

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



COMCAST CORPORATION, COMCAST
CABLE COMMUNICATIONS, LLC,
COMCAST CABLE HOLDINGS, LLC and
COMCAST OF HOUSTON, LLC,

Plaintiffs,

v.

C-CATION, INC., C-CATION
TECHNOLOGIES, LLC, and
ALEXANDER L. CHENG,

Defendants.

Case No. 11-CV-01922-JGK-RLE

JURY TRIAL DEMANDED

PUBLIC REDACTED VERSION

**SECOND AMENDED COMPLAINT FOR BREACH OF CONTRACT,
PROMISSORY ESTOPPEL, FRAUD, AND DECLARATORY JUDGMENT**

Comcast Corporation, Comcast Cable Communications, LLC, Comcast Cable Holdings, LLC, and Comcast of Houston, LLC (collectively, "Plaintiffs") allege as follows:

I. NATURE OF THE ACTION

1. This is an action for breach of contract, anticipatory breach of contract, promissory estoppel, fraud, and declaratory judgment of non-infringement and invalidity of United States Patent No. 5,563,883 ("the '883 patent") against C-cation, Inc., C-Cation Technologies, LLC, and their common principal, Alexander L. Cheng (collectively, "Defendants").

2. Plaintiffs' contract and tort claims arise under and relate to a settlement agreement negotiated and executed in 2003 between Comcast Cable Holdings, LLC ("Comcast Cable Holdings") and C-cation, Inc. ("C-cation") in a prior lawsuit in the Southern District of New York. In that prior lawsuit, C-cation accused Comcast Cable Holdings of infringing United States Patent No. 5,642,155 ("the '155 patent") by operation of its high-speed data cable systems. During

settlement negotiations, C-cation and its owner and Chief Executive Officer, Alexander L. Cheng (“Cheng”), affirmatively represented to the Court and counsel for Comcast Cable Holdings that C-cation owned and/or controlled other patents, including the ’883 patent. Comcast Cable Holdings relied upon that representation by C-cation and Cheng—who is the purported inventor of both the ’155 and ’883 patents—when it agreed to [REDACTED]

[REDACTED] Nearly eight years later, in January 2011, Cheng formed C-Cation Technologies, LLC (“C-Cation Tech”) and purportedly assigned his rights to the ’883 patent to C-Cation Tech. Just twelve days after its formation, C-Cation Tech—which is also owned and controlled by Cheng—filed a lawsuit against Comcast Corporation (among others) in the Eastern District of Texas, alleging infringement of the ’883 patent. Remarkably, Defendants now contend that C-cation did not and could not [REDACTED] because it never owned the ’883 patent, rather Cheng did.

3. By taking these actions and positions, Defendants have breached the settlement agreement for the following reasons:

- Cheng is a party to the settlement agreement because C-cation is and was Cheng’s “alter ego” when the prior settlement agreement was executed. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- C-Cation Tech is bound to the settlement agreement as a [REDACTED]
[REDACTED]
[REDACTED]
- C-Cation Tech breached the terms of the settlement agreement by filing the Eastern District of Texas lawsuit against Comcast Corporation.

- Cheng breached the terms of the settlement agreement because C-Cation Tech is and was Cheng’s “alter ego” when it filed the Eastern District of Texas lawsuit.
- C-cation breached the terms of the settlement agreement because C-cation is and was the “alter ego” of both Cheng and C-Cation Tech when
- C-Cation Tech filed the Eastern District of Texas lawsuit.

4. Plaintiffs’ promissory estoppel claim against Cheng and C-Cation Tech arise out of Cheng’s affirmative representations during the negotiation of the settlement agreement that C-cation owned or controlled, or otherwise could [REDACTED] claims based on, the ’883 patent. Since Cheng made a clear and unambiguous promise to Comcast Cable Holdings that [REDACTED] [REDACTED] and because Comcast Cable Holdings reasonably, foreseeably, and detrimentally relied upon that promise, Cheng—and his “alter ego” C-Cation Tech—should be held to that promise and found liable for the damages sought herein.

5. Plaintiffs’ claims for declaratory judgment of non-infringement and invalidity against C-Cation Tech arise out of C-Cation Tech’s allegations of infringement of the ’883 patent against Comcast Corporation (among others)—in furtherance of which C-Cation Tech filed the lawsuit in the Eastern District of Texas—and C-Cation Tech’s purported current ownership of the ’883 patent.

II. THE PARTIES

6. Plaintiff Comcast Corporation is, and at all times mentioned herein was, a corporation organized and existing under the laws of Pennsylvania, with a principal place of business in Philadelphia, Pennsylvania.

7. Plaintiff Comcast Cable Communications, LLC (“Comcast Cable”) is, and at all times mentioned herein was, a limited liability company organized and existing under the laws of Delaware, with a principal place of business in Philadelphia, Pennsylvania. Comcast Cable, directly and through operating subsidiaries, operates, markets, and/or sells cable system products and

services, including high-speed data products and services, in various markets across the United States, including within the state of New York and within the Southern District of New York.

8. Plaintiff Comcast Cable Holdings, LLC is, and at all times mentioned herein was, a limited liability company organized and existing under the laws of Delaware, with a principal place of business in Philadelphia, Pennsylvania.

9. Plaintiff Comcast of Houston, LLC (“Comcast of Houston”) is, and at all times mentioned herein was, a limited liability company organized and existing under the laws of Delaware, with a principal place of business in Philadelphia, Pennsylvania.

10. On information and belief, Defendant C-cation, Inc. is, and at all times mentioned herein was, a corporation organized and existing under the laws of Delaware, with a principal place of business at 150 Purchase Street, Suite 9, in Rye, New York.

11. On information and belief, Defendant C-Cation Technologies, LLC was formed on or around January 13, 2011 as a limited liability company purportedly organized and existing under the laws of Texas, based, inter alia, upon information shown on C-Cation Tech’s Certificate of Formation filed with the Texas Secretary of State. On information and belief, C-Cation Tech maintains a principal place of business identical to C-cation at 150 Purchase Street, Suite 9, in Rye, New York.

12. On information and belief, Defendant Alexander L. Cheng is a resident of the state of New York and resides at 111 Hidden Glen Road in Scarsdale, New York, as shown on C-Cation Tech’s Certificate of Formation filed with the Texas Secretary of State.

13. On information and belief, Cheng is the Chairman, Chief Executive Officer, President, and majority and/or controlling owner of C-cation. On information and belief, Cheng is also the sole managing member and majority and/or controlling owner of C-Cation Tech.

14. On information and belief, C-cation and C-Cation Tech are “alter egos” of Cheng and each other.

A. “Alter Ego” Liability Between C-cation and Cheng

15. On information and belief, including information provided by C-cation in its own Initial Disclosures in the instant litigation, C-cation is controlled and/or majority owned by Cheng, who is, and at times herein was, the Chairman, Chief Executive Officer, and President of C-cation. Cheng exercised complete domination and control over C-cation with respect to the transaction(s) at issue, and used this control to perpetrate the wrongful and unjust acts complained of herein.

16. C-cation’s Initial Disclosures list only Cheng—and no other person or entity—as “[t]he individuals and entities likely to have discoverable information that C-cation, Inc. may use to support its claims or defenses, and the subjects of such information.” C-cation’s disclosures further provide that Cheng can be contacted through C-cation’s counsel. A copy of C-cation’s Initial Disclosures is attached as **Exhibit A**.

17. On information and belief, Cheng misused the corporate form to further his own personal interests and to take unfair, fraudulent, and wrongful advantage of Plaintiffs by making material representations to both the Court and Comcast Cable Holdings during the negotiation of the settlement agreement in the prior litigation between C-cation and Comcast Cable Holdings (herein “the Settlement Agreement”) that C-cation owned and/or controlled the ’883 patent, and had the authority to negotiate and grant [REDACTED]

18. On information and belief, Cheng purportedly owned the ’883 patent in his personal capacity when he and/or his agents and attorneys made these affirmative representations to Comcast Cable Holdings and the Court. C-cation’s use of Cheng’s personal property as its own, and Cheng’s affirmative representations that C-cation possessed and controlled the rights to Cheng’s personal

property in its business dealings with Plaintiffs, warrants a finding of “alter ego” liability between C-cation and Cheng.

19. A finding of “alter ego” liability between C-cation and Cheng is also necessary to achieve equity, prevent fraud, and prevent the improper and unjust avoidance of Defendants’ contractual obligations. On information and belief, C-cation and Cheng’s affirmative representations regarding C-cation’s ownership and control of the ’883 patent to both the Court and Comcast Cable Holdings during the negotiation of the Settlement Agreement were knowing and intentional misrepresentations. C-cation and Cheng intended Comcast Cable Holdings to rely upon these misrepresentations, and Comcast Cable Holdings did in fact reasonably rely upon these misrepresentations to their detriment by, *inter alia*, [REDACTED]

[REDACTED]

[REDACTED]

20. Cheng’s domination and control over C-cation, and the use of C-cation to further his personal interests, is further evidenced by Cheng’s assignment of the ’155 patent—which was asserted in the prior litigation between C-cation and Comcast Cable Holdings—to C-cation a mere one month before C-cation filed the prior lawsuit in 2002.

B. “Alter Ego” Liability Between C-cation Tech and Cheng

21. On information and belief, including information provided by C-Cation Tech in its own Initial Disclosures in the instant litigation, C-Cation Tech is also controlled and/or majority owned by Cheng, who is the sole manager of record for C-Cation Tech. Cheng exercised complete domination and control over C-Cation Tech with respect to the transaction(s) at issue, and used this control to perpetrate the wrongful and unjust acts complained of herein.

22. C-Cation Tech’s Initial Disclosures list only Cheng—and no other person or entity—as an owner of C-Cation Tech and as “[t]he individuals and entities likely to have discoverable

information that C-Cation Tech may use to support its claims or defenses, and the subjects of such information.” C-Cation Tech’s disclosures further provide that Cheng can be contacted through C-Cation Tech’s counsel. A copy of C-Cation Tech’s Initial Disclosures is attached as **Exhibit B**.

23. On information and belief, on or about January 13, 2011, Cheng, with the assistance of *C-cation* Attorney Aldo V. Vitagliano (“Vitagliano”), filed a Certificate of Formation with the Texas Secretary of State to form “C-Cation Technologies, LLC” as a Texas limited liability company. On information and belief, Vitagliano is an officer of *C-cation* and holds the title of “VP Legal & PR.”

24. On information and belief, on or about January 17, 2011, Cheng purportedly executed an assignment of the ’883 patent from himself to C-Cation Tech, and registered this assignment with the Patent and Trademark Office (“PTO”). Plaintiffs neither admit nor concede that this purported patent assignment by Cheng to C-Cation Tech was valid, and expressly reserve the right to challenge its validity.

25. On January 25, 2011, C-Cation Tech filed a lawsuit in the Eastern District of Texas against Comcast Corporation and other entities, alleging infringement of the ’883 patent. Cheng’s formation of C-Cation Tech, assignment of his purported ’883 patent rights to C-Cation Tech, and the filing of the Eastern District of Texas lawsuit, all within a period of twelve days, clearly evidence Cheng’s domination and control over C-Cation Tech, and Cheng’s use of the corporate form to further his personal interests.

26. On information and belief, C-Cation Tech does not have, and has never had, any offices, employees, or business documents within the state of Texas, and does not do business or provide services anywhere within the state of Texas. The only Texas address of record for C-Cation Tech is the corporate offices of National Registered Agents, Inc., its registered agent for

service of process, which on information and belief provides otherwise generic registered-agent services for any company or business that pays its requisite service fees.

27. On information and belief, and based upon the allegations herein, C-Cation Tech was formed by Cheng for the primary if not sole purpose of enforcing his personal property rights in the '883 patent through filing a lawsuit in the Eastern District of Texas against Comcast Corporation and related Comcast entities (all in violation of the above-described Settlement Agreement), as well as other non-Comcast entities.

28. On information and belief, and based upon the allegations herein, C-Cation Tech was formed by Cheng to wrongfully, if not fraudulently, circumvent [REDACTED]
[REDACTED]
[REDACTED] thereby warranting "alter ego" liability between C-Cation Tech and Cheng.

C. "Alter Ego" Liability Between C-cation and C-Cation Tech

29. In addition to the factual allegations herein pertaining Cheng's ownership, domination, and control of both C-cation and C-Cation Tech, on information and belief, C-cation and C-Cation Tech do not maintain separate and independent corporate existences. Rather, on information and belief, C-cation and C-Cation Tech have identical or substantially overlapping owners, officers, managers, and employees, and share the exact same office space, address, and telephone numbers at 150 Purchase Street, Suite 9, in Rye, New York.

30. Additionally, both C-cation and C-Cation Tech identically disclose only Cheng as the lone witness having discoverable information supporting their claims and defenses in their Initial Disclosures. C-cation and C-Cation Tech's Initial Disclosures thus far in this case mirror each other in all relevant respects. See Exhibits A & B. This provides further evidence that C-cation and C-Cation Tech operate as "alter egos" of Cheng and each other, at least with respect to the transactions(s) at issue and the allegations of wrongful conduct described herein. Moreover,

Defendants have had a relationship and shared commonality of interests such that they have effectively acted as “alter egos” of each other and/or as agent and principal. Thus, each Defendant should be deemed to have adopted, confirmed, and ratified the conduct of the other *vis-a-vis* any Defendants’ entry into the Settlement Agreement. As a result, each Defendant has been and continues to be bound by any other Defendant’s obligations under the Settlement Agreement.

31. Due to Cheng’s treatment and use of C-cation and C-Cation Tech as his corporate “alter egos,” and based upon the allegations herein, Cheng, C-cation, and C-Cation Tech must be treated as the same entity with respect to the transaction(s) at issue in this dispute, and the activities and purported ownership of the ’155 and ’883 patents by C-cation, C-Cation Tech, and Cheng must be imputed to all Defendants at all times relevant to the allegations and claims herein.

III. JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over Plaintiffs’ breach of contract, promissory estoppel, and fraud claims against C-cation, C-Cation Tech, and Cheng pursuant to 28 U.S.C. § 1332, because Plaintiffs and Defendants are citizens of different states within the meaning of 28 U.S.C. § 1332 and the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs. Alternatively, subject-matter jurisdiction may be exercised over Plaintiffs’ breach of contract, promissory estoppel, and fraud claims under 28 U.S.C. § 1367.

33. This action also arises, *inter alia*, under the patent laws of the United States, codified at 35 U.S.C. § 1, et seq. This Court has subject matter jurisdiction over all patent-related claims in this case pursuant to 28 U.S.C. §§ 1331 and 1338(a), and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

34. Jurisdiction over this dispute, in whole or in part, was also retained by the United States District Court for the Southern District of New York to enforce the terms of the settlement

agreement at issue herein. *See infra* at Paragraph 42 (discussing and attaching the Court’s Order expressly retaining jurisdiction).

35. On information and belief, this Court has personal jurisdiction over Defendants because, *inter alia*, Defendants are domiciled and/or maintain principal places of business within the Southern District of New York, Defendants have had, and/or currently have, continuous and systematic contacts with the state of New York, the claims herein arise out of Defendants’ specific contacts with the state of New York, and/or [REDACTED]

[REDACTED]

[REDACTED] See *infra* at Paragraph 68 (discussing [REDACTED]
[REDACTED]).

36. On information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because, *inter alia*, Defendants all reside—within the meaning of the venue statute—in this judicial district and a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

IV. FACTUAL BACKGROUND

A. The 2002 Litigation in the Southern District of New York Between C-cation and Comcast Cable Holdings

37. On June 14, 2002, C-cation filed a patent infringement lawsuit against AT&T Corp. (“AT&T”) and AT&T Broadband, LLC (“AT&T Broadband”), in the United States District Court for the Southern District of New York entitled *C-cation, Inc. v. AT&T Corp. and AT&T Broadband, LLC* (herein “the 2002 SDNY Litigation”). The 2002 SDNY Litigation was designated Civil Action No. 02-CIV-1415 (HB). A copy of the Complaint in the 2002 SDNY Litigation is attached as **Exhibit C**.

38. In the 2002 SDNY Litigation, C-cation alleged that it was the assignee and/or owner of the '155 patent, issued on June 24, 1997 and entitled "Method and Apparatus for Supporting Two-Way Telecommunications on CATV Networks." A copy of the '155 patent is attached as **Exhibit D**.

39. In the 2002 SDNY Litigation, C-cation further alleged that certain cable systems owned and operated by AT&T and/or AT&T Broadband infringed one or more claims of the '155 patent.

40. On November 18, 2002, while the 2002 SDNY Litigation was pending, Comcast Corporation completed its acquisition of AT&T Broadband and all of its assets, including the cable systems accused by C-cation in the 2002 SDNY Litigation. AT&T Broadband was renamed Comcast Cable Holdings, LLC and remained a defendant in the 2002 SDNY Litigation.

41. In or around June 2003, C-cation, AT&T, and Comcast Cable Holdings (f/k/a AT&T Broadband) engaged in settlement negotiations regarding the 2002 SDNY Litigation, and on or around June 30, 2003, the parties to the 2002 SDNY Litigation settled that dispute by entering into the confidential Settlement Agreement. A copy of the Settlement Agreement is attached as **Exhibit E**.

42. At the parties' request, and pursuant to [REDACTED] the Court filed a Stipulation and Order on July 3, 2003 dismissing the 2002 SDNY Litigation with prejudice. In that order, at the parties' request and with their consent, the Court retained jurisdiction to enforce the terms of the Settlement Agreement. A copy of the Stipulation and Order dismissing the 2002 SDNY Litigation is attached as **Exhibit F**.

B. The Settlement Agreement

43. The Settlement Agreement was executed by, and became binding upon, the parties to the 2002 SDNY Litigation on or about June 30, 2003.

44. Cheng executed the Settlement Agreement on behalf of C-cation [REDACTED] and repeatedly indicated his acknowledgment thereof by placing his initials next to various sections of the Agreement, [REDACTED]

i. The Applicability of the Settlement Agreement to Plaintiffs and Defendants

45. [REDACTED]

46. Pursuant to these and other terms of the Settlement Agreement, both express and implied, Plaintiffs have standing to enforce the terms of the Settlement Agreement against Defendants, and C-cation, C-Cation Tech, and Cheng are each bound by the terms of the Settlement Agreement.

47. C-cation is expressly named as a party to the Settlement Agreement, and Cheng executed the Settlement Agreement on C-cation's behalf.

48. Cheng is bound to the terms of the Settlement Agreement because Cheng is the "alter ego" of C-cation for the reasons set forth herein. As C-cation's "alter ego," Cheng also executed the Settlement Agreement on his own behalf.

49. Cheng and C-cation are also bound to the terms of the Settlement Agreement under a promissory estoppel theory, because Cheng and C-cation, and/or their agents, made a clear and unambiguous promise to Comcast Cable Holdings [REDACTED]

[REDACTED] Comcast Cable Holdings reasonably, foreseeably, justifiably, and detrimentally relied upon that promise, and injustice would result if Cheng and C-cation's promises were not enforced.

50. C-Cation Tech is bound by the Settlement Agreement because, on information and belief, C-Cation Tech is an [REDACTED]

[REDACTED] C-Cation Tech is majority-owned and/or controlled by Cheng, who also majority owns and/or controls C-cation. Cheng was also the “alter ego” of C-cation at the time the Settlement Agreement was executed. Thus, when Cheng formed C-Cation Tech and purportedly assigned the ’883 patent to C-Cation Tech, C-Cation Tech assumed the obligations of C-cation and Cheng with respect to the subject matter of the Settlement Agreement.

51. C-Cation Tech is also bound to the Settlement Agreement because during the negotiation of the Settlement Agreement, Cheng held himself out to both the Court and Comcast Cable Holdings as the same entity as C-cation for purposes [REDACTED] [REDACTED] under the ’883 patent, which Defendants now claim was only owned by Cheng and not by C-cation. Thus, the treatment of C-Cation Tech as an “alter ego” of C-cation and/or Cheng, and binding C-Cation Tech to the terms of the Settlement Agreement as the “alter ego” of C-cation and/or Cheng, are necessary to prevent fraud and the improper use of the corporate form to circumvent Cheng and C-cation’s obligations under the Settlement Agreement.

52. The Settlement Agreement was intended to be and remains a valid and enforceable contract between the parties to the 2002 SDNY Litigation, including Plaintiffs and Defendants herein.

ii. [REDACTED] Granted by the Settlement Agreement

53. Pursuant to the terms of the Settlement Agreement, both express and implied, Defendants [REDACTED]

54. [REDACTED]

[REDACTED]:

[REDACTED]

55. [REDACTED]

[REDACTED] was negotiated and understood by the parties to the 2002 SDNY Litigation to cover all patents owned and/or controlled C-cation, including the '883 patent expressly, issued on October 8, 1996 and entitled "Dynamic Channel Management and Signalling [sic] Method and Apparatus." A copy of the '883 patent is attached as **Exhibit G**.

56. During the June 2003 settlement negotiations between the parties to the 2002 SDNY Litigation, C-cation, by and through its agents and/or counsel, affirmatively represented to both the Court and counsel for Comcast Cable Holdings that C-cation owned and/or possessed the rights to enforce other patents besides the '155 patent, including the '883 patent.

57. During a conference call held with the Court on or about June 24, 2003, C-cation affirmatively represented to both the Court and counsel for Comcast Cable Holdings that it either owned directly—or owned through Cheng (its principal and "alter ego")—the rights to enforce other patents in addition to the '155 patent.

58. C-cation's affirmative representations of its ownership and/or control of the '883 patent is memorialized in a letter submitted by Comcast Cable Holdings to the Court on June 25, 2003. In this letter, Comcast Cable Holdings provided the Court with the status of its settlement negotiations with C-cation, summarized the above-mentioned June 24 conference call with the Court, explained that C-cation had been reluctant to [REDACTED]

[REDACTED], and stated [REDACTED] by C-cation was “essential” to the terms of the Settlement Agreement. A copy of the June 25 letter submitted to the Court is attached as **Exhibit H**.¹

59. C-cation [REDACTED]

[REDACTED]—on or about June 30, 2003. In exchange for this

[REDACTED] was added specifically because C-cation, through its “alter ego” Cheng, owned, controlled, and/or otherwise could [REDACTED] based on the ’883 patent and because

[REDACTED] Two email communications between attorneys for Comcast Cable Holdings and C-cation/Cheng during the 2002 SDNY Litigation that substantiate these allegations are attached as **Exhibit I**.

60. [REDACTED] was intended to, and in fact does, cover [REDACTED]

iii. [REDACTED] Granted by the Settlement Agreement

61. Pursuant to the terms of the Settlement Agreement, both express and implied,

62. [REDACTED]

¹AT&T/Comcast Cable Holdings’ counsel in the 2002 SDNY Litigation has been unable to locate the signed document filed with the Court. The submitted copy is a final “soft” copy in Word format. The signed document was not located among the original court records from the National Archives in Lee’s Summit, Missouri.

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

64. At the time the Settlement Agreement was executed, [REDACTED]

[REDACTED] contained components capable of performing certain features of DOCSIS 1.1. At that time, components compliant with DOCSIS 1.1 had already been deployed across a large percentage of Plaintiffs' cable systems.

65. Different versions of DOCSIS have been publicly released since DOCSIS 1.0 was first issued in or around March 1997. DOCSIS 1.1 was released in or around April 1999, followed by DOCSIS 2.0 in or around December 2001 and DOCSIS 3.0 in or around August 2006.

iv. The Parties' Agreement to [REDACTED]

66. [REDACTED]

[REDACTED]

[REDACTED]

v. The Parties' Agreement to Litigate Disputes to Enforce the Terms of the Settlement Agreement in the Southern District of New York, Which Retained Jurisdiction for this Purpose

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. [REDACTED]

69. The parties to the 2002 SDNY Litigation did in fact prepare, sign, and submit a “Stipulation of Dismissal and Order” to the Court, and on or about July 2, 2003, the Court approved the Stipulation of Dismissal and Order and expressly retained jurisdiction to enforce the terms of the Settlement Agreement. *See* Exhibit D.

C. The Eastern District of Texas Lawsuit

70. On information and belief, C-Cation Tech was formed on or around January 13, 2011 as a limited liability company purportedly organized and existing under the laws of Texas. Less than two weeks later, on January 25, 2011, C-Cation Tech filed a patent infringement lawsuit against Comcast Corporation and other unrelated entities in the United States District Court for the Eastern District of Texas (herein “the Texas Lawsuit”). A copy of the Complaint from the Texas Lawsuit is attached as **Exhibit J**.

71. On April 5, 2011, approximately two and a half weeks after the Complaint in the instant lawsuit was filed, C-Cation Tech filed a First Amended Complaint naming Comcast Cable and Comcast of Houston, LLC (“Comcast of Houston”) as additional defendants to the Texas Lawsuit. A copy of the First Amended Complaint from the Texas Lawsuit is attached as **Exhibit K** (herein “the Texas Complaint”).

72. The Texas Complaint alleges, *inter alia*, that Comcast Corporation, Comcast Cable, and Comcast of Houston “willful[ly] and deliberate[ly]” infringed the ’883 patent “by offering for sale, selling, operating, advertising and marketing cable systems and cable modem products, including systems and products compliant with the Data Over Cable System Interface Specification (“DOCSIS”) standard, that fall within the scope of at least one claim of the ’883 patent.” The

allegations focus on cable systems “that perform, or are capable of performing, channel assignment, channel reassignment, and/or bandwidth allocation functions of the DOCSIS 1.1, 2.0, and 3.0 standards.” *See* Texas Complaint at ¶ 16.

73. The Texas Complaint further alleges that “[a]ny cable systems, or cable modem products used in such cable systems, that are capable of performing these functions necessarily infringe one or more claims of the ’883 patent.” *See* Texas Complaint at ¶ 16.

74. Finally, the Texas Complaint alleges that “[o]n information and belief, Comcast has had knowledge of the ’883 patent since at least June 30, 2003[.]” which is at or around the date that the 2002 SDNY Litigation settled, the Settlement Agreement was executed, and C-cation represented to Comcast Cable Holdings and this Court that it owned or controlled other patents, including the ’883 patent expressly. *See* Texas Complaint at ¶ 19.

75. Based upon these and other allegations in the Texas Complaint, C-Cation Tech seeks, *inter alia*, a judgment that Comcast Corporation, Comcast Cable, and Comcast of Houston “infringed, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents, a least one claim of the ’883 patent[.]” The Texas Complaint also seeks a permanent injunction against Comcast Corporation, Comcast Cable, and Comcast of Houston for their alleged infringement of the ’883 patent as well as an award of damages and attorney’s fees and costs. *See* Texas Complaint at 5-6.

D. The Defendants’ Anticipatory and Actual Breach of the Settlement Agreement

76. Defendants’ allegations of infringement of the ’883 patent by cable systems and cable modem products compliant with the DOCSIS standard and purportedly owned and operated by Plaintiffs materially breach the terms of the Settlement Agreement because: (1) [REDACTED] in the Settlement Agreement,

and (2) the accused cable systems and cable modem products were [REDACTED]

[REDACTED] under the Settlement Agreement.

77. C-Cation Tech, who is bound to the Settlement Agreement for the reasons stated herein, [REDACTED]

[REDACTED]
See supra at Paragraphs 53-60. C-Cation Tech's actions in filing the Texas Lawsuit against Comcast Corporation, Comcast Cable, and Comcast of Houston violates these and other terms of the Settlement Agreements [REDACTED] C-cation and Cheng are equally liable for C-Cation Tech's actions as its "alter egos."

78. Additionally, C-Cation Tech [REDACTED]

[REDACTED]
[REDACTED] *See supra* at Paragraphs 61-65. On information and belief, C-Cation Tech's infringement allegations in the Texas Lawsuit are premised on one or more extant features of DOCSIS at the time the Settlement Agreement was executed. To the extent the Texas Lawsuit states a claim against Plaintiffs' cable systems, those systems include [REDACTED]

[REDACTED]
79. The similarities and relationship between the '155 and '883 patents also support Plaintiffs' position that the cable systems and products targeted in the Texas Lawsuit were [REDACTED]
[REDACTED] Cheng is the only inventor listed on both the '155 and '883 patents, both patents were prosecuted by Cheng personally and concurrently, and the '155 patent cites to, relies upon, and incorporates by reference the disclosure of the '883 patent. *See* '155 patent, Col. 5:44-49.

80. Defendants have taken the position that the Settlement Agreement [REDACTED] [REDACTED] for the alleged infringement of the '883 patent, based, *inter alia*, upon Defendants' inclusion of Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants in the Texas Lawsuit.

81. The filing of the Texas Lawsuit and the inclusion of Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants in that lawsuit was both an anticipatory and actual breach by Defendants of the material terms, both express and implied, of the Settlement Agreement.

E. The Existence of a Justiciable Controversy Between Plaintiffs and Defendants

82. The actions taken by C-Cation Tech in filing the Texas Lawsuit against Comcast Corporation, Comcast Cable, and Comcast of Houston created a substantial controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment with respect to (1) Plaintiffs' alleged infringement of the '883 patent and (2) the rights granted to Plaintiffs under the Settlement Agreement.

83. Plaintiffs deny that any of their activities, products, and services infringe any valid and enforceable claim—if any exist—of the '883 patent, because, *inter alia*, Defendants released,

[REDACTED]

[REDACTED]

[REDACTED].

84. Based upon Defendants' filing of and allegations in the Texas Lawsuit, there is a real, substantial, definite, and concrete controversy between Plaintiffs and Defendants (1) with respect to Defendants' right to threaten or maintain a lawsuit against Plaintiffs for infringement of the '883 patent, (2) as to the validity, scope and enforceability of the '883 patent, (3) as to whether Plaintiffs infringe any valid and enforceable claim of the '883 patent, and (4) as to whether Comcast Cable and Comcast of Houston's operation, marketing, and/or selling of the accused cable system products and

services is authorized, in whole or in part, under the terms, both express and implied, of the Settlement Agreement.

85. For these reasons, this controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment under the Declaratory Judgment Act, and is an actual and justiciable controversy within the meaning of Article III of the United States Constitution.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Breach of Contract – Against All Defendants)

86. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

87. On or about June 30, 2003, C-cation entered into the Settlement Agreement with AT&T and Comcast Cable Holdings.

88. The Settlement Agreement is a valid and enforceable contract, is supported by consideration, and is binding upon all Defendants. As explained herein, C-cation is bound to the Settlement Agreement because it was a party to the Settlement Agreement. Cheng is bound to the Settlement Agreement because C-cation is and was Cheng's corporate "alter ego" with respect to the transaction(s) at issue. C-Cation Tech is bound because to the [REDACTED]

[REDACTED] and because it is an "alter ego" of both C-cation and Cheng. Moreover, "alter ego" treatment of C-cation, C-Cation Tech, and Cheng is warranted due to Cheng and C-cation's affirmative misrepresentations about C-cation's ownership and control of the '883 patent during the negotiation of the Settlement Agreement.

89. The terms of the Settlement Agreement were intended to, and in fact do, protect Plaintiffs, in whole or in part, against the allegations of patent infringement by C-Cation Tech set forth herein.

90. Comcast Cable Holdings performed under the terms of the Settlement Agreement, including but not limited to [REDACTED]

91. Despite the terms of the Settlement Agreement, C-Cation Tech filed the Texas Lawsuit and named Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants, alleging infringement of the '883 patent pertaining to cable system products and/or services operated, marketed, and/or sold by Comcast Cable and Comcast of Houston.

92. These actions by Defendants breached the terms, both express and implied, of the Settlement Agreement, [REDACTED] that bar, in whole or in part, the allegations of patent infringement herein.

93. As a result of Defendants' breach of the Settlement Agreement, Plaintiffs have suffered injury and damages in an amount to be proven at trial, including, but not limited to, the expenditure of time, money, and resources to defend against Defendants' litigation in the Texas Lawsuit and the instant lawsuit. Plaintiffs' damages are ongoing and continue to accrue.

SECOND CLAIM FOR RELIEF

(Anticipatory Breach of Contract – Against All Defendants)

94. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

95. On or about June 30, 2003, C-cation entered into the Settlement Agreement with AT&T and Comcast Cable Holdings.

96. The Settlement Agreement is a valid and enforceable contract, is supported by consideration, and is binding upon all Defendants herein. As explained herein, C-cation is bound to the Settlement Agreement because it was a party to the Settlement Agreement. Cheng is bound to the Settlement Agreement because C-cation is and was Cheng's corporate "alter ego" with respect to the transaction(s) at issue. C-Cation Tech is bound because to the Settlement Agreement because [REDACTED] [REDACTED] because it is an "alter ego" of both C-cation and Cheng. Moreover, "alter ego" treatment of C-cation, C-Cation Tech, and Cheng is warranted due to Cheng and C-cation's affirmative misrepresentations about C-cation's ownership and control of the '883 patent during the negotiation of the Settlement Agreement.

97. The terms of the Settlement Agreement were intended to, and in fact do, protect Plaintiffs, in whole or in part, against the allegations of patent infringement by C-Cation Tech set forth herein.

98. Comcast Cable Holdings performed under the terms of the Settlement Agreement, including but not limited to [REDACTED] [REDACTED].

99. Despite the terms of the Settlement Agreement, C-Cation Tech filed the Texas Lawsuit and named Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants, alleging infringement of the '883 patent pertaining to cable system products and/or services s operated, marketed, and/or sold by Comcast Cable and Comcast of Houston.

100. These actions by Defendants demonstrate a clear and unequivocal intention by Defendants to abandon the terms, both express and implied, of the Settlement Agreement, constituting an anticipatory breach of the Settlement Agreement.

101. As a result of Defendants' anticipatory breach of the Settlement Agreement, Plaintiffs have suffered injury and damages in an amount to be proven at trial, including, but not limited to, the expenditure of time, money, and resources to defend against Defendants' litigation in the Texas Lawsuit and the instant lawsuit. Plaintiffs' damages are ongoing and continue to accrue.

THIRD CLAIM FOR RELIEF

(For Declaratory Judgment Regarding Plaintiffs' Rights Under the Settlement Agreement – Against All Defendants)

102. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

103. On or about June 30, 2003, C-cation entered into the Settlement Agreement with AT&T and Comcast Cable Holdings.

104. The Settlement Agreement is a valid and enforceable contract, is supported by consideration, and is binding upon all Defendants herein.

105. The terms of the Settlement Agreement were intended to, and in fact do, protect Plaintiffs, in whole or in part, against the allegations of patent infringement by C-Cation Tech set forth herein.

106. Comcast Cable Holdings performed under the terms of the Settlement Agreement, including but not limited to [REDACTED]

107. Despite the terms of the Settlement Agreement, based upon, *inter alia*, Defendants' formation of C-Cation Technologies in Texas, C-Cation Technologies' filing of the Texas Lawsuit, the naming of Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants in the Texas Complaint, and the allegations set forth in the Texas Complaint of infringement of the '883 patent pertaining to cable system products and/or services operated, marketed, and/or sold by Comcast Cable and Comcast of Houston, there is a substantial controversy between Plaintiffs and

Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment with respect to Defendants' position that their actions are authorized under the terms, both express and implied, of the Settlement Agreement, and Plaintiffs' position to the contrary.

108. Accordingly, an actual and justiciable controversy has arisen and exists between Plaintiffs and Defendants relating to their respective rights under the terms of the Settlement Agreement. Plaintiffs seek a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time to enable the parties to ascertain their respective rights and duties.

FOURTH CLAIM FOR RELIEF

(Promissory Estoppel – Against All Defendants)

109. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

110. C-cation and Cheng, or their authorized agents, made a clear, unambiguous, and intentional promise to Comcast Cable Holdings and this Court during the negotiation of the Settlement Agreement that [REDACTED]

[REDACTED] would include and encompass the '883 patent.

111. This promise amounted to a false representation or concealment of a material fact, or was at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which Defendants now seek to assert.

112. Comcast Cable Holdings did not know the supposed "true" facts—namely, that C-cation purportedly lacked ownership or control of the '883 patent during the negotiation and execution of the Settlement Agreement, in direct contradiction to Cheng and C-cation's affirmative representations.

113. C-cation and Cheng should reasonably have expected Comcast Cable Holdings to change its position in reliance on this promise, including [REDACTED]
[REDACTED]
[REDACTED], the acceptance of the terms of the settlement agreement, and the settlement of the 2002 SDNY Litigation.

114. Comcast Cable Holdings did in fact reasonably, foreseeably, and justifiably rely upon C-cation and Cheng's promise that the Settlement Agreement would [REDACTED]
[REDACTED] that included the '883 patent, by, *inter alia*, (i) agreeing to the terms of the Settlement Agreement with the expectation that the '883 patent [REDACTED]
[REDACTED] (ii) agreeing to the terms of the Settlement Agreement with the expectation that [REDACTED]
[REDACTED] as well as their relevant "alter egos" (iii) [REDACTED]
[REDACTED] (which is explainable only with reference to Cheng's promises that the '883 patent would be covered by the Settlement Agreement), (iv) [REDACTED]
[REDACTED] and (v) agreeing to settle the 2002 SDNY Litigation.

115. The injustice, prejudice, and unconscionable injury suffered by Plaintiffs as a result of Comcast Cable Holdings' reliance upon C-cation and Cheng's [REDACTED]
[REDACTED] can only be avoided by the enforcement of the promise.

116. The Court should enforce C-cation and Cheng's promises against both C-cation, Cheng, and their "alter ego," C-Cation Tech, by binding Defendants to the terms of the Settlement Agreement, and holding them to C-cation and Cheng's promise that [REDACTED]

[REDACTED]

[REDACTED]

117. Plaintiffs have suffered injury and damages as a result of these actions by C-cation, Cheng, and their “alter ego,” C-Cation Tech, and as a result of Comcast Cable Holdings’ reasonable reliance upon C-cation and Cheng’s promises, in an amount to be proven at trial, including, but not limited to, the expenditure of time, money, and resources to defend against C-Cation Tech’s litigation in the Texas Lawsuit and the instant lawsuit. Plaintiffs’ damages are ongoing and continue to accrue.

FIFTH CLAIM FOR RELIEF
(Fraud – Against C-cation and Cheng)

118. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

119. As an alternative claim for relief, and in the event that the Settlement Agreement is interpreted as not granting rights or releases to the ’883 patent, then C-cation and Cheng, or their authorized agents, made material misrepresentations of fact to Comcast Cable Holdings and this Court during the negotiation of the Settlement Agreement that C-cation owned or otherwise possessed the authority to grant rights related to the ’883 patent, and that [REDACTED]

[REDACTED]

[REDACTED] would include and encompass the ’883 patent.

120. Specifically, C-cation and Cheng, or their authorized agents, represented to Comcast that the ’883 patent [REDACTED]

[REDACTED] on at least the following occasions:

- i) On May 22, 2003, C-cation agent Angelo Guglielmo emailed Franklyn Athias at Comcast to setup a conference call with Defendant Cheng “to discuss our Dynamic

Channel Management and Signaling Method and Apparatus protocol,” which is the title of the ’883 patent.

ii) On June 18, 2003, C-cation agent Guglielmo emailed Franklyn Athias at Comcast to follow up on scheduling a conference call with Defendant Cheng “to discuss our dynamic channel management and signaling method and apparatus protocol,” which is the title of the ’883 patent.

iii) On June 24, 2003, during a conference call with the Court in the 2002 SDNY Litigation, C-cation’s counsel represented to Comcast and the Court that C-cation owned other patents in addition to the ’155 patent, including the ’883 patent, when asked why C-cation did not want to grant [REDACTED] in the Settlement Agreement.

iv) On or around June 27, 2003, during further negotiations of the Settlement Agreement between counsel for C-cation and Comcast, C-cation’s counsel represented to Comcast’s counsel that C-cation owned or otherwise possessed the authority to grant rights related to the ’883 patent, resulting in [REDACTED]

v) On July 28, 2003, C-cation agent Guglielmo emailed Franklyn Athias at Comcast regarding an upcoming conference call with Cheng. In that email, Guglielmo represented to Comcast that the ’883 patent was a C-cation patent, attached the ’883 patent to the email, and described the ’883 patent as “*our* bandwidth-on-demand protocol patent” and one of “*C-cation’s* technologies.”

vi) On or around September 5, 2003, C-cation agent Guglielmo emailed Lee Zieroth at Comcast to provide an “update” of C-cation’s licensing discussions with CableLabs. In that email, Guglielmo represented to Comcast that “CableLabs has

offered to provide our company a cross-license to the CableLabsIPR pool in exchange for a license of *our* '883 patent" and described the '883 patent as "*our* technology" and one of "*our* patents."

121. C-cation contends in this litigation that Dr. Cheng owned the '883 patent "throughout 2003"(see C-cation, Inc.'s, C-Cation Technologies, LLC's, and Alexander L. Cheng's Consolidated Answer to Comcast's First Amended Complaint ¶ 18) and that C-cation "does not now have nor has it ever had any rights, title or interest in" the '883 patent and "could not . . . [REDACTED] [REDACTED] otherwise enter into any agreement with Comcast Cable Holdings with respect to that patent." See Dkt. No. 16 at 1, 4; see also, e.g., Dkt. No. 20 at 20 (same argument); Dkt No. 22 at ¶¶ 7-8 (Cheng states in his declaration that he "never assigned any rights, title, or interest in the '883 patent to C-cation, Inc." and "was never under any obligation" to do so); Dkt. No. 50 at 3-5 (same argument). If these arguments and contentions by C-cation are true, then the representations described in Paragraph 120 above were false when made, and were made with knowledge of their falsity.

122. On information and belief, C-cation and Cheng, or their authorized agents, made said misrepresentations before, during, and after the negotiation of the Settlement Agreement with the intent to induce to Comcast Cable Holdings' reliance. Specifically, C-cation and Cheng, or their authorized agents, knew that Comcast Cable Holdings was negotiating to obtain [REDACTED] [REDACTED], based *inter alia* upon statements made by Comcast during the conference call with the Court on June 24, 2003, and during further negotiations between counsel for C-cation and Comcast in or around June 27, 2003. C-cation and Cheng, or their authorized agents, agreed to contractual language [REDACTED] to induce Comcast Cable Holdings agree to the terms of the settlement and [REDACTED] [REDACTED]

123. Comcast Cable Holdings justifiably relied on the misrepresentations of C-cation and Cheng, or their authorized agents, during and after the negotiation of the Settlement Agreement. Specifically, Comcast Cable Holdings relied upon those misrepresentations to enter into the Settlement Agreement, to [REDACTED], and to pursue its business activities with the understanding that it had obtained “patent peace” with respect to the ’883 patent. Comcast Cable Holdings did not know the supposed “true” facts—namely, that C-cation purportedly lacked ownership or control of the ’883 patent during the negotiation and execution of the Settlement Agreement, in direct contradiction to Cheng and C-cation’s affirmative misrepresentations.

124. Plaintiffs have suffered substantial injury and damages due to the fraudulent misrepresentations and concealments of C-cation and Cheng, or their authorized agents. The amount of such damages shall be proven at trial, but include, without limitation, the expenditure of time, money, and resources to defend against C-Cation Tech’s litigation in the Texas Lawsuit and the instant lawsuit. Plaintiffs’ damages are ongoing and continue to accrue.

125. Plaintiffs are also entitled to punitive/exemplary damages due to the fraudulent misrepresentations and concealments of C-cation and Cheng, or their authorized agents.

SIXTH CLAIM FOR RELIEF

(For Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,563,883 – Against C-Cation Tech)²

126. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

² Plaintiffs have directed all patent claims in this Complaint to C-Cation Tech alone based on Defendants’ representations that C-Cation Tech is the current and lone assignee of the ’883 patent. Comcast reserves the right to amend the Complaint if discovery reveals that another defendant should be named.

127. Based upon, *inter alia*, C-Cation Tech's filing of the Texas Lawsuit, the naming of Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants in the Texas Lawsuit, and the allegations set forth in the Texas Complaint of infringement of the '883 patent pertaining to cable system products and/or services purportedly operated, marketed, and/or sold by Plaintiffs, there is a substantial controversy between Plaintiffs and C-Cation Tech of sufficient immediacy and reality to warrant the issuance of a declaratory judgment with respect to C-Cation Tech's allegations that one or more claims of the '883 patent are infringed by Comcast Cable and Comcast of Houston's operating, marketing, and/or selling of the accused cable system products and/or services.

128. Plaintiffs' activities, products, and/or services, including those identified in the Texas Lawsuit and Texas Complaint, do not infringe, literally or otherwise, directly or indirectly, any valid and enforceable claims, if any, of the '883 patent.

129. Plaintiffs were released and immunized by C-Cation Tech, in whole or in part, with respect to patent infringement claims involving the '883 patent, based upon, *inter alia*, the express and implied terms of the Settlement Agreement.

130. Accordingly, an actual and justiciable controversy has arisen and exists between Plaintiffs and C-Cation Tech relating to the non-infringement of the '883 patent. Plaintiffs seek a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time to enable the parties to ascertain their respective rights and duties.

SEVENTH CLAIM FOR RELIEF

(For Declaratory Judgment of Invalidity of U.S. Patent No. 5,563,883 – Against C-Cation Tech)

131. Plaintiffs incorporate by reference Paragraphs 1 through 85, inclusive, as though fully set forth in this Paragraph.

132. Based upon, *inter alia*, C-Cation Tech's filing of the Texas Lawsuit, the naming of Comcast Corporation, Comcast Cable, and Comcast of Houston as defendants in the Texas Lawsuit, and the allegations set forth in the Texas Complaint of infringement of the '883 patent pertaining to cable system products and/or services purported operated, marketed, and/or sold by Plaintiffs, there is a substantial controversy between Plaintiffs and C-Cation Tech of sufficient immediacy and reality to warrant the issuance of a declaratory judgment with respect to C-Cation Tech's allegations that one or more claims of the '883 patent are valid and enforceable against Plaintiffs.

133. The claims of the '883 patent are invalid. In view of the prior art and Defendants' assertions of what the claims in the '883 patent cover, and in view of basic deficiencies in the '883 patent, the '883 patent fails to satisfy the conditions of patentability set forth in Title 35, Part II, of the United States Code. In particular, the claims, at least as implicitly construed by C-Cation Tech in its assertions in the Texas Complaint, fail to satisfy the utility requirement of 35 U.S.C. § 101, fail to satisfy the novelty requirement of 35 U.S.C. § 102, fail to satisfy the non-obviousness requirement of 35 U.S.C. § 103, and fail to satisfy the written description, enablement and definiteness requirements of 35 U.S.C. § 112.

134. Accordingly, an actual and justiciable controversy has arisen and exists between Plaintiffs and C-Cation Tech relating to the validity of the '883 patent. Plaintiffs seek a judicial determination and declaration of the respective rights and duties of the parties herein. Such a determination and declaration is necessary and appropriate at this time to enable the parties to ascertain their respective rights and duties.

VI. JURY DEMAND

135. Plaintiffs request a jury trial for all issues so triable.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. For a finding that C-cation and Cheng are liable as “alter egos” of each other with respect to the transaction(s) at issue, and should be treated as one entity at all relevant times, and for all relevant purposes, as alleged herein.
2. For a finding that C-Cation Tech and Cheng are liable as “alter egos” of each other with respect to the transaction(s) at issue, and should be treated as one entity at all relevant times, and for all relevant purposes, as alleged herein.
3. For a finding that C-cation and C-Cation Tech are liable as “alter egos” of each other with respect to the transaction(s) at issue, and should be treated as one entity at all relevant times, and for all relevant purposes, as alleged herein.
4. For a declaratory judgment that:
 - i) Defendants have breached the terms of the Settlement Agreement.
 - ii) Defendants are in anticipatory breach of the Settlement Agreement.
 - iii) Plaintiffs do not infringe any valid and enforceable claim, if any exist, of the '883 patent.
 - iv) The '883 patent and claims therein are invalid.
 - v) Plaintiffs are immune from liability for infringement of the '883 patent for using, manufacturing, selling, offering to sell, and/or operating the cable systems and products described herein.
 - vi) C-Cation Tech, and those acting in concert with C-Cation Tech or acting with knowledge of the judgment herein, are without right or authority to threaten or maintain suit against Plaintiffs, or users of Comcast Cable and Comcast of Houston's products or services, for alleged infringement of the '883 patent based upon using, manufacturing, selling, offering to sell, and/or operating the cable systems and products described herein.

5. For an injunction prohibiting C-Cation Tech and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice thereof, from initiating or proceeding with patent infringement litigation against Plaintiffs (or any customers or users of Comcast Cable and Comcast of Houston's cable systems, products, and/or services) for allegedly infringing the '883 patent due to the use, manufacture, sale, offers to sell, or operation of the cable systems and products described herein.

6. For an award of damages incurred as a result of Defendants' anticipatory and actual breach of the Settlement Agreement, including all lost profits, incidental, and consequential damages.

7. For an award of damages incurred as a result of Plaintiffs' promissory estoppel claim against Cheng and C-Cation Tech, including all lost profits, incidental, and consequential damages.

8. For an award of damages incurred as a result of Plaintiffs' fraud claim against Cheng and C-Cation, including all lost profits, incidental, and consequential damages.

9. For an award of punitive/exemplary damages due to the fraudulent misrepresentations and concealments of C-cation and Cheng, or their authorized agents.

10. For an award of restitution for any and all claims where restitution would be a proper and just remedy.

11. For its costs, expenses, and attorneys' fees incurred defending against Defendants' threatened and actual litigation.

12. For such other and further relief as the Court may deem proper.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMCAST CORPORATION, COMCAST
CABLE COMMUNICATIONS, LLC,
COMCAST CABLE HOLDINGS, LLC, and
COMCAST OF HOUSTON, LLC

Plaintiffs,

v.

C-CATION, INC., C-CATION
TECHNOLOGIES, LLC, and
ALEXANDER L. CHENG

Defendants.

Case No. 11-CV-1922-JGK

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the *SECOND AMENDED COMPLAINT FOR BREACH OF CONTRACT, PROMISSORY ESTOPPEL, FRAUD, AND DECLARATORY JUDGMENT (Confidential—Filed Under Seal)* and *SECOND AMENDED COMPLAINT FOR BREACH OF CONTRACT, PROMISSORY ESTOPPEL, FRAUD, AND DECLARATORY JUDGMENT (Redacted Version)* are being served upon the following counsel of record via electronic mail on May 25, 2012.

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