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8 *Attorneys for Plaintiff ECLIPSE IP LLC*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ECLIPSE IP LLC,

12 Plaintiff,

13 vs.

14 SAFEWAY INC.,

15 Defendant.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

Complaint Filed: N/A

Trial Date: N/A

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Eclipse IP LLC (“Eclipse”) complains of defendant Safeway Inc. as
3 follows:

4 **THE PARTIES**

5 1. Eclipse is a company organized and existing under the laws of Florida and
6 having an address at 711 SW 24th, Boynton Beach, Florida 33435.

7 2. Safeway Inc. (“Defendant”) is a corporation organized and existing under
8 the laws of Delaware with, upon information and belief, a place of business at 5918
9 Stoneridge Mall Rd., Pleasanton, California 94588.

10 **JURISDICTION AND VENUE**

11 3. This is a suit for patent infringement arising under the patent laws of the
12 United States, Title 35 of the United States Code § 1 *et seq.*

13 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
14 1338(a).

15 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and
16 1400(b).

17 6. Upon information and belief, Defendant conducts substantial business in
18 this forum, directly or through intermediaries, including: (i) at least a portion of the
19 infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in
20 other persistent courses of conduct and/or deriving substantial revenue from goods and
21 services provided to individuals in California.

22 **THE PATENTS-IN-SUIT**

23 7. On July 31, 2012, United States Patent No. 8,232,899 (“the ‘899 patent”),
24 entitled, “Notification Systems and Methods Enabling Selection of Arrival or Departure
25 Times of Tracked Mobile Things in Relation to Locations,” was duly and legally issued
26 by the United States Patent and Trademark Office. A true and correct copy of the ‘899
27 patent is attached as Exhibit A to this complaint.

28 8. On September 10, 2013, United States Patent No. 8,531,317 (“the ‘317

1 patent”), entitled “Notification Systems and Methods Enabling Selection of Arrival or
2 Departure Times of Tracked Mobile Things in Relation to Locations,” was duly and
3 lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of
4 the '317 patent is attached as Exhibit B.

5 9. Eclipse is the assignee and owner of the right, title and interest in and to
6 the '899 and '317 patents including the right to assert all causes of action arising under
7 said patents and the right to any remedies for infringement of them.

8 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,232,899**

9 10. Eclipse repeats and realleges the allegations of paragraphs 1 through 9 as if
10 fully set forth herein.

11 11. Without license or authorization and in violation of 35 U.S.C. § 271(a),
12 Defendant has infringed and continues to infringe the '899 patent by making, using,
13 offering for sale and/or selling within this district and elsewhere in the United States,
14 computer-based notification systems and methods which at least initiate communication
15 sessions via Defendant’s website, shop.safeway.com, provide a plurality of arrival
16 times for deliveries, enable customers to select from the plurality of arrival times, and
17 cause the customers’ orders to arrive at substantially the selected time.

18 12. Eclipse is entitled to recover from Defendant the damages sustained by
19 Eclipse as a result of Defendant's infringement of the '899 patent in an amount subject
20 to proof at trial, which, by law, cannot be less than a reasonable royalty, together with
21 interest and costs as fixed by this Court under 35 U.S.C. § 284.

22 13. Prior to the filing of this Complaint, Eclipse, by letter dated February 15,
23 2013, informed Defendant of Defendant's infringement of the '899 patent.

24 14. Thus, Defendant has been on notice of the '899 patent since at least the
25 date it received Eclipse's letter dated February 15, 2013.

26 15. Despite an objectively high likelihood that its actions constitute
27 infringement of the '899 patent, Defendant has not altered its infringing conduct.

28 16. Defendant’s continued infringement of the '899 patent has been

1 objectively reckless and/or willful.

2 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,531,317**

3 17. Eclipse repeats and realleges the allegations of paragraphs 1 through 16 as
4 if fully set forth herein.

5 18. Without license or authorization and in violation of 35 U.S.C. § 271(a),
6 Defendant has infringed and continues to infringe the '317 patent by making, using,
7 offering for sale and/or selling within this district and elsewhere in the United States,
8 computer-based notification systems and methods which at least initiate communication
9 sessions via Defendant's website, shop.safeway.com, provide a plurality of arrival
10 times for deliveries, enable customers to select from the plurality of arrival times, cause
11 the customers' orders to arrive at substantially the selected time, and enable another
12 communication session during which the customer may make a change to his or her
13 order.

14 19. Eclipse is entitled to recover from Defendant the damages sustained by
15 Eclipse as a result of Defendant's infringement of the '899 patent in an amount subject
16 to proof at trial, which, by law, cannot be less than a reasonable royalty, together with
17 interest and costs as fixed by this Court under 35 U.S.C. § 284.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Eclipse requests that this Court enter judgment against
20 Defendant as follows:

21 (a) An adjudication that Defendant has infringed the '899 and '317 patents;

22 (b) An award of damages to be paid by Defendant adequate to compensate
23 Eclipse for Defendant's past infringement of the '899 and '317 patents and any
24 continuing or future infringement through the date such judgment is entered, including
25 interest, costs, expenses and an accounting of all infringing acts including, but not
26 limited to, those acts not presented at trial;

27 (c) A declaration that this case is exceptional under 35 U.S.C. § 285, and an
28 award of Eclipse's reasonable attorneys' fees;

1 (d) To the extent Defendant's conduct subsequent to the date of its notice of
2 the '899 patent is found to be objectively reckless, enhanced damages pursuant to 35
3 U.S.C. § 284 for its willful infringement of the '899 patent; and

4 (e) An award to Defendant of such further relief at law or in equity as the
5 Court deems just and proper.

6 **JURY DEMAND**

7 Eclipse demands a trial by jury on all issues so triable pursuant to Federal Rule of
8 Civil Procedure 38.

9
10 Respectfully submitted this 12th day of March, 2014

11 NEWPORT TRIAL GROUP

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13 By: 

14 Tyler J. Woods
15 Attorney for Plaintiff
16 ECLIPSE IP LLC
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