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7 DINING-U-CONTROL, INC.

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10 **UNITED STATES DISTRICT COURT**

11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12
13 DINING-U-CONTROL, INC.,
14 an Ohio Corporation

15 Plaintiff,

16 v.

17 CUSTOM BUSINESS SOLUTIONS,
18 INC., a California Corporation

19 Defendant.

Case No.:

COMPLAINT FOR:

(i) PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

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1 Plaintiff DINING-U-CONTROL, INC., an Ohio Corporation (hereinafter
2 referred to as “DUC” or “Plaintiff”) hereby submits this Complaint against
3 Defendant CUSTOM BUSINESS SOLUTIONS, INC., a California Corporation
4 (hereinafter referred to as “CBS” or “Defendant”), and alleges herein as follows:
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6 **JURISDICTION AND VENUE**

7 1. Pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (any
8 Act of Congress relating to patents), this Court has original jurisdiction over the
9 subject matter of this action because this is an action for patent infringement
10 pursuant to 35 U.S.C. § 271.

11 2. This Court has personal jurisdiction over CBS because CBS: (i) is
12 incorporated and conducts business in the State of California; (ii) has its principal
13 place of business in this District; (iii) has committed and continues to commit acts
14 in the State of California, including within this District, in violation of 35 U.S.C. §
15 271 by placing infringing products into the stream of commerce with the
16 understanding that those products are sold in the State of California, including
17 within this District.

18 3. Venue is proper in this District pursuant to 28 U.S.C § 1391(b) and (c)
19 because CBS conducts business within this District and offers products for sale
20 within this District that infringe upon DUC’s patent, causing harm to DUC.
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22 **PARTIES**

23 4. DUC is a corporation in good standing, incorporated under the laws of
24 the State of Ohio and maintains its principal place of business at 11250 Cornell
25 Park Drive, Suite 207, Cincinnati, OH 45242. DUC was originally formed in the
26 year 2000 under the name “3 DE Innovations Inc.” (“3DE”) In March 2006, 3DE
27 filed amended articles of incorporation with the Ohio Secretary of State, changing
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1 its name to “Dining-U-Control, Inc.” (Hereinafter, “DUC” shall inclusively refer
2 to the corporation without regard to its corporate name change.)

3 5. CBS is a California corporation having its principal place of business
4 at 12 Morgan, Irvine, California 92618. Upon information and belief, CBS is
5 headquartered in Irvine, CA with offices throughout the Western United
6 States. CBS is actively engaged in the business of developing, selling and
7 maintaining Point of Sale (“POS”) systems and related products for its customers
8 in the restaurant, food service and hospitality industries. Upon information and
9 belief, CBS markets, sells and offers to sell its POS systems and related products
10 throughout the United States, including within the State of California and this
11 District.

12 **GENERAL ALLEGATIONS**

13 **DUC’S Utility Patent**

14 6. DUC is engaged in developing products and solutions for the
15 restaurant and food service industry, that are intended to, among other things,
16 enhance the customer experience and improve the efficiency of business operations
17 through the use of innovative technologies and designs. Given the nature of
18 inventing and developing novel products, DUC expends substantial resources and
19 undertakes great efforts in protecting its intellectual property rights.

20 7. The individual co-founders of DUC were originally awarded United
21 States Patent No. 6,636,835 (the “‘835 Patent”), a utility patent, entitled “Wireless
22 Maitre D’ System for Restaurants,” attached hereto as **Exhibit “1.”**

23 8. On March 7, 2001, DUC’s individual co-founders exclusively
24 conveyed all rights, title and interest in the ‘835 Patent to DUC pursuant to that
25 certain assignment filed with the United States Patent and Trademark Office,
26 attached hereto as **Exhibit “2.”** Accordingly, DUC is the exclusive holder of all
27 rights, title, and interest in the ‘835 Patent, including the right to exclude others
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1 from the commercial exploit of its patent and to enforce, sue and recover damages
2 related to past and future infringement thereof.

3 9. The Abstract for the ‘835 Patent provides:

4 A wireless maitre d' system and method for
5 providing interactive two-way communication between
6 patrons and restaurant service personnel who have direct
7 interaction with the patrons during restaurant encounters.
8 The wireless maitre d' system includes a first wireless
9 device and a second wireless device. The first wireless
10 device establishes an interactive two-way electronic
11 communication between at least one patron and at least
12 one restaurant service personnel by a wireless
13 communication link, and the at least one restaurant service
14 personnel directly interacts with the at least one patron
15 during a restaurant encounter. The second wireless device
16 engages in the interactive two-way communication
17 between the at least one service personnel and the at least
18 one patron by the wireless communication link. The
19 interactive two-way electronic communication includes an
20 order for a retail item from the at least one patron to the at
21 least one restaurant service personnel.

16 **CBS'S INFRINGING PRODUCTS**

17 10. CBS develops, markets, sells and offers to sell a POS system named
18 “NorthStar” that, among other features, generally includes a wireless two-way
19 communication system and method for patrons to browse graphical menus, select
20 and purchase items, and otherwise interact with restaurant personnel through the
21 use of handheld touch-screen devices and kiosks.

22 11. CBS has and continues to actively market, sell and offer to sell its
23 NorthStar system to restaurants and customers in the food service and hospitality
24 industry throughout the United States. The NorthStar system is marketed and
25 offered for sale by CBS through, among other means, national industry trade
26 shows, press releases, white papers and case studies, and through CBS’s publically
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1 accessible website. CBS's claimed customers that have implemented the
2 NorthStar system are major restaurant and food service operators, including
3 California Pizza Kitchen, Norwegian Cruise Lines and the Melting Pot.

4 12. As advertised to the general public on CBS's website, the NorthStar
5 system provides CBS's customers with the ability to "have seated consumers
6 ordering for themselves in less than 1 minute with the CBS NorthStar POS Tablet
7 system. Customers can quickly order for themselves at table, pay at the table, sign
8 at the table." CBS goes on to boast that, "In less than 1 minute, guests can use
9 the iPad at the table to start their order. From there, your guests will be able to
10 order drinks and appetizers, view your menu items with brilliant, compelling
11 images, modify their order to their liking, and send the order to the kitchen."

12 13. CBS has and continues to infringe on DUC's rights under the '835
13 Patent through the development, promotion and sale of the NorthStar product, as
14 detailed herein. CBS's infringement of the '835 Patent provides the NorthStar
15 product with unique elements and functionality that is the result of DUC's
16 innovation, not CBS's.

17 14. DUC has not at any time provided permission for CBS to
18 commercially exploit or otherwise make use of the systems and methods identified
19 in the '835 Patent.

20 **FIRST CLAIM FOR RELIEF**

21 **(INFRINGEMENT OF THE '835 PATENT)**

22 15. The allegations contained in paragraphs 1-14 above are hereby re-
23 alleged as if fully set forth herein.

24 16. CBS's has infringed and continues to infringe, directly and indirectly,
25 through contributory and/or induced infringement, Claim 1, 8 and/or 20 of the '835
26 Patent, or one or more of Claim 1, 8 and/or 20's dependent claims by developing,
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1 selling and/or offering to sell the NorthStar product in the United States, in
2 violation of 35 U.S.C. § 271.

3 17. The unique functionality of CBS’s NorthStar product is dependent, or
4 substantially dependent, on each element of system Claims 1 and/or 8, and
5 performs each step, or substantially performs each step, of method Claim 20.

6 18. CBS’s NorthStar product infringes upon DUC’s ‘835 Patent through
7 its functionality as a system for restaurant operators to receive, fill and finalize
8 orders from its patrons wirelessly using an iPad, kiosk or other wireless handheld
9 device to establish two-way interactive electronic communication between the
10 patron and restaurant service personnel.

11 19. The NorthStar product further infringes upon DUC’s ‘835 Patent in
12 that it provides patrons with an interactive touch-screen photographic menu to
13 select retail items for purchase from the restaurant and a means to communicate
14 with restaurant service personnel. A patron’s inputs are received by restaurant
15 service personnel using a complimentary iPad or other interactive wireless device.
16 Patrons complete the sales transaction and pay for their purchase using the
17 NorthStar system.

18 20. CBS’s NorthStar product further infringes upon DUC’s ‘835 Patent in
19 that it offers patrons the option of an account whereby member patrons may login
20 to the NorthStar product to save and retrieve preferences and customizations,
21 including but not limited to custom favorite orders. A patron’s demographic
22 information and personal data is compiled and saved by the NorthStar product.
23 CBS’s NorthStar product also offers patrons the ability to play online interactive
24 games and trivia questions.

25 21. DUC is informed and believes, and on that basis alleges, that CBS’s
26 infringement of the ‘835 Patent has been and continues to be intentional, willful,
27 and without regard to DUC’s rights. DUC is informed and believes, and on that
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1 basis alleges, that CBS's infringement of the '835 Patent is and has been
2 intentional, deliberate, and willful as a result of CBS's participation in the
3 restaurant and food services industry, including its participation in trade shows
4 where CBS indirectly or directly became aware of DUC's '835 Patent.

5 22. DUC is informed and believes, and on that basis alleges, that CBS has
6 monetarily gained through its infringement of the '835 Patent.

7 23. DUC has sustained damages as a direct and proximate result of CBS's
8 infringement of the '835 Patent.

9 24. DUC will suffer and continues to suffer irreparable harm from CBS's
10 infringement of the '835 Patent. DUC has no adequate remedy at law and is
11 therefore entitled to an injunction against CBS, restraining and enjoining CBS
12 from further committing acts that infringe on DUC's '835 Patent. CBS will
13 continue to infringe upon DUC's '835 Patent and cause ongoing harm to DUC
14 unless enjoined.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, DUC respectfully prays for the following relief:

17 1. A judgment that CBS has infringed, contributorily infringed, and/or
18 induced infringement of one of more claims of each of DUC's '835 Patent;

19 2. An order and judgment preliminarily and permanently enjoining CBS
20 and its officers, directors, agents, servants, employees, affiliates, attorneys, and all
21 others acting in privity or in concert with it, and its parents, subsidiaries, divisions,
22 successors and assigns from further acts of infringement of DUC's '835 Patent;

23 3. A judgment awarding DUC all damages adequate to compensate for
24 CBS's infringement of DUC's '835 Patent, and in no event less than a reasonable
25 royalty for CBS's acts of infringement, including all pre-judgment and post-
26 judgment interest at the maximum rate permitted by law;

27 4. A judgment awarding DUC all damages, including treble damages,
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1 based on any infringement found to be willful, pursuant to 35 U.S.C. § 284,
2 together with prejudgment interest;

3 5. A judgment awarding DUC all of CBS's profits, pursuant to 35
4 U.S.C. § 289 together with prejudgment interest;

5 6. Actual damages suffered by DUC as a result of CBS's unlawful
6 conduct, in an amount to be proven at trial, as well as prejudgment interest as
7 authorized by law;

8 7. A judgment that this is an exceptional case and an award to DUC of
9 its costs and reasonable attorneys' fees incurred in this action as provided by 35
10 U.S.C. § 285;

11 8. Such other relief as this Court deems just and proper.

12
13 DATED: July 7, 2017

EANDI FITZPATRICK LLP

14 By: /s/ Matthew J. Eandi

15 Matthew J. Eandi, Esq.
16 Attorneys for Plaintiff
17 Dining-U-Control, Inc.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Dining-U-Control Inc. hereby respectfully requests a trial by jury on all issues raised by the Complaint.

DATED: July 7, 2017

EANDI FITZPATRICK LLP

By: /s/ Matthew J. Eandi

Matthew J. Eandi, Esq.
Attorneys for Plaintiff
Dining-U-Control, Inc.

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