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9 Attorneys for Plaintiff

10   UNITED STATES DISTRICT COURT

11   CENTRAL DISTRICT OF CALIFORNIA

12   SANTA ANA DIVISION

13
UNILOC 2017 LLC,	Case No. 8:19-cv-01150-DOC-KES
Plaintiff,	(CONSOLIDATED)
v.	DECLARATION OF JAMES J. FOSTER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO NETSUITE'S MOTION TO DISMISS
INFOR, INC.,	
Defendant.	
UNILOC 2017 LLC,	Case No. 8:19-cv-01151-DOC-KES
Plaintiff,	
v.	
NETSUITE, INC.,	
Defendant.	

23   1.   I am counsel for Plaintiff, Uniloc 2017, in this action. I am submitting

24 this declaration under penalty of perjury in support of Uniloc's Opposition to

25 NetSuite's Motion to Dismiss.

26   **The Claim Construction Dispute in the Texas Eastern District**

27   2.   On August 16, 2017, in consolidated actions pending against certain

28 defendants in the Eastern District of Texas, including the two patents involved here,

1 the court entered an interlocutory claim construction order. A copy of that order is

2 attached as Exhibit 1.

3   3.   I reviewed the claim construction order at the time and found several

4 material errors in it, most notably that several constructions gave terms meanings

5 different from the meanings that would have been given to them by a person of skill

6 in the art, including "application program." To give the Eastern District of Texas

7 court an opportunity to correct those errors before trial, I drafted and filed with that

8 court on September 27, 2017, a Motion for Reconsideration. A copy of relevant

9 pages from that Motion are attached as Exhibit 2.

10   4.   In support of that Motion, I submitted an expert declaration of Dr.

11 Michael Shamos, in which he explained the errors in the constructions. A copy of

12 relevant pages from that declaration are attached as Exhibit 3.

13   5.   The motion was denied as moot because of an intervening decision on

14 patent eligibility, which decision was appealed and reversed, in part. After the action

15 was remanded, on November 5, 2019, I refiled in the Texas Eastern District Court a

16 Motion for Reconsideration of the interlocutory claim construction order. A copy of

17 relevant pages of that refiled motion is attached as Exhibit 4. I submitted with that

18 Motion another copy of the Shamos declaration (Exhibit 3).

19   6.   The Eastern District of Texas court denied the refiled Motion for

20 Reconsideration. A copy of that denial is attached as Exhibit 5.

21   7.   I am attaching as Exhibit 6 a portion of another Shamos Declaration,

22 filed in another action on January 23, 2020, further describing the error in the

23 construction the Texas court had adopted.

24   8.   The parties to the Eastern District of Texas action later reached a

25 settlement, and agreed to dismiss the action. As a result, the interlocutory claim

26 construction order was never finalized, nor was a final judgment entered based upon

27 any constructions from that order.

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Dated: November 6, 2020

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                                  /s/ James J. Foster

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                                    James J. Foster

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