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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 WHATSAPP LLC,
 17 Plaintiff,
 18 v.
 19 AGIS SOFTWARE DEVELOPMENT LLC,
 20 Defendant.

Case No.

COMPLAINT FOR DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

21
 22 Plaintiff WhatsApp LLC (“WhatsApp”) hereby pleads the following claims for
 23 Declaratory Judgment against Defendant AGIS Software Development LLC (“AGIS Software”),
 24 and alleges as follows:

25 **THE PARTIES**

26 1. WhatsApp is a Delaware limited liability corporation with its principal place of
 27 business located in Menlo Park, California.
 28

1 2. On information and belief, AGIS Software is an agent and alter ego of Advanced
2 Ground Information Systems, Inc. Per AGIS Software’s allegations in another litigation between
3 the parties, AGIS Software is a Texas limited liability company, having its principal place of
4 business at 100 W. Houston Street, Marshall, Texas 75670. According to Texas public records,
5 the sole member of AGIS Software is AGIS Holdings, Inc. (“AGIS Holdings”). According to
6 Florida public records, AGIS Holdings is organized and existing under the laws of the State of
7 Florida, and maintains its principal place of business at 92 Lighthouse Drive, Jupiter, FL 33469.
8 It shares the same address with Advanced Ground Information Systems, Inc., (“AGIS”) a
9 corporation organized and existing under the laws of the State of Florida that also maintains its
10 principal place of business at 92 Lighthouse Drive, Jupiter, FL 33469.

11 JURISDICTION AND VENUE

12 3. The Court has subject matter jurisdiction over WhatsApp’s declaratory judgment
13 claims relating to patent non-infringement under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

14 4. On January 29, 2021, AGIS Software sued WhatsApp for infringing United States
15 Patent Nos. 7,031,728 (“728 patent”), 7,630,724 (“724 patent”), 9,408,055 (“055 patent”),
16 9,445,251 (“251 patent”), 9,467,838 (“838 patent”), and 9,749,829 (“829 patent”) (collectively,
17 “Patents-in-Suit”) in the United States District Court of the Eastern District of Texas by
18 manufacturing, using, distributing, selling, offering for sale, and/or exporting from and importing
19 into the United States the “WhatsApp and WhatsApp Messenger Applications and the related
20 services and/or servers for the applications.” *See* Compl. ¶ 16, *AGIS Software Development LLC*
21 *v. WhatsApp, Inc.*, 2:21-cv-00029 (E.D. Tex. Jan. 29, 2021), Dkt. 1. AGIS Software purported to
22 be the owner of all right, title, and interest in the Patents-in-Suit. *Id.* ¶ 1. Contemporaneously with
23 the filing of this declaratory judgment action, WhatsApp has moved to dismiss the Eastern District
24 of Texas litigation for improper venue.

25 5. WhatsApp denies that the Patents-in-Suit are infringed through the making, using,
26 distributing, sale, offering for sale, exportation, or importation of WhatsApp Messenger or any
27 other WhatsApp product or service. Under all circumstances, AGIS Software’s infringement
28 allegations and related actions threaten actual and imminent injury to WhatsApp that can be

1 redressed by judicial relief and warrants the issue of a declaratory judgment. An actual and
2 justiciable controversy exists between WhatsApp and AGIS Software with respect to the Patents-
3 in-Suit.

4 6. On information and belief, AGIS Software is subject to this Court's specific
5 jurisdiction, pursuant to due process and/or the California Long Arm Statute due to: (1) AGIS
6 Software and/or AGIS's activities purposefully directed at residents of this forum, and (2) the
7 claims arising out of or relating to AGIS Software and/or AGIS's activities with this forum.
8 Further, the assertion of personal jurisdictions is reasonable and fair.

9 7. On information and belief, AGIS Software and/or AGIS have taken intentional and
10 purposeful steps to enforce the Patents-in-Suit against residents of this judicial district, including
11 by suing WhatsApp and other companies with principal places of business or operations in this
12 judicial district for infringement of the Patents-in-Suit.

13 8. Based on Public Access to Court Electronic Records ("PACER"), on June 21, 2017,
14 AGIS Software sued Apple Inc. ("Apple"), a California corporation with its principal place of
15 business at One Apple Park Way, Cupertino, California 95014, alleging infringement of patents
16 including the '055 patent, '251 patent, '838 patent, and '829 patent. *See AGIS Software*
17 *Development LLC v. Apple Inc.*, 2:17-cv-00516 (E.D. Tex.). Based on U.S. Patent & Trademark
18 Office ("USPTO") records, on July 31, 2018, Apple filed a petition for *inter partes* review of the
19 '829 patent (IPR2018-01471). Based on USPTO records, on December 13, 2018, Apple filed a
20 petition for *inter partes* review of the '055 patent (IPR2019-00432). Based on USPTO records,
21 on January 3, 2019, Apple filed petitions for *inter partes* review of the '251 patent (IPR2019-
22 00523, IPR2019-00524). Based on USPTO records, on or around April 2, 2019, each of these
23 *inter partes* review proceedings were terminated as a result of the Apple and AGIS Software
24 reaching a settlement agreement. *See, e.g.*, Decision Granting Joint Motion to Terminate and
25 Granting Request to Treat Settlement Document as Confidential Business Information, IPR2018-
26 01471, Paper No. 15. Based on PACER, on March 14, 2019, the Eastern District of Texas
27 dismissed the district court litigation between AGIS Software and Apple as a result of settlement.

28

1 Order, *AGIS Software Development LLC v. Apple Inc .*, 2:17-cv-00516 (E.D. Tex. Mar. 14, 2019),
2 Dkt. 87.

3 9. Based on PACER, on June 21, 2017, AGIS Software sued ZTE Corporation and
4 ZTE (TX) Inc. alleging infringement of patents, including the '055 patent, '251 patent, '838 patent,
5 and '829 patent. *AGIS Software Development LLC v. ZTE Corporation*, 2:17-v-00517 (E.D. Tex.).
6 Based on PACER, on October 17, 2017, AGIS Software filed an amended complaint, adding ZTE
7 (USA) Inc. to this litigation. On information and belief, ZTE (USA) Inc. has an office located at
8 1900 McCarthy Boulevard, Milpitas, California 95035. On information and belief, ZTE (TX) Inc.
9 keeps its principal place of business at 1900 McCarthy Boulevard, Milpitas, CA 95035.

10 10. Based on PACER, on October 9, 2018, ZTE (USA) Inc. filed a declaratory
11 judgment action in the Northern District of California. Based on PACER, on October 30, 2019,
12 AGIS Software and ZTE (USA) Inc. filed a joint motion to stay all deadlines as a result of a
13 settlement in principle. *ZTE (USA) Inc. v. AGIS Software Development LLC*, No. 4:18-cv-06185-
14 HSG (N.D. Cal. Oct. 30, 2019), Dkt. 130. Based on PACER, less than a week later, on November
15 4, 2019, AGIS Software filed an unopposed renewed motion to dismiss. *Id.*, Dkt. 135. Based on
16 PACER, on November 5, 2019, the Court granted the motion. *Id.*, Dkt. 138.

17 11. On information and belief, AGIS Software has entered into agreements relating to
18 the Patents-in-Suit with Apple and ZTE Corporation, ZTE (USA) Inc., and ZTE (TX) Inc.
19 (“ZTE”).

20 12. On information and belief, AGIS Holdings registered AGIS Software in Texas on
21 June 1, 2017, 20 days before filing the above patent infringement cases against Apple and ZTE.

22 13. On information and belief, only two months prior to the registration of AGIS
23 Software, AGIS was litigating in the Southern District of Florida against Life360, Inc., a company
24 headquartered in San Francisco, California. *Advanced Ground Information Sys., Inc. v. Life360,*
25 *Inc.*, 9:14-cv-80651 (S.D. Fla.). Based on PACER, AGIS asserted that Life360 infringed the '728
26 patent (one of the Patents-in-Suit) and other related patents. Based on PACER, AGIS’s claims
27 against Life360 resulted in a jury finding of no-infringement and an award of nearly \$750,000 in
28 attorneys’ fees for litigating “an exceptionally weak case.” *Id.*, Dkt. 200, 212.

1 14. On information and belief, AGIS Software is an alter ego to AGIS Holdings and/or
2 AGIS.

3 15. On information and belief, AGIS has also committed a number of intentional acts
4 directed at the State of California.

5 16. On information and belief, AGIS has marketed and/or provided downloads of its
6 LifeRing product, which AGIS Software contends is covered by the Patents-in-Suit, in California.

7 17. On information and belief, in 2014, Mr. Malcom Beyer, CEO of both AGIS
8 Software and AGIS, attended a U.S. Navy military exercise in San Diego where he demonstrated
9 LifeRing on PCs and smartphones when asked to do so. *See Life360, Inc. v. Advanced Ground*
10 *Sys., Inc.*, 2014 WL 5612008, at *3, Case No. 15-cv-00151-BLF (N.D. Cal. Sept. 21, 2015). On
11 information and belief, during this demonstration, Mr. Beyer also discussed LifeRing with
12 companies including ADI Technology and Maven Consulting. *Id.*

13 18. On information and belief, AGIS marketed LifeRing to companies that resulted in
14 downloads of LifeRing in California. *Id.* at *4. On information and belief, AGIS marketed
15 LifeRing to at least CornerTurn LLC, Integrity Applications, and American Reliance, Inc., which
16 AGIS has stated have California addresses. *Id.*

17 19. On information and belief, AGIS has marked LifeRing as covered by the Patents-
18 in-Suit. *See, e.g.*, AGIS Website | Patents, <http://agisinc.com/about/patents> (last visited April 27,
19 2021). On information and belief, AGIS Software has licensed the patents to end users residing
20 in California who downloaded the LifeRing software.

21 20. On information and belief, AGIS also formed a “strategic partnership” with Green
22 Hills Software, Inc., a California company and security software firm located in Santa Barbara,
23 California. *See Life360*, 2014 WL 5612008, at *4.

24 21. As a result of the foregoing allegations, AGIS Software either individually or as an
25 alter ego of AGIS, is subject to personal jurisdiction within this judicial district.

26 22. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a
27 substantial part of the acts giving rise to the claim occurred in this judicial district, and because
28 AGIS Software is subject to personal jurisdiction in this district.

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