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 9 SYMANTEC CORPORATION

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SYMANTEC CORPORATION,  
 Plaintiff,  
 v.  
 CUPP CYBERSECURITY, LLC and  
 CUPP COMPUTING AS,  
 Defendants.

Case No.  
**COMPLAINT FOR  
 DECLARATORY JUDGMENT**  
**JURY TRIAL DEMANDED**

1 Symantec Corporation (“Symantec”) hereby alleges for its Complaint against defendants  
2 CUPP Cybersecurity, LLC and CUPP Computing AS (collectively, “CUPP”), as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action for declaratory judgment of noninfringement of U.S. Patent Nos.  
5 8,631,488 (the “488 patent”); 8,789,202 (the “202 patent”); 9,106,683 (the “683 patent”);  
6 9,843,595 (the “595 patent”); 9,781,164 (the “164 patent”); 9,756,079 (the “079 patent”);  
7 9,747,444 (the “444 patent”); and 8,365,272 (the “272 patent”) (collectively, “asserted patents”  
8 or “patents-in-suit”) arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and  
9 the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

10 2. On June 14, 2018, CUPP filed a complaint against Symantec in the Northern  
11 District of Texas, *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case No. 3:18-cv-  
12 01554-N (N.D. Tex.) (“CUPP Complaint”), alleging infringement of all claims of the asserted  
13 patents, with the exception of the ’202 patent on which CUPP asserts claims 1-10 and 21. CUPP  
14 has alleged infringement by a wide range of Symantec products, including, but not limited to,  
15 Symantec Endpoint Protection (“SEP”) and Norton products. The allegations are directed to  
16 Symantec’s mobile products, such as SEP Mobile and Norton Mobile, and Symantec’s cloud  
17 products, such as SEP Cloud and Web Security Solution (“WSS”). A true and correct copy of the  
18 CUPP Complaint is attached as Exhibit A. Symantec is moving to dismiss the CUPP Complaint  
19 for improper venue in view of the Supreme Court’s ruling in *TC Heartland LLC v. Kraft Foods*  
20 *Grp. Brands LLC*, 137 S. Ct. 1514 (2017), concurrently with the filing of this action for  
21 declaratory judgment.

22 3. An actual and justiciable controversy exists under 28 U.S.C. §§ 2201-2202  
23 between Symantec and CUPP as to whether Symantec infringes any claim of the asserted patents.

24 **PARTIES**

25 4. Plaintiff Symantec is a Delaware corporation, with its principal place of business  
26 at 350 Ellis Street, Mountain View, California 94043.

27 5. Defendant CUPP Cybersecurity, LLC is a Delaware corporation with its principal  
28 place of business at 470 Ramona Street, Palo Alto, California.

1           6. Defendant CUPP Computing AS is a Norwegian corporation with its principal  
2 place of business at Stortingsgaten 28, N-0161, Oslo, Norway.

### 3   **JURISDICTION AND VENUE**

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

6           8. This Court has subject matter jurisdiction over this action under 28 U.S.C.  
7 §§ 1331, 1338(a), 1367(a), and 2201(a).

8           9. This Court has personal jurisdiction over CUPP. CUPP Cybersecurity, LLC is a  
9 wholly-owned subsidiary of CUPP Computing AS, and has its principal place of business in this  
10 District, at 470 Ramona Street in Palo Alto, California. The companies share a website  
11 (<https://www.cuppcomputing.com>) and have the same Board of Directors  
12 (<https://www.cuppcomputing.com/about/#new-page-1>), the Chairman of which resides in this  
13 District. CUPP boasts on its website of “an extensive patent portfolio resulting from many years  
14 of R&D with leading industry experts in Israel, California, and Norway.” *See*  
15 <https://www.cuppcomputing.com/#hike>. CUPP Computing AS is the owner of the asserted  
16 patents and has conveyed certain rights in the asserted patents to CUPP Cybersecurity, LLC,  
17 including the rights to sue, assert, exclude, assign, and license the asserted patents. In addition to  
18 residing in this District, CUPP Cybersecurity, LLC has purposefully availed itself of the  
19 privileges and protections of this District by engaging in business here, including activities related  
20 to patent enforcement. CUPP Computing AS also engages in regular business and patent  
21 enforcement activities in this District, including by conveying to CUPP Cybersecurity LLC the  
22 rights to assert and license the asserted patents.

23           10. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and 1391(c).  
24 Defendant CUPP Cybersecurity, LLC is subject to personal jurisdiction in this District, resides in  
25 this District, and maintains its principal place of business in this District. As a non-resident,  
26 pursuant to 28 U.S.C. § 1391(c)(3), defendant CUPP Computing AS may be sued in any district.  
27 Venue is proper because a substantial part of the events giving rise to the claims in this action  
28 also occurred in this District. Symantec currently employs approximately 2,000 people

1 comprising management, engineering, finance, marketing, and other staff at its headquarters,  
2 which have been in this District since its founding in 1982.

3 11. CUPP's only U.S. location is in Palo Alto, California, in the Northern District of  
4 California. CUPP's former Chief Executive Officer, former Founder/Product  
5 Developer/President, former Vice President of Finance, and current Chairman of the Board, who  
6 all likely have information relevant to this case, reside within the Northern District of California.

7 12. The CUPP Complaint was filed in an improper venue. CUPP alleged a single fact  
8 in support of its claim that venue is proper in the Northern District of Texas: Symantec has an  
9 office at "15950 Dallas Pkwy, Dallas, TX 75248." Exh. A at ¶ 2. That allegation is  
10 incorrect. Symantec has no office in the Northern District of Texas. Symantec is also not  
11 incorporated in Texas.

12 13. This dispute should be resolved in this District, where venue is proper and where  
13 Symantec's and CUPP's ties are strongest.

14 **INTRADISTRICT ASSIGNMENT**

15 14. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this is an Intellectual Property Action  
16 subject to assignment on a district-wide basis.

17 **PATENTS-IN-SUIT**

18 15. The '488 patent, entitled SYSTEMS AND METHODS FOR PROVIDING  
19 SECURITY SERVICES DURING POWER MANAGEMENT MODE, states on its face that it  
20 issued on January 14, 2014. A true and correct copy of the '488 patent is attached as Exhibit B.  
21 CUPP Cybersecurity, LLC has alleged that it was conveyed rights by CUPP Computing AS to  
22 enforce the '488 patent.

23 16. The '202 patent, entitled SYSTEMS AND METHODS FOR PROVIDING REAL  
24 TIME ACCESS MONITORING OF A REMOVABLE MEDIA DEVICE, states on its face that it  
25 issued on July 22, 2014. A true and correct copy of the '202 patent is attached as Exhibit C.  
26 CUPP Cybersecurity, LLC has alleged that it was conveyed rights by CUPP Computing AS to  
27 enforce the '202 patent.

28 17. The '683 patent, entitled SYSTEMS AND METHODS FOR PROVIDING

1 SECURITY SERVICES DURING POWER MANAGEMENT MODE, states on its face that it  
2 issued on August 11, 2015. A true and correct copy of the '683 patent is attached as Exhibit D.  
3 CUPP Cybersecurity, LLC has alleged that it was conveyed rights by CUPP Computing AS to  
4 enforce the '683 patent.

5 18. The '595 patent, entitled SYSTEMS AND METHODS FOR PROVIDING  
6 SECURITY SERVICES DURING POWER MANAGEMENT MODE, states on its face that it  
7 issued on December 12, 2017. A true and correct copy of the '595 patent is attached as Exhibit E.  
8 CUPP Cybersecurity, LLC has alleged that it was conveyed rights by CUPP Computing AS to  
9 enforce the '595 patent.

10 19. The '164 patent, entitled SYSTEM AND METHOD FOR PROVIDING  
11 NETWORK SECURITY TO MOBILE DEVICES, states on its face that it issued on October 3,  
12 2017. A true and correct copy of the '164 patent is attached as Exhibit F. CUPP Cybersecurity,  
13 LLC has alleged that it was conveyed rights by CUPP Computing AS to enforce the '164 patent.

14 20. The '079 patent, entitled SYSTEM AND METHOD FOR PROVIDING  
15 NETWORK AND COMPUTER FIREWALL PROTECTION WITH DYNAMIC ADDRESS  
16 ISOLATION TO A DEVICE, states on its face that it issued on September 5, 2017. A true and  
17 correct copy of the '079 patent is attached as Exhibit G. CUPP Cybersecurity, LLC has alleged  
18 that it was conveyed rights by CUPP Computing AS to enforce the '079 patent.

19 21. The '444 patent, entitled SYSTEM AND METHOD FOR PROVIDING  
20 NETWORK SECURITY TO MOBILE DEVICES, states on its face that it issued on August 29,  
21 2017. A true and correct copy of the '444 patent is attached as Exhibit H. CUPP Cybersecurity,  
22 LLC has alleged that it was conveyed rights by CUPP Computing AS to enforce the '444 patent.

23 22. The '272 patent, entitled SYSTEM AND METHOD FOR PROVIDING  
24 NETWORK AND COMPUTER FIREWALL PROTECTION WITH DYNAMIC ADDRESS  
25 ISOLATION TO A DEVICE, states on its face that it issued on January 29, 2013. A true and  
26 correct copy of the '272 patent is attached as Exhibit I. CUPP Cybersecurity, LLC has alleged  
27 that it was conveyed rights by CUPP Computing AS to enforce the '272 patent.  
28

**FACTUAL BACKGROUND**

1  
2 23. Founded in 1982, Symantec is one of the world's leading cybersecurity companies.  
3 Since the beginning, Symantec has provided products that enhance the security and reliability of  
4 its customers' computing systems. Symantec has grown through organic growth and strategic  
5 acquisitions, including of Peter Norton Computing in 1990. By the late 1990s, Symantec had  
6 three major product lines. The first line, consisting primarily of Norton AntiVirus and Norton  
7 Utilities products, covered security to keep computers protected and reliable. The second line  
8 included remote productivity solutions, which enabled telecommuters, mobile professionals, and  
9 workers in remote offices to access information, applications, and data on-demand for any  
10 location. The third line included internet tools, primarily for Java programmers. With the  
11 addition of Blue Coat Systems, Inc. in 2016, Symantec expanded its web security solutions for  
12 global enterprises and governments. Symantec is dedicated to continued innovation to help its  
13 customers secure and manage their information, and has expended significant resources in the  
14 research and development of its products.

15 24. CUPP was founded in 2005 in Norway. In 2011, CUPP launched an unsuccessful  
16 hybrid processor product. In 2012, CUPP acquired the assets of Yoggie Security Systems Ltd.  
17 ("Yoggie"), including intellectual property rights in the technology underlying the asserted  
18 patents. CUPP no longer has employees working as engineers and is a patent holding company  
19 focusing on monetization of what it describes as its "extensive" and "robust" patent portfolio.

20 25. In its action against Symantec pending in the Northern District of Texas, CUPP  
21 alleged that Symantec directly infringes the asserted patents. *See, e.g.*, Exh. A ¶¶ 63, 85, 103,  
22 126, 149, 171, 187, 208 ("Symantec has infringed and continues to infringe [all claims] of the  
23 [asserted patent] in violation of 35 U.S.C. § 271(a).").

24 26. CUPP also alleged that Symantec indirectly infringes by inducement the method  
25 claims of the asserted patents. *See, e.g.*, Exh. A ¶¶ 77, 95, 118, 141, 163, 200, 224 ("Symantec  
26 has induced infringement of at least [asserted claims] of the [asserted patent] under 35 U.S.C. §  
27 271(b)."). The '079 patent has no method claims, and CUPP has not alleged indirect  
28 infringement as to that patent. *See, e.g., id.*



1 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
2 do not infringe any claim of the '488 patent is necessary and appropriate at this time in order for  
3 the parties to ascertain their respective rights and duties regarding the '488 patent.

4 **COUNT II**

5 **(Declaratory Judgment of Noninfringement of U.S. Patent No. 8,789,202)**

6 33. Symantec repeats and realleges each allegation set forth in paragraphs 1 through  
7 32 above as if fully set forth herein.

8 34. CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case  
9 No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '202 patent.

10 35. The accused Symantec products have not infringed and do not infringe any claim  
11 of the '202 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

12 36. An actual and justiciable controversy has arisen and exists between Symantec and  
13 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
14 do not infringe any claim of the '202 patent is necessary and appropriate at this time in order for  
15 the parties to ascertain their respective rights and duties regarding the '202 patent.

16 **COUNT III**

17 **(Declaratory Judgment of Noninfringement of U.S. Patent No. 9,106,683)**

18 37. Symantec repeats and realleges each allegation set forth in paragraphs 1 through  
19 36 above as if fully set forth herein.

20 38. CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case  
21 No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '683 patent.

22 39. The accused Symantec products have not infringed and do not infringe any claim  
23 of the '683 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

24 40. An actual and justiciable controversy has arisen and exists between Symantec and  
25 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
26 do not infringe any claim of the '683 patent is necessary and appropriate at this time in order for  
27 the parties to ascertain their respective rights and duties regarding the '683 patent.



COUNT IV

**(Declaratory Judgment of Noninfringement of U.S. Patent No. 9,843,595)**

41. Symantec repeats and realleges each allegation set forth in paragraphs 1 through 40 above as if fully set forth herein.

42. CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '595 patent.

43. The accused Symantec products have not infringed and do not infringe any claim of the '595 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

44. An actual and justiciable controversy has arisen and exists between Symantec and CUPP. A judicial determination and declaration that Symantec's products have not infringed and do not infringe any claim of the '595 patent is necessary and appropriate at this time in order for the parties to ascertain their respective rights and duties regarding the '595 patent.

COUNT V

**(Declaratory Judgment of Noninfringement of U.S. Patent No. 9,781,164)**

45. Symantec repeats and realleges each allegation set forth in paragraphs 1 through 43 above as if fully set forth herein.

46. CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '164 patent.

47. The accused Symantec products have not infringed and do not infringe any claim of the '164 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

48. An actual and justiciable controversy has arisen and exists between Symantec and CUPP. A judicial determination and declaration that Symantec's products have not infringed and do not infringe any claim of the '164 patent is necessary and appropriate at this time in order for the parties to ascertain their respective rights and duties regarding the '164 patent.

COUNT VI

**(Declaratory Judgment of Noninfringement of U.S. Patent No. 9,756,079)**

49. Symantec repeats and realleges each allegation set forth in paragraphs 1 through 47 above as if fully set forth herein.

1           50.    CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case  
2 No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '079 patent.

3           51.    The accused Symantec products have not infringed and do not infringe any claim  
4 of the '079 patent, literally or under the doctrine of equivalents.

5           52.    An actual and justiciable controversy has arisen and exists between Symantec and  
6 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
7 do not infringe any claim of the '079 patent is necessary and appropriate at this time in order for  
8 the parties to ascertain their respective rights and duties regarding the '079 patent.

9   **COUNT VII**

10                                   **(Declaratory Judgment of Noninfringement of U.S. Patent No. 9,747,444)**

11           53.    Symantec repeats and realleges each allegation set forth in paragraphs 1 through  
12 51 above as if fully set forth herein.

13           54.    CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case  
14 No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '444 patent.

15           55.    The accused Symantec products have not infringed and do not infringe any claim  
16 of the '444 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

17           56.    An actual and justiciable controversy has arisen and exists between Symantec and  
18 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
19 do not infringe any claim of the '444 patent is necessary and appropriate at this time in order for  
20 the parties to ascertain their respective rights and duties regarding the '444 patent.

21   **COUNT VIII**

22                                   **(Declaratory Judgment of Noninfringement of U.S. Patent No. 8,365,272)**

23           57.    Symantec repeats and realleges each allegation set forth in paragraphs 1 through  
24 55 above as if fully set forth herein.

25           58.    CUPP alleges in *CUPP Cybersecurity, LLC, et al. v. Symantec Corporation*, Case  
26 No. 3:18-cv-01554-N (N.D. Tex.), that Symantec infringes one or more claims of the '272 patent.

27           59.    The accused Symantec products have not infringed and do not infringe any claim  
28 of the '272 patent, whether directly or indirectly, literally or under the doctrine of equivalents.

1           60.     An actual and justiciable controversy has arisen and exists between Symantec and  
2 CUPP. A judicial determination and declaration that Symantec's products have not infringed and  
3 do not infringe any claim of the '272 patent is necessary and appropriate at this time in order for  
4 the parties to ascertain their respective rights and duties regarding the '272 patent.

5   **PRAYER FOR RELIEF**

6           WHEREFORE, Symantec requests that the Court enter judgment in its favor and against  
7 CUPP as follows:

- 8           (a)     Declaring that Symantec has not infringed, directly or indirectly, literally or by  
9                   equivalents, any claim of the asserted patents;
- 10          (b)     Declaring that judgment be entered in favor of Symantec and against CUPP;
- 11          (c)     Enjoining CUPP, its agents, and all persons acting in concert or participation with  
12                   it, from claiming that Symantec infringes the asserted patents;
- 13          (d)     Finding that this is an exceptional case under 35 U.S.C. § 285;
- 14          (e)     Awarding Symantec its costs and attorneys' fees in connection with this action;  
15                   and
- 16          (f)     Awarding Symantec such other and further relief as this Court may deem just and  
17                   proper.

18   **DEMAND FOR JURY TRIAL**

19           Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 3-6(a), Symantec  
20 hereby demands a jury trial of all issues triable by a jury.

21  
22 Dated: August 6, 2018

By:       /s/ Stefani E. Shanberg        
          STEFANI E. SHANBERG

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24                   Attorney for Plaintiff  
25                   SYMANTEC CORPORATION  
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