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U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA
APR 11 2011

E-Filed

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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 THINKEQUITY PARTNERS, LLC, a
12 Delaware limited liability company,

13 Plaintiff,

14 v.

15 DATATEL, INC., a Virginia Corporation,

16 Defendant.
17

1 C 05 8810

Case No.

SBA

**COMPLAINT FOR DAMAGES;
BREACH OF CONTRACT**

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19 Plaintiff alleges:

20 **JURISDICTION**

21 1. Plaintiff THINKEQUITY PARTNERS LLC is, and at all times herein mentioned was,
22 a limited liability company organized and existing under and by virtue of the laws of the State of
23 Delaware. Plaintiff has offices in the City and County of San Francisco, State of California.

24 2. Plaintiff is informed and believes and thereon alleges that Defendant DATATEL, INC.
25 is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with
26 its corporate headquarters in the State of Virginia. Plaintiff is informed and believes that DATATEL,
27 INC. conducts business on a systematic and regular basis in the State of California, and has offices in
28 the City and County of San Francisco, State of California.

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1 3. This court has original jurisdiction of this action under 28 USCA §1332 since it is a
2 civil action between citizens of different states in which the matter in controversy exceeds, exclusive
3 of costs and interests, Seventy-Five Thousand Dollars (\$75,000).

VENUE

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5 4. Venue is proper in the Northern District of California in that the defendant is subject
6 to personal jurisdiction in this District at the time the action is commenced, and because a substantial
7 part of the events or omissions giving rise to the claim occurred in this District.

INTRA-DISTRICT ASSIGNMENT

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9 5. Pursuant to Loan Rule 3-2(d), a substantial part of the events or omissions which gave
10 rise to the claim occurred in San Francisco, California, and assignment to the San Francisco Division
11 is thereby proper.

FIRST CAUSE OF ACTION (Breach of Contract)

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14 6. THINKEQUITY PARTNERS LLC (“THINKEQUITY” or “plaintiff”) is engaged in
15 the financial advising business. Among other things, THINKEQUITY conducts research, and assists
16 businesses in obtaining financing, securing investment sources, identifying merger candidates, and
17 facilitating other business opportunities on behalf of its client base.

18 7. Plaintiff is informed and believes and thereon alleges that DATATEL, INC.
19 (“DATATEL” or “defendant”) is, and at all times herein mentioned was engaged in the business of
20 providing information management solutions for institutions of higher education throughout the
21 United States.

22 8. On or about July 18, 2003, DATATEL retained THINKEQUITY as its exclusive
23 financial advisor to assist DATATEL in connection with DATATEL’s program to raise capital
24 through a sale, merger, joint venture, lease, license, or other transaction. The terms and conditions of
25 THINKEQUITY’s engagement by DATATEL were embodied in a written agreement (“the
26 Agreement”), as set forth below.

27 9. In consideration for THINKEQUITY’s provision of services as DATATEL’s
28 exclusive financial advisor, DATATEL committed to pay THINKEQUITY a fee equivalent to

1 ¾ percent of Consideration payable in connection with any Sale Transaction consummated during the
2 term of the Agreement, or within 18 months thereafter. "Sale Transaction" was defined as "Any sale,
3 merger, joint venture, lease, license or other transaction in which 50% or more of the voting power of
4 the Company or all or a substantial portion of its business or assets are combined with or transferred
5 to another company." "Consideration" was defined as "the gross value of all cash, securities and
6 other properties paid directly or indirectly by an acquirer to the Company or its security holders in
7 connection with the Sale Transaction (including without limitation all amounts paid or distributed by
8 the Company to the holders of capital stock of the Company and all amounts paid, distributed or
9 issued to the holders of options, warrants, stock appreciation rights or similar rights or securities in
10 the Company in connection with the Sale Transaction.")

11 10. Plaintiff performed all terms and conditions required of it under the Agreement.
12 Plaintiff performed valuation analyses, prepared information materials to be distributed to potential
13 buyers, and conducted and shared alternative analyses for potential acquisitions. Plaintiff performed
14 surveys to determine the interest in an acquisition among financial investors, and reported to
15 DATATEL with various strategies designed to effect a sale. Plaintiff invested significant sums of
16 time and money in performing its obligations under the Agreement.

17 11. Plaintiff is informed and believes and thereon alleges that DATATEL consummated a
18 Sale Transaction as defined by the Agreement on or about March 18, 2005, which was within 18
19 months of the conclusion of THINKEQUITY's engagement.

20 12. DATATEL breached the Agreement, by failing to pay THINKEQUITY's fee as
21 required thereunder.

22 13. Plaintiff is informed and believes and thereon alleges that the Consideration in
23 connection with the Sale Transaction, as defined by the Agreement, was the sum of Two Hundred
24 Sixty-Five Million Dollars (\$265,000,000), and that THINKEQUITY's fee thereon was the sum of
25 One Million Nine Hundred Forty-Three Thousand, Five Hundred Ninety-Four Dollars and Forty-
26 Four Cents (\$1,943,594.44).

27 14. On or about April 28, 2005, and thereafter, plaintiff made written demand on
28 defendant for payment of the fee due it under the Agreement. Payment was to be made to

1 THINKEQUITY at its offices in San Francisco, California. Despite repeated written demands
2 therefor, defendant has failed and refused, and continues to fail and refuse, to pay any amounts
3 outstanding.

4 15. As a direct and proximate result of the breach of contract of defendant as alleged
5 herein, plaintiff has been damaged in the sum of no less than One Million Nine Hundred Forty-Three
6 Thousand, Five Hundred Ninety-Four Dollars and Forty-Four Cents (\$1,943,594.44), plus pre-
7 judgment interest thereon from and after April 28, 2005.

8 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 9 1. For actual damages according to proof, in no event less than One Million Nine
10 Hundred Forty-Three Thousand, Five Hundred Ninety-Four Dollars and Forty-Four
11 Cents (\$1,943,594.44);
- 12 2. For pre-judgment interest on the above-described sum at the maximum allowable legal
13 rate, from and after April 28, 2005;
- 14 3. For costs of suit; and
- 15 4. For such other and further relief as the Court deems just and proper.

16 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

17 Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the
18 named parties and agents, there is no such interest to report.

19 DATED: July 8, 2005

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22 By: 

23 DWIGHT C. DONOVAN
24 Attorneys for Plaintiff
25 THINKEQUITY PARTNERS LLC
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