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10 Attorneys for Plaintiff  
11 TIGER FITNESS, INC.

12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 TIGER FITNESS, INC.,  
15 Plaintiff,  
16 v.  
17 ECLIPSE IP, LLC,  
18 Defendant.

Case No.: 2:15-cv-01566

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Tiger Fitness, Inc. (“Plaintiff” or “Tiger Fitness”) complains as  
2 follows:

3 **NATURE OF ACTION**

4 1. This is an action seeking Declaratory Judgment that twenty-two United  
5 States Patent (“Patents-in-Suit” or “Eclipse Patent Portfolio”), which are owned by  
6 Defendant Eclipse IP, LLC (“Eclipse” or “Defendant”), have not been infringed by  
7 Plaintiff and are invalid.

8 2. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§  
9 2201 and 2202, and the Patent Laws of the United States, Title 35 of the United  
10 States Code.

11 **THE PARTIES**

12 3. Tiger Fitness is an Ohio corporation and a leading nutrition and  
13 supplement mail order company.

14 4. On information and belief, Eclipse purports to be a Texas limited  
15 liability company with a place of business at 711 SW 24th, Boyton Beach, Florida  
16 33435. On information and belief, Eclipse is the owner of the Patents-in-Suit.

17 5. Eclipse is in the business of patent licensing through the threat of  
18 litigation.

19 6. A key part of Eclipse’s business model is sending letters, emails, and  
20 making telephone calls threatening patent litigation and following through on that  
21 threat.

22 **JURISDICTION AND VENUE**

23 7. The Court has subject matter jurisdiction of this action under 28 U.S.C.  
24 §§ 1331 and 1338(a) in that it arises under the United States Patent Laws.

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

1           9.       Eclipse has filed at least 36 cases asserting patent infringement in this  
2 District, and litigated the Patents-in-Suit in this judicial district 44 times.

3           10.       Eclipse has been involved in 144 lawsuits involving the Eclipse Patent  
4 Portfolio nationwide.

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

6                               **PATENTS-IN-SUIT / ECLIPSE PATENT PORTFOLIO**

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

11           13.       On June 20, 2006, U.S. Patent No. 7,064,681 (the ‘681 Patent), entitled  
12 Response Systems and Methods for Notification Systems was issued. The ‘681  
13 Patent resulted from a continuation application of the ‘716 Patent’s application.  
14 Claims 1, 3, 4, and 6 of the ‘681 Patent were found to be invalid for failing to satisfy  
15 35 U.S.C. § 101.

16           14.       On September 26, 2006, U.S. Patent No. 7,113,110 (the ‘110 Patent),  
17 entitled Stop List Generation Systems and Methods Based upon Tracked PCD’s and  
18 Responses from Notified PCD’s was issued. The ‘110 Patent resulted from a  
19 continuation application of the ‘716 Patent’s application. Claims 1, 2, 7, and 8 of the  
20 ‘110 Patent were found to be invalid for failing to satisfy 35 U.S.C. § 101.

21           15.       On January 15, 2008, U.S. Patent No. 7,319,414 (the ‘414 Patent),  
22 entitled Secure Notification Messaging Systems and Methods Using Authentication  
23 Indicia was issued. The ‘414 Patent resulted from a continuation application of the  
24 ‘716 Patent, which had claims invalidated for claiming unpatentable subject matter.

25           16.       On January 20, 2009, U.S. Patent No. 7,479,899 (the ‘9,899 Patent),  
26 entitled Notification Systems and Methods Enabling a Response to Cause  
27 Connection Between a Notified PCD and a Delivery or Pickup Representative was  
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1 issued. The ‘9,899 Patent resulted from a continuation application of the ‘716  
2 Patent, which had claims invalidated for claiming unpatentable subject matter.

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

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

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

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

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

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

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

6           24. On January 25, 2011, U.S. Patent No. 7,876,239 (the ‘239 Patent),  
7 entitled Secure Notification Messaging Systems and Methods Using Authentication  
8 Indicia was issued. The ‘239 Patent resulted from a continuation application of the  
9 ‘414 Patent, which resulted from a continuation application of the ‘716 Patent,  
10 which had claims invalidated for claiming unpatentable subject matter.

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

15           26. On July 31, 2012, U.S. Patent No. 8,232,899 (the ‘2,899 Patent),  
16 entitled Notification System and Methods Enabling Selection of Arrival or  
17 Departure Times of Tracked Mobile Things in Relation to Locations was issued.  
18 The ‘2,899 Patent claims priority to the ‘716 Patent, which had claims invalidated  
19 for claiming unpatentable subject matter.

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

25           28. On October 10, 2012, U.S. Patent No. 8,284,076 (the ‘076 Patent),  
26 entitled Systems and Methods for a Notification System that Enable User Changes  
27 to Quantity of Goods and/or Services for Deliver and/or Pickup was issued. The  
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1 '076 Patent claims priority to the '716 Patent, which had claims invalidated for  
2 claiming unpatentable subject matter.

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

7 30. On February 5, 2013, U.S. Patent No. 8,368,562 (the '562 Patent),  
8 entitled Systems and Methods for a Notification System that Enable User Changes  
9 to Stop Location for Delivery and/or Pickup of Good and/or Service was issued. The  
10 '562 Patent claims priority to the '716 Patent, which had claims invalidated for  
11 claiming unpatentable subject matter.

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

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

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

26 34. Collectively the twenty-two patents identified in paragraphs 12 to 33  
27 are the Patents-in-Suit and the known Eclipse Patent Portfolio.  
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1 35. All the Patents-in-Suit are related and claim priority to the ‘716 Patent.

2 **ECLIPSE’S THREATS AGAINST TIGER FITNESS**

3 36. On or about January 28, 2015, Matt Olavi of the law firm Olavi Dunne  
4 LLP, counsel for Eclipse, sent a letter to Chad Vordemesche, CEO of Tiger Fitness,  
5 at Tiger Fitness’s Mason, Ohio offices (the “Olavi letter”).

6 37. The Olavi letter asserts that Tiger Fitness infringes the Eclipse Patent  
7 Portfolio, warns that Eclipse “aggressively litigates patent infringement lawsuits,”  
8 and gave March 4, 2015 as a cutoff date, after which, Eclipse “assume[s] that [Tiger  
9 Fitness is] not interested in resolving this matter without litigation.” A true and  
10 correct copy of that letter is attached hereto as Exhibit A.

11 38. In the Olavi letter, Eclipse alleges that the “electronic messaging  
12 features of [Tiger Fitness’s] online ordering system” infringes the claims of the  
13 Eclipse Patents,” and provides two claims as representative examples of Tiger  
14 Fitness’s alleged infringement of the Eclipse Patent Portfolio.

15 39. Eclipse concludes the letter by offering a worldwide license to the  
16 entire Eclipse Patent Portfolio in exchange for \$45,000 or threatening litigation.

17 40. However, on September 4, 2014, District Court Judge George H. Wu,  
18 presiding over the case of *Eclipse IP LLC v. McKinley Equipment Corporation*,  
19 granted the defendant’s Motion to Dismiss for Lack of Patentable Subject Matter,  
20 and invalidated every claim he was asked to consider from the ‘681, ‘110, and ‘716  
21 Patents. This included invalidating the asserted claims of one of the patents Eclipse  
22 used as a representative example of Tiger Fitness’s alleged infringement of the  
23 Eclipse Patent Portfolio.

24 41. Eclipse’s first representative example of Tiger Fitness’s alleged  
25 infringement was Claim 21 of the ‘716 Patent. This claim is nearly  
26 indistinguishable from the now invalid Claims 1 and 18 of the ‘716 Patent except  
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1 that it is directed to updating contact information as opposed to completing tasks  
2 generally.

3 42. Eclipse’s second representative example of Tiger Fitness’s alleged  
4 infringement was Claim 1 of the ‘9,899 Patent. This claim is nearly  
5 indistinguishable from the now invalid Claim 1 of the ‘110 Patent except that the  
6 communication is with a singular personal communication device instead of  
7 communicating with a plurality of personal communication devices.

8 43. On or about March 3, 2015, Edward Turnbull, an individual associated  
9 with Eclipse, sent an e-mail to Mr. Vordemesche enclosing another copy of the  
10 Olavi letter. He followed up with an email on March 3, 2015, to Mr. Vordemesche,  
11 stating that Tiger Fitness “will be moved into line for litigation Monday” (the  
12 “Turnbull litigation threat email”).

13 44. The Turnbull litigation threat email reaffirms Eclipse’s aggressive  
14 posture, and concludes with the threat that litigation is imminent.

15 45. Eclipse’s letter and email, as well as pattern of aggressive litigation  
16 show that there is a substantial controversy between the parties having adverse legal  
17 interest, of sufficient immediacy and reality to warrant the issuance of a declaratory  
18 judgment.

19 **FIRST CLAIM FOR RELIEF**

20 **(Declaratory Judgment of Non-Infringement of the**  
21 **Patents-in-Suit / Eclipse Patent Portfolio)**

22 46. Tiger Fitness incorporates by reference and realleges each of the  
23 allegations set forth in the preceding paragraphs as though fully set forth herein.

24 47. Tiger Fitness’s online ordering system does not infringe the Patents-in-  
25 Suit, directly or indirectly.



1 48. Tiger Fitness is not infringing, and has never infringed, any valid claim  
2 of the Patents-in-Suit either directly or indirectly, literally or under the doctrine of  
3 equivalents.

4 49. Tiger Fitness is entitled to a judgment declaring that it has never  
5 infringed and is not infringing any valid claim of the Patents-in-Suit.

6 **SECOND CLAIM FOR RELIEF**

7 **(Declaratory Judgment of Invalidity of the**  
8 **Patents-in-Suit / Eclipse Patent Portfolio)**

9 50. Tiger Fitness incorporates by reference and realleges each of the  
10 allegations set forth in preceding paragraphs as though fully set forth herein.

11 51. All of the claims of the Patents-in-Suit are invalid under the United  
12 States Patent Act, including pursuant to 35 U.S.C. §§ 101, 102, 103, and 112.

13 52. All of the claims of the Patents-in-Suit are invalid pursuant to 35  
14 U.S.C. § 101 because they purport to claim unpatentable abstract concepts. For  
15 example, some of the claims of the '716 Patent are directed to the abstract idea of  
16 assigning someone to perform a task and then waiting until they complete it.

17 53. All of the claims of the Patents-in-Suit are invalid pursuant to 35  
18 U.S.C. §§ 102 and/or 103 because they are anticipated or rendered obvious by prior  
19 art.

20 54. All of the claims of the Patents-in-Suit are invalid pursuant to 35  
21 U.S.C. § 112 because they are indefinite, not enabled, or lack sufficient written  
22 description.

23 55. Based on Eclipse's letter and email to Tiger Fitness, its threat of  
24 litigation for patent infringement of the entire Eclipse Patent Portfolio, Eclipse's  
25 pattern of litigation, and Tiger Fitness's denial of infringement, an actual case or  
26 controversy exists as to whether Tiger Fitness infringes any valid or enforceable  
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1 claim of the Patents-in-Suit, and Tiger Fitness is entitled to a declaration that the  
2 claims of the Patents-in-Suit are invalid.

3 **REQUEST FOR RELIEF**

4 Therefore, Tiger Fitness requests for judgment:

- 5 1. That Tiger Fitness has not infringed any claim of the patents in the  
6 Eclipse Patent Portfolio;
- 7 2. That the claims of the patents comprising the Eclipse Patent Portfolio  
8 are invalid;
- 9 3. That Tiger Fitness be awarded its costs of suit, and pre- and post-  
10 judgment interest on any money judgment;
- 11 4. That the Court declare this to be an exceptional case pursuant to 35  
12 U.S.C. § 285, and award Tiger Fitness its reasonable attorney's fees;
- 13 5. For such other relief as the Court deems proper.

14  
15 Dated: March 4, 2015

Respectfully submitted,

16 */s/ Brian E. Mitchell*

17 Brian E. Mitchell

18 Brian E. Mitchell  
19 Marcel F. De Armas  
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27 Attorneys for Plaintiff  
28 TIGER FITNESS, INC.

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims as to which it has a right to a jury.

Dated: March 4, 2015

Respectfully submitted,

/s/ Brian E. Mitchell

Brian E. Mitchell

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