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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE: AMERANTH
PATENT LITIGATION**

CASE NOS.

- 11cv1810 DMS (WVG) 12cv1643 DMS (WVG)
- 12cv0729 DMS (WVG) 12cv1644 DMS (WVG)
- 12cv0731 DMS (WVG) 12cv1646 DMS (WVG)
- 12cv0732 DMS (WVG) 12cv1648 DMS (WVG)
- 12cv0733 DMS (WVG) 12cv1649 DMS (WVG)
- 12cv0737 DMS (WVG) 12cv1650 DMS (WVG)
- 12cv0739 DMS (WVG) 12cv1651 DMS (WVG)
- 12cv0742 DMS (WVG) 12cv1652 DMS (WVG)
- 12cv0858 DMS (WVG) 12cv1653 DMS (WVG)
- 12cv1627 DMS (WVG) 12cv1654 DMS (WVG)
- 12cv1629 DMS (WVG) 12cv1655 DMS (WVG)
- 12cv1630 DMS (WVG) 12cv1656 DMS (WVG)
- 12cv1631 DMS (WVG) 13cv0350 DMS (WVG)
- 12cv1633 DMS (WVG) 13cv0352 DMS (WVG)
- 12cv1634 DMS (WVG) 13cv0353 DMS (WVG)
- 12cv1636 DMS (WVG) 13cv1072 DMS (WVG)
- 12cv1640 DMS (WVG) 13cv1520 DMS (WVG)
- 12cv1642 DMS (WVG) 13cv1525 DMS (WVG)
- 12cv2350 DMS (WVG) 13cv1840 DMS (WVG)

**DECLARATION OF KEITH MCNALLY IN
SUPPORT OF PLAINTIFF AMERANTH, INC.'S
MOTION TO DISQUALIFY COUNSEL**

Date: January 3, 2014
Time: 1:30 p.m.
Location: Courtroom 13A
Judge: Hon. Dana M. Sabraw

Complaint Filed: August 15, 2011

1 I, Keith McNally, declare as follows:

2 1. I am over 18 years of age and competent to testify. I am the President
3 of Ameranth, Inc. ("Ameranth"), the plaintiff in this action, and am one of its
4 original founders. I am also the lead inventor of the four patents-in-suit owned by
5 Ameranth and asserted in the consolidated lawsuits pending before this Court (the
6 '850, '325, '733 and '077 patents). I was involved with the prosecution of the
7 patents in the USPTO. On these bases, I have first-hand personal knowledge of the
8 facts contained in this declaration, and if called upon to testify I would and could
9 do so competently as set forth herein. I provide this declaration in support of
10 Ameranth's Motion to Disqualify Counsel.

11 2. In 2007, Ameranth filed a patent infringement lawsuit on its '850,
12 '325 and '733 patents against Menusoft Corporation ("Menusoft") and other
13 defendants in the United States District Court for the Eastern District of Texas,
14 Case No. 2:07-cv-271.

15 3. Menusoft's counsel in the *Ameranth v. Menusoft* lawsuit was the law
16 firm of Fulbright & Jaworski. Attorneys Richard Zembek, Mark Delflache and
17 Dustin Mauck were some of the Fulbright attorneys chiefly involved with that
18 matter.

19 4. The judicial officer presiding over the *Ameranth v. Menusoft* case was
20 the Honorable Chad Everingham. Among other things, Judge Everingham
21 presided over a motion for summary judgment, the claim construction hearing, the
22 trial, and settlement conferences held with the parties in an attempt to resolve the
23 dispute. The case was tried before Judge Everingham from September 13-20,
24 2010. Jim Warriner was Judge Everingham's law clerk at the time.

25 5. On September 15, 2010, Judge Everingham met separately with
26 representatives of both Ameranth and Menusoft in his chambers to attempt to settle
27

1 the parties' dispute short of trial. Both I and Vern Yates of Ameranth attended the
2 meeting with Judge Everingham. Mr. Yates and I shared sensitive and confidential
3 information with Judge Everingham during the settlement conference meeting
4 about Ameranth, its patents and litigation and licensing strategies that was not
5 made public or shared with Menusoft or other defendants, including Ameranth's
6 assessment of the merits of its case, the strength and scope of its patents, and its
7 licensing goals and strategies. We were made to understand that our discussions
8 with Judge Everingham were to be treated confidentially.

9 I declare under penalty of perjury under the laws of the United States that
10 the foregoing is true and correct of my own personal knowledge and that this
11 declaration was executed by me in San Diego, California, on November 20, 2013.

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14 _____
15 Keith McNally
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