

HON. BRIAN A. TSUCHIDA

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3 UNITED STATES DISTRICT COURT  
4 FOR THE WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE  
6

7 APERTURE NET LLC,

8 Plaintiff,

9 v.

10 HTC AMERICA, INC.,

11 Defendant.  
12  
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CASE NO. 19-CV-1746

**FIRST AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

14 **COMPLAINT FOR PATENT INFRINGEMENT**

15 1. Aperture Net LLC (“Aperture” or “Plaintiff”), by and through its  
16 counsel, hereby brings this action for patent infringement against HTC America,  
17 Inc. (“HTC” or “Defendant”) alleging infringement of the following validly issued  
18 patent (the “Patent-in-Suit”): U.S. Patent No. 6,711,204, titled “Channel Sounding  
19 for a Spread-Spectrum Signal” (the ’204 Patent), attached hereto as Exhibit A.  
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22 **NATURE OF THE ACTION**

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24 2. This is an action for patent infringement arising under the United  
25 States Patent Act 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.  
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## PARTIES

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2           3.     Plaintiff Aperture Net LLC is a company established in Texas with its  
3 principal place of business at 6205 Coit Rd., Ste 300 – 1016, Plano, TX 75024-  
4 5474.

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6           4.     On information and belief, Defendant HTC America, Inc. is a  
7 company incorporated in Washington and may be served by its registered agent  
8 Cogency Global Inc. at 1780 Barnes Blvd. SW, Tumwater, WA, 98512-0410.  
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## JURISDICTION AND VENUE

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12           5.     This lawsuit is a civil action for patent infringement arising under the  
13 patent laws of the United States, 35 U.S.C. § 101 et seq. The Court has subject-  
14 matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.  
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17           6.     The Court has personal jurisdiction over Defendant for the following  
18 reasons: (1) Defendant is present within or has minimum contacts within the State  
19 of Washington and the Western District of Washington; (2) Defendant has  
20 purposefully availed itself of the privileges of conducting business in the State of  
21 Washington and in this district; (3) Defendant has sought protection and benefit  
22 from the laws of the State of Washington; (4) Defendant regularly conducts  
23 business within the State of Washington and within this district, and Plaintiff's  
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cause of action arises directly from Defendant's business contacts and other  
1 activities in the State of Washington and in this district; and (5) Defendant has a  
2 regular and established business in Washington and has purposely availed itself of  
3 the privileges and benefits of the laws of the State of Washington.  
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6 7. Defendant, directly and/or through intermediaries, ships, distributes,  
7 uses, offers for sale, sells, and/or advertises products and services in the United  
8 States, the State of Washington, and the Western District of Washington including  
9 but not limited to the products which contain the infringing '204 Patent systems  
10 and methods as detailed below. Upon information and belief, Defendant has  
11 committed patent infringement in the State of Washington and in this district;  
12 Defendant solicits and has solicited customers in the State of Washington and in  
13 this district; and Defendant has paying customers who are residents of the State of  
14 Washington and this district and who each use and have used the Defendant's  
15 products and services in the State of Washington and in this district.  
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20 8. Venue is proper in the Western District of Washington pursuant to 28  
21 U.S.C. §§ 1400(b). Defendant has a regular and established place of business in  
22 this district, has transacted business in this district, and has directly and/or  
23 indirectly committed acts of patent infringement in this district.  
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## PATENT-IN-SUIT

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2 9. The Patent-in-Suit teaches systems and methods for improving a  
3 spread-spectrum code-division-multiple-access (“CDMA”) system, using a channel  
4 sounding signal from a base station to provide initial transmitter power levels for  
5 remote stations.  
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7 10. The invention disclosed in the Patent-in-Suit discloses inventive  
8 concepts that represent significant improvements in the art and are not mere  
9 routine or conventional uses of computer components. For instance, at the time of  
10 filing, CDMA systems suffered from poor power control. See Ex. A, ’204 Patent,  
11 1:21–2:5. Although various approaches existed to address power control issues,  
12 those approaches suffered from inconsistency, inefficiency, and excessive delays.  
13 See Ex. A, ’204 Patent, 1:21–2:5. The Patent-in-Suit addressed these concerns by  
14 “permit[ting] a remote power station to have knowledge, a priori to transmitting, of  
15 a proper power level to initiate transmission.” See Ex. A, ’204 Patent, 2:7-10.  
16 Further, the Patent-in-Suit teaches “to measure and initially correct or compensate  
17 for Doppler shift in carrier frequency caused by the motion of the remote station.”  
18 See Ex. A, ’204 Patent, 2:11-13.  
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## ACCUSED PRODUCTS

1  
2 11. Defendant makes, uses, offers for sale and sells in the U.S. products,  
3 systems, and/or services that infringe the Patent-in-Suit, including, but not limited  
4 to its HTC U Ultra, HTC U11, HTC Bolt, HTC 10, HTC One M9, HTC U12+,  
5 HTC U11 Life, HTC One M7, HTC One A9, HTC One Max, HTC One Remix,  
6 HTC One Mini, HTC One M8, and HTC Droid DNA products (the “Accused  
7 Products”).  
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## COUNT I

### **(Infringement of U.S. Patent No. 6,711,204)**

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14 12. Plaintiff incorporates by reference the allegations of paragraphs 1-11,  
15 the same as if set forth herein.  
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17 13. The '204 Patent was filed on July 29, 2001, and legally issued by the  
18 United States Patent and Trademark Office (“USPTO”) on March 23, 2004. The  
19 '204 Patent is presumed valid and enforceable. See 35 U.S.C. § 282.  
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21 14. Plaintiff is the owner by assignment of the '204 patent and possesses  
22 all rights of recovery under the '204 patent, including the exclusive right to enforce  
23 the '204 patent and pursue lawsuits against infringers.  
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15. Without a license or permission from Plaintiff, Defendants have  
 1 infringed and/or continue to infringe one or more claims of the '204 Patent—  
 2 directly, contributorily, and/or by inducement—by importing, making, using,  
 3 offering for sale, or selling products and devices that embody the patented  
 4 invention, including, without limitation, one or more of the patented '204 systems  
 5 and methods, in violation of 35 U.S.C. § 271.  
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### 8 **Direct Infringement**

9  
 10 16. Defendant has been and now is directly infringing by, among other  
 11 things, practicing all of the steps of the '204 Patent, for example, through internal  
 12 testing, quality assurance, research and development, and troubleshooting. *See Joy*  
 13 *Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993); *see also* 35 U.S.C. §  
 14 271 (2006).  
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17 17. By way of example, Defendants have infringed one or more claims of  
 18 the '204 Patent by practicing every element of the claimed inventions, including  
 19 through the use of their hotspot-enabled Accused Products acting as base stations,  
 20 as detailed in the following table.  
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[3.1] An improvement to a spread-spectrum system having a	The accused product (base station (BS)) provides wireless hotspot functionality to connect devices like smartphones,
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<p>1 base station and a plurality of                  2 remote stations (RS), with said                  3 base station (BS) for transmitting                  4 a plurality of BS-spread-spectrum                  5 signals at a first frequency and for                  6 receiving, at a second frequency,                  7 a plurality of RS-spread-spectrum                  8 signals transmitted from said                  9 plurality of remote stations,                  10 respectively, the improvement                  11 comprising:</p>	<p>laptops and/or tablets to the internet using the accused device's internet connection. A mobile hotspot on the accused product shares the internet connection via Wi-Fi technology with nearby devices such as smartphones, tablets, or other devices (plurality of remote stations (RS)) using Wi-Fi technology. Wi-Fi and/or <u>Wi-Fi IEEE 802.11</u> standard uses b/g/n 2.4GHz and ac/a/n 5GHz ISM bands. The accused product supports both the bands. The IEEE 802.11b standard uses DSSS (Direct Sequence Spread Spectrum). The accused product transmits a plurality of BS-spread-spectrum signals at a first frequency defined by the 2.4GHz ISM band and/or the 5GHz band.</p> <p>The frequency used for the communication between the BS and the plurality of RS is defined by the IEEE 802.011 standard. When a hotspot is created, it acts as an access point (AP) and sends out beacon frames. The devices within the range receive the frames and</p>
<p>12 comprising:</p>	<p>use the frames to connect to the AP as per the connection parameters described in the frames. A Probe Response frame carries all the parameters in a beacon frame, which enables mobile stations to match parameters and join the network. These fields specify the channel frequency to be used and the spacing of the channel. Once the frequency measurement is complete, both the uplink and downlink communication takes place on the measured frequency.</p>
<p>13 [3.2] said base station for                  14 transmitting a BS-channel-                  15 sounding signal at the second                  16 frequency;</p>	<p>The base station transmits beacon frames (sounding signals) to the devices nearby at the second frequency (measured/calculated frequency used for the uplink communication). The Power Constraint element included in the beacon frames allows a device (trying to connect to the base station) to determine the local maximum transmit power in the current channel being used for communication and describes the maximum transmit power to remote stations. The local maximum transmit power for a channel is defined as the maximum transmit power level specified for the channel in the Country element minus the local power constraint specified for the channel in the Power Constraint element.</p>
<p>17 [3.3] said plurality of remote                  18 stations for receiving the BS-                  19 channel-sounding signal at the                  20 second frequency, with said base                  21 station for transmitting the                  22 plurality of BS-spread-spectrum</p>	<p>802.11 standard is a half-duplex technology. Hence, a remote station can either receive or transmit at a given time. This implies that when a remote station receives the sounding signal at the second frequency it is not transmitting at the first frequency. Hence, the BS transmits plurality of BS-spread-spectrum signals at a first frequency</p>

<p>1 signals at the first frequency 2 outside a correlation bandwidth of 3 the plurality of RS-spread- 4 spectrum signals transmitted by 5 the plurality of remote stations at 6 the second frequency; and</p>	<p>outside a correlation bandwidth of the plurality of RS- spread-spectrum signals transmitted by plurality of remote stations at a second frequency.</p>
<p>7 [3.4] said plurality of remote 8 stations, responsive to the BS- 9 channel-sounding signal, for 10 adjusting an initial RS-power 11 level of said plurality of remote 12 stations.</p>	<p>The base station transmits beacon frames (sounding signal) to the devices nearby at the second frequency (measured/calculated frequency used for the uplink communication). The Power Constraint element included in the beacon frames allows a device (trying to connect to the base station) to determine the local maximum transmit power in the current channel being used for communication and describes the maximum transmit power to remote stations. The local maximum transmit power for a channel is defined as the maximum transmit power level specified for the channel in the Country element minus the local power constraint specified for the channel in the Power Constraint element.</p>

13 18. By way of another example, Defendants have infringed at least one or  
14 more claims of the '204 Patent, including but not limited to Claim 3, which  
15 Defendant controls by placing every element of Plaintiff's patented inventions into  
16 service and receiving a benefit therefrom. See Centillion Data Sys., LLC v. Qwest  
17 Commc'ns Int'l, Inc., 631 F.3d 1279, 1284 (Fed. Cir. 2011). Attached hereto as  
18 Exhibit B is an exemplary claim chart detailing representative infringement of  
19 Claim 3 of the Patent-in-Suit. Defendants have contractual relationships with  
20 wireless carriers that provide base stations. See Ex. C (noting that HTC has  
21 contracted with U.S. wireless carriers such as Verizon, T-Mobile, and AT&T).



### Contributory Infringement

1  
2 19. On information and belief, Defendant has contributorily infringed  
3 Plaintiff's '204 Patent. Defendant had knowledge that third parties, such as its  
4 customers, would engage in an infringing use of the '204 Patent, whether through  
5 the use of the Accused Products in hotspot mode or by controlling wireless  
6 carriers' base stations by putting them into use and benefitting from that use. End  
7 users have contractual relationships with wireless carriers that allow them to use  
8 the base stations, including voice and data plans. *See*, Ex. C.

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11 20. On information and belief, Defendant's implementation of the  
12 accused functionality has no substantial non-infringing uses. *See, e.g., Lucent*  
13 *Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that  
14 the "substantial non-infringing use" element of a contributory infringement claim  
15 applies to an infringing feature or component, and that an "infringing feature" of a  
16 product does not escape liability simply because the product as a whole has other  
17 non-infringing uses). For example, as detailed in the example provided in ¶17,  
18 accused devices adhere to the IEEE 802.011 standard when providing hotspot  
19 functionality and thus necessarily infringe.

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22 21. Defendants had knowledge that third parties, such as their customers,  
23 would infringe for a variety of reasons, such as the following:

- 1           a.     By including in the Accused Products a component that can only  
2           infringe, the inference that infringement is intended is unavoidable  
3           and sufficient to satisfy the knowledge element of contributory  
4           infringement. *See Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d  
5           819 (E.D. Tex. 2019); *see also Ricoh Co. v. Quanta Computer Inc.*,  
6           550 F.3d 1325, 1338 (Fed. Cir. 2008).
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- 8           b.     On information and belief, in conducting prior art searches and  
9           freedom to operate analyses, HTC became apprised of the Patent-in-  
10          Suit. The Patent-in-Suit’s inventor, Donald Schilling, holds dozens of  
11          patents related to CDMA/spread-spectrum technology, a substantial  
12          foundational body of work with which HTC was indisputably aware.
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- 14          c.     On information and belief, HTC became aware of the Patent-in-Suit  
15          during prior litigation involving Schilling’s spread-spectrum patents.  
16          *See Golden Bridge Tech., Inc. v. Apple, Inc.*, No. 2:12-CV-04014-  
17          ODW-FFMx (C.D. Cal. Jul. 18, 2012) (concerning the infringement  
18          by HTC, as well as its subsidiaries, of Schilling’s patent No.  
19          6,075,793, titled “High efficiency spread spectrum system and  
20          method”); *see also Golden Bridge Tech, Inc. v. Apple, Inc.*, No. CV-  
21          12-04882-PSG (N.D. Cal. Feb. 20, 2014).
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- d. Furthermore, HTC has demonstrated its knowledge of the arena of spread-spectrum technology in the prosecution of its own patents. Inventors named on HTC's patents are named inventors on at least 63 patents involving spread spectrum technology. These patents demonstrate a knowledge of the body of spread-spectrum patents in their citations of other spread-spectrum patents. For example, HTC's patent US-8576693-B2 cites the patent US-5073899-A, "Transmission system for sending two signals simultaneously on the same communications channel".
- e. To the extent defendants argue they were not aware of the Patent-in-Suit, defendants were willfully blind, which is alone sufficient to impute knowledge for contributory infringement, even in the absence of actual knowledge. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016).

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### **Induced Infringement**

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22. On information and belief, Defendants have induced infringement of Plaintiff's '204 Patent. Defendants had knowledge that third parties, such as their customers, would engage in an infringing use of the '204 Patent.

23. Defendants induced such infringement by publication of instruction manuals for using their products in an infringing manner, as well as advertising infringing uses of the '204 patent.<sup>1</sup> HTC's customers' subsequent usage of the Accused Products to communicate via CDMA networks placed every element of the various protected Claims of the '204 Patent into service, constituting control and therefore infringement. Additionally, end users benefited from each element and controlled the invention by placing the system as a whole into service.

24. For the same reasons addressed above with respect to contributory inducement, Defendants had knowledge that third parties, such as their customers, would infringe the Patent-in-Suit.

a. On information and belief, in conducting prior art searches and freedom to operate analyses, HTC became apprised of the Patent-in-Suit. The Patent-in-Suit's inventor, Donald Schilling, holds dozens of patents related to CDMA/spread-spectrum technology, a substantial foundational body of work with which HTC was indisputably aware.

b. On information and belief, HTC became aware of the Patent-in-Suit during prior litigation involving Schilling's spread-spectrum patents. See *Golden Bridge Tech., Inc. v. Apple, Inc.*, No. 2:12-CV-04014-ODW-

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<sup>1</sup> See, e.g. <https://www.htc.com/us/support/htc-u11/>; <https://www.htc.com/us/support/htc-bolt/>; <https://www.htc.com/in/smartphones/htc-one-a9/>.

1 FFMx (C.D. Cal. Jul. 18, 2012) (concerning the infringement by HTC, as  
2 well as its subsidiaries, of Schilling’s patent No. 6,075,793, titled “High  
3 efficiency spread spectrum system and method”); see also Golden Bridge  
4 Tech, Inc. v. Apple, Inc., No. CV-12-04882-PSG (N.D. Cal. Feb. 20, 2014).

5 c. Furthermore, HTC has demonstrated its knowledge of the arena  
6 of spread-spectrum technology in the prosecution of its own patents.

7  
8 Inventors named on HTC’s patents are named inventors on at least 63  
9 patents involving spread spectrum technology. These patents demonstrate a  
10 knowledge of the body of spread-spectrum patents in their citations of other  
11 spread-spectrum patents. For example, HTC’s patent US-8576693-B2 cites  
12 the patent US-5073899-A, “Transmission system for sending two signals  
13 simultaneously on the same communications channel”.

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16 d. To the extent defendants argue they were not aware of the  
17 Patent-in-Suit, defendants were willfully blind, which alone is sufficient to  
18 impute knowledge for induced infringement. Glob.-Tech Appliances, Inc. v.  
19 SEB S.A., 131 S. Ct. 2060, 2069 (2011); see also Warsaw Orthopedic, Inc.  
20 v. NuVasive, Inc., 824 F.3d 1344, 1347 (Fed. Cir. 2016).  
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### **Willful Infringement**

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2 25. On information and belief, the infringement of the '204 Patent by  
3 Defendant has been willful. As described above, HTC holds 63 patents related to  
4 the claimed technology and possesses knowledge of the Patent-in-Suit gained in  
5 the course of its prosecution of these patents, including prior art searches and  
6 freedom to operate analyses. Additionally, HTC has previously been involved in  
7 litigation against the same inventor of the patent-in-suit on similar subject matter.  
8 To the extent HTC claims it was not aware of the Patent-in-Suit despite the  
9 foregoing, HTC was willfully blind which is alone sufficient to establish  
10 knowledge. Defendant could not have had a reasonable basis for believing that it  
11 had the right to engage in the acts complained of herein and therefore egregiously  
12 infringed the Patent-in-Suit.  
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### **Plaintiff Suffered Damages**

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18 26. Defendants' acts of infringement of the '204 Patent have caused  
19 damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the  
20 damages sustained as a result of Defendants' wrongful acts in an amount subject to  
21 proof at trial pursuant to 35 U.S.C. § 271.  
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## REQUEST FOR RELIEF

1  
2 27. Plaintiff incorporates each of the allegations in the paragraphs above  
3 and respectfully asks the Court to:

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5 (a) enter a judgment that Defendant has directly infringed,  
6 contributorily infringed, and/or induced infringement of one or more claims  
7 of each of the '204 Patent;

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9 (b) enter a judgment awarding Plaintiff all damages adequate to  
10 compensate it for Defendant's infringement of, direct or contributory, or  
11 inducement to infringe, including all pre-judgment and post-judgment  
12 interest at the maximum rate permitted by law;

13  
14 (c) enter a judgment awarding treble damages pursuant to 35  
15 U.S.C. § 284 for Defendant's willful infringement of the '204 Patent;

16  
17 (d) issue a preliminary injunction and thereafter a permanent  
18 injunction enjoining and restraining Defendant, its directors, officers, agents,  
19 servants, employees, and those acting in privity or in concert with them, and  
20 their subsidiaries, divisions, successors, and assigns, from further acts of  
21 infringement, contributory infringement, or inducement of infringement of  
22 the '204 Patent;

1 (e) enter a judgment requiring Defendant to pay the costs of this  
2 action, including all disbursements, and attorneys' fees as provided by 35  
3 U.S.C. § 285, together with prejudgment interest; and

4 (f) award Plaintiff all other relief that the Court may deem just and  
5 proper.  
6

7 DATED this 10<sup>th</sup> day of February, 2020.  
8

9 By: s/ Philip P. Mann  
10 Philip P. Mann, WSBA No. 28860  
11 **MANN LAW GROUP PLLC**  
12 1420 Fifth Avenue, Suite 2200  
13 Seattle, WA 98101  
14 Telephone: (206) 436-0900  
15 email: [phil@mannlawgroup.com](mailto:phil@mannlawgroup.com)

16 Kirk. J. Anderson (CA SBN 289043)  
17 (*Pro Hac Vice pending*)  
18 **BUDO LAW, P.C.**  
19 5610 Ward Rd., Suite #300  
20 Arvada, CO 80002  
21 Tel: (720) 225-9440  
22 Fax: (720) 225-9331  
23 email: [kanderson@budolaw.com](mailto:kanderson@budolaw.com)

24 **Counsel for Plaintiff**  
25 **Aperture Net LLC**  
26



**CERTIFICATE OF SERVICE**

1 I hereby certify on the date indicated below, I electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF system which will send  
3 notification of such filing to all parties who have appeared in this matter.  
4

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6 DATED: February, 10, 2020 /s/ Philip P. Mann  
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