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1 2 3 4 5 6 7 8	Michael J. Bettinger (SBN 122196) mbettinger@sidley.com Irene Yang (SBN 245464) irene.yang@sidley.com Sue Wang (SBN 286247) sue.wang@sidley.com SIDLEY AUSTIN LLP 555 California Street, Suite 2000 San Francisco, California 94104-1715 Telephone: (415) 772-1200 Facsimile: (415) 772-7400 Attorneys for Magento, Inc.		
9	UNITED STATES DISTRICT COURT		
10	NORTHERN DISTRICT OF CALIFORNIA		
11	DIVISION		
12			
13	X.COMMERCE, INC. D/B/A MAGENTO, ) Case No.:		
14	INC.,		
15	Plaintiff, ) COMPLAINT FOR DECLARATORY vs. ) JUDGMENT OF PATENT NON-		
16	vs. ) JUDGMENT OF PATENT NON- ) INFRINGEMENT AND INVALIDITY		
17	EXPRESS MOBILE, INC., ) DEMAND FOR JURY TRIAL		
18	Defendant.		
19	)		
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21	Plaintiff X.Commerce, Inc. d/b/a Magento, Inc. ("Magento") brings this action for		
22	declaratory judgment of patent non-infringement and invalidity against defendant Express Mobile,		
23	Inc. ("Express Mobile"). Magento alleges as follows:		
24	NATURE OF THE ACTION		
25	1. This is a civil action arising under the patent laws of the United States, Title 35 of		
26	the United States Code. Magento seeks a declaration that it does not infringe any claim of Express		
27	Mobile's U.S. Patent Nos. 6,546,397 (the '397 patent) and 7,594,168 (the '168 patent) and that those		
28	patents are invalid.		
	COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY		

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1 2. Magento is pursuing this action because Express Mobile has sued thirteen of 2 Magento's solution partners<sup>1</sup> to date in the United States District Court for the Eastern District of 3 Texas, alleging that those partners infringe the '397 and '168 patents "by using a browser-based 4 website and/or web page authoring tool in which the user-selected settings representing website 5 elements are stored in a database, and in which said stored information is retrieved to generate said website (the 'Accused Instrumentalities')." Magento's Enterprise Edition eCommerce software is 6 7 the "Accused Instrumentalit[y]" identified by name, and each of the complaints references Magento's technical documentation extensively. Express Mobile's patent infringement lawsuits thus 8 9 accuse functionality in Magento's products and create a justiciable controversy between Magento 10 and Express Mobile. Moreover, Express Mobile has filed patent infringement lawsuits against a number of other providers of website building tools. 11 12 **THE PARTIES** 3. 13 Magento, Inc. is a corporation organized and existing under the laws of the state of

Magento, Inc. is a corporation organized and existing under the laws of the state of
Delaware, with its principal place of business at 54 N. Central Ave, Suite 200, Campbell, CA 95008.
Magento offers innovative eCommerce software that allows users to build and optimize online
stores.

On information and belief, Express Mobile, Inc. is a corporation organized under the
 laws of the state of Delaware, with a place of business at 700 Larkspur Landing Circle, Larkspur,
 CA 94939 and an agent for service of process located at 38 Washington Street, Novato, CA 94947.

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### JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and under the patent laws of the United States, 35 U.S.C. §§ 1-390.

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331,
1338(a), and 2201(a).

- <sup>1</sup> Solution partners are third parties that have a contractual relationship with Magento. Through their relationship with Magento, solution partners solicit business under Magento's registered trademarks and provide services to Magento's customers in connection with the setup, customization, and operation of the different Magento software solutions.
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1 7. An immediate, real, and justiciable controversy exists between Magento and Express 2 Mobile as to whether Magento is infringing or has infringed the '397 and '168 patents and as to 3 whether those patents are valid. Since July 15, 2016, Express Mobile has sued thirteen of Magento's 4 solution partners, alleging that they infringe the '397 and '168 patents by using certain "Accused 5 Instrumentalities." In each of those thirteen complaints, Express Mobile asserts nearly identical 6 allegations about the manner in which the "Accused Instrumentalities" purportedly infringe the '397 7 and '168 patents. The "Accused Instrumentality" identified by name in each complaint is Magento's 8 Enterprise Edition software, which includes a website building tool. Express Mobile has alleged 9 infringement based upon the solution partners' use of "all versions" of Magento Enterprise Edition. 10 Furthermore, each of Express Mobile's complaints against Magento's solution partners extensively 11 references Magento user documentation as purported evidence of infringement.

8. Since April 6, 2015, Express Mobile has also pursued a number of patent
 infringement lawsuits against providers of website building tools. Such defendants have included
 Weebly, Inc.; Alibaba.com; BigCommerce, Inc.; WEBS, Inc.; Volusion LLC; and WaveMaker, Inc.
 Express Mobile alleged that each of those defendants directly infringed at least the '397 patent by
 "making, using, selling, importing and/or providing and causing to be used website-building tools"
 that purportedly employ that patent's claimed methods and features. On information and belief,
 Express Mobile is still in active litigation against BigCommerce, Inc.

9. Magento's Enterprise Edition product has not infringed and does not infringe the
 '397 and '168 patents either literally or under the doctrine of equivalents. Furthermore, the '397 and
 '168 patents are invalid under at least 35 U.S.C. §§ 101, 102, 103, and/or 112. There is accordingly
 a real and justiciable controversy between Magento and Express Mobile regarding non-infringement
 and invalidity of the '397 and '168 patents.

10. This Court has personal jurisdiction over Express Mobile. Among other things,
Express Mobile has continuous and systematic business contacts with the State of California.
Express Mobile's website, www.xpressmo.com, suggests that its principal place of business is in
Larkspur, California. Ex. 1 (http://www.expressmo.com/about-us.html). Express Mobile is a
registered corporation in California and may be served through its agent for service of process,

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Marcia K. Rempell, at 38 Washington Street, Novato, CA 94947. On information and belief, Mr.
 Steven H. Rempell, Express Mobile's founder and Chief Executive Officer (CEO) and the sole
 named inventor of the '397 and '168 patents, resides in Novato, California. Ex. 2.

- 4 11. This Court also has personal jurisdiction over Express Mobile because Express 5 Mobile has purposefully directed its activities into California, including its patent procurement and 6 enforcement activities. On information and belief, Express Mobile offers "Mobile solutions for 7 Brand and Product promotion and community building" and "Mobile solutions for Logistocs [sic], 8 Operations and Inspections" and claims to practice the '397 and '168 patents. Ex. 3 9 (http://www.expressmo.com/solutions.html); Ex. 4 (http://www.expressmo.com/technology.html). 10 Express Mobile invites potential customers and potential licensees to contact it at its Larkspur, CA 11 address or San Francisco area phone number, 415-233-7222. See Exs. 1 and 4. On information and 12 belief, Express Mobile's attorney who prosecuted the '168 patent is based in Berkeley, California.
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12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to Magento's claims occurred in this District and because Express Mobile is subject to personal jurisdiction here.

16 13. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b),
17 this Intellectual Property Action will be assigned on a district-wide basis.

# FACTUAL BACKGROUND

19 14. Founded in 2001, Magento is headquartered in Campbell, California, in this District.
 20 Magento develops and offers the world's leading platform for eCommerce innovation, with products
 21 that successfully integrate digital and physical shopping experiences. Magento's Community
 22 Edition eCommerce software is free and open source. Developers and tech-savvy merchants may
 23 freely modify the core code to add features and functionalities and use the platform to support their
 24 online stores. For larger businesses, Magento offers its paid Enterprise Edition software, which
 25 contains a greater number of features.

15. Magento partners with a number of companies to provide additional technology and
solution services to businesses that build their online store using Magento. Magento's solution
partners comprise a global network of eCommerce domain experts that can help businesses with

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end-to-end project implementations including design, customization, configuration, integration, and
 deployment. Magento solution partners solicit customer business using Magento's registered
 trademarks and use website building tools including Magento's proprietary software to build custom
 websites for customers.

5 16. On information and belief, Express Mobile is the assignee and owner of the right,
6 title, and interest in and to the '397 and '168 patents.

7 17. The '397 patent is titled "Browser Based Web Site Generation Tool and Run Time
8 Engine" and names Steven H. Rempell as the sole inventor. The '397 patent issued on April 8,
9 2003. A true and correct copy of the '397 patent is attached as Exhibit 5.

10 18. The '168 patent is titled "Browser Based Web Site Generation Tool and Run Time
11 Engine" and names Steven H. Rempell as the sole inventor. The '168 patent issued on September
12 22, 2009, and it is a continuation of the application from which the '397 patent also issued. A true
13 and correct copy of the '168 patent is attached as Exhibit 6.

14 19. Beginning on July 15, 2016, Express Mobile brought patent infringement actions 15 against thirteen of Magento's solution partners in the United States District Court for the Eastern 16 District of Texas. Express Mobile, Inc. v. Jiva Infotech, Inc. d/b/a 195DEV, Case No. 2:16-cv-00775 17 (E.D. Tex. July 15, 2016); Express Mobile, Inc. v. Amplifi Commerce, LLC, Case No. 2:16-cv-00811 (E.D. Tex. July 20, 2016); Express Mobile, Inc. v. Digital Evolution Group, LLC, Case No. 2:16-cv-18 19 00922 (E.D. Tex. Aug. 19, 2016); Express Mobile, Inc. v. Astound Commerce Corp., Case No. 2:16-20 cv-00923 (E.D. Tex. Aug. 19, 2016); Express Mobile, Inc. v. OSF Global Services Inc., Case No. 21 2:16-cv-00924 (E.D. Tex. Aug. 19, 2016); Express Mobile, Inc. v. Blue Acorn, Inc., Case No. 2:16-22 cv-01411 (E.D. Tex. Dec. 15, 2016); Express Mobile, Inc. v. Guidance Solutions, Inc., Case No. 23 2:16-cv-01412 (E.D. Tex. Dec. 15, 2016); Express Mobile, Inc. v. Coalition Technologies LLC, Case 24 No. 2:16-cv-01413 (E.D. Tex. Dec. 15, 2016); Express Mobile, Inc. v. Lyons Holding Co. Inc. et al., 25 Case No. 2:16-cv-01414 (E.D. Tex. Dec. 15, 2016); Express Mobile, Inc. v. Alpine Consulting, Inc., 26 Case No. 2:17-cv-00126 (E.D. Tex. Feb. 14, 2017); Express Mobile, Inc. v. Forix LLC, Case No. 27 2:17-cv-00127 (E.D. Tex. Feb. 14, 2017); Express Mobile, Inc. v. Optaros, Inc., Case No. 2:17-cv-28 00129 (E.D. Tex. Feb. 14, 2017); and Express Mobile, Inc. v. Svanaco, Inc., Case No. 2:17-cv-00130

1 (E.D. Tex. Feb. 14, 2017) (collectively, the "Solution Partner Actions" against the "Solution 2 Partners").<sup>2</sup>

3 20. In each of the Solution Partner Actions, the allegations are nearly identical. Express 4 Mobile's complaints allege that each of the Solution Partners directly infringes "at least" claims 1-6, 5 9-11, 14-15, 17, 20, 23-25, 35, and 37 of the '397 patent by "using a browser-based website and/or web page authoring tool in which the user-selected settings representing website elements are stored 6 7 in a database, and in which said stored information is retrieved to generate said website (the 8 'Accused Instrumentalities')." See, e.g., Ex. 7 ¶ 15 (true and correct copy of complaint from Express 9 Mobile, Inc. v. Alpine Consulting, Inc., Case No. 2:17-cv-00126 (E.D. Tex. Feb. 14, 2017)). The 10 "Accused Instrumentalities" are alleged to "include but are not limited to the website building tools used" by each defendant, and the example identified by name is "all versions of Magento Enterprise 11 12 Edition." Id. The complaints also allege that each of the Solution Partners directly infringes "at 13 least claims 1-6" of the '168 patent by "using a browser-based website and/or web page authoring 14 tool in which the user-selected settings representing website elements are stored in a database, and 15 retrieval of said information to generate said website (the 'Accused Instrumentalities')." Id. ¶ 81.

16 21. Each of Express Mobile's complaints furthermore includes allegations concerning 17 how the "Accused Instrumentalities" purportedly infringe the '397 and '168 patents. Many of these 18 allegations cite extensively to Magento user documentation. See, e.g., Ex. 7 ¶¶ 18, 21, 27, 69, 92, 19 97. Express Mobile has thus accused functionality in Magento's products of infringing the '397 and '168 patents. 20

22. 21 Separate and apart from the Solution Partner Actions, Express Mobile has also sued 22 a number of providers of website development tools for infringement of the '397 and '168 patents. 23 For example, on February 27, 2017, Express Mobile filed a patent infringement complaint against 24 BigCommerce, Inc. See Express Mobile, Inc. v. BigCommerce, Inc., Case No. 2:17-cv-00160 (E.D. 25 Tex. Feb. 27, 2017) (a true and correct copy of the complaint is attached as Exhibit 8). Express

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<sup>&</sup>lt;sup>2</sup> On information and belief, ten of the Solution Partners have settled. On information and belief, Express Mobile remains in active litigation against three Solution Partners: Alpine Consulting, Inc.; Optaros, Inc.; and Svanaco, Inc.

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1 Mobile's complaint there alleges that BigCommerce, Inc. directly infringes "at least claims 1 2 through 6, 8, 9, 11, and 37" of the '397 patent "by making, using, selling, importing and/or providing 3 and causing to be used a browser-based website and/or web page authoring tool in which the user-4 selected settings representing website elements are stored in a database, and in which said stored 5 information is retrieved to generate said website (the 'Accused Instrumentalities')." Ex. 8 ¶ 21. 6 Express Mobile's complaint also alleges that BigCommerce, Inc. directly infringes "at least claims 1 7 and 6" of the '168 patent by "making, using, selling, importing and/or providing and causing to be 8 used a browser-based website and/or web page authoring tool in which the user-selected settings 9 representing website elements are stored in a database, and retrieval of said information to generate 10 said website (the 'Accused Instrumentalities')." Id. ¶ 57. Express Mobile has advanced similar 11 allegations against other providers of browser-based website building tools including Weebly, Inc., 12 Alibaba.com, WEBS, Inc., Volusion LLC, and WaveMaker, Inc.

13 23. Express Mobile's targeted lawsuits against Magento Solution Partners accuse
14 functionality in Magento's Enterprise Edition software and have harmed Magento's business and
15 relationships with its partners. There is accordingly an actual controversy that exists between
16 Magento and Express Mobile regarding the alleged infringement of any claim of the '397 and '168
17 patents.

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#### MAGENTO DOES NOT INFRINGE THE '397 AND '168 PATENTS

24. Magento's Enterprise Edition product does not directly or indirectly infringe any claim of the '397 and '168 patents, whether literally or under the doctrine of equivalents.

21 25. For example, Magento Enterprise Edition does not meet at least the limitations of
22 "storing information representative of said one or more user selected settings in a database" or
23 "generating a website at least in part by retrieving said information representative of said one or
24 more user selected settings stored in said database," as required by claim 1 of the '397 patent.

25 26. As another example, Magento Enterprise Edition does not meet at least the limitation
26 of producing "a database with a multidimensional array comprising the objects that comprise the
27 web site including data defining, for each object, the object style, an object number, and an
28 indication of the web page that each object is part of," as required by claim 1 of the '168 patent.

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27. Because Magento Enterprise Edition does not infringe any claim of the '397 and
 '168 patents, no third party infringes any claim of the '397 or '168 patents based on its use of
 Magento's Enterprise Edition product alone. Magento has not caused, directed, requested, or
 facilitated any infringement of the '397 and '168 patents, much less with specific intent to do so.
 Magento Enterprise Edition is not designed for use in any combination that infringes any claim of
 the '397 and '168 patent. To the contrary, Magento Enterprise Edition has substantial uses that do
 not infringe any claim of the '397 and '168 patents.

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### THE '397 AND '168 PATENTS ARE INVALID

9 28. The '397 and '168 patents are invalid under at least 35 U.S.C. §§ 101, 102, 103,
10 and/or 112, and the rules, regulations, and laws pertaining thereto.

11 29. The '397 and '168 patents recite the abstract idea of a browser-based website 12 building application with a WYSIWYG<sup>3</sup> user interface for selecting user settings with runtime files 13 and information stored in a database to build websites. The recited inventions are implemented 14 using conventional computer technologies and lack any inventive concept. The '397 and '168 15 patents are accordingly invalid under 35 U.S.C. § 101 because they are directed to subject matter 16 that is not eligible for patent.

17 30. The claims of the '397 and '168 patents are also anticipated and/or obvious under
18 pre-AIA 35 U.S.C. §§ 102 and 103. Prior art that renders the '397 and '268 patents anticipated
19 and/or obvious includes, but is not limited to:

- Ben Sawyer & Dave Greely, *Creating GeoCities Websites* (Muska & Lipman Publishing 1999) ("Sawyer"), publicly available on or before March 1, 1999;
- U.S. Publication No. 2002/0091725 ("Skok"), filed May 12, 1998;
- Deborah S. Ray & Eric J. Ray, *Netscape Composer for Dummies* (IDG Books Worldwide 1997) ("Ray"), publicly available on or before December 31, 1997; and

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<sup>&</sup>lt;sup>3</sup> "WYSIWYG" is an acronym for "what you see is what you get." A WYSIWYG interface is simply the idea of a user interface that allows the user to see something very similar to the end result as the document is being created.

- European Patent Application EP 0814414 A2 ("Nielsen"), published and publicly available on or before December 29, 1997.
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31. For example, Sawyer is a reference book for using GeoCities website development tools. At the time of publication, the GeoCities website, www.geocities.com, was the top free home page service on the Internet. GeoCities provided a number of user-friendly website development tools through its website, including GeoCities File Manager, Intel.com Web PageWizard, EZ Editor, and GeoBuilder. Sawyer also discloses that GeoCities provided a number of tools that allowed users to use run time files to generate web sites, including adding Java applets that use information stored in a database to generate a website. Sawyer, and the GeoCities tools it discusses, thus anticipate or render obvious at least the claims of the '397 patent.

11 32. As another example, Skok discloses "a method and apparatus for providing content 12 creation and management" through the Internet, so that a user can read a web page stored on a web 13 server and, through the same browser, "contribute to that web document by adding new material or 14 editing the data that is already part of the document." Skok "uses a web page database" to store 15 "graphics and other images" that will be displayed on the web page. Similarly, Ray discloses an HTML editor that provides a WYSIWYG interface that offers a panel of user settings and allows 16 17 users to see how their website will appear as they are creating it. The editor also includes 18 functionality to allow a user to employ run time files, like Java applets, to generate websites. Accordingly, Skok anticipates or renders obvious at least claim 1 of the '397 patent. Claims of the 19 20 '397 patent are also rendered obvious by a combination of Skok and Ray.

# FIRST CLAIM

# (Declaration of Non-Infringement of the '397 Patent)

33. Magento restates and incorporates by reference the allegations in the preceding
paragraphs of this Complaint as if fully set forth herein.

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Express Mobile claims to own all rights, title, and interest in the '397 patent.

35. As set forth above, an actual controversy exists between Magento and Express
Mobile with respect to infringement of the '397 patent. This controversy is amenable to specific
relief through a decree of a conclusive character.

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1	36. Magento has not infringed and does not infringe any claim of the '397 patent, either		
2	directly or indirectly, literally or under the doctrine of equivalents, including by providing, making,		
3	using, offering for sale, or selling Magento Enterprise Edition.		
4	37. Magento is entitled to a judicial declaration that the providing, making, using,		
5	offering for sale, or selling of Magento Enterprise Edition has not, does not, and will not infringe,		
6	directly or indirectly, any valid claim of the '397 patent.		
7	SECOND CLAIM		
8	(Declaration of Invalidity of the '397 Patent)		
9	38. Magento restates and incorporates by reference the allegations in the preceding		
10	paragraphs of this Complaint as if fully set forth herein.		
11	39. Express Mobile claims to own all rights, title, and interest in the '397 patent.		
12	40. As set forth above, an actual controversy exists between Magento and Express		
13	Mobile concerning the validity of the '397 patent. This controversy is amenable to specific relief		
14	through a decree of a conclusive character.		
15	41. The claims of the '397 patent are invalid for failure to comply with the statutory		
16	prerequisites of pre-AIA 35 U.S.C. §§ 101, 102, 103, and/or 112.		
17	42. Magento is entitled to a judicial declaration that the claims of the '397 patent are		
18	invalid.		
19	THIRD CLAIM		
20	(Declaration of Non-Infringement of the '168 Patent)		
21	43. Magento restates and incorporates by reference the allegations in the preceding		
22	paragraphs of this Complaint as if fully set forth herein.		
23	44. Express Mobile claims to own all rights, title, and interest in the '168 patent.		
24	45. As set forth above, an actual controversy exists between Magento and Express		
25	Mobile with respect to infringement of the '168 patent. This controversy is amenable to specific		
26	relief through a decree of a conclusive character.		
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28	9		
	COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY		

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1	46. Magento has not infringed and does not infringe any claim of the '168 patent, either		
2	directly or indirectly, literally or under the doctrine of equivalents, including by providing, making,		
3	using, offering for sale, or selling Magento Enterprise Edition.		
4	47. Magento is entitled to a judicial declaration that the providing, making, using,		
5	offering for sale, or selling of Magento Enterprise Edition has not, does not, and will not infringe,		
6	directly or indirectly, any valid claim of the '168 patent.		
7	FOURTH CLAIM		
8	(Declaration of Invalidity of the '168 Patent)		
9	48. Magento restates and incorporates by reference the allegations in the preceding		
10	paragraphs of this Complaint as if fully set forth herein.		
11	49. Express Mobile claims to own all rights, title, and interest in the '168 patent.		
12	50. As set forth above, an actual controversy exists between Magento and Express		
13	Mobile concerning the validity of the '168 patent. This controversy is amenable to specific relief		
14	through a decree of a conclusive character.		
15	51. The claims of the '168 patent are invalid for failure to comply with the statutory		
16	prerequisites of pre-AIA 35 U.S.C. §§ 101, 102, 103, and/or 112.		
17	52. Magento is entitled to a judicial declaration that the claims of the '168 patent are		
18	invalid.		
19	PRAYER FOR RELIEF		
20	WHEREFORE, Magento prays for judgment and relief as follows:		
21	A. Declaring that Magento Enterprise Edition and any solution partners using Magento		
22	Enterprise Edition have not infringed, do not infringe, and will not infringe any valid claim of the		
23	'397 patent;		
24	B. Declaring that all claims of the '397 patent are invalid;		
25	C. Declaring that Magento Enterprise Edition and any solution partners using Magento		
26	Enterprise Edition have not infringed, do not infringe, and will not infringe any valid claim of the		
27	'168 patent;		
28	D. Declaring that all claims of the '168 patent are invalid; 10		
	COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY		

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1	E. Declaring this an exceptional case in favor of Magento pursuant to 35 U.S.C. § 285;		
2	F. Awarding Magento its costs and attorneys' fees in connection with this action; and		
3	G. Awarding Magento such other and further relief as the Court deems just and proper.		
4	JURY DEMAND		
5 6	Magento demands a jury trial on all issues and claims so triable.		
7	Dated: May 5, 2017 SIDLEY AUSTIN LLP		
8	By: <u>/s/ Michael J. Bettinger</u>		
9	Michael J. Bettinger		
10	Michael J. Bettinger (SBN 122196)		
11	mbettinger@sidley.com Irene Yang (SBN 245464)		
12	irene.yang@sidley.com Sue Wang (SBN 286247) sue.wang@sidley.com		
13	SIDLEY AUSTIN LLP 555 California Street, Suite 2000		
14	San Francisco, California 94104-1715 Telephone: (415) 772-1200		
15	Facsimile: (415) 772-7400		
16	Attorneys for Magento, Inc.		
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28	11		
	11 Complaint for Declaratory Judgment of Patent Non-Infringement and Invalidity		