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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 AKIN GUMP**

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 and former Magistrate Judge Charles
5 Everingham of the Akin Gump Straus Hauer & Feld LLP law firm (“Akin
6 Gump”) from any contact, involvement, or participation in or with the
7 consolidated cases pending before the Court or with any of the attorneys working
8 on such cases regarding the cases; (b) disqualifying all attorneys at, with or
9 associated with Akin Gump from any further contact, involvement, or
10 participation in or with the consolidated cases pending before the Court or with
11 any of the attorneys working on such cases regarding the cases; and (c) permitting
12 Ameranth to conduct discovery regarding the extent of communications, contact,
13 and information sharing between the disqualified attorneys from Akin Gump and
14 any of the other defenses counsel in the consolidated cases to determine whether
15 further disqualifications are appropriate.

16 This Motion is brought on the grounds that:

17 (i) Mr. Everingham joined Akin Gump as a partner in October of 2011,
18 at the same time that Hilton’s lead counsel in these consolidated cases, David
19 Stein, joined the firm;

20 (ii) As a Magistrate Judge in the United States District Court the Eastern
21 District of Texas, Judge Everingham presided over and was personally and
22 substantially involved in the Ameranth v. Menusoft lawsuit and the Ameranth v.
23 Par lawsuit involving the same patents and issues presented in the consolidated
24 cases and in the pending covered business method petition (“CBM”) proceedings
25 before the USPTO, and in which Judge Everingham conducted confidential
26 settlement meetings with Ameranth’s principals;

1 (iii) Mr. Everingham and Mr. Stein work together out of Akin Gump's
2 Longview, Texas, office. Furthermore, Mr. Everingham, Mr. Stein, Emily
3 Johnson and Kellie Johnson of Akin work together on other patent infringement
4 cases involving similar subject matter, and Emily Johnson and Kellie Johnson
5 work on the defendants' CBM petitions involving Ameranth's patents.

6 (iv) Neither Ameranth, the Court, nor the USPTO have been served with
7 any notices regarding Mr. Everingham, as required by applicable law, raising the
8 reasonable inference that Mr. Everingham has not been properly ethically
9 screened from the Ameranth matters; and

10 (v) By virtue of the joint defense group agreement between the
11 defendants, and the degree of communication and cooperation between defense
12 counsel in this matter, there is also a likelihood that counsel for the other
13 defendants have been tainted by contact with attorneys from Akin Gump.

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

20 Dated: November 22, 2013 CALDARELLI HEJMANOWSKI & PAGE LLP

21 By: /s/ William J. Caldarelli

22 William J. Caldarelli
Ben West

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