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

11 ECLIPSE IP LLC, a Florida Limited) Case No. 2:14-cv-00154-FMO-AJW
12 Liability Company,)
13 Plaintiff,) **FIRST AMENDED COMPLAINT**
14) **FOR PATENT INFRINGEMENT**
15 v.) **TRIAL BY JURY DEMANDED**
16 PAYBYPHONE TECHNOLOGIES,)
17 INC., a Canadian Corporation,)
18 Defendant.)
19 _____)

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1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains
2 against PayByPhone Technologies, Inc. (“PayByPhone”) as follows:

3 **NATURE OF LAWSUIT**

4 1. This is a suit for patent infringement arising under the patent laws of
5 the United States, Title 35 of the United States Code § 1 *et seq.* This Court has
6 exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C.
7 §§ 1331 and 1338(a).

8 **PARTIES AND PATENTS**

9 2. Eclipse is a company organized under the laws of Florida and having a
10 principal place of business at 115 NW 17th St, Delray Beach, Florida 33444.

11 3. Eclipse owns all right, title, and interest in and has standing to sue for
12 infringement of United States Patent No. 8,564,459 ("the '459 patent"), entitled
13 "Systems and methods for a notification system that enable user changes to purchase
14 order information for delivery and/or pickup of goods and/or services" (Exhibit A);
15 United States Patent No. 8,531,317 ("the '317 patent"), entitled "Notification
16 systems and methods enabling selection of arrival or departure times of tracked
17 mobile things in relation to locations" (Exhibit B); and United States Patent No.
18 8,232,899 ("the '899 patent"), entitled "Notification systems and methods enabling
19 selection of arrival or departure times of tracked mobile things in relation to
20 locations" (Exhibit C) (“the Eclipse Patents”).

21 4. On information and belief, PayByPhone is a corporation existing under
22 the laws of Canada.

23 5. On information and belief, PayByPhone does regular business in this
24 Judicial District and conduct leading to PayByPhone’s acts of infringement has
25 occurred in this Judicial District.

26 **JURISDICTION AND VENUE**

27 6. This Court has personal jurisdiction over PayByPhone because it has
28 engaged in continuous and systematic business in California; upon information and

1 belief, derives substantial revenues from commercial activities in California; and,
2 upon information and belief, is operating and/or supporting products or services that
3 fall within one or more claims of Eclipse's patents in this District.

4 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
5 28 U.S.C. § 1400(a) at least because the claim arises in this Judicial District,
6 PayByPhone may be found and transacts business in this Judicial District, and
7 injuries suffered by Plaintiff took place in this Judicial District. PayByPhone is
8 subject to the general and specific personal jurisdiction of this Court at least because
9 of its contacts with the State of California.

10 **FACTUAL BACKGROUND**

11 1. Beginning in approximately 2007, with the advent of what is
12 considered the modern smartphone, consumers and businesses have enjoyed
13 unprecedented benefits from these devices and the services that they support.

14 2. For example, consumers can use their smartphones to search the
15 Internet, video conference with one another, and even purchase goods and services
16 and track their delivery.

17 3. The growth of the mobile consumer, armed with a smartphone or tablet,
18 has spawned a panoply of new industries. One such industry is the smart parking
19 meter industry.

20 **Smart Parking Meters**

21 4. Smart parking meters are advanced parking meters that use technology
22 to offer superior functionality over traditional parking meters and improve end-user
23 satisfaction.

24 5. Traditional meters required users to pay for parking with coins and did
25 not allow the use of credit cards or other forms of more convenient payments.

26 6. In addition, these early meters did nothing to alert the user of the
27 remaining time on the meter or allow the user to purchase additional time remotely.

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1 The user was forced to remember when the meter would expire and physically
2 return to the meter in order to purchase additional parking.

3 7. The new generation of smart parking meters is a vast improvement over
4 these previous generations.

5 8. Smart parking meters allow users to pay for their parking using a credit
6 card, they notify the user when his parking time is set to expire, and they allow the
7 user to remotely purchase additional parking in a number of ways, including but not
8 limited to over the phone, online, or through the use of a smartphone application.

9 9. Users appreciate these modern conveniences and vastly prefer these
10 new meters over the previous generations.

11 10. Moreover, parking operators increasingly recognize that mobile
12 payments can both reduce the costs associated with operating expensive pay and
13 display machines as well as increase revenue per parking session.

14 **PAYBYPHONE'S ACTS OF PATENT INFRINGEMENT**

15 11. Eclipse reiterates and reincorporates the allegations set forth in
16 paragraphs 1 through 10 above as if fully set forth herein.

17 12. On information and belief, and according to its website, PayByPhone is
18 North America's leading provider of mobile payments in the parking industry,
19 processing more pay by phone payments than any other organization.

20 13. On information and belief, PayByPhone operates on at least one
21 electronic parking system that allows for mobile payments via touch-tone/IVR, text,
22 the Internet, and/or the mobile web ("the PayByPhone System").

23 14. In addition, on information and belief, as a part of the PayByPhone
24 System, PayByPhone offers a mobile application ("the PayByPhone App") for at
25 least Apple Inc.'s iOS and Google, Inc.'s Android platforms and a mobile website
26 that works across all mobile devices.

27 15. On information and belief, the PayByPhone System allows users to
28 identify parking in a given area, select a particular parking space, select the amount

1 of parking time desired, provide contact information, and purchase parking time
2 online or through the PayByPhone App.

3 16. Additionally, on information and belief, the PayByPhone System sends
4 the user electronic confirmation of a successful transaction.

5 17. Additionally, on information and belief, the PayByPhone System tracks
6 the user's parking time and sends the user a reminder before his parking time is set
7 to expire.

8 18. Additionally, on information and belief, the PayByPhone System
9 allows the user to increase the amount of parking time remotely through at least the
10 PayByPhone App, without the hassle of returning to the user's vehicle.

11 **CLAIMS FOR RELIEF**

12 **COUNT 1**

13 **(Patent Infringement of U.S. Patent No. 8,564,459**
14 **Under 35 U.S.C. § 271 et seq.)**

15 19. Eclipse reiterates and reincorporates the allegations set forth in
16 paragraphs 1 through 18 above as if fully set forth herein.

17 20. On October 22, 2013, the United States Patent and Trademark Office
18 duly and legally issued United States Patent No. 8,564,459, entitled, "Systems and
19 methods for a notification system that enable user changes to purchase order
20 information for delivery and/or pickup of goods and/or services." Eclipse is the
21 owner of the entire right, title and interest in and to the '459 patent. A true and
22 correct copy of the '459 patent is attached as Exhibit A to this Complaint.

23 21. The '459 patent is valid and enforceable.

24 22. Eclipse is informed and believes, and thereupon alleges, that:

25 (1) PayByPhone has infringed and continues to infringe one or more claims of the
26 '459 patent, literally and/or under the doctrine of equivalents and additionally and/or
27 in the alternative, (2) PayByPhone has actively induced and continues to actively
28 induce and/or has contributed to and continues to contribute to the infringement of

1 one or more claims of the '459 patent in this District and elsewhere in the United
2 States.

3 23. On information and belief, PayByPhone has directly infringed and
4 continues to directly infringe one or more claims of the '459 patent, in violation of
5 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
6 selling a computer-based notification system to, for example: communicate with the
7 user's device; enable the user to identify the desired parking area, the desired
8 parking space, the amount of parking time, and the user's contact information; track
9 the time remaining; notify the user when the parking time is nearly expired; enable
10 the user to increase the amount of parking time through his device; and
11 communicate the modified information to the user.

12 24. Additionally and/or in the alternative, on information and belief,
13 PayByPhone has actively induced and continues to actively induce and/or has
14 contributed to and continues to contribute to the infringement of one or more claims
15 of the '459 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
16 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
17 others to make, use, offer for sale, and/or sell portions of a computer-based
18 notification system that infringes one or more claims of the '459 patent, with the
19 specific intent to encourage infringement and with the knowledge that the making,
20 using, offering to sell, and/or selling of such a system would constitute
21 infringement.

22 25. On information and belief, PayByPhone has had knowledge of the '459
23 patent at least as early as January 7, 2014, the day that it received a courtesy copy of
24 the Complaint, which set forth factual allegations of PayByPhone's infringement.
25 Additionally, at least as early as January 7, 2014, PayByPhone knew or should have
26 known that its continued offering, use, deployment, and/or operation of the at least
27 one parking system and its continued support of others, if those parties perform any
28 limitations of one or more of the claims of the '459 patent, would induce direct

1 infringement of the '459 patent, as it had actual knowledge of the patent and factual
2 allegations of its infringement thereof.

3 26. On information and belief, PayByPhone has not changed or modified
4 its infringing behavior since January 7, 2014.

5 27. PayByPhone's aforesaid infringing activity has directly and
6 proximately caused damage to Plaintiff Eclipse, including loss of profits from sales
7 and/or licensing revenues it would have made but for the infringements. Unless
8 enjoined, the aforesaid infringing activity will continue and cause irreparable injury
9 to Eclipse for which there is no adequate remedy at law.

10 **COUNT 2**

11 **(Patent Infringement of U.S. Patent No. 8,531,317**
12 **Under 35 U.S.C. § 271 et seq.)**

13 28. Eclipse reiterates and reincorporates the allegations set forth in
14 paragraphs 1 through 27 above as if fully set forth herein.

15 29. On September 10, 2013, the United States Patent and Trademark Office
16 duly and legally issued United States Patent No. 8,531,317, entitled, "Notification
17 systems and methods enabling selection of arrival or departure times of tracked
18 mobile things in relation to locations." Eclipse is the owner of the entire right, title
19 and interest in and to the '317 patent. A true and correct copy of the '317 patent is
20 attached as Exhibit B to this Complaint.

21 30. The '317 patent is valid and enforceable.

22 31. Eclipse is informed and believes, and thereupon alleges, that:
23 (1) PayByPhone has infringed and continues to infringe one or more claims of the
24 '317 patent, literally and/or under the doctrine of equivalents and additionally and/or
25 in the alternative, (2) PayByPhone has actively induced and continues to actively
26 induce and/or has contributed to and continues to contribute to the infringement of
27 one or more claims of the '317 patent in this District and elsewhere in the United
28 States.

1 32. On information and belief, PayByPhone has directly infringed and
2 continues to directly infringe one or more claims of the '317 patent, in violation of
3 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
4 selling a computer-based notification system to, for example: communicate with the
5 user's device; enable the user to select a desired parking time; authorize the user to
6 park at that spot for the duration of the parking time; engage in a second
7 communication session with the user's device; and enable the user to purchase
8 additional parking time remotely.

9 33. Additionally and/or in the alternative, on information and belief,
10 PayByPhone has actively induced and continues to actively induce and/or has
11 contributed to and continues to contribute to the infringement of one or more claims
12 of the '317 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
13 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
14 others to make, use, offer for sale, and/or sell portions of a computer-based
15 notification system that infringes one or more claims of the '317 patent, with the
16 specific intent to encourage infringement and with the knowledge that the making,
17 using, offering to sell, and/or selling of such a system would constitute
18 infringement.

19 34. On information and belief, PayByPhone has had knowledge of the '317
20 patent at least as early as February 24, 2014. Additionally, at least as early as
21 February 24, 2014, PayByPhone knew or should have known that its continued
22 offering, use, deployment, and/or operation of the at least one parking system and its
23 continued support of others, if those parties perform any limitations of one or more
24 of the claims of the '317 patent, would induce direct infringement of the '317 patent,
25 as it had actual knowledge of the patent and factual allegations of its infringement
26 thereof.

27 35. On information and belief, PayByPhone has not changed or modified
28 its infringing behavior since February 24, 2014.

1 user's device when the user's parking time is approaching expiration; enable the
2 user to select additional desired parking time; and authorizing the user's vehicle to
3 remain at the parking location until the user's parking time is set to expire.

4 42. Additionally and/or in the alternative, on information and belief,
5 PayByPhone has actively induced and continues to actively induce and/or has
6 contributed to and continues to contribute to the infringement of one or more claims
7 of the '899 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
8 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
9 others to make, use, offer for sale, and/or sell portions of a system that infringes one
10 or more claims of the '899 patent, with the specific intent to encourage infringement
11 and with the knowledge that the making, using, offering to sell, and/or selling of
12 such a system would constitute infringement.

13 43. On information and belief, PayByPhone has had knowledge of the '899
14 patent at least as early as February 24, 2014. Additionally, at least as early as
15 February 24, 2014, PayByPhone knew or should have known that its continued
16 offering, use, deployment, and/or operation of the at least one parking system and its
17 continued support of others, if those parties perform any limitations of one or more
18 of the claims of the '899 patent, would induce direct infringement of the '899 patent,
19 as it had actual knowledge of the patent and factual allegations of its infringement
20 thereof.

21 44. On information and belief, PayByPhone has not changed or modified
22 its infringing behavior since February 24, 2014.

23 45. PayByPhone's aforesaid infringing activity has directly and
24 proximately caused damage to Plaintiff Eclipse, including loss of profits from sales
25 and/or licensing revenues it would have made but for the infringements. Unless
26 enjoined, the aforesaid infringing activity will continue and cause irreparable injury
27 to Eclipse for which there is no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against PayByPhone and against each of PayByPhone’s respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

- 1. A judgment that PayByPhone has infringed the Eclipse Patents;
- 2. A permanent injunction against PayByPhone, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from direct and indirect infringement of the Eclipse Patents;
- 3. An award of damages adequate to compensate Eclipse for the infringement that has occurred, together with prejudgment interest from the date infringement of the Eclipse Patents began;
- 4. A reasonable royalty for PayByPhone’s use of Eclipse’s patented technology, as alleged herein;
- 5. An award to Eclipse of all remedies available under 35 U.S.C. §§ 284 and 285; and,
- 6. Such other and further relief as this Court or a jury may deem proper and just.

DATED: February 25, 2014

OLAVI DUNNE LLP

By: /s/ Matt Olavi

Matt Olavi
Brian J. Dunne
*Attorneys for Plaintiff
Eclipse IP LLC*

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JURY DEMAND

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

DATED: February 25, 2014

OLAVI DUNNE LLP

By: /s/ Matt Olavi

Matt Olavi
Brian J. Dunne
*Attorneys for Plaintiff
Eclipse IP LLC*