Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software and alleges as follows:  THE PARTIES				
RICHARD G. FRENKEL, Bar No. 204133 rick.frenkel@w.com	1	LISA K. NGUYEN, Bar No. 244280		
rick.frenkel@lw.com CLARA WANG, Bar No. 321496 clara.wang@lw.com LATHAM & WATKINS LLP 140 Scott Drive Menlo Park, CA 94025 Telephone: (650) 328-4600 Facsimile: (650) 463-2600  TIFFANY C. WESTON (pro hac vice pending) tiffany.weston@lw.com LATHAM & WATKINS LLP 555 Eleventh Street, NW Suite 1000  Washington, DC 20004 Telephone: (202) 637-2200 Facsimile: (202) 637-2201  Attorneys for Plaintiff  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  WHATSAPP LLC, Plaintiff, WHATSAPP LLC, Plaintiff, V. AGIS SOFTWARE DEVELOPMENT LLC, Defendant.  Plaintiff WhatsApp LLC ("WhatsApp") hereby pleads the following claims Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Softwa" and alleges as follows:  THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.	2	lisa.nguyen@lw.com		
CLARA WANG, Bar No. 321496 clara.wang@lw.com LATHAM & WATKINS LLP 140 Scott Drive Menlo Park, CA 94025 Telephone: (650) 328-4600 Facsimile: (650) 463-2600  TIFFANY C. WESTON (pro hac vice pending) tiffany.weston@lw.com LATHAM & WATKINS LLP 55 Eleventh Street, NW Suite 1000  Washington, DC 20004 Telephone: (202) 637-2200 Facsimile: (202) 637-2201  Attorneys for Plaintiff  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  WHATSAPP LLC, Plaintiff, V. AGIS SOFTWARE DEVELOPMENT LLC, Defendant.  Case No. COMPLAINT FOR DECLARATORY JUDGMENT JURY TRIAL DEMANDED  Plaintiff WhatsApp LLC ("WhatsApp") hereby pleads the following claims Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software and alleges as follows:  THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.	3	,		
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Menlo Park, CA 94025 Telephone: (650) 328-4600 Facsimile: (650) 463-2600  TIFFANY C. WESTON (pro hac vice pending) tiffany.weston@lw.com LATHAM & WATKINS LLP 555 Eleventh Street, NW Suite 1000  Washington, DC 20004 Telephone: (202) 637-2200 Facsimile: (202) 637-2201  Attorneys for Plaintiff  WHATSAPP LLC, Plaintiff, N. Plaintiff, V. AGIS SOFTWARE DEVELOPMENT LLC, Defendant.  Plaintiff WhatsApp LLC ("WhatsApp") hereby pleads the following claims Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software and alleges as follows:  THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.	•			
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Washington, DC 20004 Telephone: (202) 637-2200 Facsimile: (202) 637-2201  Attorneys for Plaintiff  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  WHATSAPP LLC,  Plaintiff,  v.  AGIS SOFTWARE DEVELOPMENT LLC,  Defendant.  Plaintiff WhatsApp LLC ("WhatsApp") hereby pleads the following claims Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software and alleges as follows:  THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.	10	555 Eleventh Street, NW		
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14 15 16 17 18 18 19 19 20 20 21 22 22 23 24 24 25 26 1. WhatsApp is a Delaware limited liability corporation with its principal place.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT COURT STATES DISTRICT COURT Case No.  Case No.  COMPLAINT FOR DECLARATORY JUDGMENT JURY TRIAL DEMANDED  Case No.  COMPLAINT FOR DECLARATORY JURY TRIAL DEMANDED  THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.		, ,		
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Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software Developme		Plaintiff WhatsApp LLC ("WhatsApp") hereby pleads the following claims for		
25 THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.		Declaratory Judgment against Defendant AGIS Software Development LLC ("AGIS Software"),		
THE PARTIES  1. WhatsApp is a Delaware limited liability corporation with its principal place.		and alleges as follows:		
1. WhatsApp is a Delaware limited liability corporation with its principal place.	25	THE PARTIES		
27	26	1. WhatsApp is a Delaware limited liability corporation with its principal place of		
business located in Menlo Park, California.				
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## Ground Information Systems, Inc. Per AGIS Software's allegations in another litigation between the parties, AGIS Software is a Texas limited liability company, having its principal place of business at 100 W. Houston Street, Marshall, Texas 75670. According to Texas public records, the sole member of AGIS Software is AGIS Holdings, Inc. ("AGIS Holdings"). According to Florida public records, AGIS Holdings is organized and existing under the laws of the State of Florida, and maintains its principal place of business at 92 Lighthouse Drive, Jupiter, FL 33469. It shares the same address with Advanced Ground Information Systems, Inc., ("AGIS") a corporation organized and existing under the laws of the State of Florida that also maintains its principal place of business at 92 Lighthouse Drive, Jupiter, FL 33469.

On information and belief, AGIS Software is an agent and alter ego of Advanced

## **JURISDICTION AND VENUE**

- 3. The Court has subject matter jurisdiction over WhatsApp's declaratory judgment claims relating to patent non-infringement under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.
- 4. On January 29, 2021, AGIS Software sued WhatsApp for infringing United States Patent Nos. 7,031,728 ("'728 patent"), 7,630,724 ("'724 patent"), 9,408,055 ("'055 patent"), 9,445,251 ("'251 patent"), 9,467,838 ("'838 patent"), and 9,749,829 ("'829 patent") (collectively, "Patents-in-Suit") in the United States District Court of the Eastern District of Texas by manufacturing, using, distributing, selling, offering for sale, and/or exporting from and importing into the United States the "WhatsApp and WhatsApp Messenger Applications and the related services and/or servers for the applications." *See* Compl. ¶ 16, *AGIS Software Development LLC v. WhatsApp, Inc.*, 2:21-cv-00029 (E.D. Tex. Jan. 29, 2021), Dkt. 1. AGIS Software purported to be the owner of all right, title, and interest in the Patents-in-Suit. *Id.* ¶ 1. Contemporaneously with the filing of this declaratory judgment action, WhatsApp has moved to dismiss the Eastern District of Texas litigation for improper venue.
- 5. WhatsApp denies that the Patents-in-Suit are infringed through the making, using, distributing, sale, offering for sale, exportation, or importation of WhatsApp Messenger or any other WhatsApp product or service. Under all circumstances, AGIS Software's infringement allegations and related actions threaten actual and imminent injury to WhatsApp that can be

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

- 6. On information and belief, AGIS Software is subject to this Court's specific jurisdiction, pursuant to due process and/or the California Long Arm Statute due to: (1) AGIS Software and/or AGIS's activities purposefully directed at residents of this forum, and (2) the claims arising out of or relating to AGIS Software and/or AGIS's activities with this forum. Further, the assertion of personal jurisdictions is reasonable and fair.
- 7. On information and belief, AGIS Software and/or AGIS have taken intentional and purposeful steps to enforce the Patents-in-Suit against residents of this judicial district, including by suing WhatsApp and other companies with principal places of business or operations in this judicial district for infringement of the Patents-in-Suit.
- 8. Based on Public Access to Court Electronic Records ("PACER"), on June 21, 2017, AGIS Software sued Apple Inc. ("Apple"), a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, alleging infringement of patents including the '055 patent, '251 patent, '838 patent, and '829 patent. See AGIS Software Development LLC v. Apple Inc., 2:17-cv-00516 (E.D. Tex.). Based on U.S. Patent & Trademark Office ("USPTO") records, on July 31, 2018, Apple filed a petition for *inter partes* review of the '829 patent (IPR2018-01471). Based on USPTO records, on December 13, 2018, Apple filed a petition for inter partes review of the '055 patent (IPR2019-00432). Based on USPTO records, on January 3, 2019, Apple filed petitions for *inter partes* review of the '251 patent (IPR2019-00523, IPR2019-00524). Based on USPTO records, on or around April 2, 2019, each of these inter partes review proceedings were terminated as a result of the Apple and AGIS Software reaching a settlement agreement. See, e.g., Decision Granting Joint Motion to Terminate and Granting Request to Treat Settlement Document as Confidential Business Information, IPR2018-01471, Paper No. 15. Based on PACER, on March 14, 2019, the Eastern District of Texas dismissed the district court litigation between AGIS Software and Apple as a result of settlement.

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. <i>Id.</i> , Dkt. 135. Based on
16	PACER, on November 5, 2019, the Court granted the motion. <i>Id.</i> , 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." <i>Id.</i> , Dkt. 200, 212.

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AGIS.

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On information and belief, AGIS Software is an alter ego to AGIS Holdings and/or

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 prod	luct, 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 F	PCs and smartphones when asked to do so. See Life360, Inc. v. Advanced Ground
10	Sys., Inc., 201	4 WL 5612008, at *3, Case No. 15-cv-00151-BLF (N.D. Cal. Sept. 21, 2015). On
11	information a	and belief, during this demonstration, Mr. Beyer also discussed LifeRing with
12	companies inc	cluding 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 stat	ed have California addresses. Id.
17	19.	On information and belief, AGIS has marked LifeRing as covered by the Patents-
18	in-Suit. See, o	e.g., AGIS Website   Patents, http://agisinc.com/about/patents (last visited April 27,
19	2021). On in	formation and belief, AGIS Software has licensed the patents to end users residing
20	in California v	who downloaded the LifeRing software.
21	20.	On information and belief, AGIS also formed a "strategic partnership" with Green
22	Hills Software	e, Inc., a California company and security software firm located in Santa Barbara,
23	California. Se	ee 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 A	GIS, 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 pa	rt of the acts giving rise to the claim occurred in this judicial district, and because
28	AGIS Softwar	re is subject to personal jurisdiction in this district.
   INS		COMPLAINT FO

**COUNT I** 1 2 Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 7,031,728 3 23. WhatsApp restates and incorporates by reference each of the allegations set forth 4 in paragraphs 1-22 above, as if fully set forth herein. 5 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 6 7 and the right to any remedies for infringement of it. A copy of the '728 patent is attached hereto 8 as Exhibit A. 9 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 10 11 Messenger or any other WhatsApp product. 12 26. As set forth above, an actual and justiciable controversy exists between WhatsApp 13 and AGIS Software as to WhatsApp's non-infringement of the '728 patent. 14 27. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., 15 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. 16 17 **COUNT II** 18 Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 7,630,724 19 28. WhatsApp restates and incorporates by reference each of the allegations set forth 20 in paragraphs 1-22 above, as if fully set forth herein. 29. 21 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 22 and the right to any remedies for infringement of it. A copy of the '724 patent is attached hereto 23 as Exhibit B. 24 25 30. WhatsApp does not infringe any claim of the '724 patent, directly or indirectly, 26 contributorily or otherwise through its or its user's activities in conjunction with WhatsApp 27 Messenger or any other WhatsApp product.

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1	31. As set forth above, an actual and justiciable controversy exists between WhatsApp		
2	and AGIS Software as to WhatsApp's non-infringement of the '724 patent.		
3	32. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,		
4	WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any		
5	theory of infringement, any valid claim of the '724 patent.		
6	COUNT III		
7	Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 9,408,055		
8	33. WhatsApp restates and incorporates by reference each of the allegations set forth		
9	in paragraphs 1-22 above, as if fully set forth herein.		
10	34. On information and belief, AGIS Software is the owner of all right, title, and		
11	interest in the '055 patent, including the right to assert all causes of action arising under that patent		
12	and the right to any remedies for infringement of it. A copy of the '055 patent is attached hereto		
13	as Exhibit C.		
14	35. WhatsApp does not infringe any claim of the '055 patent, directly or indirectly,		
15	contributorily or otherwise through its or its user's activities in conjunction with WhatsApp		
16	Messenger or any other WhatsApp product.		
17	36. As set forth above, an actual and justiciable controversy exists between WhatsApp		
18	and AGIS Software as to WhatsApp's non-infringement of the '055 patent.		
19	37. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,		
20	WhatsApp requests that this Court enter a judgment that WhatsApp does not infringe, under any		
21	theory of infringement, any valid claim of the '055 patent.		
22	COUNT IV		
23	Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 9,445,251		
24	38. WhatsApp restates and incorporates by reference each of the allegations set forth		
25	in paragraphs 1-22 above, as if fully set forth herein.		
26	39. On information and belief, AGIS Software is the owner of all right, title, and		
27	interest in the '251 patent, including the right to assert all causes of action arising under that patent		
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1	and the right to any remedies for infringement of it. A copy of the '251 patent is attached hereto		
2	as <b>Exhibit D</b> .		
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 Sof	tware 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 rec	quests that this Court enter a judgment that WhatsApp does not infringe, under any	
10	theory of infri	ngement, any valid claim of the '251 patent.	
11		COUNT V	
12	Declar	ratory 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 <b>Exhibit E</b> .		
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 Sof	tware 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 rec	quests that this Court enter a judgment that WhatsApp does not infringe, under any	
26	theory of infri	ngement, any valid claim of the '838 patent.	
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**COUNT VI** 1 2 Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 9,749,829 3 48. WhatsApp restates and incorporates by reference each of the allegations set forth 4 in paragraphs 1-22 above, as if fully set forth herein. 49. 5 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 6 7 and the right to any remedies for infringement of it. A copy of the '829 patent is attached hereto 8 as Exhibit F. 9 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 10 11 Messenger or any other WhatsApp product. 12 51. As set forth above, an actual and justiciable controversy exists between WhatsApp 13 and AGIS Software as to WhatsApp's non-infringement of the '829 patent. 14 52. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., 15 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. 16 17 PRAYER FOR RELIEF 18 WHEREFORE, WhatsApp respectfully prays for judgment in favor of WhatsApp and 19 against AGIS Software, as follows: 20 For a judicial determination and declaration that WhatsApp has not infringed and 21 is not infringing, directly or indirectly, any claim of the Patents-in-Suit; 22 2. For injunctive relief against AGIS Software, and all persons acting on its behalf or 23 in concert with it, restraining them from further prosecuting or instituting any action against 24 WhatsApp or WhatsApp's users claiming the Patents-in-Suit are infringed, or for representing that 25 WhatsApp's products or services, or that others' use thereof, infringe the Patents-in-Suit;

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award of attorneys' fees and costs in this action; and

For such other and further relief as this Court may deem just and proper.

For a declaration that this case is exceptional under 35 U.S.C. § 285 and for an

1	DEMAND FO	DEMAND FOR JURY TRIAL		
2 3		rial in this action on all issues so triable.		
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