

1 **CALDARELLI HEJMANOWSKI & PAGE LLP**

2 William J. Caldarelli (SBN #149573)

3 Ben West (SBN #251018)

4 12340 El Camino Real, Suite 430

5 San Diego, CA 92130

6 Telephone: (858) 720-8080

7 Facsimile: (858) 720-6680

8 [wjc@chplawfirm.com](mailto:wjc@chplawfirm.com)

9 [dbw@chplawfirm.com](mailto:dbw@chplawfirm.com)

10 **FABIANO LAW FIRM, P.C.**

11 Michael D. Fabiano (SBN #167058)

12 12526 High Bluff Drive, Suite 300

13 San Diego, CA 92130

14 Telephone: (619) 742-9631

15 [mdfabiano@fabianolawfirm.com](mailto:mdfabiano@fabianolawfirm.com)

16 **OSBORNE LAW LLC**

17 John W. Osborne (*Appointed Pro Hac Vice*)

18 33 Habitat Lane

19 Cortlandt Manor, NY 10567

20 Telephone: (914) 714-5936

21 [josborne@osborneipl.com](mailto:josborne@osborneipl.com)

22 **WATTS LAW OFFICES**

23 Ethan M. Watts (SBN #234441)

24 12340 El Camino Real, Suite 430

25 San Diego, CA 92130

26 Telephone: (858) 509-0808

27 Facsimile: (619) 878-5784

28 [emw@ewattslaw.com](mailto:emw@ewattslaw.com)

Attorneys for Plaintiff Ameranth, Inc.

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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)

**NOTICE OF MOTION AND MOTION OF  
PLAINTIFF AMERANTH, INC. TO  
DISQUALIFY COUNSEL**

**Date: January 3, 2014  
Time: 1:30 p.m.  
Courtroom: 13A**

Complaint Filed: August 15, 2011

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on January 3, 2014, at 1:30 p.m.,  
3 Plaintiff Ameranth, Inc. (“Ameranth”) will and hereby does move the Court for an  
4 Order: (a) disqualifying attorney Jim Warriner of the Norton Fulbright Jaworski  
5 LLP law firm (the “Fulbright Firm”) from any contact, involvement, or  
6 participation in or with the consolidated cases pending before the Court or with  
7 any of the attorneys working on such cases regarding the cases; (b) disqualifying  
8 all attorneys at, with or associated with the Fulbright Firm from any further  
9 contact, involvement, or participation in or with the consolidated cases pending  
10 before the Court or with any of the attorneys working on such cases regarding the  
11 cases; and (c) permitting Ameranth to conduct discovery regarding the extent of  
12 communications, contact, and information sharing between the disqualified  
13 attorneys from the Fulbright Firm and any of the other defenses counsel in the  
14 consolidated cases to determine whether further disqualifications are appropriate.

15 This Motion is brought on the grounds that:

- 16 (i) the Fulbright Firm has hired Jim Warriner as an associate attorney;  
17 (ii) Mr. Warriner has been working on and involved with the  
18 consolidated cases before this Court, as well as the covered business method  
19 petition (“CBM”) proceedings filed by the defendants with the United States  
20 Patent and Trademark Office (“USPTO”);  
21 (iii) Mr. Warriner previously served as the law clerk to the Hon. Chad  
22 Everingham, of the Eastern District of Texas, and was personally and substantially  
23 involved in the Ameranth v. Menusoft lawsuit (and, to a lesser extent, the  
24 Ameranth v. Par lawsuit) presided over by Judge Everingham involving the same  
25 patents and issues presented in the consolidated cases and in the CBM  
26 proceedings, and in which Judge Everingham conducted confidential settlement  
27 meetings with Ameranth’s principals;

1 (iv) In violation of Rule 1.12 of the ABA Rules of Professional Conduct,  
2 Local Rule 83.4(b), 37 C.F.R. §11.112, and controlling ethics decisions, Mr.  
3 Warriner has not been screened from contact, participation and involvement with  
4 the consolidated cases and CBM proceedings, and the required notices have not  
5 been served on Ameranth, the Court, or the USPTO; and

6 (v) By virtue of the joint defense group agreement between the  
7 defendants, Fulbright partner Richard Zembek's status as liaison counsel for the  
8 non-Fulbright defendants, and the degree of communication and cooperation  
9 between defense counsel in this matter, there is a likelihood that counsel for the  
10 other defendants have been tainted by the ethical violations of the Fulbright Firm.

11 The Motion is based on this Notice of Motion, the accompanying  
12 Memorandum of Points and Authorities, the Declarations of John W. Osborne,  
13 Keith McNally, and William J. Caldarelli, the Notice of Lodgment and all exhibits  
14 thereto, the pleadings and materials on file with the Court in this matter, and such  
15 other and further evidence and argument as may be presented to the Court at or  
16 before the hearing of this Motion.

17 Respectfully submitted,

18 Dated: November 21, 2013 CALDARELLI HEJMANOWSKI & PAGE LLP

19 By: /s/ William J. Caldarelli

20 William J. Caldarelli  
Ben West

21 FABIANO LAW FIRM, P.C.  
Michael D. Fabiano

22 OSBORNE LAW LLC  
John W. Osborne

24 WATTS LAW OFFICES  
Ethan M. Watts

25 **Attorneys for Plaintiff Ameranth, Inc.**