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1 2 3 4 5 6 7 8 9 10	MITCHELL + COI Brian E. Mitchell (S brian.mitchell@mc Marcel F. De Arma mdearmas@mcolar 4 Embarcadero Cer San Francisco, Cali Tel: 415-766-3514 Fax: 415-402-0058 Attorneys for Plain FOURSEVENS LL	SBN 190095) olawoffices.c s (SBN 2892 woffices.com nter, Suite 140 fornia 94111	om 82)		
11	UNITED STATES DISTRICT COURT				
12	FOR THE CENTRAL DISTRICT OF CALIFORNIA				
13 14 15 16	FOURSEVENS LL Plainti v. ECLIPSE IP, LLC,	aintiff,		Case No.: 15-cv-3923 Complaint for Declaratory Judgment	
17	Defen	dant.	DE	MAND FOR JUR	Y TRIAL
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Plaintiff FOURSEVENS LLC ("Plaintiff" or "FOURSEVENS") complains as
 follows:
 <u>NATURE OF ACTION</u>
 This is an action seeking Declaratory Judgment that twenty-four United

This is an action seeking Declaratory Judgment that twenty-four United
 States Patents ("Patents-in-Suit" or "Eclipse Patent Portfolio"), which are owned by
 Defendant Eclipse IP, LLC ("Eclipse" or "Defendant"), have not been infringed by
 Plaintiff are invalid and unenforceable.

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.

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THE PARTIES

3. FOURSEVENS is a Georgia company that specializes in LED
illumination and a leading innovator that is constantly pushing the boundaries of
LED technology, design, and performance.

4. On information and belief, Eclipse is a Florida limited liability
company with a principal place of business at 115 NW 17th Street, Delray Beach,
Florida 33444. On information and belief, Eclipse is the owner of the Patents-inSuit.

19 5. Eclipse is in the business of patent licensing through the threat of20 litigation.

6. 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.

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JURISDICTION AND VENUE

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

8. 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.

4 9. Eclipse has filed at least 36 cases asserting patent infringement in this
5 District, and litigated the Patents-in-Suit in this judicial district 47 times.

6 10. Eclipse has been involved in 178 lawsuits involving the Eclipse Patent
7 Portfolio nationwide.

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PATENTS-IN-SUIT / ECLIPSE PATENT PORTFOLIO

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

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

14 13. On June 20, 2006, U.S. Patent No. 7,064,681 (the '681 Patent), entitled
15 Response Systems and Methods for Notification Systems was issued. The '681
16 Patent resulted from a continuation application of the '716 Patent's application.
17 Claims 1, 3, 4, and 6 of the '681 Patent were found to be invalid for failing to satisfy
18 35 U.S.C. § 101.

19 14. On September 26, 2006, U.S. Patent No. 7,113,110 (the '110 Patent),
20 entitled Stop List Generation Systems and Methods Based upon Tracked PCD's and
21 Responses from Notified PCD's was issued. The '110 Patent resulted from a
22 continuation application of the '716 Patent's application. Claims 1, 2, 7, and 8 of the
23 '110 Patent were found to be invalid for failing to satisfy 35 U.S.C. § 101.

24 15. On January 15, 2008, U.S. Patent No. 7,319,414 (the '414 Patent),
25 entitled Secure Notification Messaging Systems and Methods Using Authentication
26 Indicia was issued. The '414 Patent resulted from a continuation application of the
27 '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

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

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

10 18. On January 20, 2009, U.S. Patent No. 7,479,901 (the '901 Patent),
11 entitled Mobile Thing Determination Systems and Methods Based upon User12 Device Location was issued. The '901 Patent claims priority to the '716 Patent,
13 which had claims invalidated for claiming unpatentable subject matter.

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

20. On March 17, 2009, U.S. Patent No. 7,504,966 (the '966 Patent),
entitled 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.

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

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1 22. On May 26, 2009, U.S. Patent No. 7,538,691 (the '691 Patent), entitled 2 Mobile Thing Determination Systems and Methods Based upon User-Device 3 Location was issued. The '691 Patent claims priority to the '716 Patent, which had 4 claims invalidated for claiming upatentable subject matter.

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On July 14, 2009, U.S. Patent No. 7,561,069 (the '069 Patent), entitled 23. 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 8 upatentable subject matter

10 24. On January 25, 2011, U.S. Patent No. 7,876,239 (the '239 Patent), 11 entitled Secure Notification Messaging Systems and Methods Using Authentication 12 Indicia was issued. The '239 Patent resulted from a continuation application of the 13 '414 Patent, which resulted from a continuation application of the '716 Patent, 14 which had claims invalidated for claiming unpatentable subject matter.

15 25. On November 29, 2011, U.S. Patent No. 8,068,037 (the '037 Patent), 16 entitled Advertisement Systems and Methods for Notification Systems was issued. 17 The '037 Patent claims priority to the '716 Patent, which had claims invalidated for 18 claiming unpatentable subject matter.

19 On July 31, 2012, U.S. Patent No. 8,232,899 (the '2,899 Patent), 26. 20 entitled Notification System and Methods Enabling Selection of Arrival or 21 Departure Times of Tracked Mobile Things in Relation to Locations was issued. 22 The '2,899 Patent claims priority to the '716 Patent, which had claims invalidated 23 for claiming unpatentable subject matter.

24 27. On August 14, 2012, U.S. Patent No. 8,242,935 (the '935 Patent), 25 entitled Notification System and Methods Where a Notified PCD Causes 26 Implementation of a Task(s) Based Upon Failure to Receive a Notification was

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issued. The '935 Patent claims priority to the '716 Patent, which had claims
 invalidated for claiming unpatentable subject matter.

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

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

30. 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.

31. 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.

32. On October 22, 2013, U.S. Patent No. 8,564,459 (the '459 Patent),
entitled 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.

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33. 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.

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34. On April 21, 2015, U.S. Patent No. 9,013,334 B2 (the '334 Patent), entitled Notification Systems and Methods that Permit Change of Quantity for Delivery and/or Pickup of Goods and/or Services was issued. The '334 Patent claims priority to the '716 Patent, which had claims invalidated for claiming unpatentable subject matter.

35. On April 28, 2015, U.S. Patent No. 9,019,130 B2 (the '130 Patent),
entitled Notification Systems and Methods that Permit Change of Time Information
for Delivery and/or Pickup of Goods and/or Services was issued. The '130 Patent
claims priority to the '716 Patent, which had claims invalidated for claiming
unpatentable subject matter.

36. Collectively the twenty-four patents identified in paragraphs 12 to 35
are the Patents-in-Suit and the known Eclipse Patent Portfolio.

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ECLIPSE'S THREATS AGAINST FOURSEVENS

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

19 38. Upon information and belief, on or about March 4, 2015, Matt Olavi of
20 the law firm Olavi Dunne LLP, counsel for Eclipse, sent a letter to, FOURSEVENS,
21 at FOURSEVENS' Kennesaw, Georgia offices (the "Olavi letter").

22 belief the Olavi letter 39. Upon information and asserts that FOURSEVENS infringes the Eclipse Patent Portfolio, warns that Eclipse 23 24 "aggressively litigates patent infringement lawsuits," and gave a cutoff date prior to April 17, 2015, after which, Eclipse "assume[s] that [FOURSEVENS is] not 25 26 interested in resolving this matter without litigation."

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40. Upon information and belief, Eclipse alleges in the Olavi letter that the
 "electronic messaging features of [FOURSEVENS'] online ordering system"
 infringes the claims of the Eclipse Patents," and provides three claims as
 representative examples of FOURSEVENS' alleged infringement of the Eclipse
 Patent Portfolio.

6 41. On September 4, 2014, District Court Judge George H. Wu, presiding
7 over the case of *Eclipse IP LLC v. McKinley Equipment Corporation*, granted the
8 defendant's Motion to Dismiss for Lack of Patentable Subject Matter, and
9 invalidated every claim he was asked to consider from the '681, '110, and '716
10 Patents ("Judge Wu's Order"). This included invalidating the asserted claims of one
11 of the patents Eclipse used as a representative example of FOURSEVENS' alleged
12 infringement of the Eclipse Patent Portfolio.

42. Upon information and belief, Eclipse's first representative example of
FOURSEVENS' alleged infringement was Claim 1 of the '239 Patent. This claim is
extremely similar to the now invalid Claim 41 of the '716 Patent, except that it
requires the party to have authentication information.

43. Upon information and belief, Eclipse's second representative example
of FOURSEVENS' alleged infringement was Claim 21 of the '716 Patent. This
claim is nearly indistinguishable from the now invalid Claims 1 and 18 of the '716
Patent except that it is directed to updating contact information as opposed to
completing tasks generally.

44. Upon information and belief, Eclipse's third representative example of
FOURSEVENS' alleged infringement was Claim 1 of the '9,899 Patent. This claim
is similar to the now invalid Claim 1 of the '110 Patent except that the
communication is with a singular personal communication device instead of
communicating with a plurality of personal communication devices.

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45. These three representative examples were provided after Judge Wu had
 ruled nearly identical claims invalid.

46. Upon information and belief, Eclipse concludes the letter by offering a
worldwide license to the entire Eclipse Patent Portfolio in exchange for \$45,000 or
threatening litigation.

47. On or about April 17, 2015, Eclipse filed a complaint for patent
infringement in the United States District court for the District of New Jersey—case
number 1:15-cv-02794 ("New Jersey Litigation")—asserting the '239, '716, and
'9,899 Patents.

48. Upon information and belief, Eclipse intentionally asserted less than
the patents it offered to license so as not to risk the Court invalidating the entire
Eclipse Patent Portfolio.

13 49. Upon information and belief, Eclipse has no connection to New Jersey. Upon information and belief, Scott Horstemeyer, the inventor of the Patents-in-Suit, 14 15 is located in Atlanta, Georgia. Upon information and belief, Eclipse is a Florida company with a principal place of business in Boynton Beach, Florida. Upon 16 17 information and belief, Pete A Sirianni III, Eclipse's managing partner and 18 registered agent, is located in Delray Beach, Florida. Upon information and belief, Edward Turnbull, Eclipse's licensing agent, is located in Vancouver, Canada. Upon 19 20 information and belief, Matt Olavi, Partner at Olavi Dunne LLP and Eclipse's 21 counsel, is located in Los Angeles, California.

50. Eclipse's letter, its pattern of aggressive litigation, and willingness to
file litigation against FOURSEVENS show that there is a substantial controversy
between the parties having adverse legal interest, of sufficient immediacy and reality
to warrant the issuance of a declaratory judgment.

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ECLIPSE'S FAILURE TO DISCLOSE INFORMATION MATERIAL TO PATENTABILITY

2 51. Upon information and belief, Eclipse knowingly failed to disclose 3 material information to the United State Patent and Trademark Office ("PTO") 4 during the prosecution of the '334 and '130 Patents.

Upon information and belief, Eclipse intentionally did not disclose 5 52. 6 Judge Wu's Order to the PTO during the prosecution of the '334 and '130 Patents.

7 53. The reasoning in Judge Wu's Order directly applies to the '334 and 8 '130 Patents. Specifically Judge Wu reasoned that "the mere recitation of a generic 9 computer cannot transform a patent-ineligible abstract idea into a patent-eligible 10 invention'... [n]or can the generic recitation to 'a transportation vehicle' save the claims." 11

Eclipse's independent claims in the '334 Patent—Claims 1 and 11—are 12 54. similar to the now invalid Claims 1 and 18 of the '716 Patent except that they are 13 directed to updating quantity information necessary for completing a task as 14 15 opposed to completing tasks generally.

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Eclipse's independent claims in the '130 Patent—Claims 1 and 11—are 55. 17 similar to the now invalid Claims 1 and 18 of the '716 Patent except that they are 18 directed to updating the time information for completing a task as opposed to 19 completing tasks generally.

20 56. Eclipse's independent claims in the '334 Patent—Claims 1 and 11—are 21 like to the now invalid Claim 1 of the '110 Patent except that it adds a second 22 communication to update quantity information.

23 57. Eclipse's independent claims in the '130 Patent—Claims 1 and 11—are 24 like to the now invalid Claim 1 of the '110 Patent except that it adds a second 25 communication to update time information.

26 58. By offering a license to or threatening litigation on the entire Eclipse Patent Portfolio and providing representative examples of FOURSEVENS' alleged 27

infringement of the Eclipse Patent Portfolio, Eclipse has threatened to assert claims 1 2 against FOURSEVENS for alleged infringement of one or more claims from each

3	and every Patent-in-Suit, including the '334 and '130 Patents.			
4	FIRST CLAIM FOR RELIEF			
5	(Declaratory Judgment of Non-Infringement of the			
6	Patents-in-Suit / Eclipse Patent Portfolio)			
7	59. FOURSEVENS incorporates by reference and realleges each of the			
8	allegations set forth in the preceding paragraphs as though fully set forth herein.			
9	60. FOURSEVENS' online ordering system does not infringe the Patents-			
10	in-Suit, directly or indirectly.			
11	61. FOURSEVENS is not infringing, and has never infringed, any valid			
12	claim of the Patents-in-Suit either directly or indirectly, literally or under the			
13	doctrine of equivalents.			
14	62. FOURSEVENS is entitled to a judgment declaring that it has never			
15	infringed and is not infringing any valid claim of the Patents-in-Suit.			
16	SECOND CLAIM FOR RELIEF			
17	(Declaratory Judgment of Invalidity of the			
18	Patents-in-Suit / Eclipse Patent Portfolio)			
19	63. FOURSEVENS incorporates by reference and realleges each of the			
20	allegations set forth in preceding paragraphs as though fully set forth herein.			
21	64. All of the claims of the Patents-in-Suit are invalid under the United			
22	States Patent Act, including pursuant to 35 U.S.C. §§ 101, 102, 103, and 112.			
23	65. All of the claims of the Patents-in-Suit are invalid pursuant to 35			
24	U.S.C. § 101 because they purport to claim unpatentable abstract concepts. For			
25	example, some of the claims of the '716 Patent are directed to the abstract idea of			
26	assigning someone to perform a task and then waiting until they complete it.			
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28	11 COMPLAINT FOR DECLARATORY JUDGMENT			
	COMI LAINT FOR DECLARATOR I JUDOMENT			

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

4 67. All of the claims of the Patents-in-Suit are invalid pursuant to 35
5 U.S.C. § 112 because they are indefinite, not enabled, or lack sufficient written
6 description.

68. Based on Eclipse's letter, its threat of litigation for patent infringement
of the entire Eclipse Patent Portfolio, Eclipse's pattern of litigation, and
FOURSEVENS' denial of infringement, an actual case or controversy exists as to
whether FOURSEVENS infringes any valid or enforceable claim of the Patents-inSuit, and FOURSEVENS is entitled to a declaration that the claims of the Patentsin-Suit are invalid.

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THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Unenforceability Based on Inequitable Conduct)

15 69. FOURSEVENS incorporates by reference and realleges each of the
16 allegations set forth in the preceding paragraphs as though fully set forth herein.

17 70. Judge Wu's Order is information material to the patentability of the
18 '334 and '130 Patents.

19 71. Upon information and belief, Eclipse knew that Judge Wu's Order was
20 material to patentability, knew withholding such information was a violation of its
21 duty of candor toward the PTO, and intended to deceive the PTO by withholding
22 such information.

23 72. Upon information and belief, had Judge Wu's Order been properly
24 disclosed to the PTO the '334 Patent would not have issued.

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73. Upon information and belief, had Judge Wu's Order been properly
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disclosed to the PTO the '130 Patent would not have issued.

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74. Because of the inequitable conduct during prosecution, the '334 and
 '130 Patents are unenforceable. Because the inequitable conduct related to the
 invalidity of claims in the '716 Patent, among others, and the '334 and '130 Patents
 claim priority to the '716 Patent, all related patents that claim priority to the '716
 Patent are also rendered unenforceable.

75. Based on Eclipse's inequitable conduct and the existence of an actual
case or controversy as to whether FOURSEVENS infringes any claim of the
Patents-in-Suit, FOURSEVENS is entitled to a declaration that the claims of the
Patents-in-Suit are unenforceable.

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REQUEST FOR RELIEF

Therefore, FOURSEVENS requests for judgment:

12 1. That FOURSEVENS has not infringed any claim of the patents in the
13 Eclipse Patent Portfolio;

14 2. That the claims of the patents comprising the Eclipse Patent Portfolio
15 are invalid;

16 3. That the claims of the patents comprising the Eclipse Patent Portfolio
17 are unenforceable;

18 4. That FOURSEVENS be awarded its costs of suit, and pre- and post19 judgment interest on any money judgment;

20 5. That the Court declare this to be an exceptional case pursuant to 35
21 U.S.C. § 285, and award FOURSEVENS its reasonable attorney's fees;

6. For such other relief as the Court deems proper.

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1	DEMA	DEMAND FOR JURY TRIAL				
2	Plaintiff demands a jury trial on al	l claims as to which it has a right to a jury.				
3	B Dated: May 22, 2015	Respectfully submitted,				
4		/s/ Brian E. Mitchell				
5	5	Brian E. Mitchell				
6	5	Brian E. Mitchell Marcel F. De Armas				
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