IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

Petition for CBM Review of	§	Customer No. 97149
United States Patent No. 8,396,791, for	§	
System and Method for Assessing and Managing Financial Transactions	§	Attorney Docket No: D1164.00024
	§	
	§	Petitioner: DealerSocket, Inc.
Patent Owner: AutoAlert, Inc.	§	

DECLARATION OF NEIL M. LIBROCK

Neil M. Librock declares:

1. I have 30+ years professional experience in consumer credit, automobile lending and leasing, and automated decision engines. I retired from Wells Fargo in 2012 where I served as the EVP / Chief Credit Officer for all consumer loan portfolios. I participated in auto leasing residual insurance, auto loan portfolio purchases, automated credit scoring and decision engine development, and Basel II modeling. I have a strong background in the mechanics of auto lending.

2. Additional details of my education, work experience, publications and prior testimony are set forth in my curriculum vitae, which is attached as Exhibit A.

3. For my work in connection with the above-captioned action, I am paid $500.00 per hour for my time, plus out-of-pocket expenses. My opinions are objective, and my compensation does not depend on the outcome of this matter.

4. The specification—i.e., the "Abstract," figures, "Summary of the Invention," "Brief Description of the Drawings," and "Detailed Description of

Preferred Embodiments"—of U.S. Patent No. 8,396,791 ("'791 patent") describes three general processes, or types of process. One is:

> (1) retrieving financing, customer, and product information, (2) comparing, for each of a plurality of customers, the customer's current financial terms . . . related to a first product. . . with potential financial terms related to a second product . . . (3) generating, for each customer for which the comparing shows that the new financial arrangement has terms favorable to the customer, an alert . . . and (4) transmitting the alerts to at least one dealer.

'791 patent at 2:31–45. That process (or process type) is graphically illustrated in Figure 36, and further described at column 18, line 59 through column 20, line 12. The second general process is:

> (1) receiving a modified financial variable, (2) comparing, for each of a plurality of customers, the customer's current financial terms . . . related to a first product . . . with potential financial terms related to a second product . . . taking into account the modified financial variable . . . (3) generating, for each customer for which the comparing shows that the new financial arrangement has terms favorable to the customer, an alert . . . and (4) transmitting the alerts to at least one dealer.

'791 patent at 2:46–62. That process is graphically illustrated in Figure 37 and further described at column 20, lines 13 through 45. And the third is:

> (1) receiving an identification of a customer, (2) retrieving, in real-time, financial information regarding a current financial arrangement of the customer . . . [that] relates to a first product . . . (3) comparing current financial terms . . . with potential financial terms related to a second product . . . (4) generating an alert . . . if the comparing shows that the new financial arrangement has terms favorable to the identified customer, and (5) transmitting the alert in real-time to at least one dealer.

'791 patent at 3:15–31. That process is graphically illustrated in Figure 38 and further described at column 20, line 46 through column 21, line 3.

5. The first two of the three processes described in the specification of the '791 patent share a common objective: identifying groups of customers to whom favorable replacement terms might be available. The third has a fundamentally different objective: ascertaining whether favorable terms are available to an already identified customer. The first two processes are batch methods that have essentially the same steps, but different triggers: the first executes periodically, while the second executes in response to new or changed information (which might be described as a reactive method). *See* '791 patent at 22:59–65. The third process has a still different trigger: a customer-specific request. *See id.* at 10:17–18, 18:9–12, 22:65–23:5. Because the objective of the first two processes is to identify groups of customers to whom favorable replacement transactions might be available, a customer-specific request would be out of place in either of those processes.

6. The third process assesses the availability of a favorable replacement transaction to an identified customer without regard to whether new or changed information has been received. Indeed the specification of the '791 patent does not associate the third, customer-specific process with the receipt of changed or new information in way. The only process that the specification associates with changed or new information is the second; and the only associations it makes are (1) the

second process may be triggered by the receipt of changed or new information and (2) the second process takes such information into account.

7. Requiring the third process to await and be responsive to the receipt of new or changed information would frustrate its objective, which is to find out *now* whether favorable replacement terms are available to an already identified customer. Limiting the scope of that process to changed information would also be useless, because the point of the process is to determine whether favorable replacement terms are available. Someone trying to figure out if she can sell a car to the customer standing in her showroom or waiting in her service department (whom the '791 patent describes as exemplary users of the third process) does not care whether and how that determination was affected by new or changed (or any other particular type) of information.

8. Although one of the three processes is triggered by the receipt of new or changed information, *none* of the three processes described in the '791 patent specification reveals anything about the *impact* of new, changed, or any other particular information, in isolation or as distinguished from any other information. Each simply indicates whether favorable replacement transactions are available, in light of *all* the information, without shedding any light on whether changed information or any other particular piece(s) of information affected the availability of a favorable replacement transaction.

9. According to the specification, the reactive batch method is "able to determine how changed financial variables affect whether customers can enter new financial arrangements with favorable terms." '791 patent at 2:64–66. The specification offers the following illustration of that capability: "this process can be used to generate alerts when a new financial incentive, such as a manufacturer rebate or a dealership incentive, allows customers to enter new financial arrangements with favorable terms." *Id.* at 2:67–3:3. But that is incorrect. It is possible that the reactive method will lead to the generation of an alert, if a customer is able to enter new financial arrangements with favorable terms after a new financial incentive becomes available. But the reactive method, as disclosed, is incapable of basing the generation of an alert on whether it is the new incentive, in particular, that "allows customers to enter into new financial arrangements with favorable terms." The reactive method, like each of the others, "takes into account *all* available financial variables that affect whether a customer can advantageously switch financial arrangements," *see id.* at 19:19–21 (italics added), without isolating how any one of them affects the availability of a favorable alternative arrangement.

10. The specification does not teach how to isolate the impact of a new or changed financial variable on the availability of favorable alternative arrangements in any other context, either. The specification does single out some items of information "that affect whether a customer can advantageously switch financial arrangements," '791 patent at 19:20–21, such as "interest rates, payoff periods,

amount due on the current financial arrangement, any dealer or manufacturer incentives currently available, and the like," *id.* at 19:21–24; and it acknowledges that "other financial variables . . . are relevant, under some circumstances, for determining whether a customer can advantageously switch financial arrangements," *id.* at 19:26–29. But the specification does not either describe determining, or teach how to determine, what those "other financial variables" are; and it does not teach how to determine what the effect of any particular variable is in any particular circumstance.

11. Claim 1 of the '791 patent recites:

(1) retrieving information (more specifically, "at least a portion of customer information, first financial terms that a customer has for a first vehicle, and first vehicle information" and "second vehicle information for a second vehicle and second financial terms available to the customer for the second vehicle");

(2) receiving a "configuration request";

(3) in response to the configuration request, retrieving "current information" (more specifically, "current information associated with at least one of the customer information, the first financial terms that the customer has for the first vehicle, the first vehicle information, the second vehicle information, or the second financial terms available to the customer for the second vehicle");

and then

(4) "determining . . . whether the *current retrieved information* may affect whether it is favorable for the customer to replace a first vehicle and first financial terms with a second vehicle and second financial terms by at least:"

(a) "calculating one or more new payments [for the second vehicle] based on an estimated equity value of the first

vehicle derived from the first financial terms, and, based on the second financial terms; and"

(b) "calculating a difference between the one or more new payments and an existing periodic payment for the first vehicle, and"

(c) "determining whether the difference is less than or equal to a preset acceptable threshold value."

Claim 6 of the '791 patent recites a computing system with "machine-executable instructions" that are "configured . . . to cause the computing system" to execute the same steps. But nothing in steps (4)(a)–(4)(c) sheds any light on whether the "current information" retrieved in step (3) affected the favorability of replacement. If it is determined in step (4)(c) that "the difference is less than or equal to a preset acceptable threshold value" then, perhaps, it *is* favorable for the customer to replace her car, given *all* the information; but none of the steps sheds any light on whether the "current information" retrieved in step (3)—as opposed to the information retrieved in steps (1) and (2)—made it favorable to do so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22 day of May, 2014, at Emeryville, California.

Neil M. Librock

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EXHIBIT A

Curriculum Vitae

NEIL M. LIBROCK
BERKELEY RESEARCH GROUP, LLC
2200 Powell Suite, Suite 1200
Emeryville, CA 94608

Direct: (510) 285-3253
nlibrock@brg-expert.com

EDUCATION

MBA, Finance, University of Rochester (NY)
Full tuition academic scholarship

B.A. (with Honors), Economics, The Ohio State University
Phi Beta Kappa
University housing Resident Advisor

PROFESSIONAL CAREER SUMMARY

Financial Services Consultant, 2012 – present

University Finance and Real Estate Instructor, 2012 – present

Banking and Credit Risk Executive – 30 years' experience

CONSULTING ENGAGEMENTS

Confidential Securitization Repurchase: Prepared expert rebuttal report regarding loan underwriting and default factors re: plaintiffs' $300+ million repurchase demands. Deposition pending.

FDIC-R v. Core Logic Valuation Services: Prepared expert reports and testified at deposition re: plaintiff's $98 million mortgage underwriting damage claim. Trial pending.

FDIC-R v. LSI: Prepared expert reports and testified at deposition re: plaintiffs' $129 million mortgage underwriting damage claim. Case settled prior to trial.

Crowell v. Ritz Carlton: Prepared expert report and testified at deposition re: defendant's estimates of plaintiffs' lost income. Trial settled in favor of defendant with no damages awarded plaintiff.

Confidential LIBOR Research Report: Prepared research and analysis on LIBOR as the index for certain adjustable rate residential mortgages.

TEACHING RESPONSIBILITIES

Cal State University East Bay ***2012 – Present***

Accounting and Finance Instructor

- Teach Finance and Real Estate courses
- Selected as Charlene Abendroth "Instructor of the Year" in 2013
- Co-director of the Center for Financial Literacy

UC Davis MBA Program ***2013 – Present***

Visiting Faculty in Accounting and Finance

MAJOR BUSINESS ACCOMPLISHMENTS

- **Due Diligence** – Integration of Wachovia mortgage portfolio with successful loss mitigation programs and $2.4B impairment reserve release
- **Stress Testing** – Federal Reserve approval for three credit quality and capital management plans
- **Analytics** – Allowance for loan loss reserves, MSA-based real estate trends, and economic forecasts
- **Business Management** – Ran home equity and mortgage lending operations
- **Training** – Classroom and on-line consumer credit training and education

PROFESSIONAL EXPERIENCE

WELLS FARGO, San Francisco, CA 1998 - 2012
Executive Vice President and Senior Credit Officer (2008 – 2012)

Senior consumer credit risk executive responsible for a $400B portfolio including mortgage, auto, credit card, student loan, and small business loans. Member of key executive committees, including Sarbanes-Oxley Disclosure, Fair and Responsible Lending, Corporate Credit Policy, Loan Repurchase Reserves, and Allowance Approach. Consumer credit expert for due diligence reviews and loan portfolio valuations.

- Directed 2008 Wachovia Bank consumer credit due diligence including establishing a $30B credit impairment reserve and a $13B equity capital raise. Pick-a-Pay mortgage results have exceeded expectations – completed loan modifications for 60,000+ customers, accumulated negative amortization reduced by $3B, and a $2.4B reserve release due to lower than expected credit losses
- Managed consumer credit forecasting and analysis for 2009 Federal Reserve SCAP and subsequent CCAR stress tests. All Wells Fargo capital plans approved by regulators
- Maintain extensive support for rating agency, stock analyst, and regulator interface
- Implemented a Market Classification process for residential real estate to assign risk ratings at the MSA level to optimize lending policies and loss mitigation practices
- Developed and delivered web-based consumer credit training for over 25,000 team members

Senior Credit Officer – Corporate Credit (1998 – 2007)

SCO responsible for establishing and monitoring corporate consumer credit policies and loan portfolio performance:

- Managed Wells Fargo corporate Allowance for Loan Losses ($5.5B at YE 2007), including quarterly adequacy testing and documentation. Received satisfactory annual audit and SOX 404 exam ratings. Developed special reserve methodology and documentation for Hurricane Katrina disaster
- Directed merger integration of Wells Fargo and Norwest consumer products and credit policies
- Managed corporate credit reporting for senior management and Board of Directors, including portfolio concentration and peer analysis
- Chaired Retail Basel II working committee responsible for risk framework, data integrity, and model development and validation
- Directed effort to segregate $10B Home Equity "non-strategic" portfolio for focused loss mitigation efforts
- Supported on-going Strategic Auto loan pool purchases including underwriting individual deals
- Managed Y2K credit reporting systems conversions

OTHER SIGNIFICANT EXPERIENCE

EUREKA BANK, FSB, Foster City, CA
Senior Vice President and Residential Mortgage Director

- Built and ran an innovative jumbo mortgage business with $2 billion annual fundings and a #1 market share in northern California
- Managed Retail and Broker sales channels and loan underwriting / funding
- Negotiated lender paid mortgage insurance program to facilitate customer service and preferred pricing

BANK OF AMERICA, San Francisco, CA
Senior Vice President – BofA Mortgage

- Directed national lending policies and product development for a major national mortgage company, including the "Neighborhood Advantage" program for low income and first time home owners
- Developed and delivered classroom based consumer credit training, including credit scoring and collections

CITIBANK (CA), Oakland, CA
Senior Vice President – Mortgage Operations

- Built a second mortgage lending operation for Citibank (CA) with a 2% return on assets and a #3 market share in northern California
- Managed two first mortgage underwriting centers with 500 team members, funding $2 billion per year. Developed innovative customer service programs in response to Loma Prieta earthquake and Oakland Hills fire natural disasters

- Part-time faculty member of Citicorp Executive Development Center, responsible for consumer credit curriculum development and classroom training, including lectures, case studies, and computer simulations

CITIBANK (NYS), Rochester, NY
Vice President

- Credit Director responsible for credit policy and consumer collections in a $10B portfolio
- Senior financial officer responsible for annual budgets, monthly financial reporting, and consolidation of bank subsidiary into Citicorp reporting

XEROX, Rochester, NY
Financial Analysis Manager

PUBLICATIONS

"Selected Problems in Finance" Cal State University East Bay, Neil Librock editor, ISBN 978-1-269-06446-0

"Managing a Consumer Lending Business", David Lawrence and Arlene Solomon. Chapter 10, "The Home Mortgage Business" authored by Neil Librock. ISBN 978-0-9715737-3-0

ACTIVITIES

- University of Rochester Simon Graduate School of Business – Executive Advisory Council
- Member U.S. Green Building Council, Northern CA Chapter
- Porsche Club of America, San Francisco Golden Gate Region – Chief Driving Instructor