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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. 3:12-CV-2350-IEG -BGS

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 including their integrated Passbook System (“PBS”), which includes the “pass
2 styles” that Apple has defined as “boarding pass” and “event ticketing”
3 applications within Passbook, and which permits the management, maintenance,
4 downloading, and/or storage of, *inter alia*, airline boarding passes, hotel
5 reservations, movie tickets, and event tickets, and is integrated with iPhone 5 and
6 other iPhone and iPod Touch devices that are running Apple’s iOS 6 software,
7 and linked to/with Apple’s iCloud, the “Apple Notification Service”, and Apple’s
8 Safari browser. Apple has already announced and/or implemented Passbook
9 partnerships integrating Passbook-enabled systems with defendants in other
10 Ameranth patent enforcement actions including Ticketmaster, StubHub,
11 Starwood Hotels, Fandango, Ticketfly, Eventbrite, Ticketbiscuit, Starbucks and
12 others, as well as integrating Apple’s Siri speech-recognition and voice
13 control/command application with the systems of defendants such as OpenTable
14 and Fandango. Industry analysts have called Passbook a “game changer.”
15 Former Apple senior vice president Scott Forstall, in demonstrating Passbook in
16 2012 with stored tickets and passes including movie tickets, airline boarding
17 passes, and concert tickets, asserted that “Passbook is the best way to collect all
18 of your passes in one place.” As Apple describes it, within the Passbook
19 application itself, “Passbook is the simplest way to get all your passes in one
20 place. Passbook puts your boarding passes, movie tickets, retail coupons, loyalty
21 cards, and more all in one place. They’ll also be ready on your lock screen at just
22 the right time and place. You can add passes to Passbook through apps, emails,
23 and websites from participating airlines, theatres, stores and more.”

24 3. On information and belief, among the other computer technology
25 products that Apple makes, uses, sells and/or offers for sale include all models of
26 the iPhone and iPod Touch, and all versions of Apple’s iOS mobile operating
27 system, and tools for developing apps for iOS devices including the iOS
28 Simulator, which, according to Apple, “allows you to rapidly prototype and test

1 builds of your app during the development process. Installed as part of the Xcode
2 tools along with the iOS SDK, iOS Simulator runs on your Mac and behaves like
3 a standard Mac app while simulating an iPhone or iPad environment. Think of
4 the simulator as a preliminary testing tool to use before testing your app on an
5 actual device. iOS Simulator enables you to simulate several iOS devices and
6 several versions of the iOS operating system. Each simulated software version is
7 considered its own simulation environment, independent of the others, with its
8 own settings and files. These settings and files exist on every device you test
9 within a simulation environment. ... By simulating the operation of your app in
10 iOS Simulator, you can ... Find major problems in your app during design and
11 early testing ... [and] Test your app using developer tools that are available only
12 for iOS Simulator ... iOS Simulator is a great tool for rapid prototyping and
13 development before testing your app on a device. iOS Simulator also has features
14 that can assist you in testing and debugging both iOS apps and web apps.”

15 **JURISDICTION AND VENUE**

16 4. This is an action for patent infringement arising under the Patent Laws of
17 the United States, 35 U.S.C. §§ 271, 281-285.

18 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
19 1338(a).

20 6. On information and belief, Apple engages in the offer for sale or license
21 and sale or license of computer technology products, including personal
22 computers, mobile communications devices, portable digital music and video
23 players and related hardware, software, components and/or systems, including
24 this Judicial District, including the PBS and Siri as defined herein.

25 7. This Court has personal jurisdiction over Apple because Apple commits
26 acts of patent infringement in this Judicial District including, *inter alia*, making,
27 using, offering for sale or license, and/or selling or licensing infringing services,
28 products, software, components and/or systems in this Judicial District.

1 Additionally, Apple has already appeared in this action and submitted to the
2 jurisdiction of the Court. Apple has continued to engage in and perform such acts
3 of infringement since the filing of the original complaint in this matter accusing
4 Apple of infringement of the Ameranth patents at issue herein.

5 8. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and
6 (c) and 1400(b).

7 **BACKGROUND**

8 9. Ameranth was established in 1996 to develop and provide its 21st
9 Century Communications™ innovative information technology solutions for the
10 hospitality industry (inclusive of, *e.g.*, restaurants, hotels, casinos, nightclubs,
11 cruise ships, and other entertainment and sports venues). Ameranth has been
12 widely recognized as a technology leader in the provision of wireless and
13 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
14 cruise ships and entertainment and sports venues. Ameranth's award winning
15 inventions enable, in relevant part, generation and synchronization of menus,
16 including but not limited to restaurant menus, event tickets, reservations, and
17 other products across fixed, wireless and/or internet platforms as well as
18 synchronization of hospitality information and hospitality software applications
19 across fixed, wireless and internet platforms, including but not limited to,
20 computer servers, web servers, databases, affinity/social networking systems,
21 desktop computers, laptops, "smart" phones and other wireless handheld
22 computing devices.

23 10. Ameranth began development of the inventions leading to the patents in
24 this patent family, including the patents-in-suit, in the late Summer of 1998, at a
25 time when the then-available wireless and internet hospitality offerings were
26 extremely limited in functionality, were not synchronized and did not provide an
27 integrated system-wide solution to the pervasive ordering, reservations, affinity
28 program and information management needs of the hospitality industry.

1 Ameranth uniquely recognized the actual problems that needed to be resolved in
2 order to meet those needs, and thereafter conceived and developed its
3 breakthrough inventions and products to provide systemic and comprehensive
4 solutions directed to optimally meeting these industry needs. Ameranth has
5 expended considerable effort and resources in inventing, developing and
6 marketing its inventions and protecting its rights therein.

7 11. Ameranth's pioneering inventions have been widely adopted and are
8 thus now essential to the modern wireless hospitality enterprise of the 21st
9 Century. Ameranth's solutions have been adopted, licensed and/or deployed by
10 numerous entities across the hospitality industry.

11 12. The adoption of Ameranth's technology by industry leaders and the wide
12 acclaim received by Ameranth for its technological innovations are just some of
13 the many confirmations of the breakthrough aspects of Ameranth's inventions.
14 Ameranth has received twelve different technology awards (three with "end
15 customer" partners) and has been widely recognized as a hospitality
16 wireless/internet technology leader by almost all major national and hospitality
17 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
18 and many others. Ameranth was personally nominated by Bill Gates, the
19 Founder of Microsoft, for the prestigious Computerworld Honors Award that
20 Ameranth received in 2001 for its breakthrough synchronized
21 reservations/ticketing system with the Improv Comedy Theatres. In his
22 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
23 information technology for the betterment of mankind." This prestigious award
24 was based on Ameranth's innovative synchronization of wireless/web/fixed
25 hospitality software technology. Subsequently, the United States Patent and
26 Trademark Office granted Ameranth a number of currently-issued patents, two of
27 which are the basis for this lawsuit. Ameranth has issued press releases
28 announcing these patent grants on business wires, on its web sites and at

1 numerous trade shows since the first of the two presently-asserted patents issued
2 in 2002. A number of companies have licensed patents and technology from
3 Ameranth, recognizing and confirming the value of Ameranth's innovations. At
4 all relevant times, Ameranth marked its own products with the numbers of the
5 Ameranth patents then issued, thereby providing companies, competitors and
6 participants in the hospitality industry with notice of Ameranth's patents.
7 Furthermore, companies that license Ameranth's products have marked their
8 products with Ameranth's patent numbers, thereby also providing notice of
9 Ameranth's patents.

10 13. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
11 "'850 patent"), U.S. Patent No. 6,871,325 (the "'325 patent"), U.S. Patent No.
12 6,982,733 (the "'733 patent"), and U.S. Patent No. 8,146,077 (the "'077 patent")
13 are all patents in Ameranth's "Information Management and Synchronous
14 Communications" patent family.

15 14. Apple is well aware of this Ameranth patent family. One of the
16 Ameranth patents-in-suit, U.S. Patent No. 6,384,850 – the first patent issued in
17 this Ameranth patent family – was cited as a prior art reference in two Apple
18 iPhone patents issued to named inventors Bas Ording and Steven P. Jobs. Also,
19 the patents in this Ameranth patent family have been asserted in several patent
20 enforcement actions against Apple business partners, as noted above. Further,
21 Apple has had knowledge of this lawsuit, and the patent claims asserted herein,
22 since the filing of the original complaint in September of 2012, and has continued
23 its infringing activities nonetheless.

24 **RELATED CASES PREVIOUSLY FILED**

25 15. Ameranth is also currently asserting claims of these same patents in
26 separate lawsuits, against other defendants, that are already pending in this Court.
27 The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled
28 *Ameranth v. Pizza Hut, Inc. et al.*,⁶ Case No. 3:11-cv-01810-DMS-WVG.

1 Lawsuits subsequently filed by Ameranth in this Court, asserting claims of the
2 '077 patent, include Case Nos. 3:12-cv-00729-DMS-WVG; 3:12-cv-00731-
3 DMS-WVG; 3:12-cv-00732-DMS-WVG; 3:12-cv-00733-DMS-WVG; 3:12-cv-
4 00737-DMS-WVG; 3:12-cv-00738-JLS-NLS (settled); 3:12-cv-00739-DMS-
5 WVG and 3:12-cv-00742-DMS-WVG. Other lawsuits filed by Ameranth in this
6 Court asserting claims of the '850, '325, and '077 patents are Case No. 3:12-cv-
7 00858-DMS-WVG; 3:12-cv-1201-JLS-NLS (settled); 3:12-cv-01627-DMS-
8 WVG; 3:12-cv-01629-DMS-WVG; 3:12-cv-01630-DMS-WVG; 3:12-cv-01631-
9 DMS-WVG; 3:12-cv-01633-DMS-WVG; 3:12-cv-01634-DMS-WVG; 3:12-cv-
10 01636-DMS-WVG; 3:12-cv-01640-DMS-WVG; 3:12-cv-01642-DMS-WVG;
11 3:12-cv-01643-DMS-WVG; 3:12-cv-01644-DMS-WVG; 3:12-cv-01646-DMS-
12 WVG 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-DMS-WVG; 3:12-cv-
13 01649-DMS-WVG; 3:12-cv-01650-DMS-WVG; 3:12-cv-01651-DMS-WVG;
14 3:12-cv-01652-DMS-WVG; 3:12-cv-01653-DMS-WVG; 3:12-cv-01654-DMS-
15 WVG; 3:12-cv-01655-DMS-WVG; 3:12-cv-01656-DMS-WVG; 3:12-cv-01659-
16 DMS-WVG; 3:13-cv-00350-DMS-WVG; 3:13-cv-00352-DMS-WVG; 3:13-cv-
17 00353-DMS-WVG; 3:13-cv-0836-DMS-WVG (settled) and 3:13-cv-01072-
18 DMS-WVG. All of the above still-pending cases have been consolidated for pre-
19 trial through claim construction except for 3:13-cv-00350-DMS-WVG; 3:13-cv-
20 00352-DMS-WVG; 3:13-cv-00353-DMS-WVG; and 3:13-cv-01072-DMS-
21 WVG.

PASSBOOK

22
23 16. In or about September 2012, Apple introduced Passbook, a
24 product/service currently available on iPhone and iPod Touch devices that are
25 running Apple's iOS 6 software or iOS 7 software. (This includes both the
26 larger-screen iPhone 5 devices and the smaller-screen iPhone 4 and 4S devices.
27 iOS 6 and iOS 7 enable software to be written so that the linked user interface
28

1 screens are presented in the screen dimensions that correspond to each user's
2 iPhone screen size and characteristics.)

3 17. Adoption of Passbook has been swift. For example, one writer reported
4 a marketing study that Passbook was responsible for "hundreds of thousands" of
5 transactions just in the first few months after its introduction; and American
6 Airlines reported in fall 2012 that it processes about 20,000 Passbook passes each
7 day and that it has about 1.5 million active Passbook users. Apple encourages and
8 supports the adoption and spreading of Passbook. Apple has created, and entered
9 into with developers and companies using Passbook, various agreements to
10 govern and encourage the use of Passbook, including the "Passbook Marketing
11 Agreement" and the "iOS Developer Program License Agreement", and Apple
12 has provided detailed documentation to developers and companies to instruct,
13 promote, and further encourage the widespread use of Passbook. As one
14 American Airlines official stated regarding American Airlines' implementation
15 of Passbook, "Apple did a really good job of defining the spec and putting out all
16 the required technical documents. It was one of the more straightforward
17 implementations for our tech team."

18 18. The Passbook "pass styles" that Apple has defined as "boarding pass"
19 and "event ticketing" permit the management, maintenance, downloading, and/or
20 storage of, *inter alia*, airline boarding passes, hotel reservations, movie tickets,
21 restaurant gift cards, and event tickets to an iPhone or iPod Touch, from which
22 the ticket or boarding pass can be displayed and scanned at, for example, the
23 appropriate movie theatre, event venue, hotel, or airport. Passbook now features,
24 for example, AMC and Fandango movie tickets, Major League Baseball game
25 tickets, Ticketmaster, LiveNation, StubHub, Eventbrite, Ticketfly, Ticketbiscuit,
26 Interactive Ticketing, and Goldstar event tickets, gift cards for restaurants and
27 other establishments, Starbucks Coffee prepaid cards and loyalty cards, Starwood
28 hotel reservations and loyalty cards (including a unique Passbook card for each of

1 Starwood's more than 1,000 properties), Hyatt Hotels reservations, membership
2 and loyalty programs including Passport, tours and other hospitality events
3 booked through Checkfront, Discover e-certificates/loyalty bonuses, and Amtrak,
4 American Airlines, Delta Airlines. Air Canada, Lufthansa, and United Airlines
5 tickets and boarding passes.

6 19. Passbook may be used by downloading a Passbook-compatible app (e.g.,
7 for Fandango, Ticketmaster, StubHub, Eventbrite, Hyatt Hotels, Delta Airlines,
8 or United Airlines) from Apple's "App Store" for the merchant corresponding to
9 the "tickets" that are to be stored in Passbook. On information and belief, Apple
10 reviews and tests each app (including Passbook-compatible apps), including
11 testing the app on iPhones and/or iPod Touch devices, prior to approving the app
12 to appear in the Apple App Store for downloading by consumers, and Apple
13 provides detailed instructions to app developers to test their own apps on iPhones
14 and/or iPod Touch devices prior to submitting the app to Apple for approval.

15 20. Another way of using Passbook is by receiving a confirmation e-mail,
16 text, or instant message after a consumer purchase is made (e.g., for event
17 tickets), and then clicking a "Download to Passbook" link in said message, after
18 which the consumer's "tickets" are automatically stored in Passbook.
19 Additionally, web sites and web pages can include Passbook passes as
20 attachments or links, automatically storing them in Passbook after the link is
21 clicked or tapped. Boarding passes, event tickets, and other Passbook passes can
22 be added directly to Passbook via an "Add to Passbook" badge created and
23 distributed by Apple for placement within iOS apps, emails, and web pages.

24 21. Additional Passbook features include the capability to remind a
25 consumer, for example, (depending on which type of "pass" is stored on the
26 iPhone or iPod Touch) which airport terminal their plane will depart from, where
27 in an auditorium their concert seats are, or how much money is remaining on a
28 prepaid Starbucks card, utilizing Passbook's time-based and location-based

1 synchronization. (Passbook uses “Data Detectors” to automatically add links to
2 the text in the menu display fields on the back of a pass. Website URLs, street
3 addresses and phone numbers are automatically detected by Passbook and turned
4 into tappable web hyperlinks.) Passbook also uses Apple’s iCloud cloud storage
5 to keep a Passbook user’s passes and related data synchronized on multiple
6 connected devices. Passbook passes can be updated and synchronized via Apple
7 Push Notifications utilizing Apple’s servers. Mobile payment services, including
8 Square, can be integrated with Passbook so that payment cards or gift cards are
9 automatically imported into Passbook and synchronized across all of a user’s
10 devices via iCloud, enabling payment/redemption at the point of purchase via
11 Passbook.

12 **COUNT I**

13 **Patent Infringement (U.S. Pat. No. 6,384,850)**

14 **(35 U.S.C. § 271)**

15 22. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
16 1-21 above as if fully set forth herein.

17 23. On May 7, 2002, United States Patent No. 6,384,850 entitled
18 “Information Management and Synchronous Communications System with Menu
19 Generation” (“the ‘850 patent”) (a true and copy of which is attached hereto as
20 **Exhibit A**) was duly and legally issued by the United States Patent & Trademark
21 Office.

22 24. Plaintiff Ameranth is the lawful owner by assignment of all right, title
23 and interest in and to the ‘850 patent.

24 25. On information and belief, Apple directly infringes and continues to
25 directly infringe one or more valid and enforceable claims of the ‘850 patent, in
26 violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license
27 and/or selling or licensing infringing systems, products, and/or services in the
28 United States without authority or license from Ameranth, including but not

1 limited to the Apple products/services that include, *inter alia*, the Passbook
2 System (hereinafter “PBS”) which includes the “pass styles” that Apple has
3 defined as “boarding pass” and “event ticketing” applications within Passbook,
4 which permits the management, maintenance, downloading, and/or storage of,
5 *inter alia*, airline boarding passes, hotel reservations, movie tickets, and event
6 tickets, and is integrated with iPhone 5 and other iPhone and iPod Touch devices
7 that are running Apple’s iOS 6 software, and linked to/with Apple’s iCloud, the
8 “Apple Notification Service”, and Apple’s Safari web browser.

9 26. On information and belief, defendant Apple has indirectly infringed and
10 continues to indirectly infringe one or more valid and enforceable claims of the
11 ‘850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
12 intentionally inducing direct infringement by other persons, by making, using,
13 offering for sale or license and/or selling or licensing infringing systems,
14 products, and/or services in the United States without authority or license from
15 Ameranth, including but not limited to PBS.

16 27. Apple infringes by its own actions and through, or in concert with,
17 agents of Apple who are under the direction and control of Apple by virtue of
18 contractual agreements between Apple and such parties, including, for example,
19 IOS Developer Program Licensing Agreements and Passbook Marketing
20 Agreements.

21 28. On information and belief, systems including the PBS, as
22 deployed and/or used by Apple, its agents, distributors, partners, affiliates,
23 licensees, third-party businesses, and/or their customers, infringe one or more
24 valid and enforceable claims of the ‘850 patent, by, *inter alia*, doing, or providing
25 the capability for doing, at least one of the following: (a) Generating and
26 transmitting menus in a system including a central processing unit, a data storage
27 device, a computer operating system containing a graphical user interface, one or
28 more displayable main menus, modifier menus, and sub-modifier menus, and

1 application software for generating a second menu and transmitting it to a
2 wireless handheld computing device or a Web page; and/or (b) Enabling
3 ticketing, reservations, and other hospitality functions via iPhone and iPod Touch
4 devices, storing hospitality information and data on at least one central database,
5 on at least one wireless handheld computing device, and on at least one Web
6 server and Web page, and synchronizing applications and data, including but not
7 limited to applications and data relating to ordering, between at least one central
8 database, wireless handheld computing devices, and at least one Web server and
9 Web page; utilizing an interface that provides a single point of entry that allows
10 the synchronization of at least one wireless handheld computing device and at
11 least one Web page with at least one central database; allowing information to be
12 entered via Web pages, transmitted over the internet, and automatically
13 communicated to at least one central database and to wireless handheld
14 computing devices; allowing information to be entered via wireless handheld
15 computing devices, transmitted over the internet, and automatically
16 communicated to at least one central database and to Web pages.

17 29. Ameranth has previously served Apple with infringement contentions in
18 this action further describing the details of Apple's direct and indirect
19 infringement of Ameranth's patents. Those infringement contentions are
20 attached hereto as **Exhibit E** and incorporated herein by reference.

21 30. On information and belief, customers of Apple use the PBS in a manner
22 that infringes upon one or more valid and enforceable claims of the '850 patent.
23 Apple provides instruction and direction regarding the use of the PBS and
24 advertises, promotes, and encourages the use of the PBS in a manner known and
25 intended to infringe Ameranth's patents.

26 31. On information and belief, Apple actively induces others to infringe the
27 '850 patent in violation of 35 U.S.C. §271(b) by actively, knowingly and
28 intentionally encouraging, aiding and abetting customers of Apple, including

1 consumers and those businesses identified elsewhere in this complaint, to use the
2 infringing PBS in the United States without authority or license from Ameranth,
3 with the knowledge that said customers of Apple were directly infringing the
4 ‘850 patent. For example, Apple describes its PBS as an 'Ecosystem': “There are
5 three major parts to the Passbook life cycle; creation, management and
6 redemption. Passbook handles the middle, it lets users view and manage their
7 passes and provides lock screen integration. You are responsible for the two ends;
8 creating passes and redeeming passes.”

9 32. Apple has been aware of the ‘850 patent since at least March 31, 2010,
10 when the ‘850 patent was cited as a prior art reference in two Apple iPhone
11 patent applications which issued to Apple under named inventors Bas Ording and
12 Steven P. Jobs. Despite having knowledge of the ‘850 patent for two and one
13 half years before Ameranth brought suit on the ‘850 patent, Apple continued its
14 infringing conduct. Also, three of the patents in this Ameranth patent family have
15 been asserted in several patent enforcement actions against Apple business
16 partners, as noted above, including OpenTable (lawsuit filed in August 2011).
17 Due to the degree of integration between Apple and OpenTable including, inter
18 alia, “direct SIRI integration” into OpenTable and the integration of OpenTable
19 functionality into Apple’s iOS6, it is implausible that Apple was not informed of
20 the Ameranth suit against OpenTable as early as 2011. Further, Apple has had
21 knowledge of this lawsuit, and the claims asserted herein, since the filing of the
22 original complaint in September of 2012, and has continued its infringing
23 activities nonetheless. Apple has thus obtained the level of knowledge required to
24 support a claim for inducement of infringement regarding Apple’s actions
25 involving the Apple PBS in numerous different and independent ways.

26 33. On information and belief, Apple also has actively induced, and
27 continues to actively induce, others to infringe the ‘850 patent, in violation of 35
28 U.S.C. §271(b), by actively, knowingly, and intentionally encouraging, aiding

1 and abetting customers and business partners of Apple, including, *inter alia*,
2 software developers and businesses including those identified elsewhere in this
3 complaint, to use the iOS Simulator in making, using, selling, and/or offering for
4 sale infringing systems/products/services, (including encouraging, aiding and
5 abetting use by such parties of Ameranth's inventive "preview" functionality as
6 recited, *inter alia*, in '850 claim 10) without authority or license from Ameranth.
7 iOS Simulator allows developers to simulate the environment of iPhone and iPad
8 devices running any iOS version from the most current, back to iOS 3.4, and to
9 build, test, and debug apps and web apps on Mac computers. Apple provides
10 extensive technical documentation and support to encourage, facilitate, and assist
11 in the development of iPhone/iPad apps and the offering of said apps in Apple's
12 App Store. As Apple explains in its own documentation, "The iOS Simulator
13 allows you to rapidly prototype and test builds of your app during the
14 development process. Installed as part of the Xcode tools along with the iOS
15 SDK, iOS Simulator runs on your Mac and behaves like a standard Mac app
16 while simulating an iPhone or iPad environment. Think of the simulator as a
17 preliminary testing tool to use before testing your app on an actual device. ... iOS
18 Simulator enables you to simulate several iOS devices and several versions of the
19 iOS operating system. Each simulated software version is considered its own
20 simulation environment, independent of the others, with its own settings and
21 files. These settings and files exist on every device you test within a simulation
22 environment." As one example, as discussed above, Apple's marketing materials
23 encourage use of the iOS Simulator in a way that infringes claims of the '850
24 patent, and tout the advantages of such use to achieve the same
25 results/functionality provided by the '850 claims. In offering and promoting its
26 IOS Simulator, Apple is actively encouraging all iOS developers to use that tool.
27 Customers and business partners of Apple directly infringe claims of the '850
28 patent by using the iOS Simulator in making, using, selling, and/or offering for

1 sale infringing systems/products/services including, *inter alia*, online/mobile
2 ticketing systems of AMC, Fandango, Major League Baseball, Ticketmaster,
3 LiveNation, StubHub, Eventbrite, Ticketfly, Ticketbiscuit, Interactive Ticketing
4 and Goldstar, systems for providing online/mobile gift cards for restaurants and
5 other establishments, Starbucks Coffee online/mobile system for providing
6 prepaid cards and loyalty cards, Starwood hotel's system for providing
7 reservations and loyalty cards (including a unique Passbook card for each of
8 Starwood's more than 1,000 properties), online/mobile systems for managing and
9 booking tours and other hospitality events booked through Checkfront,
10 Discover's online/mobile system for providing e-certificates/loyalty bonuses, and
11 Amtrak, American Airlines, Delta Airlines, Air Canada, Lufthansa, and United
12 Airlines online/mobile systems for passenger ticketing and boarding passes, and
13 other customers and business partners of Apple who use the iOS simulator in
14 providing, *e.g.*, point of sale, online and mobile ordering, loyalty, restaurant
15 reservations, hotel reservations and other hospitality functions and/or services
16 including, *inter alia*, Domino's Pizza, Seamless, Micros Systems, OpenTable,
17 Hyatt Hotels and OLO Online Ordering.

18 34. As detailed above, Apple has had knowledge of the '850 patent since at
19 least March 31, 2010, well before the filing of the complaint in this action. Also,
20 three of the patents in this Ameranth patent family have been asserted in several
21 patent enforcement actions against Apple business partners, as noted above,
22 including OpenTable (lawsuit filed in August 2011). Due to the degree of
23 integration between Apple and OpenTable including, *inter alia*, "direct SIRI
24 integration" into OpenTable and the integration of OpenTable functionality into
25 Apple's iOS6, it is implausible that Apple was not informed of the Ameranth suit
26 against OpenTable as early as 2011. Further, Apple has had knowledge of this
27 lawsuit, and the claims asserted herein, since the filing of the original complaint
28 in September of 2012, and has continued its infringing activities nonetheless.

1 Apple has thus obtained the level of knowledge required to support a claim for
2 inducement of infringement regarding Apple's actions involving the Apple iOS
3 Simulator in numerous different and independent ways.

4 35. On information and belief, Apple contributorily infringes and continues
5 to contributorily infringe one or more valid and enforceable claims of the '850
6 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to sell
7 and/or selling components of systems on which claims of the '850 patent read,
8 constituting a material part of the invention, knowing that the components were
9 especially adapted for use in systems which infringe claims of the '850 patent.

10 36. By making, distributing, selling, offering, offering to sell or license
11 and/or selling or licensing the PBS, Apple provides non-staple articles of
12 commerce to others, including those businesses identified elsewhere in this
13 complaint, for use in infringing systems, products, and/or services. Additionally,
14 Apple provides instruction and direction regarding the use of the PBS and
15 advertises, promotes, and encourages the use of the PBS in a manner known and
16 intended to infringe Ameranth's patents. Users of the PBS directly infringe one
17 or more valid and enforceable claims of the '850 patent, for the reasons set forth
18 hereinabove.

19 37. Apple has long had knowledge of the '850 patent, as set forth above, at
20 least as early as March 31, 2010. Apple also has long known that the PBS
21 "boarding pass" and "event ticketing" pass styles are non-staple articles of
22 commerce that have no substantial non-infringing uses, in that this is specialized
23 software designed and intended for use, and actually used as a material part of the
24 claimed invention and used in ticketing and reservations systems that infringe the
25 '850 patent as set forth herein, including the ticketing and/or reservations systems
26 of Fandango, StubHub, Ticketmaster, LiveNation, and Starwood. Apple has thus
27 obtained the level of knowledge required to support a claim for contributory
28 infringement in numerous different and independent ways.

1 38. On information and belief, the aforesaid infringing activities of
2 defendant Apple have been done with knowledge and willful disregard of
3 Ameranth’s patent rights, making this an exceptional case within the meaning of
4 35 U.S.C. § 285. As detailed above, Apple has had knowledge of the ‘850 patent
5 since at least March 31, 2010, well before the filing of the complaint in this
6 action. Also, three of the patents in this Ameranth patent family have been
7 asserted in several patent enforcement actions against Apple business partners, as
8 noted above, including OpenTable (lawsuit filed in August 2011). Due to the
9 degree of integration between Apple and OpenTable including, *inter alia*, “direct
10 SIRI integration” into OpenTable and the integration of OpenTable functionality
11 into Apple’s iOS6, it is implausible that Apple was not informed of the Ameranth
12 suit against OpenTable as early as 2011. Further, Apple has had knowledge of
13 this lawsuit, and the claims asserted herein, since the filing of the original
14 complaint in September of 2012, and has continued its infringing activities
15 nonetheless. Apple has thus obtained the level of knowledge required to support
16 a claim for willful infringement in numerous different and independent ways.
17 Apple’s decision to continue its infringing activities after obtaining said
18 knowledge constitutes objectively reckless behavior justifying a finding of
19 willfulness.

20 39. The aforesaid infringing activity of defendant Apple has directly and
21 proximately caused damage to plaintiff Ameranth, including loss of profits from
22 sales or licensing revenues it would have made but for the infringements. Unless
23 enjoined, the aforesaid infringing activity will continue and cause irreparable
24 injury to Ameranth for which there is no adequate remedy at law.

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1 COUNT II

2 **Patent Infringement (U.S. Pat. No. 6,871,325)**

3 **(35 U.S.C. § 271)**

4 40. Plaintiff reiterates and reincorporates the allegations set forth in
5 paragraphs 1-39 above as if fully set forth herein.

6 41. On March 22, 2005, United States Patent No. 6,871,325 entitled
7 “Information Management and Synchronous Communications System with Menu
8 Generation” (“the ‘325 patent”) (a true and correct copy of which is attached
9 hereto as **Exhibit B**) was duly and legally issued by the United States Patent &
10 Trademark Office.

11 42. Plaintiff Ameranth is the lawful owner by assignment of all right, title
12 and interest in and to the ‘325 patent.

13 43. On information and belief, Apple directly infringes and continues to
14 directly infringe one or more valid and enforceable claims of the ‘325 patent, in
15 violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license
16 and/or selling or licensing infringing systems, products, and/or services in the
17 United States without authority or license from Ameranth, including but not
18 limited to the PBS, as detailed above with respect to the ‘850 patent.

19 44. Ameranth has previously served Apple with infringement contentions in
20 this action further describing the details of Apple’s direct and indirect
21 infringement of Ameranth’s patents. Those infringement contentions are
22 attached hereto as **Exhibit E** and incorporated herein by reference.

23 45. On information and belief, defendant Apple has indirectly infringed and
24 continues to indirectly infringe one or more valid and enforceable claims of the
25 ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
26 intentionally inducing direct infringement by other persons, by making, using,
27 offering for sale or license and/or selling or licensing infringing systems,
28

1 products, and/or services in the United States without authority or license from
2 Ameranth, including but not limited to the PBS.

3 46. Apple infringes by its own actions and through, or in concert with,
4 agents of Apple who are under the direction and control of Apple by virtue of
5 contractual agreements between Apple and such parties, including, for example,
6 IOS Developer Program Licensing Agreements and Passbook Marketing
7 Agreements.

8 47. On information and belief, systems including the PBS, as
9 deployed and/or used by Apple, its agents, distributors, partners, affiliates,
10 licensees, third-party businesses, and/or their customers, infringe one or more
11 valid and enforceable claims of the '325 patent, by, *inter alia*, doing, or providing
12 the capability for doing, at least one of the following: (a) Generating and
13 transmitting menus in a system including a central processing unit, a data storage
14 device, a computer operating system containing a graphical user interface, one or
15 more displayable main menus, modifier menus, and sub-modifier menus, and
16 application software for generating a second menu and transmitting it to a
17 wireless handheld computing device or a Web page; and/or (b) Enabling
18 ticketing, reservations, and other hospitality functions via iPhone and iPod Touch
19 devices as well as via Web pages, storing hospitality information and data on at
20 least one central database, on at least one wireless handheld computing device,
21 and on at least one Web server and Web page, and synchronizing applications
22 and data, including but not limited to applications and data relating to orders,
23 between at least one central database, wireless handheld computing devices, and
24 at least one Web server and Web page.

25 48. On information and belief, customers of Apple use the PBS in a manner
26 that infringes upon one or more valid and enforceable claims of the '325 patent.
27 Apple provides instruction and direction regarding the use of the PBS and
28

1 advertises, promotes, and encourages the use of the PBS in a manner known and
2 intended to infringe Ameranth's patents.

3 49. On information and belief, Apple actively induces others to infringe the
4 '325 patent in violation of 35 U.S.C. §271(b) by actively, knowingly and
5 intentionally encouraging, aiding and abetting customers of Apple, including
6 consumers and those businesses identified elsewhere in this complaint, to use the
7 infringing PBS in the United States without authority or license from Ameranth,
8 with the knowledge that said customers of Apple were directly infringing the
9 '325 patent. For example, Apple describes its PBS as an 'Ecosystem': "There are
10 three major parts to the Passbook life cycle; creation, management and
11 redemption. Passbook handles the middle, it lets users view and manage their
12 passes and provides lock screen integration. You are responsible for the two ends;
13 creating passes and redeeming passes."

14 50. Apple has been aware of the patent family which includes the '325
15 patent since well before the complaint in this action was filed. Apple has been
16 aware of the '850 patent (the first patent to issue in this family) since at least
17 March 31, 2010, when the '850 patent was cited as a prior art reference in two
18 Apple iPhone patent applications which issued to Apple under named inventors
19 Bas Ording and Steven P. Jobs. Despite having knowledge of the '850 patent for
20 two and one half years before Ameranth brought suit on the '850 patent, Apple
21 continued its infringing conduct. Also, three of the patents in this Ameranth
22 patent family have been asserted in several patent enforcement actions against
23 Apple business partners, as noted above, including OpenTable (lawsuit filed in
24 August 2011). Due to the degree of integration between Apple and OpenTable
25 including, *inter alia*, "direct SIRI integration" into OpenTable and the integration
26 of OpenTable functionality into Apple's iOS6, it is implausible that Apple was
27 not informed of the Ameranth suit against OpenTable as early as 2011. Further,
28 Apple has had knowledge of this lawsuit₂₀ and the claims asserted herein, since the

1 filing of the original complaint in September of 2012, and has continued its
2 infringing activities nonetheless. Apple has thus obtained the level of knowledge
3 required to support a claim for inducement of infringement regarding Apple's
4 actions involving the Apple PBS in numerous different and independent ways.

5 51. On information and belief, Apple contributorily infringes and continues
6 to contributorily infringe one or more valid and enforceable claims of the '325
7 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to sell
8 and/or selling components of systems on which claims of the '325 patent read,
9 constituting a material part of the invention, knowing that the components were
10 especially adapted for use in systems which infringe claims of the '325 patent.

11 52. By making, using, distributing, selling, offering, offering to sell or
12 license and/or selling or licensing the PBS, Apple provides non-staple articles of
13 commerce to others, including those businesses identified elsewhere in this
14 complaint, for use in infringing systems, products, and/or services. Additionally,
15 Apple provides instruction and direction regarding the use of the PBS and
16 advertises, promotes, and encourages the use of the PBS. Users of the PBS
17 directly infringe one or more valid and enforceable claims of the '325 patent, for
18 the reasons set forth hereinabove.

19 53. Apple has had knowledge of the '325 patent, at least as early as the filing
20 of the original complaint in this action. Apple further has had knowledge, at least
21 as early as that date, that the PBS "boarding pass" and "event ticketing" pass
22 styles are non-staple articles of commerce that have no substantial non-infringing
23 uses, in that this is specialized software designed and intended for use, and
24 actually used as a material part of the claimed invention and used in ticketing and
25 reservations systems that infringe the '325 patent as set forth herein, including the
26 ticketing and/or reservations systems of Fandango, StubHub, Ticketmaster,
27 LiveNation, and Starwood. In addition, Apple has had knowledge of the patent
28 family which includes the '325 patent₂₁ since March 2010 as discussed above.

1 Apple has thus obtained the level of knowledge required to support a claim for
2 contributory infringement in numerous different and independent ways.

3 54. On information and belief, the aforesaid infringing activities of
4 defendant Apple have been done with knowledge and willful disregard of
5 Ameranth's patent rights, making this an exceptional case within the meaning of
6 35 U.S.C. § 285. As detailed above, Apple has had knowledge of the patent
7 family which includes the '325 patent since at least March 31, 2010, well before
8 the filing of the complaint in this action. Also, three of the patents in this
9 Ameranth patent family have been asserted in several patent enforcement actions
10 against Apple business partners, as noted above, including OpenTable (lawsuit
11 filed in August 2011). Due to the degree of integration between Apple and
12 OpenTable including, *inter alia*, "direct SIRI integration" into OpenTable and the
13 integration of OpenTable functionality into Apple's iOS6, it is implausible that
14 Apple was not informed of the Ameranth suit against OpenTable as early as
15 2011. Further, Apple has had knowledge of this lawsuit, and the claims asserted
16 herein, since the filing of the original complaint in September of 2012, and has
17 continued its infringing activities nonetheless. Apple has thus obtained the level
18 of knowledge required to support a claim for willful infringement in numerous
19 different and independent ways. Apple's decision to continue its infringing
20 activities after obtaining said knowledge constitutes objectively reckless behavior
21 justifying a finding of willfulness.

22 55. The aforesaid infringing activity of defendant Apple has directly and
23 proximately caused damage to plaintiff Ameranth, including loss of profits from
24 sales or licensing revenues it would have made but for the infringements. Unless
25 enjoined, the aforesaid infringing activity will continue and cause irreparable
26 injury to Ameranth for which there is no adequate remedy at law.

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28 //

1 **COUNT III**

2 **Patent Infringement (U.S. Pat. No. 6,982,733)**

3 **(35 U.S.C. § 271)**

4 56. Plaintiff reiterates and reincorporates the allegations set forth in
5 paragraphs 1-55 above as if fully set forth herein.

6 57. On January 3, 2006, United States Patent No. 6,982,733 entitled
7 “Information Management and Synchronous Communications System with Menu
8 Generation, and Handwriting and Voice Modification of Orders” (“the ‘733
9 patent”) (a true and correct copy of which is attached hereto as **Exhibit C**) was
10 duly and legally issued by the United States Patent & Trademark Office.

11 58. Plaintiff Ameranth is the lawful owner by assignment of all right, title
12 and interest in and to the ‘733 patent.

13 59. Siri is a speech-recognition and voice control/command application
14 available on certain models of the iPhone and iPod Touch. With iOS 6, Siri is
15 integrated with third-party systems/products/services including, *inter alia*,
16 OpenTable. Siri sends commands through a remote server using a wireless data
17 connection.

18 60. On information and belief, Apple directly infringes and continues to
19 directly infringe one or more valid and enforceable claims of the ‘733 patent, in
20 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
21 and/or selling or licensing infringing systems, products, and/or services in the
22 United States without authority or license from Ameranth, including but not
23 limited to the PBS and Siri.

24 61. Ameranth has previously served Apple with infringement contentions in
25 this action further describing the details of Apple’s direct and indirect
26 infringement of Ameranth’s patents. Those infringement contentions are
27 attached hereto as **Exhibit E** and incorporated herein by reference.

1 62. On information and belief, defendant Apple has indirectly infringed and
2 continues to indirectly infringe one or more valid and enforceable claims of the
3 ‘733 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
4 intentionally inducing direct infringement by other persons, by making, using,
5 offering for sale or license and/or selling or licensing infringing systems,
6 products, and/or services in the United States without authority or license from
7 Ameranth, including but not limited to the PBS and Siri.

8 63. Apple infringes by its own actions and through, or in concert with,
9 agents of Apple who are under the direction and control of Apple by virtue of
10 contractual agreements between Apple and such parties, including, for example,
11 IOS Developer Program Licensing Agreements and Passbook Marketing
12 Agreements.

13 64. On information and belief, systems including one or more of the PBS,
14 and/or Siri, as deployed and/or used by Apple, its agents, distributors, partners,
15 affiliates, licensees, third-party businesses, and/or their customers, infringe one or
16 more valid and enforceable claims of the ‘733 patent, by doing, or providing the
17 capability for doing, at least one of the following: (a) Generating menus in a
18 system including a central processing unit, a data storage device connected to said
19 central processing unit, an operating system including a graphical user interface, a
20 first menu stored on said data storage device, application software for generating a
21 second menu from said first menu that facilitates the generation of the second
22 menu by allowing selection of items from the first menu, addition of items to the
23 second menu and assignment of parameters to items in the second menu using the
24 graphical user interface of said operating system and data comprising the second
25 menu is synchronized between the data storage device connected to the central
26 processing unit and at least one other computing device, and said second menu is
27 manually modified by voice recording or capture or recognition after generation;
28 and/or (b) Generating menus in a system including a microprocessor, a display

1 device, a data and instruction input device, a data storage device for storing
2 information and instructions entered through said data and instruction input means
3 or information generated by said microprocessor, an operating system, a master
4 menu stored on said data storage device for generating a modified menu, and
5 application software, wherein said microprocessor, operating system and
6 application software are operative to display the master menu on the display
7 device in response to instructions programmed into said microprocessor, operating
8 system, application software and information and instructions entered through said
9 data input device, and said microprocessor, operating system and application
10 software are operative to create the modified menu from said master menu in
11 response to information and instructions entered through said data and instruction
12 input device and data comprising the modified menu is synchronized between the
13 data storage device and at least one other computing device, wherein said
14 modified menu is manually modified after generation.

15 65. On information and belief, customers of Apple use the PBS and Siri in a
16 manner that infringes upon one or more valid and enforceable claims of the '733
17 patent. Apple provides instruction and direction regarding the use of the PBS and
18 Siri and advertises, promotes, and encourages the use of the PBS and Siri in a
19 manner known and intended to infringe Ameranth's patents.

20 66. On information and belief, Apple actively induces others to infringe the
21 '733 patent in violation of 35 U.S.C. §271(b) by actively, knowingly and
22 intentionally encouraging, aiding and abetting customers of Apple, including
23 consumers and those businesses identified elsewhere in this complaint, to use the
24 infringing PBS and Siri in the United States without authority or license from
25 Ameranth, with the knowledge that said customers of Apple were directly
26 infringing the '733 patent. For example, Apple describes its PBS as an
27 'Ecosystem': "There are three major parts to the Passbook life cycle; creation,
28 management and redemption. Passbook handles the middle, it lets users view and

1 manage their passes and provides lock screen integration. You are responsible for
2 the two ends; creating passes and redeeming passes.”

3 67. Apple has been aware of the patent family which includes the ‘733
4 patent since well before the complaint in this action was filed. Apple has been
5 aware of the ‘850 patent (the first patent to issue in this family) since at least
6 March 31, 2010, when the ‘850 patent was cited as a prior art reference in two
7 Apple iPhone patent applications which issued to Apple under named inventors
8 Bas Ording and Steven P. Jobs. Despite having knowledge of the ‘850 patent for
9 two and one half years before Ameranth brought suit on the ‘850 patent, Apple
10 continued its infringing conduct. Also, three of the patents in this Ameranth
11 patent family have been asserted in several patent enforcement actions against
12 Apple business partners, as noted above, including OpenTable (lawsuit filed in
13 August 2011). Due to the degree of integration between Apple and OpenTable
14 including, *inter alia*, “direct SIRI integration” into OpenTable and the integration
15 of OpenTable functionality into Apple’s iOS6, it is implausible that Apple was
16 not informed of the Ameranth suit against OpenTable as early as 2011. Further,
17 Apple has had knowledge of this lawsuit, and the claims asserted herein, since the
18 filing of the original complaint in September of 2012, and has continued its
19 infringing activities nonetheless. Apple has thus obtained the level of knowledge
20 required to support a claim for inducement of infringement regarding Apple’s
21 actions involving the Apple PBS and/or Siri in numerous different and
22 independent ways.

23 68. On information and belief, Apple contributorily infringes and continues
24 to contributorily infringe one or more valid and enforceable claims of the ‘733
25 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to sell
26 and/or selling components of systems on which claims of the ‘733 patent read,
27 constituting a material part of the invention, knowing that the components were
28 especially adapted for use in systems which infringe claims of the ‘733 patent.

1 69. By making, distributing, selling, offering, offering to sell or license
2 and/or selling or licensing the PBS, Apple provides non-staple articles of
3 commerce to others, including those businesses identified elsewhere in this
4 complaint, for use in infringing systems, products, and/or services. Additionally,
5 Apple provides instruction and direction regarding the use of the PBS and
6 advertises, promotes, and encourages the use of the PBS in a manner known and
7 intended to infringe Ameranth's patents. Users of the PBS directly infringe one
8 or more valid and enforceable claims of the '733 patent, for the reasons set forth
9 hereinabove.

10 70. Apple has had knowledge of the '733 patent, as set forth above, at least
11 as early as the filing of this complaint. Apple further has had knowledge, at least
12 as early as that date, that the PBS "boarding pass" and "event ticketing" pass
13 styles are non-staple articles of commerce that have no substantial non-infringing
14 uses, in that this is specialized software designed and intended for use, and
15 actually used as a material part of the claimed invention and used in ticketing and
16 reservations systems that infringe the '733 patent as set forth herein, including the
17 ticketing and/or reservations systems of Fandango, StubHub, Ticketmaster,
18 LiveNation, and Starwood. In addition, Apple has had knowledge of the patent
19 family which includes the '733 patent since March 2010 as discussed above.
20 Apple has thus obtained the level of knowledge required to support a claim for
21 contributory infringement in numerous different and independent ways.

22 71. On information and belief, the aforesaid infringing activities of
23 defendant Apple have been done with knowledge and willful disregard of
24 Ameranth's patent rights, making this an exceptional case within the meaning of
25 35 U.S.C. § 285. As detailed above, Apple has had knowledge of the patent
26 family which includes the '733 patent since at least March 31, 2010, well before
27 the filing of the complaint in this action. Also, three of the patents in this
28 Ameranth patent family have been asserted in several patent enforcement actions

1 against Apple business partners, as noted above, including OpenTable (lawsuit
2 filed in August 2011). Due to the degree of integration between Apple and
3 OpenTable including, *inter alia*, “direct SIRI integration” into OpenTable and the
4 integration of OpenTable functionality into Apple’s iOS6, it is implausible that
5 Apple was not informed of the Ameranth suit against OpenTable as early as
6 2011. Further, Apple has had knowledge of this lawsuit, and the claims asserted
7 herein, since the filing of the original complaint in September of 2012, and has
8 continued its infringing activities nonetheless. Apple has thus obtained the level
9 of knowledge required to support a claim for willful infringement in numerous
10 different and independent ways. Apple’s decision to continue its infringing
11 activities after obtaining said knowledge constitutes objectively reckless behavior
12 justifying a finding of willfulness.

13 72. The aforesaid infringing activity of defendant Apple has directly and
14 proximately caused damage to plaintiff Ameranth, including loss of profits from
15 sales or licensing revenues it would have made but for the infringements. Unless
16 enjoined, the aforesaid infringing activity will continue and cause irreparable
17 injury to Ameranth for which there is no adequate remedy at law.

18 COUNT IV

19 **Patent Infringement (U.S. Pat. No. 8,146,077)**

20 **(35 U.S.C. § 271)**

21 73. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
22 1-72 above as if fully set forth herein.

23 74. On March 27, 2012, United States Patent No. 8,146,077 entitled
24 “Information Management and Synchronous Communications System with Menu
25 Generation, and Handwriting and Voice Modification of Orders” (a true copy of
26 which is attached hereto as **Exhibit D** and incorporated herein by reference) was
27 duly and legally issued by the United States Patent & Trademark Office.

1 75. Plaintiff Ameranth is the lawful owner by assignment of all right, title
2 and interest in and to the '077 patent.

3 76. On information and belief, Apple directly infringes and continues to
4 directly infringe one or more valid and enforceable claims of the '077 patent, in
5 violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license
6 and/or selling or licensing infringing systems, products, and/or services in the
7 United States without authority or license from Ameranth, including but not
8 limited to the PBS.

9 77. Ameranth has previously served Apple with infringement contentions in
10 this action further describing the details of Apple's direct and indirect
11 infringement of Ameranth's patents. Those infringement contentions are
12 attached hereto as **Exhibit E** and incorporated herein by reference.

13 78. On information and belief, defendant Apple has indirectly infringed and
14 continues to indirectly infringe one or more valid and enforceable claims of the
15 '077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
16 intentionally inducing direct infringement by other persons, by making, using,
17 offering for sale or license and/or selling or licensing infringing systems,
18 products, and/or services in the United States without authority or license from
19 Ameranth, including but not limited to the PBS.

20 79. Apple infringes by its own actions and through, or in concert with,
21 agents of Apple who are under the direction and control of Apple by virtue of
22 contractual agreements between Apple and such parties, including, for example,
23 IOS Developer Program Licensing Agreements and Passbook Marketing
24 Agreements.

25 80. On information and belief, systems including the PBS, as
26 deployed and/or used by Apple, its agents, distributors, partners, affiliates,
27 licensees, third-party businesses, and/or their customers, infringe one or more
28 valid and enforceable claims of the '077 patent, by, *inter alia*, doing, or providing

1 the capability for doing, at least one of the following: (a) Configuring and
2 transmitting menus in a system including a central processing unit, a data storage
3 device, a computer operating system containing a graphical user interface, one or
4 more displayable master menus, menu configuration software enabled to generate
5 a menu configuration for a wireless handheld computing device in conformity
6 with a customized display layout, and enabled for synchronous communications
7 and to format the menu configuration for a customized display layout of at least
8 two different wireless handheld computing device display sizes, and/or (b)
9 Enabling ticketing, reservations, and other hospitality functions via iPhone and
10 iPod Touch devices as well as via Web pages, storing hospitality information and
11 data on at least one database, on at least one wireless handheld computing device,
12 and on at least one Web server and Web page, and synchronizing applications
13 and data, including but not limited to applications and data relating to orders,
14 between at least one database, wireless handheld computing devices, and at least
15 one Web server and Web page; utilizing communications control software
16 enabled to link and synchronize hospitality information between at least one
17 database, wireless handheld computing device, and web page, to display
18 information on web pages and on different wireless handheld computing device
19 display sizes, and to allow information to be entered via Web pages, transmitted
20 over the internet, and automatically communicated to at least one database and to
21 wireless handheld computing devices; allowing information to be entered via
22 wireless handheld computing devices, transmitted over the internet, and
23 automatically communicated to at least one database and to Web pages.

24 81. On information and belief, customers of Apple use the PBS in a manner
25 that infringes upon one or more valid and enforceable claims of the '077 patent.
26 Apple provides instruction and direction regarding the use of the PBS and
27 advertises, promotes, and encourages the use of the PBS in a manner known and
28 intended to infringe Ameranth's patents.₋₃₀₋

1 82. Apple actively induces others to infringe the '077 patent in violation of
2 35 U.S.C. §271(b) by actively, knowingly and intentionally encouraging, aiding
3 and abetting customers of Apple, including consumers and those businesses
4 identified elsewhere in this complaint, to use the infringing PBS in the United
5 States without authority or license from Ameranth, with the knowledge that said
6 customers of Apple were directly infringing the '077 patent. For example, Apple
7 describes its PBS as an 'Ecosystem': "There are three major parts to the Passbook
8 life cycle; creation, management and redemption. Passbook handles the middle, it
9 lets users view and manage their passes and provides lock screen integration. You
10 are responsible for the two ends; creating passes and redeeming passes."

11 83. Apple has been aware of the patent family which includes the '077
12 patent since well before the complaint in this action was filed. Apple has been
13 aware of the '850 patent (the first patent to issue in this family) since at least
14 March 31, 2010, when the '850 patent was cited as a prior art reference in two
15 Apple iPhone patent applications which issued to Apple under named inventors
16 Bas Ording and Steven P. Jobs. Despite having knowledge of the '850 patent for
17 two and one half years before Ameranth brought suit on the '850 patent, Apple
18 continued its infringing conduct. Also, three of the patents in this Ameranth
19 patent family have been asserted in several patent enforcement actions against
20 Apple business partners, as noted above, including OpenTable (lawsuit filed in
21 August 2011). Due to the degree of integration between Apple and OpenTable
22 including, *inter alia*, "direct SIRI integration" into OpenTable and the integration
23 of OpenTable functionality into Apple's iOS6, it is implausible that Apple was
24 not informed of the Ameranth suit against OpenTable as early as 2011. Further,
25 Apple has had knowledge of this lawsuit, and the claims asserted herein, since the
26 filing of the original complaint in September of 2012, and has continued its
27 infringing activities nonetheless. Apple has thus obtained the level of knowledge
28

1 required to support a claim for inducement of infringement regarding Apple's
2 actions involving the Apple PBS in numerous different and independent ways.

3 84. On information and belief, Apple also has actively induced, and
4 continues to actively induce, others to infringe the '077 patent, in violation of 35
5 U.S.C. §271(b), by actively, knowingly, and intentionally encouraging, aiding
6 and abetting customers and business partners of Apple, including, *inter alia*,
7 software developers and businesses including those identified elsewhere in this
8 complaint, to use the iOS Simulator in making, using, selling, and/or offering for
9 sale infringing systems/products/services (including encouraging, aiding and
10 abetting use by such parties of Ameranth's inventive "preview" functionality as
11 recited, *inter alia*, in '077 claim 8) without authority or license from Ameranth.
12 Further, an aspect of the iOS Simulator which is directly relevant to aspects of the
13 claims of the '077 patent is that the Simulator allows developers to simulate the
14 different iPhone screen sizes (for, *e.g.*, different phone models) merely by
15 selecting the screen size from a drop-down menu in the simulator. *See, e.g.*,
16 screenshot example at [http://stackoverflow.com/questions/12462253/how-can-i-](http://stackoverflow.com/questions/12462253/how-can-i-set-the-iphone-5-in-simulator-in-the-new-xcode-4-5-gm)
17 [set-the-iphone-5-in-simulator-in-the-new-xcode-4-5-gm](http://stackoverflow.com/questions/12462253/how-can-i-set-the-iphone-5-in-simulator-in-the-new-xcode-4-5-gm). iOS Simulator allows
18 developers to simulate the environment of iPhone and iPad devices running any
19 iOS version from the most current, back to iOS 3.4, and to build, test, and debug
20 apps and web apps on Mac computers. Apple provides extensive technical
21 documentation and support to encourage, facilitate, and assist in the development
22 of iPhone/iPad apps and the offering of said apps in Apple's App Store. As
23 Apple explains in its own documentation, "The iOS Simulator allows you to
24 rapidly prototype and test builds of your app during the development process.
25 Installed as part of the Xcode tools along with the iOS SDK, iOS Simulator runs
26 on your Mac and behaves like a standard Mac app while simulating an iPhone or
27 iPad environment. Think of the simulator as a preliminary testing tool to use
28 before testing your app on an actual device. ... iOS Simulator enables you to

1 simulate several iOS devices and several versions of the iOS operating system.
2 Each simulated software version is considered its own simulation environment,
3 independent of the others, with its own settings and files. These settings and files
4 exist on every device you test within a simulation environment.”

5 85. As discussed above, Apple’s marketing materials encourage use of the
6 iOS Simulator in a way that infringes claims of the ‘077 patent, and tout the
7 advantages of such use to achieve the same results/functionality provided by the
8 ‘077 claims. In offering and promoting its IOS Simulator, Apple is actively
9 encouraging all iOS developers to use that tool. Customers and business partners
10 of Apple directly infringe claims of the ‘077 patent by using the iOS Simulator in
11 making, using, selling, and/or offering for sale infringing
12 systems/products/services including, *inter alia*, online/mobile ticketing systems
13 of AMC, Fandango, Major League Baseball, Ticketmaster, LiveNation, StubHub,
14 Eventbrite, Ticketfly, Ticketbiscuit, Interactive Ticketing and Goldstar, systems
15 for providing online/mobile gift cards for restaurants and other establishments,
16 Starbucks Coffee online/mobile system for providing prepaid cards and loyalty
17 cards, Starwood hotel’s system for providing reservations and loyalty cards
18 (including a unique Passbook card for each of Starwood’s more than 1,000
19 properties), online/mobile systems for managing and booking tours and other
20 hospitality events booked through Checkfront, Discover’s online/mobile system
21 for providing e-certificates/loyalty bonuses, and Amtrak, American Airlines,
22 Delta Airlines, Air Canada, Lufthansa, and United Airlines online/mobile
23 systems for passenger ticketing and boarding passes, and other customers and
24 business partners of Apple who use the iOS simulator in providing, *e.g.*, point of
25 sale, online and mobile ordering, loyalty, restaurant reservations, hotel
26 reservations and other hospitality functions and/or services including, *inter alia*,
27 Domino’s Pizza, Seamless, Micros Systems, OpenTable, Hyatt Hotels and OLO
28 Online Ordering.

1 86. As detailed above, Apple has had knowledge of the patent family which
2 includes the '077 patent since at least March 31, 2010, well before the filing of
3 the complaint in this action. Also, three of the patents in this Ameranth patent
4 family have been asserted in several patent enforcement actions against Apple
5 business partners, as noted above, including OpenTable (lawsuit filed in August
6 2011). Due to the degree of integration between Apple and OpenTable including,
7 *inter alia*, "direct SIRI integration" into OpenTable and the integration of
8 OpenTable functionality into Apple's iOS6, it is implausible that Apple was not
9 informed of the Ameranth suit against OpenTable as early as 2011. Further,
10 Apple has had knowledge of this lawsuit, and the claims asserted herein, since the
11 filing of the original complaint in September of 2012, and has continued its
12 infringing activities nonetheless. Apple has thus obtained the level of knowledge
13 required to support a claim for inducement of infringement regarding Apple's
14 actions involving the Apple iOS Simulator in numerous different and
15 independent ways.

16 87. On information and belief, Apple contributorily infringes and continues
17 to contributorily infringe one or more valid and enforceable claims of the '077
18 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to sell
19 and/or selling components of systems on which claims of the '077 patent read,
20 constituting a material part of the invention, knowing that the components were
21 especially adapted for use in systems which infringe claims of the '850 patent.

22 88. By making, distributing, selling, offering, offering to sell or license
23 and/or selling or licensing the PBS, Apple provides non-staple articles of
24 commerce to others, including those businesses identified elsewhere in this
25 complaint, for use in infringing systems, products, and/or services. Additionally,
26 Apple provides instruction and direction regarding the use of the PBS and
27 advertises, promotes, and encourages the use of the PBS in a manner known and
28 intended to infringe Ameranth's patents.³⁴ Users of the PBS directly infringe one

1 or more valid and enforceable claims of the '077 patent, for the reasons set forth
2 hereinabove.

3 89. Apple has long had knowledge of the patent family which includes the
4 '077 patent, as set forth above, at least as early as March 31, 2010. Apple further
5 has had knowledge, at least as early as that date, that the PBS "boarding pass"
6 and "event ticketing" pass styles are non-staple articles of commerce that have no
7 substantial non-infringing uses, in that this is specialized software designed and
8 intended for use, and actually used as a material part of the claimed invention and
9 used in ticketing and reservations systems that infringe the '077 patent as set
10 forth herein, including the ticketing and/or reservations systems of Fandango,
11 StubHub, Ticketmaster, LiveNation, and Starwood. In addition, Apple has had
12 knowledge of the patent family which includes the '077 patent since March 2010
13 as discussed above. Apple has thus obtained the level of knowledge required to
14 support a claim for contributory infringement in numerous different and
15 independent ways.

16 90. On information and belief, the aforesaid infringing activities of
17 defendant Apple have been done with knowledge and willful disregard of
18 Ameranth's patent rights, making this an exceptional case within the meaning of
19 35 U.S.C. § 285. As detailed above, Apple has had knowledge of the patent
20 family which includes the '077 patent since at least March 31, 2010, well before
21 the filing of the complaint in this action. Also, three of the patents in this
22 Ameranth patent family have been asserted in several patent enforcement actions
23 against Apple business partners, as noted above, including OpenTable (lawsuit
24 filed in August 2011). Due to the degree of integration between Apple and
25 OpenTable including, *inter alia*, "direct SIRI integration" into OpenTable and the
26 integration of OpenTable functionality into Apple's iOS6, it is implausible that
27 Apple was not informed of the Ameranth suit against OpenTable as early as
28 2011. Further, Apple has had knowledge of this lawsuit, and the claims asserted

1 herein, since the filing of the original complaint in September of 2012, and has
2 continued its infringing activities nonetheless. Apple has thus obtained the level
3 of knowledge required to support a claim for willful infringement in numerous
4 different and independent ways. Apple's decision to continue its infringing
5 activities after obtaining said knowledge constitutes objectively reckless behavior
6 justifying a finding of willfulness.

7 91. The aforesaid infringing activity of defendant Apple has directly and
8 proximately caused damage to plaintiff Ameranth, including loss of profits from
9 sales or licensing revenues it would have made but for the infringements. Unless
10 enjoined, the aforesaid infringing activity will continue and cause irreparable
11 injury to Ameranth for which there is no adequate remedy at law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
14 defendant Apple, as follows:

15 1. Adjudging that the manufacture, use, offer for sale or license and/or
16 sale or license of the PBS directly and indirectly infringes valid and enforceable
17 claims of the '850 patent, and the '325 patent, and the '733 patent, and the '077
18 patent, as set forth hereinabove;

19 2. Adjudging that the manufacture, use, offer for sale or license and/or
20 sale or license of the iOS Simulator indirectly infringes valid and enforceable
21 claims of the '850 patent, and the '077 patent, as set forth hereinabove;

22 3. Adjudging that Apple has infringed, actively induced others to
23 infringe and/or contributorily infringed valid and enforceable claims of the '850
24 patent, and the '325 patent, and the '733 patent, and the '077 patent, as set forth
25 hereinabove;

26 4. Adjudging that Apple's direct and/or indirect infringement of the
27 valid and enforceable claims of the '850 patent, and the '325 patent, and the '733
28 patent, and the '077 patent, has been knowing and willful;

1 5. Enjoining Apple, and its officers, directors, employees, attorneys,
2 agents, representatives, parents, subsidiaries, affiliates and all other persons
3 acting in concert, participation or privity with Apple, and their successors and
4 assigns, from infringing, contributorily infringing and/or inducing others to
5 infringe the valid and enforceable claims of the '850 patent, and the '325 patent,
6 and the '733 patent, and the '077 patent;

7 6. Awarding Ameranth the damages it has sustained by reason of
8 Apple's infringement, together with interest and costs pursuant to 35 U.S.C. §
9 284;

10 7. Awarding Ameranth increased damages of three times the amount of
11 damages found or assessed against Apple by reason of the knowing, willful and
12 deliberate nature of Apple's acts of infringement pursuant to 35 U.S.C. § 284;

13 8. Adjudging this to be an exceptional case and awarding Ameranth its
14 attorney's fees pursuant to 35 U.S.C. §285;

15 9. Awarding to Ameranth its costs of suit, and interest as provided by
16 law; and

17 10. Awarding to Ameranth such other and further relief that this Court
18 may deem just and proper.

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DEMAND FOR JURY TRIAL

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

Respectfully submitted,

Dated: August 26, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

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