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12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON
14 AT RICHLAND

15 PROVISION A/R, INC., a Washington
16 corporation and ARMADA CORP., a
17 Washington corporation,

18 Plaintiffs,

19 vs.

20 COMMERCIAL RECOVERY
21 CORPORATION, a Minnesota
22 corporation,

23 Defendant.

Civil Cause No. 2:11-cv-00330-EFS

**FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AND OTHER RELIEF**

24 Plaintiffs, Provision A/R, Inc. (Provision A/R) and Armada Corp. (Armada),
by and through their undersigned counsel, bring this action against Defendant,

1 Commercial Recovery Corporation (CRC), for a declaratory judgment declaring that
2 U.S. Patent No. 7,167,839 (the '839 Patent) is invalid and/or is not infringed by
3 Provision A/R, Armada, or any other subscriber of Provision A/R.
4

5 **PARTIES**

6 1. Provision A/R, Inc. is a corporation organized under the laws of the
7 State of Washington, with its principal place of business in East Wenatchee,
8 Washington.

9 2. Armada Corp. is a corporation organized under the laws of the State of
10 Washington, with its principal place of business in East Wenatchee, Washington.

11 3. Commercial Recovery Corporation is a corporation organized under the
12 laws of the State of Minnesota, with its registered in Blaine, Minnesota.
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14 **JURISDICTION AND VENUE**

15 4. This action arises under the patent laws of the United States, Title 35
16 U.S.C. § 1, *et seq.*
17

18 5. Plaintiffs are corporations organized under the laws of the State of
19 Washington with principal places of business in East Wenatchee, Washington.
20 Provision A/R provides Internet services to subscribers within the jurisdiction of this
21 Court. Armada is a licensed collection agency providing services to clients,
22 including a network-based client account access method for client services using the
23 Internet, within the jurisdiction of this Court.
24

1 6. Plaintiffs are informed and believe, and on that basis allege that this
2 Court has personal jurisdiction over Defendant; that Defendant has, among other
3 things, distributed, sold or offered for sale, online services via the Internet including
4 services that are the subject of this litigation nationwide and accessible within the
5 State of Washington; that Defendant has threatened litigation against collection
6 agencies, including subscribers, or potential subscribers, of Provision A/R's online
7 services; Provision A/R is at risk from prospective claims for patent infringement by
8 Defendant and is at risk for claims of indemnification and defense by its subscribers
9 in a myriad of courts around the United States. Armada, as a collection agency, is at
10 risk that Defendant will assert claims of patent infringement against it as evidenced
11 by Exhibit A, attached hereto, which cease and desist letter was sent to a client of
12 Provision A/R who is a credit agency and uses the same software as does Armada
13 for its on-line client access services.
14

15
16 7. This Court has subject matter jurisdiction over this action under 28
17 U.S.C. §§ 1331, 1338, 2201, and 2202.
18

19 8. Venue is proper in this District under 28 U.S.C. § 1931 (b) and (c).

20 9. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and
21 2202 exists between Provision A/R and Armada, on the one hand, and CRC on the
22 other, with respect to whether the claims of the '839 Patent are invalid and/or not
23 infringed.
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FACTUAL BACKGROUND

10. Defendant has alleged that subscribers to Plaintiff's network based client account access method for client services infringe United States Patent No. 7,167,839, please see Exhibit A attached hereto. A copy of the '839 Patent is attached hereto as Exhibit B, which is purportedly owned by Defendant.

11. An actual case or controversy has arisen between the parties as Provision A/R, under its warranties of merchantability and fitness for purpose, and Section 271(b) of the Patent Act, 35 U.S.C. § 271(b) for inducement of infringement, is at risk of suit by Defendant and/or responsible for the indemnity and defense to its subscribers of its online services, which includes subscribers in the Eastern District of Washington. Armada is at risk of suit by Defendant for using a network based client account access method for client services. The claims of Defendant, therefore, threaten injury to Plaintiffs. Defendant has further established a risk of suit against Plaintiffs by having brought litigation against another collection agency in the District of Minnesota, sub nom, *Commercial Recovery Corporation v. Allen, Maxwell & Silver, Inc.* 0:11-cv-02788-SRN-JJG. Please see Exhibit C attached hereto, which is a copy of the Complaint therein.

1 **DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘839 PATENT**

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3 12. Plaintiffs incorporate by reference the allegations as set forth above in
4 paragraphs 1 through 11.

5 13. Upon information and belief, Plaintiffs allege that the ‘839 Patent is
6 invalid for failing to comply with the provisions of the Patent Laws, including 35
7 U.S.C. §§ 102, 103, and 112.

8 14. Upon information and belief, Plaintiffs allege that any online computer
9 based services offered to clients and subscribers do not infringe any claim of the
10 ‘839 Patent, and that no client or subscriber is induced to infringe any claim of the
11 ‘839 Patent.
12

13 **PRAYER FOR RELIEF**

14
15 WHEREFORE, Plaintiffs pray:

16 a. For a judgment declaring that Plaintiffs, nor any client or subscriber of
17 Plaintiffs’ online services, has infringed and is not infringing any valid claim of the
18 ‘839 Patent;

19 b. For a judgment declaring that the ‘839 Patent is invalid; and
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1 c. For such other and further relief as the Court deems just and equitable
2 in the premises.

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4 DATED this 10th day of November, 2011.

5
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11 ATTORNEYS FOR PLAINTIFFS

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 10, 2011, I electronically filed the
3 foregoing document with the Clerk of the Court using the CM/ECF system, which
4 will send notification of such filing to the following:
5

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