	Case 2:14-cv-09588-PA-AJW Document 1 File	ed 12/15/14 Page 1 of 9 Page ID #:1					
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7 8	Attorneys for Plaintiffs WORLDPANTRY.COM, INC. AND BALANCE BAR, INC.						
9	IN THE UNITED STATES DISTRICT COURT						
10	FOR THE CENTRAL DISTRICT OF CALIFORNIA						
11							
12		Case No. 2:14-cv-9588					
13		COMPLAINT FOR DECLATORY JUDGMENT					
14	Plaintiffs,	DEMAND FOR JURY TRIAL					
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13	V.						
15	V. ECLIPSE IP, LLC,						
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Plaintiffs WorldPantry.com, Inc. ("WorldPantry") and Balance Bar, Inc. ("Balance Bar") (collectively, "Plaintiffs") complain as follows:

NATURE OF ACTION

This is an action seeking Declaratory Judgment that twenty-two United States
 Patents ("Patents-in-Suit" or "Eclipse Patent Portfolio"), that are owned by Defendant
 Eclipse IP, LLC ("Eclipse" or "Defendant"), are invalid.

2. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, Title 35 of the United States Code.

THE PARTIES

3. WorldPantry is a corporation organized under the laws of Delaware, with its principal place of business in San Francisco, CA.

4. Balance Bar is a corporation organized under the laws of Delaware, with its principal place of business in Ronkonkoma, New York.

5. On information and belief, Eclipse is a Texas limited liability company with a place of business at 711 SW 24th, Boyton Beach, Florida 33435. On information and belief, Eclipse is the owner of the Patents-in-Suit.

17 6. Upon information and belief, Eclipse is in the business of patent licensing
18 through the threat of litigation.

7. Upon information and belief, a key part of Eclipse's business model is sending letters, emails, and making telephone calls threatening patent litigation and following through on that threat.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) in that it arises under the United States Patent Laws.

9. This Court has personal jurisdiction over the Defendant pursuant to the laws
of the State of California, including California's long-arm statute and California Code of
Civil Procedure § 410.10.

10. Eclipse has filed at least 36 cases asserting patent infringement in this District, and has been involved in at least 132 lawsuits involving the Eclipse Patent Portfolio nationwide.

11. Eclipse has litigated the Patents-in-Suit in this judicial district more than any other district.

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12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

PATENTS-IN-SUIT / ECLIPSE PATENT PORTFOLIO

13. On October 10, 2006, U.S. Patent No. 7,119,716 (the '716 Patent), entitled
Response Systems and Methods for Notification Systems for Modifying Future
Notifications was issued. Claims 1, 2, 4, 6, 7, 18, 19, 20, 41, 43, 44, 45, and 46 of the '716
Patent were found to be invalid for failing to satisfy 35 U.S.C. § 101.

14. On June 20, 2006, U.S. Patent No. 7,064,681 (the '681 Patent), entitled Response Systems and Methods for Notification Systems was issued. The '681 Patent resulted from a continuation application of the '716 Patent's application. Claims 1, 3, 4, and 6 of the '681 Patent were found to be invalid for failing to satisfy 35 U.S.C. § 101.

15. On September 26, 2006, U.S. Patent No. 7,113,110 (the '110 Patent), entitled Stop List Generation Systems and Methods Based upon Tracked PCD's and Responses from Notified PCD's was issued. The '110 Patent resulted from a continuation application of the '716 Patent's application. Claims 1, 2, 7, and 8 of the '110 Patent were found to be invalid for failing to satisfy 35 U.S.C. § 101.

16. On January 15, 2008, U.S. Patent No. 7,319,414 (the '414 Patent), entitled Secure Notification Messaging Systems and Methods Using Authentication Indicia was issued. The '414 Patent resulted from a continuation application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

25 17. On January 20, 2009, U.S. Patent No. 7,479,899, entitled Notification Systems
26 and Methods Enabling a Response to Cause Connection Between a Notified PCD and a
27 Delivery or Pickup Representative was issued. U.S. Patent No. 7,479,899 resulted from a

continuation application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

18. On January 20, 2009, U.S. Patent No. 7,479,900 (the '900 Patent), entitled Notification Systems and Methods that Consider Traffic Flow Predicament Data was issued. The '900 Patent resulted from a divisional application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

On January 20, 2009, U.S. Patent No. 7,479,901 (the '901 Patent), entitled 19. Mobile Thing Determination Systems and Methods Based upon User-Device Location was issued. The '901 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

On January 27, 2009, U.S. Patent No. 7,482,952 (the '952 Patent), entitled 20. Response Systems and Methods for Notification Systems for Modifying Future Notifications was issued. The '952 Patent resulted from a divisional application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

On March 17, 2009, U.S. Patent No. 7,504,966 (the '966 Patent), entitled 15 21. 16 Response Systems and Methods for Notification Systems for Modifying Future Notifications was issued. The '966 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

22. On May 5, 2009, U.S. Patent No. 7,528,742 (the '742 Patent), entitled Response System and Methods for Notification Systems for Modifying Future Notifications was issued. The '742 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

23 23. On May 26, 2009, U.S. Patent No. 7,538,691 (the '691 Patent), entitled 24 Mobile Thing Determination Systems and Methods Based upon User-Device Location was issued. The '691 Patent claims priority to the '716 Patent, which had claims invalidated 26 for claiming unpatentable subject matter.

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24. On July 14, 2009, U.S. Patent No. 7,561,069 (the '069 Patent), entitled Notification Systems and Methods Enabling a Response to Change Particulars of Delivery or Pickup was issued. The '069 Patent resulted from a divisional application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter

25. On January 25, 2011, U.S. Patent No. 7,876,239 (the '239 Patent), entitled Secure Notification Messaging Systems and Methods Using Authentication Indicia was issued. The '239 Patent resulted from a continuation application of the '414 Patent, which resulted from a continuation application of the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

26. On November 29, 2011, U.S. Patent No. 8,068,037 (the '037 Patent), entitled Advertisement Systems and Methods for Notification Systems was issued. The '037 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

27. On July 31, 2012, U.S. Patent No. 8,232,899, entitled Notification System and Methods Enabling Selection of Arrival or Departure Times of Tracked Mobile Things in Relation to Locations was issued. U.S. Patent No. 8,232,899 claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

28. On August 14, 2012, U.S. Patent No. 8,242,935 (the '935 Patent), entitled Notification System and Methods Where a Notified PCD Causes Implementation of a Task(s) Based Upon Failure to Receive a Notification was issued. The '935 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

23 29. On October 10, 2012, U.S. Patent No. 8,284,076 (the '076 Patent), entitled
24 Systems and Methods for a Notification System that Enable User Changes to Quantity of
25 Goods and/or Services for Deliver and/or Pickup was issued. The '076 Patent claims
26 priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject
27 matter.

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30. On January 29, 2013, U.S. Patent No. 8,362,927 (the '927 Patent), entitled Advertisement Systems and Methods for Notification Systems was issued. The '927 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

31. On February 5, 2013, U.S. Patent No. 8,368,562 (the '562 Patent), entitled Systems and Methods for a Notification System that Enable User Changes to Stop Location for Delivery and/or Pickup of Good and/or Service was issued. The '562 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

32. On September 10, 2013, U.S. Patent No. 8,531,317 (the '317 Patent), entitled Notification Systems and Methods Enabling Selection of Arrival or Departure Times of Tracked Mobile Things in Relation to Locations was issued. The '317 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

On October 22, 2013, U.S. Patent No. 8,564,459 (the '459 Patent), entitled 33. Systems and Methods for a Notification System that Enable User Changes to Purchase Order Information for Delivery and/or Pickup of Goods and/or Services was issued. The '459 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

2034. On April 29, 2014, U.S. Patent No. 8,711,010 (the '010 Patent), entitled Notification Systems and Methods that Consider Traffic Flow Predicament Data was issued. The '010 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

24 35. Collectively the twenty-two patents identified in paragraphs 12 to 33 are the 25 Patents-in-Suit and the known Eclipse Patent Portfolio.

26 All the Patents-in-Suit are related and claim priority to the '716 Patent. 36. ///

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37. On September 4, 2014, District Court Judge George H. Wu, presiding over the case of Eclipse IP LLC v. McKinley Equipment Corporation, granted the defendant's Motion to Dismiss for Lack of Patentable Subject Matter, and invalidated every claim he was asked to consider from the '681, '110, and '716 Patents. On September 4, 2014, the Court entered a final judgment in favor of the defendant. On October 7, 2014, Eclipse filed a Notice of Appeal to the Federal Circuit. On October 22, 2014, the Federal Circuit dismissed the appeal pursuant to Eclipse's voluntary dismissal.

ECLIPSE'S THREATS AGAINST BALANCE BAR

On November 13, 2014, Matt Olavi of the law firm Olavi Dunne LLP, counsel 38. for Eclipse, sent a letter to Peter B. Wilson, the former CEO/President of Balance Bar (the "Olavi letter").

The Olavi letter asserts that Balance Bar infringes patents in the Eclipse Patent 39. Portfolio, warns that Eclipse "aggressively litigates patent infringement lawsuits," and gave December 18, 2014 as a cutoff date, after which, Eclipse "assume[s] that [Balance Bar is] not interested in resolving this matter without litigation." A true and correct copy of that letter is attached hereto as Exhibit 1.

40. The Olavi letter references the entire Eclipse Patent Portfolio, noting that 18 Eclipse IP has "21 United States patents."

41. In the Olavi letter, Eclipse accuses the "computer-based automated notification systems" and contends that those systems "infringe claims of at least the patents identified below, and may possibly infringe claims of other patents in Eclipse's portfolio."

23 42. The Olavi letter specifically identifies as representative examples of Balance 24 Bar's alleged infringement of the Eclipse Patent Portfolio two patents by patent number: 25 the '716 Patent and U.S. Patent No. 7,479,899.

Eclipse concludes the letter by offering a worldwide license to the entire 43. Eclipse Patent Portfolio and threatens litigation if Balance Bar does not take such a license,

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suggesting that Balance Bar requires a license to the Eclipse Patent Portfolio.

44. Balance Bar receives the software accused by Eclipse from WorldPantry.

45. WorldPantry provides the software accused by Eclipse to Balance Bar and other third parties.

46. WorldPantry has agreed to defend and indemnify Balance Bar with respect to any claims from Eclipse against accused software provided by WorldPantry.

WorldPantry has obligations to defend and indemnify other third parties who 47. receive the software accused by Eclipse.

9 Eclipse's letter, as well as its pattern of aggressive litigation, WorldPantry's 48. indemnification of Balance Bar, and WorldPantry's indemnification obligations to its other 10 11 customers show that there is a substantial controversy between the parties having adverse 12 legal interest, of sufficient immediacy and reality to warrant the issuance of a declaratory 13 judgment.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the

Patents-in-Suit / Eclipse Patent Portfolio)

49. Plaintiffs incorporate by reference and realleges each of the allegations set forth in preceding paragraphs as though fully set forth herein.

All of the claims of the Patents-in-Suit are invalid pursuant to 35 U.S.C. § 101 50. because they purport to claim unpatentable abstract concepts.

51. Based on Eclipse's letter, its threat of litigation for patent infringement, and 22 Eclipse's pattern of litigation, an actual case or controversy exists as to whether Plaintiffs infringes any valid or enforceable claim of the Patents-in-Suit, and Plaintiffs is entitled to a declaration that the claims of the Patents-in-Suit are invalid.

REQUEST FOR RELIEF

Therefore, Plaintiffs requests for judgment:

52. A declaration that the claims of the patents comprising the Eclipse Patent

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1	Portfolio ar	Portfolio are invalid;						
2	53.	That Plaintiffs be awarded their costs of suit;						
3	54.	That the Court declare this to be an exceptional case pursuant to 35 U.S.C. §						
4	285, and av	5, and award Plaintiffs its reasonable attorneys' fees;						
5	55.	For such other relief as the Court deems proper.						
6	Dated: Dec	cember 15, 2014		DURIE TANGRI LLP				
7			D	,				
8			Bv:	/s	<i>/ Daralvn J. Durie</i> Daralyn J. Durie			
9				Attorneys for P	laintiffs			
10		Attorneys for Plaintiffs WORLDPANTRY.COM, INC. AND BALANCE BAR. INC.						
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