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Attorneys for Plaintiff Eclipse IP LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ECLIPSE IP LLC, a Florida Limited Liability Company,	) Case No. 2:13-cv-07153-SJO-JC
	)
	) **FIRST AMENDED COMPLAINT**
Plaintiff,	) **FOR PATENT INFRINGEMENT**
	)
v.	) **TRIAL BY JURY DEMANDED**
	)
RIDECHARGE, INC., a Delaware Corporation,	)
	)
	)
Defendant.	)
	)

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Eclipse IP LLC ("Eclipse"), by and through counsel, complains against RideCharge, Inc. ("RideCharge") as follows:

NATURE OF LAWSUIT

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

PARTIES AND PATENTS

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

3.   Eclipse owns all right, title, and interest in and has standing to sue for infringement of United States Patent No. 7,064,681 ("the '681 patent"), entitled "Response systems and methods for notification systems" (Exhibit A) and United States Patent No. 7,538,691 ("the '691 patent"), entitled "Mobile thing determination systems and methods based upon user-device location" (Exhibit B) (collectively, "the Eclipse Patents").

4.   On information and belief, RideCharge is a corporation existing under the laws of Delaware.

5.   On information and belief, RideCharge does regular business in this Judicial District and conduct leading to RideCharge's acts of infringement has occurred in this Judicial District.

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JURISDICTION AND VENUE

6.   This Court has personal jurisdiction over RideCharge because it has engaged in continuous and systematic business in California; upon information and belief, derives substantial revenues from commercial activities in California; and upon information and belief, is operating and/or supporting products or services that fall within one or more claims of Eclipse's patents in this District.

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

FACTUAL BACKGROUND

8.   On information and belief, RideCharge designs, makes, advertises, and/or distributes mobile applications ("the Taxi Magic Application" and "the Sedan Magic Application") that connect users of the Taxi Magic or Sedan Magic Application with drivers of cars for hire ("RideCharge Drivers").

9.   On information and belief, users of the Taxi Magic or Sedan Magic Application can use their smartphone or tablet computer ("tablet") to request that a vehicle pick them up from a given location.

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10.   On information and belief, when a user opens the Taxi Magic or Sedan Magic Application, RideCharge tracks the location of the user's smartphone or tablet and attempts to pinpoint the user on a map. RideCharge also tracks the location of RideCharge Drivers. Non-limiting, exemplary images appear below:
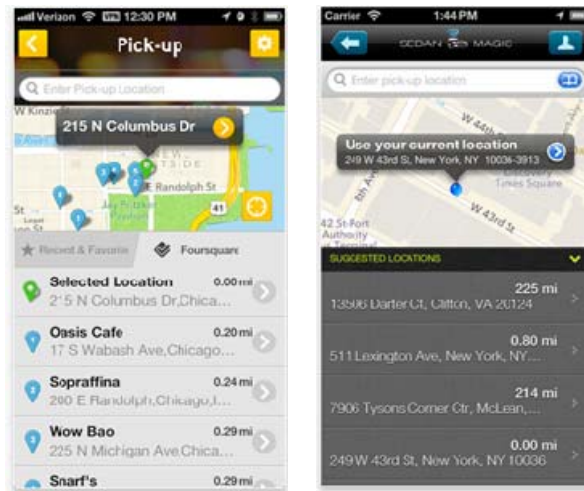
11.   On information and belief, when the user of the Taxi Magic or Sedan Magic Application selects a pickup location, RideCharge sends a pickup request to the closest available RideCharge Driver. If that RideCharge Driver declines or is non-responsive, RideCharge sends the pickup request to other RideCharge Drivers. When RideCharge receives a response indicating that a RideCharge Driver will accept the fare, RideCharge notifies the user in at least one way. A non-limiting, exemplary image appears below:

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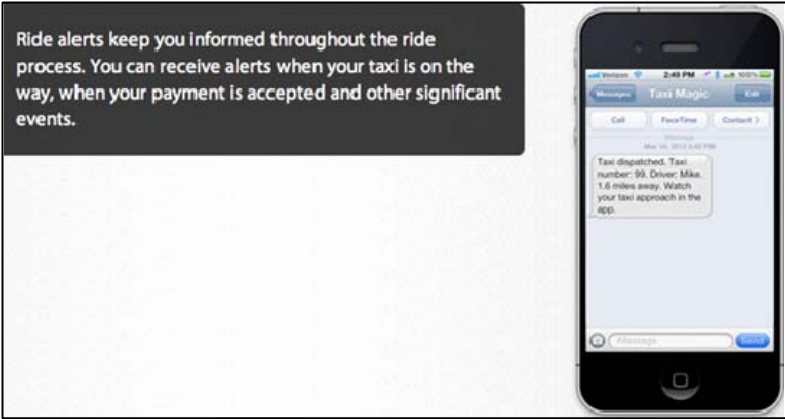
12.   On information and belief, through the Taxi Magic or Sedan Magic Application, RideCharge displays the location of the RideCharge Driver and the pickup location, allowing the user of the Taxi Magic or Sedan Magic Application to track the RideCharge Driver's progress.

13.   On information and belief, through the Taxi Magic or Sedan Magic Application, RideCharge also provides the RideCharge Driver's distance from the pickup location, so that users of the Taxi Magic or Sedan Magic application can better estimate the RideCharge Driver's time of arrival.

14.   On information and belief, through the Taxi Magic or Sedan Magic Application, RideCharge allows the user to communicate with the driver or cancel the trip. Non-limiting, exemplary images appear below:

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FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
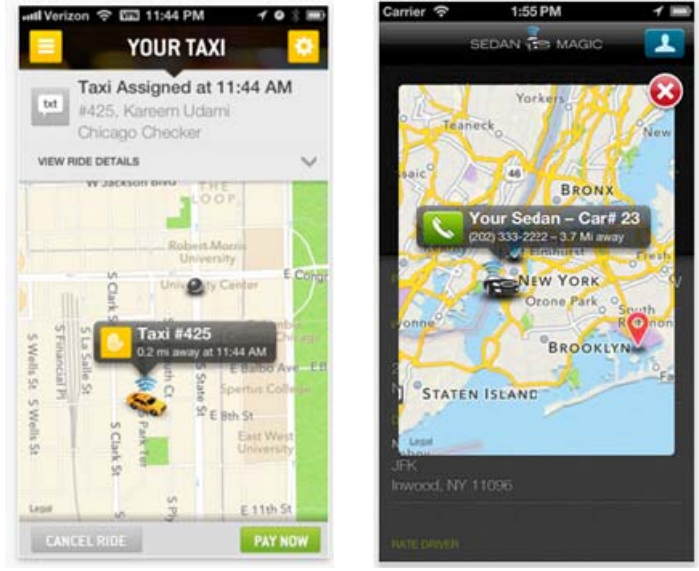
RIDECHARGE'S ACTS OF PATENT INFRINGEMENT

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

16.   RideCharge owns, uses, deploys, and/or operates at least one service and/or system for booking a taxi or sedan electronically.

17.   The at least one service and/or system allows users of a smartphone or tablet to request a taxi or sedan to pick them up.

18.   To implement the at least one service and/or system, RideCharge created and/or developed at least two smartphone applications – the Taxi Magic and Sedan Magic Applications – which play a material role in the at least one car booking service and/or system.

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19.   The Taxi Magic and Sedan Magic Applications are available on several different platforms, including but not limited to on smartphones and tablets running versions of Apple Inc.'s iOS platform and Google, Inc.'s Android platform.

20.   Among other things, the Taxi Magic and Sedan Magic Applications allow users to schedule or arrange a pickup on their smartphone or tablet, and track the status of the vehicle on a map.

21.   Among other things, RideCharge tracks the location of the user's smartphone or tablet, tracks the location of a smartphone being used by each RideCharge Driver, distributes requests for pickups received from users of the Taxi Magic or Sedan Magic Application, receives responses from at least one RideCharge Driver, and notifies the user when their vehicle is arriving at the pickup location.

CLAIMS FOR RELIEF

COUNT 1
(Patent Infringement of U.S. Patent No. 7,064,681
Under 35 U.S.C. § 271 *et seq*.)

22.   Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 21 above as if fully set forth herein.

23.   On June 20, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,064,681, entitled "Response systems and methods for notification systems." Eclipse is the owner of the entire right, title

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1 and interest in and to the '681 patent. A true and correct copy of the '681 patent is

2 attached as Exhibit A to this Complaint.

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4   24.   The '681 patent is valid and enforceable.

5   25.   Eclipse is informed and believes, and thereupon alleges, that:

6 (1) RideCharge has infringed and continues to infringe one or more claims of the

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8 '681 patent, literally and/or under the doctrine of equivalents and additionally and/or

9 in the alternative, (2) RideCharge has actively induced and continues to actively

10 induce and/or has contributed to and continues to contribute to the infringement of

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12 one or more claims of the '681 patent in this District and elsewhere in the United

13 States.

14   26.   On information and belief, RideCharge has directly infringed and

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16 continues to directly infringe one or more claims of the '681 patent, in violation of

17 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or

18 selling a method for communication in connection with a computer-based

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20 notification system to, for example: notify a RideCharge Driver of a requested

21 pickup; receive a response indicating whether or not the RideCharge Driver will

22 perform the pickup; if the RideCharge Driver will perform the pickup, refrain from

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24 sending additional notifications to the RideCharge Driver until detection of one or

25 more events indicating that the user's trip is complete; and if the RideCharge Driver

26 will not pickup the user, notify another RideCharge Driver in order to request

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28 assistance in picking up the user.

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27.   Additionally and/or in the alternative, on information and belief, RideCharge has actively induced and continues to actively induce and/or has contributed to and continues to contribute to the infringement of one or more claims of the '681 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting others to make, use, offer for sale, and/or sell portions of a computer-based notification system that infringes one or more claims of the '681 patent, with the specific intent to encourage infringement and with the knowledge that the making, using, offering to sell, and/or selling of such a system would constitute infringement.

28.   On information and belief, RideCharge has had knowledge of the '681 patent at least as early as September 27, 2013, the day that it received a courtesy copy of the Complaint, which set forth factual allegations of RideCharge's infringement. *See* Olavi Decl., ¶¶2-5. Additionally, at least as early as September 27, 2013, RideCharge knew or should have known that its continued offering, use, deployment, and/or operation of the at least one service and/or system for booking a taxi or sedan electronically and its continued support of others, if those parties perform any limitations of one or more of the claims of the '681 patent, would induce direct infringement of the '681 patent, as it had actual knowledge of the patent and factual allegations of its infringement thereof.

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29.   On information and belief, RideCharge has not changed or modified its

infringing behavior since September 27, 2013.

30.   RideCharge's aforesaid infringing activity has directly and proximately

caused damage to Plaintiff Eclipse, including loss of profits from sales and/or

licensing revenues it would have made but for the infringements. Unless enjoined,

the aforesaid infringing activity will continue and cause irreparable injury to Eclipse

for which there is no adequate remedy at law.

COUNT 2
(Patent Infringement of U.S. Patent No. 7,538,691
Under 35 U.S.C. § 271 *et seq*.)

31.   Eclipse reiterates and reincorporates the allegations set forth in

paragraphs 1 through 30 above as if fully set forth herein.

32.   On May 26, 2009, the United States Patent and Trademark Office duly

and legally issued United States Patent No. 7,538,691, entitled "Mobile thing

determination systems and methods based upon user-device location." Eclipse is the

owner of the entire right, title and interest in and to the '691 patent. A true and

correct copy of the '691 patent is attached as Exhibit B to this Complaint.

33.   The '691 patent is valid and enforceable.

34.   Eclipse is informed and believes, and thereupon alleges, that:

(1) RideCharge has infringed and continues to infringe one or more claims of the

'691 patent, literally and/or under the doctrine of equivalents and additionally and/or

in the alternative, (2) RideCharge has actively induced and continues to actively

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induce and/or has contributed to and continues to contribute to the infringement of one or more claims of the '691 patent in this District and elsewhere in the United States.

35.   On information and belief, RideCharge has directly infringed and continues to directly infringe one or more claims of the '691 patent, in violation of 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or selling a method for implementation in connection with a computer-based notification system to, for example: determine the user's location; identify a pickup location; and notify the user when the taxi or sedan is approaching the pickup location.

36.   Additionally and/or in the alternative, on information and belief, RideCharge has actively induced and continues to actively induce and/or has contributed to and continues to contribute to the infringement of one or more claims of the '691 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting others to make, use, offer for sale, and/or sell portions of a computer-based notification system that infringes one or more claims of the '691 patent, with the specific intent to encourage infringement and with the knowledge that the making, using, offering to sell, and/or selling of such a system would constitute infringement.

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37. On information and belief, RideCharge has had knowledge of the '691 patent at least as early as September 27, 2013, the day that it received a courtesy copy of the Complaint, which set forth factual allegations of RideCharge's infringement. *See* Olavi Decl., ¶¶2-5. Additionally, at least as early as September 27, 2013, RideCharge knew or should have known that its continued offering, use, deployment, and/or operation of the at least one service and/or system for booking a taxi or sedan electronically and its continued support of others, if those parties perform any limitations of one or more of the claims of the '691 patent, would induce direct infringement of the '691 patent, as it had actual knowledge of the patent and factual allegations of its infringement thereof.

38. On information and belief, RideCharge has not changed or modified its infringing behavior since September 27, 2013.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against RideCharge and against each of RideCharge's respective subsidiaries, affiliates,

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agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

1.   A judgment that RideCharge has infringed each and every one of the Eclipse Patents;

2.   A permanent injunction against RideCharge, 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 each and every one 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 RideCharge'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.

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1 DATED: October 21, 2013   OLAVI DUNNE LLP

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4   By: /s/ Matt Olavi

5   Matt Olavi
                                              Brian J. Dunne
6   *Attorneys for Plaintiff*
                                              Eclipse IP LLC
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10   **JURY DEMAND**

11   Eclipse demands a trial by jury on all issues so triable pursuant to Federal

12 Rule of Civil Procedure 38.

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15 DATED: October 21, 2013   OLAVI DUNNE LLP

16

17   By: /s/ Matt Olavi

18

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