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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 SANTA ANA DIVISION

13 UNILOC 2017 LLC, 14 Plaintiff, 15 v. 16 INFOR, INC., 17 Defendant.	Case No. 8:19-cv-01150-DOC-KES (CONSOLIDATED) PLAINTIFF’S OPPOSITION TO NETSUITE’S MOTION TO DISMISS FIRST AMENDED COMPLAINT
18 UNILOC 2017 LLC, 19 Plaintiff, 20 v. 21 NETSUITE, INC., 22 Defendant.	Case No. 8:19-cv-01151-DOC-KES

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1 Plaintiff, Uniloc 2017 LLC (“Uniloc”), respectfully submits this Opposition to  
2 the Motion (Dkt. No. 54) of defendant, NetSuite, Inc. (“NetSuite”), to Dismiss the  
3 First Amended Complaint (“Mot.” or “Motion”). For the reasons set forth below, the  
4 Motion should be denied.<sup>1</sup>

## 5 I. BACKGROUND

6 NetSuite’s Motion is labeled as an *Iqbal/Twombly* motion to dismiss. Mot. at  
7 12. But those cases dealt only with whether sufficient *factual* matter had been  
8 pleaded, and NetSuite does not argue Uniloc’s Amended Complaint (“AC”) lacks  
9 factual matter. Rather, NetSuite bases its Motion not on the quantity of facts  
10 pleaded, but on its disagreement with the claim construction inherent to Uniloc’s  
11 theory of infringement. The Motion is thus not a pleadings motion, but a thinly-  
12 disguised motion for summary judgment.

13 NetSuite asserts the AC fails to demonstrate that the accused NetSuite  
14 architecture infringes the ‘578 Patent or the ‘293 Patent (together “the Asserted  
15 Patents”). To the extent the Motion is considered as an *Iqbal/Twombly* motion, the  
16 authorities do not support it. As the Federal Circuit and this Court recently have  
17 made clear, Uniloc is not required to prove its infringement case at this pleadings  
18 stage of the case. *See, e.g., Preservation Techs. LLC v. MindGeek USA, Inc.*, No. 17-  
19 8906-DOC, 2019 WL 3213585, at \*2 (C.D. Cal. Apr. 2, 2019) (citing *Nalco Co. v.*  
20 *Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018)). Uniloc need only state a  
21 plausible claim for infringement of each asserted patent. *See, e.g., TeleSign Corp. v.*  
22 *Twilio, Inc.*, No. 16-2106 PSG, 2016 WL 4703873, at \*3 (C.D. Cal. Aug. 3, 2016).  
23 As set forth below, Uniloc has done that. *See Preservation Techs.*, 2019 WL  
24 3213585, at \*2 (complaint is sufficient when it places the alleged infringer on notice

25 \_\_\_\_\_  
26 <sup>1</sup> As the Ninth Circuit has a liberal policy favoring amendments, leave to amend  
27 should be freely granted. *See, e.g., Julbo, Inc. v. Oakley, Inc.*, No. SA CV 17-1022-  
28 DOC, 2018 WL 2329151, at \*2 (C.D. Cal. Jan. 19, 2019). Should the Court deem  
29 the AC in any way deficient, Uniloc requests leave to amend

1 of the activity being accused of infringement). Further, on a motion to dismiss,  
2 courts must accept as true such well-pleaded factual allegations of the AC and  
3 construe all factual inferences in the light most favorable to Uniloc. *See Manzarek v.*  
4 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9<sup>th</sup> Cir. 2008). The AC  
5 complies with current pleading requirements.

6 NetSuite asks the Court, on a pleadings motion, to construe “application  
7 program,” a term found in the claims of the Asserted Patents, and to rule that, under  
8 NetSuite’s proposed construction, the AC did not plead the correct facts.

9 NetSuite relies upon an interlocutory – and erroneous – construction that had  
10 been entered In the Eastern District of Texas. But the court there ruled that the  
11 interlocutory construction was not the law-of-the-case, and that Uniloc had not  
12 waived its right to continue to contest it. *See Uniloc USA, Inc. v. ADP, LLC*, No.  
13 2:16-cv-00741, Dkt. No. 364, at 12 (E.D. Tex. Feb. 5, 2020). That court also stated  
14 that, as claim construction is performed on a rolling basis, it may revisit and alter its  
15 construction as that case proceeds.<sup>2</sup> Because that interlocutory construction did not  
16 create issue preclusion, this Court will perform its own construction.

17 NetSuite also cited an interlocutory order in a pending action in  
18 Massachusetts, which contains the same erroneous construction, but NetSuite does  
19 not argue that order created issue preclusion. That court may reconsider that  
20 construction before or at trial, but if it does not, Uniloc will challenge that  
21 construction on appeal.

22 As set forth below, Uniloc believes that the construction of “application  
23 program” NetSuite relies upon here is erroneous. In any event, as also set forth  
24 below, a properly instructed jury could reasonably determine that the accused  
25 products infringe even under NetSuite’s claim construction. Thus, as Uniloc is not  
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29 <sup>2</sup> The case was later settled. Foster Decl. ¶ 8

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