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COURT OF COMMON PLEAS
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CLERK OF COURTS
MONTGOMERY CO., OHIO



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

LADD INDUSTRIES
4849 Hempstead Station Drive
Kettering, Ohio 45429

* CASE NO. 00-2633
* (Judge John W. Kessler)

Plaintiffs

v.

ACCUNET, INC.
929 Eastwind Drive, Suite 221
Westerville, Ohio 43081

and

SOLOMON SOFTWARE, INC.
200 East Hardin Street
Findlay, Ohio 45840

Defendants

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* PLAINTIFF'S FIRST AMENDED
* COMPLAINT WITH JURY DEMAND
* ENDORSED HEREON
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Now comes the plaintiff, Ladd Industries, Inc., by and through counsel, and for its complaint against the defendants, hereby states as follows:

A. PARTIES, JURISDICTION, AND VENUE

1. Ladd Industries, Inc. is an Ohio corporation with offices in Kettering, Ohio.

2. AccuNet, Inc. is an Ohio corporation that conducted business and other actions as set forth herein in Dayton, Ohio subjecting itself to the jurisdiction and venue of this Court.

3. Solomon Software, Inc. is an Ohio corporation that conducted business and other actions as set forth herein, subjecting itself to the jurisdiction and venue of this Court.

4. Individual Consultants Jim Wise and Mike Milligan both functioned as professionals and as consultants on behalf of AccuNet and agents of Solomon and provided negligent services to Ladd Industries in Kettering, Ohio. Defendants are responsible for consultants' acts and omissions pursuant to the doctrine of respondeat superior and as agents.

B. FACTUAL BACKGROUND

5. Defendants AccuNet, Inc. and Solomon Software, Inc. hereinafter collectively referred to as Defendants, are liable to the plaintiff as set forth herein.

6. Solomon's products and services were offered for sale to plaintiff, Ladd Industries.

7. Upon recommendation from Defendants, plaintiff Ladd Industries purchased the Solomon IV for Windows Accounting Software which included the following Solomon modules:

- System Manager & Crystal Report Writer-23 Users
- General Ledger
- Accounts Payable
- Accounts Receivable
- Order Processing
- Purchasing
- Inventory
- Project Costing
- Bill of Materials

8. Plaintiff Ladd Industries justifiably and detrimentally relied upon Defendants' recommendation to purchase the aforementioned Solomon IV for Windows.

9. On or before June 29, 1999, Defendants represented to plaintiff the Solomon software would perform in accordance with its published specifications. At the time such representations were made, they were known by Defendants to be false.

10. In addition to specific performance specifications, Defendants warranted the capability of the software programs thereby inducing plaintiff to purchase the same.

11. Plaintiff specifically solicited recommendations from Defendants as to the appropriateness of the subject software for plaintiff's business needs.

12. Defendants, with knowledge of plaintiff's needs warranted that the subject software was capable to meet their specific needs for their particular business purposes.

13. In addition to the aforementioned warranties, Defendants also made specific warranties, representations, and promises regarding their ability to implement the subject software as set forth in AccuNet's contract dated June 29, 1999, attached to the original complaint.

14. Despite plaintiff's best efforts, Defendants have failed to remedy identified material defects in the subject software.

15. Such defects are so substantial they render the software commercially unuseable.

16. Prior to the sale and implementation, Defendants knew the system would not meet the needs of plaintiff, but nonetheless, falsely represented its characteristics, knowingly concealed defects regarding the subject software and caused plaintiff to rely upon such misrepresentations causing plaintiff injury as set forth herein.

17. Defendants were under duty to disclose such defects but refrained from doing so with the intent of misleading plaintiff into the sales, consulting, and maintenance agreement referred to herein.

18. Representations by Defendants to plaintiff were made with either knowledge of their falsity with or a negligent or reckless disregard for the truth.

19. Examples of material defects and misrepresentations and negligent acts not conforming to performance specifications, include, but are not limited to:

A. Compilation of inaccurate and missing report totals, inability to

look up account payable document by invoice number, failure to appropriately post data to the general ledger

- B. Failure to appropriately process invoices, failure to appropriately account for inventory, among others.

20. Consultants, Jim Wise and Mike Milligan were both held out by AccuNet to be competent computer professionals with specific contractual obligations to perform pursuant to their duties under the contract and in accordance with generally accepted standards as defined in their profession. The actions of said Consultants, failed to comply with generally accepted standards within their industry. The negligent breach and deviation from accepted standards by the aforementioned Consultants directly and proximately caused injury to plaintiff as set forth herein.

C. CLAIMS

FIRST CAUSE OF ACTION

BREACH OF DIRECT CONTRACT AND THIRD PARTY CONTRACTS

21. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 21 as if fully rewritten.

22. Defendants' actions as set forth herein breach their contracts for sale of the subject products, breach of their contracts for installation as set forth herein, and also breach of their contracts for maintenance of the subject software referred to herein.

23. Plaintiff, Ladd Industries, Inc. has rights, remedies, and has been damaged as a third party beneficiary of contracts between the defendants.

24. As a direct and proximate result of such breaches of contracts, plaintiff has been injured and continues to incur expenses in excess of \$370,000.

SECOND CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

25. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 24 as if fully rewritten.

26. Defendants expressly warranted the software to meet plaintiff's business needs and expressly stated the software would conform to "marketed functionality." Such specifications were relied upon by plaintiff. The subject software failed to meet express market functionality as described in the program specifications and demonstration modules. Said defects and failures have rendered the subject software commercially useless. Attempts to disclaim said warranty are contrary to law.

27. As a direct and proximate result of such breach of warranty, plaintiff has been injured and continue, to incur expenses in excess of \$370,000.

THIRD CAUSE OF ACTION

BREACH OF EXPRESS LIMITED WARRANTIES

28. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 27 as if fully rewritten.

29. Defendants expressly warranted that they would not knowingly install any application, which they knew contained defects, that may adversely effect Ladd. Based upon information and belief, Defendants knowingly installed applications which, when installed, contained defects, known by Defendants that adversely affected Ladd all in violation of Defendants' express limited warranty. All attempts to disclaim said warranty are contrary to law.

30. As a direct and proximate result of Defendants' breach of express limited warranty, Ladd has suffered and continues to suffer damages in excess of \$370,000.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

31. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 30 as if fully rewritten.

32. The actions of Defendants created an implied warranty that the software was fit for the ordinary purpose for which it is used.

33. The defects that existed in the subject software were well above and beyond any standard and ordinary defects. All attempts to disclaim said warranty are contrary to law.

34. As a result of Defendants' breach of implied warranties of merchantability, plaintiff has been damaged an amount which exceeds \$370,000.

FIFTH CAUSE OF ACTION

**BREACH OF IMPLIED WARRANTY OF FITNESS
FOR A PARTICULAR PURPOSE**

35. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 34 as if fully rewritten.

36. Defendants knew or had reason to know the particular needs of plaintiff.

37. Defendants were aware that plaintiff was relying upon their skill or judgment in selecting appropriate products and/or services for plaintiff.

38. Plaintiff relied upon the skill and/or judgment of Defendants to select, design, install, and maintain an appropriate Software system for plaintiff.

39. Through their contracts, representations, product literature, and actions, Defendants created an implied warranty of fitness for a particular purpose. All attempts to disclaim said warranty are contrary to law.

40. As a result of Defendants' breach of their implied warranty that the software product was fit for the particular needs of plaintiff's business, plaintiff has been damaged in an amount in excess of \$370,000.

SIXTH CAUSE OF ACTION

NEGLIGENCE

41. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 40 as if fully rewritten.

42. Defendants had a duty to exercise ordinary care in the selection, design, installation, and/or maintenance of the software sold to the plaintiff.

43. Defendants had a duty to select and assign employees and/or other individuals who had sufficient knowledge and expertise to design, install, implement, and/or maintain an appropriate software system to fulfill plaintiff's needs.

44. Defendants failed to exercise ordinary care in selecting, designing, implementing, maintaining, and/or repairing its software system.

45. Defendants also failed to exercise ordinary care in assigning employees with sufficient knowledge and expertise to select, design, install, implement, maintain, and/or repair the plaintiff's software system.

46. As a result of Defendants' breach of ordinary care, the plaintiff has been damaged in excess of \$370,000.

SEVENTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION/FRAUD

47. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 46 as if fully rewritten.

48. Defendants made factual misrepresentations concerning the present capabilities of the Solomon software system which were

material to plaintiff's decision to purchase the software system. The representations made by Defendants were false.

49. Defendants made misrepresentations to plaintiff with the knowledge that such representations were false and/or with reckless disregard for the truth of the representations.

50. Defendants made misrepresentations to plaintiff with an intent to mislead the plaintiff into relying upon the representations and to mislead plaintiff so as to enter into an agreement with Defendants.

51. Having no knowledge of the misrepresentations of Defendants, plaintiff justifiably relied upon the misrepresentations made by Defendants.

52. Defendants' misrepresentations were made in published documents and through oral statements and concerned the capabilities of the software and the ability of the software to satisfy the needs of plaintiff's business.

53. As a result of plaintiff's justifiable detrimental reliance upon the misrepresentations made by Defendants, plaintiff has been damaged in an amount in excess of \$370,000.

EIGHTH CAUSE OF ACTION

PRODUCT LIABILITY CLAIM

54. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 53 as if fully rewritten.

55. Defendants Solomon and AccuNet, Inc. are engaged in the business of selling software products.

56. Defendants Solomon and AccuNet, Inc. designed, implemented, and/or manufactured a software system which was in a defective condition. The defect of the software system existed at the time it was sold to plaintiff. As a direct and proximate result of the defect in the software system, plaintiff suffered property damage to its data, and processes, and systems in an amount in excess of \$25,000, all to be proven at the trial of this matter.

NINTH CAUSE OF ACTION

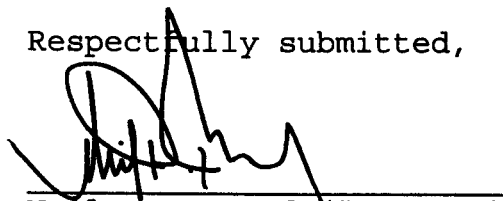
PUNITIVE DAMAGES AND ATTORNEY FEES

57. Plaintiff, Ladd Industries, Inc. hereby restates all those allegations contained in paragraphs 1 through 56 as if fully rewritten herein.

58. Plaintiff is entitled to punitive damages and its attorney fees as a result of defendant Solomon's and defendant AccuNet's fraudulent, insulting, and malicious conduct that demonstrates, among other things, a state of mind characterized by hatred, ill will, or a spirit of revenge and/or a conscious disregard for the rights of other persons that had a great probability of causing, and did cause, substantial harm.

WHEREFORE, plaintiff demands judgment against all defendants in an amount in excess of \$370,000 and an award of other costs, punitive damages, and attorney fees, and for such other relief to which it is entitled either in law or equity.

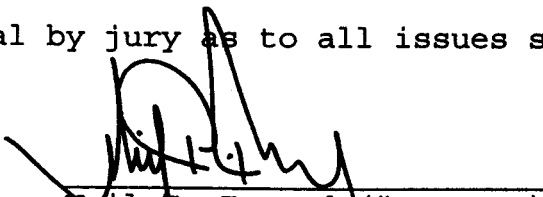
Respectfully submitted,



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Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury as to all issues set forth herein.



Neil F. Freund (#0012183)
Wayne E. Waite (#0008352)