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Attorneys for Plaintiff  
ADOBE SYSTEMS INCORPORATED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ADOBE SYSTEMS INCORPORATED, a  
Delaware Corporation,

Plaintiff,

v.

WOWZA MEDIA SYSTEMS, LLC,  
a Delaware Corporation, and  
COFFEE CUP PARTNERS, INC.  
(F/K/A/ WOWZA MEDIA SYSTEMS, INC.),  
a California Corporation,

Defendants.

CASE NO. CV-11-02243

**THIRD AMENDED COMPLAINT FOR:**

- 1) PATENT INFRINGEMENT;**
- 2) FALSE ADVERTISING (15 U.S.C. § 1125(a));**
- 3) UNFAIR COMPETITION (California common law);**
- 4) FALSE ADVERTISING UNDER CALIFORNIA LAW (Cal. Bus. & Prof. Code § 17500 et seq.); and**
- 5) UNFAIR COMPETITION UNDER CALIFORNIA LAW (Cal. Bus. & Prof. Code § 17200 et seq.).**

**JURY TRIAL DEMANDED**

1 Plaintiff Adobe Systems Incorporated (“Adobe”), for its Third Amended Complaint  
 2 against Wowza Media Systems, LLC and Coffee Cup Partners, Inc. (f/k/a Wowza Media  
 3 Systems, Inc.), hereby alleges as follows:

4 **PARTIES**

5 1. Plaintiff Adobe is a Delaware corporation with its principal place of business at 345  
 6 Park Avenue, San Jose, CA 95110.

7 2. On information and belief, Defendant Coffee Cup Partners, Inc. (“Coffee Cup”)  
 8 (f/k/a Wowza Media Systems, Inc. (“Wowza Inc.”)) is a California corporation with a principal  
 9 place of business at 32560 El Diente Ct., Evergreen, CO 80439, and with offices and/or  
 10 employees in the Silicon Valley, Stockton, San Diego, and San Francisco Bay areas of  
 11 California. Coffee Cup’s California agent for service of process is Timothy E. Herr, 152 N. 3rd  
 12 Street, Suite 500, San Jose, CA 95112.

13 3. On information and belief, Defendant Wowza Media Systems, LLC (“Wowza LLC,”  
 14 and together with Coffee Cup, “Defendants”) is a limited liability company organized under the  
 15 laws of the state of Delaware. On or about March 1, 2012, and in relation to a contemporaneous  
 16 minority investment by Summit Partners L.P. and affiliated entities (the “Summit Transaction”),  
 17 Wowza Inc. underwent a corporate restructuring pursuant to which it was renamed to Coffee  
 18 Cup. Also pursuant to this restructuring, Wowza LLC was created. Following the Summit  
 19 Transaction and contemporaneous restructuring, Wowza LLC purports to have assumed all  
 20 assets and all liabilities of Wowza Inc. Accordingly, for purposes of this Third Amended  
 21 Complaint, the term “Wowza” shall mean (1) prior to the Summit Transaction, Wowza Inc.; and  
 22 (2) subsequent to the Summit Transaction, Coffee Cup and Wowza LLC.

23 4. At all relevant times, up to and including the present date, Wowza has engaged in the  
 24 design, manufacture, sale within the United States, offering for sale in the United States, use  
 25 within the United States, importation into the United States, and/or sale after importation into the  
 26 United States of server software that streams content, including software related thereto. On  
 27 information and belief, Wowza markets and sells this software worldwide.

**JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code; false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); unfair competition under California common law; false advertising under Cal. Bus. & Prof. Code § 17500 et seq.; and unfair competition under Cal. Bus. & Prof. Code § 17200 et seq.

6. **Jurisdiction**: This Court has subject matter jurisdiction over Plaintiff's claims for relief for violation of the patent laws of the United States, 35 U.S.C. § 100 et seq. under 28 U.S.C. §§ 1331 and 1338(a). This Court has subject matter jurisdiction over Plaintiff's claims for relief for violation of the Lanham Act under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a), and jurisdiction over Plaintiff's unfair competition claims pursuant to 28 U.S.C. 1338(b) in that those claims are joined with substantial and related claims under the Lanham Act and the patent laws of the United States, 35 U.S.C. § 100 et seq.

7. Defendant Coffee Cup is subject to this Court's personal jurisdiction because it is organized and exists under the laws of the State of California, it has designated an agent for service of process in this District, it has regularly transacted business in this district, including by developing, marketing, offering for sale, and selling infringing products as described below, and it has committed patent infringement and other unlawful acts as described below in this District.

8. Defendant Wowza LLC is subject to this Court's personal jurisdiction because it regularly transacts business in this district, including by developing, marketing, offering for sale, and selling infringing products as described below, it has committed patent infringement and other unlawful acts as described below in this District, it has purported to assume all assets and liabilities of Defendant Coffee Cup, and it has stipulated to being named as a Defendant in this action.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

10. **Intradistrict Assignment**. This is an Intellectual Property case assigned on a district-wide basis pursuant to Local Rule 3-2(c).

**FACTUAL BACKGROUND**

**A. Adobe's Flash Platform**

11. Adobe is in the business of developing and distributing software for the deployment of content over the Internet using an integrated set of application programming technologies called the Adobe® Flash® Platform. The Flash Platform is one of the most popular multimedia platforms for integrating video, animation, and interactivity into Internet content, and more recently, to build rich Internet applications. Through the Flash Platform and other high-quality products, Adobe has developed and maintained a strong reputation for quality and security, and derives substantial benefit and goodwill from its efforts.

12. Adobe's Flash Media Server and Flash Player products are an integral part of the Flash Platform, providing content owners such as major music, movie, and television producers efficient and secure means for meeting the enormous online demand for streaming their video, audio and data ("content"). Flash Media Server streams content to Flash Player using technologies such as Adobe's Real-Time Messaging Protocol ("RTMP"), which Adobe designed for high-performance transmission of digital content.

13. Because Internet content is in purely digital form, its unprotected transmission presents a heightened risk of illegal modification, copying, and distribution. Without appropriate safeguards, valuable content can be digitally altered, such as to remove advertising, or unlawfully downloaded, copied, and transmitted repeatedly without degradation of the clarity and overall quality. Once copies of content are "in the clear" and in the hands of others, repeated reproduction and distribution are possible, and these unlawful processes can be replicated endlessly in ways content owners never intended or authorized. Thus, ensuring the protection of streaming content is an essential prerequisite before many content owners will make their copyrighted content available online.

14. To address Adobe's customers' need for content protection technologies, Adobe invests heavily in developing secure solutions for content distribution. A major portion of this effort involves developing and maintaining technological measures to secure content streamed via RTMP. One of these measures is Encrypted RTMP ("RTMPe"), Adobe's enhanced version

1 of RTMP that incorporates security measures to prevent unauthorized access to, copying, and  
 2 downloading content streamed over the Internet using the Flash Platform. Adobe customers rely  
 3 on the security provided by RTMPe in making their valuable content available online. Adobe  
 4 introduced RTMPe in December 2007 with the release of Flash Media Server 3.0. To maintain  
 5 the security of RTMPe, for the benefit of its customers, Adobe has not made the RTMPe  
 6 specification publicly available.

7 15. Adobe invests heavily in developing updates and enhancements to RTMPe to  
 8 maintain its effectiveness in preventing illegal modification, copying, and distribution of its  
 9 customers' valuable content. These updates and enhancements are incorporated seamlessly into  
 10 the Adobe Flash Platform products supporting RTMPe, including Flash Media Server and Flash  
 11 Player. Adobe's customers desire and rely on these updates and enhancements to RTMPe to  
 12 protect valuable copyrighted content online. Circumventions or unauthorized versions of  
 13 RTMPe can undermine the security provided by RTMPe and its effectiveness in protecting  
 14 valuable content online, including the valuable content of Adobe's customers.

#### 15 **B. The Patents-in-Suit**

16 16. Implementations of RTMP and RTMPe are covered by Adobe's intellectual property  
 17 rights, including U.S. Patent Number 7,272,658, entitled "Real-time priority-based media  
 18 communication" issued on September 18, 2007 ("the '658 Patent"), U.S. Patent Number  
 19 7,587,509, entitled "Real-time priority-based media communication" issued on September 8,  
 20 2009 ("the '509 Patent"), and U.S. Patent Number 8,065,426, entitled "Real-time priority-based  
 21 media communication," issued on November 22, 2011 ("the '426 Patent"). Implementations of  
 22 RTMPe are additionally covered by U.S. Patent Number 7,961,878, entitled "Imparting  
 23 cryptographic information in network communications" issued on June 14, 2011 ("the '878  
 24 Patent"), and U.S. Patent Number 8,051,287, entitled "Imparting real-time priority-based  
 25 network communications in an encrypted communication session" issued on November 1, 2011  
 26 ("the '287 Patent). Collectively, the '658, '509, '426, '878, and '287 Patents are referred to  
 27 herein as the "Patents-in-Suit."  
 28

1           17. In April 2009, Adobe openly licensed the RTMP Specification to Flash developers  
2 worldwide under the RTMP Specification License (available at  
3 <http://www.adobe.com/devnet/rtmp.html>), to promote the widespread adoption of Flash Platform  
4 technologies by content developers and distributors. A true and correct copy of the RTMP  
5 Specification License is attached as Exhibit A.

6           18. In the RTMP Specification License, Adobe provides a license under its essential  
7 patents, conditioned upon full compliance with both the RTMP Specification and the terms of  
8 the RTMP Specification License. For example, the RTMP Specification requires specific  
9 handshaking sequences (and not others) to initialize an RTMP connection. It also defines  
10 specific message formats for transmitting data between the client and server once the RTMP  
11 connection is initialized. To obtain a license under Adobe's essential patents, a party must first  
12 fully comply with these and all other requirements set forth in the RTMP Specification. If a  
13 party does not comply with such requirements, it is not licensed under Adobe's essential patents,  
14 including any of the Patents-in-Suit.

15           19. Additionally, one of the requirements set forth in the RTMP Specification License is  
16 that a party must not circumvent any of Adobe's secure RTMP measures (e.g., RTMPe). More  
17 specifically, a party must agree "not to make, have made, use, sell, offer to sell, import or  
18 distribute ... any technology that circumvents technological measures for the protection of audio,  
19 video and/or data content, including any of Adobe's secure RTMP measures." Preventing the  
20 circumvention of the secure RTMPe measures helps maintain effective protection for valuable  
21 content, including the valuable content of Adobe's customers. Thus, any party who engages in  
22 such prohibited activities is not licensed under Adobe's essential patents, including any of the  
23 Patents-in-Suit, for any implementations of RTMP.

24           20. Accompanying the specification and license, Adobe explains on its website that the  
25 materials "do not include information or license around any other Flash Media Server  
26 technology," and specifically that "the open RTMP specification does not include Adobe's  
27 unique secure RTMP measures." Indeed, the RTMP Specification does not provide the  
28 requirements for enabling an RTMPe connection. To protect the valuable content of Adobe's

1 customers, RTMPe is not licensed under the RTMP Specification License or otherwise  
 2 designated by Adobe as an open standard. As Adobe further explains on its website, “[n]or does  
 3 the license that accompanies the specification allow developers to circumvent such [secure  
 4 RTMP] measures.”

5 **C. Wowza’s Unlawful Use of Adobe Technology**

6 21. At all relevant times, up through and including the present date, Wowza has  
 7 developed and sold the Wowza Media Server, which competes directly with Adobe’s Flash  
 8 Media Server. The Wowza Media Server streams content using unauthorized versions of RTMP  
 9 and RTMPe.

10 22. On information and belief, Wowza Media Server was developed by former Adobe  
 11 employees David Stubenvoll and Charlie Good. Stubenvoll and Good met while working at  
 12 Adobe on network publishing products, and were let go by Adobe in 2005 as part of a reduction  
 13 in force following Adobe’s acquisition of Macromedia. Wowza introduced the Wowza Media  
 14 Server in February 2007, including its unauthorized version of RTMP. In July 2008, Wowza  
 15 went further by including its unauthorized version of RTMPe with the release of Wowza Media  
 16 Server version 1.5.2. Wowza continues to implement an unauthorized versions of RTMP and  
 17 RTMPe in Wowza Media Server today. Wowza’s unauthorized versions of RTMP and RTMPe  
 18 infringe Adobe’s intellectual property, including the Patents-in-Suit. Wowza’s circumvention  
 19 efforts and its unauthorized version of RTMPe threaten to undermine the security provided by  
 20 RTMPe.

21 23. On information and belief, Wowza’s unauthorized version of RTMPe is based on its  
 22 efforts to circumvent RTMPe incorporated into Adobe’s Flash Platform products, including  
 23 Flash Media Server and Flash Player. Wowza’s unauthorized version of RTMPe is not  
 24 compliant with the RTMP Specification. Moreover, by implementing RTMPe, Wowza has  
 25 failed to comply with the requirements of the RTMP Specification License, including the  
 26 requirement not to circumvent Adobe’s secure RTMP measures. Accordingly, Wowza is not  
 27 licensed under the RTMP Specification License since it did not fulfill the requirements of the  
 28 agreement. In any event, Wowza has never had a license to RTMPe because Adobe does not



1 openly license that technology to the public, in order to protect its customers and their valuable  
2 content.

3 24. Adobe and Wowza engaged in discussions regarding Wowza's unauthorized use of  
4 Adobe technology prior to Adobe's filing of this action. During these discussions, Adobe  
5 notified Wowza in writing that it was infringing Adobe's intellectual property rights, including  
6 but not limited to the '658 Patent and the '509 Patent. Since that time, including subsequent to  
7 the Summit Transaction, Wowza has continued to willfully infringe the '658 Patent, the '509  
8 Patent and the '426 Patent by making, using, selling, offering to sell, and/or importing Wowza  
9 Media Server with its unauthorized versions of RTMP and RTMPe. Additionally, both before  
10 and after the Summit Transaction, Wowza has continued to infringe the '878 Patent and the '287  
11 Patent by making, using, selling, offering to sell, and/or importing Wowza Media Server with its  
12 unauthorized version of RTMPe, and Wowza willfully infringes the '878 Patent and the '287  
13 Patent by continuing such activities.

#### 14 **D. Wowza's Misleading Activities**

15 25. At all relevant times, Wowza's advertising materials, product descriptions, and  
16 public statements and claims have misled consumers into believing that its products and  
17 activities, including the Wowza Media Server and the development and distribution of its  
18 unauthorized version of RTMPe, are legally sanctioned by Adobe.

19 26. For example, in 2007 a Wowza user identified as "tehnomaag" posted an inquiry on  
20 Wowza's public user forum entitled "Legal issues?" and asking "How does Wowza stand in  
21 legal terms... Are you cleared by Adobe legal from any potential sticky problems in the future?"  
22 A Wowza forum administrator identified as "WowzaDave" posted a reply entitled "No legal  
23 issues" and stating "We have no legal issues with Adobe at this time and we don't expect any in  
24 the future."

25 27. As another example, in 2008 a Wowza user identified as "alesgregorc" posted an  
26 inquiry on the same forum regarding how Adobe patents "could affect future licensing of Wowza  
27 Media Server? For us and maybe for others this is [a] very crucial question right now." Again,  
28



Wowza's forum administrator "WowzaDave" replied, stating that "We continually review this matter" and "...do not expect any legal problems with Adobe on this matter."

28. Given Wowza's willful infringement of Adobe intellectual property, the legal status of Wowza's products and activities has rightfully been characterized as "a very crucial question" by its users. However, Wowza has never corrected these statements and claims, which continue to mislead consumers into believing that its products and activities are legally sanctioned by Adobe.

29. Wowza has also misled customers into believing that its unauthorized version of RTMPe provides security comparable or equivalent to the security provided by Adobe's RTMPe.

30. As noted above, Adobe has invested heavily in developing updates and enhancements to RTMPe, which are incorporated into upgrades of Flash Platform products such as Flash Media Server and Flash Player. These updates and enhancements maintain the continued effectiveness of RTMPe in protecting valuable copyrighted content for Adobe's customers. Wowza has not invested in developing or maintaining RTMPe, and has instead unfairly ridden on Adobe's coattails by circumventing the secure measures incorporated into Adobe's Flash Platform products, including Adobe's Flash Media Server and/or Flash Player. Wowza does this in order to produce its unauthorized version of RTMPe, which is not maintained by Adobe.

31. Wowza's customers do not receive the benefit of the most up to date and authorized version of RTMPe, which is deployed by Adobe through upgrades to Flash Platform products. Rather, Wowza customers either miss out on critical updates altogether, or must wait for Wowza developers to circumvent the Adobe updates and issue software patches for Wowza Media Server. In either case, Wowza's unauthorized version of RTMPe can leave Wowza customers exposed to security breaches.

32. Yet, Wowza's statements and claims have misled customers into believing that its unauthorized version of RTMPe provides security comparable or equivalent to the security provided by Adobe's RTMPe. For example, it states that Wowza Media Server offers "a complete interactive Flash media streaming feature set," and offers to potential customers a side-

by-side “FMS Comparison” chart intended to convey that both Wowza Media Server and Flash Media Server provide comparable or equivalent RTMPe security.

**E. Wowza Has Benefitted and Continues to Benefit From Its Unlawful Activities**

33. Wowza has unfairly benefitted financially from its unauthorized use of Adobe technology by misleading customers into believing that its products and activities are somehow legally sanctioned by Adobe, and that its unauthorized version of RTMPe is comparable or equivalent to RTMPe provided by Adobe. Wowza has attained substantial growth and market share for Wowza Media Server over a short period of time due to its unauthorized use of Adobe technology, and its unfair comparisons and misleading statements and claims.

34. Wowza has benefitted substantially from its unauthorized version of RTMPe. For users wishing to accept only secure connections, Wowza provides instructions on how to disable all non-secure protocols except its unauthorized version of RTMPe and SSL encryption, and includes a setting specifically for this purpose. When Wowza customers expressed concerns that videos streamed via Wowza Media Server could be downloaded using stream recording software, Wowza directed customers to use its unauthorized version of RTMPe to protect their content. Rather than direct customers to use other secure streaming options such as SSL encryption, Wowza directed them towards its unauthorized version of RTMPe, saying “[it] is probably better to use rtmpe which is equally secure and does not require any additional setup.” Wowza told its customers that compared to SSL encryption, “RTMPE is a better way to go” and “offers similar security and performs better.”

35. Wowza features its unauthorized version of RTMPe on its website and in its promotional and marketing materials, to drive demand for Wowza Media Server. Its unauthorized version of RTMPe is included in a special “MediaSecurity” add-on package for Wowza Media Server, identifying “RTMPe” as one of the “features that are needed to properly secure your content.” To protect streamed content, Wowza advised users that “a combination of RTMPE and SecureToken security is suggested.” Wowza instructed customers that “simply streaming your content does not always provide sufficient security against content intrusion, unauthorized diversion and stream ripping.” To address this problem, Wowza told users that it

1 “implements content URL protection, domain verification and link encryption (RTMPS,  
2 RTMPE, RTMPTE).” When asked why prospective customers should choose Wowza Media  
3 Server rather than a competing server product, Wowza’s chief marketing officer cited to the rival  
4 product’s lack of support for RTMPE as a significant reason.

5 36. Wowza has benefited and continues to benefit from the widespread market demand  
6 for RTMPE. At the same time, it offers an unauthorized version of RTMPE to keep its own costs  
7 low and undercut Adobe in the streaming server market. Given Wowza’s business model, it  
8 comes as no surprise that Stubenvoll and Good created what they referred to as “the only  
9 commercially available alternative to Adobe’s Flash Media Server” in a matter of months, “did it  
10 ourselves and became profitable very, very quickly” and “without any venture money at all.”

11 37. Wowza has been able to keep costs low by avoiding the substantial expenses  
12 associated with researching, developing, and maintaining Flash Platform technologies such as  
13 RTMPE, and by free-riding on the widespread demand for Adobe’s proprietary technology.

14 38. Adobe has been and continues to be irreparably harmed by Wowza’s activities, and  
15 therefore brings this action to enjoin Wowza’s unauthorized use of Adobe proprietary  
16 technology.

# **FIRST CLAIM FOR RELIEF**

18 **(Infringement of U.S. Pat. No. 7,587,509)**

19 **(Against All Defendants)**

20 39. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1  
21 through 38.

22 40. Adobe is the owner of the ’509 Patent entitled “Real-time priority-based media  
23 communication,” which issued September 8, 2009. A true and correct copy of the ’509 Patent is  
24 attached as Exhibit B.

25 41. The ’509 Patent covers implementations of both RTMP and RTMPE. For example,  
26 implementations of RTMP and RTMPE operate by communicating media streams comprised of a  
27 plurality of “chunks,” where each chunk is associated with a plurality of states. A header of each  
28 of the chunks includes a state association representing the state and indicating the following

possible purposes: a new stream chunk associated with a new stream, wherein said new stream chunk includes a plurality of new parameters in said header and uses no parameters from a previous header; a new media chunk associated with said new stream wherein said new media chunk includes a plurality of new parameters in said header and uses at least one other parameter from a previous header; a new time chunk associated with said new stream wherein said new time chunk includes at least one new parameter in said header and uses a plurality of other parameters from a previous header; and a continuation chunk requiring no new parameters in said header and using a plurality of parameters from a previous header.

42. At all relevant times, Wowza has been and now is manufacturing, using, selling, offering to sell and/or importing the Wowza Media Server with unauthorized versions of RTMP and RTMPe, in the State of California, in this District, and elsewhere in the United States.

43. With knowledge of the '509 Patent, at all relevant times, Wowza has been and now is directly infringing, and/or indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '509 Patent in the State of California, in this judicial District, and elsewhere in the United States by manufacturing, using, selling, offering to sell and/or importing the Wowza Media Server with unauthorized versions of RTMP and RTMPe, by, among other things, communicating media streams comprised of a plurality of "chunks" in accordance with one or more claims of the '509 Patent. Defendants are thus liable for infringement of the '509 Patent pursuant to 35 U.S.C. § 271(a), (b) and (c).

44. Wowza's customers and licensees are also liable for direct infringement of the '509 Patent pursuant to 35 U.S.C. § 271(a) for use of Wowza Media Server to stream content via RTMP and/or RTMPe.

## **SECOND CLAIM FOR RELIEF**

**(Infringement of U.S. Pat. No. 7,272,658)**

**(Against All Defendants)**

45. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 44.

1           46. Adobe is the owner of the '658 Patent entitled "Real-time priority-based media  
2 communication," which issued September 18, 2007. A true and correct copy of the '658 Patent  
3 is attached as Exhibit C.

4           47. The '658 Patent covers implementations of both RTMP and RTMPe. For example,  
5 implementations of RTMP and RTMPe contain a chunk configurator for dividing media message  
6 sub-streams into chunks, and a state machine to provide state associations. State associations are  
7 written into a header for each chunk, identifying possible purposes consisting of: a new stream  
8 chunk, wherein said new stream chunk includes a plurality of new parameters in said header and  
9 uses no parameters from a previous header; a new media chunk, wherein said new media chunk  
10 includes a plurality of new parameters in said header and uses at least one other parameter from a  
11 previous header; a new time chunk, wherein said new time chunk includes at least one new  
12 parameter in said header and uses a plurality of other parameters from a previous header; and a  
13 continuation chunk requiring no new parameters in said header and using a plurality of  
14 parameters from a previous header. Implementations of RTMP and RTMPe contain a queue for  
15 holding chunks waiting to be transmitted, and a processor for executing a scheduling algorithm  
16 that determines which queued chunks to transmit next.

17           48. At all relevant times, Wowza has been and now is manufacturing, using, selling,  
18 offering to sell and/or importing Wowza Media Server with unauthorized versions of RTMP and  
19 RTMPe, in the State of California, in this District, and elsewhere in the United States.

20           49. With knowledge of the '658 Patent, at all relevant times, Wowza has been and now  
21 is directly infringing, and indirectly infringing by way of inducing infringement and/or  
22 contributing to the infringement of the '658 Patent in the State of California, in this judicial  
23 District, and elsewhere in the United States by manufacturing, using, selling, offering to sell  
24 and/or importing the Wowza Media Server with unauthorized versions of RTMP and RTMPe,  
25 by, among other things providing a chunk configurator and a state machine with the Wowza  
26 Media Server, which are covered by one or more claims of the '658 Patent. Defendants are thus  
27 liable for infringement of the '658 Patent pursuant to 35 U.S.C. § 271(a), (b) and (c).

28

50. Wowza's customers and licensees are also liable for direct infringement of the '658 Patent pursuant to 35 U.S.C. § 271(a) for use of Wowza Media Server to stream content via RTMP and/or RTMPe.

**THIRD CLAIM FOR RELIEF**

**(Lanham Act – False Advertising)**

**(15 U.S.C. § 1125(a))**

**(Against All Defendants)**

51. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 50.

52. Wowza's marketing and advertising of its competing Wowza Media Server product constitutes false advertising under the Lanham Act.

53. As discussed above, during the relevant time period, Wowza has made, and continues to make, false and misleading statements and claims about its Wowza Media Server product. For example, as discussed above, Wowza's statements and claims have misled consumers into believing that its products and activities, including the Wowza Media Server and the development and distribution of its unauthorized version of RTMPe, are legally sanctioned by Adobe. Additionally, as discussed above, Wowza's statements and claims have misled customers into believing that its unauthorized version of RTMPe provides security comparable or equivalent to the security provided by Adobe's RTMPe.

54. Wowza has intentionally misrepresented the nature, characteristics, qualities and/or origin of its commercial activities and products in order to influence consumer purchasing decisions.

55. Wowza's false and misleading statements and claims constitute commercial advertising or promotion within the meaning of the Lanham Act.

56. Wowza intentionally placed these misleading advertising statements and claims in interstate commerce.

57. Wowza's misleading statements and claims are material in that they are likely to influence, and on information and belief have influenced, consumer purchasing decisions, and

1 have a tendency to deceive, and on information and belief have deceived, a substantial segment  
2 of its audience, which may have otherwise purchased Adobe's Flash Media Server.

3 58. Wowza's actions have a tendency to cause and on information and belief have  
4 caused, and unless enjoined will continue to cause, irreparable harm, damage, loss and injury to  
5 Adobe, for which it has no adequate remedy at law.

6 59. Wowza's actions have resulted in an improper financial benefit and gain to Wowza,  
7 which amount should be disgorged.

8 60. On information and belief, Wowza has engaged in this activity intentionally,  
9 knowingly, willfully, with actual malice, and in bad faith, justifying the assessment of enhanced  
10 damages against it.

11 61. Wowza's acts make this an exceptional case under 15 U.S.C. § 1117(a), and Adobe  
12 is thus entitled to an award of attorneys' fees and costs.

#### 13 **FOURTH CLAIM FOR RELIEF**

##### 14 **(Unfair Competition)**

##### 15 **(California Common Law)**

##### 16 **(Against All Defendants)**

17 62. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1  
18 through 61.

19 63. Adobe has expended significant time and expense in researching and developing its  
20 Flash Platform products and technology. Adobe's high quality products have allowed Adobe to  
21 develop and maintain a strong reputation for quality and security, and Adobe derives substantial  
22 benefit and goodwill from its efforts.

23 64. Through its actions as described above, Wowza has misappropriated Adobe's efforts  
24 and is exploiting Adobe's technology and reputation to market and sell its competing Flash  
25 Media Server products. These actions constitute unfair competition.

26 65. Wowza's actions have caused, and unless enjoined will continue to cause, irreparable  
27 harm, damage, loss and injury to Adobe, for which it has no adequate remedy at law.

28



66. In performing the conduct described herein, on information and belief Wowza acted with oppression and malice, intending to injure Adobe and to wrongfully advantage itself at Adobe's expense. Adobe is entitled to an award of compensatory and punitive damages against Wowza, in an amount to be ascertained at trial.

**FIFTH CLAIM FOR RELIEF**

**(False Advertising Under California Law)**

**(Cal. Bus. & Prof. Code § 17500 et seq.)**

**(Against All Defendants)**

67. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 66.

68. As detailed above, Wowza has made and disseminated untrue and misleading advertising statements in the State of California about its media server product, by misrepresenting the nature, characteristics, qualities or origin of its unauthorized version of RTMPe.

69. Wowza knew or should have known that its statements were untrue and misleading.

70. Wowza's acts, as described above, constitute false and misleading advertising pursuant to Cal. Bus. & Prof. Code § 17500 et seq.

71. Adobe has been harmed and will continue to be harmed by Wowza's false and misleading advertising as described above. Accordingly, Adobe is entitled to an injunction prohibiting Wowza from continuing the practices described above, pursuant to Cal. Bus. & Prof. Code § 17535.

**SIXTH CLAIM FOR RELIEF**

**(Unfair Competition Under California Law)**

**(Cal. Bus. & Prof. Code § 17200 et seq.)**

**(Against All Defendants)**

72. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 71.

73. Wowza's conduct, as described above, constitutes unlawful and fraudulent conduct, including violations of the Patent Act, the Lanham Act, Cal. Bus. & Prof. Code § 17500, and California common law.

74. Wowza's acts accordingly constitute unfair competition and unfair business practices pursuant to Cal. Bus. & Prof. Code § 17200 et seq.

75. Absent injunctive relief, Adobe has no means by which to control Wowza's deceptive and confusing activities. Adobe is thus entitled to injunctive relief prohibiting Wowza from continuing its acts of unfair competition.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Infringement of U.S. Pat. No. 7,961,878)**

#### **(Against All Defendants)**

76. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 75.

77. Adobe is the owner of the '878 Patent entitled "Imparting cryptographic information in network communications," which issued June 14, 2011. A true and correct copy of the '878 Patent is attached as Exhibit D.

78. The '878 Patent covers implementations of RTMPe. For example, implementations of RTMPe receive cryptographic information inserted into a pre-defined portion of a network communication in a client-server environment, where the pre-defined portion of the network communication is reserved for random data in accordance with an RTMP random byte section. Implementations of RTMPe identify a variable location of the cryptographic information in the pre-defined portion of the network communication, and process the cryptographic information by establishing a cryptographic key or authenticating the network communication. Implementations of RTMPe modify interactions in the client-server environment based at least in part on a result of the processing of the cryptographic information, by initiating an encrypted session using the cryptographic key or turning on or off a feature of a program operating in the client-server environment.

79. Wowza has been and now is manufacturing, using, selling, offering to sell and/or importing Wowza Media Server with unauthorized version of RTMPe, in the State of California, in this District, and elsewhere in the United States.

80. At all relevant times, Wowza has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '878 Patent in the State of California, in this judicial District, and elsewhere in the United States by manufacturing, using, selling, offering to sell and/or importing the Wowza Media Server with an unauthorized version of RTMPe, by, among other things, providing Wowza Media Server to stream content via RTMPe, which is covered by one or more claims of the '878 Patent.

Defendants are thus liable for infringement of the '878 Patent pursuant to 35 U.S.C. § 271(a), (b) and (c).

81. Wowza's customers and licensees are also liable for direct infringement of the '878 Patent pursuant to 35 U.S.C. § 271(a) for use of Wowza Media Server to stream content via RTMPe.

### **EIGHTH CLAIM FOR RELIEF**

**(Infringement of U.S. Pat. No. 8,051,287)**

**(Against All Defendants)**

82. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 81.

83. Adobe is the owner of the '287 Patent entitled "Imparting real-time priority-based network communications in an encrypted communication session," which issued November 1, 2011. A true and correct copy of the '287 Patent is attached as Exhibit E.

84. The '287 Patent covers implementations of RTMPe. For example, implementations of RTMPe establish, based at least in part on cryptographic information in a pre-defined portion of a handshake network communication, a communication session to communicate a media stream, wherein the pre-defined portion of the handshake network communication is reserved for random data. Implementations of RTMPe receive through the communication session, as part of the media stream, values of parameters relating to a sub media stream, included in a first header

1 portion of a first real-time, priority-based network communication, and store the values of the  
 2 parameters. Implementations of RTMPe obtain through the communication session, as part of  
 3 the media stream, state information included in a control portion of a second real-time, priority-  
 4 based network communication and a data payload included in the second network  
 5 communication. Implementations of RTMPe identify, from the state information, a purpose of  
 6 the second network communication in relation to the media stream, and whether a second header  
 7 portion of the second network communication includes one or more new values corresponding to  
 8 one or more of the parameters. Implementations of RTMPe update, when the second header  
 9 portion includes the one or more new values, one or more of the stored values based at least in  
 10 part on the one or more new values. Implementations of RTMPe process the data payload based  
 11 at least in part on the identified purpose and the stored values of the parameters.

12 85. At all relevant times, Wowza has been and now is manufacturing, using, selling,  
 13 offering to sell and/or importing Wowza Media Server with an unauthorized version of RTMPe,  
 14 in the State of California, in this District, and elsewhere in the United States.

15 86. At all relevant times, Wowza has been and now is directly infringing, and indirectly  
 16 infringing by way of inducing infringement and/or contributing to the infringement of the '287  
 17 Patent in the State of California, in this judicial District, and elsewhere in the United States by  
 18 manufacturing, using, selling, offering to sell and/or importing the Wowza Media Server with an  
 19 unauthorized version of RTMPe, by, among other things, providing Wowza Media Server to  
 20 stream content via RTMPe, which is covered by one or more claims of the '287 Patent.

21 Defendants are thus liable for infringement of the '287 Patent pursuant to 35 U.S.C. § 271(a), (b)  
 22 and (c).

23 87. Wowza's customers and licensees are also liable for direct infringement of the '287  
 24 Patent pursuant to 35 U.S.C. § 271(a) for use of Wowza Media Server to stream content via  
 25 RTMPe.

**NINTH CLAIM FOR RELIEF****(Infringement of U.S. Pat. No. 8,065,426)****(Against All Defendants)**

88. Adobe restates and incorporates by reference the allegations set forth in paragraphs 1 through 87.

89. Adobe is the owner of the '426 Patent entitled "Real-time priority-based media communication," which issued November 22, 2011. A true and correct copy of the '426 Patent is attached as Exhibit F.

90. The '426 Patent covers implementations of both RTMP and RTMPe. For example, implementations of RTMP and RTMPe receive a plurality of chunks associated with one or more streams, wherein each chunk of the plurality of chunks has an associated data payload and an associated chunk control byte including rendering information relating to a media rendering state associated with one chunk and one or more subsequent chunks, such that a portion of the rendering information that remains unchanged from the one chunk to a subsequent chunk is included in the chunk control byte of the one chunk but is missing from the chunk control byte of the subsequent chunk, wherein the chunk control byte includes a chunk type identifier. For each chunk of the plurality of chunks, implementations of RTMP and RTMPe determine playback information associated with the chunk at least in part by reading the rendering information from the associated chunk control byte, designating the rendering information read from the associated chunk control byte as the playback information associated with the chunk, and in response to determining that a portion of the rendering information from the associated chunk control byte is missing, add to the playback information associated with the chunk a corresponding portion of rendering information read from a chunk control byte of a preceding chunk. Implementations of RTMP and RTMPe reassemble the one or more streams based on respective playback information associated with each of the plurality of chunks, and issue the reassembled one or more streams.

91. At all relevant times, Wowza has been and now is manufacturing, using, selling, offering to sell and/or importing Wowza Media Server with an unauthorized versions of RTMP and RTMPe, in the State of California, in this District, and elsewhere in the United States.

92. At all relevant times, Wowza has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '426 Patent in the State of California, in this judicial District, and elsewhere in the United States by manufacturing, using, selling, offering to sell and/or importing the Wowza Media Server with unauthorized versions of RTMP and RTMPe, by, among other things, providing Wowza Media Server to stream content via RTMP and RTMPe, which is covered by one or more claims of the '426 Patent. Defendants are thus liable for infringement of the '426 Patent pursuant to 35 U.S.C. § 271(a), (b) and (c).

93. Wowza's customers and licensees are also liable for direct infringement of the '426 Patent pursuant to 35 U.S.C. § 271(a) for use of Wowza Media Server to stream content via RTMP and/or RTMPe.

### **JURY DEMAND**

Adobe hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

WHEREFORE, Adobe requests that this Court enter:

1. A judgment in favor of Adobe that Defendants have infringed directly, and/or by way of inducing infringement by others, and/or contributing to the infringement by others of the Patents-in-Suit.

2. A judgment and order awarding Adobe damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the Patents-in-Suit as provided under 35 U.S.C. § 284.

3. A judgment and order finding Defendants' infringement of the Patents-in-Suit to be willful and deliberate, and a trebling of damages pursuant to 35 U.S.C. § 284.

4. A judgment and order finding that this is an exceptional case within the meaning

1 of 35 U.S.C. § 285 and/or 15 U.S.C. § 1117(a), and awarding to Adobe its reasonable attorneys'  
2 fees and costs.

3 5. A preliminary and permanent injunction, enjoining Defendants, their officers,  
4 directors, agents, servants, attorneys, affiliates, employees, divisions, branches, subsidiaries,  
5 parents, assigns, and successors in interest of Defendants, and all others acting in concert,  
6 participation or privity with any of them (the "Wowza Entities"); and Defendants' customers and  
7 licensees, and all others acting in concert, participation or privity with any of them, from  
8 continued acts of infringement of the Patents-in-Suit.

9 6. A judgment finding that Defendants have not complied with the terms of the RTMP  
10 Specification License, and accordingly has no right or license to any Adobe intellectual property,  
11 including any of the Patents-in-Suit.

12 7. A judgment and order finding that Defendants have committed the following  
13 unlawful acts:

14 a. False advertising in connection with goods offered for sale, under 15 U.S.C.

15 § 1125(a);

16 b. Unfair competition under California common law;

17 c. False advertising under Cal. Bus. & Prof. Code § 17500 et seq.; and

18 d. Unfair competition under Cal. Bus. & Prof. Code § 17200 et seq.

19 8. A preliminary and permanent injunction, enjoining the Wowza Entities from:

20 a. Making false and/or misleading advertising claims and statements about

21 Wowza Media Server; and

22 b. Unfairly competing with Adobe in any manner whatsoever, or engaging in  
23 any unfair, fraudulent, or deceptive business practices that relate in any way to  
24 the use of the marketing and advertising of Wowza Media Server.

25 9. An order directing Defendants to file with this Court and serve upon Adobe's  
26 counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the  
27 manner and form in which Wowza has complied with the injunction, pursuant to 15 U.S.C. §  
28 1116(a).



1           10. For an order pursuant to 15 U.S.C. § 1117(a) compelling Defendants to account to  
2 Adobe for any and all profits derived by it from its unlawful and misleading conduct.

3           11. For an order that Defendants must pay and provide for appropriate corrective  
4 advertisements.

5           12. With respect to the unlawful activities described above, that the Court order  
6 Defendants to pay Adobe:

7           a.       General, special, actual and/or statutory damages, according to proof at  
8 trial, trebled and increased due to the nature of Defendants' conduct as  
9 provided above;

10          b.       All of Defendants' profits or gains of any kind from its acts of false  
11 advertising and unfair competition;

12          c.       Pre-judgment and post-judgment interest; and

13          d.       Punitive and exemplary damages.

14          13. Any and all other relief to which the Court may deem Adobe entitled.  
15

16 Dated: May 31, 2012

Respectfully submitted,

17 LATHAM & WATKINS LLP  
18 Robert Steinberg  
19 Jennifer Barry  
Charles Courtenay  
Ryan Hatch

20  
21 By /s/ Robert Steinberg  
Robert Steinberg  
22 Attorney for Plaintiff  
Adobe Systems Incorporated  
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