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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.

Plaintiff,

v.

MOBO SYSTEMS, INC.,

Defendant.

Case No. '12CV1642 BEN BLM

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Mobo Systems, Inc., a/k/a
3 OLO, a/k/a OLO Online Ordering (herein “OLO”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having a principal
6 place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth
7 develops, manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and
8 food service information technology solutions under the trademarks 21st Century
9 Communications™, and 21st Century Restaurant™, among others, comprising the
10 synchronization and integration of hospitality information and hospitality software applications
11 between fixed, wireless and/or internet applications, including but not limited to computer
12 servers, web servers, databases, affinity/social networking systems, desktop computers,
13 laptops, “smart” phones and other wireless handheld computing devices.

14 2. Defendant Mobo Systems, Inc., a/k/a OLO, a/k/a OLO Online Ordering (herein
15 “OLO”) is, on information and belief, a Delaware corporation having a principal place of
16 business and headquarters in New York, New York. On information and belief, OLO makes,
17 uses, sells and/or offers for sale, restaurant, foodservice, point-of-sale and property
18 management and other hospitality information technology products, software, components
19 and/or systems within this Judicial District, including the OLO Ordering System as defined
20 herein.

21 **JURISDICTION AND VENUE**

22 3. This is an action for patent infringement arising under the Patent Laws of the United
23 States, 35 U.S.C. §§ 271, 281-285.

24 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
25 1338(a).

26 5. On information and belief, Defendant engages in (a) the offer for sale or license and
27 sale or license of hospitality, restaurant, food service, ordering, products and/or components in
28 the United States, including this Judicial District, including services, products, software, and

1 available wireless and internet hospitality offerings were extremely limited in functionality,
2 were not synchronized and did not provide an integrated system-wide solution to the pervasive
3 ordering, reservations, affinity program and information management needs of the hospitality
4 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in
5 order to meet those needs, and thereafter conceived and developed its breakthrough inventions
6 and products to provide systemic and comprehensive solutions directed to optimally meeting
7 these industry needs. Ameranth has expended considerable effort and resources in inventing,
8 developing and marketing its inventions and protecting its rights therein.

9 10. Ameranth's pioneering inventions have been widely adopted and are thus now
10 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's
11 solutions have been adopted, licensed and/or deployed by numerous entities across the
12 hospitality industry.

13 11. The adoption of Ameranth's technology by industry leaders and the wide acclaim
14 received by Ameranth for its technological innovations are just some of the many
15 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received
16 twelve different technology awards (three with "end customer" partners) and has been widely
17 recognized as a hospitality wireless/internet technology leader by almost all major national and
18 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and
19 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for
20 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its
21 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.
22 In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
23 information technology for the betterment of mankind." This prestigious award was based on
24 Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology.
25 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of
26 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press
27 releases announcing these patent grants on business wires, on its web sites and at numerous
28 trade shows since the first of the presently-asserted patents issued in 2002. A number of

1 companies have licensed patents and technology from Ameranth, recognizing and confirming
2 the value of Ameranth's innovations.

3 **RELATED CASES PREVIOUSLY FILED**

4 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the "850 patent"),
5 U.S. Patent No. 6,871,325 (the "325 patent"), and U.S. Patent No. 8,146,077 (the "077
6 patent"), are all patents in Ameranth's "Information Management and Synchronous
7 Communications" patent family.

8 13. Ameranth is also currently asserting claims of these same patents in separate
9 lawsuits, against other defendants, that are already pending in this Court. The first-filed
10 lawsuit asserts claims of the '850 and '325 patents and is entitled *Ameranth v. Pizza Hut, Inc.*
11 *et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in this
12 Court, asserting claims of the '077 patent, include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-
13 cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-
14 NLS; 3:12-cv-00738-JLS-NLS; 3:12-cv-00739-JLS-NLS; and 3:12-cv-00742-JLS-NLS.
15 Another lawsuit subsequently filed by Ameranth in this Court, asserting claims of the '850,
16 '325, and '077 patents, is Case No. 3:12-cv-00858-JLS-NLS.

17 **COUNT I**

18 **Patent Infringement (U.S. Pat. No. 6,384,850)**

19 **(35 U.S.C. § 271)**

20 14. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-13 above
21 as if fully set forth herein.

22 15. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information
23 Management and Synchronous Communications System with Menu Generation" ("the '850
24 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued
25 by the United States Patent & Trademark Office.

26 16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
27 and to the '850 patent.

1 17. On information and belief, Defendant directly infringes and continues to directly
2 infringe one or more valid and enforceable claims of the '850 patent, in violation of 35 U.S.C.
3 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing
4 systems, products, and/or services in the United States without authority or license from
5 Ameranth, including but not limited to the OLO ordering system/product/service, which
6 includes, *inter alia*, wireless and internet POS integration, online and mobile ordering,
7 integration with e-mail and affinity program and social media applications such as Facebook,
8 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other
9 hospitality aspects ("OLO Ordering System").

10 18. On information and belief, the OLO Ordering System, as deployed and/or used at or
11 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,
12 and/or their customers, infringes one or more valid and enforceable claims of the '850 patent,
13 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting menus in a
14 system including a central processing unit, a data storage device, a computer operating system
15 containing a graphical user interface, one or more displayable main menus, modifier menus,
16 and sub-modifier menus, and application software for generating a second menu and
17 transmitting it to a wireless handheld computing device or a Web page; and/or (b) Enabling
18 ordering and other hospitality functions via iPhone, Android, and other internet-enabled
19 wireless handheld computing devices as well as via Web pages, storing hospitality information
20 and data on at least one central database, on at least one wireless handheld computing device,
21 and on at least one Web server and Web page, and synchronizing applications and data,
22 including but not limited to applications and data relating to ordering, between at least one
23 central database, wireless handheld computing devices, and at least one Web server and Web
24 page; utilizing an interface that provides a single point of entry that allows the synchronization
25 of at least one wireless handheld computing device and at least one Web page with at least one
26 central database; allowing information to be entered via Web pages, transmitted over the
27 internet, and automatically communicated to at least one central database and to wireless
28 handheld computing devices; allowing information to be entered via wireless handheld

1 computing devices, transmitted over the internet, and automatically communicated to at least
2 one central database and to Web pages.

3 19. On information and belief, defendant OLO has indirectly infringed and continues to
4 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of
5 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
6 other persons.

7 20. On information and belief, customers of OLO, including consumers and restaurant
8 operators, use the OLO Ordering System. OLO provides instruction and direction regarding
9 the use of the OLO Ordering System, and advertises, promotes, and encourages the use of the
10 OLO Ordering System.

11 21. On information and belief, the OLO Ordering System infringes one or more valid
12 and enforceable claims of the '850 patent for the reasons set forth hereinabove.

13 22. OLO has long had knowledge of the '850 patent, and knew or should have known
14 that its continued offering and deployment of the OLO Ordering System, and its continued
15 support of consumers, restaurant operators, and other users of this system/product/service,
16 would induce direct infringement by those users. Additionally, OLO intended that its actions
17 would induce direct infringement by those users.

18 23. On information and belief, Defendant has indirectly infringed and continues to
19 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of
20 35 U.S.C. § 271(c).

21 24. By distributing, selling, offering, offering to sell or license and/or selling or licensing
22 the OLO Ordering System, OLO provides non-staple articles of commerce to others for use in
23 infringing systems, products, and/or services. Additionally, OLO provides instruction and
24 direction regarding the use of the OLO Ordering System, and advertises, promotes, and
25 encourages the use of the OLO Ordering System. Users of one or more of the OLO Ordering
26 System directly infringe one or more valid and enforceable claims of the '850 patent for the
27 reasons set forth hereinabove.

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1 25. On information and belief, the OLO Ordering System infringes one or more valid
2 and enforceable claims of the '850 patent, for the reasons set forth hereinabove.

3 26. On information and belief, OLO has had knowledge of the '850 patent, including
4 knowledge that the OLO Ordering System, which is a non-staple article of commerce, has been
5 used as a material part of the claimed invention of the '850 patent, and that there are no
6 substantial non-infringing uses for the OLO Ordering System.

7 27. On information and belief, the aforesaid infringing activities of defendant OLO have
8 been done with knowledge and willful disregard of Ameranth's patent rights, making this an
9 exceptional case within the meaning of 35 U.S.C. § 285.

10 28. The aforesaid infringing activity of defendant OLO has directly and proximately
11 caused damage to plaintiff Ameranth, including loss of profits from sales it would have made
12 but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and
13 cause irreparable injury to Ameranth for which there is no adequate remedy at law.

14 **COUNT II**

15 **Patent Infringement (U.S. Pat. No. 6,871,325)**

16 **(35 U.S.C. § 271)**

17 29. Plaintiff reiterates and reincorporates the allegations set forth in paragraphs 1-28
18 above as if fully set forth herein.

19 30. On March 22, 2005, United States Patent No. 6,871,325 entitled "Information
20 Management and Synchronous Communications System with Menu Generation" ("the '325
21 patent") (a true and correct copy of which is attached hereto as **Exhibit B**) was duly and legally
22 issued by the United States Patent & Trademark Office.

23 31. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
24 and to the '325 patent.

25 32. On information and belief, Defendant directly infringes and continues to directly
26 infringe one or more valid and enforceable claims of the '325 patent, in violation of 35 U.S.C.
27 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing
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1 systems, products, and/or services in the United States without authority or license from
2 Ameranth, including but not limited to the OLO Ordering System.

3 33. On information and belief, the OLO Ordering System, as deployed and/or used at or
4 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,
5 and/or their customers, infringes one or more valid and enforceable claims of the '325 patent,
6 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting menus in a
7 system including a central processing unit, a data storage device, a computer operating system
8 containing a graphical user interface, one or more displayable main menus, modifier menus,
9 and sub-modifier menus, and application software for generating a second menu and
10 transmitting it to a wireless handheld computing device or a Web page; and/or (b) Enabling
11 ordering and other hospitality functions via iPhone, Android, and other internet-enabled
12 wireless handheld computing devices as well as via Web pages, storing hospitality information
13 and data on at least one central database, on at least one wireless handheld computing device,
14 and on at least one Web server and Web page, and synchronizing applications and data,
15 including but not limited to applications and data relating to orders, between at least one central
16 database, wireless handheld computing devices, and at least one Web server and Web page;
17 and sending alerts, confirmations, and other information regarding orders to various wireless
18 mobile devices.

19 34. On information and belief, Defendant has indirectly infringed and continues to
20 indirectly infringe one or more valid and enforceable claims of the '325 patent, in violation of
21 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
22 other persons.

23 35. On information and belief, customers of OLO, including consumers and restaurant
24 operators, use the OLO Ordering System in a manner that infringes upon one or more valid and
25 enforceable claims of the '325 patent. OLO provides instruction and direction regarding the
26 use of the OLO Ordering System and advertises, promotes, and encourages the use of the OLO
27 Ordering System.

1 36. On information and belief, Defendant actively induces others to infringe the ‘325
2 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
3 customers of OLO, including consumers and restaurant operators, to use the infringing OLO
4 Ordering System in the United States without authority or license from Ameranth.

5 37. On information and belief, Defendant contributorily infringes and continues to
6 contributorily infringe one or more valid and enforceable claims of the ‘325 patent, in violation
7 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
8 of the ‘325 patent read, constituting a material part of the invention, knowing that the
9 components were especially adapted for use in systems which infringe claims of the ‘325
10 patent.

11 38. By distributing, selling, offering, offering to sell or license and/or selling or licensing
12 the OLO Ordering System, Defendant provides non-staple articles of commerce to others for
13 use in infringing systems, products, and/or services. Additionally, OLO provides instruction
14 and direction regarding the use of the OLO Ordering System and advertises, promotes, and
15 encourages the use of the OLO Ordering System. Users of the OLO Ordering System directly
16 infringe one or more valid and enforceable claims of the ‘325 patent, for the reasons set forth
17 hereinabove.

18 39. On information and belief, the OLO Ordering System infringes one or more valid
19 and enforceable claims of the ‘325 patent, for the reasons set forth hereinabove.

20 40. OLO has had knowledge of the ‘325 patent, including knowledge that the OLO
21 Ordering System, which is a non-staple articles of commerce, has been used as a material part
22 of the claimed invention of the ‘325 patent, and that there are no substantial non-infringing
23 uses for the OLO Ordering System.

24 41. On information and belief, the aforesaid infringing activities of defendant OLO have
25 been done with knowledge and willful disregard of Ameranth’s patent rights, making this an
26 exceptional case within the meaning of 35 U.S.C. § 285.

27 42. The aforesaid infringing activity of defendant OLO has directly and proximately
28 caused damage to plaintiff Ameranth, including loss of profits from sales it would have made

1 but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and
2 cause irreparable injury to Ameranth for which there is no adequate remedy at law.

3 **COUNT III**

4 **Patent Infringement (U.S. Pat. No. 8,146,077)**

5 **(35 U.S.C. § 271)**

6 43. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-42 above
7 as if fully set forth herein.

8 44. On March 27, 2012, United States Patent No. 8,146,077 entitled “Information
9 Management and Synchronous Communications System with Menu Generation, and
10 Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as
11 **Exhibit C** and incorporated herein by reference) was duly and legally issued by the United
12 States Patent & Trademark Office.

13 45. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
14 and to the ‘077 patent.

15 46. On information and belief, Defendant directly infringes and continues to directly
16 infringe one or more valid and enforceable claims of the ‘077 patent, in violation of 35 U.S.C.
17 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing
18 systems, products, and/or services in the United States without authority or license from
19 Ameranth, including but not limited to the OLO Ordering System.

20 47. On information and belief, the OLO Ordering System, as deployed and/or used at or
21 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,
22 and/or their customers, infringes one or more valid and enforceable claims of the ‘077 patent,
23 by, *inter alia*, doing at least one of the following: (a) Configuring and transmitting menus in a
24 system including a central processing unit, a data storage device, a computer operating system
25 containing a graphical user interface, one or more displayable master menus, menu
26 configuration software enabled to generate a menu configuration for a wireless handheld
27 computing device in conformity with a customized display layout, and enabled for
28 synchronous communications and to format the menu configuration for a customized display

1 layout of at least two different wireless handheld computing device display sizes, and/or (b)
2 Enabling ordering and other hospitality functions via iPhone, Android, and other internet-
3 enabled wireless handheld computing devices as well as via Web pages, storing hospitality
4 information and data on at least one database, on at least one wireless handheld computing
5 device, and on at least one Web server and Web page, and synchronizing applications and data,
6 including but not limited to applications and data relating to orders, between at least one
7 database, wireless handheld computing devices, and at least one Web server and Web page;
8 utilizing communications control software enabled to link and synchronize hospitality
9 information between at least one database, wireless handheld computing device, and web page,
10 to display information on web pages and on different wireless handheld computing device
11 display sizes, and to allow information to be entered via Web pages, transmitted over the
12 internet, and automatically communicated to at least one database and to wireless handheld
13 computing devices; allowing information to be entered via wireless handheld computing
14 devices, transmitted over the internet, and automatically communicated to at least one database
15 and to Web pages.

16 48. On information and belief, Defendant has indirectly infringed and continues to
17 indirectly infringe one or more valid and enforceable claims of the '077 patent, in violation of
18 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
19 other persons.

20 49. On information and belief, customers of OLO, including consumers and restaurant
21 operators, use the OLO Ordering System in a manner that infringes upon one or more valid and
22 enforceable claims of the '077 patent. OLO provides instruction and direction regarding the
23 use of the OLO Ordering System and advertises, promotes, and encourages the use of the OLO
24 Ordering System.

25 50. On information and belief, Defendant actively induces others to infringe the '077
26 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
27 customers of OLO, including consumers and restaurant operators, to use the infringing OLO
28 Ordering System in the United States without authority or license from Ameranth.

1 51. On information and belief, Defendant contributorily infringes and continues to
2 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation
3 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
4 of the '077 patent read, constituting a material part of the invention, knowing that the
5 components were especially adapted for use in systems which infringe claims of the '077
6 patent.

7 52. By distributing, selling, offering, offering to sell or license and/or selling or licensing
8 the OLO Ordering System, Defendant provides non-staple articles of commerce to others for
9 use in infringing systems, products, and/or services. Additionally, OLO provides instruction
10 and direction regarding the use of the OLO Ordering System and advertises, promotes, and
11 encourages the use of the OLO Ordering System. Users of the OLO Ordering System directly
12 infringe one or more valid and enforceable claims of the '077 patent, for the reasons set forth
13 hereinabove.

14 53. On information and belief, each of the OLO Ordering System infringes one or more
15 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

16 54. On information and belief, OLO has had knowledge of the '077 patent, including
17 knowledge that the OLO Ordering System, which is a non-staple article of commerce, has been
18 used as a material part of the claimed invention of the '077 patent, and that there are no
19 substantial non-infringing uses for the OLO Ordering System.

20 55. On information and belief, the aforesaid infringing activities of defendant OLO have
21 been done with knowledge and willful disregard of Ameranth's patent rights, making this an
22 exceptional case within the meaning of 35 U.S.C. § 285.

23 56. The aforesaid infringing activity of defendant OLO has directly and proximately
24 caused damage to plaintiff Ameranth, including loss of profits from sales it would have made
25 but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and
26 cause irreparable injury to Ameranth for which there is no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendant, as follows:

1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license of the OLO Ordering System infringes valid and enforceable claims of the '850 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

2. Adjudging that Defendant has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '850 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

3. Adjudging that Defendant's infringement of the valid and enforceable claims of the '850 patent, and the '325 patent, and the '077 patent, has been knowing and willful;

4. Enjoining Defendant, and its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with Defendant, and their successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the valid and enforceable claims of the '850 patent, and the '325 patent, and the '077 patent;

5. Awarding Ameranth the damages it has sustained by reason of Defendant's infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

6. Awarding Ameranth increased damages of three times the amount of damages found or assessed against Defendant by reason of the knowing, willful and deliberate nature of Defendant's acts of infringement pursuant to 35 U.S.C. § 284;

7. Adjudging this to be an exceptional case and awarding Ameranth its attorney's fees pursuant to 35 U.S.C. §285;

8. Awarding to Ameranth its costs of suit, and interest as provided by law; and

9. Awarding to Ameranth such other and further relief that this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

Respectfully submitted,

Dated: June 29, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

By: /s/ William J. Caldarelli
William J. Caldarelli

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