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6 Pro Se plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 Douglas M. Shortridge)
10 Plaintiff,)
11 vs.)
12 Foundation Construction Payroll Service, LLC)
(dba: Payroll4Construction.com);)
13 Foundation Software, Inc.;)
14 and,)
15 Associated Builders and Contractors, Inc.)
16 Defendants.)

Case No. 3:14-cv-04850 JCS

FIRST AMENDED COMPLAINT

[Fed. Rules Civ. P. 15(a)(1)(B)]

Jury Trial Demanded

18 Pursuant to Federal Rules of Civil Procedure §15(a)(1)(B) Plaintiff Douglas M.
19 Shortridge amends his original complaint and hereby complains against Foundation Construction
20 Payroll Service, LLC, dba: Payroll4Construction.com; Foundation Software, Inc.; and
21 Associated Builders and Contractors, Inc. alleging:

22 **THE PARTIES**

23
24 1. Douglas M. Shortridge (hereinafter "Shortridge" or "Plaintiff") is an individual
25 whose principal place of business is 3481 Valle Verde Drive, Napa, California 94558.
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27

1 8. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), (c), and 1400(b)
2 because all Defendants have committed acts of patent infringement in this district.

3
4 **INTRADISTRICT ASSIGNMENT**

5 9. Pursuant to Civil L.R. 3-2(c), divisional assignment is unnecessary because this is
6 an intellectual property action.

7
8 **FACTS**

9 10. On June 3, 2014 Patent No. 8,744,933 ("the '933 patent") titled; "Payroll
10 Processing, Certification, Reporting and Project Management System and Method", duly and
11 legally issued. This is the Patent-in-suit of this complaint. A true and correct copy of this patent
12 is attached herein as Exhibit A.

13 11. Shortridge is the inventor and sole owner of the '933 patent and is a subject
14 matter expert in public works construction prevailing wage law regarding reporting, fraud
15 detection, and enforcement.

16 12. P4C and Foundation are each majority owned and operated under the same
17 management leadership jointly. Both entities share at least one employee and one officer
18 working concurrently in each entity on a regular and consistent basis. The CEO for each entity is
19 Frederick J. Ode.

20 13. P4C is an outsourced payroll processing service entity which is "powered by"
21 Foundation construction accounting software according to P4C's public advertisement.

22 14. Foundation construction accounting software is the software product developed,
23 maintained, and sold by Foundation.

24 15. Presently there are at least nine additional entities registered in the State of Ohio
25 listing Frederick J. Ode as agent/incorporator which include:

26 #1961426 "PayrollForConstruction.com LLC", Effective 09/07/2010 (Active);

27 #1436157 "Construction Research Corporation", Effective 01/20/2004 (Active);

1 #953703 "Construction Accounting Systems LTD", Effective 12/04/2003 (Active);
2 #701029 "Foundation Enterprises, Inc.", Effective 05/13/1987 (Cancelled);
3 #754217 "Foundation Software Systems, Inc.", Effective 07/31/1989 (Cancelled);
4 #1866318 "Ode Development LLC", Effective 06/25/2009 (Active);
5 #1637780 "Ode Realty, LLC", Effective 07/26/2006 (Active);
6 #1013118 "Matt and Fred Realty, LTD.", Effective 12/04/2003 (Active);
7 #1872735 "Adam's Auto Body & Repair, LLC", Effective 07/28/2009 (Dead).

8
9 16. P4C and Foundation have jointly developed and implemented a payroll
10 processing system and method for outsourced payroll services in multiple jurisdictions, and for a
11 clientele which includes construction contractors performing upon government tax payer funded
12 projects commonly known as "public works" or "prevailing wage projects".

13 17. As of June 3, 2014 P4C and Foundation offers their outsourced payroll processing
14 service to construction contractors in all the United States, both directly and through a third party
15 vendor partner agreement with Defendant ABC.

16 18. P4C and Foundation's joint effort focus of outsourced payroll service offering is
17 to construction contractors, at least some of which regularly or occasionally perform on "public
18 works" projects.

19 19. ABC is a trade association organization for merit-shop (nonunion) contractors
20 with chapters throughout the United States.

21 20. ABC offers to select companies a "Strategic Partner Program" which provides
22 these companies direct sales access to the ABC membership for various things such as wireless
23 phone service, uniforms service, drug and background screening, insurance, fringe benefit
24 management plans, and payroll processing.

25 21. ABC states on its website it generates funds from the Strategic Partner Program to
26 "...support ABC activities...".

27 22. The sole "Strategic Partner" for outsourced payroll services on ABC's website is
28 P4C (which is "powered by" Foundation).

1
2 23. On March 2, 2012 P4C President Mike Ode contacted Shortridge via Email to
3 invite a discussion based on Shortridge's LinkedIn profile which included information about the
4 pending application of the '933 patent.

5
6 **Count One**

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8 24. Shortridge incorporates the allegations in paragraphs 1 through 23 as if fully set
9 forth herein.

10 25. P4C, jointly and in concert with Foundation, has directly infringed and continues
11 to directly infringe, strictly or under the Doctrine of Equivalents, one or more of the Claims of
12 the '933 Patent in violation of 35 U.S.C. §271 by making, using, selling, and implementing a
13 system and method that processes payroll for public works construction contractors operating in
14 several and multiple jurisdictions and creates project-specific payroll records and management
15 reports, at least some of which are in accordance with the rules of the various projects
16 jurisdictions.

17 26. Foundation, jointly and in concert with P4C, has directly infringed and continues
18 to directly infringe, strictly or under the Doctrine of Equivalents, one or more of the Claims of
19 the '933 Patent in violation of 35 U.S.C. §271 by making, using, selling, and implementing a
20 system and method that processes payroll for public works construction contractors operating in
21 several jurisdictions and creates project-specific payroll records and management reports, at least
22 some of which are in accordance with the rules of the various projects jurisdictions.

23 27. P4C and Foundation, jointly and in concert, and each separately and
24 independently, offer(s) for sale and sells in the United States, through a strategic partnership with
25 ABC, the P4C and Foundation combination payroll processing service which includes
26 implementation of the method and system covered by one or more claims of the '933 Patent.
27

1 Defendants' actions constitute infringement, strictly or under the Doctrine of Equivalents, of the
2 '933 Patent in violation of 35 U.S.C. §271.

3 28. Based on information and belief, P4C and Foundation will continue to directly
4 infringe, strictly or under the Doctrine of Equivalents, the '933 Patent.

5 29. P4C and Foundation's direct infringement, strictly or under the Doctrine of
6 Equivalents, has caused damage to Plaintiff and he is entitled to recover from P4C and
7 Foundation the damages sustained as a result of its wrongful acts in an amount subject to proof at
8 trial. Defendants P4C and Foundation's infringement of Shortridge's exclusive rights under the
9 '933 Patent will continue to damage Shortridge's business, causing irreparable harm for which
10 there is no adequate remedy at law, unless it is enjoined by this Court.

11 30. P4C and Foundation were cognizant of the pending application of the '933 Patent
12 since at least March 2, 2012, and enjoyed the benefit of reviewing the public file of the
13 application to further develop their outsourced payroll processing system and method which
14 directly infringes the '933 Patent. This constitutes willful infringement. Pursuant to 35 U.S.C.
15 §284 up to three times the amount of damages found or assessed applies in this case.

16
17 **Count Two**

18 31. Shortridge incorporates the allegations in paragraphs 1 through 30 as if fully set
19 forth herein.

20 32. ABC offers for sale and sells the payroll service of the combination of P4C and
21 Foundation under its "Strategic Partner Program" and in so doing, generates revenue for its own
22 benefit. This action is in accordance with ABC's agreement with Defendant(s) P4C and/or
23 Foundation, whether this agreement is with either entity, individually, independently, jointly or
24 severally. This action constitutes direct patent infringement of the '933 patent in violation of 35
25 U.S.C. §271.

PRAYER FOR RELIEF

33. Shortridge respectfully requests that the Court enter a final judgment granting the following relief:

a. Finding that Defendant P4C has infringed and will continue to infringe the '933 Patent;

b. Finding that Defendant P4C has willfully infringed the '933 Patent;

c. Finding that Defendant Foundation has infringed and will continue to infringe the '933 Patent;

d. Finding that Defendant Foundation has willfully infringed the '933 Patent;

e. Finding that Defendant ABC has infringed and will continue to infringe the '933 Patent;

f. For accounting of all damages sustained by Shortridge as a result of the act of patent infringement of the '933 patent by Defendant P4C;

g. For accounting of all damages sustained by Shortridge as a result of the act of patent infringement of the '933 patent by Defendant Foundation;

h. For accounting of all damages sustained by Shortridge as a result of the act of patent infringement of the '933 patent by Defendant ABC;

i. For actual damages together with prejudgment interest against Defendant P4C as a result of its acts of infringement of the '933 patent;

j. For an assessment of treble the actual damages attributed to Defendant P4C due to finding of willful infringement;

k. For actual damages together with prejudgment interest against Defendant Foundation as a result of its acts of infringement of the '933 patent;

l. For an assessment of treble the actual damages attributed to Defendant Foundation due to finding of willful infringement;

1 m. For actual damages together with prejudgment interest against Defendant ABC as
2 a result of its acts of infringement of the '933 patent;

3 n. For a permanent injunction against Defendant P4C regarding infringement of the
4 '933 Patent;

5 o. For a permanent injunction against Defendant Foundation regarding infringement
6 of the '933 Patent;

7 p. For a permanent injunction against Defendant ABC regarding infringement of the
8 '933 Patent;

9 q. For all costs of suit, prejudgment interest, and post-judgment interest as allowed
10 by law; and,

11 r. For such other and further relief as the Court may deem just and proper.
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13 **DEMAND FOR JURY TRIAL**

14 34. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Shortridge demands a
15 trial by jury of all matters.
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22 Dated: December 16, 2014

Respectfully submitted,

/s/ Douglas M. Shortridge

24 _____
25 Douglas M. Shortridge – Plaintiff In Pro Se
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