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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 TATCHA LLC,
12 Plaintiff,
13 v.
14 SHIPPING & TRANSIT LLC,
15 Defendant.
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CASE NO. 3:16-cv-00539-WHO

FIRST AMENDED COMPLAINT FOR (1) DECLARATORY JUDGMENT OF NON-INFRINGEMENT, (2) DECLARATORY JUDGMENT OF INVALIDITY, (3) DECLARATORY JUDGEMENT OF UNENFORCEABILITY OF U.S. PATENT NOS. 5,400,020; 5,444,444; 5,623,260; 5,648,770; 5,657,010; 5,668,543; 6,278,936; 6,313,760; 6,317,060; 6,363,254; 6,363,323; 6,411,891; 6,415,207; 6,486,801; 6,492,912; 6,510,383; 6,618,668; 6,683,542; 6,700,507; 6,714,859; 6,741,927; 6,748,318; 6,748,320; 6,763,299; 6,763,300; 6,804,606; 6,859,722; 6,904,359; 6,952,645; 6,975,998; 7,030,781; 7,089,107; 7,191,058; 7,400,970; AND CANADIAN PATENT NOS. 2,360,288; 2,363,556; 2,283,239, AND (4) BREACH OF CONTRACT

JURY TRIAL DEMANDED

1 Plaintiff Tatcha, LLC (“Plaintiff” or “Tatcha”) files this Amended Complaint for
2 Declaratory Judgment of Invalidity, Declaratory Judgment of Non-Infringement, Declaratory
3 Judgment of Unenforceability, and Breach of Contract against Defendant Shipping and Transit
4 LLC, stating as follows:

5 **THE PARTIES**

6 1. Plaintiff Tatcha is a Delaware limited liability company headquartered in San
7 Francisco, California.

8 2. Upon information and belief, Defendant Shipping & Transit LLC (“Shipping and
9 Transit”) is a Florida limited liability corporation having its principal place of business at 711 SW
10 24th Avenue, Boynton Beach, Florida.

11 **JURISDICTION AND VENUE**

12 3. This Complaint arises under federal law and the laws of California. This Court
13 has jurisdiction over these claims pursuant to 28 U.S.C. § 1338 because the Complaint states
14 claims arising under an Act of Congress relating to patents, 35 U.S.C. § 271.

15 4. This Complaint also arises under the Federal Declaratory Judgment Act, 28 U.S.C.
16 §§ 2201 *et seq.* based on Defendants’ threats to sue Plaintiff for patent infringement, thereby
17 giving rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

18 5. This Court also has supplemental jurisdiction over Tatcha’s breach of contract
19 claim pursuant to 28 U.S.C. § 1367 because it arises out of the same acts and occurrences that
20 gave rise to the declaratory judgment claims.

21 6. This Court has personal jurisdiction over Shipping and Transit. Upon
22 information and belief, Shipping and Transit conducts substantial business in this judicial district,
23 including regularly doing or soliciting business, engaging in other persistent courses of conduct
24 and deriving substantial revenue from individuals and entities in California.

25 7. More specifically, since January 2015, Shipping and Transit has been involved in
26 100 lawsuits asserting the ‘970 Patent, of which 18 suits, excluding this one, have been or are
27 being litigated in California. California lawsuits wherein Shipping and Transit has asserted the
28 ‘970 patent include, but are not necessarily limited to:

- 1 • 2:15-cv-06672-JAK-PLA *Shipping and Transit, LLC v. The Antigua Group, Inc., et al*
- 2 • 2:16-cv-00911-AB-DTB *Shipping and Transit LLC v. VelaTrack, Inc. et al*
- 3 • 2:16-cv-00195-RGK-AGR *Shipping and Transit LLC v. 123Stores, Inc.*
- 4 • 2:15-cv-06683-JVS-JEM *Shipping and Transit, LLC v. Maravia Corp. of Idaho et al*
- 5 • 2:15-cv-06699-JVS-AJW *Shipping and Transit, LLC v. Russell Brands, LLC et al*
- 6 • 2:15-cv-09793-MWF-MRW *Shipping and Transit LLC v. zZounds Music, L.L.C.*
- 7 • 2:15-cv-09539-JAK-PJW *Shipping and Transit LLC v. Gilmore and Co., Inc. et al*
- 8 • 2:15-cv-08635-GW-PLA *Shipping and Transit LLC v. Campmor, Inc.*
- 9 • 2:15-cv-09804-CAS-AFM *Shipping and Transit LLC v. Babyhaven.com Inc.*
- 10 • 2:15-cv-06675-JAK-PLA *Shipping and Transit LLC v. C3 Concepts, Inc.*
- 11 • 2:15-cv-09533-AG-AS *Shipping and Transit LLC v. J Brand, Inc. et al*
- 12 • 2:16-cv-00741-R-PLA *Shipping and Transit LLC v. Ebuys, Inc. et al*
- 13 • 2:16-cv-00192-PSG-FFM *Shipping and Transit LLC v. Marine Layer, Inc.*
- 14 • 2:15-cv-08638-JVS-AS *Shipping and Transit LLC v. Freshpair Inc., et al*
- 15 • 2:15-cv-08641-DDP-AFM *Shipping and Transit LLC v. Glasses USA, LLC, et al*

16 8. Indeed, Shipping and Transit is so partial to purposefully availing itself of the
 17 California federal district courts, and using those courts as a preferred forum for asserting the
 18 ‘970 Patent, that it files suit here against companies that are based in other states, with no
 19 apparent connection to California at all. *See, e.g., Shipping & Transit, LLC v. Maravia Corp. of*
 20 *Idaho et al.*, Case. No. 2:15-cv-06683-JVS-JEM (C.D. Cal.).

21 9. On information and belief, Shipping and Transit has sent letters to numerous other
 22 companies, including numerous other companies based in California, asserting infringement of
 23 the ‘970 Patent and demanding payment of money.

24 10. Shipping and Transit was “formerly known as ArrivalStar S.A. and Melvino
 25 Technologies Limited.” *See* Exhibit 1. As such, Shipping and Transit was involved in
 26 approximately 495 lawsuits across the United States involving the patents-in-suit, or other related
 27 patents. As “ArrivalStar S.A. and Melvino,” Shipping and Transit regularly, continuously, and
 28 systematically availed itself of the California federal district courts, and repeatedly used these

1 courts as a preferred forum for asserting a number of the patents-in-suit, including the '970
2 Patent.

3 11. On information and belief, as "ArrivalStar S.A. and Melvino," Shipping and Transit
4 has sent letters to hundreds (if not thousands) of companies, including hundreds (if not thousands)
5 of companies based on California, asserting infringement of one or more of the patents-in-suit and
6 demanding payment of money.

7 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial
8 part of the events or omissions giving rise to the claims herein occurred in this judicial district.

9 **FACTUAL BACKGROUND**

10 13. The '970 Patent is directed to methods and systems for tracking the location of
11 vehicles carrying packages being shipped to customers, and for informing customers of the
12 location of the vehicles bearing their packages at those times that the customer has specified he
13 wants to receive information.

14 14. On April 22, 1997, U.S. Patent No. 7,400,970 ('970 Patent), entitled System and
15 Method for an Advance Notification System for Monitoring and Reporting Proximity of a Vehicle
16 was issued.

17 15. By way of example, Claim 1 of the '970 Patent claims as follows:

18 1. A computer based notification system, comprising:

19 means for enabling communication with a user that is designated to receive delivery of
20 a package;

21 **means for presenting one or more selectable options to the user, the selectable**
22 **options including at least an activation option for instigating monitoring of**
23 **travel data associated with a vehicle that is delivering the package to the user;**

24 **means for requesting entry by the user of a package identification number or**
25 **package delivery number,** each pertaining to delivery of the package;

26 **means for identifying the vehicle based upon the entry;**

27 means for requesting entry by the user of contact information indicating one or more
28 communication media to be used in connection with a notification communication
to the user;

means for monitoring the travel data; and

1 means for initiating the notification communication pertaining to the package via the
2 one or more communication media, based upon the travel data.

3 The '970 Patent, Claim 1 (emphasis added).

4 16. In other words, to infringe this claim, one must at the very least have a system that:
5 presents to the user options that the user may select that include at least an “activation option” to
6 start monitoring travel data associating with a vehicle carrying a package to the user; has a way of
7 requesting the user to enter a “package identification number” or “package delivery number;”
8 identifies a vehicle based on the package identification or delivery number; and monitors the travel
9 data associated with a vehicle delivering the package to the user.

10 **B. Tatcha’s Checkout and Shipping Process**

11 17. Tatcha is a leading luxury skincare company that sells skincare products online
12 with its headquarters in San Francisco, California.

13 18. Tatcha markets and sells its products online through its website www.tatcha.com
14 and ships products all over the world via United States Postal Service (“USPS”) and Federal
15 Express (“FedEx”). Tatcha customers are located throughout the United States, including the San
16 Francisco Bay Area

17 19. When a customer makes a purchase on Tatcha’s website, Tatcha’s computer system
18 automatically sends the customer an order confirmation email.

19 20. Tatcha then arranges to package and ship the customer’s order. Tatcha uses FedEx
20 and USPS, for shipment. Upon information and belief, the FedEx has a license to the entire
21 Shipping and Transit Patent Portfolio.

22 21. When the order has been packed and given to the courier, Tatcha computer system
23 sends an email to the customer telling her that her package has shipped, and providing her with a
24 tracking number and a link to the website of courier service as appropriate. At that point, Tatcha
25 has completed its interaction with the customer, the package, and the shipping.

26 22. Tatcha does not track the package or any vehicle that carries the package, does not
27 allow the user to specify when the user wishes to receive notifications, does not receive vehicle or
28 location indicator numbers from the user, does not create a “vehicle status report,” does not

1 automatically or otherwise identify a proximity of a vehicle based on any location indicator, does
2 not track any vehicles, does not analyze data indicative of the travel of any vehicle, does not
3 present the user with options including an activation option to start monitoring travel data
4 associated with a vehicle carrying a package, does not ask the user for a package identification
5 number or package delivery number related to the delivery of a package, does not identify a
6 vehicle based on any such package number, and does not monitor travel data associated with a
7 vehicle delivering a package.

8 **C. Shipping and Transit’s Multiple Letters Threatening Tatcha with Litigation**

9 23. Upon information and belief, Shipping and Transit is in the business of patent
10 licensing through the threat of litigation.

11 24. Upon information and belief, a key part of Shipping and Transit’s business model is
12 sending letters, emails, and making telephone calls threatening patent litigation and following
13 through on that threat.

14 25. On or about December 17, 2015, Shipping and Transit send a letter (the “American
15 Letter”) to Victoria Tsia, Tatcha’s CEO, asserting that Tatcha infringes the ‘970 Patent, and claims
16 that “[t]wo or more people within Shipping and Transit have done extensive research to determine
17 patent usage before sending you this document.” A true and correct copy of the American letter
18 attached as Exhibit 1.

19 26. On or about February 4, 2016, Shipping and Transit send a second letter (the
20 “Canadian Letter”) to Ms. Tsia “to acquaint Tatcha LLC (Tatcha) with Shipping and Transit’s
21 Canadian patent portfolio, show examples of how Tatcha utilizes the patented technologies and
22 offer you a license.” Shipping and Transit claims that Tatcha’s “past and future use requires
23 licensing and compensation.” A true and correct copy of the Canadian Letter is attached as Exhibit
24 2.

25 27. The Canadian letter identifies Canadian Patent Nos. 2,360,288; 2,363,556; and
26 2,283,239 as patents that Tatcha utilizes, does not have a license, and must pay for past and future
27 use.

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1 28. The basis for Shipping and Transit’s claims of patent infringement against Tatcha
2 are the use of Tatcha’s checkout procedure, which is managed by Magento, Inc., and then shipped
3 via FedEx or USPS.

4 **D. Third-Party Licenses Protect Tatcha’s Activities**

5 29. Upon information and belief, Magento has a license to the entire Shipping and
6 Transit Patent Portfolio, including the Canadian patents. Upon information and belief, Magento’s
7 license extends to its customers, including Tatcha. Shipping and Transit is well aware of the fact
8 that it has granted Magento a license to the entire Shipping and Transit Patent Portfolio, including
9 the Canadian patents, and it knows (or, with reasonable investigation, should know) that Tatcha is
10 a Magento customer and an intended third-party beneficiary of the license that it has granted.

11 30. Upon information and belief, FedEx has licensed the entire Shipping and Transit
12 Patent Portfolio, including the Canadian patents. Upon information and belief, FedEx’s license
13 extends to its customers, including Tatcha. Shipping and Transit is well aware of the fact that it
14 has granted FedEx a license to the entire Shipping and Transit Patent Portfolio, including the
15 Canadian patents, and it knows (or, with reasonable investigation, should know) that Tatcha ships
16 products using FedEx. Shipping and Transit knows (or, with reasonable investigation, should
17 know) that Tatcha is an intended third-party beneficiary of the license that it has granted.

18 31. Upon information and belief, Tatcha cannot infringe any patent in the Shipping and
19 Transit Patent Portfolio on the basis of the Magento license alone.

20 32. To the extent that Shipping and Transit claims the Magento license is insufficient to
21 cover any patent, then all of Tatcha’s orders that ship via FedEx are protected by the FedEx
22 license.

23 **E. Shipping and Transit’s Patent Portfolio**

24 33. The Shipping and Transit Patent Portfolio includes, but is not necessarily limited to,
25 U.S. Patent Nos. 5,400,020; 5,444,444; 5,623,260; 5,648,770; 5,657,010; 5,668,543; 6,278,936;
26 6,313,760; 6,317,060; 6,363,254; 6,363,323; 6,411,891; 6,415,207; 6,486,801; 6,492,912;
27 6,510,383; 6,618,668; 6,683,542; 6,700,507; 6,714,859; 6,741,927; 6,748,318; 6,748,320;

1 6,763,299; 6,763,300; 6,804,606; 6,859,722; 6,904,359; 6,952,645; 6,975,998; 7,030,781;
2 7,089,107; 7,191,058; and 7,400,970.

3 34. The Shipping and Transit Patent Portfolio includes, but is not necessarily limited to,
4 Canadian Patent Nos. 2,360,288; 2,363,556; and 2,283,239.

5 **COUNT I – DECLARATION OF INVALIDITY**
6 (U.S. Patent No. 7,400,970)

7 35. Tatcha restates and incorporates by reference the allegations in paragraphs 1
8 through 34 of this Complaint as if fully set forth herein.

9 36. Shipping and Transit claims to own all rights, title, and interest to the ‘970 Patent.

10 37. Shipping and Transit has demanded that Tatcha take a license to the ‘970 Patent.

11 38. A substantial, immediate, and real controversy therefore exists between Tatcha and
12 Shipping and Transit regarding whether the claims of the ‘970 Patent are valid.

13 39. The claims of the ‘970 Patent are invalid under at least 35 U.S.C. §§ 101, 102, 103,
14 and 112.

15 40. The claims of the ‘970 Patent do not constitute patentable subject matter pursuant
16 to 35 U.S.C. § 101, and therefore are an invalid patent on an abstract idea. The ‘970 Patent claims
17 the abstract idea of monitoring, comparing, and communicating with users regarding vehicle
18 schedules, routes, and updated travel data. Nothing in the claims, “transform the nature of the
19 claims” into patent eligible subject matter. *Mayo Collaborative Services v. Prometheus Labs.,*
20 *Inc.*, 566 U.S. 10 (2012). Furthermore, “[t]he mere visitation of a generic computer cannot
21 transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice Corp. v. CLS*
22 *Bank Int’l*, 134 S. Ct. 2347 (2014).

23 41. Additionally, the ‘970 Patent is invalid as anticipated pursuant to § 102 and as
24 obvious pursuant to § 103. Prior art that renders the ‘970 Patent anticipated and/or obvious
25 includes, but is not necessarily limited to:

- 26 • U.S. Patent No. 5,835,377 (Bush);
- 27 • U.S. Patent No. 6,006,159 (Schmier);

- 1 • Advanced Public Transportation System: The State of the Art Update '92, U.S. Department
- 2 of Transportation, April 1992 (Labell et al.);
- 3 • Gadget May End Lengthy Bus Waits: Inventor's Locator Device Could Stop Bus-Stop
- 4 Blues, S.F. Chron., Nov. 25, 1996 (Walker);
- 5 • Automatic Vehicle Monitoring, A Tool for Vehicle Fleet Operations, IEEE Transactions
- 6 on Vehicular Technology, Vol. VT-29, No. 2 (May 1980) (Symes);
- 7 • German "Smart Bus" Systems: Potential for Application in Portland, Oregon Volume 1
- 8 Technical Report, Office of Technical Assistance and Safety, Jan. 1993; and,
- 9 • Communications and Positioning Systems in the Motor Carrier Industry, Program on
- 10 Advanced Technology for the Highway, Jan. 1, 1992 (Scapinakis).

11 42. Based on Shipping and Transit's letter, its threat of litigation for patent
12 infringement, its pattern of litigation, and Tatcha's denial of infringement, an actual case or
13 controversy exists as to whether Tatcha infringes any valid claim of the '970 Patent, and Tatcha is
14 entitled to a declaration that the claims of the '970 Patent are invalid.

15 **COUNT II – DECLARATION OF NON-INFRINGEMENT**
16 (U.S. Patent No. 7,400,970)

17 43. Tatcha restates and incorporates by reference the allegations in paragraphs 1
18 through 34 of this Complaint as if fully set forth herein.

19 44. Shipping and Transit claims to own all rights, title, and interest in the '970 Patent.

20 45. Shipping and Transit has demanded that Tatcha take a license to the '970 Patent.

21 46. Based on Shipping and Transit's letters, its threat of litigation for patent
22 infringement, and its pattern of litigation, and Tatcha's denial of infringement, a substantial,
23 immediate, and real controversy exists between Tatcha and Shipping and Transit regarding
24 whether Tatcha directly or indirectly infringes or has infringed the '970 Patent. A judicial
25 declaration is necessary to determine the parties' respective rights regarding the '970 Patent.

26 47. Tatcha seeks a judgment declaring that Tatcha does not directly or indirectly
27 infringe any claim of the '970 Patent.

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COUNT III – DECLARATION OF UNENFORCEABILITY
BASED ON LICENSE

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2 48. Tatcha restates and incorporates by reference the allegations in paragraphs 1
3 through 34 of this Complaint as if fully set forth herein.

4 49. Upon information and belief, Shipping and Transit has granted licenses to third
5 parties that cover Tatcha’s services, systems, and practices that Shipping and Transit accuses of
6 infringement in the American and Canadian Letters.

7 50. Upon information and belief, Shipping and Transit granted a license to its entire
8 patent portfolio to Magento that extends to Magento’s customers. Upon information and belief,
9 Tatcha is an intended third-party beneficiary of this license.

10 51. Upon information and belief, Shipping and Transit granted a license to its entire
11 patent portfolio to FedEx that extends to anything “in connection with any product, service, or
12 system provided to or for FedEx or its Affiliates.” Upon information and belief, Tatcha is an
13 intended third-party beneficiary of this license.

14 52. Upon information and belief, Shipping and Transit’s license grant to Magento
15 renders the entire Shipping and Transit Patent Portfolio contractually unenforceable, at minimum,
16 against Tatcha because it is an intended third-party beneficiary of that license.

17 53. Upon information and belief, Shipping and Transit’s license grant to FedEx renders
18 the entire Shipping and Transit Patent Portfolio contractually unenforceable, at minimum, against
19 Tatcha for all products shipped via FedEx because it is an intended third-party beneficiary of that
20 license.

21 54. A substantial, immediate, and real controversy exists between Tatcha and Shipping
22 and Transit regarding whether the Tatcha’s services, systems, and practices that Shipping and
23 Transit accuses of infringement are, in fact, licensed and incapable of infringing any patent in the
24 Shipping and Transit Patent Portfolio.

25 55. A judicial declaration of unenforceability by virtue of contract is necessary to
26 establish Tatcha’s right to continue operating its business free of unwarranted claims of
27 infringement by Shipping and Transit.
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COUNT IV – BREACH OF CONTRACT

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2 56. Tatcha restates and incorporates by reference the allegations in paragraphs 1
3 through 34 and paragraphs 49 through 53 of this Complaint as if fully set forth herein.

4 57. Shipping and Transit has granted licenses to third parties that cover the Tatcha
5 methods, processes, and systems that are accused of infringement by Shipping and Transit’s
6 American and Canadian Letters. Upon information and belief, Tatcha’s checkout process and
7 shipping method are covered by the Magento and FedEx licenses. Upon information and belief,
8 Tatcha is an intended third-party beneficiary of these licenses.

9 58. Shipping and Transit is in breach of the Magento and FedEx license agreements by,
10 among other things, accusing a Magento and FedEx customer of patent infringement for activity
11 that, on information and belief, is within the scope of licenses that it has granted. As an intended
12 third-party beneficiary of these licenses, Tatcha has standing to file suit on said breach and seek
13 enforcement of the parties’ contractual terms for which it is an intended beneficiary.

14 59. Shipping and Transit has made accusations of patent infringement in bad faith and
15 with unclean hands, and has made threats to pursue litigation in multiple jurisdictions against
16 Tatcha even though Tatcha is protected by licenses that Shipping and Transit has granted.

17 60. Tatcha has suffered harm arising from Shipping and Transit’s breach of the
18 Magento and FedEx licenses including, but not limited to, incurring substantial attorneys’ fees
19 based on the need to evaluate and defend against Shipping and Transit’s spurious claims of
20 ongoing infringement notwithstanding its prior license grants.

21 61. Shipping and Transit has breached the Magento and FedEx licenses and will
22 continue to breach the licenses unless specifically enjoined by this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Tatcha respectfully prays for the following relief:

25 A. A declaration that Tatcha’s services, systems, and practices do not infringe ‘970
26 Patent;

27 B. A declaration that ‘970 Patent is invalid;

1 C. A declaration that Shipping and Transit’s entire patent portfolio, as defined in the
2 Magento and/or FedEx licenses, which include Canadian Patent Nos. 2,360,288; 2,363,556;
3 2,283,239, are contractually unenforceable against Tatcha.

4 D. A determination that Shipping and Transit is in breach of the licenses granted to
5 Magento and FedEx and that, as an intended third-party beneficiary, Tatcha has been harmed by
6 that breach.

7 E. An injunction barring further breach of the licenses granted to Magento and
8 FedEx, including an injunction barring the initiation and prosecution of any lawsuit in the United
9 States, Canada, or elsewhere, against Tatcha based on any patent in the Shipping and Transit
10 Patent Portfolio, as defined in the Magento and/or FedEx licenses, which include Canadian Patent
11 Nos. 2,360,288; 2,363,556; 2,283,239;

12 F. A determination that this is an exceptional case and an award of all costs and
13 attorneys’ fees to Tatcha;

14 G. That Tatcha be awarded its costs of suit, and pre- and post-judgment interest on
15 any money amount; and

16 H. Any other relief as this Court deems just and proper.

17
18 Dated: February 18, 2016

Respectfully submitted,

19 /s/ Brian E. Mitchell

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of February 2016, the following document **FIRST AMENDED COMPLAINT FOR (1) DECLARATORY JUDGMENT OF NON-INFRINGEMENT, (2) DECLARATORY JUDGMENT OF INVALIDITY, (3) DECLARATORY JUDGEMENT OF UNENFORCEABILITY OF U.S. PATENT NOS. 5,400,020; 5,444,444; 5,623,260; 5,648,770; 5,657,010; 5,668,543; 6,278,936; 6,313,760; 6,317,060; 6,363,254; 6,363,323; 6,411,891; 6,415,207; 6,486,801; 6,492,912; 6,510,383; 6,618,668; 6,683,542; 6,700,507; 6,714,859; 6,741,927; 6,748,318; 6,748,320; 6,763,299; 6,763,300; 6,804,606; 6,859,722; 6,904,359; 6,952,645; 6,975,998; 7,030,781; 7,089,107; 7,191,058; 7,400,970; AND CANADIAN PATENT NOS. 2,360,288; 2,363,556; 2,283,239, AND (4) BREACH OF CONTRACT** with supporting exhibits was electronically served on the following email addresses:

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Respectfully submitted,

By: /s/ Brian E. Mitchell
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