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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 WHATSAPP LLC,
 17 Plaintiff,
 18 v.
 19 AGIS SOFTWARE DEVELOPMENT LLC,
 20 Defendant.

Case No.

COMPLAINT FOR DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

21
 22 Plaintiff WhatsApp LLC (“WhatsApp”) hereby pleads the following claims for
 23 Declaratory Judgment against Defendant AGIS Software Development LLC (“AGIS Software”),
 24 and alleges as follows:

25 **THE PARTIES**

26 1. WhatsApp is a Delaware limited liability corporation with its principal place of
 27 business located in Menlo Park, California.
 28

1 redressed by judicial relief and warrants the issue of a declaratory judgment. An actual and
2 justiciable controversy exists between WhatsApp and AGIS Software with respect to the Patents-
3 in-Suit.

4 6. On information and belief, AGIS Software is subject to this Court's specific
5 jurisdiction, pursuant to due process and/or the California Long Arm Statute due to: (1) AGIS
6 Software and/or AGIS's activities purposefully directed at residents of this forum, and (2) the
7 claims arising out of or relating to AGIS Software and/or AGIS's activities with this forum.
8 Further, the assertion of personal jurisdictions is reasonable and fair.

9 7. On information and belief, AGIS Software and/or AGIS have taken intentional and
10 purposeful steps to enforce the Patents-in-Suit against residents of this judicial district, including
11 by suing WhatsApp and other companies with principal places of business or operations in this
12 judicial district for infringement of the Patents-in-Suit.

13 8. Based on Public Access to Court Electronic Records ("PACER"), on June 21, 2017,
14 AGIS Software sued Apple Inc. ("Apple"), a California corporation with its principal place of
15 business at One Apple Park Way, Cupertino, California 95014, alleging infringement of patents
16 including the '055 patent, '251 patent, '838 patent, and '829 patent. *See AGIS Software*
17 *Development LLC v. Apple Inc.*, 2:17-cv-00516 (E.D. Tex.). Based on U.S. Patent & Trademark
18 Office ("USPTO") records, on July 31, 2018, Apple filed a petition for *inter partes* review of the
19 '829 patent (IPR2018-01471). Based on USPTO records, on December 13, 2018, Apple filed a
20 petition for *inter partes* review of the '055 patent (IPR2019-00432). Based on USPTO records,
21 on January 3, 2019, Apple filed petitions for *inter partes* review of the '251 patent (IPR2019-
22 00523, IPR2019-00524). Based on USPTO records, on or around April 2, 2019, each of these
23 *inter partes* review proceedings were terminated as a result of the Apple and AGIS Software
24 reaching a settlement agreement. *See, e.g.*, Decision Granting Joint Motion to Terminate and
25 Granting Request to Treat Settlement Document as Confidential Business Information, IPR2018-
26 01471, Paper No. 15. Based on PACER, on March 14, 2019, the Eastern District of Texas
27 dismissed the district court litigation between AGIS Software and Apple as a result of settlement.

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1 Order, *AGIS Software Development LLC v. Apple Inc.*, 2:17-cv-00516 (E.D. Tex. Mar. 14, 2019),
2 Dkt. 87.

3 9. Based on PACER, on June 21, 2017, AGIS Software sued ZTE Corporation and
4 ZTE (TX) Inc. alleging infringement of patents, including the '055 patent, '251 patent, '838 patent,
5 and '829 patent. *AGIS Software Development LLC v. ZTE Corporation*, 2:17-v-00517 (E.D. Tex.).
6 Based on PACER, on October 17, 2017, AGIS Software filed an amended complaint, adding ZTE
7 (USA) Inc. to this litigation. On information and belief, ZTE (USA) Inc. has an office located at
8 1900 McCarthy Boulevard, Milpitas, California 95035. On information and belief, ZTE (TX) Inc.
9 keeps its principal place of business at 1900 McCarthy Boulevard, Milpitas, CA 95035.

10 10. Based on PACER, on October 9, 2018, ZTE (USA) Inc. filed a declaratory
11 judgment action in the Northern District of California. Based on PACER, on October 30, 2019,
12 AGIS Software and ZTE (USA) Inc. filed a joint motion to stay all deadlines as a result of a
13 settlement in principle. *ZTE (USA) Inc. v. AGIS Software Development LLC*, No. 4:18-cv-06185-
14 HSG (N.D. Cal. Oct. 30, 2019), Dkt. 130. Based on PACER, less than a week later, on November
15 4, 2019, AGIS Software filed an unopposed renewed motion to dismiss. *Id.*, Dkt. 135. Based on
16 PACER, on November 5, 2019, the Court granted the motion. *Id.*, Dkt. 138.

17 11. On information and belief, AGIS Software has entered into agreements relating to
18 the Patents-in-Suit with Apple and ZTE Corporation, ZTE (USA) Inc., and ZTE (TX) Inc.
19 (“ZTE”).

20 12. On information and belief, AGIS Holdings registered AGIS Software in Texas on
21 June 1, 2017, 20 days before filing the above patent infringement cases against Apple and ZTE.

22 13. On information and belief, only two months prior to the registration of AGIS
23 Software, AGIS was litigating in the Southern District of Florida against Life360, Inc., a company
24 headquartered in San Francisco, California. *Advanced Ground Information Sys., Inc. v. Life360,*
25 *Inc.*, 9:14-cv-80651 (S.D. Fla.). Based on PACER, AGIS asserted that Life360 infringed the '728
26 patent (one of the Patents-in-Suit) and other related patents. Based on PACER, AGIS's claims
27 against Life360 resulted in a jury finding of no-infringement and an award of nearly \$750,000 in
28 attorneys' fees for litigating “an exceptionally weak case.” *Id.*, Dkt. 200, 212.

1 14. On information and belief, AGIS Software is an alter ego to AGIS Holdings and/or
2 AGIS.

3 15. On information and belief, AGIS has also committed a number of intentional acts
4 directed at the State of California.

5 16. On information and belief, AGIS has marketed and/or provided downloads of its
6 LifeRing product, which AGIS Software contends is covered by the Patents-in-Suit, in California.

7 17. On information and belief, in 2014, Mr. Malcom Beyer, CEO of both AGIS
8 Software and AGIS, attended a U.S. Navy military exercise in San Diego where he demonstrated
9 LifeRing on PCs and smartphones when asked to do so. *See Life360, Inc. v. Advanced Ground*
10 *Sys., Inc.*, 2014 WL 5612008, at *3, Case No. 15-cv-00151-BLF (N.D. Cal. Sept. 21, 2015). On
11 information and belief, during this demonstration, Mr. Beyer also discussed LifeRing with
12 companies including ADI Technology and Maven Consulting. *Id.*

13 18. On information and belief, AGIS marketed LifeRing to companies that resulted in
14 downloads of LifeRing in California. *Id.* at *4. On information and belief, AGIS marketed
15 LifeRing to at least CornerTurn LLC, Integrity Applications, and American Reliance, Inc., which
16 AGIS has stated have California addresses. *Id.*

17 19. On information and belief, AGIS has marked LifeRing as covered by the Patents-
18 in-Suit. *See, e.g.*, AGIS Website | Patents, <http://agisinc.com/about/patents> (last visited April 27,
19 2021). On information and belief, AGIS Software has licensed the patents to end users residing
20 in California who downloaded the LifeRing software.

21 20. On information and belief, AGIS also formed a “strategic partnership” with Green
22 Hills Software, Inc., a California company and security software firm located in Santa Barbara,
23 California. *See Life360*, 2014 WL 5612008, at *4.

24 21. As a result of the foregoing allegations, AGIS Software either individually or as an
25 alter ego of AGIS, is subject to personal jurisdiction within this judicial district.

26 22. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a
27 substantial part of the acts giving rise to the claim occurred in this judicial district, and because
28 AGIS Software is subject to personal jurisdiction in this district.

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COUNT I

Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 7,031,728

23. WhatsApp restates and incorporates by reference each of the allegations set forth in paragraphs 1-22 above, as if fully set forth herein.

24. On information and belief, AGIS Software is the owner of all right, title, and interest in the '728 patent, including the right to assert all causes of action arising under that patent and the right to any remedies for infringement of it. A copy of the '728 patent is attached hereto as **Exhibit A**.

25. WhatsApp does not infringe any claim of the '728 patent, directly or indirectly, contributorily or otherwise through its or its user's activities in conjunction with WhatsApp Messenger or any other WhatsApp product.

26. As set forth above, an actual and justiciable controversy exists between WhatsApp and AGIS Software as to WhatsApp's non-infringement of the '728 patent.

27. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any theory of infringement, any valid claim of the '728 patent.

COUNT II

Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 7,630,724

28. WhatsApp restates and incorporates by reference each of the allegations set forth in paragraphs 1-22 above, as if fully set forth herein.

29. On information and belief, AGIS Software is the owner of all right, title, and interest in the '724 patent, including the right to assert all causes of action arising under that patent and the right to any remedies for infringement of it. A copy of the '724 patent is attached hereto as **Exhibit B**.

30. WhatsApp does not infringe any claim of the '724 patent, directly or indirectly, contributorily or otherwise through its or its user's activities in conjunction with WhatsApp Messenger or any other WhatsApp product.

1 and the right to any remedies for infringement of it. A copy of the '251 patent is attached hereto
2 as **Exhibit D**.

3 40. WhatsApp does not infringe any claim of the '251 patent, directly or indirectly,
4 contributorily or otherwise through its or its user's activities in conjunction with WhatsApp
5 Messenger or any other WhatsApp product.

6 41. As set forth above, an actual and justiciable controversy exists between WhatsApp
7 and AGIS Software as to WhatsApp's non-infringement of the '251 patent.

8 42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
9 WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any
10 theory of infringement, any valid claim of the '251 patent.

11 **COUNT V**

12 **Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 9,467,838**

13 43. WhatsApp restates and incorporates by reference each of the allegations set forth
14 in paragraphs 1-22 above, as if fully set forth herein.

15 44. On information and belief, AGIS Software is the owner of all right, title, and
16 interest in the '838 patent, including the right to assert all causes of action arising under that patent
17 and the right to any remedies for infringement of it. A copy of the '838 patent is attached hereto
18 as **Exhibit E**.

19 45. WhatsApp does not infringe any claim of the '838 patent, directly or indirectly,
20 contributorily or otherwise through its or its user's activities in conjunction with WhatsApp
21 Messenger or any other WhatsApp product.

22 46. As set forth above, an actual and justiciable controversy exists between WhatsApp
23 and AGIS Software as to WhatsApp's non-infringement of the '838 patent.

24 47. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*,
25 WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any
26 theory of infringement, any valid claim of the '838 patent.

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COUNT VI

Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 9,749,829

48. WhatsApp restates and incorporates by reference each of the allegations set forth in paragraphs 1-22 above, as if fully set forth herein.

49. On information and belief, AGIS Software is the owner of all right, title, and interest in the '829 patent, including the right to assert all causes of action arising under that patent and the right to any remedies for infringement of it. A copy of the '829 patent is attached hereto as **Exhibit F**.

50. WhatsApp does not infringe any claim of the '829 patent, directly or indirectly, contributorily or otherwise through its or its user's activities in conjunction with WhatsApp Messenger or any other WhatsApp product.

51. As set forth above, an actual and justiciable controversy exists between WhatsApp and AGIS Software as to WhatsApp's non-infringement of the '829 patent.

52. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any theory of infringement, any valid claim of the '829 patent.

PRAYER FOR RELIEF

WHEREFORE, WhatsApp respectfully prays for judgment in favor of WhatsApp and against AGIS Software, as follows:

1. For a judicial determination and declaration that WhatsApp has not infringed and is not infringing, directly or indirectly, any claim of the Patents-in-Suit;
2. For injunctive relief against AGIS Software, and all persons acting on its behalf or in concert with it, restraining them from further prosecuting or instituting any action against WhatsApp or WhatsApp's users claiming the Patents-in-Suit are infringed, or for representing that WhatsApp's products or services, or that others' use thereof, infringe the Patents-in-Suit;
3. For a declaration that this case is exceptional under 35 U.S.C. § 285 and for an award of attorneys' fees and costs in this action; and
4. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

WhatsApp respectfully demands a jury trial in this action on all issues so triable.

Dated: April 27, 2021

LATHAM & WATKINS, LLP

By: /s/ Lisa K. Nguyen

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