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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 AKIN GUMP**

**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 Akin Gump.

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.

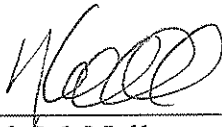
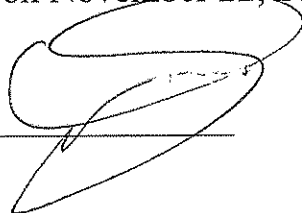
15 3. The judicial officer presiding over the *Ameranth v. Menusoft* case was  
16 the Honorable Charles Everingham. Among other things, Judge Everingham  
17 presided over a motion for summary judgment, the claim construction hearing, the  
18 trial, and settlement conferences held with the parties in an attempt to resolve the  
19 dispute. The case was tried before Judge Everingham from September 13-20,  
20 2010.

21 4. On September 15, 2010, Judge Everingham met separately with  
22 representatives of both Ameranth and Menusoft in his chambers to attempt to settle  
23 the parties' dispute short of trial. Both I and Vern Yates of Ameranth attended the  
24 meeting with Judge Everingham. Mr. Yates and I shared sensitive and confidential  
25 information with Judge Everingham during the settlement conference meeting  
26 about Ameranth, its patents and litigation and licensing strategies that was not  
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1 made public or shared with Menusoft or other defendants, including Ameranth's  
2 assessment of the merits of its case, the strength and scope of its patents, and its  
3 licensing goals and strategies. We were made to understand that our discussions  
4 with Judge Everingham were to be treated confidentially.

5 5. In 2010, Ameranth filed a patent infringement lawsuit in the Eastern  
6 District of Texas against Par Technology Corp. and other defendants styled as  
7 *Ameranth v. Par*, Civil Case No. 10-cv-294. The *Ameranth v. Par* case was  
8 assigned to Judge Everingham as well (the parties stipulated to assignment to  
9 Judge Everingham for all purposes), and also involved claims for infringement of  
10 the '850, '325 and '733 patents. After Judge Everingham left the bench, the case  
11 was reassigned.

12 I declare under penalty of perjury under the laws of the United States that  
13 the foregoing is true and correct of my own personal knowledge and that this  
14 declaration was executed by me in San Diego, California, on November 22, 2013.

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17 \_\_\_\_\_  
18 Keith McNally