employees, contractors and agents ("Workers") and shall defend, indemnify and hold ASI harmless from and against any and all claims

- (a) for bodily injury and physical property damage to such Workers, or
- (b) attributable to the negligent or intentional acts of RESELLER's Workers occurring within the scope of their work, or
- (c) brought by a third party, where such claim arises out of RESELLER's performance or breach of its responsibilities hereunder, except to the extent ASI has specifically assumed responsibility for such claim under this Agreement, or
- (d) with respect to any other products sold or marketed by RESELLER, or any actions or omissions of RESELLER.

12. Confidential Information

(a) Acknowledgment of Confidentiality. RESELLER acknowledges that it has learned or may learn confidential and proprietary information belonging to ASI including, without limitation, any ASI Product or Service, programming techniques, know-how, database format, or other technical information. RESELLER also acknowledges that it has learned or may learn confidential information relating to pricing, marketing strategies and promotional activities of ASI.

(b) Covenant Not to Disclose. RESELLER agrees that during the Term hereof and at all times thereafter, except as specifically permitted herein or in a separate writing signed by ASI, RESELLER shall not use, commercialize or disclose ASI's Confidential Information to any person or entity, except to its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions). This Covenant Not to Disclose covers all particulars of the relationship between ASI and the RESELLER, including but not limited to any special terms or pricing that may be agreed upon in an addendum to this agreement.

(c) Injunctive Relief. The parties acknowledge that RESELLER'S violation of the provisions of this Section 12 would cause irreparable harm to ASI not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available to prevent any actual or threatened violation of such provisions.

13. Term and Termination

This Agreement shall become effective on the date it is executed by both parties, and shall continue for a term of twelve (12) months. The Term shall automatically be renewed for successive like periods unless:

- (a) RESELLER has failed to meet any of the stipulations of this agreement, or if
- (b) RESELLER has failed to meet the sales quotas set forth in the Addendum to this agreement

Any commissions or residual payments resulting from the sale of Software Products or Services by the Reseller will cease upon termination of the Agreement.

This Agreement may be terminated by either party upon giving 30 days written notice of termination to the other. Either party may terminate this Agreement immediately if the other party becomes the subject of an involuntary bankruptcy proceeding and fails to discharge or terminate such proceeding within 60 days, voluntarily files for bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or ceases business operations. Upon termination, Reseller shall, if requested by ASI to do so, return within thirty (30) days all unsold and unopened inventory of ASI Products to ASI. The provisions of this Agreement relating to confidentiality, indemnities, payment, and return of materials shall survive any termination of this Agreement.

14. Disputes, Choice of Law

Any dispute shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association. The award of the arbitrators shall be binding upon the parties and enforceable in any court of competent jurisdiction. The prevailing party shall be entitled to an award of reasonable attorney's fees, expenses and costs in addition to such other relief as may be awarded in such arbitration. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF MARYLAND, DISREGARDING CONFLICT OF LAW PRINCIPLES, AND ANY ARBITRATION PROCEEDING SHALL BE INITIATED AND MAINTAINED IN SUCH STATE.

15. Force Majeure

ASI shall not be liable for delays or failure to perform as a result of causes beyond its reasonable control, including acts of god (such as fire, storm, earthquake), electrical outages, labor disputes or delay or failure by RESELLER or any End-User in the timely performance of its obligations hereunder or under any End-User Software License Agreement.

16. Notices

Notices sent to either party shall be effective when delivered in person or by "fax" machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the main business address of both parties or at such other address as the parties may from time to time give notice.

17. Entire Agreement; Amendment

This Agreement and its Addendum(s) constitute the entire agreement between the parties and supersedes all prior representations, understandings or communications, whether written or verbal, with respect to the subject matter hereof.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Company:

Action Systems, Inc (ASI)
1734 Elton Road
Suite 219
Silver Spring, MD 20910
EIN: 51-0310354

EIN (Tax) #:

Signature:

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ADDENDUM A

1. Description of Software Products (per Section 1)

- (a) All versions of Restaurant Manager POS and all related modules and utilities
- (b) All versions of the Write-On Handheld POS System and related modules and utilities
- (c) All web based (on-line) software and applications created by ASI

ADDENDUM B

During the term of this agreement, (per Section 1 (b)) the RESELLER must meet a minimum sales quota of:

\$ _____ per year.

ADDENDUM C

1. During the term of this agreement, (per Section 1(d)) ASI recognizes that RESELLER will also sell and/or service the following Point-of-Sale software products for the foodservice industry (and only those software products) listed below:

- (a) _____
- (b) _____

2. During the term of this agreement, (per Section 1(d)) ASI recognizes that RESELLER will also sell and/or service the following online services for the foodservice industry (and only those online services) listed below:

Initials: _____

Date: _____



ASI 2005
 1734 Elton Road, Suite 219
 Silver Spring, MD 20903
 USA

Voice: (301) 445-6100
 Fax: (301) 445-6104

Invoice

Invoice Number:
 13605

Invoice Date:
 Jul 18, 2005

Page:
 1

Sold To:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Ship to:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Customer PO	Shipping Method	Payment Terms	Ship Date	Sales Rep
	UPS Ground	Net 160	7/18/05	PHS

Quantity	Description	Unit Price	Extension
1	6 POS license for S/N:N6703-0507 (Denny's Beer Barrel Pub Inc.)	2,800.00	2,800.00
3	HandHeld Stn License for S/N:N6703-0507	300.00	900.00
1	HandHeld Interface	600.00	600.00
1	Table Service (includes Quick Service)	100.00	100.00
1	Tabs Module (includes Quick Service)	100.00	100.00
2	Any three Add-On modules	700.00	1,400.00
1	Guest Accounts, Gift Certificates, Prepaid Cards, etc.		
1	Customer Loyalty		
1	Employee Scheduling Module		
1	Inventory Control Module		
1	Datatan or PC Charge (Datacap/Modem NOT included)		
1	Fingerprint, Caller ID, Scanner, Video Overlay, Scale, Coin Dispenser, Berg Liquor Control, Real Time KDS		
1	Advance Ordering Module	200.00	200.00
1	Shipping & Handling	15.00	15.00

Invoice to Batcho

Note: This invoice is still outstanding

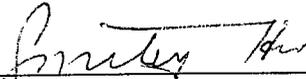
TOTAL 6,115.00

Late fee of 1.5% per month on overdue invoices. \$50 return check fee.

EXHIBIT "E"

VERIFICATION

The undersigned verifies that he is the President of ACTION SYSTEMS, INC., Defendant, and that the statements made in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Smiley Hsu, President
ACTION SYSTEMS, INC.

DATE: 1/30/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC., AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC., t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO, a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO, husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS, was forwarded by U. S. Mail, postage prepaid, on the 1st day of February, 2008, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: _____


Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103707
NO: 07-1351-CD
SERVICE # 1 OF 3
COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

PLAINTIFF: DENNY'S BEER BARREL PUB, INC.
vs.
DEFENDANT: ACTION SYSTEMS, INC.
-VS- BATCHO BUSINESS MACHINES, INC. t/d/b/a BATCHO OFFICE SYSTEMS al

SHERIFF RETURN

NOW, February 07, 2008 AT 2:20 PM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEFENDANTS ON BATCHO BUSINESS MACHINES, INC. t/d/b/a BATCHO OFFICE SYSTEMS DEFENDANT AT WORK 115 EAST MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MELISSA KNEE, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

FILED
013:54/BDY
MAY 21 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103707
NO: 07-1351-CD
SERVICE # 2 OF 3
COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

PLAINTIFF: DENNY'S BEER BARREL PUB, INC.

vs.

DEFENDANT: ACTION SYSTEMS, INC.

-VS- BATCHO BUSINESS MACHINES, INC. t/d/b/a BATCHO OFFICE SYSTEMS al

SHERIFF RETURN

NOW, February 07, 2008 AT 3:20 PM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEFENDANTS ON ANDREW G. BATCHO, aka ANDREW G. BATCHO, SR. t/d/b/a BATCHO OFFICE SYSTEMS DEFENDANT AT WORK 115 EAST MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MELISSA KNEE, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103707
NO: 07-1351-CD
SERVICE # 3 OF 3
COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

PLAINTIFF: DENNY'S BEER BARREL PUB, INC.

vs.

DEFENDANT: ACTION SYSTEMS, INC.

-VS- BATCHO BUSINESS MACHINES, INC. t/d/b/a BATCHO OFFICE SYSTEMS al

SHERIFF RETURN

NOW, February 07, 2008 AT 2:20 PM SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEFENDANTS ON LINDA L. BATCHO t/d/b/a BATCHO OFFICE SYSTEMS DEFENDANT AT WORK 115 EAST MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MELISSA KNEE, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL DEFENDANTS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103707
NO: 07-1351-CD
SERVICES 3
COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

PLAINTIFF: DENNY'S BEER BARREL PUB, INC.
VS.
DEFENDANT: ACTION SYSTEMS, INC.
-VS- BATCHO BUSINESS MACHINES, INC. t/d/b/a BATCHO OFFICE SYSTEMS al

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	GATES	36677	30.00
SHERIFF HAWKINS	GATES	36677	32.41

Sworn to Before Me This
_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition was served on the following and in the following manner on the 10th day of June, 2008:

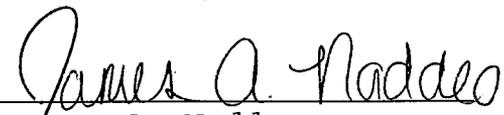
First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

NADDEO & LEWIS, LLC

By: _____



James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff :
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

No. 07-1351-CD

FILED

01:30 P.M. GK

SEP 02 2008

No CC

William A. Shaw
Prothonotary/Clerk of Courts

(G10)

**NOTICE OF SERVICE OF DEFENDANT'S INTERROGATORIES
DIRECTED TO ADDITIONAL DEFENDANTS**

Take notice that Defendant's Interrogatories Directed to Additional Defendants have been served on counsel of record on the 29th day of August, 2008, by regular U. S. Mail, postage prepaid, as follows:

Batcho Business Machines, Inc., t/d/b/a
Batcho Office Systems
Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr.
and Linda L. Batcho
t/d/b/a Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

GATES & SEAMAN

BY: _____

Laurance B. Seaman, Esquire
Attorney for Defendant,
ASI Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff :
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

No. 07-1351-CD

FILED

01:30 p.m. CLK

SEP 02 2008

No. CC

(GIC)

William A. Shaw
Prothonotary/Clerk of Courts

**NOTICE OF SERVICE OF DEFENDANT'S REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ADDITIONAL DEFENDANTS**

Take notice that on the 29th day of August, 2008, the undersigned Attorney served Request for Production of Documents by regular U. S. Mail, postage prepaid, upon the following:

Batcho Business Machines, Inc., t/d/b/a
Batcho Office Systems
Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr.
and Linda L. Batcho
t/d/b/a Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff :
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

No. 07-1351-CD

FILED
0 1:30 P.M. EK
SEP 02 2008 NOCC

William A. Shaw
Prothonotary/Clerk of Courts (60)

NOTICE OF SERVICE OF DEFENDANT'S INTERROGATORIES
DIRECTED TO PLAINTIFF

Take notice that Defendant's Interrogatories Directed to Plaintiff have
been served on counsel of record on the 29th day of August, 2008, by regular U. S.

Mail, postage prepaid, as follows:

DENNY'S BEER BARREL PUB, INC., Plaintiff
c/o James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

BY: _____


Laurance B. Seaman, Esquire
Attorney for Defendant,
ASI Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff :

-vs- :

ACTION SYSTEMS, INC., :
Defendant :

-vs- :

BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

No. 07-1351-CD

FILED
0 1:30 p.m. GK No CC
SEP 02 2008
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE OF SERVICE OF DEFENDANT'S REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFF

Take notice that on the 29th day of August, 2008, the undersigned Attorney served Request for Production of Documents by regular U. S. Mail, postage prepaid, upon the following:

DENNY'S BEER BARREL PUB, INC., Plaintiff
c/o James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Response to Defendant, Action System, Inc.'s, Request for Production of Documents was served on the following and in the following manner on the 29th day of September, 2008:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

and

Andrew G. Batcho
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: AFFIDAVIT OF
SERVICE OF NOTICE OF DEPOSITION

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED *NOCC*
0/10:50 AM
OCT 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

AFFIDAVIT OF SERVICE

I, Laurance B. Seaman, Esquire, Attorney for Defendant, certify that a true and correct copy of a Notice of Taking Deposition, a photocopy of which is attached hereto as Exhibit "A", was forwarded by regular first-class mail, postage prepaid, on the 6 day of October, 2008, to:

Andrew G. Batcho,
t/d/b/a Batcho Office Systems
115 E. Market Street
Clearfield, PA 16830

ASAP COURT REPORTING
By Facsimile Only 472-8950

James A. Naddeo, Esquire
207 E. Market Street
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

NOTICE OF TAKING DEPOSITION

TO: Andrew G. Batcho,
t/d/b/a Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NOTICE is given herewith that the deposition of **ANDREW G. BATCHO** will be taken on oral examination at the Law Offices of GATES & SEAMAN, Two North Front Street, Clearfield PA 16830, on Tuesday, October 14, 2008, commencing at 2:30 o'clock p.m. at which time you are invited to attend and participate. The deposition shall continue from day to day until completed, and will be taken before a notary public or some other officer authorized by law to administer oaths.

You are to bring with you all documents and records as defined by the Pennsylvania Rules of Civil Procedure which are in your possession, custody or control, or in the possession, custody or control of your attorneys, principals, officers, agents, employees or other representatives, including, but not limited to, all documents, records and items mentioned or requested to be produced in the Interrogatories Directed to Additional Defendant and Defendant's Request for Production of Documents Directed to Additional Defendant.

The scope of said deposition will include inquiry into all facts concerning all matters relevant to the issues raised in the case and is for use in discovery and/or at trial.

Date: October 6, 2008

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: AFFIDAVIT OF
SERVICE OF NOTICE OF DEPOSITION

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

⁵ FILED NO CC
0110:506N
OCT 07 2008
LST

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

AFFIDAVIT OF SERVICE

I, Laurance B. Seaman, Esquire, Attorney for Defendant, certify that a true and correct copy of a Notice of Taking Deposition, a photocopy of which is attached hereto as Exhibit "A", was forwarded by regular first-class mail, postage prepaid, on the 10 day of October, 2008, to:

Dennis F. Liegey, President
DENNY'S BEER BARREL PUB, INC.
c/o James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

ASAP COURT REPORTING
By Facsimile Only 472-8950

Andrew G. Batcho
t/d/b/a Batcho Office Systems
115 E. Market Street
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

DENNY'S BEER BARREL PUB, INC., Plaintiff :
-vs- :
ACTION SYSTEMS, INC., Defendant : No. 07-1351-CD
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

NOTICE OF TAKING DEPOSITION

TO: Dennis F. Liegey, Sr., President,
DENNY'S BEER BARREL PUB, INC.
c/o James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

NOTICE is given herewith that the deposition of DENNIS LIEGEY will be taken on oral examination at the Law Offices of GATES & SEAMAN, Two North Front Street, Clearfield PA 16830, on Tuesday, October 14, 2008, commencing at 1:30 o'clock p.m. at which time you are invited to attend and participate. The deposition shall continue from day to day until completed, and will be taken before a notary public or some other officer authorized by law to administer oaths.

You are to bring with you all documents and records as defined by the Pennsylvania Rules of Civil Procedure which are in your possession, custody or control, or in the possession, custody or control of your attorneys, principals, officers, agents, employees or other representatives, including, but not limited to, all documents, records and items mentioned or requested to be produced in the Interrogatories Directed to Plaintiff and Defendant's Request for Production of Documents Directed to Plaintiff.

The scope of said deposition will include inquiry into all facts concerning all matters relevant to the issues raised in the case and is for use in discovery and/or at trial.

Date: October 6, 2008

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
Notice of Taking Deposition was served on the following and in the
following manner on the 13th day of March, 2009:

First-Class Mail, Postage Prepaid

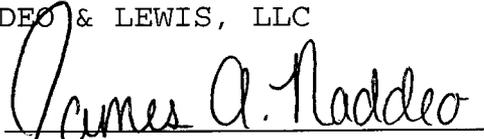
Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
Notice of Taking Deposition was served on the following and in the
following manner on the 17th day of March, 2009:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

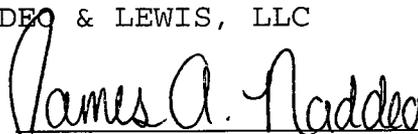
Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

Maryann Cornelius, Court Reporter
339 Southmont Boulevard
Johnstown, PA 15905

Jason Unch
122 West Pauline Drive
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: STIPULATION

FILED NoCC.
0/12:05Lm
APR 08 2009 (610)

§

William A. Shaw
Prothonotary/Clerk of Courts

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

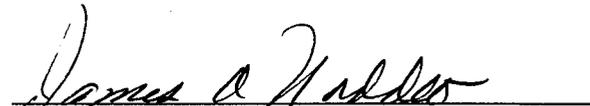
STIPULATION

The parties herein do hereby stipulate and agree that Additional Defendant, BATCHO OFFICE SYSTEMS, at all times relevant to these proceedings, was not an Agent of Defendant, Action Systems, Inc. ("ASI"), but rather a dealer/reseller, which was authorized to sell, install and service ASI products, after purchasing the same from ASI.



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Date: April 6, 2009



James A. Naddeo, Esquire
Attorney for Plaintiff,
Denny's Beer Barrel Pub, Inc.

Date: April 7, 2009

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

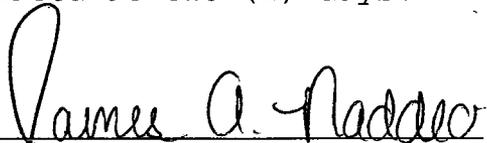
Action Systems, Inc, *
Defendant. *

PRAECIPE TO LIST FOR TRIAL

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready for trial.
3. Notice of the Praecipe has been given to opposing counsel.
4. The time for trial is estimated at two (2) days.


James A. Naddeo, Esquire
Attorney for Plaintiff

Date: September 22, 2009

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecipe to List for Trial was served on the following and in the following manner on the 22nd day of September, 2009:

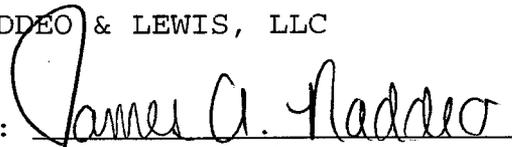
First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

William A. Shaw

DATE PRESENTED 10/21/09

CASE NUMBER 07-1351-CD
Date Complaint Filed: 8/21/07
TYPE TRIAL REQUESTED
() Jury () Non-Jury
(X) Arbitration
ESTIMATED TRIAL TIME
½ to 1 day

Denny's Beer Barrel Pub, Inc.
PLAINTIFF(S)

Action Systems, Inc. () Check block if a Minor
DEFENDANT(S) is a Party to the Case

Batcho Business Machines, Inc., t/d/b/a Batcho
Office Systems.
ADDITIONAL DEFENDANT(S)

_____ ()

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

Less than
\$20,000.00 () yes (X) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:

James A. Naddeo

James A. Naddeo, Esquire
FOR THE PLAINTIFF

(814)765-1601
TELEPHONE NUMBER

Laurance B. Seaman, Esquire
FOR THE DEFENDANT

(814)765-1766
TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Certificate of Readiness was served on the following and in the following manner on the 21st day of October, 2009:

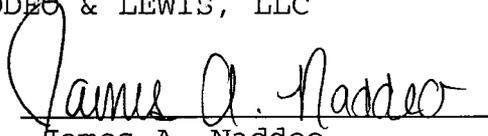
First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: _____


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *

Defendant. *

PRAECIPE TO WITHDRAW

TO THE PROTHONOTARY:

Please withdraw the Praecipe to Place Case on Trial
List filed on behalf of Denny's Beer Barrel Pub, Inc.



James A. Naddeo, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecept to Withdraw was served on the following and in the following manner on the 29th day of October, 2009:

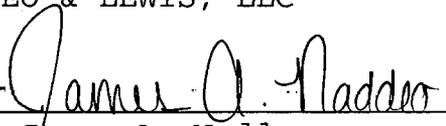
First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: _____


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: MOTION FOR
SUMMARY JUDGMENT

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

9 FILED 4CC/114
01/10:35 am Seaman
DEC 15 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

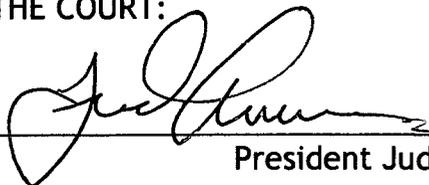
5 FILED
07:55 AM
DEC 15 2009
William A. Shaw
Prothonotary/Clerk of Courts
4 CC Atty Seaman

ORDER

AND NOW, this 15 day of December, 2009, upon consideration of the foregoing Motion, IT IS HEREBY ORDERED that:

- (1) Respondents shall file an answer to the Motion within twenty (20) days of this date;
- (2) Argument shall be held on the 6th day of January, 2010 at 11:30 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830; and
- (3) Notice of entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:



President Judge

NOTICE TO DEFEND

A Motion has been filed against you in Court. If you wish to defend against the matters set forth in the following Motion, you must enter a written appearance

personally or by attorney and file an answer in writing with the prothonotary setting forth your defenses or objections to the matter set forth against you and serve a copy on the attorney or person filing the petition. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the Court without further notice for the relief requested by the petitioner. You may lose rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Extension 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

MOTION FOR SUMMARY JUDGMENT

AND NOW COMES, Defendant, Action Systems, Inc. (hereafter "ASI"), by its attorneys, Gates and Seaman, and files this following Motion for Summary Judgment pursuant to PA. R. C. P. §1035.2 and, in support thereof, avers the following:

1. Plaintiff purchased from Additional Defendant, Batcho Office Systems ("Batchos"), on July 8, 2005 the ASI Restaurant Manager Software ("Software"), which purchase included the license to use the purchased Software and the installation of the Software by Batcho's on existing computers, printer, etc. ("Hardware") of Plaintiff. The Software and Hardware together made up a System used by Plaintiff at its restaurant. See Invoice between Batchos and Plaintiff (Exhibit "A" to the Complaint), Exhibit "1".

2. Plaintiff paid Batchos over a period of time for this purchase the sum of \$15,200.00. See copies of five (5) checks and hand written notes (Produced by Plaintiff in response to a Request for Production of Documents made by ASI) Exhibit "2".

3. Plaintiff experienced problems with the System and Batchos recommended that Plaintiff purchase new Hardware for the System, which Plaintiff did, and Plaintiff continued to experience problems. (See pp. 59-60 of Dennis Leigey Deposition) Exhibit "3".

4. Plaintiff commenced the above-captioned action against ASI by filing a Complaint. Following ASI's filing of Preliminary Objections, Plaintiff filed an Amended Complaint. Preliminary Objections to the Amended Complaint were dismissed by this Court.

5. ASI joined Batchos et al as Additional Defendants by the filing of a Complaint to Join Additional Defendants. Batchos filed an Answer thereto, (incorrectly titled Answer to Amended Complaint).

6. The pleadings are closed and discovery in the form of Interrogatories, Requests for Production of Documents and Depositions has been completed.

7. This case is scheduled for Arbitration on January 21, 2009, commencing at 1:00 p.m.

8. This Motion is not filed for the purpose of any delay and time exists within which to dispose of this Motion without delaying trial.

9. In Paragraph 4 of its Amended Complaint, Plaintiff alleged that Batchos: ".

. . was an authorized dealer and/or agent of ASI. . .”, and in Paragraph 5 alleged ASI: “. . . clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products.”, or in other words, that Batchos was an agent of ASI.

10. The actual relationship between Batchos and ASI was that Batchos was only a value-added reseller of ASI products. Batcho’s admitted this in its Answer to ASI’s Complaint to Join Additional Defendant. Paragraph 16 of the Complaint to Join alleged:

“Batcho has only ever been an independent contractor reseller of ASI and has never been an agent of ASI and never had any authorization to legally bind or obligate ASI”.

Paragraph 16 of Batchos’ Answer: “16. Admitted”. (Relevant portion of ASI’s Complaint To Join Additional Defendants - Exhibit “4” and Entire Answer of Batchos to the Complaint to Join Additional Defendants, [incorrectly titled “Answer to Amended Complaint”] Exhibit “5”).

11. During the Deposition of Dennis F. Leigey, Jr., President of Plaintiff, Plaintiff agreed that Batcho was not an agent of ASI but rather a dealer/reseller authorized to sell, install and service ASI products after purchasing the same from ASI. Said agreement was subsequently memorialized to a written Stipulation by counsel for Plaintiff and ASI, which has been filed of record. Exhibit “6”.

12. Without Batchos being an agent of ASI, there is no privity of contract between Plaintiff and ASI. Without privity of contract, Plaintiff has no valid cause of action against Defendant. Reeves v. Middletown Athletic Association, 866 A. 2d 1115

(Pa. Super. 2004).

13. Plaintiff never paid Defendant anything and Defendant never gave Plaintiff an invoice. (Dennis Leigey Deposition Page 50, Lines 22 through 25 and Page 51, Line 1) Exhibit "7".

14. While Plaintiff paid Batchos \$15,200.00, Batcho's never paid Defendant any money on ASI's Invoice (Exhibit "7" to Leigey Deposition) Exhibit "8". Paragraph 13 of the Complaint to Join Additional Defendants alleges: "13. ASI never received any payment on this Invoice from Batcho or any other party.". The Answer of Additional Defendants, Paragraph 13 states: "13, Admitted". (Relevant portion of ASI's Complaint to Join - Exhibit "9" and Entire Answer of Batchos - Exhibit "10".)

15. Dennis Leigey admitted that Plaintiff was provided a license to operate the Software (Dennis Leigey Deposition, Page 73, Pages 73 - 76, lines 7 - 25, Pages 77 - 78, Lines 1 - 25, Lines 1 - 4) Exhibit "11".

16. While Dennis Leigey stated that the license was retracted as shown in an e-mail, he could not point to any specific e-mail which did so. In fact, the e-mail that he referred to in his Deposition stated: ". . . ASI has never made an attempt to recover the Software key that allows you to use this illegal software license". (Dennis Leigey Deposition, Pages 73 - 78, lines 7 - 4) Exhibit "11"

17. As further confirmation that Plaintiff received the license from Batchos and Batchos never asked for it back, see pages 97-99 of the Deposition of Jason Unch, who was a partner in Batchos when Batchos made this purchase from ASI and sold it to Plaintiff. Exhibit "12".

18. In order to use the manufacturer's software, the ultimate user, in this case Plaintiff, had to agree to the terms and conditions of the End User License Agreement. (Exhibit "6" to Dennis Leigey's Deposition). Exhibit "13".

19. Under the terms of the End User License Agreement, ASI made no warranty of any kind other than: ". . . the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from date of purchase . . . ". Further, ASI's: ". . . entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied."

20. Count I of the Amended Complaint is based upon a breach by ASI of a ". . . purchase contract between Plaintiff and Defendant, (Paragraph 15 of the Amended Complaint) and that Batchos was an agent of ASI (Paragraphs 4 and 5).

21. Plaintiff has admitted there was no contract with ASI and that Batchos was not an agent of ASI. (See Paragraph 13 of this Motion).

22. Count II of the Amended Complaint is based on a claim that an employee of ASI offered ". . . to Plaintiff that if Plaintiff agreed to be a 'showcase site' of

defendant's product, Plaintiff would be afforded certain benefits from defendant (including but not limited to certain restaurant manager software systems being provided at no cost)" (Paragraph 18. of the Amended Complaint), and that in reliance upon that representation, ". . . plaintiff agreed to become a showcase site." (Paragraph 19 of the Amended Complaint).

23. Plaintiff admitted in his deposition (p. 106, lines 2 - 9) that he did not expect to receive the ASI software system at no cost.

"Q. Did you think somebody was going to pay you back the money?

A. No.

(Recess taken).

Q. You did not expect, Mr. Leigey, that you were going to get this software system free?

A. No. Never." Exhibit "14".

24. Under Count II of the Amended Complaint, Plaintiff's only complaints with the software system are set forth in Paragraphs 22 and 23.

25. In Paragraph 22 of the Amended Complaint, Plaintiff alleged: "That Plaintiff was never provided the benefits (including but not limited to accounting and restaurant control software systems) agreed to and represented to plaintiff that it would receive upon becoming a showcase site."

26. Dennis Leigey admitted Plaintiff actually did receive the certain benefits he claimed he was to receive. He stated in his Deposition (pp 93-94, lines 12 - 2) that the items shown on Exhibit "8" (Ex. "7" to his Deposition) were the items (certain benefits) Plaintiff was supposed to get upon becoming a showcase site.

“Q. Does that (referring to Ex. 7 to the Deposition) show the items of things that you bought from Batchos, all the different modules you talked about?

A. It’s similar.

Q. What would be different?

A. I don’t recall a fingerprint, caller ID, scanner, video overlay, coin dispenser, berg liquor control.

I don’t understand - - or, I don’t recall that at all.

Q. The rest of the items, do they look like things that you thought you were getting from Batchos?

A. They - - it looks - - it appears to be the thing that we were supposed to get being a Showcase Site.”. Exhibit “15”

27. Dennis Leigey admitted in his Deposition (p 106, lines 10-25, p 107, lines 1-13) that Plaintiff did receive those items (certain benefits) that he expected it would receive upon becoming a showcase site - those shown on Exhibit “8”. (Deposition Ex. “7”), the Invoice from ASI to Batchos.

“Q. You thought you were going to get the items that you mentioned, that’s what you read off that invoice?

A. The items that Jason - -

Q. And you got those, right?

A. Yes.

Q. Would it be fair to say then that the only thing you didn’t get, or things you didn’t get that you thought you were bargaining for, were the upgrades and the patches?

A. No.

Q. What else did - -

Do you think you didn't get those?

A. I didn't get a - -

You want to know what I didn't get.

Q. Yes.

A. I didn't get - - I didn't get a complete system. I didn't get everything that's on the paper you just provided me. I didn't get any inventory control modules that worked - -

Q. I mean, you got one.

A. But it does work. It still doesn't work.

Q. Just so I'm clear, you got the items that are on there. You're just saying they didn't work?

A. They don't work.

Q. But you got them?

A. We got them and they didn't work."

28. Dennis Leigey's real complaint is with Batchos - that while Plaintiff did receive what it was supposed to upon becoming a showcase site, what Plaintiff didn't receive was a system that worked and patches that would make it work. (Dennis Leigey Deposition, p 107, line 14 through p 108, line 10)

"Q. So that's what your complaint is, they didn't work?

A. My complaint is that we couldn't get this thing repaired, that the critical V-15 patches or whatever patches were that were needed were never supplied to us.

Q. They were never - -

Number 1, they were never supplied by Batcho's; is that correct?

A. They were never supplied by ASI.

Q. But they were never supplied by Batcho's, correct?

A. I don't think Batcho's - -

Q. Just answer the question. Did Batcho's ever supply that?

A. Not that I know of.

Q. And you're saying ASI didn't either?

A. I'm not aware of what they supplied and what they didn't. I'm not saying they didn't supply any at all. I'm not aware of what they supplied and what they didn't supply. I have no idea. I just know my system didn't work."

Exhibit "16"

29. The party responsible to Plaintiff for supplying a working system and patches, if necessary, was the party who Plaintiff contracted with, who sold the system to Plaintiff and installed it - Batchos, not ASI. The Invoice listing the benefits Plaintiff would receive upon becoming a showcase site does not include anything about upgrades (patches or updates). Lisa Wilson, Vice President of ASI, testified in her deposition taken by Plaintiff (p 28, lines 12 - 16) that the reseller (value added reseller), like Batchos, makes upgrades available to end users, like Plaintiff.

"Q. I understand. Okay. Is there any way for an end user, someone who has purchased software, ASI's software from a value added reseller, is there any way for them to get the upgrades except through the value added reseller?

A. No.” Exhibit “17”

30. Plaintiff had no contract with ASI, nor any warranty from ASI. (See Exhibit 13 - End User License Agreement) Plaintiff received the benefits it thought it would get upon becoming a showcase site - that is all that Plaintiff has alleged was represented by ASI’s employee, Lisa Wilson.

31. Plaintiff’s other complaint in Count II is set forth in Paragraph 23 of the Amended Complaint is that: “. . . defendant refused to issue a license to use the ASI Software to plaintiff, refused to issue critical patches and updates necessary to operate the Software, and ultimately withdrew plaintiff as a showcase site.”.

32. ASI did issue the license to use its software. See Paragraphs 15, 16 and 17 of this Motion.

33. ASI never “. . . withdrew Plaintiff as a showcase site,” as alleged in Paragraph 23 of the Amended Complaint. Plaintiff continued to have all the certain benefits it expected to receive upon becoming a showcase site as shown in Exhibit “8” and still had the license to operate the system. If Plaintiff was no longer a showcase site it was not because ASI withdrew it. (See Lisa Wilson Deposition p 33, lines 11-25, p 34, lines 1-3).

“Q. Okay. Was the designation as a showcase site eventually withdrawn from Denny’s Beer Barrel Pub?

A. Well, all we did was we told Batcho’s that they had to pay us for the license, and I can give you another letter that I wrote to Jason about it. That doesn’t mean that they can’t be a showcase site, it just means that

Batcho has to pay us for the license.

Q. All right. I'm not clear on what happened to Denny's Beer Barrel Pub. Was Denny - at the time that you sent the E-mail to Mr. Eckels on September 4, 2006, did you still consider Denny's Beer Barrel Pub to be a showcase site?

A. Well, being that the showcase site is a restaurant that is supposed to be promoting what a great business Batcho Office Systems is, obviously, they're not. Because Denny had called me because he was angry and upset with Batcho so he is, obviously, not being a reference site and feeling that he wants to tell other restaurants to buy POS systems from Batcho." Exhibit "18"

34. There is no genuine issue of material fact to be tried.

35. If Plaintiff is entitled to a recovery, it is from Batchos, not ASI.

36. Batchos paid nothing for the Invoice from ASI, yet charged Plaintiff \$13,103.00 for ASI's software (Exhibit "1"), while Plaintiff claims it paid Batchos \$15,200.00. (See Paragraph 2 of this Motion). While Batchos could have at least discounted the cost to Plaintiff by 50%, since Plaintiff replaced a competitive POS System (Andrew G. Batcho Deposition Exhibit "2"). Exhibit "19"

37. ASI is entitled to judgment as a matter of law.

WHEREFORE, Defendant, ASI, respectfully represents that this Court enter summary judgment in favor of Defendant, ASI, and against Plaintiff.

Respectfully submitted.



Laurance B. Seaman, Esquire
Attorney for Defendant, Action Systems, Inc.

Date: Dec 15, 2009

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

AS3
Batche\Office Systems

110 East Market Street
Clearfield, PA 16830

Invoice

Date	Invoice #
7/8/2005	114631

Bill To
DENNYS Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00.
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
Total						\$11,159.18

THREE Handhelds Returned 4500- 1500 EACH
 EXHIBIT "1" NO TRAINING - NO COMPLETED PROGRAMMING
 17603.00
 4500.00
 13103.00 actual

NY

Rest m44

(2) 7-30-05

DENNY'S BEER BARREL PUB INC. 60-629/713 1354
 ATM ACCOUNT 1242668
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830 DATE July 2005

PAY TO THE ORDER OF Batchos \$ 2500⁰⁰

Twenty five hundred and 00/100 DOLLARS

MEMO System/Computer

CLEARFIELD BANK TRUST COMPANY
 Main Office
 11 North 2nd Street
 Clearfield, PA 16830

Dennis J. Gregory

⑆03⑆306294⑆ ⑆ 2 42668 7⑆ 1354 ⑆0000250000⑆

Ck# 1354 Date 08/04/05 \$2,500.00

DENNY'S BEER BARREL PUB INC. 60-629/713 1431
 ATM ACCOUNT 1242668
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830 DATE Sept 6, 2005

PAY TO THE ORDER OF Batcho Office Systems \$ 5000⁰⁰

Five thousand and 00/100 DOLLARS

MEMO Rest invoice 114631

CLEARFIELD BANK TRUST COMPANY
 Main Office
 11 North 2nd Street
 Clearfield, PA 16830

Dennis J. Gregory

⑆03⑆306294⑆ ⑆ 2 42668 7⑆ 1431 ⑆0000500000⑆

Ck# 1431 Date 09/07/05 \$5,000.00

DENNY'S BEER BARREL PUB INC.
ATM ACCOUNT
1452 WOODLAND RD. PH. 814-765-7190
CLEARFIELD, PA 16830

80-629/313
1202667

1497

DATE OCT 10, 2005

PAY TO THE ORDER OF Boncho OFFICE system \$ 1200.00

Twelve hundred and 00/100 DOLLARS

CLEARFIELD BANK
TRUST COMPANY
MEMO 10/16 114631

Main Office
11 North 2nd Street
Clearfield, PA 16830

Dennis J. Perry Jr.

⑆031306294⑆ ⑆ 2 42668 7⑈ 1497 ⑆0000120000⑆

Ck# 1497 Date 10/13/05 \$1,200.00

1st
Rest mgr

DENNY'S BEER BARREL PUB INC.
ATM ACCOUNT
1452 WOODLAND RD. PH. 814-765-7190
CLEARFIELD, PA 16830

80-629/313
1202667

1322

DATE July 15, 2005

PAY TO THE ORDER OF Batches \$ 5000.00

Five thousand and 00/100 DOLLARS

CLEARFIELD BANK
TRUST COMPANY
MEMO Rest mgr

Main Office
11 North 2nd Street
Clearfield, PA 16830

Dennis J. Perry Jr.

⑆031306294⑆ ⑆ 2 42668 7⑈ 1322 ⑆0000500000⑆

Ck# 1322 Date 07/19/05 \$5,000.00

Rest mgr

DENNY'S BEER BARREL PUB INC.
ATM ACCOUNT
1452 WOODLAND RD. PH. 814-765-7190
CLEARFIELD, PA 16830

80-629/313
1202667

1455

DATE Sept 16, 2005

PAY TO THE ORDER OF Batches Business Machines \$ 1500.00

Fifteen hundred and 00/100 DOLLARS

CLEARFIELD BANK
TRUST COMPANY
MEMO

Main Office
11 North 2nd Street
Clearfield, PA 16830

Dennis J. Perry Jr.

⑆031306294⑆ ⑆ 2 42668 7⑈ 1455 ⑆0000150000⑆

Ck# 1455 Date 09/19/05 \$1,500.00

Batches

REST manager

7-11-05	Down payment	\$5000 ⁰⁰	CK#	1322
7-30-05	2nd payment	\$2500 ⁰⁰	CK#	1354
9-6-05	3rd payment	\$5000 ⁰⁰	CK#	1431
9-13-05	4th payment	\$1500 ⁰⁰	CK#	1455
10-10-05	5th payment	\$1200	CK#	1497

15,200

Batches 9-26-05	Switch Box / Serial Card	BanTeam \$252.28	CK#	1474
11-3-05	Replace Back Office Tower/Computer	\$132.45	CK	1600
12-8-05	Power Supply.	\$983.68	CK#	1534
12/26/05	Service Computers	\$148.40	CK#	1629
1-12-06	Service Printer not working	\$498.20	CK#	1669
4-14-06	New \$05 Terminal. 500 Down payment	\$2395.00	CK#	8112

- 1 **A. Delayed printing.**
 2 **Q.** Delayed printing?
 3 **A. Yes.**
 4 **Q.** What were the printers used for, to print
 5 out the bill, the check for the customer?
 6 **A. They sent out the bill for the customer.**
 7 **They made the -- they sent an order to the**
 8 **kitchen, sent an order to the bar, sent it to that**
 9 **particular station.**
 10 **Q.** The printer did?
 11 **A. The printer did, yes, from the touch**
 12 **screen.**
 13 **Q.** You had touch screens with the system
 14 that Batcho's installed. Would that be fair? You
 15 had both in place.
 16 **A. They were in place.**
 17 **Q.** From the Silverware system?
 18 **A. Yes. Yes.**
 19 **Q.** Right.
 20 **A. Yes.**
 21 **Q.** And then you started having this problem
 22 with freezing up.
 23 **A. (No audible response.)**
 24 **Q.** With the printers delaying the passing of
 25 information; is that fair to say?

ASAP COURT REPORTING
1-866-38-COURT

- 1 **A. That is correct. That is correct.**
 2 **Q.** Any other problems?
 3 **A. Many, but I just -- I can't recall what**
 4 **they are all individually.**
 5 **Q.** Well, I'm sure you can understand that I
 6 have to ask you about those --
 7 **A. I'm trying. Yeah, I'm sure.**
 8 **Q.** -- because that's why we're here.
 9 **A. Sure. Sure.**
 10 **Q.** So what were the other problems?
 11 **A. I'm just trying to recall them.**
 12 **Q.** Take your time.
 13 **A. System would shut off.**
 14 **Q.** And how did that happen?
 15 **A. It would just shut off and go back to a**
 16 **blank screen or to an -- its front page, whatever**
 17 **the computer's front page is.**
 18 **I'm not very computer literate, I'll tell**
 19 **you that.**
 20 **Q.** When you say the computer's front page,
 21 did it go back to --
 22 What would show on the screen?
 23 **A. Like a blue screen.**
 24 **Q.** Okay, nothing on it but blue?
 25 **A. Some icons on it.**

ASAP COURT REPORTING
1-866-38-COURT

- 1 **Q.** What other problems?
 2 **A. Those were the basic problems. The**
 3 **freezing up, the printers. That's pretty much it.**
 4 **Q.** And the system shutting off, like you
 5 said?
 6 **A. And the system shutting off, yeah.**
 7 **Q.** And would that be it? I mean, you said
 8 others. I mean, you can take some time to think
 9 about it.
 10 **A. It doesn't take anything more to disable**
 11 **the entire operation than what I just told you.**
 12 **Q.** Now, how do you know what was the cause
 13 of the freezing up problem?
 14 **A. I don't.**
 15 **Q.** Okay.
 16 **A. I just know what I was told.**
 17 **Q.** And what were you told?
 18 **A. Jason Unch.**
 19 **Q.** What were you told?
 20 **A. Jason told me that he believed the**
 21 **problems with your system were our old hardware**
 22 **that we had purchased from Thomas Small.**
 23 **Q.** Okay. Did that apply to the freezing up
 24 and the printer delay and the system shutting off?
 25 **A. Yes.**

ASAP COURT REPORTING
1-866-38-COURT

- 1 **Q.** So you acquired new touch screens?
 2 **A. Yes.**
 3 **Q.** New hardware?
 4 **A. Yes.**
 5 **Q.** Correct?
 6 **A. Yes.**
 7 **Q.** And who did you get those, that hardware,
 8 from?
 9 **A. Well, we leased them from Wells Fargo.**
 10 **Q.** Okay.
 11 **A. Through Jason.**
 12 **Q.** Through Jason?
 13 **A. Through Jason, yes. He set -- he set the**
 14 **hardware up, the hardware purchase up, or lease I**
 15 **should say.**
 16 **Q.** And this doesn't show us anything about
 17 what any of that hardware was, does it?
 18 **A. No.**
 19 **Q.** This page really doesn't apply to
 20 Exhibit A, the first page, which is the invoice
 21 from Batcho's to you, or does it?
 22 **A. No.**
 23 **Q.** Did you get another invoice from Batcho's
 24 for the hardware that you leased from Wells Fargo?
 25 **A. Wells Fargo sends us a direct invoice.**

ASAP COURT REPORTING
1-866-38-COURT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: COMPLAINT TO
JOIN ADDITIONAL DEFENDANTS

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC.,
AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO,
a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO,
husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS

NOW COMES, Defendant, Action Systems, Inc., by and through its attorneys,
Gates & Seaman, and sets forth the following:

1. Additional Defendant, Batcho Business Machines, Inc., t/d/b/a BATCHO
OFFICE SYSTEMS (an unregistered fictitious name) is a Pennsylvania corporation with
its principal office and place of business at 115 East Market Street, Clearfield,
Pennsylvania 16830.

2. Additional Defendants, Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr.,
and Linda L. Batcho, husband and wife, of 45 Rocky Bend Road, Clearfield, PA
16830, are individuals and are trading and doing business under the unregistered
fictitious name of Batcho Office Systems, with offices at 45 Rocky Bend Road,

11. Batcho did not submit to ASI those required items set forth in Paragraph 9 hereof.

12. ASI delivered to Batcho all of the items set forth on Invoice No. 13605 (Exhibit "E" herein).

13. ASI never received any payment on this Invoice, from Batcho or any other party.

14. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was not the result of anything done or not done by ASI, but rather through the action or inaction of Batcho, and its or their principals, owners, shareholders, directors, employees, agents, contractors or representatives (hereafter "Workers"), by and through whom Batcho acted at all times relevant hereto.

15. If Plaintiff's System did in fact fail and/or become inoperable, or was failing and becoming inoperable, all of which is specifically denied by ASI, the same was the result of Batcho's negligence, carelessness or intentional acts, and/or breach of its contract with Plaintiff, which consisted of, among other things, the purchase from other third parties and resale to Plaintiff of Hardware that was not capable of or could not properly run the Software Batcho sold to Plaintiff and/or the faulty or improper installation and/or maintenance of the System by Batcho.

16. Batcho has only ever been an independent contractor reseller of ASI and has never been an agent of ASI and never had any authorization to legally bind or obligate ASI.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.
Plaintiff

No. 07-1351-CD

ACTION SYSTEMS, INC.
Defendant

BATCHO OFFICE SYSTMES
Defendant

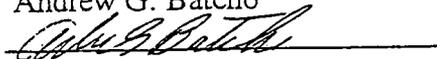
ANSWER TO AMENDED COMPLANT

AND NOW, Defendant, Batcho Office Systems hereby answers Plaintiff's Amended
Complaint as follows:

1. Denied Batcho Office Systems and Batcho Inc. have no common interest. Batcho Office Systems was a partnership between Andrew G Batcho Andrew G Batcho Jr. and Jason Unch.
2. Denied Linda Batcho has no common interest to Batcho Office , office is not located at 45 Rocky Bend Road, office is located at 115 East Market Street. Clearfield, PA
3. Admitted.
4. Denied Denny's Software was purchased in June 2005 and installed on existing hardware and wiring. Computer systems were purchased in 6/2006 after Denny's own equipment not purchased from Batcho's failed regularly.
5. Batcho's ended servicing system July 2006 after paying Pittsburgh hospitality to do required patches from ASI.
6. Denied Batchos has no knowledge of reseller agreement
7. Admitted.
8. Denied Batcho's was told by Lisa Wilson of ASI that part of paying ASI \$5,000 to be a dealer that Batcho's would have a copy of software to put in a site that Batcho's and ASI agreed to be a good showcase location at no charge. Lisa Wilson also told Batcho's that she understood the area in which we live, and told Batcho's ASI would not have to order a set number of licenses from ASI. Batcho's received an email from Lisa Wilson confirming this.
9. Denied invoice was faxed to Lisa Wilson prior to purchase of software. No hardware key was available.
10. Admitted
11. Admitted
12. Admitted
13. Admitted
14. Denied system regularly required updates and patches from ASI , as changes were made to correct problem with version upgrades as they became apparent.
15. Denied system worked for 2 years with no failure.
16. Admitted
17. Denied ASI did not provide support to Batcho
18. Denied Batcho's has no knowledge of a reseller agreement.
19. Denied Batcho's has no knowledge of a reseller agreement.
20. Denied ASI is solely at fault due to lack of support to Batcho
21. Denied ASI is solely at fault due to lack of support to Batcho

Respectfully submitted:

Andrew G. Batcho



Batcho Office Systems
115 East Market Street
Clearfield, PA 16830 (814) 765-8522

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: STIPULATION

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and:	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

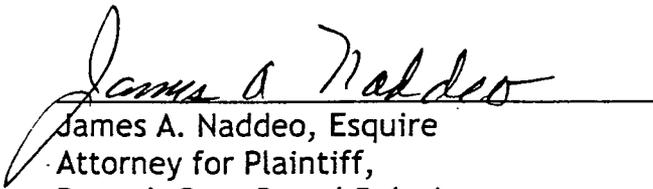
STIPULATION

The parties herein do hereby stipulate and agree that Additional Defendant, BATCHO OFFICE SYSTEMS, at all times relevant to these proceedings, was not an Agent of Defendant, Action Systems, Inc. ("ASI"), but rather a dealer/reseller, which was authorized to sell, install and service ASI products, after purchasing the same from ASI.

Date: April 6, 2009


Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Date: April 7, 2009


James A. Naddeo, Esquire
Attorney for Plaintiff,
Denny's Beer Barrel Pub, Inc.

1 **A. It was -- it was close to the fair and we**
 2 **did not want to start operating and training for a**
 3 **brand new system before the fair because the fair**
 4 **is an extremely busy week for us.**

5 **So the installation began after that**
 6 **period, the training and everything. It was after**
 7 **the first week of August.**

8 **Q. Do you believe you made these payments**
 9 **before the system was installed?**

10 **A. I can't recall the exact date at this**
 11 **time.**

12 **Q. Did you make any other payments besides**
 13 **the two shown on here?**

14 **A. Yes.**

15 **Q. When did you make those?**

16 **A. I can't recall.**

17 **Q. How many payments would that have been,**
 18 **one or more?**

19 **A. One or more.**

20 **Q. You're not sure?**

21 **A. I'm not sure at this time.**

22 **Q. And I'm not asking you for exact dates**
 23 **they were paid. I'm just asking --**

24 **A. I don't recall the exact dates I paid**
 25 **them.**

ASAP COURT REPORTING
 1-866-38-COURT

1 **A. No.**

2 **Q. In Paragraph 5 of the Amended**
 3 **Complaint --**

4 I've got my own. Do you have a copy
 5 there?

6 I'm going to read to you what it says and
 7 Mr. Naddeo will want to be looking at his copy to
 8 verify.

9 MR. NADDEO: No, I want him to look at it
 10 to verify. You're asking him the question, right?
 11 BY MR. SEAMAN:

12 **Q. Paragraph 5 of the Amended Complaint**
 13 **states that at all times referred to herein,**
 14 **Defendant, Action System, Inc. clothed Batcho with**
 15 **actual, implied and/or apparent authority to sell,**
 16 **service and install ASI products.**

17 Is that what that says?

18 **A. That's what it says, yes.**

19 **Q. I want you to tell me what things did ASI**
 20 **do, what conduct, what things did they do that**
 21 **gave you the impression that they clothed Batcho**
 22 **with that authority?**

23 **A. Clothed, please?**

24 **Q. It's not my word. That's in your**
 25 **Complaint, in your Amended Complaint.**

ASAP COURT REPORTING
 1-866-38-COURT

1 **Q. I'm asking time frame. Was it before the**
 2 **system was installed or after the system was**
 3 **installed?**

4 **A. I don't recall.**

5 **Q. Do you still have any of those records**
 6 **available that would show when the payments were**
 7 **made?**

8 **A. Sure.**

9 **Q. Can I ask you to provide that information**
 10 **to your attorney to provide to me?**

11 **A. Sure.**

12 **Q. So what I'm asking for is for --**

13 **A. Payments.**

14 **Q. -- payments, dates and amounts of**
 15 **payments that you made to Batcho's for the**
 16 **Restaurant Manager system that was installed at**
 17 **your place of business.**

18 **A. Yes. Okay. I understand.**

19 **Q. Right now you don't believe that there's**
 20 **anything owed to Batcho's?**

21 **A. Oh, no.**

22 **Q. Did you ever pay anything to ASI?**

23 **A. No.**

24 **Q. Did ASI ever give you an invoice or a**
 25 **bill?**

ASAP COURT REPORTING
 1-866-38-COURT

1 **A. They represented themselves as a dealer,**
 2 **a dealership for ASI.**

3 **Q. Batcho's represented themselves?**

4 **A. They represented Batcho's Business**
 5 **Systems, I believe they were called, as a**
 6 **dealership for Restaurant Manager.**

7 **Q. You're saying that ASI did that?**

8 **A. I'm saying that Batcho's did that.**

9 **Q. Batcho's did that?**

10 **A. Batcho's represented themsel- --**
 11 **represented ASI as their dealer.**

12 **Q. And what did Batcho's do, what conduct**
 13 **did they do, what things did they do for you to**
 14 **get from that that they were ASI's dealer?**

15 **A. They brought brochures up. They brought**
 16 **a setup on a computer with Restaurant Manager**
 17 **software.**

18 **Q. Okay.**

19 MR. NADDEO: Can we go off the record?

20 MR. SEAMAN: You want to go off the

21 record?

22 MR. NADDEO: Yes.

23 (Recess taken.)

24 BY MR. SEAMAN:

25 **Q. Do you still have in front of you**

ASAP COURT REPORTING
 1-866-38-COURT



ASI 2005
 1734 Elton Road, Suite 219
 Silver Spring, MD 20903
 USA

Voice: (301) 445-6100
 Fax: (301) 445-6104

Invoice
 Invoice Number:
 13605

Invoice Date:
 Jul 18, 2005

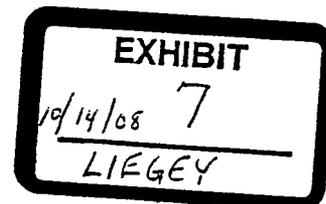
Page:
 1

Sold To:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Ship to:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830



Customer PO	Shipping Method	Payment Terms	Ship Date	Sales Rep
	UPS Ground	Net 160	7/18/05	PHS

Quantity	Description	Unit Price	Extension
1	6 POS license for S/N:N6703-0507 (Denny's Beer Barrel Pub Inc.)	2,800.00	2,800.00
3	HandHeld Stn License for S/N:N6703-0507	300.00	900.00
1	HandHeld Interface	600.00	600.00
1	Table Service (includes Quick Service)	100.00	100.00
1	Tabs Module (includes Quick Service)	100.00	100.00
2	Any three Add-On modules	700.00	1,400.00
1	Guest Accounts, Gift Certificates, Prepaid Cards, etc.		
1	Customer Loyalty		
1	Employee Scheduling Module		
1	Inventory Control Module		
1	Datatran or PC Charge (Datacap/Modem NOT included)		
1	Fingerprint, Caller ID, Scanner, Video Overlay, Scale, Coin Dispenser, Berg Liquor Control, Real Time KDS		
1	Advance Ordering Module	200.00	200.00
1	Shipping & Handling	15.00	15.00

Invoice to Batcho

Note: This invoice is still outstanding

TOTAL 6,115.00

fee of 1.5% per month on overdue invoices.\$50 return check fee.

EXHIBIT "E"

EXHIBIT "8"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
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G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: COMPLAINT TO
JOIN ADDITIONAL DEFENDANTS

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
 :
-vs- :
 :
ACTION SYSTEMS, INC., :
Defendant :
 :
-vs- :
 :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

COMPLAINT OF DEFENDANT, ACTION SYSTEMS, INC.,
AGAINST ADDITIONAL DEFENDANTS, BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS and ANDREW G. BATCHO,
a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO,
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PENNSYLVANIA CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.
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No. 07-1351-CD

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BATCHO OFFICE SYSTMES
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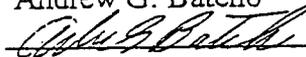
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19. Denied Batcho's has no knowledge of a reseller agreement.
20. Denied ASI is solely at fault due to lack of support to Batcho
21. Denied ASI is solely at fault due to lack of support to Batcho

Respectfully submitted:

Andrew G. Batcho



Batcho Office Systems
115 East Market Street
Clearfield, PA 16830 (814) 765-8522

1 Complaint that you were not provided a license --
2 I'm sorry, the Amended Complaint, that you were
3 not provided a license to be able to operate the
4 system. Would that be a fair statement?

5 **A. Not in those words.**

6 **Q.** Okay.

7 **A. We were provided a license. It was
8 retracted.**

9 **Q.** You were provided a license?

10 **A. And it was retracted.**

11 **Q.** Who retracted it?

12 **A. Apparently ASI.**

13 **Q.** When you say "apparently," is that what
14 Jason said?

15 **A. No.**

16 **Q.** What are you referring to?

17 **A. I'm referring to an e-mail from Lisa
18 Wilson to David Eckles --**

19 **Q.** Okay, that's the same document --

20 **A. -- on September 4, '06.**

21 **Q.** Is that the same one we talked about
22 before?

23 **A. Yes.**

24 (Dennis Liegey, Jr. Exhibit No. 4 was
25 marked for identification, attached hereto.)

ASAP COURT REPORTING
1-866-38-COURT

1 BY MR. SEAMAN:

2 **Q.** I'm going to show you what has been
3 marked as Exhibit 4 and ask you is that the same
4 document you were just referring to?

5 **A. Yes.**

6 **Q.** And that's the same document we referred
7 to way back in the beginning of the deposition?

8 **A. Yes, it is.**

9 **Q.** Now explain to me again then how this
10 says that ASI retracted your license.

11 MR. NADDEO: I think you've got the wrong
12 e-mail.

13 THE WITNESS: Oh, I might have the wrong
14 e-mail.

15 We need to refer to an e-mail on
16 April 4, 2007.

17 BY MR. SEAMAN:

18 **Q.** And is that marked as an exhibit already?

19 **A. I don't believe so.**

20 **No, it is not.**

21 (Dennis Liegey, Jr. Exhibit No. 5 was
22 marked for identification, attached hereto.)

23 BY MR. SEAMAN:

24 **Q.** I will show you what has been marked for
25 identification, attached hereto as Exhibit 5. Is

ASAP COURT REPORTING
1-866-38-COURT

1 that the same as what you're holding in your hand
2 and referring to?

3 **A. It is.**

4 **Q.** Tell me in Exhibit 5 then where that says
5 that ASI retracted the license.

6 **A. It doesn't exactly say that.**

7 **Q.** What does it say that led you to testify
8 that they retracted the license?

9 **A. It says that ASI has never made an
10 attempt to recover the software key that allows
11 you to use this illegal software license. Illegal
12 software license is what keyed me.**

13 **Q.** But the e-mail you just read to me says
14 they never made any attempt to take it back.

15 **A. Illegal software license.**

16 **Q.** But you just read, did you not?

17 **A. Yes.**

18 **Q.** I don't mean to argue with you.

19 MR. NADDEO: But you are, and I think --

20 MR. SEAMAN: I take that back. I

21 withdraw that question.

22 **Q.** Is there anything else in that exhibit
23 that led you to your testimony that ASI retracted
24 the license?

25 **A.** However, we cannot issue any
ASAP COURT REPORTING
1-866-38-COURT

1 software upgrades or otherwise
2 service the license you're using
3 until we receive payment on the
4 original license.

5 **Q.** But does that say that they retracted the
6 license?

7 **A. That's what it says to me. That's how I
8 interpret it. That was my interpretation.**

9 **Q.** Can you look for me, please, at Paragraph
10 15 of Count 1 of the Amended Complaint?

11 **A. Okay.**

12 **Q.** Do you see in Paragraph 15 where you are
13 alleging that -- it says:

14 The Defendant, by refusing
15 to provide Plaintiff with an
16 operable software system as
17 expected, and by refusing to
18 provide critical updates
19 necessary to render the ASI
20 software system operable at
21 Plaintiff's place of business,
22 and by refusing to issue a
23 license to use said software to
24 Plaintiff, has breached the
25 purchase contract between

ASAP COURT REPORTING
1-866-38-COURT

1 Plaintiff and Defendant.
 2 **A. Yes.**
 3 **Q.** That allegation is saying that, am I
 4 reading this wrong that -- and you're saying that
 5 ASI refused to issue you a license? Is that what
 6 you're saying?
 7 **A. Yes.**
 8 **Q.** You just testified they did issue you a
 9 license, but they retracted it.
 10 **A. It is my assumption they retracted it,**
 11 **yes.**
 12 **Q.** Well, which is correct? Did they issue
 13 you a license and retract it, or did they refuse
 14 to issue you a license?
 15 **A. Yes, they issued a license and retracted**
 16 **it.**
 17 **Q.** How did they retract it?
 18 **A. By asking us to repay the original fee**
 19 **that Batcho was to pay ASI for the dealer -- for**
 20 **the program that we were involved with --**
 21 **Q.** Do you know what a --
 22 **A. -- the Showcase Site.**
 23 **Q.** Do you know what a license is?
 24 **A. I know you have to have a license to**
 25 **operate Windows. That's my understanding with**

ASAP COURT REPORTING
 1-866-38-COURT

1 **this computer terminal.**
 2 **Q.** You have to have a license to operate the
 3 software?
 4 **A. Yes.**
 5 **Q.** And is there --
 6 Do you know what a dongle is,
 7 D-O-N-G-L-E?
 8 **A. No. No idea.**
 9 **Q.** Do you know that that's a piece of
 10 hardware that is called the hardware key or
 11 security key?
 12 **A. Security key. I've heard of a security**
 13 **key. I've never heard of that though.**
 14 **Q.** Did you have one of these? Did you have
 15 a dongle? I'll describe it for you so you know
 16 what I'm talking about.
 17 **A. Sure.**
 18 **Q.** It's about a two-inch square piece of
 19 equipment that goes in the printer port of your
 20 computer.
 21 **A. I can't tell you that.**
 22 **Q.** Can you tell me that you never got one?
 23 **A. I don't know what it is. I have no idea.**
 24 **Q.** To be honest you can't tell me if you --
 25 **A. I can't tell you whether I have one or I**

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1 **don't have one.**
 2 **Q.** Do you understand that a software system
 3 such as this cannot be operated without that
 4 security key.
 5 **A. No. Again, I don't know what it is.**
 6 **Q.** What do you think a security key is?
 7 What's the purpose of a security key?
 8 **A. I have no comment on that. I have no**
 9 **idea what the purpose of it actually is.**
 10 **Again, I'm not a software or a computer**
 11 **expert. I have no idea.**
 12 **Q.** Paragraph 21 of your Amended Complaint in
 13 Count 2 you state that the local agent -- you
 14 state that the local agent of Defendant did bring
 15 potential customers of Defendant through the
 16 restaurant site of Plaintiff and showcased the
 17 site and the ASI product at Plaintiff's site to
 18 potential customers.
 19 **A. Yes.**
 20 **Q.** The reference in that to the word
 21 "agent," we can disregard now, correct, according
 22 to your attorney?
 23 MR. NADDEO: Yeah, we'll call that
 24 dealer.
 25 ///

ASAP COURT REPORTING
 1-866-38-COURT

1 BY MR. SEAMAN:
 2 **Q.** Okay, we'll call the word agent dealer.
 3 Who did you -- who came to your site to
 4 see your system?
 5 **A. Clearfield Country Club.**
 6 **Q.** Anybody else?
 7 **A. Pete Kutsick, I think the man's name was**
 8 **at that time.**
 9 **Q.** He was probably the manager of the club
 10 at the time?
 11 **A. I believe he was.**
 12 **Q.** Anybody else, any other restaurants,
 13 anybody else come to you?
 14 **A. I don't recall who else was there at this**
 15 **time.**
 16 **Q.** Would you like a little time to think
 17 about it?
 18 **A. No, I don't recall. I'm not there 24/7.**
 19 **I can't tell you whether there was or there wasn't**
 20 **anyone else there.**
 21 **Q.** As far as you know, though, the country
 22 club --
 23 **A. Well, in my presence, only in my**
 24 **presence, the Clearfield Country Club was the only**
 25 **one in my presence.**

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1 Q. Did you ever ask Denny's to produce the competitive
2 software key of the hard drive that Denny's would have
3 gotten from Silverware, the prior system that they --
4 restaurant manager system they operated?

5 A. Yes.

6 Q. And why did you do that?

7 A. ASI asked if it had one; that they needed it. And
8 it did not have one.

9 Q. Do you know why ASI wanted that?

10 A. It's just a bland statement that they make about
11 any competitive software. It's just a way for them to
12 give a competitive pricing. But it did not have it. That
13 particular brand did not use a key.

14 Q. Do you know what a dongle is?

15 A. Um-hmm.

16 Q. Explain to me what a dongle is.

17 A. That's your license. That's what ASI calls their
18 license.

19 Q. Is it a physical piece of something?

20 A. Yes, it is.

21 Q. Could you describe it for me?

22 A. It's a small piece of plastic that clips onto the
23 computer at the printer port.

24 Q. And is that referred to sometimes as a security
25 key?

1 A. That's your license key.

2 Q. Okay. Is it sometimes called a security key?

3 A. Um-hmm.

4 MR. NADDEO: Say yes.

5 MR. SEAMAN: He doesn't have to say yes. He can
6 say no. I know. I know.

7 And did Denny's have a -- such a dongle?

8 THE WITNESS: Um-hmm, yes.

9 BY MR. SEAMAN:

10 Q. And how did they get it?

11 A. ASI sent it to them.

12 Q. ASI sent it to them? I don't mean to be badgering.

13 I just want to be certain that it wasn't sent to you.

14 A. They sent it to us, to Batcho.

15 MR. SEAMAN: See, Jim? Sometimes you have to ask

16 the same question twice.

17 Okay. And how did Denny's get it then?

18 THE WITNESS: It was installed on their system.

19 BY MR. SEAMAN:

20 Q. By whom?

21 A. By us.

22 Q. By you in particular?

23 A. I believe Tom Quinn installed it.

24 Q. To your knowledge were they ever asked by Batcho's

25 to give back that dongle?

1 A. They were not.

2 Q. To your knowledge were they ever asked by ASI to
3 give back that dongle?

4 A. I don't know.

5 (E-mail dated 2-24-06 marked
6 Deposition Exhibit No. 7.)

7 Q. Do you have any recollection of an e-mail to Lisa
8 Wilson in February of 2006 from you to her?

9 A. Be more specific? I contacted her a lot.

10 Q. First question is, do you have any recollection?

11 A. We spoke a lot by e-mail.

12 Q. Do you have any recollection of an e-mail --

13 A. No, I don't, not one in particular.

14 Q. Do you have any recollection of ever telling Lisa
15 that Denny's was again very happy with us?

16 MR. NADDEO: Wouldn't it be appropriate to show
17 him --

18 MR. SEAMAN: I think I can ask the question. Thank
19 you, Jim.

20 THE WITNESS: I don't recall.

21 BY MR. SEAMAN:

22 Q. Okay. Show you what is marked as Deposition
23 Exhibit 7 and ask you to read that, please.

24 A. Who is that referring to? I don't know who it's
25 referring to.

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1 **A. My basic understanding was everything I**
2 **just previously told you.**

3 MR. NADDEO: You know, you don't have
4 to -- that's been asked and answered half a dozen
5 times or more today, and I'm going to object. You
6 don't have to answer it any more.

7 THE WITNESS: Okay.

8 BY MR. SEAMAN:

9 **Q.** In Paragraph 20 you're indicating that
10 you paid the sum of \$13,103 for the Restaurant
11 Manager Software System; is that right? It's in
12 Paragraph 20 of your Complaint.

13 I'm just asking you, does the Complaint
14 say that you paid \$13,103?

15 **A. Yes, it does.**

16 **Q.** And what you paid for was the Restaurant
17 Manager Software System?

18 **A. Yes.**

19 **Q.** And at the time you paid for it, you were
20 under the impression you were a Showcase Site,
21 right?

22 **A. Yes. At the time I paid for it, I was**
23 **under the impression I was a Showcase Site, yes.**

24 **Q.** And you didn't have any objection to
25 paying it at the time, I guess, right?

ASAP COURT REPORTING
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1 **A. I didn't get -- I didn't get a complete**
2 **system. I didn't get everything that's on the**
3 **paper you just provided me. I didn't get any**
4 **inventory control modules that worked --**

5 **Q.** I mean, you got one.

6 **A. But it doesn't work. It still doesn't**
7 **work.**

8 **Q.** Just so I'm clear, you got the items that
9 are on there. You're just saying they didn't
10 work?

11 **A. They don't work.**

12 **Q.** But you got them?

13 **A. We got them and they didn't work.**

14 **Q.** So that's what your complaint is, they
15 didn't work?

16 **A. My complaint is that we couldn't get this**
17 **thing repaired, that the critical V-15 patches or**
18 **whatever patches were that were needed were never**
19 **supplied to us.**

20 **Q.** They were never --
21 Number 1, they were never supplied by
22 Batcho's; is that correct?

23 **A. They were never supplied by ASI.**

24 **Q.** But they were never supplied by Batcho's,
25 correct?

ASAP COURT REPORTING
1-866-38-COURT

1 **A. Absolutely not.**

2 **Q.** Did you think somebody was going to pay
3 you back the money?

4 **A. No.**

5 (Recess taken.)

6 BY MR. SEAMAN:

7 **Q.** You did not expect, Mr. Liegey, that you
8 were going to get this software system free?

9 **A. No. Never.**

10 **Q.** You thought you were going to get the
11 items that you mentioned, that's what you read off
12 that invoice?

13 **A. The items that Jason --**

14 **Q.** And you got those, right?

15 **A. Yes.**

16 **Q.** Would it be fair to say then that the
17 only thing you didn't get, or things you didn't
18 get that you thought you were bargaining for, were
19 the upgrades and the patches?

20 **A. No.**

21 **Q.** What else did --

22 Do you think you didn't get those?

23 **A. I didn't get a --**

24 **You want to know what I didn't get.**

25 **Q.** Yes.

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1-866-38-COURT

1 **A. I don't think Batcho's --**

2 **Q.** Just answer the question. Did Batcho's
3 ever supply that?

4 **A. Not that I know of.**

5 **Q.** And you're saying ASI didn't either?

6 **A. I'm not aware of what they supplied and**
7 **what they didn't. I'm not saying they didn't**
8 **supply any at all. I'm not aware of what they**
9 **supplied and what they didn't supply. I have no**
10 **idea. I just know my system didn't work.**

11 MR. SEAMAN: Can I have one moment? I
12 want to confer -- I think we're done, but I just
13 want to confer with my client and I'll be right
14 back with you.

15 (Dennis Liegey, Jr. Exhibit No. 8 was
16 marked for identification, attached hereto.)

17 (Recess taken.)

18 MR. SEAMAN: I don't have any other
19 questions.

20 (Whereupon, the deposition was concluded
21 at 3:59 p.m. Signature waived.)
22

ASAP COURT REPORTING
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- 1 software package from Batcho's, correct?
 2 **A. (No audible response.)**
 3 **Q.** Is that correct?
 4 **A. They were the dealer, yes.**
 5 **Q.** And Batcho's bought it from ASI. Did you
 6 understand that?
 7 **A. I believe so. I believe so.**
 8 **Q.** What I've shown you in that exhibit is
 9 the invoice from Batcho -- from ASI to Batcho's
 10 for the system.
 11 **A. Okay.**
 12 **Q.** Does that show the items of things that
 13 you bought from Batcho's, all the different
 14 modules you talked about?
 15 **A. It's similar.**
 16 **Q.** What would be different?
 17 **A. I don't recall a fingerprint, caller ID,**
 18 **scanner, video overlay, coin dispenser, berg**
 19 **liquor control.**
 20 **I don't understand -- or, I don't recall**
 21 **that at all.**
 22 **Q.** The rest of the items, do they look like
 23 things that you thought you were getting from
 24 Batcho's?
 25 **A. They -- it looks -- it appears to be the**

ASAP COURT REPORTING
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- 1 **thing that we were supposed to get being a**
 2 **Showcase Site.**
 3 **Q.** Okay. If I may, I just -- a couple more
 4 questions. I don't have that much more.
 5 In the original Complaint, do you have
 6 that document there, Mr. Naddeo?
 7 **MR. NADDEO:** Yes, I do.
 8 **BY MR. SEAMAN:**
 9 **Q.** Count 2, Paragraphs 11 through 24 -- I'm
 10 sorry, 19 through 24. I can't read my own
 11 writing.
 12 In that count, Mr. Liegey, you're making
 13 an allegation that Batcho's improperly installed
 14 the software system; is that correct?
 15 **A. Yes.**
 16 **Q.** And in Paragraph 23 of that Complaint,
 17 you allege that you have obtained an estimate for
 18 re-installation of the ASI Software System at
 19 approximately \$3,100?
 20 **A. Yes.**
 21 **Q.** And it says a true and correct copy of
 22 evidence of the same is attached here as
 23 Exhibit B. Now, there is no Exhibit B to the
 24 Complaint.

MR. NADDEO: Yeah, there is.
 ASAP COURT REPORTING
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- 1 **MR. SEAMAN:** There is. I retract that.
 2 **Q.** That's the quotation that we were talking
 3 about before from Hospitality --
 4 **A. Pittsburgh Hospitality.**
 5 **Q.** -- right?
 6 **A. That is correct.**
 7 **Q.** So --
 8 **A. ASI's dealer in Pittsburgh.**
 9 **Q.** So that's an estimate you got?
 10 **A. That was just an estimate. I think that**
 11 **the -- yeah, I believe that was the estimate.**
 12 **Q.** And that's an estimate you got for
 13 re-installation of the ASI software?
 14 **A. Yes.**
 15 **Q.** How does that exhibit show that the cost
 16 would have been \$3,100?
 17 **A. It should have been your Exhibit -- your**
 18 **Exhibit B should have been the actual --**
 19 **Q.** Not my Exhibit B. That's your Exhibit B.
 20 **A. Or my Exhibit B, that should been the**
 21 **actual cost. That should have been.**
 22 **Q.** Do you recall making any demands or
 23 requests on Batcho's Office System to resolve your
 24 problem?
 25 **A. Constantly.**

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- 1 **Q.** Okay.
 2 **A. Constantly.**
 3 **Q.** What type of demands or requests did you
 4 make?
 5 **A. Come up and get me running correctly, get**
 6 **my software, to get everything running correctly.**
 7 **Q.** Did you make a demand to resolve the
 8 whole problem?
 9 **A. Did I threaten them? Is that your**
 10 **question?**
 11 **Q.** No, I didn't ask if you threatened.
 12 **A. I asked them to come repair my system.**
 13 **That was the only demand I had.**
 14 **Q.** I'm going to show you in your Answers to
 15 Interrogatory Number 14 --
 16 **A. Okay.**
 17 **Q.** Well, that question was posed to you --
 18 actually was posed in Interrogatory Number 13.
 19 Did you ever make any demand or request, and then
 20 in parentheses in quotations marks is the word
 21 demand, upon Batcho Business Machines, Inc. to in
 22 any way resolve the subject matter of the suit;
 23 and the answer was yes.

And 14 says, if the answer to the
 preceding Interrogatory is in the affirmative,
 ASAP COURT REPORTING
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1 **A. My basic understanding was everything I**
2 **just previously told you.**

3 MR. NADDEO: You know, you don't have
4 to -- that's been asked and answered half a dozen
5 times or more today, and I'm going to object. You
6 don't have to answer it any more.

7 THE WITNESS: Okay.

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10 you paid the sum of \$13,103 for the Restaurant
11 Manager Software System; is that right? It's in
12 Paragraph 20 of your Complaint.

13 I'm just asking you, does the Complaint
14 say that you paid \$13,103?

15 **A. Yes, it does.**

16 **Q.** And what you paid for was the Restaurant
17 Manager Software System?

18 **A. Yes.**

19 **Q.** And at the time you paid for it, you were
20 under the impression you were a Showcase Site,
21 right?

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25 paying it at the time, I guess, right?

ASAP COURT REPORTING
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ASAP COURT REPORTING
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1 **A. Absolutely not.**

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3 you back the money?

4 **A. No.**

5 (Recess taken.)

6 BY MR. SEAMAN:

7 **Q.** You did not expect, Mr. Liegey, that you
8 were going to get this software system free?

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11 items that you mentioned, that's what you read off
12 that invoice?

13 **A. The items that Jason --**

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17 only thing you didn't get, or things you didn't
18 get that you thought you were bargaining for, were
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22 Do you think you didn't get those?

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24 **You want to know what I didn't get.**

25 **Q.** Yes.

ASAP COURT REPORTING
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19 questions.

20 (Whereupon, the deposition was concluded
21 at 3:59 p.m. Signature waived.)

ASAP COURT REPORTING
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1 A I don't think so because it looks like we were
2 talking about basically what he wanted. They had not --
3 Batcho's office had not been meeting our sales quotas so I had
4 already told them that they were going to go onto the
5 maintenance program and that they would have to start paying
6 that 250 per quarter. And our conversation is about -- that
7 my notes indicate -- I don't, to be honest, remember it that
8 well, but my notes indicate that we were talking about whether
9 he could still get a free license from us that he could use to
10 set up a site.

11 Q Okay. Now, do I understand then that you either did
12 not have a conversation with Dennis Liegey in June of 2005,
13 or, alternatively, you don't recall that conversation?

14 A Yes.

15 Q Do you have the date of the call that was made to
16 you by Mr. Unch in June of 2005?

17 A Well, actually, you know what, now that I'm looking
18 at it, it says May 11th, 2005. And the June conversation, I'm
19 sorry, I misinformed you a moment ago, my note about the
20 conversation with Jason is in May of 2005. And it looks like
21 in June of 2005 one of the other staff people at ASI spoke to
22 Jason.

23 Q But not you?

24 A Not me. But I did speak to him about the restaurant
25 in May.

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1 A Yes. Again, I'm basing most of my recollection here
2 on some notes that I have, but, yes.

3 Q All right. Do you have any specific recollection of
4 that call in terms of what was discussed?

5 A Yes. I've got some notes here and I also have a
6 letter that I wrote after the conversation.

7 Q Let's speak about the spoken, the telephone
8 conversation first. What is your recollection of the
9 telephone conversation?

10 A My recollection is that he called because he wasn't
11 getting the support that he needed from Batcho's.

12 Q Okay. Would that include the updates on the
13 software?

14 A It could have, yes.

15 Q Okay. If I'm a licensed user of your software, does
16 ASI provide updates?

17 A No, not directly to the users again. But resellers
18 are able to get -- there's two kinds of updates; one is called
19 a patch, or patch and a utility, and then there is also
20 upgrades. So resellers can get the patches at their
21 discretion as they need them off of a special Web site that we
22 set up for them for that particular purpose.

23 Q All right. So, if I'm an end user, if I purchased
24 the software from one of your value added resellers, the only
25 way I can get the upgrade is through the reseller?

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1 Q Do your notes indicate what staff person Jason spoke
2 to in June of 2005?

3 A Yes, it says his name is Kevin.

4 Q Was there a Kevin employed by ASI at that time?

5 A Yes.

6 Q His last name, please?

7 A Mangelson, M-A-N-G-E-L-S-O-N.

8 Q What was his position with the company?

9 A He was called the sales associate.

10 Q Is he still employed by ASI?

11 A No, he is not.

12 Q When did he terminate his employment?

13 A I'm going to have to look that up. I would say
14 approximately in the fall of 2006. We can look it up, if you
15 can hold on a minute, I don't remember. I think that it was
16 probably in July of 2007, but to be honest I'll have to go
17 back and look at some other employment files. I'm just
18 looking at a --

19 Q That's all right. Let me ask you a different
20 question. Does anybody at ASI know where this person is
21 currently located?

22 A No, I don't think so.

23 Q Now you do recollect having a telephone conversation
24 with Dennis Liegey, but that would have been in September of
25 2006?

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1 A Yes, that's correct. But then, again, there's two
2 different things, an upgrade is different than a patch.

3 Q Okay. Let's talk about --

4 A It's just at their own discretion go and download
5 the patches if -- if they felt they needed them or what have
6 you. They're usually just a small -- a patch is usually a
7 small change to the software.

8 Q Okay.

9 A An upgrade actually means upgrading the license to
10 software that we have redesigned to offer additional features
11 and those upgrade users are required to pay for them.

12 Q I understand. Okay. Is there any way for an end
13 user, someone who has purchased software, ASI's software from
14 a value added reseller, is there any way for them to get the
15 upgrades except through the value added reseller?

16 A No.

17 Q And in order to be able to get those upgrades from a
18 value added reseller does the software have to be licensed?

19 A I'm not sure I understand your question, can you
20 rephrase it?

21 Q Okay. If I'm an end user, I've purchased software
22 from a value added user -- or, excuse me, a value added
23 reseller, do I have to -- does my software have to be licensed
24 in order to purchase the upgrades?

25 A No. I'm not -- I'm not sure I understand your

MARYANN CORNELIUS (814) 536-7450

1 value added reseller?
 2 A Yes. We give the software license to the reseller
 3 for free.
 4 Q Okay. The reseller in turn gives it to -- or not
 5 necessarily gives it, sells it to the end user?
 6 A That's correct.
 7 Q Okay. So ASI was aware that this arrangement had
 8 been set up between Batcho Office Systems and Denny's Beer
 9 Barrel Pub?
 10 A Yes.
 11 Q Okay. Was the designation as a showcase site
 12 eventually withdrawn from Denny's Beer Barrel Pub?
 13 A Well, all we did was we told Batcho's that they had
 14 to pay us for the license, and I can give you another letter
 15 that I wrote to Jason about it. That doesn't mean that they
 16 can't be a showcase site, it just means that Batcho has to pay
 17 us for the license.
 18 Q All right. I'm not clear on what happened to
 19 Denny's Beer Barrel Pub. Was Denny -- at the time that you
 20 sent the E-mail to Mr. Eckels on September 4th, 2006, did you
 21 still consider Denny's Beer Barrel Pub to be a showcase site?
 22 A Well, being that the showcase site is a restaurant
 23 that is supposed to be promoting what a great business Batcho
 24 Office Systems is, obviously, they're not. Because Denny had
 25 called me because he was angry and upset with Batcho so he is,

MARYANN CORNELIUS (814) 536-7450

1 Q Well, but that's not what you say, do you agree?
 2 A Well, that, obviously, isn't what I say, but if you
 3 read my next sentence --
 4 Q Well, we're going to get to that.
 5 A -- missing the payment. ASI never made any attempt
 6 to recover the software key. The software key is the same
 7 thing as the license.
 8 Q All right.
 9 A It's just like if you were driving a car that, you
 10 know, you're driving it, but it's -- it might not belong to
 11 you, that means you own it illegally.
 12 Q So, when you state that they did not have a valid
 13 license, what you meant was that ASI had never been paid --
 14 A Yes.
 15 Q -- for the license?
 16 A That's right.
 17 Q Now I'm confused. I thought that license was given
 18 to Batcho free of charge in order to set up the showcase site
 19 for Denny's Beer Barrel Pub?
 20 A Well, if you look at the letter, let's see, dated on
 21 July 8th of 2005, after I had had the conversation with Jason
 22 Unch in May and after my associate Kevin had talked to him in
 23 June, we did tell Batcho, listen, you know what, you're not
 24 really qualified right now to do a showcase site. In other
 25 words, you're not -- we're not going to give you free

MARYANN CORNELIUS (814) 536-7450

1 obviously, not being a reference site and feeling that he
 2 wants to tell other restaurants to buy POS systems from
 3 Batcho.
 4 Q Okay. Miss Wilson, I'd like to refer to another
 5 E-mail dated Wednesday, April 4th, 2007. Do you have that in
 6 your possession?
 7 A Let's see, Wednesday, April 4th, from whom to whom?
 8 Q That would have been from you to Dennis Liegey.
 9 A Okay. Yes, I have it.
 10 Q Okay. I would like to go through that E-mail with
 11 you. The first sentence is, the wholesale cost of the
 12 restaurant manager software license issued in your name was
 13 \$6,100, correct?
 14 A Uh-huh.
 15 Q ASI invoiced Batcho Office Systems for this amount
 16 on July 18, 2005?
 17 A Uh-huh.
 18 Q Is that correct?
 19 A Yes.
 20 Q Unfortunately, the invoice was never paid which
 21 means Denny's Beer Barrel Pub does not have a valid license to
 22 use the restaurant manager's software?
 23 A Well, again, I'm afraid as I read back on my letters
 24 I don't speak very well, it's a bad choice of words. What I
 25 mean is that ASI never got paid.

MARYANN CORNELIUS (814) 536-7450

1 software. But you're making a good case that you haven't had
 2 the time to sell our software in the last year, but that now
 3 you're going to work at it really hard so we'll give you this
 4 license for free as long as you meet sales quotas over the
 5 next six months. If you don't meet those sales quotas, then
 6 we're going to ask you to pay for the software.
 7 Q Okay. That was the letter from ASI to Batcho, is
 8 that correct?
 9 A That's correct.
 10 Q Do you have a copy of that letter?
 11 A I do, yes, or at least I have a copy of it pasted
 12 into my notes. Let me see if I have a printout of it here
 13 right now. Yes, I have a copy of the E-mail here also.
 14 Q And, I'm sorry, what was the date of that letter to
 15 Mr. Unch?
 16 A July 8th, 2005.
 17 Q Okay. So as of July 8th, 2005, the showcase site
 18 deal was still on, is that right?
 19 A What was on was that I would give Batcho's a free
 20 license if they agreed to generate sales of a certain volume
 21 by the end of the year.
 22 Q Well, did Batcho tell you that they were going to
 23 designate Denny's Beer Barrel Pub as a showcase site?
 24 A He did, and I actually told him -- do you want me to
 25 read out part of the letter to you?

MARYANN CORNELIUS (814) 536-7450

EXHIBIT "18"

Subject: Invoice for license

Date: Fri, 07 Jul 2005 14:09:43 -0500

From: Lisa Wilson <lwilson@actionssystem.com>

To: Jason Unch <pos@bosisp.com>

I have reviewed the qualifications of Denny's Beer Barrel Pub and find the site well qualified to serve as a strong reference site for Batcho's Office Systems. Given the reputation of the restaurant and the commitment of the owner, I am confident this site is in a position to help you generate new business in the local restaurant community.

Therefore, in exchange for your commitment to meet Batcho's sales quota for the second half of 2005, I would like to offer an extension on the reference site software that most new ASI resellers are required to install during their first year. In other words, if the Denny's installation does help you secure more business and if you are able to sell at least 5 more site licenses restaurants between now and December 31, 2005 ASI will waive the entire invoice for the software you install there.

However, because we are going beyond the standard one year expiration date on the reference site offer, we will process it differently than we do during the initial dealership launch period:

When you place the order for the reference site software, ASI will invoice you for the full value of the software. But the invoice will be issued 120 days net... (or however many days are pending until December 31, 2005.) If you then order an additional 5 software licenses before December 31, 2005, ASI will waive the entire invoice for the Denny's system. However, if Denny's is NOT able to help you secure 5 more sales in 2005 then, clearly, they will not have lived up to their end of the bargain in terms of boosting your sales.

I suggest you explain the situation clearly to the restaurant owner to make sure he understands what's involved in being a reference site for you. In fact, to make things clear you should ask him to shoulder part of the responsibility for serving as a reference site by passing our deal on to him: Tell him that if he helps you close five more sales between now and the end of the year you can give him the entire software package for free. If, however, he cannot use his standing in the restaurant community to help you generate new business, then you can give him only a 50% discount on the list price of the software.

And come what may this site WILL be eligible for a 50% discount simply by virtue of the fact that they're replacing a competitive POS System within 12 months of purchase. This 50% competitive upgrade discount will be applied to the Denny's invoice as soon as you submit to ASI:

the invoice Denny's paid to purchase the competitive software
the competitive software key of hard-drive, etc (whatever it is
that represents the license purchased)

The competitive upgrade discount is applicable regardless of future sales you may or may not make in 2005.

Yours,
Lisa

--
Lisa Wilson
ASI, Managing Vice President
(301) 445-6100 x104

DEPOSITION
EXHIBIT
2
ESN 4-7-05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: STIPULATION

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED ICC A44
01/10/2008 Seaman
DEC 15 2008
LM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

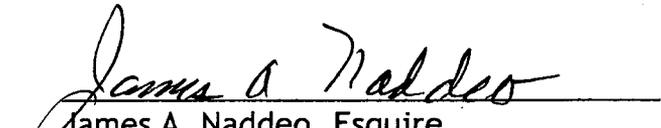
STIPULATION

The parties herein do hereby stipulate and agree that Additional Defendant, BATCHO OFFICE SYSTEMS, at all times relevant to these proceedings, was not an Agent of Defendant, Action Systems, Inc. ("ASI"), but rather a dealer/reseller, which was authorized to sell, install and service ASI products, after purchasing the same from ASI.



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Date: April 6, 2009



James A. Naddeo, Esquire
Attorney for Plaintiff,
Denny's Beer Barrel Pub, Inc.

Date: April 7, 2009

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC. :

vs. :

No. 07-1351-CD

ACTION SYSTEMS, INC. :

vs. :

BATCHO BUSINESS MACHINES, :
INC., t/d/b/a BATCHO OFFICE :
SYSTEMS, and Andrew G. Batcho, a/k/a :
Andrew G. Batcho, Sr., and Linda L. :
Batcho, Husband and Wife, t/d/b/a :
Batcho Office Systems :

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013-00301
DEC 15 2009 CIA

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 15th day of December, 2009, it is the ORDER of the

Court that the above-captioned matter is scheduled for Arbitration on **Thursday, January 21, 2010 at 1:00 P.M.** in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

Richard H. Milgrub, Esquire, Chairman

Girard Kasubick, Esquire

Ronald L. Collins, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form in enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :

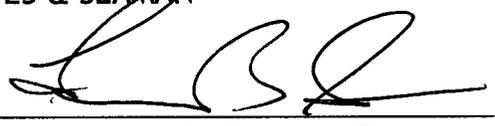
CERTIFICATE OF SERVICE

I hereby certify that a certified copy of Defendant's MOTION FOR SUMMARY JUDGMENT, and attached ORDER, was forwarded by U. S. Mail, postage prepaid, on the 15th day of December, 2009, to:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

Glenn Batcho
BATCHO OFFICE SYSTEMS
115 East Market Street
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

FILED

0 11:24 a.m. 6E

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *
v. * No. 2007 - 1351 - CD
Action Systems, Inc, *
Defendant. *
*

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

NOW COMES the Plaintiff, Denny's Beer Barrel Pub, Inc., and by its attorney, James A. Naddeo, Esquire, hereby responds to the motion for summary judgment filed by Defendant, Action Systems, Inc., as follows:

1. Plaintiff would concede that Batcho's is not an agent of ASI and therefore that there is no privity of contract between the parties.

2. Plaintiff is choosing to proceed with Count II of its Amended Complaint which deals with promissory estoppel.

3. Plaintiff purchased the ASI restaurant manager software because he was promised to be a showcase cite with which came certain benefits. See Affidavit of Dennis Liegey which is attached hereto.

4. Plaintiff did not receive the benefits as promised when he agreed to purchase the software. See Affidavit of Dennis Liegey.

5. Plaintiff was advised that he was operating the restaurant manager software at his location "illegally." See Affidavit of Dennis Liegey.

6. As a result, Plaintiff currently does not have a "legal" operating restaurant manager software system as was promised by ASI. See Affidavit of Dennis Liegey.

7. When Plaintiff was advised that his software system was "illegal" he understood this to mean he was no longer a showcase cite. See Affidavit of Dennis Liegey.

8. Plaintiff was refused upgrades and updates necessary to have the software system operate properly. See Affidavit of Dennis Liegey.

9. Plaintiff has no operating "legal" restaurant manager software system as promised. See Affidavit of Dennis Liegey.

10. Plaintiff's Affidavit as attached hereto is consistent with his deposition. True and correct copy of Deposition of Dennis Liegey, Jr. is attached hereto as Exhibit "B."

11. Defendant is misconstruing the statements of Mr. Liegey in an attempt to allege that he has admitted he did receive all of the benefits as promised. Mr. Liegey never stated this. See Exhibit "B."

12. Defendant asserts that ASI "never withdrew" the showcase cite at Paragraphs 33 of its motion for summary judgment. Defendant offers the Deposition of Lisa Wilson as proof of this assertion.

13. Plaintiff would represent that the same testimony offered for proof by Defendant is in fact proof of the opposite, that the showcase cite was pulled. Lisa Wilson states therein "obviously they're not" (referring to Denny's not being a showcase site). True and correct copy of Deposition of Lisa Wilson is attached hereto as Exhibit "C." See p. 33, line 11-25; p. 34, lines 1-3.

14. Plaintiff alleges that the email from Lisa Wilson of ASI which is attached to Affidavit of Dennis Liegey hereto is proof that the showcase cite was in fact withdrawn.

15. There are several issues of fact to be determined in this case. One, is what were the benefits of becoming a showcase cite. Two, is did Plaintiff receive the benefits as promised. Three, is was the showcase cite status withdrawn by ASI. Four, if and when it was withdrawn what benefits had been received and not received by Plaintiff.

16. Based upon the foregoing Plaintiff submits that there are numerous issues of fact that must be determined by the trier of fact and that Defendant cannot be entitled to judgment as a matter of law.

WHEREFORE, Plaintiff, Denny's Beer Barrel Pub, Inc., respectfully requests the motion for summary judgment filed by Defendant be denied.

NADDEO & LEWIS, LLC

By James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Response to Motion for Summary Judgment was served on the following and in the following manner on the 24th day of December, 2009:

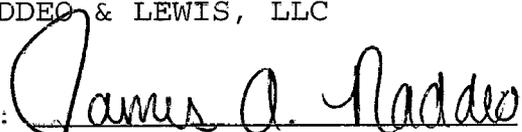
First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *
v. * No. 2007 - 1351 - CD
Action Systems, Inc, *
Defendant. *
*

AFFIDAVIT OF DENNIS LIEGEY, JR. PRESIDENT OF DENNY'S
BEER BARREL PUB, INC.

COMES NOW, the undersigned, who being duly sworn according to law, and based upon personal knowledge of the facts stated herein, deposes and says as follows:

1. The Affiant is Dennis Liegey, Jr., an adult individual who is the President of Denny's Beer Barrel Pub, Inc. ("Denny's") and was so during the course of the dealings which are the subject of the above-captioned litigation.

2. That as President of Denny's, Affiant has personal knowledge and information regarding the herein discussed facts and circumstances.

3. That Affiant only purchased the restaurant manager software of ASI because he was promised to become a showcase cite which included several benefits.

4. That the benefits included with agreeing to become a showcase cite were as follows: a reduced price on the restaurant manager software system; restaurant manager software system "add-ons" (i.e. software modules not included in the base software

Exhibit "A"

package such as, accounting modules, employee scheduling, customer loyalty, and inventory control); upgrades and software updates provided at no cost; Denny's business name would be utilized in advertising materials that would be distributed for advertising purposes; a continued business relationship that would be beneficial to both parties.

5. That when you purchase the restaurant manager software you are provided a license to use said software as is the case with most software on the market.

6. That after Denny's purchased the restaurant manager software at a reduced cost and was acting as a showcase cite, Lisa Wilson of ASI advised me in an email that Denny's did not have a valid license to use the restaurant manager software and that Denny's was using an illegal software license to which no software upgrades would be provided. Email of Lisa Wilson is attached hereto.

7. That when I received this email I understood it to mean that I was no longer a showcase cite as I was told the software I was utilizing was "illegal" and would not be serviced with upgrades.

8. That additionally the upgrades were necessary and critical to the working of the software and without the same it would not and does not operate as intended.

9. That I never received the benefit of advertising as was promised when I purchased the software and agreed to become a showcase cite.

10. That the benefit of "free" advertising was of particular significance to me as a business owner.

11. That Denny's fulfilled its side of the obligation as a showcase cite in that Denny's was available for local businesses to be shown the restaurant manager software at my restaurant as agreed. Denny's was instrumental in having one local business purchase the restaurant manager software after seeing that Denny's utilized it.

12. Despite this, Denny's was advised by ASI that it was operating the restaurant manager software illegally and Denny's never received the benefit of advertising, the continued beneficial business relationship or the upgrades and updates necessary for the working of the software.


Dennis Liegey, Jr., President
Denny's Beer Barrel Pub, Inc.

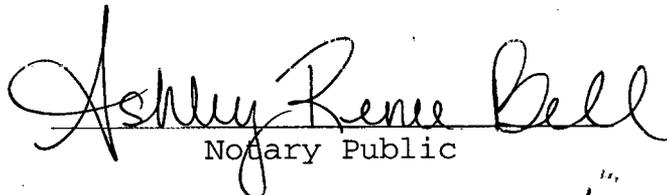
STATE OF PENNSYLVANIA)
COUNTY OF CLEARFIELD)

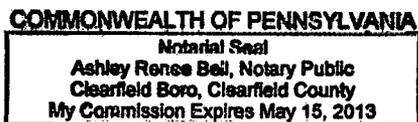
ss.

On this 24th day of December, 2009, before me, the undersigned officer, personally appeared DENNIS LIEGEY, JR., known to me (or satisfactorily proven) to be the person

whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public



INBOX Compose Folders Options Search Problem? Junk Mail Help Address Book Logout Open Folder

INBOX: Re: Support (5 of 163)

Move | Copy This message to

Back to INBOX

Delete | Reply | Reply to All | Forward | Redirect | Message Source | Save as | Print

Date: Wed, 04 Apr 2007 14:30:43 -0400**From:** Lisa <lwilson@actionssystems.com>**To:** dennypub@pennswoods.net**Cc:** pos@bosisp.com, phspos@comcast.net**Subject:** Re: Support

Dear Dennis --

The wholesale cost on the Restaurant Manager software license issued in your name was \$6,100. ASI invoiced Batcho's Office Systems for this amount on July 18, 2005. Unfortunately, the invoice was never paid which means Denny's Beer Barrel Pub does not have a valid license to use the Restaurant Manager software.

ASI has never made any attempt to recover the software key that allows you to use this illegal software license and we have no plans to do so in the future. However, we cannot issue any software upgrades or otherwise service the license you're using until we receive payment on the original license.

I have indicated to Pittsburgh Hospitality ASI's willingness to discount the amount due on the original license issued in your name if they get Denny's on an annual maintenance contract. If this is an option of interest to you, please discuss it further with Jeff Knapton.

Alternatively, you may wish to contact Batcho's Office Systems and urge them to pay off the original invoice.

Yours,

Lisa Wilson
 ASI Managing Vice President
 (301) 445-6100 x104

dennypub@pennswoods.net wrote:

> Lisa I just spoke with Pittsburgh Hospitality (Jeff) concerning our system
 > here At Denny's Beer Barrel Pub.I was shocked to here that Batcho Business
 > Machines here in Clearfield never secured a license for our software ,when
 > selling us on Restraunt Manager.We were charged \$17,603.00 and we already had
 > all hardware and wiring in place and were told we were given a break for us to
 > be a site to showcase your product in our area,we however were never told we
 > did not or would not have a license for our software.We engaged in all forms
 > OF TRAINING that were required as presented to us By Batchos, (JASON
 > UNCH)AND(THOMAS QUINN).We also were instrumental in securing the Clearfield
 > Country Club for the sale of your system in having board members observe our
 > system and us going to their board meeting with Jason and tom and speaking on
 > their behalf about the system.We have had major problems with our system from
 > the beginning and have had Batchos here countless times,we even purchased new
 > hardware on their say so as the root of all our problems.But still have many
 > unsolved issues.I also am very unhappy that ASI would allow someone to sell
 > anything related to their company that needed licensed and not contact us about
 > that problem.We have wasted countless dollars and lost countless dollars due to
 > all the software problems we have had.I will be meting with Jeff from

> Pittsburgh Hospitality in the near future to try to resolve our issues. We also
> will pursue legal action against Batchos after we know the extent of what has or
> hasn't been done. I also have issues in paying \$4360.25 for software licenses we
> were promised from the beginning and were told we had. If there is a solution
> that can be arranged between Denny's Beer Barrel Pub Inc and ASI, please
> contact us by email or you may call me on my Mobile line 814-577-2733. Thank you
> for your time.
Dennis Liegey, President

Delete | Reply | Reply to All | Forward | Redirect | Message Source | Save as | Print

Back to INBOX ◀▶

Move | Copy This message to

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DENNY'S BEER BARREL PUB INC.,)

Plaintiff,)

vs.)

ACTION SYSTEMS, INC.)

Defendant,)

vs.)

BATCHO BUSINESS MACHINES INC.,)

t/b/d/a BATCHO OFFICE SYSTEM,)

and ANDREW G. BATCHO, a/k/a)

ANDREW G. BATCHO, SR., and)

LINDA L. BATCHO, husband and)

wife, t/d/b/a BATCHO OFFICE)

SYSTEMS,)

Additional Defendants,)

OCT 31 2008

No. 07-1351-CD

**Certified
Copy**

PROCEEDINGS: Deposition of
DENNIS LIEGEY, JR.

DATE: October 14, 2008

TIME: 1:44 p.m. - 3:49 p.m.

PLACE: Gates & Seaman
Two North Front Street
Clearfield, Pennsylvania 16830

REPORTER: Diane G. Galvin
Professional Court Reporter
Notary Public

ASAP COURT REPORTING
Registered Professional Reporters
167 South McKean Street
Kittanning, Pennsylvania 16201
(814) 472-8009 - (724) 543-4996
FAX: (814) 472-8950 - (724) 543-5054
e-mail: ASAP10@windstream.net

Exhibit "B"

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APPEARANCES

On behalf of the Plaintiff:

JAMES A. NADDEO, ESQUIRE
Law Offices of James A. Naddeo
207 East Market Street
P. O. Box 552
Clearfield, Pennsylvania 16830

On behalf of the Defendants:

LAURANCE B. SEAMAN, ESQUIRE
Gates & Seaman
Two North Front Street
Post Office Box 846
Clearfield, Pennsylvania 16830

Also present:

SMILEY HSU
(Via telephone)

- - -

STIPULATION

It is stipulated and agreed by and among
counsel for the respective parties and the
deponent that the inspection, reading and signing
of the deposition may be and are waived.

- - -

I N D E X

DENNIS F. LIEGEY, JR.

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EXAMINATION	PAGE
By Mr. Seaman	4

EXHIBITS

NUMBER	DESCRIPTION	MARKED
No. 1	E-mail Dated July 7, 2005	35
No. 2	Invoice Dated July 8, 2005	43
No. 3	Quotation	66
No. 4	INBOX Tech Support	73
No. 5	E-mail Dated April 4, 2007	74
No. 6	End User License Agreement	91
No. 7	Invoice from ASI	92
No. 8	Copy of Business Card	108

DENNIS F. LIEGEY, JR.

the deponent, having been first duly sworn, was
deposed and testified as follows:

- - -

EXAMINATION

BY MR. SEAMAN:

Q. Mr. Liegey, my name is Larry Seaman. I
represent the Defendant, Action Systems, Inc., in
this lawsuit that your corporation has brought
against it.

Do you understand that?

A. I do.

Q. You understand that in taking your
deposition today, I'm going to be asking you
questions about a whole range of things and that I
need you to respond to each question with an
answer, a vocal answer, not a nod of the head or
an uh-huh or an huh-uh, but a yes or no or a
verbal answer, okay?

A. Yes.

Q. If at any time you can't hear me or you
don't understand the question or you're not sure what
the question is or what I'm asking, say so. Let
me know that, okay?

A. Sure.

1 Q. If you don't, if you answer the question,
2 then I can only assume that you fully understood
3 it and answered it to the best of your ability.
4 Is that okay?

5 A. That's okay.

6 MR. SEAMAN: Jim, do you want to reserve
7 all objections except as to the form of the
8 question until time of trial?

9 MR. NADDEO: That would be acceptable,
10 yes.

11 MR. SEAMAN: Do you have any other input
12 at this time, Jim?

13 MR. NADDEO: No, I do not.

14 BY MR. SEAMAN:

15 Q. One other thing, Mr. Liegey. At any time
16 while we're taking your deposition, you have the
17 right to stop the questioning and answering and
18 consult with your attorney, Mr. Naddeo, outside of
19 the presence of anybody else.

20 Do you understand that?

21 A. I do.

22 Q. Would you state your full name, please.

23 A. Dennis Francis Liegey, Junior.

24 Q. And what is your address, please? Where
25 do you live?

- 1 A. 64 Corner Lane, Clearfield, Pennsylvania.
- 2 Q. And your age, please?
- 3 A. It's 56.
- 4 Q. Are you married?
- 5 A. Yes, I am.
- 6 Q. And your wife's name, please?
- 7 A. Jean.
- 8 Q. J-E-A-N?
- 9 A. J-E-A-N.
- 10 Q. Do you have any children?
- 11 A. Two.
- 12 Q. Would you give us their names, please?
- 13 A. Stephanie and Dennis, III.
- 14 Q. Is Stephanie married?
- 15 A. Yes, she is.
- 16 Q. Would you give me her full name?
- 17 A. Stephanie Lukens.
- 18 Q. Lucus?
- 19 A. Lukens.
- 20 Q. Would you spell that for me?
- 21 A. L-U-K-E-N-S.
- 22 Q. Thank you.
- 23 And your son's name?
- 24 A. Dennis Liegey, III.
- 25 Q. I assume there was a Senior. That was

1 your father?

2 A. Dennis Liegey, Sr. was my father.

3 Q. He's deceased now?

4 A. He is deceased, yes.

5 Q. All right. Thank you.

6 What business are you engaged in,

7 Mr. Liegey?

8 A. I own a restaurant and pub here in

9 Clearfield, Pennsylvania.

10 Q. What's the name of that?

11 A. Denny's Beer Barrel Pub, Incorporated.

12 Q. And in what state is that incorporated?

13 A. Pennsylvania.

14 Q. And its principal office would be where?

15 A. Clearfield.

16 Q. Do you have a street?

17 A. 64 Corner Lane, Clearfield, PA.

18 Q. Could you give me just a little of your

19 background? Were you born and raised in

20 Clearfield?

21 A. Born and raised -- I was born and raised

22 in Clearfield. I have been in the restaurant

23 business for 31 years.

24 Q. High school graduate?

25 A. Yes.

1 Q. From which high school?

2 A. Clearfield Area High School.

3 Q. And when was that?

4 A. 1970.

5 Q. Were you ever involved in any business --
6 strike that.

7 You said the restaurant business for
8 31 years. Any restaurant business prior to
9 Denny's Beer Barrel Pub?

10 A. No.

11 Q. Has the whole time of your restaurant
12 business been at the same location?

13 A. No.

14 Q. Where was it located before?

15 A. The 1400 block of Daisy Street.

16 Q. But operated under the same name?

17 A. No.

18 Q. What name then?

19 A. The Friendly Tavern for approximately a
20 year-and-a-half.

21 Q. Any particular reason for the change in
22 name and location?

23 A. Location was for more room. The name
24 just changed plainly.

25 Q. With regards to the corporation, who are

1 the shareholders of the corporation?

2 A. Myself, Dennis Liegey, Jean Liegey and
3 Dennis Liegey, III.

4 Q. You, your wife and your son?

5 A. Correct.

6 Q. And do you have a board of directors?

7 A. No..

8 Q. The corporation is operated by the
9 shareholders then?

10 A. Correct.

11 Q. Do you have officers?

12 A. Yes.

13 Q. And would you give me the names of the
14 officers and positions, please.

15 A. Dennis F. Liegey, Jr., President;
16 Dennis F. Liegey, III, Vice President;
17 Jean Liegey, secretary.

18 Q. Does your wife -- is she involved in the
19 operation of the business day-to-day?

20 A. No.

21 Q. Is your son involved in the business,
22 operation of the business day-to-day?

23 A. Yes.

24 Q. And what does he do?

25 A. He's the manager. He's the overall

1 manager of the business.

2 Q. That business has a liquor license?

3 A. Yes, it does.

4 Q. From the Commonwealth of Pennsylvania?

5 A. Yes, it does.

6 Q. And is he listed as the manager of that?

7 A. Yes, he is.

8 Q. What part do you play in the business?

9 A. I'm the operations manager, purchasing,
10 catering. I try to golf.

11 Q. You try to golf?

12 A. Yeah, I try to golf as much as I can.

13 Q. The day-to-day business, is that run by
14 your son or more by you?

15 A. Both. Both.

16 Q. Who's principally involved in entering
17 into contracts for purchases of equipment and
18 supplies?

19 A. Myself and my son also. It's both
20 parties.

21 Q. Okay. Prior to the deposition today, did
22 you review any materials in preparation for your
23 testimony here?

24 A. No.

25 Q. You didn't look at any of the pleadings

1 in the case or discovery?

2 A. No.

3 Q. You didn't review any e-mails or
4 correspondence?

5 A. Yes, I did.

6 Q. So you did review some material then in
7 preparation for the deposition?

8 A. Yes.

9 Q. Would you tell me what those were,
10 please?

11 A. Date of -- date of license for ASA.

12 Q. Date of license?

13 A. For software.

14 Q. And what gave you the date of the license
15 of the software?

16 A. E-mail.

17 Q. E-mail from who to who and dated when?

18 A. Lisa Wilson and...

19 Q. From Lisa Wilson or to Lisa Wilson?

20 A. From Lisa Wilson.

21 Q. To whom?

22 A. To me, Dennis Liegey.

23 Q. And what was the date of that?

24 Was that an e-mail?

25 A. Yes. There was a David Eckles involved

1 also.

2 Q. In that same e-mail?

3 A. I believe so.

4 Q. You said that the e-mail was from Lisa to
5 you?

6 A. Yes.

7 Q. How was David Eckles involved in that
8 e-mail?

9 A. He was part of that entire scenario that
10 we were involved in at that time.

11 Q. I'm not asking you what all went on. I'm
12 just asking you in reference to the e-mails that
13 you reviewed --

14 Does your attorney have the e-mails that
15 you reviewed?

16 A. He does.

17 Q. Would you get them from him, please, and
18 tell me which ones you reviewed and the dates and
19 who they were from and who they were to.

20 A. From Lisa Wilson to Pittsburgh
21 Hospitality, carbon copy to Denny's Beer Barrel
22 Pub.

23 Q. And what's the date of that?

24 A. That one is September 4, 2006.

25 Q. Thank you.

1 And what's the next one?

2 MR. NADDEO: Did you review any others?

3 THE WITNESS: No, that was it.

4 BY MR. SEAMAN:

5 Q. That's the only e-mail that you reviewed
6 prior to the deposition today?

7 A. Yes, this e-mail.

8 Q. Were there other e-mails that your
9 attorney handed you?

10 A. No.

11 MR. NADDEO: I'm going to -- I don't
12 under- -- do you mean other e-mails that he
13 reviewed. I think he's already stated that the
14 only e-mail he reviewed is the one that he's
15 identified.

16 MR. SEAMAN: That's fine. I'll withdraw
17 the question.

18 Q. And you said you reviewed that to
19 determine the date of the license of the software?

20 A. Correct.

21 Q. What was the date of the license of the
22 software?

23 A. July 18, 2005.

24 Q. And could you show me on that e-mail
25 where that information was -- I can't see it from

1 there.

2 A. Bottom left-hand corner.

3 Q. There is a date of July 18, 2005, and
4 after that all in capital letters it says,
5 software license issued for, F-O-R, colon,
6 correct?

7 A. I'll have to review it.

8 MR. NADDEO: Here's a copy.

9 THE WITNESS: Correct.

10 BY MR. SEAMAN:

11 Q. So what about that tells you that that
12 was the date that the license for the software --
13 that that was the date of the license for the
14 software?

15 A. It's the approximate time of the
16 agreement.

17 Q. Approximate time of what agreement?

18 A. The agreement for the Showcase Site from
19 ASI and Batcho's.

20 Q. We've talked about ASI and that you have
21 brought suit against them for some software system
22 that you purchased from Batcho's Office Systems;
23 is that correct?

24 A. Correct.

25 Q. Prior to that -- prior to buying that

1 system from Batcho's, did you have in operation at
2 your restaurant any other system to help you with
3 the operation of the -- computer system to help
4 you with the operation of your restaurant
5 business?

6 A. Yes.

7 Q. And when did you get that system? When
8 was that put in place?

9 A. The fall of 2004.

10 Q. And who did you acquire that system from?

11 A. iExpediter.

12 Q. I?

13 A. Expediter.

14 Q. Two words?

15 A. I think it's one long word.

16 Q. Where is that outfit? Where is that
17 organization from?

18 A. Charleston, West Virginia.

19 Q. And would you describe for me what that
20 system was composed of?

21 A. I don't understand your question.

22 Q. You had a system in place that helped you
23 operate your restaurant business prior to
24 purchasing from Batcho's the software of ASI; is
25 that right?

1 A. Correct.

2 Q. What was that system composed of? Did it
3 have hardware, did it have computers, did it have
4 software? What did it have?

5 A. It had hardware; it had software.

6 Q. Describe for me the hardware, please.

7 A. The hardware was independent computer
8 bases at five stations.

9 Q. Do you know what kind of computers they
10 were?

11 A. No, not right offhand.

12 Q. Each one was independent or were they
13 networked together?

14 A. They were networked but they were
15 independent. If one went down, the rest of them
16 would operate.

17 Q. And did you have --

18 What else composed that system? What
19 else made up that system besides the hardware?

20 A. It had several modules in it of
21 inventory, credit card, interface, menus, that
22 type.

23 Q. How was that system used? What use did
24 you make of it?

25 A. It was a direct link between my servers,

1 their guests, the bar and the kitchen.

2 Q. What would a server do? What would the
3 server's use of it be?

4 A. The servers would go to the terminal and
5 place their orders.

6 Q. Did that system have any handheld units?

7 A. No.

8 Q. Did you acquire, did you purchase the
9 entire hardware and software system from
10 iExpediter?

11 A. Yes, I did.

12 Q. How long did you operate that system?

13 A. Approximately one year.

14 Q. What happened that you only used it for
15 one year?

16 A. Proposal from ASI.

17 Q. Was the proposal directly from ASI or was
18 it --

19 A. Batcho's.

20 Q. -- from Batcho's Office Systems?

21 A. Batcho and ASI together.

22 Q. Both together?

23 A. Absolutely.

24 Q. Did somebody from each organization come
25 visit with you?

1 A. Telephone.

2 Q. Why did you even consider another system?

3 A. Distance for repair.

4 Q. What was the problem with distance for
5 repair?

6 A. Charleston, West Virginia, is
7 three-and-a-half hours away, and we had a local
8 rep and I wanted to look at that.

9 Q. Okay. There was nobody local to service
10 the iExpediter system?

11 A. No.

12 Q. Did that system have a name? Was it
13 called anything?

14 A. Silverware.

15 Q. Did you have any problems with that
16 system?

17 A. No.

18 Q. Then why were you concerned about having
19 to have somebody closer to service it?

20 A. The unknown factor. I don't know
21 computers. That's not my expertise.

22 Q. Does your son know computers?

23 A. Basic computer skills.

24 Q. Have either of you had any computer
25 training, either you or your son?

1 A. No.

2 Q. Was that Silverware Restaurant System
3 referred to or called a POS system?

4 A. Yes.

5 Q. What does POS system mean?

6 A. It's a solutions system, positive
7 solution system.

8 Q. Point of service?

9 A. Point of service, yeah.

10 Q. Would that be correct, point of service?

11 A. That sounds correct.

12 Q. So during the approximate year you said
13 that you had that Silverware system, you never had
14 any problems with it. Would that be a fair
15 statement?

16 A. Programming initially.

17 Q. Okay, programming initially.

18 What kind of programming problems did you
19 have initially?

20 A. Just knowing how to set prices.

21 Q. Okay.

22 A. That was it.

23 Q. Okay. And once you got your prices set
24 in the system, you did not have any further
25 problems at all with this system?

1 A. Not that I can recall.

2 Q. Do you recall the name of the contact,
3 the person who you dealt with at iExpediter?

4 A. Thomas Small.

5 Q. And he was at that Charleston, West
6 Virginia site?

7 A. Yes.

8 Q. Was he the person who actually came to
9 your location and installed that Silverware
10 system?

11 A. He was.

12 Q. Anybody else from iExpediter do anything
13 on your system that you knew of?

14 A. Not that I recall.

15 Q. Why were you interested in looking at
16 another system?

17 A. More features.

18 Q. Such as what?

19 A. Let me think. Better reporting.

20 Q. What do you mean by better reporting?

21 A. Reporting on quantities of product sold.

22 Q. Trying to keep track of what you sold?

23 A. Absolutely. A better inventory-base
24 system.

25 Q. Any other features you were looking for?

1 A. Not that I recall.

2 Q. What did you first do when you started
3 thinking about looking for another system? Did
4 you contact anybody?

5 A. No.

6 Q. Did somebody contact you?

7 A. Yes.

8 Q. Who was the first contact you had with
9 regards to the -- with regards to the system you
10 bought from Batcho's?

11 A. Jason Unch.

12 Q. Do you know what his position was with
13 Batcho's Office Systems?

14 A. No.

15 Q. What did you think he was? Did you think
16 he was an owner, an employee?

17 A. Salesman.

18 Q. Did you have contact with any other
19 representatives of Batcho Office Systems?

20 A. Thomas Quinn.

21 Q. And was that -- that was after you had
22 the contact with Jason Unch?

23 A. I believe it was at the same time.

24 Q. Do you recall, did they come to see you
25 at your place of business?

1 A. Yes, they did.

2 Q. And what did they tell you? What did
3 they say to you when they came to see you?

4 A. That they were now a dealership for
5 Restaurant Manager and ASI.

6 Q. Is that all they said?

7 A. And they knew we had bought a system and
8 had a new system in place, and this one had more
9 bells and whistles.

10 I said I wasn't interested at that
11 particular time.

12 Q. Okay. When did you next have contact
13 with Jason Unch?

14 A. I believe it was a month later at a food
15 show.

16 Q. Do you recall when that was that you had
17 the first contact with Jason?

18 A. It was in the spring.

19 Q. I'm sorry. I should have -- I didn't
20 say -- I should have said Jason and Tom because
21 you said they were together.

22 A. It was in the spring of '05.

23 Q. Was there still any snow on the ground?

24 A. I don't recall.

25 Q. Is there any event that happened in 2005

1 that you can relate that to as to when that was,
2 such as a birthday of your family or an
3 anniversary or anything like that?

4 A. Food show.

5 Q. It was before the food show, about a
6 month before you said?

7 A. A couple weeks to a month probably --
8 possibly.

9 Q. And where was the food show?

10 A. In Pittsburgh at the David Lawrence
11 Center.

12 Q. Is the food show something you regularly
13 attend?

14 A. Yes.

15 Q. Is it always held in Pittsburgh at the
16 David Lawrence Center?

17 A. No.

18 Q. But the one in 2005 was?

19 A. The one I attended was.

20 Q. In 2005?

21 A. Correct.

22 Q. Did you see Jason and Tom both there at
23 that food show?

24 A. I believe I seen them both.

25 Q. And did you have a conversation with

1 them?

2 A. Yes.

3 Q. What was it about?

4 A. They had a splice set up of Restaurant
5 Manager and they just showed me an operating
6 system.

7 Q. Okay.

8 A. Kind of a demo, let's say.

9 Q. What do you recall about the demo that
10 you saw?

11 A. Not very much. It was just a demo.

12 Q. Was there anything about the demo that
13 intrigued you, that made you more interested in
14 perhaps purchasing from Batcho's that system?

15 A. Not at that time.

16 Q. When did you next have any contact with
17 Jason Unch or Tom Quinn?

18 A. I believe it to be a month or so later.

19 Q. And where did that contact take place?

20 A. At the restaurant, at Denny's Beer Barrel
21 Pub.

22 Q. They came to see you together?

23 A. Yes, they did.

24 Q. Both of them?

25 A. Yes.

1 Q. And what took place at that time?

2 A. They brought a computer with some images
3 of us with our big burgers, just to show us what
4 they could do if we switched over to Restaurant
5 Manager.

6 Q. Do you remember how long that meeting
7 took place?

8 A. It was during lunch. Ten minutes maybe.

9 Q. They hit you at the busiest time of the
10 day.

11 A. Absolutely. Absolutely.

12 Q. At that point were you interested in
13 buying it?

14 A. No.

15 Q. Did they at that point tell you anything
16 about prices or what it would cost?

17 A. I can't recall if it was at that time.

18 Q. Had they maybe before that told you
19 anything about prices?

20 A. No, not really. I didn't inquire.

21 Q. When did you next have contact with
22 Jason Unch and/or Tom Quinn?

23 A. It was more towards the end of June of
24 '05, in there somewhere.

25 Q. Okay. And where did that contact take

1 place?

2 A. At the restaurant, Denny's Beer Barrel
3 Pub.

4 Q. Did both of them come to see you again?

5 A. Yes, they did.

6 Q. I assume -- did they call you before they
7 came or just show up on your door?

8 A. I don't recall.

9 Q. Did they get you at lunchtime again?

10 A. I don't recall that either. I believe it
11 was after this time.

12 Q. And what took place between the three of
13 you at that meeting near the end of June of '05?

14 A. They brought a little bit more updated
15 system, not really anything pertaining to our
16 operation. It was like a demo operation. It
17 still had our images in the computer.

18 Q. Was it more than what they showed you at
19 the food show of a demo?

20 A. Yes.

21 Q. At that point were you starting to get
22 interested?

23 A. I was listening.

24 Q. What did you tell them when they left
25 that meeting?

1 A. Maybe.

2 Q. When did you next see Jason Unch and/or
3 Tom Quinn, or have contact with them by phone or
4 e-mail, whatever type of contact you might have
5 had?

6 A. I would say maybe a week later, maybe.

7 Q. And --

8 A. Maybe more.

9 Q. Somewhere around a week. It could have
10 been a little -- it could have been a month?

11 A. Sure.

12 Q. It wouldn't have been a month?

13 A. I don't believe so. I believe it was at
14 the end of June into the first week of July in
15 some aspect somewhere. I don't actually recall
16 the exact date.

17 Q. You didn't keep a diary or anything?

18 A. Absolutely not.

19 Q. What took place --

20 Was that with Jason and Tom both?

21 A. Jason and Tom again. My son, Dennis, was
22 there at that time.

23 Q. Was that the first time that your son had
24 met with them?

25 A. Dennis had met with them every time. He

1 was there on every occasion.

2 Q. Okay. And what took place at that
3 meeting?

4 A. At that particular time Jason said, I
5 have some numbers for you if you want to hear
6 them. I said, sure, I'll listen to what you have
7 to say.

8 So he told me that for approximately -- I
9 want to say -- I can't recall the exact amount,
10 \$17,000 we could do a switchover from our system,
11 from Restaurant Manager and Silverware, that ASI
12 was offering us a Showcase Site.

13 I asked Jason, please explain that to me.
14 I'm not -- I don't quite understand what you're
15 talking about.

16 Q. What did he say?

17 A. Jason said this includes -- they waive --
18 they waive software fees. They put a package
19 together which included the same things as
20 Silverware had, employee scheduling, credit card
21 interface, all the normal modules that run a POS
22 system.

23 Q. Do you know what some of those other
24 modules were?

25 A. It's in -- yeah, it's table service,

1 customer loyalty program, employee scheduling,
2 inventory. They offered three handheld units,
3 which was the only hardware involved, and licenses
4 for six POS units.

5 Q. Now, what you're referring to, to provide
6 me with the answer to that question, is that same
7 e-mail of September 4, 2006; is that right?

8 A. That is correct.

9 Q. The same one we talked about earlier?

10 A. Yes.

11 Q. When Jason finished telling you all these
12 features and the price, were you interested then?

13 A. Very.

14 Q. How did that meeting end then?

15 A. Well, I asked Jason, I said, could you
16 confirm this with somebody from ASI because he had
17 no paperwork, no proposal in hand. It was just
18 him making a statement. He said, yes, I can get
19 ahold of Lisa Wilson, whom I've been dealing with;
20 I said, fine.

21 Q. When you said whom I've been dealing
22 with, you meant he had been dealing with?

23 A. Who Jason Unch had been dealing with
24 through Batcho's.

25 Q. Okay.

1 A. And I said, fine. So he at that time
2 made a call on his cell phone.

3 Q. Who did he call?

4 A. Lisa Wilson, I'm assuming.

5 Q. Okay. What happened after he spoke? Did
6 you hear him talk to Lisa?

7 A. Yes, I was standing right there. I heard
8 him call ASI, got Lisa on the phone. I was
9 standing there.

10 Q. Okay. Did he have it on speakerphone?

11 A. No.

12 Q. So you couldn't hear what she was saying?

13 A. No, actually not.

14 Q. When Jason finished talking to her --

15 A. He handed me the phone.

16 Q. What happened then? What did you and
17 Lisa talk about?

18 A. I just said, I'm Dennis Liegey. She
19 said, my name is Lisa. I'm understanding you're
20 going to be a Showcase Site for ASI. I said, I
21 guess so. I said, I like what I hear, and I said,
22 could you just confirm some of those things? And
23 she went briefly over some of the things that we
24 just talked about, scheduling, and just briefly
25 over some of that.

1 I can't recall the total conversation.

2 Q. Tell me what you do recall of it.

3 A. That's what I recall. I recall her
4 briefly going over what a Showcase Site was, what
5 it meant.

6 Q. What do you recall from what she said
7 that a Showcase Site was?

8 A. A Showcase Site --

9 Q. What did she tell you? What is it you
10 recall she told you?

11 A. A Showcase Site basically got all the
12 bells and whistles with the system, and we were to
13 be able to show the system to potential buyers.

14 Q. You would be able to?

15 A. Yes.

16 Q. Was there anything said about you being
17 required to show the system to potential buyers?

18 A. I don't recall the verbiage, how she
19 exactly said that.

20 Q. She could have said that?

21 A. Possibly.

22 Q. Do you recall her saying anything about
23 Batcho's having to sell a certain number of units
24 before you would be entitled to all these
25 benefits?

1 A. No.

2 Q. When I say units, I mean sell the same
3 license to other sites, five other sites,
4 restaurant sites?

5 A. I don't recall that.

6 Q. If she had said something like that,
7 would you recall that for sure?

8 MR. NADDEO: Objection. Wait a minute.
9 I object to the form of the question. That calls
10 for speculation.

11 THE WITNESS: I don't recall.

12 MR. SEAMAN: Well, no --

13 MR. NADDEO: You are asking him to
14 speculate as to what she's thinking.

15 MR. SEAMAN: I'll rephrase the question.
16 I'll rephrase the question.

17 Q. You've indicated to me that you don't
18 recall whether she said anything to you about
19 having to -- about Denny's Beer Barrel Pub having
20 to assist Batcho's in the sale of at least five
21 other licenses to restaurant sites in order for
22 Batcho's -- in order for Denny's Beer Barrel Pub
23 to be entitled to Showcase Site designation?

24 A. I do not ever recall hearing that
25 conversation or having that conversation with

1 anyone.

2 Q. Jason Unch, or Tom Quinn, or no one from
3 Batcho's ever showed you an e-mail that they
4 received from Lisa --

5 A. No.

6 Q. -- that set forth those requirements?

7 A. No.

8 Q. Did Jason Unch or Tom Quinn or anyone
9 else on behalf of Batcho's ever tell you that in
10 order for you to get the benefits of being a
11 Showcase Site, Denny's Beer Barrel Pub had to
12 assist Batcho's in the sale of five more licenses
13 at restaurant sites before the end of December 31,
14 2005?

15 A. Absolutely not.

16 Q. Did anyone on behalf of Batcho's ever
17 tell you that you would be entitled to a
18 50 percent discount if you didn't meet the
19 requirements of helping them sell five sites, that
20 you still might be eligible for a 50 percent
21 discount?

22 A. No.

23 Q. Did anyone at Batcho's ever ask you to
24 produce an inventory for the Silverware system
25 that you brought?

1 A. No.

2 Q. Did anyone at Batcho's ever ask you to
3 produce a software key or something to show that
4 you had acquired a license for the Silverware
5 software program?

6 A. Yes.

7 Q. Who asked you that?

8 A. Jason Unch.

9 Q. And when did he ask you that?

10 A. I don't recall.

11 Q. Was it before you agreed to buy the
12 Restaurant Manager software system from Batcho's?

13 A. I don't recall.

14 Q. Do you have any idea why he asked you if
15 you had --

16 A. No.

17 Q. -- anything to show --

18 Let me finish the question. This is
19 something I should have told you before. Let me
20 finish the question before you start the answer?

21 A. Sure.

22 Q. Thank you.

23 Did Jason ever tell you why he wanted to
24 know if you could produce any kind of proof of
25 ownership of the Silverware software system?

1 A. Not that I recall.

2 Q. And you specifically know it was Jason,
3 though, that did ask you about that?

4 A. Yes. Yes.

5 Q. Thank you.

6 (Dennis Liegey, Jr. Exhibit No. 1 was
7 marked for identification, attached hereto.)

8 BY MR. SEAMAN:

9 Q. Mr. Liegey, I'm showing you what has been
10 marked as Exhibit 1. Do you recognize that?

11 A. No.

12 Q. Have you ever seen that before?

13 A. No. I don't recognize it.

14 Q. Please take a good close look at it once
15 more and then let me know whether you have ever
16 seen that before.

17 A. I don't ever recall seeing this document.

18 Q. Thank you.

19 A. At least this page of the document.

20 Q. That page of the document?

21 A. Well, whatever it is.

22 Q. What is it you're --

23 A. Well, it says Page 2 so I'm not sure...

24 Q. Page 2 of a fax.

25 A. Oh, okay.

1 No, I don't recall seeing this document.

2 Q. Did you ever have any contact with
3 Glen Batcho at Batcho Office Systems? Do you know
4 who Glen Batcho is?

5 A. I know Glen.

6 Q. He has a father who went by -- they have
7 the same name almost but he went by Andy, and the
8 son, Glen, went by Glen, right?

9 A. Right. Sure.

10 Q. So you know Glen?

11 A. I know who Glen is, yes.

12 Q. Did you ever have any contact with him
13 regarding this software system that you purchased
14 from Batcho's?

15 A. I seen him at his office and that was --
16 I mean, I don't recall negotiating anything with
17 him whatsoever.

18 Q. Okay. Did you have another contact with
19 Jason and/or Tom after you had the phone
20 conversation with Lisa?

21 A. Yes.

22 Q. And when would that contact have been?

23 A. I believe in July sometime.

24 Q. And where did that take place?

25 A. At the pub.

1 Q. And by "the pub," you mean your place of
2 business?

3 A. At Denny's Beer Barrel Pub, yes.

4 Q. And was that both of them again?

5 A. I don't recall whether it was both of
6 them at that time or not.

7 Q. Who do you recall that it was?

8 A. I do recall Jason. That was my primary
9 contact.

10 Q. What took place at that meeting?

11 A. Basically just him and I made the
12 agreement. I mean, the agreement had been made,
13 but we acknowledged that we were going to start
14 setting up training to make the transition, which
15 was -- I'm sure it was in July sometime.

16 Q. You formalized the purchase of it from
17 Batcho's; would that be fair?

18 A. Yes.

19 Q. Did you pay them any money then?

20 A. That I don't recall. I don't recall if
21 we gave them a down payment at that time or not.

22 Q. Do you recall if they asked for any money
23 then?

24 A. I don't even recall that.

25 Q. Did you have any other phone calls with

1 Lisa Wilson at that time?

2 A. No.

3 Q. Do you recall when the system was
4 installed by Batcho's?

5 A. I believe September. Towards the end of
6 September I believe.

7 Q. Of what year?

8 A. Of '05.

9 Q. Who installed the system?

10 A. Jason Unch and Tom Quinn.

11 Q. What hardware was it installed on?

12 A. The hardware that was already present in
13 the building.

14 Q. Your own computers?

15 A. Absolutely.

16 Q. And you had how many computers at that
17 point?

18 A. Five stations.

19 Q. Correct me if I'm wrong, I thought you
20 said that this software system was for six?

21 A. That is correct.

22 Q. Okay.

23 A. Jason told me the extra license was for
24 handheld units.

25 Q. And when Jason installed -- when Jason

1 and Tom installed this system, did they give you
2 the handhelds?

3 A. The handhelds we never seen until, I'm
4 guessing, and this is a shot too, maybe November.

5 Q. Was there any problem that you didn't
6 have those handhelds until November?

7 A. The system -- nothing was totally
8 completed in the system on the installation.

9 Q. Was the system inoperable without the
10 handhelds?

11 A. No.

12 Q. So you could still use it?

13 A. Absolutely.

14 Q. Do you know who actually made those
15 handheld units?

16 A. No.

17 Q. Did you think or believe that they were
18 purchased by Batcho's from ASI?

19 A. I thought it was part of the package with
20 ASI.

21 Q. Mr. Liegey, I'm going to show you the
22 Complaint that was initially filed in this case to
23 start this lawsuit. Could you look at that for
24 me, please, and identify that that's --

25 MR. NADDEO: Wait a minute. Time out.

1 What's the point of the questioning concerning the
2 original Complaint when the effective document is
3 the Amended Complaint?

4 MR. SEAMAN: That was a Complaint filed
5 first.

6 MR. NADDEO: Yeah.

7 MR. SEAMAN: And then there was an
8 Amended Complaint.

9 MR. NADDEO: But what's the point? How
10 are these relevant -- how is the original
11 Complaint relevant to anything?

12 MR. SEAMAN: It contains certain
13 allegations of fact that I want to see if he can
14 verify.

15 MR. NADDEO: Okay.

16 BY MR. SEAMAN:

17 Q. Would you look all the way at the back of
18 the Complaint for me, please? One page forward,
19 and another page forward, and one more.

20 Is that your signature on what's known as
21 a Verification page?

22 A. It is.

23 Q. And what's the date of that?

24 A. 7/3/07.

25 Q. And by verifying that Complaint, did you

1 verify that the facts set forth in that Complaint
2 were true and correct?

3 A. To my knowledge.

4 Q. What does the Verification actually say?

5 MR. NADDEO: Oh, the thing speaks for
6 itself. I object to the form of the question. I
7 mean, are we going to wade through the
8 Verification? It says the same as every other
9 Verification.

10 BY MR. SEAMAN:

11 Q. How many Verifications are you familiar
12 with, Mr. Liegey?

13 MR. NADDEO: Here, read the Verification
14 so we can take the rest of the day to finish this
15 deposition. This is crucial to this case.

16 THE WITNESS: I, Dennis F.
17 Liegey, verify that I'm the
18 President of Denny's Beer Barrel
19 Pub, Incorporated, and that I'm
20 authorized to execute this
21 verification, and further that
22 the statements made in the
23 foregoing Complaint are true and
24 correct upon my personal
25 knowledge or information and

1 belief.

2 I understand that false
3 statements herein are subject to
4 the penalties of 18-PA-CS
5 Section 4904 relating to unsworn
6 falsification to authorities.

7 BY MR. SEAMAN:

8 Q. Thank you.

9 Do you recall, did you read and review
10 that Complaint before you signed it?

11 A. I believe we went over it.

12 Q. By "we," who do you mean?

13 A. My attorney and I.

14 Q. And that would have been who?

15 A. Mr. Naddeo.

16 Q. I'm going to show you what's titled
17 Amended Complaint and ask you to look -- to do the
18 same thing, if you would look at that for me,
19 please.

20 And that has a similar Verification,
21 correct?

22 A. Yes.

23 Q. And you signed that? That's your
24 signature on that Verification Page?

25 A. Yes, it is.

1 Q. And you read and reviewed that prior to
2 signing it also?

3 A. Yes, sir.

4 Q. Thank you.

5 If you would look -- just so that -- I'll
6 tell you what, I've got another copy of it. I
7 want to show you what was marked as Exhibit A to
8 both of those documents, and I'm going to have
9 this marked as Exhibit 2, please?

10 (Dennis Liegey, Jr. Exhibit No. 2 was
11 marked for identification, attached hereto.)

12 BY MR. SEAMAN:

13 Q. Exhibit 2, does that appear to be the
14 same as what was Exhibit A to the Complaint and
15 the Amended Complaint?

16 MR. NADDEO: Now, wait a minute. Look at
17 these.

18 THE WITNESS: Yes.

19 BY MR. SEAMAN:

20 Q. Thank you.

21 You'll notice on that Exhibit 2 that
22 there's some -- in addition to the typed
23 information, there's some handwritten information?

24 A. Yes.

25 Q. Can you tell me if you're familiar with

1 that handwritten information at the bottom of the
2 exhibit?

3 A. That is my -- that is my penmanship.

4 Q. And do you recall when you did that?

5 A. No, I can't recall that exact date.

6 Q. I'm not asking for an exact date. Would
7 you recall in relation to the purchase of the
8 system when you did that? Did you do it right
9 after you got the invoice?

10 A. No.

11 Q. Did you do it in preparation for the
12 lawsuit?

13 A. I believe it was sometime afterwards,
14 sometime after the system was installed. I don't
15 know when, what period.

16 Q. Okay.

17 A. I just don't recall.

18 Q. Can you explain for us what those
19 handwritten notations mean and why you put them on
20 there?

21 A. Handheld units were \$1,500 apiece. They
22 were the hardware, the only hardware supplied by
23 Batcho's for the Restaurant Manager system.

24 The system itself was not working
25 correctly.

1 Q. So the handheld part of it --

2 A. No one was ever trained. They were never
3 fully programmed.

4 Q. Okay.

5 A. So they were actually unusable for our
6 building. There was no way we could have used
7 them.

8 Q. Did you ask Jason and/or Tom for
9 training?

10 A. Absolutely.

11 Q. What was their response?

12 A. At that time, Mr. Quinn was unavailable
13 doing other installations, I believe, and Jason
14 the same.

15 Q. Were they unavailable for months or was
16 it a short period of time?

17 A. Whenever we requested it.

18 Q. How long do you recall it was that you
19 went from the time the system was installed until
20 you decided that the handhelds weren't something
21 you wanted to keep because you hadn't had
22 training?

23 A. I believe it was after the first of the
24 year. I believe it was in -- in '06, in the
25 beginning of the year sometime. I'm guessing.

1 Q. During that entire period of time, had
2 you made a request of Batcho's for training on
3 these handhelds?

4 A. Several.

5 Q. And what was the response to the several
6 times you requested training?

7 A. They -- I believe Jason come out one time
8 and took one of my servers and took the handheld
9 units out to test them, show her how to use them.

10 Q. Okay. And what happened after that?

11 A. That was the only time I recall that he
12 actually did that.

13 Tom may have come up and took another one
14 of my waitstaff out to try to show them how to use
15 them also.

16 Q. By white staff, what do you mean?

17 A. My waitstaff. My waitresses.

18 Q. Waitstaff?

19 A. Yes.

20 Q. Wait as in waiters?

21 A. Yes, sir.

22 Q. Did the handhelds ever work?

23 A. No.

24 Q. Was there a period of time during this
25 time that you were off work, or you were laid up,

1 or you weren't available that your son was kind of
2 taking care of the business?

3 A. I don't recall.

4 Q. So at about the time that that happened
5 is when you believe you put the notation on this
6 exhibit?

7 A. I believe it was after the first of the
8 year. I believe it was in '06. I'm not sure
9 when.

10 Q. You indicated there's a 1-5-0-0, \$1,500,
11 E-A-C-H, and that meant \$1,500 for each handheld?

12 A. Yes.

13 Q. And then there's a \$4,500 that's circled.
14 That would be for the three handhelds?

15 A. That is correct.

16 Q. And over on the right-hand side there's a
17 17603.00, below that 4500.00 (sic), right?

18 A. Yes.

19 Q. What were you doing there?

20 A. Seeing what my actual cost was I still
21 owed Batcho's.

22 Q. And what was the actual cost you owed
23 Batcho's?

24 A. \$13,103, I believe.

25 Q. And at the time when you made the

1 notation, did you still own Batcho's that?

2 A. No, I don't believe so.

3 Q. What did you owe Batcho's at that time?

4 A. I'm not sure. I don't recall.

5 Q. What amount of money was paid by you to
6 Batcho's for this system?

7 A. Everything, I believe, but the \$4,500.

8 Q. Now, this invoice shows two payments,
9 correct?

10 A. That one does, yes. I believe that was
11 one of his initial ones, yeah.

12 Q. It shows \$5,000 and it shows \$2,500?

13 A. Yeah.

14 Q. It doesn't have any dates, does it?

15 A. No.

16 Q. Do you know when those payments were
17 made?

18 A. No, I don't. Not offhand.

19 Q. What's the date of the invoice?

20 A. 7/8/2005.

21 Q. Would that be the date that the software
22 equipment was installed?

23 A. No.

24 Q. You've indicated that it was installed in
25 September you believe?

1 A. It was -- it was close to the fair and we
2 did not want to start operating and training for a
3 brand new system before the fair because the fair
4 is an extremely busy week for us.

5 So the installation began after that
6 period, the training and everything. It was after
7 the first week of August.

8 Q. Do you believe you made these payments
9 before the system was installed?

10 A. I can't recall the exact date at this
11 time.

12 Q. Did you make any other payments besides
13 the two shown on here?

14 A. Yes.

15 Q. When did you make those?

16 A. I can't recall.

17 Q. How many payments would that have been,
18 one or more?

19 A. One or more.

20 Q. You're not sure?

21 A. I'm not sure at this time.

22 Q. And I'm not asking you for exact dates
23 they were paid. I'm just asking --

24 A. I don't recall the exact dates I paid
25 them.

1 Q. I'm asking time frame. Was it before the
2 system was installed or after the system was
3 installed?

4 A. I don't recall.

5 Q. Do you still have any of those records
6 available that would show when the payments were
7 made?

8 A. Sure.

9 Q. Can I ask you to provide that information
10 to your attorney to provide to me?

11 A. Sure.

12 Q. So what I'm asking for is for --

13 A. Payments.

14 Q. -- payments, dates and amounts of
15 payments that you made to Batcho's for the
16 Restaurant Manager system that was installed at
17 your place of business.

18 A. Yes. Okay. I understand.

19 Q. Right now you don't believe that there's
20 anything owed to Batcho's?

21 A. Oh, no.

22 Q. Did you ever pay anything to ASI?

23 A. No.

24 Q. Did ASI ever give you an invoice or a
25 bill?

1 A. No.

2 Q. In Paragraph 5 of the Amended
3 Complaint --

4 I've got my own. Do you have a copy
5 there?

6 I'm going to read to you what it says and
7 Mr. Naddeo will want to be looking at his copy to
8 verify.

9 MR. NADDEO: No, I want him to look at it
10 to verify. You're asking him the question, right?

11 BY MR. SEAMAN:

12 Q. Paragraph 5 of the Amended Complaint
13 states that at all times referred to herein,
14 Defendant, Action System, Inc. clothed Batcho with
15 actual, implied and/or apparent authority to sell,
16 service and install ASI products.

17 Is that what that says?

18 A. That's what it says, yes.

19 Q. I want you to tell me what things did ASI
20 do, what conduct, what things did they do that
21 gave you the impression that they clothed Batcho
22 with that authority?

23 A. Clothed, please?

24 Q. It's not my word. That's in your
25 Complaint, in your Amended Complaint.

1 A. They represented themselves as a dealer,
2 a dealership for ASI.

3 Q. Batcho's represented themselves?

4 A. They represented Batcho's Business
5 Systems, I believe they were called, as a
6 dealership for Restaurant Manager.

7 Q. You're saying that ASI did that?

8 A. I'm saying that Batcho's did that.

9 Q. Batcho's did that?

10 A. Batcho's represented themsel- --
11 represented ASI as their dealer.

12 Q. And what did Batcho's do, what conduct
13 did they do, what things did they do for you to
14 get from that that they were ASI's dealer?

15 A. They brought brochures up. They brought
16 a setup on a computer with Restaurant Manager
17 software.

18 Q. Okay.

19 MR. NADDEO: Can we go off the record?

20 MR. SEAMAN: You want to go off the
21 record?

22 MR. NADDEO: Yes.

23 (Recess taken.)

24 BY MR. SEAMAN:

25 Q. Do you still have in front of you

1 Exhibit 1, Mr. Liegey? I'm sorry, Exhibit 2. I'm
2 sorry, I have the wrong number.

3 A. Which is?

4 Q. The invoice.

5 A. Yes.

6 Q. Down also at the bottom, there is, in
7 handwriting, no training, dash, no, dash -- I
8 think it's completed programming. Would that be
9 correct?

10 A. That's correct.

11 Q. And is that your handwriting also?

12 A. That is.

13 Q. What did you mean by that?

14 A. I meant by that no training and no
15 completed programming.

16 Q. I can read what it says, but what did you
17 mean?

18 A. I have 25 --

19 Q. What -- who didn't get training?

20 A. We didn't, Denny's Beer Barrel Pub
21 waitstaff.

22 Q. Didn't get training on what, on the
23 handhelds?

24 A. The handheld units.

25 Q. Did you have training on the rest of the

1 operation of the restaurant system?

2 A. Yes, we did.

3 Q. And were you able to operate the system?

4 A. Yes.

5 Q. And it says no completed programming.

6 That also refers then to the handhelds?

7 A. Correct.

8 Q. Thank you.

9 There's a second page to that exhibit.

10 A. Okay.

11 Q. That has some information at the top of
12 it, Wells Fargo Financial Leasing.

13 A. Yeah.

14 Q. Why was that -- why is that a part of the
15 exhibit? What is that supposed to show?

16 A. This is supposed to show that we changed
17 touch screens is what it was. That's what this
18 is.

19 Q. Explain what you mean, "we changed."

20 A. We actually changed hardware, went to a
21 better system, a better hardware system to make
22 our system run more efficiently.

23 Q. And when did you do that?

24 A. Geez. This is saying around June 15,
25 2006.

1 Q. And when you say it's saying that,
2 there's a date at the top --

3 A. Yeah, that's --

4 Q. -- with a time?

5 A. Yeah, there's a date at the top.

6 Q. With a time after it?

7 A. Yeah.

8 Q. And further to the right of that on that
9 same line it says, Page 001 of 001.

10 A. That is correct.

11 Q. Would you believe that that is the
12 information that gets put on a piece of paper when
13 it's faxed?

14 A. Yes, it would be.

15 Q. So that doesn't mean that's the date.

16 A. Yeah, that doesn't mean it's that date.
17 That's correct.

18 Q. So about when did you purchase the new
19 touch screens?

20 A. I want to say approximately nine months
21 to a year afterwards.

22 Q. Sometime in '06?

23 A. Yes.

24 Q. Definitely in '06?

25 A. Definitely.

1 Q. And why did you purchase those?

2 A. Because of problems that were occurring.

3 Q. Problems with the hardware?

4 A. Problems with the software.

5 Q. What were the problems?

6 A. Systems were freezing up, screens were
7 freezing up on the waitstaff.

8 Q. And by "freezing up," what do you mean?

9 A. Inoperable. They were inoperable.

10 Q. Explain to me freezing up. You end up
11 with --

12 A. You have one page --

13 Q. On your screen.

14 A. -- on your screen.

15 Q. And you can't get rid of it?

16 A. You can't get rid of it. You can't send
17 an order. You can't do anything. It was freezing
18 up.

19 Q. Now, was that the only problem you were
20 having at that time?

21 A. No.

22 Q. What other problems were you having?

23 A. Printers.

24 Q. Okay. What was the problem with the
25 printers?

1 A. Delayed printing.

2 Q. Delayed printing?

3 A. Yes.

4 Q. What were the printers used for, to print
5 out the bill, the check for the customer?

6 A. They sent out the bill for the customer.
7 They made the -- they sent an order to the
8 kitchen, sent an order to the bar, sent it to that
9 particular station.

10 Q. The printer did?

11 A. The printer did, yes, from the touch
12 screen.

13 Q. You had touch screens with the system
14 that Batcho's installed. Would that be fair? You
15 had both in place.

16 A. They were in place.

17 Q. From the Silverware system?

18 A. Yes. Yes.

19 Q. Right.

20 A. Yes.

21 Q. And then you started having this problem
22 with freezing up.

23 A. (No audible response.)

24 Q. With the printers delaying the passing of
25 information; is that fair to say?

1 A. That is correct. That is correct.

2 Q. Any other problems?

3 A. Many, but I just -- I can't recall what
4 they are all individually.

5 Q. Well, I'm sure you can understand that I
6 have to ask you about those --

7 A. I'm trying. Yeah, I'm sure.

8 Q. -- because that's why we're here.

9 A. Sure. Sure.

10 Q. So what were the other problems?

11 A. I'm just trying to recall them.

12 Q. Take your time.

13 A. System would shut off.

14 Q. And how did that happen?

15 A. It would just shut off and go back to a
16 blank screen or to an -- its front page, whatever
17 the computer's front page is.

18 I'm not very computer literate, I'll tell
19 you that.

20 Q. When you say the computer's front page,
21 did it go back to --

22 What would show on the screen?

23 A. Like a blue screen.

24 Q. Okay, nothing on it but blue?

25 A. Some icons on it.

1 Q. What other problems?

2 A. Those were the basic problems. The
3 freezing up, the printers. That's pretty much it.

4 Q. And the system shutting off, like you
5 said?

6 A. And the system shutting off, yeah.

7 Q. And would that be it? I mean, you said
8 others. I mean, you can take some time to think
9 about it.

10 A. It doesn't take anything more to disable
11 the entire operation than what I just told you.

12 Q. Now, how do you know what was the cause
13 of the freezing up problem?

14 A. I don't.

15 Q. Okay.

16 A. I just know what I was told.

17 Q. And what were you told?

18 A. Jason Unch.

19 Q. What were you told?

20 A. Jason told me that he believed the
21 problems with your system were our old hardware
22 that we had purchased from Thomas Small.

23 Q. Okay. Did that apply to the freezing up
24 and the printer delay and the system shutting off?

25 A. Yes.

1 Q. So you acquired new touch screens?

2 A. Yes.

3 Q. New hardware?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. And who did you get those, that hardware,
8 from?

9 A. Well, we leased them from Wells Fargo.

10 Q. Okay.

11 A. Through Jason.

12 Q. Through Jason?

13 A. Through Jason, yes. He set -- he set the
14 hardware up, the hardware purchase up, or lease I
15 should say.

16 Q. And this doesn't show us anything about
17 what any of that hardware was, does it?

18 A. No.

19 Q. This page really doesn't apply to
20 Exhibit A, the first page, which is the invoice
21 from Batcho's to you, or does it?

22 A. No.

23 Q. Did you get another invoice from Batcho's
24 for the hardware that you leased from Wells Fargo?

25 A. Wells Fargo sends us a direct invoice.

1 Q. Do you remember what the cost of that
2 was?

3 A. I'm still paying and it's \$369 a month, I
4 think, in that range.

5 Q. And you would still have the paperwork
6 for that?

7 A. I'm still paying on it.

8 Q. Right. And would you have the paperwork
9 that would reflect your deal with Wells Fargo
10 through Batcho's that shows what computers you
11 purchased, what kind of computers or how many?

12 A. I don't recall if I have that
13 information. I would look.

14 Q. Would you please look for that, and if
15 you find it, will you please provide that to your
16 attorney to provide it to me, please?

17 A. Yes.

18 Q. You're going to look and see whatever
19 documentation --

20 A. Absolutely.

21 Q. -- you have, either something from
22 Wells Fargo or something from Batcho's, that set
23 forth what those computers were.

24 A. Sure.

25 Q. And the price?

1 A. Sure.

2 Q. Do you recall, in looking at this page
3 from Wells Fargo, below on the right-hand side
4 below 36 months there looks like \$10,500. Does
5 that mean anything to you?

6 A. Where's that number?

7 Q. Near the top.

8 A. Yes.

9 Q. Does that mean anything to you?

10 A. Yeah, that's the purchase price. That
11 was the price for the new units.

12 Q. And how many new units did you get?

13 A. Four.

14 Q. Were those complete computers or just the
15 touch screens, just the monitors?

16 A. They were complete computers,
17 self-contained.

18 Q. And those were installed by who?

19 A. Batcho's.

20 Q. Just so you can help me, on the first
21 page of that exhibit under Terms -- there's a
22 column that is headed Terms, T-E-R-M-S --

23 A. Uh-huh.

24 Q. -- it says four computers. What does
25 that mean?

1 A. I believe -- I believe it means the
2 operational units. That means the ones that are
3 on the floor.

4 There's a back office unit also, which is
5 not included, I believe in that number. I believe
6 it's the four on the floor.

7 Q. Does this invoice mean you bought four
8 computer units from Batcho's?

9 A. My understanding was programming. That
10 meant they were programming. That was my
11 understanding.

12 Q. You can tell us today from your own
13 recollection -- let me finish.

14 You can tell us today from your own
15 recollection that when Batcho's installed the
16 Restaurant Manager software system they did not
17 install any computers at that time?

18 A. No.

19 Q. You can't tell me that?

20 A. They did not install any computers at
21 that time.

22 Q. So you can tell me they did not?

23 A. They did not.

24 Q. Even though this shows --

25 A. Even though --

1 Q. -- four computers --

2 A. Yes.

3 Q. -- you didn't buy them?

4 A. Yes.

5 Q. You think maybe it was -- and correct me
6 if I'm wrong, I'm not trying to mislead you. I'm
7 just trying to understand it.

8 You think maybe it was just trying to
9 show that the POS Restaurant Manager was to be
10 used on four computers?

11 A. I don't recall. I don't recall that
12 statement.

13 Q. Because it says -- it does say there six
14 terminals?

15 A. Yes.

16 Q. Three-handheld systems.

17 A. Yes. Yes.

18 Q. So we don't know what the four computers
19 means?

20 A. No, not really. I have no knowledge.

21 Q. If Mr. Naddeo could also show you the
22 Amended Complaint again, please, Paragraphs 9, 10,
23 11 and 13. If you'll just look at those briefly.

24 I'm just going to ask you, those refer to
25 something that you called upgrades and patches; is

1 that right?

2 A. Correct.

3 Q. Correct?

4 A. Right.

5 Q. What did you mean by that? What do you
6 think an upgrade and/or a patch is?

7 A. I believe the upgrade is something that
8 comes into your system as things change, as years
9 change. That way you're not -- you do not have to
10 keep purchasing new software and new hardware. I
11 think there's upgrades in the current software.
12 That was my understanding of it.

13 Q. And where would those upgrades come from?

14 A. ASI.

15 Q. And what makes you think they come from
16 ASI?

17 A. That's what I was told.

18 Q. By whom?

19 A. Jason Unch.

20 Q. And what about the patches? What does a
21 patch mean to you?

22 A. My understanding of a patch, because I
23 have very little knowledge of it, was problems in
24 the system and through problems they send patches
25 from ASI from their computer network into your

1 system to repair a problem you're having
2 currently.

3 Q. And where did you learn that?

4 A. From Mr. Unch.

5 Q. Mr. Unch didn't tell you that the
6 upgrades or patches would come from Batcho's?

7 A. No.

8 Q. Paragraphs 15 and 16 you refer to
9 updates. What do you mean by updates?

10 A. Critical updates, again, according to
11 what Mr. Unch said, all the things that are
12 necessary in your computer to keep it up and
13 operational. That's all I can say about that.

14 Q. So it would be fair to say anything you
15 know about updates, upgrades, patches was
16 something that Jason Unch told you? Would that be
17 fair?

18 A. Yes.

19 Q. Paragraph 13 of the Amended Complaint
20 refers to an Exhibit B, and I'm going to show you
21 what that is.

22 MR. SEAMAN: If you could please mark
23 that as Exhibit 3.

24 (Dennis Liegey, Jr. Exhibit No. 3 was
25 marked for identification, attached hereto.)

1 BY MR. SEAMAN:

2 Q. Mr. Liegey.

3 A. Yes.

4 Q. I'm handing you what has been marked as
5 Exhibit 3.

6 A. Yes.

7 Q. Have you ever seen that before?

8 A. Yes.

9 Q. And would you describe for me what that
10 is?

11 A. It's a quotation from Pittsburgh
12 Hospitality.

13 Q. And who was the quotation to? Is that to
14 you, to Denny's Beer Barrel Pub?

15 A. To Denny's Beer Barrel Pub in Clearfield,
16 PA.

17 Q. And it's dated June 6, '07?

18 A. Yes.

19 Q. Why did you have that quotation? What
20 was the purpose of getting that quotation?

21 A. We had contacted ASI about our problems.

22 Q. When you say "we," you mean --

23 A. Denny's Beer Barrel Pub.

24 Q. And who at ASI?

25 A. I believe I talked to Lisa Wilson at that

1 time also.

2 Q. Okay.

3 A. I believe.

4 Q. Okay. So why have this quotation from
5 Pittsburgh Hospitality?

6 A. Well, she referred me to another dealer
7 to repair my problems.

8 Q. Okay.

9 A. That we were having problems with our
10 system, and this was the quotation that they
11 e-mailed us.

12 Q. And what was this to do? What were they
13 going to do for you?

14 A. Keep our system up and running. They
15 were the contractors to take care of the system.

16 Q. They were another dealer?

17 A. They were another dealer. They were a
18 Restaurant Manager dealer exactly like Batcho.

19 Q. Were you looking to buy what's on this
20 quotation from them?

21 A. No.

22 Q. Why did you get the quotation?

23 A. We were trying to get ourselves repaired
24 is what -- how it all started. We did not realize
25 that we were going to have to pay \$3,675 plus \$273

1 sales tax for a total of \$4,173 to get our system
2 up and running again when we were already set up
3 to be an ASI Showcase Site from Batcho's and ASI.

4 Q. Just to correct you, and I'm not trying
5 to hammer you on this, you said the price was
6 \$3,675 plus tax?

7 A. Plus tax.

8 Q. Look at that a little closer.

9 A. \$3,675 plus \$273 is \$4,173.

10 Q. I admit that it's a little bit hard to
11 read. The \$3,675, isn't that a trade-in that
12 you're getting back from --

13 A. Competitive -- yes, competitive bid. I'm
14 just giving you numbers. I'm giving you numbers
15 of what's on this document.

16 Q. So the price wasn't \$3,675. That was an
17 amount that was going to be taken off because you
18 were being given a competitive software trade-in
19 discount?

20 A. Exactly. Yes. Yes. This is -- was
21 their proposal from Pittsburgh, yes. That's
22 correct.

23 Q. So what did you do about that quotation?

24 A. We didn't do anything about that
25 quotation.

1 Q. And why not?

2 A. We had Jeffrey Napkin (phonetic), who was
3 their -- basically their programmer came to our
4 site to tell us what we need. There was -- this
5 is long after the fact, this document.

6 Q. Long after what fact?

7 A. Of them actually checking out our system
8 to see what the problem was.

9 Q. Okay. When did they check out your
10 system?

11 A. I'm guessing it was sometime after April
12 of '07.

13 Q. Okay.

14 A. Sometime in that period.

15 Q. And how did you --

16 You said you got the name of Pittsburgh
17 Hospitality from Lisa?

18 A. Yes. David Eckles I believe was the
19 guy's name. Don't quote me on the last name.

20 Q. At Pittsburgh Hospitality?

21 A. Yes.

22 Q. Did they come up and look at your system
23 at your place of business?

24 A. Jeffrey Napkin did.

25 Q. Was that quotation done after that visit?

1 A. Yes, I believe so.

2 Q. In Paragraph 13, if you'll look at that,
3 please, of the Amended Complaint, you indicate
4 that Plaintiff paid \$7,775 for a software system.
5 Is that what that says?

6 A. That's what it says.

7 Q. Who did you pay the \$7,775 to?

8 A. That was Batcho's, because we did not --
9 in your original, in Exhibit Number 1, we bought
10 no hardware, but we paid them \$13,000, and in that
11 \$13,000 was supposed to be software, was supposed
12 to be the Showcase Site.

13 Q. The handheld units?

14 A. Yeah.

15 Q. But the figure, the \$7,775 --

16 A. That was --

17 Q. -- where did that come from?

18 A. -- that was an assumption on what it cost
19 long before -- of what software cost.

20 Q. An assumption?

21 A. Yeah.

22 Q. Based upon the quotation you got from --

23 A. No.

24 Q. Let me finish -- from Pittsburgh
25 Hospitality?

1 A. No.

2 Q. Well, what was the assumption from?

3 A. The assumption was going -- basically I
4 went online, and I'll be honest with you there, I
5 went online to find out what software actually was
6 costing. And that was an assumption out of that
7 \$13,103 that a basic package like the one I had in
8 my building would cost.

9 Q. So when you say you paid \$7,775 --

10 A. I actually paid 13.

11 Q. Then Paragraph 13 is incorrect; is that
12 right?

13 A. I need to confer with my attorney.

14 MR. SEAMAN: Fine. I'll leave the room.

15 MR. NADDEO: You don't have to.

16 (Recess taken.)

17 BY MR. SEAMAN:

18 Q. Give me an explanation then of why
19 Paragraph 13 says you paid \$7,775 when you didn't.
20 If you can.

21 A. I can't. I cannot do that.

22 MR. NADDEO: We got it right here.

23 THE WITNESS: I cannot do that.

24 BY MR. SEAMAN:

25 Q. Mr. Liegey, you've also alleged in this

1 Complaint that you were not provided a license --
2 I'm sorry, the Amended Complaint, that you were
3 not provided a license to be able to operate the
4 system. Would that be a fair statement?

5 A. Not in those words.

6 Q. Okay.

7 A. We were provided a license. It was
8 retracted.

9 Q. You were provided a license?

10 A. And it was retracted.

11 Q. Who retracted it?

12 A. Apparently ASI.

13 Q. When you say "apparently," is that what
14 Jason said?

15 A. No.

16 Q. What are you referring to?

17 A. I'm referring to an e-mail from Lisa
18 Wilson to David Eckles --

19 Q. Okay, that's the same document --

20 A. -- on September 4, '06.

21 Q. Is that the same one we talked about
22 before?

23 A. Yes.

24 (Dennis Liegey, Jr. Exhibit No. 4 was
25 marked for identification, attached hereto.)

1 BY MR. SEAMAN:

2 Q. I'm going to show you what has been
3 marked as Exhibit 4 and ask you is that the same
4 document you were just referring to?

5 A. Yes.

6 Q. And that's the same document we referred
7 to way back in the beginning of the deposition?

8 A. Yes, it is.

9 Q. Now explain to me again then how this
10 says that ASI retracted your license.

11 MR. NADDEO: I think you've got the wrong
12 e-mail.

13 THE WITNESS: Oh, I might have the wrong
14 e-mail.

15 We need to refer to an e-mail on
16 April 4, 2007.

17 BY MR. SEAMAN:

18 Q. And is that marked as an exhibit already?

19 A. I don't believe so.

20 No, it is not.

21 (Dennis Liegey, Jr. Exhibit No. 5 was
22 marked for identification, attached hereto.)

23 BY MR. SEAMAN:

24 Q. I will show you what has been marked for
25 identification, attached hereto as Exhibit 5. Is

1 that the same as what you're holding in your hand
2 and referring to?

3 A. It is.

4 Q. Tell me in Exhibit 5 then where that says
5 that ASI retracted the license.

6 A. It doesn't exactly say that.

7 Q. What does it say that led you to testify
8 that they retracted the license?

9 A. It says that ASI has never made an
10 attempt to recover the software key that allows
11 you to use this illegal software license. Illegal
12 software license is what keyed me.

13 Q. But the e-mail you just read to me says
14 they never made any attempt to take it back.

15 A. Illegal software license.

16 Q. But you just read, did you not?

17 A. Yes.

18 Q. I don't mean to argue with you.

19 MR. NADDEO: But you are, and I think --

20 MR. SEAMAN: I take that back. I
21 withdraw that question.

22 Q. Is there anything else in that exhibit
23 that led you to your testimony that ASI retracted
24 the license?

25 A. However, we cannot issue any

1 software upgrades or otherwise
2 service the license you're using
3 until we receive payment on the
4 original license.

5 Q. But does that say that they retracted the
6 license?

7 A. That's what it says to me. That's how I
8 interpret it. That was my interpretation.

9 Q. Can you look for me, please, at Paragraph
10 15 of Count 1 of the Amended Complaint?

11 A. Okay.

12 Q. Do you see in Paragraph 15 where you are
13 alleging that -- it says:

14 The Defendant, by refusing
15 to provide Plaintiff with an
16 operable software system as
17 expected, and by refusing to
18 provide critical updates
19 necessary to render the ASI
20 software system operable at
21 Plaintiff's place of business,
22 and by refusing to issue a
23 license to use said software to
24 Plaintiff, has breached the
25 purchase contract between

1 Plaintiff and Defendant.

2 A. Yes.

3 Q. That allegation is saying that, am I
4 reading this wrong that -- and you're saying that
5 ASI refused to issue you a license? Is that what
6 you're saying?

7 A. Yes.

8 Q. You just testified they did issue you a
9 license, but they retracted it.

10 A. It is my assumption they retracted it,
11 yes.

12 Q. Well, which is correct? Did they issue
13 you a license and retract it, or did they refuse
14 to issue you a license?

15 A. Yes, they issued a license and retracted
16 it.

17 Q. How did they retract it?

18 A. By asking us to repay the original fee
19 that Batcho was to pay ASI for the dealer -- for
20 the program that we were involved with --

21 Q. Do you know what a --

22 A. -- the Showcase Site.

23 Q. Do you know what a license is?

24 A. I know you have to have a license to
25 operate Windows. That's my understanding with

1 this computer terminal.

2 Q. You have to have a license to operate the
3 software?

4 A. Yes.

5 Q. And is there --

6 Do you know what a dongle is,

7 D-O-N-G-L-E?

8 A. No. No idea.

9 Q. Do you know that that's a piece of
10 hardware that is called the hardware key or
11 security key?

12 A. Security key. I've heard of a security
13 key. I've never heard of that though.

14 Q. Did you have one of these? Did you have
15 a dongle? I'll describe it for you so you know
16 what I'm talking about.

17 A. Sure.

18 Q. It's about a two-inch square piece of
19 equipment that goes in the printer port of your
20 computer.

21 A. I can't tell you that.

22 Q. Can you tell me that you never got one?

23 A. I don't know what it is. I have no idea.

24 Q. To be honest you can't tell me if you --

25 A. I can't tell you whether I have one or I

1 don't have one.

2 Q. Do you understand that a software system
3 such as this cannot be operated without that
4 security key.

5 A. No. Again, I don't know what it is.

6 Q. What do you think a security key is?
7 What's the purpose of a security key?

8 A. I have no comment on that. I have no
9 idea what the purpose of it actually is.

10 Again, I'm not a software or a computer
11 expert. I have no idea.

12 Q. Paragraph 21 of your Amended Complaint in
13 Count 2 you state that the local agent -- you
14 state that the local agent of Defendant did bring
15 potential customers of Defendant through the
16 restaurant site of Plaintiff and showcased the
17 site and the ASI product at Plaintiff's site to
18 potential customers.

19 A. Yes.

20 Q. The reference in that to the word
21 "agent," we can disregard now, correct, according
22 to your attorney?

23 MR. NADDEO: Yeah, we'll call that
24 dealer.

25 ///

1 BY MR. SEAMAN:

2 Q. Okay, we'll call the word agent dealer.
3 Who did you -- who came to your site to
4 see your system?

5 A. Clearfield Country Club.

6 Q. Anybody else?

7 A. Pete Kutsick, I think the man's name was
8 at that time.

9 Q. He was probably the manager of the club
10 at the time?

11 A. I believe he was.

12 Q. Anybody else, any other restaurants,
13 anybody else come to you?

14 A. I don't recall who else was there at this
15 time.

16 Q. Would you like a little time to think
17 about it?

18 A. No, I don't recall. I'm not there 24/7.
19 I can't tell you whether there was or there wasn't
20 anyone else there.

21 Q. As far as you know, though, the country
22 club --

23 A. Well, in my presence, only in my
24 presence, the Clearfield Country Club was the only
25 one in my presence.

1 Q. Did you do anything further? Did you go
2 to the Clearfield Country Club --

3 A. Yes, I did.

4 Q. -- to a board meeting?

5 A. Yes, I did.

6 Q. And do you remember when that was?

7 A. No, I don't. I don't recall the date or
8 the time.

9 Q. I'm not asking you for a specific date.
10 Was it in '06?

11 A. Yes, I believe so.

12 Q. Spring, winter, summer? Do you remember
13 anything about that? Were you playing golf up at
14 the country club at the time or was there snow on
15 the ground?

16 A. I don't recall. I don't recall the exact
17 time. It was after the first of the year. That's
18 all I know.

19 Q. Of '06?

20 A. Of '06.

21 Q. And what was your purpose in letting them
22 come to your site and in you going to the board
23 meeting at the country club?

24 A. I was asked to go by Jason Unch and
25 Tom Quinn.

1 Q. Why?

2 A. To talk about the site at the pub.

3 Q. At the --

4 A. At Denny's Beer Barrel Pub, yes.

5 Q. And what did you talk about? What did
6 you tell them?

7 A. Whatever questions they asked me, I
8 answered.

9 Q. What questions did they ask?

10 A. They were mainly interested in inventory.

11 Q. Okay. Like what?

12 A. They were mainly interested in an
13 inventory system. And all -- I made the statement
14 with them was they had one.

15 Q. Okay.

16 A. I had one that was inoperable at the
17 time.

18 Q. Did you tell them it was inoperable?

19 A. Yes.

20 Q. You told the country club?

21 A. I told one of the guys there, whoever was
22 sitting there, that mine was not up and running at
23 this time.

24 Q. Did you say it had been up and running at
25 one point --

1 A. No.

2 Q. -- and now wasn't working?

3 A. No.

4 Q. Was that the case, though, that it was
5 working at one time --

6 A. It never ran.

7 Q. It never ran?

8 A. No. We never accessed the inventory
9 system on Restaurant Manager at any time.

10 Q. Okay. What else, what other questions
11 did they ask?

12 A. Mainly it was bar, bar questions, how it
13 worked as far as once the server touches it, sent
14 it, sent the message to the bar, how it collected
15 information, how it collected it on reports. That
16 was how it mainly was. That's --

17 I didn't talk very much, I'll be honest
18 with you. I can't recall what I said.

19 Q. Was your purpose -- tell me if I'm wrong.
20 Was your purpose in being there to help Batcho's
21 in selling a system?

22 A. Sure.

23 Q. And in doing so, did you go with the
24 attitude of this system sucks. I'm not going to
25 tell them that it's any good?

1 A. No.

2 Q. What attitude did you go with?

3 A. I went with the attitude that hopefully
4 I'll get my system repaired and they'll sell one
5 here. That was my attitude.

6 Q. Somehow that Batcho's would help you
7 repair your system?

8 A. I was hoping to get the bugs out of my
9 system, yes.

10 Q. That Batcho's would help you do that?

11 A. Yes.

12 Q. If you went up to the country club, they
13 would do that?

14 A. Absolutely.

15 Q. That's what you --

16 A. That was my thought.

17 Q. Did you represent to the country club
18 that the system wasn't working well for you and
19 you didn't like it?

20 A. They didn't ask me -- they didn't ask me
21 that question.

22 Q. Did you tell them about the bugs that you
23 had?

24 A. No, I did not. Mine is a total different
25 system.

1 Q. Well, they didn't know what -- maybe they
2 were going to buy the same thing as you.

3 A. It was my understanding they weren't.

4 Q. Do you know for a fact that they didn't?

5 A. Yes.

6 Q. And where did you learn that they did not
7 buy your system?

8 A. I'm a member of the country club and they
9 don't have the same setup we do.

10 Q. Do they have a Restaurant Manager system?

11 A. Yes, they -- they didn't. I haven't been
12 there to notice whether they changed that up or
13 not.

14 Q. After your visit to the board meeting,
15 the country club purchased a system, Restaurant
16 Manager system, from Batcho's?

17 A. That was my understanding, yes.

18 Q. So you must have done a pretty decent
19 sales job then.

20 A. Tom Quinn and Jason did most of the
21 talking. And I can't recall, again, my
22 conversation.

23 Q. Do you remember the names of anybody that
24 was at that meeting from the country club?

25 A. Pete.

1 Q. Pete Kutsick?

2 A. Pete Kutsick.

3 Q. He was the manager of the country club?

4 A. Yeah, I believe he was there.

5 Q. Were you a member of the country club at
6 that time?

7 A. I don't think so. I don't think I was.

8 Q. Okay.

9 A. I might have been. I'm not saying I
10 wasn't. I've been in and out of there a couple
11 times.

12 Q. Anybody else that you remember, the names
13 of people that were there at that meeting?

14 A. No.

15 Some young -- some gal but I can't
16 remember what her name was. I have no idea.

17 Q. Do you recall if there were any employees
18 of the country club that would have been there --

19 A. I don't.

20 Q. -- besides Pete?

21 A. I don't recall that.

22 Q. Did your son ever tell you of any other
23 restaurants that came to your site to observe your
24 system?

25 A. I don't recall that.

1 Q. Did Jason or Tom ever tell you of any
2 other restaurants that came to your pub?

3 A. I don't recall them ever having a
4 conversation with me about that.

5 Q. When did you first experience the
6 problems with this system?

7 A. From the very beginning.

8 Q. When would that be?

9 A. September.

10 Q. Right after it was installed?

11 A. Yes.

12 Q. Did the system ever work for you? Did it
13 ever work satisfactorily?

14 A. It's a 50/50 deal. Sometimes it worked;
15 sometimes it didn't.

16 Q. And by "50/50," you mean half the time it
17 would work, half the time it wouldn't; is that
18 what you mean?

19 A. It just -- it never worked correctly from
20 the very beginning.

21 Q. Okay. And it's the same problems that
22 you told us about before?

23 A. Yes, sir. Yes, sir.

24 Q. The freezing up, the printer --

25 A. Yes.

1 Q. -- delay and that system shutting off?

2 A. Yes, sir.

3 Q. And that started right from the get-go?

4 A. Yes, sir.

5 Q. Did you approach Jason and/or Tom about
6 those problems?

7 A. Many times.

8 Q. And did they do anything?

9 A. Oh, they'd come up and tried to do
10 everything they could to rectify the problem.

11 Q. But they couldn't?

12 A. No.

13 Q. How long did you go on operating that
14 system?

15 A. We changed out in -- I'm going to say May
16 of '08. I'm thinking.

17 Or, no, excuse me, May of '07. I'm
18 sorry.

19 Q. You changed to another system?

20 A. Yeah, we started I think it was in around
21 that period, May, June, July. I don't recall. It
22 was -- then we went back to Silverware is what we
23 did.

24 Q. Okay. You went back to where you were?

25 A. Absolutely.

1 Q. And who did you buy that from?

2 A. The same guy, Thomas Small.

3 Q. Down in West Virginia?

4 A. Absolutely.

5 Q. Did they have anybody local here to help
6 you, or was it the same problem with the distance?

7 A. No, we got into a maintenance program,
8 which at that time was available.

9 Q. It wasn't before?

10 A. Not to my knowledge. Not saying it
11 wasn't. It was -- not to my knowledge.

12 Q. And what did you purchase from
13 iExpediter?

14 A. We actually just re-updated the software
15 is what we did. That's what I purchased.

16 Q. Re-updated the Silverware software?

17 A. The Silverware software, yes.

18 Q. Do you have that at home anywhere or are
19 they in the office records that would show like an
20 invoice, a bill or something you got from
21 iExpediter --

22 A. Yes.

23 Q. -- for that purchase?

24 Would you provide a copy of that, please,
25 to your attorney to provide to me?

1 A. Absolutely.

2 Q. Thank you.

3 Have you had any problems with that
4 system since you've been operating that?

5 A. None.

6 Q. Not one?

7 A. (No audible response.)

8 Q. Are there --

9 A. There's minor problems that occur in
10 every system because that's what computers are.
11 I'm not talking about minor problems. I'm talking
12 about things that shut you down for a day.

13 Q. What minor problems have you had with the
14 iExpediter?

15 A. Maybe a credit card will go offline due
16 to a storm, things like that. That's all.

17 Q. Did you have to purchase any new hardware
18 for that system?

19 A. I don't believe so. I don't think I did.

20 Q. Do you recall today --

21 I know you're going to get me the
22 documents, but do you recall anything today about
23 what the price of that updating of the Silverware
24 system cost you?

25 A. Somewhere -- I think it was right around

1 \$4,000, I believe, that portion of it. And the
2 maintenance agreement was another \$2,000, \$2,500
3 or something like that.

4 (Dennis Liegey, Jr. Exhibit No. 6 was
5 marked for identification, attached hereto.)

6 BY MR. SEAMAN:

7 Q. I'm showing you what has been marked as
8 Exhibit 6 and providing a copy to your attorney.
9 Can you look at that for me, please?

10 A. Yes.

11 Q. Have you ever seen that before, or
12 anything similar to it? Take your time and look
13 it over.

14 A. Yeah. I don't recall this document.

15 Q. Do you know what an End User License
16 agreement is?

17 A. No.

18 Q. Have you ever experienced anything with a
19 computer when you're opening software and before
20 it will operate for you, you have to accept,
21 A-C-C-E-P-T, the license or you have to accept
22 that you will agree with the items of an End User
23 License agreement?

24 A. Do I recall seeing that?

25 Q. Something like -- I'm not talking about

1 just on this Restaurant Manager, but on any kind
2 of software, when you open it up that there will
3 be a thing -- a window will pop up and you'll have
4 to accept, A-C-C-E-P-T, something, the terms of an
5 agreement in order to be able to use it? Did you
6 ever have that happen?

7 A. I can't recall that, but I might have,
8 but I can't recall at this moment.

9 Q. But you don't have any recollection of
10 seeing this particular document or an End User
11 License agreement with terms like that in here
12 anyplace else?

13 A. I don't recall that at this time.

14 Q. All right. Thank you.

15 MR. NADDEO: This is a complete document?

16 MR. SEAMAN: Yes.

17 THE WITNESS: Yeah, I don't recall that.

18 (Dennis Liegey, Jr. Exhibit No. 7 was
19 marked for identification, attached hereto.)

20 BY MR. SEAMAN:

21 Q. I'm showing you what has been marked as
22 Exhibit 7 and providing a copy to your attorney.

23 Have you ever seen that document before?

24 A. No. No, sir.

25 Q. You understand that you bought the

1 software package from Batcho's, correct?

2 A. (No audible response.)

3 Q. Is that correct?

4 A. They were the dealer, yes.

5 Q. And Batcho's bought it from ASI. Did you
6 understand that?

7 A. I believe so. I believe so.

8 Q. What I've shown you in that exhibit is
9 the invoice from Batch- -- from ASI to Batcho's
10 for the system.

11 A. Okay.

12 Q. Does that show the items of things that
13 you bought from Batcho's, all the different
14 modules you talked about?

15 A. It's similar.

16 Q. What would be different?

17 A. I don't recall a fingerprint, caller ID,
18 scanner, video overlay, coin dispenser, berg
19 liquor control.

20 I don't understand -- or, I don't recall
21 that at all.

22 Q. The rest of the items, do they look like
23 things that you thought you were getting from
24 Batcho's?

25 A. They -- it looks -- it appears to be the

1 thing that we were supposed to get being a
2 Showcase Site.

3 Q. Okay. If I may, I just -- a couple more
4 questions. I don't have that much more.

5 In the original Complaint, do you have
6 that document there, Mr. Naddeo?

7 MR. NADDEO: Yes, I do.

8 BY MR. SEAMAN:

9 Q. Count 2, Paragraphs 11 through 24 -- I'm
10 sorry, 19 through 24. I can't read my own
11 writing.

12 In that count, Mr. Liegey, you're making
13 an allegation that Batcho's improperly installed
14 the software system; is that correct?

15 A. Yes.

16 Q. And in Paragraph 23 of that Complaint,
17 you allege that you have obtained an estimate for
18 re-installation of the ASI Software System at
19 approximately \$3,100?

20 A. Yes.

21 Q. And it says a true and correct copy of
22 evidence of the same is attached here as
23 Exhibit B. Now, there is no Exhibit B to the
24 Complaint.

25 MR. NADDEO: Yeah, there is.

1 MR. SEAMAN: There is. I retract that.

2 Q. That's the quotation that we were talking
3 about before from Hospitality --

4 A. Pittsburgh Hospitality.

5 Q. -- right?

6 A. That is correct.

7 Q. So --

8 A. ASI's dealer in Pittsburgh.

9 Q. So that's an estimate you got?

10 A. That was just an estimate. I think that
11 the -- yeah, I believe that was the estimate.

12 Q. And that's an estimate you got for
13 re-installation of the ASI software?

14 A. Yes.

15 Q. How does that exhibit show that the cost
16 would have been \$3,100?

17 A. It should have been your Exhibit -- your
18 Exhibit B should have been the actual --

19 Q. Not my Exhibit B. That's your Exhibit B.

20 A. Or my Exhibit B, that should have been the
21 actual cost. That should have been.

22 Q. Do you recall making any demands or
23 requests on Batcho's Office System to resolve your
24 problem?

25 A. Constantly.

1 Q. Okay.

2 A. Constantly.

3 Q. What type of demands or requests did you
4 make?

5 A. Come up and get me running correctly, get
6 my software, to get everything running correctly.

7 Q. Did you make a demand to resolve the
8 whole problem?

9 A. Did I threaten them? Is that your
10 question?

11 Q. No, I didn't ask if you threatened.

12 A. I asked them to come repair my system.
13 That was the only demand I had.

14 Q. I'm going to show you in your Answers to
15 Interrogatory Number 14 --

16 A. Okay.

17 Q. Well, that question was posed to you --
18 actually was posed in Interrogatory Number 13.
19 Did you ever make any demand or request, and then
20 in parentheses in quotations marks is the word
21 demand, upon Batcho Business Machines, Inc. to in
22 any way resolve the subject matter of the suit;
23 and the answer was yes.

24 And 14 says, if the answer to the
25 preceding Interrogatory is in the affirmative,

1 state who made the demand, and it says,
2 Dennis Liegey, Sr.

3 A. That's my father. I'm Dennis Liegey, Jr.

4 Q. So that should be Junior rather than
5 Senior?

6 A. It should be.

7 Q. You made the demand.

8 Then B says, when the demand was made --
9 state when the demand was made?

10 The answer is, exact date unknown. After
11 ASI refused to license the software or provide
12 patches.

13 A. Yes.

14 Q. Now, we've already talked about today
15 that they didn't refuse to issue you a license;
16 they gave you a license but then you said they
17 retracted it?

18 A. And then they tried to charge us again
19 for what we already paid for.

20 Q. And I said to whom was the demand made
21 and your answer was Jason Unch.

22 And the content of the demand, your
23 demand to them was, what could Batcho Office
24 System do to straighten the situation out?

25 Does that sound right? Is that fair?

1 That's your answer.

2 A. Yes.

3 Q. And it says the content of the reply of
4 the demand -- the content of the reply to the
5 demand, so Jason said to you, pay ASI for the
6 software; is that right?

7 A. Pay ASI, yes.

8 Q. Is that what he said to you when you
9 said, you know, what can you do to straighten this
10 situation out? He said to you, well, you go pay
11 ASI?

12 A. They want money. That's what he told me.

13 Q. You already paid Batcho's, right?

14 A. Exactly. That was my point. I already
15 paid it once.

16 Q. Yeah, why should you pay it twice?

17 A. Exactly. That's why.

18 Q. Do you recall when that took place? Not
19 the exact date, but was that sometime after the
20 first of the year in '06?

21 A. Yes.

22 Q. Was it sometime after the first of the
23 year '07?

24 A. I'll tell you -- I'll tell you, it was
25 prior to -- it was prior to the 2006 show in Las

1 Vegas where I met the CEO of ASI and complained to
2 him.

3 Q. And who was that?

4 A. I'm glad you asked. Alex Malison.

5 Q. Okay. Now, you're just showing me --
6 May I see that?

7 A. Sure.

8 Q. You're showing me a business card?

9 A. Yep, that he handed me.

10 Q. From ASI?

11 A. Yep.

12 Q. That has the name Alex, M-A-L-I-S-O-N,
13 Malison?

14 A. Yes.

15 Q. CEO?

16 A. Yes.

17 Q. What I'd like to do is make a copy of
18 that.

19 A. Absolutely. Sure.

20 Q. And this was in Las Vegas?

21 A. Yes.

22 Q. Would you leave that out for me so I
23 don't forget. Thank you.

24 A. Yes.

25 Q. And about when was that?

1 A. I believe it was in March of '06. I
2 think that's when the show was.

3 Q. And what did you say to this gentleman
4 when you met him?

5 A. Well, I just said to Alex -- which I
6 didn't know was Alex. I just went up and was
7 questioning the problems I was having, the
8 freezing of the screens, printers not working, and
9 asked him what I would possibly do about it
10 because I wasn't getting -- getting anywhere with
11 my dealer.

12 Q. And what did he tell you?

13 A. He asked me a little bit about the
14 operation. I told him about the operation.

15 Q. Of your business, you mean?

16 A. Yes, sir. He asked me how many stations
17 I had, which I told him. He asked me exactly the
18 same questions you just asked me, what was the
19 problems. I said the screens are freezing, the
20 printers weren't working, that type of thing.

21 He asked me if I was shutting the system
22 down because the system needs to shut down
23 occasionally apparently to reset, which I don't
24 really understand all that, but I was told that by
25 Mr. Unch also. I said, yes, sir, we're shutting

1 them down three times a day.

2 Q. Did he say anything else to you about
3 this?

4 A. He said you shouldn't have to be shutting
5 them down three times a day. I said, that's my
6 point why I'm standing here talking to you.

7 Q. Okay. Did you say anything else to him
8 about the problem?

9 A. Other than what I just told you, I'm
10 pretty sure --

11 Q. Did he say anything else to you?

12 A. Not that I recall.

13 Q. Okay. Please refer to the Amended
14 Complaint, Count 2, Paragraphs 17 through 23.

15 A. Paragraph what? I'm sorry.

16 Q. 17 through 23, if you would read those.

17 A. Sure.

18 Yes.

19 Q. Okay?

20 A. Yes.

21 Q. Paragraph 18, you're stating that
22 Defendant, meaning ASI, through its
23 representative, Lisa Wilson, directly offered to
24 Plaintiff, meaning the pub, that if the pub agreed
25 to be a Showcase Site of the Defendant's product,

1 the Plaintiff would be afforded certain benefits.

2 How did she directly relate that to you?

3 Was that in person, in a letter, on the phone?

4 How was that done?

5 A. Phone call.

6 Q. Was that the phone call that you referred
7 to earlier where Jason called her on his cell
8 phone?

9 A. Yes, it was.

10 Q. Was that the only phone call, only phone
11 conversation you had with her at that time?

12 A. At that time, yes.

13 Q. Any other phone calls you had with her
14 were after you already purchased the system, would
15 that be fair?

16 A. I don't recall if that's the only one. I
17 can't recall if that was the only time I talked to
18 Lisa on the phone. I may have talked to her one
19 more time. I'm not sure.

20 Q. You may have talked to her one more time?

21 A. I may have. I can't recall.

22 Q. And if you know, was it before or after
23 you purchased the system?

24 A. Oh, after. It would have been after.

25 Q. And what were the benefits -- you said

1 you would be afforded certain benefits. What was
2 the benefit that you would be afforded if you
3 agreed to be a Showcase Site?

4 A. Six POS licenses, handheld station
5 license, handheld interface, table service, table
6 mods, add-on modules, guest accounts, gift
7 certificates, prepaid cards, customer loyalty,
8 employee scheduling, inventory module control.

9 The patches, upgrades, everything that --
10 all the bells and whistles that go with operating
11 a system.

12 Q. And you started off by reading that off
13 the invoice?

14 A. Absolutely.

15 Q. From ASI to Batcho's; is that correct?

16 A. Sure. Sure.

17 Q. And she went through all of the items
18 with you and told you --

19 A. I can't -- I can't recall --

20 Q. Please let me finish the question.

21 A. I don't recall.

22 Q. Did she go through and name each one of
23 those items that you just said during that phone
24 conversation that you would get each one of those
25 things?

1 A. I can't recall if she named them all.

2 Q. Okay. What do you recall she said?

3 A. I recall her talking about licenses. I
4 recall her talking about table and inventory. I
5 mean, we skimmed over basically the proposal over
6 the phone, everything that Jason had told me.

7 Q. Okay. Jason didn't have anything in
8 writing at that time. That was why you wanted to
9 talk to somebody at ASI, right?

10 A. Well, whenever someone says --

11 Q. Is that right?

12 A. Yes. Yes. When someone said Showcase
13 Site, I did not really know what it meant.

14 Q. Okay.

15 A. Until she explained to me what a Showcase
16 Site was.

17 Q. And by "a Showcase Site," what you
18 thought it meant was you were going to get those
19 things that you just stated?

20 A. Absolutely.

21 Q. Except she didn't say each one of those,
22 did she?

23 A. I can't recall if she said all of them.

24 Q. What was your basic understanding that
25 you were going to get?

1 A. My basic understanding was everything I
2 just previously told you.

3 MR. NADDEO: You know, you don't have
4 to -- that's been asked and answered half a dozen
5 times or more today, and I'm going to object. You
6 don't have to answer it any more.

7 THE WITNESS: Okay.

8 BY MR. SEAMAN:

9 Q. In Paragraph 20 you're indicating that
10 you paid the sum of \$13,103 for the Restaurant
11 Manager Software System; is that right? It's in
12 Paragraph 20 of your Complaint.

13 I'm just asking you, does the Complaint
14 say that you paid \$13,103?

15 A. Yes, it does.

16 Q. And what you paid for was the Restaurant
17 Manager Software System?

18 A. Yes.

19 Q. And at the time you paid for it, you were
20 under the impression you were a Showcase Site,
21 right?

22 A. Yes. At the time I paid for it, I was
23 under the impression I was a Showcase Site, yes.

24 Q. And you didn't have any objection to
25 paying it at the time, I guess, right?

1 A. Absolutely not.

2 Q. Did you think somebody was going to pay
3 you back the money?

4 A. No.

5 (Recess taken.)

6 BY MR. SEAMAN:

7 Q. You did not expect, Mr. Liegey, that you
8 were going to get this software system free?

9 A. No. Never.

10 Q. You thought you were going to get the
11 items that you mentioned, that's what you read off
12 that invoice?

13 A. The items that Jason --

14 Q. And you got those, right?

15 A. Yes.

16 Q. Would it be fair to say then that the
17 only thing you didn't get, or things you didn't
18 get that you thought you were bargaining for, were
19 the upgrades and the patches?

20 A. No.

21 Q. What else did --

22 Do you think you didn't get those?

23 A. I didn't get a --

24 You want to know what I didn't get.

25 Q. Yes.

1 A. I didn't get -- I didn't get a complete
2 system. I didn't get everything that's on the
3 paper you just provided me. I didn't get any
4 inventory control modules that worked --

5 Q. I mean, you got one.

6 A. But it doesn't work. It still doesn't
7 work.

8 Q. Just so I'm clear, you got the items that
9 are on there. You're just saying they didn't
10 work?

11 A. They don't work.

12 Q. But you got them?

13 A. We got them and they didn't work.

14 Q. So that's what your complaint is, they
15 didn't work?

16 A. My complaint is that we couldn't get this
17 thing repaired, that the critical V-15 patches or
18 whatever patches were that were needed were never
19 supplied to us.

20 Q. They were never --

21 Number 1, they were never supplied by
22 Batcho's; is that correct?

23 A. They were never supplied by ASI.

24 Q. But they were never supplied by Batcho's,
25 correct?

1 A. I don't think Batcho's --

2 Q. Just answer the question. Did Batcho's
3 ever supply that?

4 A. Not that I know of.

5 Q. And you're saying ASI didn't either?

6 A. I'm not aware of what they supplied and
7 what they didn't. I'm not saying they didn't
8 supply any at all. I'm not aware of what they
9 supplied and what they didn't supply. I have no
10 idea. I just know my system didn't work.

11 MR. SEAMAN: Can I have one moment? I
12 want to confer -- I think we're done, but I just
13 want to confer with my client and I'll be right
14 back with you.

15 (Dennis Liegey, Jr. Exhibit No. 8 was
16 marked for identification, attached hereto.)

17 (Recess taken.)

18 MR. SEAMAN: I don't have any other
19 questions.

20 (Whereupon, the deposition was concluded
21 at 3:59 p.m. Signature waived.)

22
23
24
25

1 COMMONWEALTH OF PENNSYLVANIA)
) SS
 2 COUNTY OF ARMSTRONG)

3 I, Diane G. Galvin, Notary Public within
 4 and for the Commonwealth of Pennsylvania, do
 5 hereby certify that before the taking of the
 6 deposition, the said deponent, DENNIS LIEGEY, JR.,
 7 was by me first duly sworn to testify to the
 8 truth, the whole truth, and nothing but the truth,
 9 and that the above deposition was recorded in
 10 stenotype by me and reduced to typewriting under
 11 my direction.

12 I further certify that the reading and
 13 signing of the transcript of the deposition were
 14 waived by the deponent and by counsel for the
 15 respective parties and that the said deposition
 16 constitutes a true record of the testimony given
 17 by said deponent.

18 I further certify that I am not a
 19 relative or employee or attorney or counsel or
 20 financially interested directly or indirectly in
 21 this action.

22 I further certify that the said
 23 deposition was taken before me at the time and
 24 place specified in the notice.

25 IN WITNESS WHEREOF, I have hereunto set
 my hand and affixed my seal of office at
 Kittanning, Pennsylvania, on October 30, 2008.

Diane G. Galvin

21 DIANE G. GALVIN
 22 NOTARY PUBLIC

23 COMMONWEALTH OF PENNSYLVANIA

24 Notarial Seal
 Diane G. Galvin, Notary Public
 Whitaker Boro, Allegheny County
 My Commission Expires July 22, 2010

25 Member, Pennsylvania Association of Notaries

<p>\$</p> <p>\$1,500 [3] - 44:21, 47:10, 47:11</p> <p>\$10,500 [1] - 62:4</p> <p>\$13,000 [2] - 71:10, 71:11</p> <p>\$13,103 [4] - 47:24, 72:7, 105:10, 105:14</p> <p>\$17,000 [1] - 28:10</p> <p>\$2,000 [1] - 91:2</p> <p>\$2,500 [2] - 48:12, 91:2</p> <p>\$273 [2] - 68:25, 69:9</p> <p>\$3,100 [2] - 94:19, 95:16</p> <p>\$3,675 [5] - 68:25, 69:6, 69:9, 69:11, 69:16</p> <p>\$369 [1] - 61:3</p> <p>\$4,000 [1] - 91:1</p> <p>\$4,173 [2] - 69:1, 69:9</p> <p>\$4,500 [2] - 47:13, 48:7</p> <p>\$5,000 [1] - 48:12</p> <p>\$7,775 [5] - 71:4, 71:7, 71:15, 72:9, 72:19</p> <p>'05 [4] - 22:22, 25:24, 26:13, 38:8</p> <p>'06 [10] - 45:24, 47:8, 55:22, 55:24, 73:20, 81:10, 81:19, 81:20, 98:20, 100:1</p> <p>'07 [4] - 67:17, 70:12, 88:17, 98:23</p> <p>'08 [1] - 88:16</p>	<p>17603.00 [1] - 47:17</p> <p>18 [3] - 13:23, 14:3, 101:21</p> <p>18-PA-CS [1] - 42:4</p> <p>19 [1] - 94:10</p> <p>1970 [1] - 8:4</p> <p>1:44 [1] - 1:17</p>	<p>543-5054 [1] - 1:24</p> <p>552 [1] - 2:6</p> <p>56 [1] - 6:3</p>	<p>Action [2] - 4:8, 51:14</p> <p>actual [5] - 47:20, 47:22, 51:15, 95:18, 95:21</p> <p>add [1] - 103:6</p> <p>add-on [1] - 103:6</p> <p>addition [1] - 43:22</p> <p>Additional [1] - 1:12</p> <p>address [1] - 5:24</p> <p>admit [1] - 69:10</p> <p>affixed [1] - 109:16</p> <p>afforded [3] - 102:1, 103:1, 103:2</p> <p>afterwards [2] - 44:13, 55:21</p> <p>age [1] - 6:2</p> <p>agent [4] - 79:13, 79:14, 79:21, 80:2</p> <p>agree [1] - 91:22</p> <p>agreed [4] - 2:21, 34:11, 101:24, 103:3</p> <p>agreement [10] - 14:16, 14:17, 14:18, 37:12, 91:2, 91:16, 91:23, 92:5, 92:11</p> <p>Agreement [1] - 3:16</p> <p>ahold [1] - 29:19</p> <p>Alex [4] - 99:4, 99:12, 100:5, 100:6</p> <p>allegation [2] - 77:3, 94:13</p> <p>allegations [1] - 40:13</p> <p>allege [1] - 94:17</p> <p>alleged [1] - 72:25</p> <p>alleging [1] - 76:13</p> <p>allows [1] - 75:10</p> <p>almost [1] - 36:7</p> <p>Amended [14] - 40:3, 40:8, 42:17, 43:15, 51:2, 51:12, 51:25, 64:22, 66:19, 71:3, 73:2, 76:10, 79:12, 101:13</p> <p>amount [3] - 28:9, 48:5, 69:17</p> <p>amounts [1] - 50:14</p> <p>and.. [1] - 11:18</p> <p>ANDREW [2] - 1:9, 1:10</p> <p>Andy [1] - 36:7</p> <p>anniversary [1] - 23:3</p> <p>answer [13] - 4:17, 4:19, 5:1, 29:6, 34:20, 96:23, 96:24, 97:10, 97:21, 98:1, 105:6, 108:2</p> <p>answered [3] - 5:3, 82:8, 105:4</p> <p>answering [1] - 5:17</p> <p>Answers [1] - 96:14</p> <p>anyplace [1] - 92:12</p> <p>apiece [1] - 44:21</p> <p>apparent [1] - 51:15</p> <p>appear [1] - 43:13</p> <p>APPEARANCES [1] - 2:1</p> <p>apply [2] - 59:23, 60:19</p> <p>approach [1] - 88:5</p>		
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<p style="text-align: center;">U</p> <p>unavailable [2] - 45:12, 45:15 Unch [20] - 21:11, 21:22, 22:13, 24:17, 25:22, 27:2, 29:23, 33:2, 33:8, 34:8, 38:10, 59:18, 65:19, 66:4, 66:5, 66:11, 66:16, 81:24, 97:21, 100:25 under [7] - 4:22, 8:16, 13:12, 62:21, 105:20, 105:23, 109:6 understood [1] - 5:2 unit [1] - 63:4 units [15] - 17:6, 29:2, 29:4, 31:23, 32:2, 38:24, 39:15, 44:21, 46:9, 53:24, 62:11, 62:12, 63:2, 63:8, 71:13 unknown [2] - 18:20, 97:10 unsworn [1] - 42:5 unusable [1] - 45:5 up [35] - 16:19, 24:4, 26:7, 37:14, 46:13, 46:25, 52:15,</p>	<p style="text-align: center;">V</p> <p>V-15 [1] - 107:17 Vegas [2] - 99:1, 99:20 verbal [1] - 4:19 verbiage [1] - 31:18 Verification [7] - 40:21, 41:4, 41:8, 41:9, 41:13, 42:20, 42:24 verification [1] - 41:21 Verifications [1] - 41:11 verify [5] - 40:14, 41:1, 41:17, 51:8, 51:10 verifying [1] - 40:25 Via [1] - 2:18 Vice [1] - 9:16 video [1] - 93:18 Virginia [4] - 15:18, 18:6, 20:6, 89:3 visit [3] - 17:25, 70:25, 85:14 vocal [1] - 4:17 vs [2] - 1:4, 1:7</p>	<p style="text-align: center;">Y</p> <p>year [12] - 8:20, 17:13, 17:15, 19:12, 38:7, 45:24, 45:25, 47:8, 55:21, 81:17, 98:20, 98:23 year-and-a-half [1] - 8:20 years [3] - 7:23, 8:8, 65:8 young [1] - 86:15</p>
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Subject: Invoice for license

Date: Fri, 07 Jul 2005 14:09:43 -0500

From: Lisa Wilson <lwilson@actionssystem.com>

To: Jason Unch <pos@bosisp.com>

I have reviewed the qualifications of Denny's Beer Barrel Pub and find the site well qualified to serve as a strong reference site for Batcho's Office Systems. Given the reputation of the restaurant and the commitment of the owner, I am confident this site is in a position to help you generate new business in the local restaurant community.

Therefore, in exchange for your commitment to meet Batcho's sales quota for the second half of 2005, I would like to offer an extension on the reference site software that most new ASI resellers are required to install during their first year. In other words, if the Denny's installation does help you secure more business and if you are able to sell at least 5 more site licenses restaurants between now and December 31, 2005 ASI will waive the entire invoice for the software you install there.

However, because we are going beyond the standard one year expiration date on the reference site offer, we will process it differently than we do during the initial dealership launch period:

When you place the order for the reference site software, ASI will invoice you for the full value of the software. But the invoice will be issued 120 days net... (or however many days are pending until December 31, 2005.) If you then order an additional 5 software licenses before December 31, 2005, ASI will waive the entire invoice for the Denny's system. However, if Denny's is NOT able to help you secure 5 more sales in 2005 then, clearly, they will not have lived up to their end of the bargain in terms of boosting your sales.

I suggest you explain the situation clearly to the restaurant owner to make sure he understands what's involved in being a reference site for you. In fact, to make things clear you should ask him to shoulder part of the responsibility for serving as a reference site by passing our deal on to him: Tell him that if he helps you close five more sales between now and the end of the year you can give him the entire software package for free. If, however, he cannot use his standing in the restaurant community to help you generate new business, then you can give him only a 50% discount on the list price of the software.

And come what may this site WILL be eligible for a 50% discount simply by virtue of the fact that they're replacing a competitive POS System within 12 months of purchase. This 50% competitive upgrade discount will be applied to the Denny's invoice as soon as you submit to ASI:

the invoice Denny's paid to purchase the competitive software
the competitive software key of hard-drive, etc (whatever it is
that represents the license purchased)

The competitive upgrade discount is applicable regardless of future sales you may or may not make in 2005.

Yours,
Lisa

Lisa Wilson
ASI, Managing Vice President
(301) 445-6100 x104



Batcho^{ASS} Office Systems
 110 East Market Street
 Clearfield, PA 16830

EXHIBIT
 2 10/14/08
 LIEGEY

Invoice

Date	Invoice #
7/8/2005	114631

Bill To

DENNY'S
 Denny's Pub
 1423 Dorey Street
 Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
					Total	11,159.18

THREE Handhelds Returned (4500 -) 1500 EACH
 NO TRAINING - NO - Completed programming
 17603.00
 4500 - 00
 123103.00
 actual

WELLS FARGO FINANCIAL LEASING

Phone: (856) 497-6661

Fax: (800) 242-7252

Fax to: (814) 765-3411

Deliver To: GLEN BATCHO SR

From: BARBARA CRONIN

Decision: APPROVED

Credit Decision

Company: BATCHO BUSINESS MACHINES, INC

Cust Nm: DENNYS BEAR BARREL PUB INC

Application No.: 483271

Approved Amount: 11550

Documentation Required:

TERM/RESIDUAL

FACTOR/YIELD/GDA

ORIGINAL EQUIP COST

SIGNER

EQUIPMENT

36 MONTHS

\$ OUT 0.0331

\$10500.00

CORPORATE OFFICER

NOT LISTED

Comments:

Thank you for the business. Maximum funding is subject to MSRP limits and current rates established for your program. Funding is contingent upon our receipt and acceptance of all proper customer, vendor and other documentation (including without limitation the documents identified above), all as determined and required by Wells Fargo Financial Leasing, and the customer's

~~verbal verification of acceptance of the equipment. Wells Fargo Financial Leasing may revoke this approval at any time prior to the complete satisfaction of all such requirements or in the event of fraud or a material adverse change in the customer's financial condition. This approval will automatically expire in ninety (90) days.~~

Please contact your Program Representative with any questions.

ADDITIONAL CREDIT AVAILABLE

DENNYS BEAR BARREL PUB INC may qualify for additional credit of \$****63,400.

Please contact your Program Representative for terms and conditions.

Quotation
Prepared for



Denny's Beer Barrel Pub
Clearfield, PA
Required Purchase

6/6/2007

Description	Price
1 USB 2.0 3.5" External Hard Drive (for backups)	\$225.00
5 Restaurant Manager POS (Includes Backoffice, Employee Timekeeping, Customer Database & Reporting)	\$4,000.00
1 RM Table Service License	\$175.00
1 RM Tabs License	\$175.00
1 RM Accounts Module (Gift Cards)	\$800.00
1 RM Customer Loyalty	\$800.00
1 RM Inventory Control Module	\$800.00
1 RM Credit Card Authorization Interface	\$600.00
1 Competitive Software Trade-In	-\$3,675.00
Sub Total Before Tax	\$4,175.00
Sales Tax*	\$273.00
Total Investment	\$4,448.00

Software Cost

\$7775.00

*Sales tax and Shipping will be calculated at time of invoice.

** Includes cash discount

Software Subscription for the First Year \$367.50 per month
Software Subscription for the Second Year \$80.00 per month

Up front cost would be \$526 for the external drive plus labor.

Quote valid for 30 days from receipt

7853 Steubenville Pike • Oakdale, PA 15071
Phone: 724-695-2540
phspos@comcast.net

EXHIBIT
3 10/14/08
LIEGEY

EXHIBIT "B"

INBOX: INBOX

INBOX: Tech Support for Denny's Beer Barrel Pub move | copy This message to (832 of 1031)

Delete | Reply | Reply to All | Forward | Redirect | Message Source | Save as | Print

Back to INBOX

Date: Mon, 04 Sep 2006 11:34:27 -0400

From: Lisa Wilson <lwilson@actionsystems.com>

To: phspos@comcast.net

Cc: dennypub@pennswoods.net , jknapton@comcast.net

Subject: Tech Support for Denny's Beer Barrel Pub

ATTN: David Eckels
Pittsburgh Hospitality Systems
7863 Steubenville Pike
Oakdale, PA 15071
724-695-2540

Dear Dave --

Denny's Beer Barrel Pub was originally setup as a Showcase Site for another ASI dealership, Batcho Business Systems. Unfortunately, Batcho has not been able to meet their financial obligations to ASI and has left them without the technical support services they need to keep their POS Systems operating properly. In fact, it appears that Batcho has failed to update their software license with critical v15 patches.

If Pittsburgh Hospitality is in a position to provide an annual maintenance contract to this location, please contact Denny at the number below:

Dennis Liegey
Denny's Beer Barrel Pub, Inc.
1452 Woodland Road
Clearfield, PA 16830
814-765-7190

7/18/2005 SOFTWARE LICENSE ISSUED FOR:
N6703-0507
6 pos, 3 hh stn, table, tabs, accts, adv ord,
cust loy, emp sch, inv, cc, hardware int; sec 9

Yours,

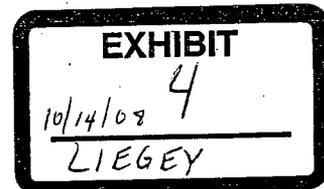
Lisa

Lisa Wilson
ASI Managing Vice President
(301) 445-6100 x104

Delete | Reply | Reply to All | Forward | Redirect | Message Source | Save as | Print

Back to INBOX

move | copy This message to



Subject: Re: Support
From: Lisa <lwilson@actionssystem.com>
Date: Wed, 04 Apr 2007 14:30:43 -0400
To: dennypub@pennswoods.net
CC: pos@bosisp.com, phspos@comcast.net
BCC: Jerry Pilcher <pilcher@actionssystem.com>, Patti Sery <ofcmgr@actionssystem.com>

Dear Dennis' --

The wholesale cost on the Restaurant Manager software license issued in your name was \$6,100. ASI invoiced Batcho's Office Systems for this amount on July 18, 2005. Unfortunately, the invoice was never paid which means Denny's Beer Barrel Pub does not have a valid license to use the Restaurant Manager software.

ASI has never made any attempt to recover the software key that allows you to use this illegal software license and we have no plans to do so in the future. However, we cannot issue any software upgrades or otherwise service the license you're using until we receive payment on the original license.

I have indicated to Pittsburgh Hospitality ASI's willingness to discount the amount due on the original license issued in your name if they get Denny's on an annual maintenance contract. If this is an option of interest to you, please discuss it further with Jeff Knapton.

Alternatively, you may wish to contact Batcho's Office Systems and urge them to pay off the original invoice.

Yours,

Lisa Wilson
ASI Managing Vice President
301) 445-6100 x104

dennypub@pennswoods.net wrote:

Lisa I just spoke with Pittsburgh Hospitality (Jeff) concerning our system here At Denny's Beer Barrel Pub. I was shocked to here that Batcho Business Machines here in Clearfield never secured a license for our software ,when selling us on Restraunt Manager. We were charged \$17,603.00 and we already had all hardware and wiring in place and were told we were given a break for us to be a site to showcase your product in our area, we however were never told we did not or would not have a license for our software. We engaged in all forms OF TRAINING that were required as presented to us By Batchos, (JASON UNCH) AND (THOMAS QUINN). We also were instrumental in securing the Clearfield Country Club for the sale of your system in having board members observe our system and us going to their board meeting with Jason and tom and speaking on their behalf about the system. We have had major problems with our system from the beginning and have had Batchos here countless times, we even purchased new hardware on their say so as the root of all our problems. But still have many unsolved issues. I also am very unhappy that ASI would allow someone to sell anything related to their company that needed licensed and not contact us about that problem. We have wasted countless dollars and lost countless dollars due to all the software problems we have had. I will be meting with Jeff from Pittsburgh Hospitality in the near future to try to resolve our issues. We also will pursue legal action againt Batchos after we know the extent of what has or hasn't been done. I also have issues in paying \$4360.25 for software licenses we were promised from the beginning and were told we had. If there is a solution that can be arranged between Denny's Beer Barrel Pub Inc and ASI , please contact us by email or you may call me on my Mobile line 814-577-2733. Thank you for your time.
Dennis Liegey, President



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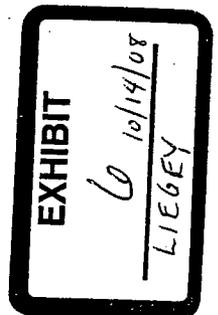
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ASI 2005
 1734 Elton Road, Suite 219
 Silver Spring, MD 20903
 USA

Voice: (301) 445-6100
 Fax: (301) 445-6104

Invoice
 Invoice Number:
 13605

Invoice Date:
 Jul 18, 2005

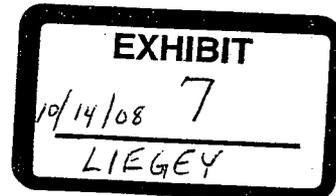
Page:
 1

Sold To:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830

Ship to:

Batcho Business Machines
 110 East Market Street
 Clearfield, PA 16830



Customer PO	Shipping Method	Payment Terms	Ship Date	Sales Rep
	UPS Ground	Net 160	7/18/05	PHS

Quantity	Description	Unit Price	Extension
1	6 POS license for S/N:N6703-0507 (Denny's Beer Barrel Pub Inc.)	2,800.00	2,800.00
3	HandHeld Stn License for S/N:N6703-0507	300.00	900.00
1	HandHeld Interface	600.00	600.00
1	Table Service (includes Quick Service)	100.00	100.00
1	Tabs Module (includes Quick Service)	100.00	100.00
2	Any three Add-On modules	700.00	1,400.00
1	Guest Accounts, Gift Certificates, Prepaid Cards, etc.		
1	Customer Loyalty		
1	Employee Scheduling Module		
1	Inventory Control Module		
1	Datatran or PC Charge (Datacap/Modem NOT included)		
1	Fingerprint, Caller ID, Scanner, Video Overlay, Scale, Coin Dispenser, Berg Liquor Control, Real Time KDS		
1	Advance Ordering Module	200.00	200.00
1	Shipping & Handling	15.00	15.00

Invoice to Batcho

Note: This invoice is still outstanding

TOTAL 6,115.00

Fee of 1.5% per month on overdue invoices. \$50 return check fee.

EXHIBIT "E"

Point of Sale for Restaurants



ALEX MALISON

CEO

malison@actionsystems.com

T:301.445.6100 x102
F:301.445.6104
www.actionsystems.com

1734 Elton Road, #219
Silver Spring, MD 20903

EXHIBIT

10/14/08

LIEGEY

restaurant
manager

An ASI Technology

write-on
HANDHELD

An ASI Technology

Refreshing POS Solutions

1 IN THE COURT OF COMMON PLEAS
2 OF
3 CLEARFIELD COUNTY, PENNSYLVANIA

4 DENNY'S BEER BARREL PUB, INC.,
5 Plaintiff

6 -vs-

7 ACTION SYSTEMS, INC.,
8 Defendant

9 CIVIL DIVISION
10 NO. 2007 - 1351 - CD

11 PROCEEDINGS: Telephone Deposition of
12 LISA G. WILSON
13 DATE: Wednesday, July 23, 2008
14 10:15 - 11:30 a.m.
15 PLACE: Naddeo & Lewis, LLC
16 207 East Market Street
17 Clearfield, PA 16830
18 REPORTED BY: Maryann Cornelius
19 Freelance Court Reporter
20 Notary Public

21 MARYANN CORNELIUS
22 Freelance Court Reporter
23 339 Southmont Boulevard
24 Johnstown, PA 15905
25 (814) 536-7405
or
(814) 241-2121

MARYANN CORNELIUS (814) 536-7450

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AUG 1 8 2008

MARYANN CORNELIUS (814) 536-7450

1 APPEARANCES

2 JAMES A. NADDEO, ESQUIRE
3 TRUDY C. BUMADUE, ESQUIRE
4 Naddeo & Lewis, LLC
5 207 East Market Street
6 P.O. Box 552
7 Clearfield, PA 16830
8 Appearing on behalf of the Plaintiff
9 Denny's Beer Barrel Pub, Inc.

10 LAURANCE B. SEAMAN, ESQUIRE
11 Gates & Seaman
12 470 North Front Street
13 P.O. Box 846
14 Clearfield, PA 16830
15 Appearing on behalf of the Defendant
16 Action Systems, Inc.

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25
Exhibit "C"
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1 STIPULATION

2
3 It is hereby stipulated by and between counsel for
4 the respective parties that sealing, certification, and filing
5 are waived, and that all objections except as to the form of
6 the question are reserved to the time of trial.
7

8 EXAMINATION

9 BY MR. NADDEO:

10 Q Lisa, this is Jim Naddeo.
11 A Hi, Jim.
12 Q How are you? I represent -- you know I represent
13 Denny Liegey and his business known as Liegey's Beer Barrel
14 Pub?
15 A Yes.
16 Q Okay. You understand that we are taking your
17 deposition this morning concerning whatever knowledge you may
18 have of what transpired between ASI, Batcho Office Systems and
19 Denny's Beer Barrel Pub?
20 A Yes.
21 Q Okay. And you will be placed under oath by an
22 official court reporter.
23 A Yes.
24 Q And you're going to be asked by me a series of
25

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1 questions.

2 A Yes.

3 Q All right. A couple of things that you should know

4 before we start. First of all, be sure that you have heard
5 and that you have -- and that you understand the question that
6 I've asked. If you didn't hear it or if you don't understand
7 it, please ask me to restate it or rephrase the question and I
8 will be happy to do that for you, all right?

9 A Okay.

10 Q If you've heard the question and if you understand
11 the question, we would ask -- I would ask that you give a
12 response to that question, including an I don't know or I
13 don't recall if you don't know the answer or don't recall the
14 answer to the question. Don't speculate. In other words,
15 don't give me an answer just because I've asked the question
16 if you really don't recall or know the answer.

17 A Okay.

18 Q In other words, if I say to you what did you have
19 for breakfast last July on the 23rd, don't say oatmeal because
20 you usually eat oatmeal every day. The likelihood is you
21 don't remember or don't recall, all right?

22 A All right.

23 Q If at any time you want to consult with Mr. Seaman,
24 you should interrupt me and you're welcome to do that.

25 A Okay.

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1 Q All right. I have some E-mails from you indicating
2 a title of managing vice-president, is that --

3 A Yes.

4 Q Is that your actual title?

5 A Yes.

6 Q Do you have a job description as the managing
7 vice-president?

8 A Yes, I do.

9 Q What is that job description?

10 A I assist ASI with recruiting and supporting
11 resellers, value added resellers to our independent companies
12 that purchase software from us and configure and bundle and
13 then install it on equipment and then resell it to restaurants
14 with training service and consultation services as a full POS
15 system.

16 Q Okay. So you interact with the purchasers of your
17 company software?

18 A That is correct.

19 Q Now you say "purchasers." Would they -- could
20 anybody purchase directly from the company or do I get
21 designated as a dealer?

22 A Yes. Dealers do have to get trained on the software
23 and they then are authorized to purchase the software.

24 Q I understand. So you do set up dealerships for
25 handling your software?

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1 Q All right?

2 A Okay.

3 MR. NADDEO: She's going to have to give a verbal
4 response so the part about nodding your head and --

5 THE WITNESS: Can you hear me?

6 MR. NADDEO: Yes, yes, we can hear you very well.

7 MR. SEAMAN: We'll reserve all objections except as
8 to the form of the question?

9 MR. NADDEO: Correct.

10 BY MR. NADDEO:

11 Q Lisa, are you ready to go?

12 A I am.

13 Q All right.

14
15 LISA G. WILSON, called as a witness, being sworn,
16 testified as follows:

17

18 BY MR. NADDEO:

19 Q Your full name, please.

20 A Lisa Gail Wilson.

21 Q What is your occupation?

22 A I am the vice-president at Action Systems,
23 Incorporated.

24 Q How long have you held that position?

25 A About eight years.

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1 A That's correct.

2 MR. SEAMAN: Excuse me. By "set up," I'm not sure
3 what you mean by that.

4 BY MR. NADDEO:

5 Q Okay. Let me say -- do you establish dealerships
6 for marketing your software?

7 A Well, actually no because what we are doing --
8 they're not really dealers, they're what we call value added
9 resellers. They are companies that are selling point of sale
10 systems.

11 Q Okay.

12 A ASI does not sell point of sale systems. We design
13 software that can be used as a component in a point of sale
14 system. So they're not really dealers because we -- nobody
15 sells software only to a restaurant. They're -- we find
16 companies that sell point of sale systems and then we tell
17 them that our software can make a good component and that's
18 when a sale system has -- then we set them up to purchase the
19 software from us.

20 Q You also mentioned some kind of training for the
21 point of sale dealers?

22 A Well, we do give them some training on our software
23 if they want it. It's not always required. But what we don't
24 do is we don't train them on how to configure hardware, how to
25 work with Windows, how to -- there's a lot of things involved

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1 in putting together a point of sale system that we
2 specifically not only don't give them training on, but we
3 can't even support them on. They are -- they need to know
4 those kind of things and handle them on their own.

5 Q Okay.

6 A We just train them on the software itself.

7 Q Do you enter into some type of written agreement
8 with your point of sale buyers?

9 A With the retailers?

10 MR. SEAMAN: Excuse me, I'm going to have to -- I'm
11 not sure that I understand. When you're referring to
12 point of sale buyer, are you referring to the end user or
13 are you referring to the reseller?

14 MR. NADDEO: Well, I'm using her terminology. She's
15 calling her -- the people point of sale purchasers of
16 their software who in turn sell it to consumers.

17 BY MR. NADDEO:

18 Q Do I have the terminology correct, Miss Wilson?

19 A Actually not quite.

20 Q Okay.

21 A We do not have any relationship with the people who
22 buy the point of sale systems, but we do have a contract with
23 the people that buy our software.

24 Q All right.

25 A The software is quite different from the system.

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1 cooperative advertising, or we will help them with direct mail
2 campaigns and other things that actually promote the POS
3 systems they sell with their name and their information, but
4 it will have, like a little restaurant manager logo on it, our
5 software logo. That benefit is one that we don't give to
6 resellers after they stop selling our software so we will
7 cancel those privileges and tell them that instead they --
8 they may pay us a quarterly fee of \$250 which allows them to
9 continue to access our technicians, ask them questions about
10 the software, if they need to, but that we're not going to
11 give them those additional support services that we give to
12 the active resellers.

13 So the answer is yes, we did tell Batcho that they
14 would not be -- that they were not meeting their sales quotas
15 and could not have those special services any longer. So we
16 do always extend to them at the same time, to any reseller,
17 that option to pay our maintenance fee to continue asking
18 questions about the software, if they need to.

19 Q Okay. Do you have a record of when you terminated
20 your written agreement with Batcho's when they -- let me
21 rephrase that.

22 Do you know when you notified Batcho's that they
23 were no longer meeting the necessary quota to continue as a
24 value added reseller?

25 A Yes, if you will give me a minute again. There's

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1 Q What do you call the people who buy your software?

2 A Value added resellers.

3 Q All right. Do you enter into a written agreement of
4 any type with your value added resellers?

5 A Yes, we do.

6 Q Did you have a value added -- did you have an
7 agreement at some point in time with Batcho Office Systems?

8 A Yes, we did.

9 Q Okay. Do you know when that written agreement was
10 signed?

11 A I don't remember, but if you give me a minute I have
12 some notes here I think I can consult and find that answer.

13 Yes, it would appear that we signed the agreement on
14 March -- February 19th of 2004.

15 Q Did you ever terminate your agreement with Batcho
16 Office Systems?

17 A We have a system where we look at our value added
18 resellers as being active resellers who are going out and
19 actually selling software systems and we count up their sales.

20 And we have another system for resellers who then -- who are
21 no longer selling for a variety of reasons our software. The
22 active resellers enter an agreement that includes a sales
23 quota. When they're no longer able to meet the sales quota in
24 the agreement, we do tell them that they are no longer
25 eligible for certain benefits which mostly consist of

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1 notes that I need to access to check on that date. It looks
2 to me like they started -- I don't see a date for the actual
3 letter being sent, but I do see that they started -- they
4 started paying maintenance for the first quarter of 2006, they
5 started paying the maintenance fee. So that means at that
6 point they aren't -- we aren't considering them full resellers
7 and they're no longer meeting the sales quotas.

8 Q So the first payment you received for the
9 maintenance fee was for the first quarter for 2006, is that
10 what you said?

11 A Yes.

12 Q And that would have been \$250?

13 A That's correct.

14 Q Which implies that they no longer had their status
15 with you as a value added reseller as of the end of December
16 of 2006?

17 A Actually, no. They still are able to be a value
18 added reseller, they're just not getting the additional
19 cooperative advertising support.

20 Q I see.

21 A It's related to the way we help them advertise our
22 software.

23 Q Did ASI retain a copy of the agreement between your
24 company and Batcho Office Systems?

25 A We did have a copy, and I even have a note here

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1 about it, but I -- we were not able to find it in our files.

2 Q To your knowledge, was there anything different
3 between the agreement that your company had with Batcho and
4 any of its other value added resellers?

5 A No.

6 Q Have you changed the contract in any manner since
7 February 19th of 2004?

8 A Yes, we have.

9 Q Does your company have a copy of the contracts that
10 you were using in February of 2004?

11 A Yes, we do.

12 Q So if I were to request a copy of that from your
13 Counsel, you would be able to provide it to him?

14 A Yes, that's correct.

15 Q Okay.

16 MR. SEAMAN: If I may, one of those was attached to
17 the Complaint to join additional Defendants as Exhibit D
18 as in dad.

19 MR. NADDEO: The contract she's referring to?

20 MR. SEAMAN: The resellers agreement.

21 BY MR. NADDEO:

22 Q Okay. Miss Wilson, I guess my next thing that I'm
23 confused is, what is meant by a showcase site?

24 A When we first sign up a new value added reseller, we
25 want to help them get a system installed that is using our

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1 helping the dealer get set up so that they have -- that they
2 have a local user.

3 Q Okay. And does the local user or the person --

4 A Can I add something to that?

5 Q Sure.

6 A It's also intended -- I don't know how familiar you
7 are with the way we license our software.

8 Q Well, I'm completely unaware or unfamiliar, but go
9 ahead.

10 A Okay. Well, we license -- when we provide our
11 software to the reseller, we ask them to tell us what

12 configuration of how many computers and different pieces of
13 equipment will be on the software and what features the user

14 might be needing. So we have a basic license which counts the
15 number of stations that that restaurant might need. And then

16 we -- the reseller also can say in this restaurant they're

17 going to be selling gift cards so I need an extra module to

18 help them sell gift cards, or they are going to do employee

19 scheduling so I'm going to give them that.

20 So we normally license it to the user, but the

21 showcase site license, we don't do that. They get everything

22 on it, it's a fully loaded license.

23 Q Okay.

24 A That gives them the flexibility to do what they want

25 or show what they want for that user.

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1 software as one of the components. We give them a special as
2 we -- as they're launching their dealership, if you will. We

3 give them some special benefits, and one of them is that they
4 can get from us a license that they may use for any user they

5 want to install and really get that customer up and going and

6 willing to say that Batcho's sells these great POS systems.

7 It's a privilege we only give to a new dealer who doesn't have

8 other licenses, other clients already using restaurant

9 managers.

10 Q Okay. Is there any benefit to the end user, and by

11 that I mean the person who purchases your software from an

12 added -- a value added reseller such as Batcho?

13 A That is up to the reseller, they do whatever they

14 want to do. But usually they will do some of them, give free

15 service, some of them do give extra equipment, some of them

16 give a variety of things.

17 Q So the end user also benefits from the program?

18 A The end user should benefit depending on whatever

19 the reseller offers to them.

20 Q Now, can I refer to this showcase site as a type of

21 marketing endeavor on the part of ASI and its value added

22 reseller?

23 A Yes.

24 Q It's a part of a marketing program?

25 A Well, it is sort of marketing. It's really just

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1 Q So if you're designated as a showcase site, there is
2 definitely some benefit to the end user, is that right?

3 A There should be. But, again, it's up to their
4 reseller what that benefit might be.

5 Q But, no -- I mean, from what you've described ASI

6 also gives them a benefit which you give them a software

7 package which includes benefits or character, you know, which

8 includes benefits that they wouldn't otherwise get if they

9 weren't a showcase site, isn't that true?

10 A Yes. Although I should say that the software -- for

11 instance, if we -- if there was an employee scheduling module

12 on the license, the user would not know that or even benefit

13 from it unless the reseller chose to set it up and configure

14 it further. So most of our showcase sites which go out with

15 everything licensed, very rarely are they actually installed

16 that way by the reseller.

17 Q Okay. But they do as a showcase site they receive

18 the capacity to do or perform these various functions?

19 A If the reseller wants to give it to them, yes.

20 Q Okay. Now, if I am the end user and I've been

21 designated as a showcase site, does that impose any

22 obligations on me?

23 A Yes, it does. But, again, we let the reseller set

24 up what those obligations ought to be. ASI does tell them

25 that they need to get -- first of all, the resellers, after

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1 they get them up and going, wants to ask them for a letter of
2 reference and a photograph and other things that the reseller
3 could use to help promote their business in the area.

4 Q Would that include inspections by other potential
5 buyers of your software?

6 A On site inspections it --

7 Q Yes.

8 A -- may or may not be part of it, but, yes. The idea
9 is that this site would be a referral or a reference for the
10 reseller which may just be in a printed ad or a letter of
11 reference, or it might mean having people visit the site; and,
12 again, that would depend on whether -- what the reseller
13 wanted to set up.

14 Q Okay. So to generalize, and you may correct me if
15 I'm wrong, the showcase site program is a marketing vehicle
16 which ASI uses along with its value added reseller to help
17 market ASI's software as well as promote the sales of the
18 value added reseller?

19 A Well, no, we promote the showcase site where we're
20 recruiting the resellers as something that we offer to them, a
21 way that we help them get up and running. It's not -- we
22 don't really market directly to the restaurants.

23 Q Yeah, I understand that. But the whole marketing
24 program is interrelated between ASI, the value added reseller
25 and the end user, correct?

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1 Q And you offer that program to your value added
2 reseller?

3 A We simply offer them -- we tell them we won't charge
4 them for that license.

5 Q Right. So you offer the program to them, you give
6 them something so that they can establish a showcase site?

7 A Yes.

8 Q And the purpose of establishing a showcase site is
9 to assist your value added reseller in marketing your
10 software?

11 A To assist our value added reseller in marketing
12 their entire POS system. They're not allowed -- in fact, our
13 agreement specifically prohibits them from selling software
14 itself.

15 Q Okay. Maybe licensing your software, is that a
16 better term?

17 A Yes.

18 Q Okay.

19 A We also do -- what we want to prevent -- the reason
20 we don't sell software directly to restaurants is that there's
21 quite a bit of configuration and installation services that
22 have to be done and equipment has to be bought, things like
23 that.

24 Q Okay. So you don't actually sell your software, you
25 license it?

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1 A The reseller is going to be marketing their entire
2 -- you know, they're going to be selling POS systems. ASI
3 only sells software to the reseller.

4 Q I understand.

5 A We don't dictate or have anything to do with what
6 kind -- what kind of equipment goes into a POS system or if
7 there's a cash drawer or not a cash drawer, mad stripe readers
8 or not mad stripe readers. Even if it's stationary, touch
9 screen equipment or wireless hand-held equipment, we don't do
10 any of that.

11 Q Okay.

12 A So, when restaurants purchase systems, they're kind
13 of looking at a thing, they're buying a thing so that's
14 marketed by the reseller.

15 Q Okay. Miss Wilson, you know, I don't want to
16 belabor the point or dance around this issue, but I do need to
17 have an understanding of just what the showcase site marketing
18 program is. So, if you'll bear with me, I would like to go
19 back through this and see if my understanding is correct,
20 okay?

21 A Okay.

22 Q Number one, you acknowledge that ASI participates in
23 some fashion in this marketing program known as a --
24 identified as a showcase site?

25 A Yes.

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1 A Yes.

2 Q Okay. And your value added reseller is not
3 permitted to sell your software, correct?

4 A What?

5 Q They're not permitted to sell, I think that's what
6 you said, they don't sell your software?

7 A Sell the software by itself? Of course they're
8 selling the software.

9 MR. SEAMAN: As a part of the system, the POS.

10 MR. NADDEO: Okay.

11 BY MR. NADDEO:

12 Q All right. Let me go back through. Your company
13 manufactures, I guess, for want of a better term, software,
14 correct?

15 A Yes.

16 Q You enter into agreements with value added resellers
17 to market your software?

18 A Yes.

19 Q To sell it -- resell it to other people?

20 A Yes.

21 Q The company does not sell direct to an end user, you
22 sell through value added resellers?

23 A Yes.

24 Q The company has a marketing program known as a
25 showcase site, is that correct?

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- 1 A Yes. But that's not -- well, yes.
- 2 Q Okay. And the showcase site is a program which
- 3 assists your value added reseller in establishing the
- 4 business, or their business, its business of reselling your
- 5 software?
- 6 A It assists them in establishing their business of
- 7 selling POS systems that use our software as one of their
- 8 components.
- 9 Q Right. Okay. And that system provides certain
- 10 benefits to the value added reseller?
- 11 A Yes.
- 12 Q Correct?
- 13 A Correct.
- 14 Q In terms --
- 15 MR. SEAMAN: Excuse me, I object. That's kind of
- 16 been asked and answered. She already indicated that it
- 17 provided benefits to the end user if the reseller passes
- 18 the benefits on to the end user.
- 19 MR. NADDEO: I wasn't -- I didn't ask that question.
- 20 The question I asked is whether the program benefitted
- 21 the value added reseller and I think the answer is yes,
- 22 it does.
- 23 MR. SEAMAN: I'm just asking did she understand that
- 24 as being the question?
- 25 THE WITNESS: Yes. Yes, the program benefits the

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- 1 A No.
- 2 Q Okay. But there could be other obligations, that
- 3 would be between the entity designated as the showcase site
- 4 and the value added reseller?
- 5 A That's correct.
- 6 Q So the value added reseller could put any "bells or
- 7 whistles" that it wanted on that relationship?
- 8 A Yes.
- 9 Q And ASI is not a party to that?
- 10 A No.
- 11 Q Could it include demonstrations at the site, for
- 12 instance?
- 13 A It could.
- 14 Q Are you aware of any situations where that's part of
- 15 the arrangement between the value added reseller and the
- 16 entity designated as the showcase site?
- 17 A I'm sorry, the entire reseller network or with
- 18 Batcho's?
- 19 Q No, any of them. Is that something that's done
- 20 generally?
- 21 A I do know of a site where that has happened; I don't
- 22 know that it is done generally.
- 23 Q Okay. How about Batcho's specifically, did you --
- 24 were you aware of what was going on between Batcho and Denny's
- 25 Beer Barrel Pub?

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- 1 value added reseller.
- 2 BY MR. NADDEO:
- 3 Q Okay. The value added reseller in turn finds an end
- 4 user to be designated as a showcase site, is that correct?
- 5 A I'm "an end user," I'm not sure what that means.
- 6 Q Well, they sell -- they sell the POS systems and
- 7 your software to someone who agrees to act as a showcase site?
- 8 A For them?
- 9 Q Yes.
- 10 A The restaurant agrees to act as a showcase site for
- 11 the value added reseller.
- 12 Q Correct. Is that how it works?
- 13 A Yes.
- 14 Q Okay. And in return for being designated as a
- 15 showcase site, the end user also has certain responsibilities
- 16 to assist in marketing the software in the POS systems, is
- 17 that correct?
- 18 A They are set up by the reseller with whatever
- 19 obligations the reseller wants to give them.
- 20 Q Okay. And I understand that includes a letter of
- 21 reference of some type?
- 22 A Yes.
- 23 Q Okay. Are you aware of any other obligations that
- 24 it imposes on the entity designated as the showcase site in
- 25 addition to a letter of reference?

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- 1 A Not when they were setting it up, no.
- 2 Q Did you at some point learn what the arrangement
- 3 was?
- 4 A Not really, but I did have a conversation at a later
- 5 date with Denny.
- 6 Q Okay. And I guess that was the next thing I wanted
- 7 to ask you about. My information is that you had a telephone
- 8 discussion with Denny, and by Denny I'm referring to Dennis
- 9 Liegey sometime in June of 2005, is my information correct?
- 10 A I don't think that's the date. Let me check my
- 11 notes here, sorry. No. It looks like the conversation was in
- 12 September of 2006.
- 13 Q Okay. And do you know Jason Unch?
- 14 A Yes.
- 15 Q And how do you know Jason Unch?
- 16 A Jason Unch was the person at Batcho's that we spoke
- 17 to about and that we worked with as a reseller.
- 18 Q All right. Do you recall Jason Unch initiating a
- 19 call to you on behalf of Mr. Liegey in June of 2005?
- 20 A I do not, but let me check, I have some other notes
- 21 about calls I had with Jason. I see a conversation that I had
- 22 with Jason in June of 2005. I don't see anything with the
- 23 restaurant themselves.
- 24 Q All right. Is it possible that Jason initiated the
- 25 call and then gave the phone to Mr. Liegey to talk with you?

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- 1 A I don't think so because it looks like we were
2 talking about basically what he wanted. They had not --
3 Batcho's office had not been meeting our sales quotas so I had
4 already told them that they were going to go onto the
5 maintenance program and that they would have to start paying
6 that 250 per quarter. And our conversation is about -- that
7 my notes indicate -- I don't, to be honest, remember it that
8 well, but my notes indicate that we were talking about whether
9 he could still get a free license from us that he could use to
10 set up a site.
- 11 Q Okay. Now, do I understand then that you either did
12 not have a conversation with Dennis Liegey in June of 2005,
13 or, alternatively, you don't recall that conversation?
- 14 A Yes.
- 15 Q Do you have the date of the call that was made to
16 you by Mr. Unch in June of 2005?
- 17 A Well, actually, you know what, now that I'm looking
18 at it, it says May 11th, 2005. And the June conversation, I'm
19 sorry, I misinformed you a moment ago, my note about the
20 conversation with Jason is in May of 2005. And it looks like
21 in June of 2005 one of the other staff people at ASI spoke to
22 Jason.
- 23 Q But not you?
- 24 A Not me. But I did speak to him about the restaurant
25 in May.

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- 1 A Yes. Again, I'm basing most of my recollection here
2 on some notes that I have, but, yes.
- 3 Q All right. Do you have any specific recollection of
4 that call in terms of what was discussed?
- 5 A Yes. I've got some notes here and I also have a
6 letter that I wrote after the conversation.
- 7 Q Let's speak about the spoken, the telephone
8 conversation first. What is your recollection of the
9 telephone conversation?
- 10 A My recollection is that he called because he wasn't
11 getting the support that he needed from Batcho's.
- 12 Q Okay. Would that include the updates on the
13 software?
- 14 A It could have, yes.
- 15 Q Okay. If I'm a licensed user of your software, does
16 ASI provide updates?
- 17 A No, not directly to the users again. But resellers
18 are able to get -- there's two kinds of updates; one is called
19 a patch, or patch and a utility, and then there is also
20 upgrades. So resellers can get the patches at their
21 discretion as they need them off of a special Web site that we
22 set up for them for that particular purpose.
- 23 Q All right. So, if I'm an end user, if I purchased
24 the software from one of your value added resellers, the only
25 way I can get the upgrade is through the reseller?

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- 1 Q Do your notes indicate what staff person Jason spoke
2 to in June of 2005?
- 3 A Yes, it says his name is Kevin.
- 4 Q Was there a Kevin employed by ASI at that time?
- 5 A Yes.
- 6 Q His last name, please?
- 7 A Mangelson, M-A-N-G-E-L-S-O-N.
- 8 Q What was his position with the company?
- 9 A He was called the sales associate.
- 10 Q Is he still employed by ASI?
- 11 A No, he is not.
- 12 Q When did he terminate his employment?
- 13 A I'm going to have to look that up. I would say
14 approximately in the fall of 2006. We can look it up, if you
15 can hold on a minute, I don't remember. I think that it was
16 probably in July of 2007, but to be honest I'll have to go
17 back and look at some other employment files. I'm just
18 looking at a --
- 19 Q That's all right. Let me ask you a different
20 question. Does anybody at ASI know where this person is
21 currently located?
- 22 A No, I don't think so.
- 23 Q Now you do recollect having a telephone conversation
24 with Dennis Liegey, but that would have been in September of
25 2006?

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- 1 A Yes, that's correct. But then, again, there's two
2 different things, an upgrade is different than a patch.
- 3 Q Okay. Let's talk about --
- 4 A It's just at their own discretion go and download
5 the patches if -- if they felt they needed them or what have
6 you. They're usually just a small -- a patch is usually a
7 small change to the software.
- 8 Q Okay.
- 9 A An upgrade actually means upgrading the license to
10 software that we have redesigned to offer additional features
11 and those upgrade users are required to pay for them.
- 12 Q I understand. Okay. Is there any way for an end
13 user, someone who has purchased software, ASI's software from
14 a value added reseller, is there any way for them to get the
15 upgrades except through the value added reseller?
- 16 A No.
- 17 Q And in order to be able to get those upgrades from a
18 value added reseller does the software have to be licensed?
- 19 A I'm not sure I understand your question, can you
20 rephrase it?
- 21 Q Okay. If I'm an end user, I've purchased software
22 from a value added user -- or, excuse me, a value added
23 reseller, do I have to -- does my software have to be licensed
24 in order to purchase the upgrades?
- 25 A No. I'm not -- I'm not sure I understand your

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1 question, but I think the answer is no. I'm not sure what
2 you're trying to ask.

3 Q Let me ask you this. Wasn't one of the issues that
4 arose between Denny's Beer Barrel Pub and Batcho's Business
5 Machinery -- or, excuse me, Batcho Office Systems and ASI, the
6 fact that ASI did not issue a license for the software that
7 Liegey thought he purchased?

8 A No. You have to install a license to make the
9 software work.

10 Q Okay. A license was never issued by ASI to Denny's
11 Beer Barrel Pub, is that correct?

12 A No. We -- yes, we issued a license for Denny's Beer
13 Barrel Pub. You have to have a license for the software to
14 work.

15 Q Okay. Do you have a copy of an E-mail dated Monday,
16 September 4th, 2006?

17 A The E-mail from me to --

18 MR. SEAMAN: An E-mail from who to who?

19 BY MR. NADDEO:

20 Q Which was sent by you to a David Eckels.

21 A Yes.

22 Q Do you have that in front of you?

23 A Uh-huh.

24 Q That E-mail was authored by you, is that correct?

25 A Yes.

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1 the letter was not to create a legal document; the goal of my
2 letter was to try and help Denny.

3 Q Okay. Now your E-mail goes on to state that,
4 unfortunately, Batcho has not been able to meet their
5 financial obligations to ASI and has left them without a
6 technical -- without the technical support services that they
7 need to keep their POS systems operating properly?

8 A Yes.

9 Q Okay. So at that point it --

10 A Separate things though. One is Batcho's financial
11 obligations to us and the other one is the technical services
12 that Denny needs. They're not one thing, they're two things.

13 Q Okay. Your E-mail goes on to say in fact it appears
14 that Batcho has failed to update their software license with
15 critical V15 patches?

16 A Uh-huh.

17 Q Okay. Are those V15 -- the patches are to be
18 distinguished from the upgrades, is that right?

19 A That's right. Denny's already is licensed. Their
20 license is a Version 15 license.

21 Q Okay. Well, I guess I'm confused on whether or not
22 they're licensed. Let's stick with the showcase site. As of
23 Monday, September 4th, 2006, your E-mail specifically states
24 that Denny's was originally set up as a showcase site. Was
25 that sloppy language or was that true?

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1 Q Okay. And the E-mail states that Denny's Beer
2 Barrel Pub was originally set up as a showcase site for
3 another ASI dealership, Batcho Business Systems?

4 A Yes.

5 Q And you refer in your E-mail to an ASI dealership,
6 correct?

7 A Yeah, I do say that, but they're really value added
8 resellers.

9 Q Okay.

10 A Again, that's sloppy language in my letter.

11 Q What is the relationship between ASI and Pittsburgh
12 Hospitality Systems?

13 A They are another -- well, actually they're no longer
14 -- any longer either, but at the time they were another value
15 added reseller.

16 Q All right. Is the terminology "value added
17 reseller" the terminology that's used in your written
18 agreements with these people who remarket your software?

19 A Yes, it is.

20 Q Okay. But you, again, and I understand it was poor
21 language on your part, but you do refer to the ASI dealership,
22 Batcho Business Systems, that's what it says?

23 A Yes, that's what I wrote in the letter.

24 Q It isn't what you meant though?

25 A Well, it's just a sloppy way of talking. My goal of

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1 A Well, you have to -- you still have to have a
2 license if you're a showcase site.

3 Q That's not my question. Is your statement that
4 Denny's Beer Barrel Pub was originally set up as a showcase
5 site accurate?

6 A Yes, that's true.

7 Q Okay. So ASI was aware that Denny's Beer Barrel Pub
8 had been set up as a showcase site?

9 A Yes.

10 Q Okay. That means that your value added reseller,
11 Batcho Office Systems, participated in setting up the
12 arrangement for Denny's Beer Barrel Pub to be a showcase site?

13 A Not that they -- that they did it.

14 Q They did it. And ASI was aware of it?

15 A Yes.

16 Q Okay.

17 A We have another letter that we sent to Jason telling
18 him that we were issuing the software license to him and under
19 what conditions he would have to pay for it and under what
20 conditions he wouldn't have to pay for it.

21 Q Okay.

22 A And all the difference was was does Batcho have to
23 pay us for this license or not.

24 Q All right. Now I understand that as part of setting
25 someone up as a showcase site you give free software to the

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1 value added reseller?

2 A Yes. We give the software license to the reseller
3 for free.

4 Q Okay. The reseller in turn gives it to -- or not
5 necessarily gives it, sells it to the end user?

6 A That's correct.

7 Q Okay. So ASI was aware that this arrangement had
8 been set up between Batcho Office Systems and Denny's Beer
9 Barrel Pub?

10 A Yes.

11 Q Okay. Was the designation as a showcase site
12 eventually withdrawn from Denny's Beer Barrel Pub?

13 A Well, all we did was we told Batcho's that they had
14 to pay us for the license, and I can give you another letter
15 that I wrote to Jason about it. That doesn't mean that they
16 can't be a showcase site, it just means that Batcho has to pay
17 us for the license.

18 Q All right. I'm not clear on what happened to
19 Denny's Beer Barrel Pub. Was Denny -- at the time that you
20 sent the E-mail to Mr. Eckels on September 4th, 2006, did you
21 still consider Denny's Beer Barrel Pub to be a showcase site?

22 A Well, being that the showcase site is a restaurant
23 that is supposed to be promoting what a great business Batcho
24 Office Systems is, obviously, they're not. Because Denny had
25 called me because he was angry and upset with Batcho so he is,

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1 Q Well, but that's not what you say, do you agree?

2 A Well, that, obviously, isn't what I say, but if you
3 read my next sentence --

4 Q Well, we're going to get to that.

5 A -- missing the payment. ASI never made any attempt
6 to recover the software key. The software key is the same
7 thing as the license.

8 Q All right.

9 A It's just like if you were driving a car that, you
10 know, you're driving it, but it's -- it might not belong to
11 you, that means you own it illegally.

12 Q So, when you state that they did not have a valid
13 license, what you meant was that ASI had never been paid --

14 A Yes.

15 Q -- for the license?

16 A That's right.

17 Q Now I'm confused. I thought that license was given
18 to Batcho free of charge in order to set up the showcase site
19 for Denny's Beer Barrel Pub?

20 A Well, if you look at the letter, let's see, dated on
21 July 8th of 2005, after I had had the conversation with Jason
22 Unch in May and after my associate Kevin had talked to him in
23 June, we did tell Batcho, listen, you know what, you're not
24 really qualified right now to do a showcase site. In other
25 words, you're not -- we're not going to give you free

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1 obviously, not being a reference site and feeling that he
2 wants to tell other restaurants to buy POS systems from
3 Batcho.

4 Q Okay. Miss Wilson, I'd like to refer to another
5 E-mail dated Wednesday, April 4th, 2007. Do you have that in
6 your possession?

7 A Let's see, Wednesday, April 4th, from whom to whom?

8 Q That would have been from you to Dennis Liegey.

9 A Okay. Yes, I have it.

10 Q Okay. I would like to go through that E-mail with
11 you. The first sentence is, the wholesale cost of the
12 restaurant manager software license issued in your name was
13 \$6,100, correct?

14 A Uh-huh.

15 Q ASI invoiced Batcho Office Systems for this amount
16 on July 18, 2005?

17 A Uh-huh.

18 Q Is that correct?

19 A Yes.

20 Q Unfortunately, the invoice was never paid which
21 means Denny's Beer Barrel Pub does not have a valid license to
22 use the restaurant manager's software?

23 A Well, again, I'm afraid as I read back on my letters
24 I don't speak very well, it's a bad choice of words. What I
25 mean is that ASI never got paid.

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1 software. But you're making a good case that you haven't had
2 the time to sell our software in the last year, but that now
3 you're going to work at it really hard so we'll give you this
4 license for free as long as you meet sales quotas over the
5 next six months. If you don't meet those sales quotas, then
6 we're going to ask you to pay for the software.

7 Q Okay. That was the letter from ASI to Batcho, is
8 that correct?

9 A That's correct.

10 Q Do you have a copy of that letter?

11 A I do, yes, or at least I have a copy of it pasted
12 into my notes. Let me see if I have a printout of it here
13 right now. Yes, I have a copy of the E-mail here also.

14 Q And, I'm sorry, what was the date of that letter to
15 Mr. Unch?

16 A July 8th, 2005.

17 Q Okay. So as of July 8th, 2005, the showcase site
18 deal was still on, is that right?

19 A What was on was that I would give Batcho's a free
20 license if they agreed to generate sales of a certain volume
21 by the end of the year.

22 Q Well, did Batcho tell you that they were going to
23 designate Denny's Beer Barrel Pub as a showcase site?

24 A He did, and I actually told him -- do you want me to
25 read out part of the letter to you?

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1 Q Sure.

2 A I had written, I suggest you explain the situation
3 clearly to the restaurant owner to make sure he understands
4 what's involved in being a reference site for you. In fact,
5 to make things clear, you should ask him to shoulder part of
6 the responsibility. I'm going to jump over here -- for
7 serving as a reference site by passing on the deal we're
8 giving -- our deal to him. Tell him that if he helps you
9 close five more sales between now and the end of the year, you
10 can give him the entire software package for free. If,
11 however, he cannot use his standing in the restaurant
12 community to help you generate new business, then you can give
13 him only a 50 percent discount on the list price of the
14 software.

15 Q Okay. So, as of July 8th, Batcho informed you that
16 he was going to designate Denny's Beer Barrel Pub as a
17 showcase site, correct?

18 A Yes.

19 Q And you informed Batcho in turn that the software
20 could be given to Denny's Beer Barrel Pub free of charge, or
21 at a 50 percent discount depending on how successful Denny's
22 was in helping to market ASI's product?

23 A Well, actually, no. I told Batcho's this is what
24 you get and -- so that you don't incur a financial liability
25 that doesn't help them, I suggest that you make an arrangement

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1 any software upgrades or otherwise service the license you're
2 using until we receive payment on the original license.

3 A That's right. Because the only service that ASI
4 provides is upgrading; everything else the resellers do.

5 Q Well, I didn't understand that. I thought that the
6 upgrades had to be obtained from the reseller also?

7 A Yes, they do, but the upgrades are paid and the
8 patches are not.

9 Q And now I'm lost.

10 A Okay.

11 Q As of April 4th, 2007, was Denny's Beer Barrel Pub
12 entitled to receive software upgrades from ASI, and that's a
13 yes or no answer by the way.

14 MR. SEAMAN: Which she may follow with an
15 explanation.

16 MR. NADDEO: Sure. But give me a yes or no answer.

17 MR. SEAMAN: If you can.

18 THE WITNESS: ASI does not ever issue software
19 directly to restaurants so, no, they were not going to
20 get an upgrade directly from ASI.

21 BY MR. NADDEO:

22 Q Were they going to be able to get upgrades from
23 anybody?

24 A Yes. I was referring them to Pittsburgh Hospitality
25 so that they could get upgrades from them.

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1 with Denny's where he understands that the price he pays for
2 his system is dependent on how much help he gives you selling
3 more.

4 Q Okay.

5 A But that was -- I didn't talk to Denny about that, I
6 just told -- I just basically told Batcho's you will not get
7 this license for free if you don't generate more sales.

8 Q Okay. Let's go back to your E-mail of Wednesday,
9 April 4th, 2007, the second paragraph.

10 A Okay.

11 Q ASI has never made any attempt to recover the
12 software key that allows you to use this illegal software
13 license and we have no plans to do so in the future.

14 A That's correct.

15 Q Now, is that an accurate statement or is that some
16 additional sloppy language on your part?

17 A Well, it's probably sloppy language. I'm trying to
18 tell him that we didn't get paid for the software, but we're
19 not going to take it away from you.

20 Q But you considered it illegal?

21 A Well, I considered it that I never got paid for it.
22 It's like you gave someone something and you were supposed to
23 get paid for it, you know, you don't think that they -- that
24 you really got what you should have on it.

25 Q Okay. You go on to say, however, we cannot issue

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1 Q Why then are you telling Mr. Liegey on April 4th,
2 2007 that we -- does "we" mean ASI?

3 A Yes.

4 Q Cannot issue any software upgrades until receipt of
5 payment for the original license?

6 A Because he was being serviced at that point by
7 Batcho.

8 Q Okay. Now let's go to the third paragraph. I've
9 indicated to Pittsburgh Hospitality ASI's willingness to
10 discount the amount due on the original license issued in your
11 name if they get Denny's on an annual maintenance contract.

12 A Yes. That's just a benefit to them, resellers like
13 to charge their users for maintenance.

14 Q Well, it doesn't sound like a benefit to Denny's,
15 I'm not clear here. It appears -- I would interpret that to
16 mean that if Denny's paid a discounted price for the software,
17 they could get on an annual maintenance contract with --

18 A No, no. The discount that I would give would be to
19 Pittsburgh Hospitality. I was just trying to help him get
20 service. Restaurants don't only need software, they need
21 service on their whole entire POS system, on equipment, on
22 printers that don't work, that kind of thing.

23 Q Okay.

24 A I was trying to get him -- to refer him to another
25 reseller. Now that reseller isn't going to want to just give

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1 service for free if they've done -- you know, if they haven't
2 had any relationship with the restaurant. So I told
3 Pittsburgh Hospitality that, you know, here's a client who
4 really needs service. If he goes and gets -- if you want to
5 start providing service to him, if he'll buy your services,
6 then I'll waive all of this and you can take care of him.

7 Q Well, what do you mean by "willingness to discount
8 the amount due on the original license," what did you mean by
9 that?

10 A That I wasn't going to make Pittsburgh Hospitality
11 pay for it.

12 Q Well, discounting doesn't mean you're going to get
13 it for free, it says you're going to discount it?

14 A Well, when we give a showcase site we discount it
15 100 percent and that's basically free.

16 Q So you were expecting -- this E-mail meant that you
17 were expecting Pittsburgh Hospitality to pay some discounted
18 price for the original license?

19 A Well, I don't remember what arrangements I had set
20 up with Pittsburgh Hospitality. I do know we hadn't been paid
21 by Batcho and so it sounds like -- but I would have to go back
22 and check my notes on Pittsburgh Hospitality that I might have
23 said, you know, we issued this license, we never got paid by
24 Batcho, do you -- are you able to take over the client and
25 service them and in that case you would -- the license could

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1 Q Would you do that, please.

2 A We're looking at April of 2007. I'm afraid I don't
3 seem to have made any notes about that.

4 Q Okay. So I want to understand your explanation of
5 sentence one, paragraph three of your fax of April 4th, 2007
6 to Denny Liegey -- or, excuse me, E-mail.

7 A Yes.

8 Q What were you trying to say to him?

9 A I have talked to Pittsburgh Hospitality and told
10 them that we issued this license and that we never got paid on
11 it, but that the user needs support and even if we don't get
12 paid on it, if they can work with Denny's and get them on an
13 annual maintenance contract, and whatever they determine to be
14 suits -- how Pittsburgh Hospitality operates, that I'd like
15 them to help Denny.

16 Q Okay. Then how do you explain the last sentence of
17 that E-mail? Alternatively, you may wish to contact Batcho
18 Office Systems and urge them to pay off the original invoice?

19 A Well, then if Batcho paid the invoice then there
20 wouldn't be any problem --

21 Q Well, why is there a problem?

22 A I didn't specifically tell Batcho's to pay the
23 invoice.

24 COURT REPORTER: Could you repeat that, please.

25 THE WITNESS: I wanted Denny's to tell Batcho's to

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1 have gone through you.

2 Q Well, assuming all this happened, would Denny's Beer
3 Barrel Pub then continue to act as a showcase site for
4 Pittsburgh Hospitality?

5 A No, no, no, no. The showcase site is just for the
6 reseller, and at that point Denny's is clearly not happy so
7 they don't seem like a good candidate for a showcase site.

8 Q Well, being unhappy with the reseller doesn't
9 necessarily imply unhappiness with the software, does it?

10 A No. But the showcase site, as I said, is really
11 something that we offer to a new dealership to help them get
12 set up.

13 Q Okay.

14 A Pittsburgh Hospitality is not a new dealership, they
15 don't have any need for something like that.

16 Q Does that mean that as of April 4th, 2007 any
17 involvement by Denny's Beer Barrel Pub as a showcase site was
18 no longer a possibility here?

19 A Yeah. Because at that point Batcho's isn't really
20 selling our software anyway.

21 Q Okay. And you have some notes that might help
22 explain your statement that ASI is willing to discount the
23 amount due on the original license?

24 A I might if I go look at Pittsburgh Hospitality
25 again. That would have been an arrangement I made with them.

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1 pay the invoice.

2 BY MR. NADDEO:

3 Q Well, what difference would it make; I mean, if you
4 were going to give it to them for free -- excuse me, strike
5 that.

6 If you were going to give Pittsburgh Hospitality the
7 license for free anyway, what difference -- what impetus would
8 they have to go after Batcho's for the money?

9 A Because Pittsburgh Hospitality, I didn't -- it
10 sounds like, and I don't usually inquire what a reseller
11 charges for maintenance so -- I knew that Denny's wanted to
12 pay as little money as possible so I didn't know if they
13 wanted to get service from Batcho's or from Pittsburgh. I was
14 trying to help them get service.

15 Q Just a couple of final questions, Miss Wilson. On
16 the E-mail of April 4th, 2007, there is a reply from Mr.
17 Liegey at the bottom of the E-mail.

18 A Uh-huh.

19 Q Did you respond to him in respect to -- I'm not
20 clear, was your E-mail a response to him or was that his
21 response to your E-mail, I'm not sure.

22 A Well, I'm afraid I'm not sure either.

23 MR. SEAMAN: Lisa.

24 THE WITNESS: Yes.

25 MR. SEAMAN: What he's looking at is a printout of

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1 an E-mail from Denny to you and then your response. It
2 starts off with, Lisa, I just spoke with Pittsburgh
3 Hospitality.

4 THE WITNESS: Yes.

5 MR. SEAMAN: And then your E-mail –

6 THE WITNESS: Because I'm responding to him.

7 MR. SEAMAN: And then your E-mail to Dennis is the
8 one that you've been discussing and answering the
9 questions on for Mr. Naddeo?

10 THE WITNESS: Yes.

11 MR. SEAMAN: Okay.

12 BY MR. NADDEO:

13 Q Okay. So your E-mail of April 4th, 2007 was in
14 response to Mr. Liegey's E-mail to you, apparently, the same
15 date?

16 A Yes, that's what it looks like.

17 MR. SEAMAN: Lisa, do you have that E-mail from
18 Denny's to you?

19 THE WITNESS: I'm looking at it right now, yes.

20 MR. SEAMAN: Okay.

21 BY MR. NADDEO:

22 Q In his E-mail to you, Miss Wilson, Mr. Liegey
23 indicates that we, being his, him, his firm, were instrumental
24 in securing the Clearfield Country Club for the sale of your
25 system by having board members observe our system, and us

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1 restaurant.

2 Q All right. Just, again, to clarify your position
3 with ASI. It sounds to me as though you're the person who, I
4 guess, actively deals with the showcase sites being issued?

5 A Yes.

6 Q So that if I had questions concerning the showcase
7 site and how it works I could direct them to you and rely on
8 you explaining it to me correctly?

9 A Yes.

10 Q All right. Do you know whether ASI software is
11 being used by the Clearfield Country Club?

12 A I actually don't know, but, again, I can look that
13 up right now.

14 Q Would you, please?

15 A Yes, it is.

16 Q Okay. So according to Denny's E-mail he was
17 instrumental in getting the country club to purchase ASI's
18 software and in fact the country club does use your software?

19 A Well, first of all, I need to say I don't know if
20 they are currently using the software. I can see that a
21 license was issued, but it's possible that they had problems
22 as well and are using a different system, I don't know. But
23 that wouldn't really make a difference to us whether Denny's
24 had helped in that sale or not.

25 MR. NADDEO: Okay. Thank you. That's all the

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1 going to their board meeting with Jason and Tom and speaking
2 on their behalf for the system?

3 A Uh-huh.

4 Q Do you know whether that is an accurate statement;
5 did Mr. Liegey do that to your knowledge?

6 A I have no idea. I mean, I can't imagine why he
7 would lie about it, but that's not really relevant to ASI.

8 Q Well, I guess it's relevant to my – I'm still
9 trying to figure out whether we are or are not a showcase
10 site, and you're indicating that as of May -- excuse me, April
11 of '07, Denny's was no longer a showcase site because he was
12 mad at everybody.

13 A The showcase site -- again, there's two different
14 things that happened. ASI simply gives a free license to
15 their reseller and they are able to use it as they wish.

16 In the case of Batcho's, because it was way beyond
17 the initial six month period, I said, I'll tell you what,
18 Jason, I will give you a free license, but if you don't meet
19 certain sales volumes I'm not doing it the way I normally do
20 it. I'm issuing an invoice when I issue the license, and if
21 you haven't reached the sales volume, you're going to have to
22 pay the invoice.

23 Q Okay.

24 A So that's the relationship between ASI and Batcho's,
25 it has nothing to do with Batcho's relationship with the

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1 questions I have.

2 THE WITNESS: Good. Thank you.

3 MR. NADDEO: Before you sign off we need to inform
4 you that you have a right to review the transcript of
5 your testimony for accuracy. If you want to do that,
6 the court reporter will provide you with a transcript
7 along with an Errata sheet for you to make corrections.

8 THE WITNESS: Okay.

9 MR. NADDEO: You have 30 days after -- from the date
10 you receive the transcript to return it with your
11 corrections; otherwise, it will be filed as transcribed.
12 Do you want to review the transcript?

13 MR. SEAMAN: Yes, she does.

14 THE WITNESS: Yes, I do.

15 MR. NADDEO: All right. Thank you.

16 THE WITNESS: Thank you.

17 *****

18 DEPOSITION CONCLUDED AT 11:30 A.M.

19 *****

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E R R A T A

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I, LISA G. WILSON, have read the foregoing deposition given by me on Wednesday, July 23rd, 2008, at the offices of Naddeo & Lewis, LLC, 207 East Market Street, Clearfield, PA, in the case of Denny's Beer Barrel Pub, Inc. v Action Systems, Incorporated.

This deposition should be corrected as follows:

PAGE LINE ERROR OR AMENDMENT AND REASON THEREFORE:

Subject to these corrections, my testimony reads as given by me in the foregoing. Signed this ___ day of _____, 2008.

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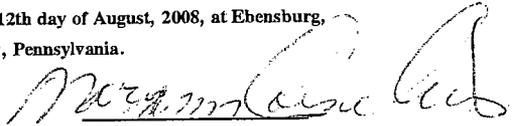
COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CAMBRIA :

I, MARYANN CORNELIUS, Freelance Court Reporter and Notary Public, Commonwealth of Pennsylvania,

DO HEREBY CERTIFY, that the foregoing deposition was taken before me at the time and place stated herein; that I administered unto the deponent her oath to testify to the truth, the whole truth, and nothing but the truth; that she testified by phone and was orally examined and testified as herein set forth; that I reported said examination and testimony stenographically, and that this transcript of deposition constitutes a true and correct transcription of the shorthand report of said deposition.

I FURTHER CERTIFY that I am neither related to nor employed by any counsel or party to the cause pending, nor interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand and official seal this 12th day of August, 2008, at Ebensburg, Cambria County, Pennsylvania.



MARYANN CORNELIUS
Notary Public
Commonwealth of Pennsylvania
My Commission Expires 4/25/2010

MARYANN CORNELIUS (814) 536-7450

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: MOTION FOR
CONTINUANCE

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

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01324/301
JAN 07 2010 Atty Seaman

William A. Shaw
Prothonotary/Clerk of Courts

60

S

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

MOTION FOR CONTINUANCE

AND NOW, comes Defendant, ACTION SYSTEMS, INC., by its attorneys, Gates & Seaman, and sets forth as follows:

1. Pending this Court's disposition of a Motion for Summary Judgment filed on behalf of Defendant, Action Systems, Inc., this case has been scheduled for Hearing before a selected Board of Arbitrators on Thursday, January 21, 2010 commencing at 1:00 p.m.

2. Counsel for Defendant, Action Systems, Inc., just learned that the employees of Defendant who will be necessary witnesses at the Hearing have been scheduled to attend a Reseller's Conference sponsored by Defendant, Action Systems, Inc., in New Orleans, LA from January 20, 2010 through January 24, 2010, with approximately one-half of the company employees attending said Conference.

3. Counsel for Defendant, Action Systems, Inc., believes that the Arbitration Hearing will most likely require more than one-half (1/2) day and requests that one

(1) day be allotted for the same.

4. James A. Naddeo, Esquire, Counsel for Plaintiff, and Andrew G. Batcho, Batcho Office Systems, pro se, have advised Counsel for Defendant, Action Systems, Inc., that they would not object to a continuance of the scheduled Arbitration Hearing.

WHEREFORE, Defendant, Action Systems, Inc., respectfully requests that a continuance of the Arbitration Hearing scheduled for January 20, 2010 be granted and the Arbitration Hearing be rescheduled.

Respectfully submitted,

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire,
Attorney for Defendant,
ACTION SYSTEMS, INC.

Date: 1/7/2010

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
 Plaintiff :
 :
 vs. :
 :
 ACTION SYSTEMS, INC., :
 Defendant : NO. 07-1351-CD
 :
 vs. :
 :
 BATCHO BUSINESS MACHINES, INC., :
 t/d/b/a BATCHO OFFICE SYSTEMS, and :
 Andrew G. Batcho, Sr., and Linda L. :
 Batcho, Husband and Wife, t/d/b/a :
 Batcho Office Systems :
 Additional Defendants :

ORDER

AND NOW, this 12th day of January 2010, upon consideration of the Parties' oral arguments, it is the ORDER of this Court as follows:

1. Defendant Action Systems, Inc.'s Motion for Summary Judgment on Plaintiff's Amended Complaint GRANTED in part, DENIED in part as follows:
 - a. Motion for Summary Judgment on Count I of Plaintiff's Amended Complaint is hereby GRANTED.
 - b. Count I of Plaintiff's Amended Complaint against Defendant Action Systems, Inc. is hereby DISMISSED.
 - c. Motion for Summary Judgment on Count II of Plaintiff's Amended Complaint is hereby DENIED.

BY THE COURT,

 FREDRIC J. AMMERMAN
 President Judge

FILED 202
 0185061
 JAN 14 2010
 William A. Shaw
 Prothonotary Clerk of Courts
 Atty: Naddo Seaman (60)
 1cc Batcho Business Machines
 115 E. Market St.
 Clearfield, PA 16830
 1cc A. Batcho
 L. Batcho
 45 Rocky Bend Road
 Clearfield, PA 16830

FILED

JAN 14 2010

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 1/14/10

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Boychko Defendant(s) Defendant(s) Attorney

Special Instructions:

67

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

FILED

JAN 14 2010
 0/3:50 PM @
 William A. Shaw
 Prothonotary/Clerk of Courts
 3 copy to ATT

ORDER

AND NOW, this 8th day of January, 2010, upon consideration of the Motion for Continuance, the requested continuance is granted and the Arbitration Hearing in the above-captioned matter is rescheduled to the 20th day of April, 2010, commencing at 9:00 o'clock A. M. in the Conference/Hearing Room No. 3, Second Floor, Clearfield County Courthouse, Clearfield, PA 16830.

Notice of the entry of this Order shall be provided to all parties by counsel for the moving party.

BY THE COURT:


 Judge

DATE: 1-14-10

You are responsible for serving all appropriate parties.

The Prothonotary's Office has provided service to the following parties:

Plaintiff(s) _____ Attorney _____ Other _____

Defendant(s) _____ Attorney _____

Special Instructions: _____

William A. Shaw
Prothonotary/Clerk of Courts

JAN 14 2010

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

FILED No CC.
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JAN 18 2010
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

I hereby certify that service of a certified copy of Motion for Continuance and Order dated January 8, 2010, was made upon the following, on the 15th day of January, 2010, by regular first class mail, postage prepaid:

James A. Naddeo, Esquire
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

Andrew G. Batcho
Batcho Office Systems, et al
115 Market Street
Clearfield, PA 16830

GATES & SEAMAN
By: 
Laurance B. Seaman, Esquire,
Attorney for Defendant,
ACTION SYSTEMS, INC.

Date: 1/15/2010

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Denny's Beer Barrel Pub, Inc.
vs.
Action Systems, Inc.

No. 2007-01351-CD

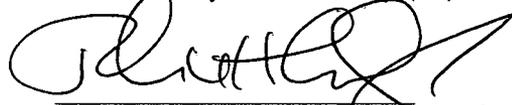
Batcho Business Machines, Inc., t/d/b/a Batcho Office Systems, and
Andrew G. Batcho a/k/a Andrew G. Batcho, Sr. and Linda L. Batcho,
Husband and wife, t/d/b/a Batcho Office Systems

FILED Notes to
Atty Naddeo &
Seaman +
Batcho Office
System
Andrew Bateno et al
2115 East
Market Street
Clearfield
§ 0111:50am
APR 20 2010
William A. Shaw
Prothonotary/Clerk of Courts

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 20th day of April, 2010, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Richard Milgrub, Esq.
Girard Kasubick, Esq.
Ronald L. Collins, Esq.


Chairman



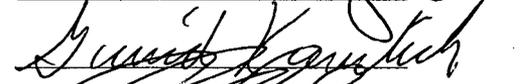
Sworn to and subscribed before me this
April 20, 2010


Prothonotary

AWARD OF ARBITRATORS

Now, this 20th day of April, 2010, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

Judgment in favor of Plaintiff against Defendant in amount of \$3057.50. Judgment in favor of Defendants against Additional Defendant in Amount of \$3057.50.


Chairman



(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 20th day of April, 2010, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT


Prothonotary
By _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. :

Vs. :

No. 2007-01351-CD

Action Systems, Inc.
defendant

Batcho Business Machines, Inc. Batcho
Office Systems Andrew G. Batcho Linda L.
Batcho Batcho Office Systems
Additional defendant

NOTICE OF AWARD

TO: Batcho Office Systems-Andrew Batcho et al

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 20, 2010 and have awarded:

Judgment in favor of Plaintiff against defendant ASI in amount of \$3057.50. Judgment in favor of defendant against additional defendant in amount of \$3057.50.



William A. Shaw, Prothonotary

April 20, 2010

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on April 20, 2010 at 11:50 a.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. :

Vs. :

No. 2007-01351-CD

Action Systems, Inc.
defendant

Batcho Business Machines, Inc. Batcho
Office Systems Andrew G. Batcho Linda L.
Batcho Batcho Office Systems
Additional defendant

NOTICE OF AWARD

TO: Laurance B. Seaman Esq

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 20, 2010 and have awarded:

Judgment in favor of Plaintiff against defendant ASI in amount of \$3057.50. Judgment in favor of defendant against additional defendant in amount of \$3057.50.



William A. Shaw, Prothonotary

April 20, 2010
Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on April 20, 2010 at 11:50 a.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. :

Vs. :

No. 2007-01351-CD

Action Systems, Inc.
defendant

Batcho Business Machines, Inc. Batcho
Office Systems Andrew G. Batcho Linda L.
Batcho Batcho Office Systems
Additional defendant

NOTICE OF AWARD

TO: James A. Naddeo Esq

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 20, 2010 and have awarded:

Judgment in favor of Plaintiff against defendant ASI in amount of \$3057.50. Judgment in favor of defendant against additional defendant in amount of \$3057.50.



William A. Shaw, Prothonotary

April 20, 2010
Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on April 20, 2010 at 11:50 a.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc.
Plaintiff,

v.

Action Systems, Inc,
Defendant.

No. 07-1351-CD

Type of Pleading:

**PRAECIPE TO ENTER
JUDGMENT ON AWARD**

Filed on behalf of
Defendant

Counsel of Record
for this party:

James A. Naddeo, Esq.
PA ID 06820

207 East Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

pd \$2000 Att
of 10:21 am ICC & notice to
JUN -2 2010 Att Seaman

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

PRAECIPE TO ENTER JUDGMENT ON AWARD

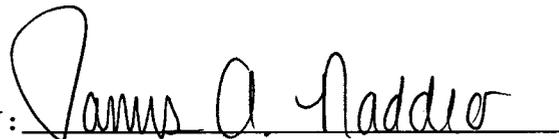
TO: WILLIAM SHAW, PROTHONOTARY

Dear Sir:

Please enter judgment upon the Award of Arbitrators dated April 20, 2010 on behalf of Plaintiff and against the Defendant in the amount of \$3,057.50.

NADDEO & LEWIS, LLC

BY:


James A. Naddeo, Esquire
Attorney for Defendant

Date: June 1, 2010

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

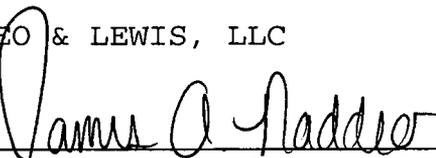
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecipe to Enter Judgment on Award was served on the following and in the following manner on the 2nd day of June, 2010:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc.
Plaintiff,

v.

Action Systems, Inc,
Defendant.

*
*
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*
*

No. 07-1351-CD

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NOTICE

NOTICE is given that a JUDGMENT in the above-captioned matter has been entered against Action Systems, Inc. in the amount of \$3,057.50 plus 6% interest.

PROTHONOTARY

By William L. [Signature] cm

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading: PRAECIPE TO ENTER
JUDGMENT ON AWARD

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED

05:37 PM
JUN 10 2010

(60)
3cc
Atty Seaman
Atty Ad. 2010

William A. Shaw
Prothonotary/Clerk of Courts

1cc Notice to Adm Def.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., :
Plaintiff : No. 07-1351-CD
-vs- :
ACTION SYSTEMS, INC., :
Defendant :
-vs- :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

PRAECIPE TO ENTER JUDGMENT ON AWARD

TO: WILLIAM A. SHAW, Prothonotary

Please enter judgment upon the Award of Arbitrators dated April 20, 2010 on behalf of Defendant, Action Systems, Inc., and against the Additional Defendants, Batcho Business Machines, Inc., t/d/b/a Batcho Office Systems and Andrew G. Batcho, a/k/a Andrew G. Batcho, Sr., and Linda L. Batcho, husband and wife, t/d/b/a Batcho Office Systems, in the amount of \$3,057.50, plus 6% interest.

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Defendant,
Action Systems, Inc.

Two North Front Street
P. O. Box 846
Clearfield, Pa 16830
(814) 765-1766

Date: June 10, 2010.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., Plaintiff

-vs-

ACTION SYSTEMS, INC., Defendant

-vs-

BATCHO BUSINESS MACHINES, INC., t/d/b/a
BATCHO OFFICE SYSTEMS, and ANDREW G.
BATCHO, a/k/a ANDREW G. BATCHO, SR., and
LINDA L. BATCHO, husband and
wife, t/d/b/a BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 07-1351-CD

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of Praecipe to Enter Judgment on Award and NOTICE of the entry of such Judgment was served by First Class U. S. Mail, postage prepaid, on the 10 day of June, 2010, upon the following:

Batcho Business Machines, Inc., t/d/b/a Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

James A. Naddeo, Esquire
Attorney for Plaintiff
207 East Market Street, P. O. Box 552
Clearfield, PA 16830

GATES & SEAMAN

By: 

Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

COPY

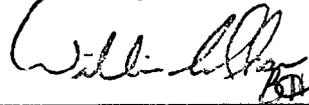
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
	:	
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
	:	
-vs-	:	
	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

NOTICE

NOTICE is given that a Judgment in the above-captioned matter has been entered against Additional Defendants, BATCHO BUSINESS MACHINES, INC., t/d/b/a BATCHO OFFICE SYSTEMS, and ANDREW G. BATCHO, a/k/a ANDREW G. BATCHO, SR., and LINDA L. BATCHO, husband and wife, t/d/b/a BATCHO OFFICE SYSTEMS, in the amount of \$3,057.50, plus 6% interest.

Prothonotary:



William A. Shaw

Date: June 10, 2010.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

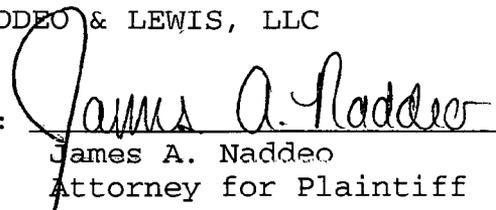
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecipe to Settle and Discontinue was served on the following and in the following manner on the 14th day of June, 2010:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: 

James A. Naddeo
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Denny's Beer Barrel Pub, Inc.

Vs.

No. 2007-01351-CD

Action Systems, Inc.

Batcho Business Machines, Inc.

Batcho Office Systems

Andrew G. Batcho

Linda L. Batcho

Batcho Office Systems

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 14, 2010, marked:

Praecipe to settle and discontinue as to defendant, ACTION SYSTEMS INC. ONLY

Record costs in the sum of \$125.00 have been paid in full by James A. Naddeo Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of June A.D. 2010.



William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc.
Plaintiff,

v.

Action Systems, Inc,
Defendant.

v.

Batcho Business Machines, Inc.
T/d/b/a Batcho Office Systems,
And Andrew G. Batcho, a/k/a
Andrew G. Batcho, Sr., and Linda
L. Batcho, husband and wife,
T/d/b/a Batcho Office Systems

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No. 07-1351-CD

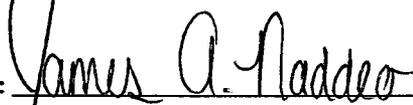
PRAECIPE TO MARK JUDGMENT SATISFIED

TO THE PROTHONOTARY:

Please mark the judgment entered in favor of Denny's Beer Barrel Pub, Inc. against Action Systems, Inc. in the amount of \$3,057.50 paid in full.

NADDEO & LEWIS, LLC

BY:



James A. Naddeo, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecipe to Mark Judgment Satisfied was served on the following and in the following manner on the 16th day of June, 2010:

First-Class Mail, Postage Prepaid

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: James A. Naddeo

James A. Naddeo
Attorney for Plaintiff

4-20-10
9:00 AM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,
Plaintiff

vs.

ACTION SYSTEMS, INC.,
Defendant

vs.

BATCHO BUSINESS MACHINES, INC.,
t/d/b/a BATCHO OFFICE SYSTEMS, and
ANDREW G. BATCHO, a/k/a ANDREW
G. BATCHO, SR., and LINDA L.
BATCHO, husband and wife, t/d/b/a
BATCHO OFFICE SYSTEMS,
Additional Defendants

No. 2007-1351-CD

Type of Case: Civil

Type of Pleading:
PRE-TRIAL ARBITRATION
MEMORANDUM

Filed on behalf of Defendant:
Action Systems, Inc.

Counsel of Record for this Party:
Laurance B. Seaman, Esq.

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

RECEIVED
APR 12 2010
Court Administrator's
Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC.,	:	
Plaintiff	:	No. 07-1351-CD
-vs-	:	
	:	
ACTION SYSTEMS, INC.,	:	
Defendant	:	
-vs-	:	
	:	
BATCHO BUSINESS MACHINES, INC., t/d/b/a	:	
BATCHO OFFICE SYSTEMS, and ANDREW G.	:	
BATCHO, a/k/a ANDREW G. BATCHO, SR., and	:	
LINDA L. BATCHO, husband and	:	
wife, t/d/b/a BATCHO OFFICE SYSTEMS,	:	
Additional Defendants	:	

PRE-TRIAL ARBITRATION MEMORANDUM

A. Statement of Defense:

Plaintiff, Denny's Beer Barrel Pub, Inc., ("Denny's") purchased from Additional Defendant, Batcho Office Systems ("Batchos"), on July 8, 2005 the ASI Restaurant Manager Software ("Software") produced by Defendant, Action Systems, Inc. ("ASI"), which purchase included the license to use the purchased Software and the installation of the Software by Batchos on existing computers, printers, etc. ("Hardware") of Denny's. The Software and Hardware together made up a "System" used by Plaintiff at its restaurant. Denny's paid Batchos over a period of time for this purchase the sum of \$15,200.00. When Denny's experienced problems with the System, Batchos recommended that Plaintiff purchase new Hardware for the System, which Denny's did, and Denny's continued to experience problems.

Denny's commenced this action against ASI by filing a Complaint, to which Preliminary Objections were filed by ASI, resulting in Denny's filing an Amended Complaint. Preliminary Objections to the Amended Complaint were dismissed by the Court.

ASI joined Batchos as Additional Defendants by the filing of a Complaint to Join Additional Defendants, to which Batchos, acting pro se, filed an Answer, incorrectly titled "Answer to Amended Complaint".

Plaintiff alleged in its Amended Complaint (Paragraph 4) that Batchos: ". . . was an authorized dealer and/or agent of ASI. . .", and (Paragraph 5) that ASI: ". . . clothed Batcho with actual, implied and/or apparent authority to sell, service and install ASI products.", or, in other words, that Batchos was acting as an agent of ASI.

Batchos admitted in its Answer to ASI's Complaint to Join Additional Defendant that Batchos had only ever been an independent contractor reseller of ASI and had never been an agent of ASI and never had any authorization to legally bind or obligate ASI (Paragraph 16 of the Complaint to Join and Paragraph 16 of Batchos Answer).

During the Deposition of Dennis F. Leigey, Jr., President of Denny's, Denny's agreed that Batchos was not an agent of ASI, but rather a dealer/reseller authorized to sell, install and service ASI products after purchasing the same from ASI. Said agreement was subsequently memorialized to a written Stipulation by counsel for Denny's and ASI.

ASI invoiced Batchos the sum of \$6,115.00, of which Batchos never paid ASI any part. Batchos initially invoiced Denny's on July 8, 2005 the sum of \$17,603.00, which was subsequently reduced by returned equipment to the sum of \$13,103.00. There was never any contract between ASI and Denny's, ASI never invoiced Denny's and Denny's never paid any money to ASI. Without Batchos being an agent of ASI, there was no privity of contract between Denny's and ASI and without privity of contract, Denny's had no valid contractual cause of action against ASI. Reeves vs. Middletown Athletic Association, 866 A. 2d 1115 (Pa. Super. 2004).

ASI's Motion for Summary Judgment was granted in part and denied in part by Order of Court dated January 12, 2010, resulting in Count I of Plaintiff's Amended Complaint, which was based upon an alleged breach by ASI of a purchase contract between ASI and Denny's, being dismissed and Count II, a claim based upon promissory estoppel, remaining.

Denny's entire case comes down to a claim that it was promised to be a showcase site that was to come with certain benefits and that he did not receive the benefits as promised (Paragraph 22 of the Amended Complaint). However, during the Deposition of Mr. Leigey, he admitted he did receive the benefits he claimed he was to receive (p. 106, lines 10-25, p. 107, lines 1-13), but he claimed the benefits, different modules that were to provide different types of services, did not work. Denny's real complaint thus was with Batchos, from whom the Software was purchased, and who installed and serviced it. The party with whom Denny's contracted, Batchos, is the party responsible for supplying a working system and the

patches and upgrades, if necessary, to make it work. Value added resellers, like Batchos, are the parties who make upgrades and patches available to end users, such as Denny's.

In order to use a manufacturer's Software, the ultimate or end user, in this case, Denny's, had to agree to the terms of the End User License Agreement. Under the terms of the End User License Agreement, ASI made no warranty of any kind other than: ". . . the original distribution media is free from defects in material and workmanship under normal use and service for a period of thirty (30) days from date of purchase . . . ". Further, ASI's: ". . . entire liability and the User's exclusive remedy shall be replacement of the defective media, provided the media is returned to Action Systems, Inc., with a copy of a dated Receipt or Invoice. Action Systems, Inc. shall not be liable to the User or any other entity for any special, consequential, indirect or other similar damages or claims including loss of profit, or any other commercial damage caused or imagined to have been caused directly or indirectly by the use, or the inability to use, the Software. Action Systems, Inc. specifically disclaims all other warranties, expressed or implied."

Denny's last complaint in Count II (Paragraph 23) is based on a claim that ASI refused to issue a license to use the ASI Software and refused to issue critical patches and updates necessary to operate the Software and ultimately withdrew Denny's as a showcase site. During his Deposition, Mr. Leigey admitted that Denny's was provided a license to operate the Software (p. 73, pp. 73-76, lines 7-25, p. 77-78, lines 1-25, lines 1-4). Denny's continued to use the license, albeit illegal since

ASI had never been paid for it, and ASI never withdrew Denny's as a showcase site, Denny's continued to have all the benefits it expected to receive upon becoming a showcase site and still had the license to operate the System. If Denny's was no longer a showcase site, it was not because ASI withdrew it.

Part of being a showcase site was the requirement that Denny's assist Batchos in making a certain number of sales of the ASI Software, which required sales were never made. Batchos also had the option to discount the cost to Denny's of the ASI Software by 50% since Denny's had replaced a competitive restaurant manager system, but Batchos never made Denny's aware of that.

The responsible party in this case to Denny's is Batchos, not ASI.

B. Citations to Applicable Cases or Statutes:

1. None.

C. Witnesses:

1. Smiley Hsu, President, Action Systems, Inc.
2. Lisa G. Wilson, Vice President, Action Systems, Inc.
3. Any persons of which discovery was done or whose names were obtained through discovery and any witnesses listed in any other Pre-Trial Memorandum.
4. Defendant, Action Systems, Inc., reserves the right to call additional witnesses at trial.

D. Statement of Damages and Copies of Bills:

1. None.

Respectfully submitted:

GATES & SEAMAN

By:



Laurance B. Seaman, Esquire
Attorney for Action Systems, Inc.

Date: April 12, 2010

Two North Front Street, P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DENNY'S BEER BARREL PUB, INC., Plaintiff : No. 07-1351-CD
: :
-vs- : :
: :
ACTION SYSTEMS, INC., Defendant : :
: :
-vs- : :
: :
BATCHO BUSINESS MACHINES, INC., t/d/b/a :
BATCHO OFFICE SYSTEMS, and ANDREW G. :
BATCHO, a/k/a ANDREW G. BATCHO, SR., and :
LINDA L. BATCHO, husband and :
wife, t/d/b/a BATCHO OFFICE SYSTEMS, :
Additional Defendants :

CERTIFICATE OF SERVICE

I hereby certify that the original of the within Pre-Trial Memorandum was hand delivered to the Clearfield County Court Administrator's Office, Clearfield County Courthouse, Clearfield, PA, 16830, on April 12, 2010, and that a true and correct copy of said Pre-Trial Memorandum was forwarded by U. S. Mail, postage prepaid, on the 12th day of April, 2010, to:

James A. Naddeo, Esquire
Attorney for Denny's Beer Barrel Pub, Inc.
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830

ANDREW G. BATCHO
BATCHO OFFICE SYSTEMS, et al
115 East Market Street
Clearfield, PA 16830

Richard H. Milgrub, Esquire
211 North Second Street
Clearfield, PA 16830

Girard Kasubick, Esquire
611 Brisbin Street
Houtzdale, PA 16651

Ronald L. Collins, Esquire
218 South Second Street
Clearfield, PA 16830

GATES & SEAMAN

By: _____


Laurance B. Seaman, Esq.
Attorney for Defendant,
Action Systems, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

PRE-ARBITRATION MEMORANDUM

I. Factual Statement.

Plaintiff is the owner and operator of a restaurant known as Denny's Beer Barrel Pub. For approximately one to one and one half years prior to July of 2005 a representative of Batcho Business Machines made repeated efforts to encourage Mr. Leigey to purchase software developed by the Defendant ASI. Batcho was a designated dealer of ASI software product.

ASI had a program in conjunction with its dealers known as a "showcase site". In essence the "showcase site" was a marketing tool intended to promote sales of ASI's product through the ASI distributors. The "showcase site" designation entitled the end user of ASI software to certain benefits such as additional modules to supplement the basic software program, free software updates for one year and advertising. The "showcase site" designation required the owner of the site to make its facility available to other potential purchasers of ASI software for the purpose of demonstrating its use. It also

required the "showcase site" designee to assist ASI's distributor in promoting the purchase of ASI software by other restaurateurs.

Batcho eventually induced the Plaintiff to purchase ASI software by offering Plaintiff the "showcase site" designation. Prior to the purchasing the software Mr. Leigey insisted on speaking directly with ASI to confirm that the company would agree to designate his restaurant as a "showcase site". A call was placed to ASI at which time Mr. Leigey spoke directly to Lisa Wilson who was an officer of ASI. Ms. Wilson confirmed ASI's willingness to designate Mr. Leigey's restaurant as a "showcase site" for ASI. The benefits to Mr. Leigey's business to be derived from this designation were also discussed during this conversation. In reliance upon ASI's promise to designate his business as a "showcase site" Mr. Leigey purchased the ASI software from its distributor Batcho Business Machines.

Batcho invoiced Plaintiff for the ASI software and three handheld service devices at a total cost of \$ 17,603.00. Plaintiff paid Batcho for that portion of the Batcho invoice pertaining to the software in the amount of \$15,200.00. Plaintiff elected not to purchase the handheld service devices.

ASI claims that its distributor Batcho Business Machines failed to pay ASI for the software purchased by Plaintiff. As a result of that failure ASI withdrew the "showcase site"

designation from Plaintiff, informed Plaintiff that it was illegally using its software and refused to provide software upgrades and support. ASI also failed to extend the other benefits due to a "showcase site" designee. In the meantime Plaintiff fully complied with its obligation as a "showcase site" by making its facility available for demonstrating its software to other restaurant owners and by facilitating the purchase of ASI software by the Clearfield-Curwensville Country Club.

As a result of ASI's refusal to provide software upgrades and support, Plaintiff was unable to effectively implement ASI's software in its business activities. This necessitated Plaintiff's purchase of an alternate software package from another software company. Plaintiff seeks to recover the amount paid by it to Batcho Business Machines for ASI's software.

II. Citation.

A. Plaintiff seeks recovery based upon the theory of Promissory estoppel. A Promissory estoppel is defined as:

"That which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise. "Moore

Burger", Inc. v. Phillips Petroleum Co., Tex., 492 S.W.2d 934. Elements of a "promissory estoppel" are a promise clear and unambiguous in its terms, reliance by the party to whom the promise is made, with that reliance being both reasonable and foreseeable, and injury to the party asserting the estoppel as a result of his reliance. James King & Son, Inc. v. De Santis Const. No. 2 Corp., 97 Misc.2d 1063, 413 N.Y.S.2d 78, 81."

Defendant ASI reneged on its promise to Plaintiff because of its distributor's alleged failure to pay ASI for the software sold to Plaintiff. ASI's position is untenable for the reason that it violates the to innocent party rule:

"as between two innocent parties, the loss should fall upon the party who made the loss possible." 319 Pa. 17, 178 A. 683, 1935 Pa."

In the instant case ASI designated Batcho Business Machines as a dealer of its product. ASI's remedy was to pursue a claim against Batcho not to punish Plaintiff for a wrong that it suffered through no fault of the Plaintiff.

It is also pertinent that this transaction is covered by the provisions of the Uniform Commercial Code 13 Pa C.S.A. 2401 (2):

"Future" goods cannot be the subject of a present sale. Before title can pass the goods must be identified in the manner set forth in Section 2-501. The parties, however, have full liberty to arrange by specific terms for the passing of title to goods which are existing."

Under the Code payment is irrelevant to the issue of when title passes. Clearly title to the software purchased by Plaintiff passed to it upon delivery of the software to the buyer. Defendant is correct in its assertion that there is no privity of contract between Plaintiff and Defendant. Consequently Defendant has no claim against Plaintiff for non-payment of the purchase price due to ASI from its distributor. Consequently Plaintiff could not possibly have been using ASI's software illegally and was clearly entitled to receive software updates from ASI.

III. Witnesses.

A. Dennis Leigey, President of Denny's Beer Barrel Pub.

B. Jason Unch, former representative of Batcho Business Machines.

C. Glenn Batcho, Owner and operator of Batcho Business Machines.

IV. Damages.

A. Plaintiff seeks to recover the money paid by it for ASI's software in the amount of \$15,200.00.

V. Exhibits.

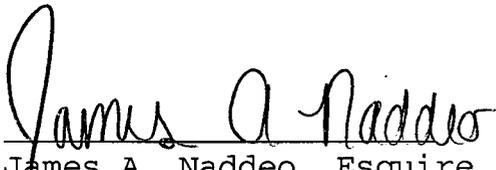
A. Cancelled checks from Denny's Beer Barrel Pub to Batcho Business Machines.

B. Invoice from Batcho Business Machines in the amount of \$17,603.00.

C. Email from Lisa Wilson to Dennis Leigey dated April 4, 2007.

D. Any other documents exchanged during discovery.

NADDEO & LEWIS, LLC

By: 
James A. Naddeo, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Denny's Beer Barrel Pub, Inc. *
Plaintiff, *

v. *

No. 07-1351-CD

Action Systems, Inc, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Pre-Arbitration Memorandum was served on the following and in the following manner on the 13th day of April, 2010:

HAND DELIVERED

Laurance B. Seaman, Esquire
GATES & SEAMAN
Two North Front Street
P.O. Box 846
Clearfield, PA 16830

Ronald L. Collins, Esquire
218 South Second Street
Clearfield, PA 16830

Richard H. Milgrub, Esquire
211 North Second Street
Clearfield, PA 16830

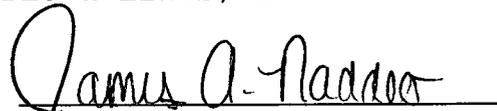
First-Class Mail, Postage Prepaid

Andrew G. Batcho, Sr.
Batcho Office Systems
115 East Market Street
Clearfield, PA 16830

Girard Kasubick, Esquire
Lehman & Kasubick
611 Brisbin Street
Houtzdale, PA 16651

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiff

NI

Rest mgr

②

7-30-05

DENNY'S BEER BARREL PUB INC. 80-629/313 1354
 ATM ACCOUNT 12426687
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830

DATE July 2005

PAY TO THE ORDER OF Batches \$ 2500⁰⁰

Twenty five hundred and 00/100 DOLLARS

MEMO System/Champion

Clearfield Bank Trust Company
 Main Office
 11 North 2nd Street
 Clearfield, PA 16830

Dennis J. [Signature]

⑆031306294⑆ 1 2 42668 7⑈ 1354 ⑆0000250000⑆

Ck# 1354 Date 08/04/05 \$2,500.00

1st

Rest mgr

DENNY'S BEER BARREL PUB INC. 80-629/313 1322
 ATM ACCOUNT 12426687
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830

DATE July 15 2005

PAY TO THE ORDER OF Batches \$ 5000⁰⁰

Five thousand and 00/100 DOLLARS

MEMO Rest mgr

Clearfield Bank Trust Company
 Main Office
 11 North 2nd Street
 Clearfield, PA 16830

Dennis J. [Signature]

⑆031306294⑆ 1 2 42668 7⑈ 1322 ⑆0000500000⑆

Ck# 1322 Date 07/19/05 \$5,000.00

DENNY'S BEER BARREL PUB INC. 80-829/313 1431
 ATM ACCOUNT 12426687
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830 DATE Sept 6, 2005

PAY TO THE ORDER OF Batchco Office Systems \$ 5000.00
Five thousand and 00/100 DOLLARS

MEMO Rest invoice 114631 Dennis T. Perry Jr.
 CLEARFIELD BANK Main Office 11 North 2nd Street Clearfield, PA 16830
 TRUST COMPANY
 :031306294: 1 2 42668 ? 1431 0000500000

Ck# 1431 Date 09/07/05 \$5,000.00

11/26/05

DENNY'S BEER BARREL PUB INC. 80-829/313 1455
 ATM ACCOUNT 12426687
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830 DATE Sept 16 2005

PAY TO THE ORDER OF Batchco Business Machines \$ 1500.00
Fifteen hundred and 00/100 DOLLARS

MEMO Rest invoice 114631 Dennis T. Perry Jr.
 CLEARFIELD BANK Main Office 11 North 2nd Street Clearfield, PA 16830
 TRUST COMPANY
 :031306294: 1 2 42668 ? 1455 0000150000

Ck# 1455 Date 09/19/05 \$1,500.00

DENNY'S BEER BARREL PUB INC. 80-829/313 1497
 ATM ACCOUNT 12426687
 1452 WOODLAND RD. PH. 814-765-7190
 CLEARFIELD, PA 16830 DATE Oct 10, 2005

PAY TO THE ORDER OF Batchco OFFICE systems \$ 1200.00
Twelve hundred and 00/100 DOLLARS

MEMO invoice 114631 Dennis T. Perry Jr.
 CLEARFIELD BANK Main Office 11 North 2nd Street Clearfield, PA 16830
 TRUST COMPANY
 :031306294: 1 2 42668 ? 1497 0000120000

Ck# 1497 Date 10/13/05 \$1,200.00

Invoice

Batcho Office Systems
 110 East Market Street
 Clearfield, PA 16830

Date	Invoice #
7/8/2005	114631

Bill To
DENNYS Denny's Pub 1423 Dorey Street Clearfield, PA 16830

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30	JB	7/8/2005			
Quantity	Item Code	Description			Price Each	Amount
1	4computers	POS Restaurant Manager Six Terminal Three Handheld System			17,603.00	17,603.00T
	PMT	AMOUNT PAID			-5,000.00	-5,000.00
	PMT	AMOUNT PAID			-2,500.00	-2,500.00
		PA Tax			6.00%	1,056.18
		1st 7-15-05 5000- ck# 1322 <i>Docum payment</i> 2 7-30-05 2500 ck# 1354 3 9-6-05 5000- ck# 1431 4 11-13-05 1500- ck# 1455 5 10-5-05 1200- ck# 1497				
Total						\$11,159.18

INBOX: Re: Support (5 of 163)

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Date: Wed, 04 Apr 2007 14:30:43 -0400

From: Lisa <lwilson@actionssystem.com>

To: dennypub@pennswoods.net

Cc: pos@bosisp.com, phspos@comcast.net

Subject: Re: Support

Dear Dennis --

The wholesale cost on the Restaurant Manager software license issued in your name was \$6,100. ASI invoiced Batcho's Office Systems for this amount on July 18, 2005. Unfortunately, the invoice was never paid which means Denny's Beer Barrel Pub does not have a valid license to use the Restaurant Manager software.

ASI has never made any attempt to recover the software key that allows you to use this illegal software license and we have no plans to do so in the future. However, we cannot issue any software upgrades or otherwise service the license you're using until we receive payment on the original license.

I have indicated to Pittsburgh Hospitality ASI's willingness to discount the amount due on the original license issued in your name if they get Denny's on an annual maintenance contract. If this is an option of interest to you, please discuss it further with Jeff Knapton.

Alternatively, you may wish to contact Batcho's Office Systems and urge them to pay off the original invoice.

Yours,

Lisa Wilson
ASI Managing Vice President
(301) 445-6100 x104

dennypub@pennswoods.net wrote:

> Lisa I just spoke with Pittsburgh Hospitality (Jeff) concerning our system
> here At Denny's Beer Barrel Pub.I was shocked to here that Batcho Business
> Machines here in Clearfield never secured a license for our software ,when
> selling us on Restraunt Manager.We were charged \$17,603.00 and we already had
> all hardware and wiring in place and were told we were given a break for us to
> be a site to showcase your product in our area,we however were never told we
> did not or would not have a license for our software.We engaged in all forms
> OF TRAINING that were required as presented to us By Batchos, (JASON
> UNCH)AND(THOMAS QUINN).We also were instrumental in securing the Clearfield
> Country Club for the sale of your system in having board members observe our
> system and us going to their board meeting with Jason and tom and speaking on
> their behalf about the system.We have had major problems with our system from
> ~~the beginning and have had Batchos here countless times,we even purchased new~~
> hardware on their say so as the root of all our problems.But still have many
> unsolved issues.I also am very unhappy that ASI would allow someone to sell
> anything related to their company that needed licensed and not contact us about
> that problem.We have wasted countless dollars and lost countless dollars due to
> all the software problems we have had.I will be meting with Jeff from