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 15 *AGIS Software Development LLC*

16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

19 WHATSAPP LLC,

20 *Plaintiffs,*

21 v.

22 AGIS SOFTWARE DEVELOPMENT LLC,

23 Defendant.

Case No. 5:21-cv-03076-BLF

Hon. Judge Beth Labson Freeman

**NOTICE OF MOTION AND MOTION TO
 DISMISS COMPLAINT FOR
 DECLARATORY JUDGMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT**

Date: September 30, 2021

Time: 9:00 a.m.

Location: Courtroom 3

*[Declaration of Malcolm K. Beyer, Jr;
 Declaration of Vincent J. Rubino, III and
 exhibits; and Proposed Order filed
 concurrently herewith]*

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on September 30, 2021 at 9:00 a.m., or as soon thereafter as the matter may be heard before The Honorable Beth Labson Freeman in the United States District Court for the Northern District of California in the Robert F. Peckham Federal Building & United States Courthouse, Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113, Defendant AGIS Software Development LLC (“AGIS Software” or “Defendant”) will and hereby does move the Court, for: (1) an order dismissing the Complaint for Declaratory Judgment filed by Plaintiff WhatsApp LLC (“WhatsApp” or “Plaintiff”) pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure; (2) an order dismissing the Complaint for Declaratory Judgment in favor of the first-filed action; or (3) in the alternative, an order staying this action pending a decision on WhatsApp’s motion to dismiss, or in the alternative, to transfer, which is currently pending in the Eastern District of Texas.

This Motion is made on the grounds that the Court lacks personal jurisdiction over AGIS Software. AGIS Software is a Texas corporation with its principal place of business in Marshall, Texas. AGIS Software is not registered to conduct business in California; does not have a registered agent for service of process in California; does not have offices, employees, equipment, bank accounts or other assets in California; is not subject and has never paid taxes in California; does not manufacture or sell products in California; does not solicit or engage in business in California; has not signed contracts in California; does not recruit employees in California; and does not own, lease, or rent any property in California. Additionally, AGIS Software has not purposefully directed any activities related to the enforcement or defense of the Patents-in-Suit at California.

Additionally, this Motion requests that this Court dismiss the Complaint based on the first-to-file rule. AGIS Software filed a complaint against WhatsApp in the Eastern District of Texas prior to the filing of WhatsApp’s Complaint in this Court. The two actions involve the same parties and the same issues, and accordingly, the first-to-file rule applies here. There are no exceptions to the rule that apply and, even if there were, whether any exceptions should trump the first-to-file rule should be determined by the Eastern District of Texas. In the alternative, the Court should stay this

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1 action pending resolution of WhatsApp’s motion in the Eastern District of Texas, where parties have
2 completed briefing and is currently awaiting a decision by the Texas Court.

3 The Motion will be and is based on this Notice of Motion and Motion, the accompanying
4 Memorandum of Points and Authorities, the accompanying declarations and exhibits, the pleadings
5 and papers filed herein, as well as upon such and other further matters, papers, and arguments as may
6 be presented to the Court.

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DATED: August 23, 2021

Respectfully submitted,

RUSS AUGUST & KABAT
By: /s/ Benjamin T. Wang
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