Alfred R. Fabricant (*pro hac vice*)
afabricant@fabricantllp.com
Peter Lambrianakos (*pro hac vice*)
plambrianakos@fabricantllp.com
Vincent J. Rubino, III (*pro hac vice*)
vrubino@fabricantllp.com
Enrique Iturralde (*pro hac vice*)
eiturralde@fabricantllp.com
FABRICANT LLP
411 Theodore Fremd Road, Suite 206 South
Rye, New York 10580
Telephone: (212) 257-5797
Facsimile: (212) 257-5796

Benjamin T. Wang (CA SBN 228712)
bwang@raklaw.com
Minna Y. Chan (CA SBN 305941)
mchan@raklaw.com
RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-9226

Attorneys for Defendant
AGIS Software Development LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SMITH MICRO SOFTWARE, INC., and SMITH MICRO SOFTWARE, LLC *Plaintiffs*, v. AGIS SOFTWARE DEVELOPMENT LLC, and DOES 1 to 10, *Defendants*.	Case No. 5:21-cv-03677-BLF **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR DECLARATORY JUDGMENT** Date: January 27, 2022 Time: 9:00 a.m. Ctrm: 3 Judge Beth Labson Freeman

1

TABLE OF CONTENTS

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Page(s)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RUSS AUGUST & KABAT

I.   INTRODUCTION

Smith Micro cannot meet its burden to establish personal jurisdiction over AGIS Software. AGIS Software is a Texas corporation with a principal place of business in Texas and no relevant ties to California. Smith Micro concedes that AGIS Software itself lacks the minimum contacts necessary to find specific jurisdiction, and thus, relies on the purported contacts of AGIS Software's sister entity and non-party, AGIS, Inc. However, Smith Micro fails to allege facts sufficient to demonstrate that the alleged contacts of AGIS, Inc. should be imputed to AGIS Software. Rather, Smith Micro overlooks the fact that AGIS Software has not answered the Complaint and relies on misrepresentations by listing dozens of bullet points stating "uncontested factual allegations," which, to the contrary, are contested. AGIS Software has provided specific facts rebutting each allegation that the purported contacts of AGIS, Inc. should be imputed to AGIS Software.

Smith Micro has failed to show any of non-party AGIS, Inc's purported contacts warrant the exercise of personal jurisdiction over AGIS Software in this action, or factual allegations sufficient to show that AGIS Software itself has contacts with California sufficient to subject it to suit in this Court. Accordingly, AGIS Software's Motion to Dismiss should be granted.[1]

II.   PLAINTIFF'S RECITATION OF "UNCONTESTED FACTUAL ALLEGATIONS" ARE MISLEADING AND DO NOT ESTABLISH IMPUTATION OF AGIS, INC'S PURPORTED CONTACTS OVER AGIS SOFTWARE

Smith Micro misleads the Court when it recites thirty legally and factually incorrect "uncontested factual allegations." Smith Micro misrepresents the record and ignores the Federal Rules of Civil Procedure because, in accordance with the rules, AGIS Software has not answered the Complaint in this Action. Nonetheless, such assertions do not establish that specific jurisdiction exists over AGIS Software.

Contrary to Smith Micro's unsupported allegation, AGIS Holdings, Inc. ("AGIS Holdings") is *not* the "successor to Advanced Ground Information Systems, Inc. ("AGIS, Inc."). *See* Dkt. 33

---

[1] Smith Micro's opposition refers to Mr. Beyer and his declaration as "Mr. Breyer" and the "Breyer Declaration." *See, e.g.*, Dkt. 33 at 6. To provide clarification to the extent necessary, the inventor

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.