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15 Attorneys for Plaintiff Mitek Systems, Inc.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 Mitek Systems, Inc.,

19 Plaintiff,

20 vs.

21 United Services Automobile
22 Association,

23 Defendant.

Case No. _____

**COMPLAINT FOR
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

Date: November 1, 2019

24 Plaintiff Mitek Systems, Inc. (“Mitek” or “Plaintiff”), for its Complaint against
25 Defendant United Services Automobile Association (“USAA” or “Defendant”),
26 hereby alleges as follows:

27 **NATURE OF THE ACTION**

28 1. This is a declaratory judgment action arising under the patent laws of
the United States, Title 35 of the United States Code. This action seeks a
determination that Mitek does not infringe any valid or enforceable claim of United
States Patent Nos. 8,699,779 (“the ’779 Patent”); 9,336,517 (“the ’517 Patent”);

1 9,818,090 (“the ’090 Patent”); and 8,977,571 (“the ’571 patent”) (collectively, “the
2 Patents-in-Suit”).

3 2. USAA’s patent enforcement and litigation campaign has placed a cloud
4 over Mitek’s products and services; has accused Mitek and Mitek’s customers of
5 infringing the Patents-in-Suit; and has created a justiciable controversy between
6 Mitek and USAA.

7 **THE PARTIES**

8 3. Plaintiff Mitek is a Delaware corporation, having its international
9 headquarters and principal place of business at 660 B Street, Suite 100, San Diego,
10 CA 92101. Part of Mitek’s business includes licensing a remote image capture SDK
11 called MiSnap™ (part of Mitek’s Mobile Deposit® product offering) to financial
12 institutions for incorporation within their mobile banking applications.

13 4. On information and belief, Defendant USAA is a reciprocal inter-
14 insurance exchange and unincorporated association organized under the laws of the
15 State of Texas having its principal place of business at 9800 Fredericksburg Road,
16 San Antonio, Texas 78288. USAA regularly conducts business throughout the
17 United States including within this District.

18 **JURISDICTION AND VENUE**

19 5. This civil action arises under the Declaratory Judgment Act, 28 U.S.C.
20 §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

21 6. This Court has jurisdiction over the subject matter of this action
22 pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

23 7. This Court has general and specific personal jurisdiction over USAA.

24 8. Starting in early 2017, USAA launched an aggressive patent licensing
25 and enforcement campaign relating to the Patents-in-Suit targeting California
26 financial institutions. On information and belief, sometime in 2017, USAA retained
27 a law firm, Epicenter Law, PC (“Epicenter”), which is based in the San Francisco
28 Bay Area within this District, to conduct this extensive campaign. On information

1 and belief, Epicenter, on behalf of USAA, sent over 1,000 patent licensing demand
2 letters to financial intuitions across the country, most of which are Mitek customers.
3 These letters explained that “USAA has asked Epicenter Law to approach financial
4 institutions to offer a license, on reasonable terms, as fair compensation for the
5 continued use of this patent-protected innovation.” Ex. A. On information and
6 belief, at least some of these letters included one or more “claim charts” detailing
7 Mitek’s customers’ infringement of one or more of the Patents-in-Suit as well as a
8 “Patent List” identifying one or more of the Patents-in-Suit. *Id.*

9 9. USAA intentionally and purposefully directed patent enforcement
10 activities relating to the Patents-in-Suit into California and this District. For example,
11 on information and belief, USAA, through Epicenter, sent several of the
12 aforementioned letters to financial institutions within California and within this
13 District. For example, USAA sent a patent licensing demand letter to one of Mitek’s
14 largest customers, Wells Fargo Bank, in San Francisco, California.

15 10. On information and belief, USAA, through Epicenter, also initiated
16 numerous telephone calls and in-person meetings with financial institutions within
17 California and within this District seeking to enforce the Patents-in-Suit. As just one
18 example, in May and June of 2018, representatives of Epicenter held in-person
19 meetings with representatives of Wells Fargo Bank in San Francisco, California
20 relating to USAA’s patent licensing campaign and the Patents-in-Suit. During those
21 meetings, on information and belief, USAA, through Epicenter, discussed the
22 infringement of the Patents-in-Suit and provided claim charts describing the alleged
23 infringement to the representatives of Wells Fargo Bank.

24 11. In June 2018, USAA sued Wells Fargo Bank for patent infringement in
25 the Eastern District of Texas alleging infringement of the Patents-in-Suit based at
26 least in part on technology provided to Wells Fargo Bank by Mitek. In the First
27 Amended Complaint in that action, USAA specifically referenced Mitek’s
28 technology, including Mitek’s MiSnap™. Ex. B, “Amended Complaint,” *USAA v.*

1 *Wells Fargo Bank*, No. 2:18-cv-00245-JRG (“Wells Fargo lawsuit”), Dkt. 54 ¶ 29
2 (E.D. Tex. Nov. 28, 2018). According to the Amended Complaint, Wells Fargo Bank
3 acknowledged that Mitek “provides its capture control software” that is accused, at
4 least in part, of infringing the Patents-in-Suit. *Id.* at ¶ 36. Mitek’s software and
5 technology is directly implicated in the alleged infringement.

6 12. In the Amended Complaint, USAA also implicitly accused Mitek of
7 encouraging and contributing to the infringement of each of the Patents-in-Suit by
8 supplying its MiSnap™ technology to financial institutions for incorporation within
9 their mobile banking applications. On information and belief, in the Wells Fargo
10 lawsuit, USAA has accused Wells Fargo Bank of infringing each of the Patents-in-
11 Suit at least in part by virtue of Wells Fargo Bank’s use of Mitek’s software and
12 technology, including MiSnap™. USAA has also sought and received, in the Wells
13 Fargo lawsuit, documents and source code from Mitek and deposition testimony from
14 several Mitek witnesses regarding the operation of MiSnap™. On information and
15 belief, USAA is relying on these documents, source code, and deposition testimony
16 in order to show direct infringement of the Patents-in-Suit by Wells Fargo’s remote
17 deposit application that incorporates MiSnap™. On information and belief, USAA
18 also alleged in the Wells Fargo lawsuit that the accused Mitek technology being used
19 by Wells Fargo has no substantial non-infringing uses. Mitek therefore has a real
20 and substantial apprehension of imminent litigation between Mitek and USAA for
21 direct infringement, inducement, and contributory infringement of the Patents-in-
22 Suit.

23 13. Mitek has various contractual relationships with its customers, including
24 OEM Agreements, relating to MiSnap™ and Mitek’s Mobile Deposit® product
25 offering. These agreements include indemnification provisions relating to actual or
26 alleged patent infringement by Mitek’s technology. In response to USAA’s massive
27 patent enforcement and letter writing campaign, Mitek has received demands for
28 indemnification from its customers and suppliers pursuant to these agreements. On

1 information and belief, USAA sent its patent licensing demand letters to Mitek's
2 customers knowing that Mitek's customers would forward those letters to Mitek and
3 seek indemnification for infringement of the Patents-in-Suit.

4 14. USAA has initiated litigation with Mitek in the past, raising Mitek's
5 apprehension of imminent litigation surrounding the Patents-in-Suit. In 2012, USAA
6 initiated a lawsuit against Mitek for trade secret misappropriation and declaratory
7 judgment of non-infringement and invalidity of certain Mitek patents in the Western
8 District of Texas, *USAA v. Mitek Systems, Inc.*, No. 5:12-cv-00282-FB (W.D. Tex.).
9 At least by conducting an aggressive and extensive patent licensing campaign
10 relating to the Patents-in-Suit, sending hundreds of patent licensing demand letters to
11 Mitek customers knowing those customers would forward the letters to Mitek and
12 seek indemnification, and initiating patent infringement litigation against a major
13 Mitek customer over technology provided to that customer by Mitek, there is a
14 substantial controversy between Mitek and USAA, who have adverse legal interests,
15 of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

16 15. This court has general personal jurisdiction over USAA at least because
17 of USAA's continuous and systematic contacts within this District, including
18 conducting substantial and regular business therein through its extensive property
19 and casualty insurance business conducted within this District, through its vast
20 network of ATMs within this District, and through its mail, internet, and mobile-
21 device based banking services carried out within this District.

22 16. For example, on information and belief, USAA derives substantial
23 revenue from California residents and is licensed to conduct business and sell
24 property and casualty insurance, among other products, within California and this
25 District. On information and belief, USAA owns or operates several companies
26 licensed in California that conduct regular and systematic business within California
27 and this District, such as USAA Casualty Insurance Company, USAA General
28

1 Indemnity Company, Garrison Property and Casualty Insurance Company, and
2 USAA Financial Insurance Agency.

3 17. On information and belief, USAA owned and operated at least two
4 places of business within California, a USAA Financial Center at 2431 Fenton
5 Parkway in San Diego, California and a USAA Financial Center at 2178 Vista Way
6 in Oceanside, California. On information and belief, these centers provide or
7 provided face-to-face personal service to USAA customers residing in California.

8 18. USAA actively invests in many Bay Area companies and, on
9 information and belief, retains an equity and/or controlling interest in these
10 companies. USAA's investment portfolio includes significant equity and/or control
11 in at least Coinbase and Socotra, both headquartered in San Francisco, California.
12 USAA also conducts substantial and systematic business in California through its
13 limited partnerships with many California residents, including at least Commerce
14 Ventures, headquartered in San Francisco, California; InCube Ventures,
15 headquartered in San Jose, California; Montage Ventures, headquartered in Palo
16 Alto, California; and the Entrepreneurs' Fund, headquartered in San Mateo,
17 California.

18 19. USAA has intentionally invoked and purposefully availed itself to the
19 jurisdiction of California courts and voluntarily submitted to jurisdiction in
20 California on numerous occasions in the past. For example, USAA has initiated
21 claims against the United States of America and others using courts in California and
22 this District. *See, e.g., USAA Casualty Insurance Company v. United States*, Case
23 No. 3:2005-cv-01680 (N.D. Cal.); *United Services Automobile Association v. Franke*
24 *Consumer Products, Inc.*, Case No. 5:11-cv-05430 (N.D. Cal.); *USAA Investment*
25 *Management Company et al v. Henry et al.*, Case No. 5:18-00137 (N.D. Cal.); *USAA*
26 *Casualty Insurance Company v. Broan-Nutone LLC*, Case No. 2:18-cv-01656 (C.D.
27 Cal.); *USAA Investment Management Company et al v. Hodges et al.*, Case No. 1:18-
28 cv-00605 (E.D. Cal.); *USAA v. United States of America et al.*, Case No. 3:14-cv-

1 01669-AJB-JMA (S.D. Cal.); *USAA et al. v. United States of America et al.*, Case
2 No. 3:15-cv-01144-AJB-KSC (S.D. Cal.); *USAA et al. v. United States of America*,
3 Case No. 3:09-cv-01009-L-POR (S.D. Cal.); *USAA et al. v. United States of America*,
4 Case No. 3:02-cv-02078-JM-POR; *USAA et al. v. The United States Bureau of Land*
5 *Management et al.*, Case No. 3:14-cv-01437-AJB-KSC (S.D. Cal.); *USAA v. North*
6 *American Van Lines, Inc. et al.*, Case No. 3:96-cv-00753-BTM-JFS (S.D. Cal.).
7 USAA has also voluntarily consented to jurisdiction in California and this District.
8 *See, e.g., Sturm v. United Services Automobile Association et al.*, Case. No. 3:12-cv-
9 01810 (N.D. Cal.); *Langan v. United Services Automobile Association et al.*, Case
10 No. 3:13-cv-04994 (N.D. Cal.); *Yue v. 21st Century Insurance et al.*, Case No. 5:10-
11 cv-03634 (N.D. Cal.); *Hudson et al v. USAA Property and Casualty Insurance*
12 *Company et al.*, Case No. 3:11-cv-01057 (N.D. Cal.); *Koepsell v. USAA, et al.*, Case
13 No. 2:11-cv-01772 (E.D. Cal.); *Kane v. USAA et al.*, No. 3:17-cv-02581-JAH-AGS
14 (S.D. Cal.); *Mattson v. USAA et al.*, Case No. 3:18-cv-00222-JM-KSC (S.D. Cal.);
15 *Conover v. USAA Cas. Ins. Co. et al.*, Case No. 3:91-cv-01044-K-HRM (S.D. Cal.);
16 *Bacino et al. v. USAA Cas. Ins. Co. et al.*, Case No. 3:08-cv-01239-DMS-RBB (S.D.
17 Cal.); *Radcliffe v. USAA Cas. Ins. Co.*, Case No. 3:11-cv-00352-JM-BLM (S.D.
18 Cal.); *Burns et al. v. USAA Cas. Ins. Co.*, Case No. 3:14-cv-02331-AJB-RBB (S.D.
19 Cal.); *Braden v. USAA Cas. Ins. Co. et al.*, Case No. 3:15-cv-01707-JM-BLM (S.D.
20 Cal.); *Lisicky et al. v. USAA Cas. Ins. Co. et al.*, Case No. 3:18-cv-01642-W-AGS
21 (S.D. Cal.); *Brumfield, et al. v. USAA Cas. Ins. Co.*, Case No. 3:05-cv-02214-LAB-
22 NLS (S.D. Cal.); *Deutz et al. v. USAA Cas. Ins. Co., Inc. et al.*, Case No. 3:16-cv-
23 02096-LAB-RNB (S.D. Cal.); *LaVaut v. USAA Fed. Sav. Bank, et al.*, Case No. 3:01-
24 cv-02047-BTM-NLS (S.D. Cal.); *Brewster v. USAA Fed. Sav. Bank et al.*, Case No.
25 3:10-cv-01633-JAH-BLM (S.D. Cal.); *Gugger v. USAA Fed. Sav. Bank et al.*, Case
26 No. 3:17-cv-01518-AJB-AGS (S.D. Cal.); *Small et al. v. Travelers Prop. Cas. Co. of*
27 *Am. et al.*, Case No. 3:08-cv-01160-BTM-WMC (S.D. Cal.); *Earlywine v. USAA Life*
28 *Ins. Co. et al.*, Case No. 3:17-cv-00328-CAB-NLS (S.D. Cal.).

1 28. Mitek has continued to innovate and improve its remote deposit
2 solution. Mitek currently licenses MiSnap™, a patented mobile-capture SDK that
3 enables an intuitive user experience and instant capture of quality images with a
4 mobile or desktop device. The process of capturing and optimizing an image can be
5 used to enable remote check deposit, verify a customer's identity, increase
6 transaction speed, improve image quality, and reduce abandonment rates. Mitek's
7 MiSnap™, after incorporated into a financial institution's remote banking
8 application, streamlines the user experience by enabling users to capture quality
9 images of their checks (as well as other important documentation) the first time.

10 29. Defendant USAA distributes remote deposit capture products, called
11 Deposit@Home® and Deposit@Mobile®, to its members. On information and
12 belief, USAA released its remote deposit product for mobile phones—
13 Deposit@Mobile®—in the spring or summer of 2009.

14 30. On information and belief, USAA has accused Wells Fargo Bank of
15 infringing at least claim 1 of the '779 Patent by virtue of Wells Fargo Bank's use of
16 Mitek's MiSnap™ and related remote deposit technology. On information and
17 belief, USAA has relied on certain MiSnap™ source code, documentation, and
18 deposition testimony from Mitek witnesses in order to show the alleged infringement
19 of at least claim 1 of the '779 Patent. On information and belief, USAA alleges that
20 Wells Fargo Bank specifically encourages its customers to use the accused Mitek's
21 MiSnap™ and related remote deposit technology in an infringing manner. On
22 information and belief, USAA also alleges that the accused Mitek's MiSnap™ and
23 related remote deposit technology have no substantial non-infringing uses. Thus,
24 Mitek and all of its MiSnap™ customers are presently faced with a substantial risk
25 of litigation by USAA for allegedly infringing, either directly or indirectly, the '779
26 Patent.

27 31. On information and belief, USAA has accused Wells Fargo Bank of
28 infringing at least claim 1 of the '517 Patent by virtue of Wells Fargo Bank's use of

1 Mitek's MiSnap™ and related remote deposit technology. On information and
2 belief, USAA has relied on certain MiSnap™ source code, documentation, and
3 deposition testimony from Mitek witnesses in order to show the alleged infringement
4 of at least claim 1 of the '517 Patent. On information and belief, USAA alleges that
5 Wells Fargo Bank specifically encourages its customers to use the accused Mitek's
6 MiSnap™ and related remote deposit technology in an infringing manner. On
7 information and belief, USAA also alleges that the accused Mitek's MiSnap™ and
8 related remote deposit technology have no substantial non-infringing uses. Thus,
9 Mitek and all of its MiSnap™ customers are presently faced with a substantial risk
10 of litigation by USAA for allegedly infringing, either directly or indirectly, the '517
11 Patent.

12 32. On information and belief, USAA has accused Wells Fargo Bank of
13 infringing at least claim 1 of the '571 Patent by virtue of Wells Fargo Bank's use of
14 Mitek's MiSnap™ and related remote deposit technology. On information and
15 belief, USAA has relied on certain MiSnap™ source code, documentation, and
16 deposition testimony from Mitek witnesses in order to show the alleged infringement
17 of at least claim 1 of the '571 Patent. On information and belief, USAA alleges that
18 Wells Fargo Bank specifically encourages its customers to use the accused Mitek's
19 MiSnap™ and related remote deposit technology in an infringing manner. On
20 information and belief, USAA also alleges that the accused Mitek's MiSnap™ and
21 related remote deposit technology have no substantial non-infringing uses. Thus,
22 Mitek and all of its MiSnap™ customers are presently faced with a substantial risk
23 of litigation by USAA for allegedly infringing, either directly or indirectly, the '571
24 Patent.

25 33. On information and belief, USAA has accused Wells Fargo Bank of
26 infringing at least claim 1 of the '090 Patent by virtue of Wells Fargo Bank's use of
27 Mitek's MiSnap™ and related remote deposit technology. On information and
28 belief, USAA has relied on certain MiSnap™ source code, documentation, and

1 deposition testimony from Mitek witnesses in order to show the alleged infringement
2 of at least claim 1 of the '090 Patent. On information and belief, USAA alleges that
3 Wells Fargo Bank specifically encourages its customers to use the accused Mitek's
4 MiSnap™ and related remote deposit technology in an infringing manner. On
5 information and belief, USAA also alleges that the accused Mitek's MiSnap™ and
6 related remote deposit technology have no substantial non-infringing uses. Thus,
7 Mitek and all of its MiSnap™ customers are presently faced with a substantial risk
8 of litigation by USAA for allegedly infringing, either directly or indirectly, the '090
9 Patent.

10 34. Thus, as described above, Mitek and all of its MiSnap™ customers are
11 presently faced with a substantial risk of litigation by USAA for allegedly infringing
12 each of the Patents-in-Suit.

13 **COUNT I**

14 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

15 **OF U.S. PATENT NO. 8,699,779**

16 35. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

17 36. Mitek, through the manufacture, use, and/or sale of Mitek's MiSnap™
18 and related remote deposit technology, has not and does not infringe, induce
19 infringement, or contribute to the infringement of any enforceable claim of the '779
20 patent, either literally or under the doctrine of equivalents.

21 37. Mitek's customers' use of Mitek's MiSnap™ and related remote deposit
22 technology has not and does not infringe, induce infringement, or contribute to the
23 infringement of any enforceable claim of the '779 patent, either literally or under the
24 doctrine of equivalents.

25 38. For example, Mitek's MiSnap™ and related remote deposit technology
26 do not infringe at least because they do not "determine whether the image of the
27 check aligns with the alignment guide" or "automatically capture the image of the
28 check when the image of the check is determined to align with the alignment guide,"

1 as required by claims 1 and 10 of the '779 patent. In addition, Mitek has never had
2 any intent to cause its customers to infringe the '779 patent.

3 39. As a result of the acts described in the preceding paragraphs, there exists
4 a controversy of sufficient immediacy and reality to warrant the issuance of a
5 declaratory judgment.

6 40. A judicial declaration is necessary and appropriate so that Mitek and its
7 customers may ascertain their rights regarding the '779 patent.

8 **COUNT II**

9 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

10 **OF U.S. PATENT NO. 9,336,517**

11 41. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

12 42. Mitek, through the manufacture, use, and/or sale of Mitek's MiSnap™
13 and related remote deposit technology, has not and does not infringe, induce
14 infringement, or contribute to the infringement of any enforceable claim of the '517
15 patent, either literally or under the doctrine of equivalents.

16 43. Mitek's customers' use of Mitek's MiSnap™ and related remote deposit
17 technology has not and does not infringe, induce infringement, or contribute to the
18 infringement of any enforceable claim of the '517 patent, either literally or under the
19 doctrine of equivalents.

20 44. For example, Mitek's MiSnap™ and related remote deposit technology
21 do not infringe at least because they do not "determine whether the at least one feature
22 of the instrument aligns with the alignment guide" or "automatically capture
23 information of the instrument when the at least one feature aligns with the alignment
24 guide," as required by claims 1 and 10 of the '517 patent. In addition, Mitek has
25 never had any intent to cause its customers to infringe the '517 patent.

26 45. As a result of the acts described in the preceding paragraphs, there exists
27 a controversy of sufficient immediacy and reality to warrant the issuance of a
28 declaratory judgment.

1 C. That Mitek and its customers have not infringed, either directly or
2 indirectly, any valid and enforceable claim of the '090 Patent through the
3 manufacture, use, and/or sale of Mitek's products, software, or technology;

4 D. That Mitek and its customers have not infringed, either directly or
5 indirectly, any valid and enforceable claim of the '571 Patent through the
6 manufacture, use, and/or sale of Mitek's products, software, or technology;

7 E. That Mitek is a prevailing party and that this is an exceptional case,
8 awarding Mitek its costs, expenses, disbursements, and reasonable attorneys' fees
9 under 35 U.S.C. § 285, and all other applicable statutes, rules, and common law; and

10 F. That Mitek be granted such other and further relief as the Court deems
11 just and proper.

12 **JURY DEMAND**

13 Mitek hereby demands a jury trial on all issues and claims so triable.
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17 DATED: November 1, 2019

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