

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

ACTIVISION TV, INC.,	§
	§
Plaintiff,	§
	§
and	§
	§
MPHJ TECHNOLOGY INVESTMENTS, LLC, inclusive of its subsidiaries,	§
	§
Intervenor-Plaintiff,	§
	§
v.	§
	§
PINNACLE BANCORP, INC.	§
	§
Defendant,	§
	§
and	§
	§
JON BRUNING, Attorney General of Nebraska (in his official capacity); DAVID D. COOKSON, Chief Deputy Attorney General of Nebraska (in his official capacity); DAVID A. LOPEZ, Assistant Attorney General of Nebraska (in his official capacity),	§
	§
Defendants and	§
Intervenor-Defendants.	§

Civil Action No. 8:13-cv-00215

**COMPLAINT IN INTERVENTION**

Intervenor-Plaintiff MPHJ Technology Investments, LLC, on behalf of itself and its subsidiaries (hereinafter “MPHJ” or “Plaintiff”), by way of this Complaint in Intervention against Defendants Jon Bruning, David D. Cookson and David A. Lopez (collectively “Defendants”) states and alleges as follows:

**THE PARTIES**

1. Intervenor-Plaintiff MPHJ Technology Investments, LLC is a limited liability company organized under the laws of Delaware with a registered agent for service at 1220 N. Market Street, Suite 806, Wilmington, DE 19801. MPHJ also has operations in Texas at 166 S. Belknap, Stephenville, Texas 76401. This suit is brought by MPHJ Technology Investments LLC on behalf of itself and its subsidiaries (collectively and/or individually, “MPHJ”).

2. Upon information and belief, Intervenor-Defendant Jon Bruning (“Defendant Bruning” is the Attorney General for the State of Nebraska and in his official capacity has a place of business at 2115 State Capitol Building, Lincoln, NE 68509-8920, and may be served at that address.

3. Upon information and belief, Intervenor-Defendant David D. Cookson (“Defendant Cookson”) is the Chief Deputy Attorney General for the State of Nebraska and in his official capacity has a place of business at 2115 State Capitol Building, Lincoln, NE 68509-8920, and may be served at that address.

4. Upon information and belief, Intervenor-Defendant David A. Lopez (“Defendant Lopez”) is an Assistant Attorney General for the State of Nebraska and in his official capacity has a place of business at 2115 State Capitol Building, Lincoln, NE 68509-8920, and may be served at that address.

5. Defendants Bruning, Cookson and Lopez will be referred to herein as the AG Defendants as appropriate, which reference shall be understood to refer to them collectively or individually as supported by the context of any particular statement or allegation.

**JURISDICTION AND VENUE**

6. This is an action in intervention in the above-captioned suit as filed by Plaintiff Activision TV, Inc. (“Activision”) in its First Amended Complaint. That action arises under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*; as an action under 28 U.S.C. § 2201, and the First, Fifth and Fourteenth Amendments to the U.S. Constitution, and Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”) for declaratory judgment that Plaintiff Activision, and its representatives and counsel, have not violated any Nebraska state laws related to unfair competition and deceptive trade practices; and as an action for relief under 42 U.S.C. § 1983, and the First, Fifth and Fourteenth Amendments to the U.S. Constitution, and the Supremacy clause seeking remedy for violations of Plaintiff Activision’s constitutional rights and rights under federal law.

7. This Court had and has subject matter jurisdiction over Activision’s First Amended Complaint under 28 U.S.C. §§ 1331, 1332, 1338(a), 1338(b), 1367; 28 U.S.C. § 2201; and 28 U.S.C. § 1367.

8. This Complaint in Intervention is submitted only pursuant to order of this Court, if the Court grants the Motion for Intervention under FED. R. CIV. P. 24 filed by MPHJ into this suit, to which this Complaint in Intervention is attached as an Exhibit.

9. This Complaint incorporates the First Amended Complaint of Activision herein in its entirety to the extent any of the allegations there are relevant to Plaintiff MPHJ, and adopts such allegations as its own.

10. This Complaint in Intervention comprises an action and claims arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.* because it necessarily requires resolution of federal issues of patent law, and under 28 U.S.C. § 2201, and the First, Fifth and

Fourteenth Amendments to the U.S. Constitution, and Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”), for declaratory judgment that Plaintiff MPHJ, and its representatives and counsel, have not violated any Nebraska state laws related to unfair competition and deceptive trade practices nor any related federal laws; and claims and an action for relief under 42 U.S.C. § 1983, and the First, Fifth and Fourteenth Amendments to the U.S. Constitution, and the Supremacy clause seeking remedy for violations of Intervenor-Plaintiff MPHJ’s constitutional rights and rights under federal law.

11. This Court has subject matter jurisdiction over MPHJ’s Complaint in Intervention under 28 U.S.C. §§ 1331, 1332, 1338(a), 1338(b), 1367; 28 U.S.C. § 2201; and 28 U.S.C. § 1367.

12. Plaintiff MPHJ has standing to bring this Complaint in Intervention because it has been, and continues to be, adversely affected by the issuance of the July 18 Cease and Desist Order by the AG Defendants.

13. The claims presented by the Complaint in Intervention are ripe for adjudication because Intervenor-Plaintiff MPHJ has, and is presently, adversely affected by the AG Defendant’s July 18 Cease and Desist Order, including the unlawful “prior restraint” it imposes on Intervenor-Plaintiff MPHJ’s rights under the First Amendment.

14. This Court has personal jurisdiction over Defendants Bruning, Cookson, and Lopez at least because, on information and belief, these Defendants respectively in their official capacities have ongoing and systematic contacts with this District, have and maintain offices in this District, and reside in this District, and have committed wrongful acts which both occurred within this District, and which have had an impact or effect in this District.

15. Venue is proper in this District under 28 U.S.C. §§ 1400(b), 1391(b), and 1391(c). Venue as to Defendants Bruning, Cookson, and Lopez is proper on the basis of the allegations provided in Paragraph 9 above.

**RIGHT TO INTERVENE**

16. Plaintiff repeats and realleges the allegations of all of the preceding paragraphs as though fully set forth herein.

17. On September 19, 2013, this Court in the above-captioned case issued a first preliminary injunction order with respect to the AG Defendants. The September 19 Order granted Plaintiff Activision certain requested preliminary injunctive relief with respect to a Cease and Desist Order issued by the AG Defendants on July 18, 2013 to Farney Daniels PC (“the July 18 Cease and Desist Order”).

18. On September 30, 2013, this Court, in the above-captioned case, issued a second preliminary injunction order with respect to the AG Defendants. The September 30 Order granted Plaintiff Activision the remainder of its requested preliminary injunctive relief with respect to the July 18 Cease and Desist Order.

19. On or about October 8, 2013, Intervenor-Plaintiff MPHJ filed a Motion for Intervention under Rule 24, seeking intervention to file this Complaint in Intervention in the above-captioned suit then pending before this Court.

20. As of the date Intervenor-Plaintiff MPHJ filed the Motion for Intervention referenced in the preceding paragraph, on information and belief, the AG Defendants had not withdrawn their July 18 Cease and Desist Order, nor amended the Order such that it did not apply to activities of Farney Daniels PC on behalf of Intervenor-Plaintiff MPHJ.

21. This Complaint in Intervention will be filed as a matter of right, because it will be filed if the Court grants the Motion for Intervention referenced in the prior paragraph. Intervenor-Plaintiff MPHJ hereby incorporates the allegations and legal bases for intervention set forth in its Motion for Intervention herein by reference in their entirety in support of its right to file and serve this Complaint upon the AG Defendants.

### COUNT I

#### DECLARATORY JUDGMENT OF NO VIOLATION OF NEBRASKA STATE LAW, INCLUDING BUT NOT LIMITED TO NEB. REV. STAT. § 59-1601 et seq. (Reissue 2010, Supp. 2012), AND NEB. REV. STAT. § 87-301 et seq. (Reissue 2008, Supp. 2010)

22. Plaintiff repeats and realleges the allegations of all of the preceding paragraphs as though fully set forth herein.

#### The Relevant Patents

23. On July 26, 2011, United States Patent No. 7,986,426 (“the ’426 Patent”) entitled “Distributed Computer Architecture and Process for Document Management” was duly and legally issued by the United States Patent and Trademark Office, identifying Laurence C. Klein as the inventor. A true and correct copy of the ’426 Patent is attached as Exhibit A-1 to this Complaint.

24. On January 13, 2009, United States Patent No. 7,477,410 (“the ’410 Patent”) entitled “Distributed Computer Architecture and Process for Virtual Copying” was duly and legally issued by the United States Patent and Trademark Office, identifying Laurence C. Klein as the inventor. A true and correct copy of the ’410 Patent is attached as Exhibit A-2 to this Complaint.

25. On August 3, 2004, United States Patent No. 6,771,381 (“the ‘381 Patent”) entitled “Distributed Computer Architecture and Process for Virtual Copying” was duly and legally issued by the United States Patent and Trademark Office, identifying Laurence C. Klein as the inventor. A true and correct copy of the ‘381 Patent is attached as Exhibit A-3 to this Complaint.

26. On February 6, 2001, United States Patent No. 6,185,590 (“the ‘590 Patent”) entitled “Process and Architecture for Use on Stand-Alone Machine and in Distributed Computer Architecture for Client Server and/or Intranet and/or Internet Operating Environments for Migrating a Program Specific Application Programmer Interface (API) From an Original State into a Generic Interface by Building an Object” was duly and legally issued by the United States Patent and Trademark Office, identifying Laurence C. Klein as the inventor. A true and correct copy of the ‘590 Patent is attached as Exhibit A-4 to this Complaint.

27. On July 16, 2013, United States Patent No. 8,488,173 (“the ‘173 Patent”) entitled “Distributed Computer Architecture and Process for Document Management” was duly and legally issued by the United States Patent and Trademark Office, identifying Laurence C. Klein as the inventor. A true and correct copy of the ‘173 Patent is attached as Exhibit A-5 to this Complaint.

28. The ‘426 Patent, ‘410 Patent, ‘381 Patent, ‘590 Patent and the ‘173 Patent are collectively referred to herein as “the Klein Patents.”

29. Intervenor-Plaintiff MPHJ, is the assignee and owner of the Klein Patents, and together with its exclusive licensees, has the right to assert causes of action arising under said patents and the right to any remedies for infringement thereof, and to license any and all of the Klein Patents, and to send any correspondence to third parties regarding the same.

30. Intervenor-Plaintiff MPHJ, and its exclusive licensees, have a right to retain counsel of their choice to represent them in connection with any of the activities identified in the above paragraph.

31. The '426 Patent was examined by the U.S. Patent and Trademark Office ("Patent Office") before issuance, and by law is presumed valid.

32. The '410 Patent was examined by the Patent Office before issuance, and by law is presumed valid.

33. The '381 Patent was examined by the Patent Office before issuance, and by law is presumed valid.

34. The '590 Patent was examined by the Patent Office before issuance, and by law is presumed valid.

35. The '173 Patent was examined by the Patent Office before issuance, and by law is presumed valid.

36. A Petition for Review with respect to the '426 Patent has been filed at the Patent Office, but the Patent Office has not yet issued any decision regarding the validity of that patent.

37. A Petition for Review with respect to the '381 Patent has been filed at the Patent Office, but the Patent Office has not yet issued any decision regarding the validity of that patent.

#### **Likely Infringement of the Relevant Patents**

38. The claims of the Klein Patents generally cover an entire networked system having certain components and features.

39. The Klein Patents relate to networked scanning systems having certain specific claim attributes related to the scanning and transmission of images.

40. At least some commonly used networked scanning systems would employ a Local Area Network (or "LAN"), and have connected thereto components in communication with the



LAN, including a scanner, and computers running email or other application software, and a memory storing interface protocols, and a processor for processing such protocols, where the system permits a document to be scanned and transmitted via the LAN directly as an attachment into the email or application software.

41. With the exception of an IT provider who provides an entire networked system to a customer, in general no individual manufacturer of a scanner, or a server, or any employee computer, or any application software, has liability for direct infringement of any claim of the Klein Patents.

42. Only the businesses that have sold, assembled or used the entire claimed networked scanning system could directly infringe a claim of a Klein Patent.

43. Certain companies can be identified as being likely to have at least one networked scanning system that would satisfy at least one claim of the Klein Patents. Such companies are referred to herein as “Likely Infringers.”

44. Because a Likely Infringer’s networked scanner system typically is internal to the business, public proof of infringement is not ordinarily available.

45. Unless a Likely Infringer has made public the relevant details of its networked scanner system(s), proof of infringement by any particular company is not available from public sources. Such a Likely Infringer is referred to herein as a Likely Private Infringer.

#### **MPHJ And Its Exclusive Licensees’ Retention of Farney Daniels**

46. On or about the summer of 2012, MPHJ and its exclusive licensees retained Farney Daniels PC, a nationally recognized patent law firm, to assist MPHJ in its identification of infringers of its patents, and to represent it in its attempts to license and enforce those patents.

47. The services for which Farney Daniels PC was retained included identification of potential infringers, assessment of the patents and of potential infringement, assistance with

ensuring compliance with all obligations of the courts in bringing any enforcement action on the Klein Patents, assistance with preparing and sending patent notice or inquiry letters, and follow-up correspondence, and in bringing suit for infringement where warranted and appropriate.

48. Farney Daniels PC is a law firm with headquarters in Georgetown, Texas (“the Farney Daniels firm”), with offices in San Mateo, California; Dallas, Texas; Minneapolis, Minnesota; and Wilmington, Delaware.

49. The Farney Daniels firm specializes in patent litigation, licensing and counseling.

50. MPHJ also retained Hill, Kertscher & Wharton, LLP of Atlanta Georgia, a long-time experienced patent litigation firm, to also represent and advise it with respect to its patent licensing and enforcement efforts. Hill Kertscher & Wharton had previously represented the prior owner of the Klein Patents in connection with various legal services associated with the patents, including licensing and enforcement.

51. Since the time of its retention, Farney Daniels has been representing MPHJ and its exclusive licensees, in connection with licensing and enforcement of the Klein Patents.

52. The representation by Farney Daniels of MPHJ and its exclusive licensees, as described above, has included identifying and sending inquiries to potential infringers in Nebraska, or having Nebraska operations.

53. The representation by Farney Daniels of MPHJ and its exclusive licenses, as described above, has included sending patent-related letters to potential infringers in Nebraska, or having Nebraska operations.

54. The representation by Farney Daniels of MPHJ and its exclusive licensees, as described above, have included identifying and preparing suits to be brought against companies

for whom infringement of the Klein Patents can be determined from publicly available information, including companies either in Nebraska or having operations in Nebraska.

55. The representation by Farney Daniels of MPHJ and its exclusive licensees, as described above, have included identifying and preparing to bring suits against companies for whom infringement of the Klein Patents cannot be confirmed from publicly available information, including companies either in Nebraska or having operations in Nebraska.

56. MPHJ and its exclusive licensees are preparing, with their counsel, Farney Daniels, to bring suit for infringement under the Klein Patents, including with respect to companies in Nebraska or having operations in Nebraska.

57. MPHJ and its exclusive licensees reasonably prefer to have Farney Daniels be lead counsel on any litigation described in the preceding paragraph.

58. MPHJ and its exclusive licensees reasonably prefer to have Farney Daniels be their counsel in connection with sending patent-related letters on their behalf.

59. On information and belief, no U.S. District Court has ever denied a motion or admission *pro hac vice* of a Farney Daniels attorney in connection with representation in a patent case.

**Identification of Likely Infringers**

60. Intervenor-Plaintiff MPHJ has a number of subsidiaries, where each subsidiary was provided a license with certain specific defined exclusivity, with the right to grant sublicenses within that defined field of exclusivity.

61. Intervenor-Plaintiff MPHJ worked with these respective exclusive licensees to determine whether the Klein Patents were being infringed by any companies in Nebraska, or having operations within the State of Nebraska.

62. Intervenor-Plaintiff MPHJ, together with its respective exclusive licensees, reasonably concluded that there were a number of Likely Infringers within the State of Nebraska, or having operations within the State of Nebraska.

63. The Likely Infringers identified, as referenced in the preceding paragraph, included at least some companies from whom definitive proof of infringement was not available from public sources. These Likely Infringers are referred to as Likely Private Infringers.

**Relevant Patent Rights and Obligations With Respect to Likely Infringers**

64. A patent owner, and any relevant exclusive licensee, has a First Amendment right to provide notice of its patents to third parties.

65. A patent owner, and any relevant exclusive licensee, has a First Amendment right to grant licenses under its patents, absent some contractual restriction on that right.

66. A patent owner, and any relevant exclusive licensee, has a First Amendment right to provide notice to a third party infringer of that third party's infringement of the relevant patents.

67. Where a patent owner, and any relevant exclusive licensee, has reasonably concluded that a third party infringes, it may bring suit in federal district court for patent infringement provided it satisfies the requirements of the Patent Laws, and the Federal Rules of Civil Procedure, including Rule 11.

68. To bring suit for infringement against an infringer, the Federal Rules of Civil Procedure require, as a predicate, that an adequate pre-suit investigation be conducted to confirm the infringement.

69. Where a Likely Private Infringer's infringing product or process cannot be definitively ascertained from publicly available sources, a patent owner, and any relevant

exclusive licensee, may satisfy its pre-suit investigation obligation under Rule 11 by communicating to the Likely Private Infringer an inquiry regarding the suspected infringement.

70. A Rule 11 inquiry, such as described in the prior paragraph, may, by law, include asking the Likely Private Infringer whether it denies any infringement, and in the event of such denial, may seek such support for such denial as may be reasonably required for confirmation.

71. In the event a Likely Private Infringer refuses to respond to an inquiry as described in the prior paragraph, filing suit for infringement would not then violate Rule 11.

72. A patent owner may provide one or more entities exclusive licenses defined by subject matter and/or geographic fields.

73. A patent owner may provide one or more entities exclusive licenses defined by a specific potential sublicensee.

**Notice, License, And Pre-Suit Inquiry Letters of MPHJ's Exclusive Licensees And Counsel**

74. Consistent with the rights set forth above, respective exclusive licensees of MPHJ, themselves and through their counsel, sent correspondence to certain of these Likely Private Infringers beginning in the Fall of 2012.

75. The correspondence referenced in the preceding paragraph included at least a First Letter from a relevant exclusive licensee to a Likely Private Infringer in Nebraska. An example of one such First Letter is attached hereto as Exhibit B-1.

76. At least some of the recipients of this First Letter did not provide any response, and at the request of the relevant exclusive licensee, counsel for that licensee sent a Second Letter. An example of one such Second Letter is attached hereto as Exhibit B-2.

77. At least some of the recipients of the Second Letter did not provide a response, and at the request of the relevant exclusive licensee, counsel for that licensee sent a Third Letter. An example of one such Third Letter is attached hereto as Exhibit B-3.

78. Counsel for the relevant exclusive licensees who sent Second Letters and Third Letters to Likely Private Infringers in Nebraska was Farney Daniels PC.

79. The First Letter identified the Klein Patents to the recipient. The '173 Patent was referred to only by application number, because it had not issued at the time any First Letters were sent to any Likely Private Infringer in Nebraska.

80. The First Letter inquired whether the recipient had and used a networked scanning system that infringed the Klein Patents.

81. The First Letter included some general descriptions of features required by claims of the Klein Patents.

82. The AG Defendants have no basis to allege any general description referred to in the preceding paragraph was inaccurate, or objectively baseless or subjectively baseless.

83. The First Letter made expressly clear to the recipient that the Klein Patents were defined by their claims, and not by any generalized description provided for convenience.

84. The First Letter made clear to the recipient that if it did not infringe the claims of the Klein Patents, that it did not need a license.

85. The First Letter asked any recipient who did not infringe the claims of the Klein Patents to so inform the sending exclusive licensee, so that it could know to discontinue correspondence on the subject.

86. The First Letter also made it clear to the recipient that if it did infringe any claim of the Klein Patents, that it needed a license, and that the sending exclusive licensee was prepared to grant such a license in return for an agreed upon payment.

87. Certain Nebraska Likely Private Infringers who received a First Letter did not provide any response to that First Letter.

88. At least some of the Likely Private Infringers identified in the preceding paragraph were sent a Second Letter by Farney Daniels at the request of the relevant exclusive licensee.

89. The Second Letter explained to the recipient that no response had been received in connection with its First Letter, that Farney Daniels had been retained by the sender to follow up on the matter, and asked the recipient to review the First Letter and to provide a response.

90. The Second Letter made clear to the recipient that if it did not infringe any claim of the Klein Patents, that neither the sender nor the Firm believed the recipient needed a license, nor had any interest in any further communication with the recipient.

91. The Second Letter made clear to the recipient that if it did not respond, the sender and the Firm would reasonably assume the recipient had an infringing system.

92. For recipients such as those described in the preceding paragraph, the Second Letter asked that the recipient provide a response denying the infringement so that the sender and the Firm could know to discontinue correspondence.

93. The Second Letter also made clear that if the recipient did infringe any claim of the Klein Patents, that it needed a license, and that the client was prepared to grant a license in return for an agreed upon payment.

94. Certain Nebraska Likely Private Infringers who received a Second Letter did not provide any response to that Second Letter.

95. At least some of the Likely Private Infringers identified in the preceding paragraph were sent a Third Letter by Farney Daniels at the request of the relevant exclusive licensee.

96. The Third Letter explained to the recipient that no response had been received in connection with its Second Letter, or the client's relevant First Letter, and that Farney Daniels had been retained by the sender to follow up on the matter, and asked the recipient to review the First Letter and Second Letter and to provide a response.

97. The Third Letter made clear to the recipient that if it did not infringe any claim of the Klein Patents, that neither the sender nor the Firm believed the recipient needed a license, nor had any interest in any further communication with the recipient.

98. For recipients such as those described in the preceding paragraph, the Third Letter asked that the recipient provide a response denying the infringement so that the sender and the Firm could know to discontinue correspondence.

99. The Third Letter also made clear that if the recipient did infringe any claim of the Klein Patents, that it needed a license, and that the client was prepared to grant a license in return for an agreed upon payment.

100. The Third Letter also made it clear that if the recipient failed to respond, the client and the Firm would assume that the recipient did have an infringing system, and would bring suit to enforce the client's patent rights. So that the recipient would better understand this, and would understand the basis for such a suit, a draft complaint was included for the recipient's review.



101. The draft complaint made clear, such as in Paragraph 8, that the recipient's failure to respond was being relied upon by the sender and Farney Daniels to reasonably assume the recipient had an infringing system and as a basis for filing suit.

102. The AG Defendants have no basis to assert that Intervenor-Plaintiff MPHJ, its exclusive licensees, or its counsel Farney Daniels, sought a license from a recipient who reasonably denied infringement.

103. The AG Defendants have no basis to assert that Intervenor-Plaintiff MPHJ, its exclusive licensees, or its counsel Farney Daniels, obtained a license from a recipient who reasonably denied infringement.

104. Neither Intervenor-Plaintiff MPHJ, nor its exclusive licensees, entered into a patent license with any company in Nebraska on or before July 18, 2013.

105. The AG Defendants have no basis to assert that Intervenor-Plaintiff MPHJ, its exclusive licensees, or its counsel Farney Daniels, brought suit for infringement against anyone who reasonably denied infringement.

**First Investigation by the Nebraska Attorney General**

106. On or about February 7, 2013, Morgan Rogers with the Nebraska Attorney General's Office contacted one of MPHJ's exclusive licensees to inquire about correspondence sent by that licensee to at least one Nebraska entity, Nebraska Hematology Oncology.

107. On information and belief, Ms. Rogers received information in response to her inquiry regarding the licensing activity of MPHJ's exclusive licensees, and with respect to the bases and purposes of the First, Second and Third Letters, including correspondence to Nebraska Hematology and Oncology.

108. On information and belief, Ms. Rogers did not obtain any information as part of her February inquiry that would support a conclusion that MPHJ's licensing activity was "objectively baseless."

109. On information and belief, Ms. Rogers did not obtain any information as part of her February inquiry that would support a conclusion that MPHJ's licensing activity was "subjectively baseless."

110. On information and belief, following her February 2013 inquiry, Ms. Rogers took no further steps to investigate MPHJ's licensing activity.

111. After that February 2013 inquiry from Ms. Rogers, no further inquiry or investigation was made, written or oral, by the Nebraska Attorney General for four months, until June 11, 2013.

**Second Investigation By the Nebraska Attorney General**

112. On or about May 20, 2013, MPHJ was sued in the State of Vermont by the Vermont Attorney General, alleging that the sending of First, Second and Third Letters to companies in Vermont somehow violated Vermont state law.

113. The Vermont suit has since been removed to the U.S. District Court for the District of Vermont and is pending there.

114. The actions taken by the Vermont Attorney General received widespread public attention.

115. On information and belief, one or more of the AG Defendants, and at least Defendant Bruning, became aware of this widespread public attention prior to June 11, 2013.

116. On or about June 11, 2013, Mr. Gregory Walklin with the Nebraska Attorney General's Office, sent a letter to Farney Daniels inquiring regarding letters sent to three Nebraska companies by and on behalf of MPHJ exclusive licensees. *See Exhibit C.*

117. On information and belief, Mr. Walklin sent the letter at the request of one or more of the AG Defendants.

118. Mr. Walklin received some information relevant to his June 11 inquiry verbally between June 12, 2013 and July 12, 2013.

119. A written response to Mr. Walklin's June 11 letter was provided to Mr. Walklin on the evening of Monday, July 15, 2013. *See* Exhibit D. A letter providing a correction to a footnote in that letter was sent to Mr. Walklin on October 7, 2013. *See* Exhibit D-1.

120. The July 15 letter (Exh. D), provided information regarding the licensing activity of MPHJ's exclusive licensees. Exhibits D and D-1 are incorporated herein by reference.

121. On information and belief, Mr. Walklin did not obtain any information as part of his inquiry that would support a conclusion that the content or the sending of the First, Second or Third Letters was "objectively baseless."

122. On information and belief, Mr. Walklin did not obtain any information as part of his February inquiry that would support a conclusion that the content of or the sending of the First, Second or Third Letter was "subjectively baseless."

123. On information and belief, following his June 2013 inquiry, Mr. Walklin took no further steps to investigate into the licensing activity of MPHJ, its exclusive licensees, or activities of counsel on their behalf.

**Issuance by the AG Defendants of the July 18 Cease and Desist Order**

124. On July 18, 2013, Defendants Bruning, Cookson and Lopez provided to the Farney

125. The Nebraska AG July 18 letter alleged that the Farney Daniels firm had “issued demand letters upon several entities based in or with a substantial presence in the State of Nebraska.”

126. On information and belief, the “demand letters” referred to in the Nebraska AG July 18 letter included at least the letters sent by the Farney Daniels firm on behalf of MPHJ’s exclusive licensees, inclusive of the Second Letter and Third Letter referenced above.

127. The Nebraska AG July 18 letter further demanded, under the authority provided to the Nebraska Attorney General under NEB. REV. STAT. § 87-303.03(1)(b), that the Farney Daniels firm “immediately cease and desist the initiation of any and all new patent infringement enforcement efforts within the State of Nebraska pending the outcome of this office’s investigation.”

128. The Nebraska AG July 18 letter accuses MPHJ and its exclusive licensees of violating Nebraska state law, including but not limited to NEB. REV. STAT. §§ 59-1602, 87-302, and/or 87-303.01.

129. The Nebraska AG July 18 letter accuses counsel for MPHJ and its exclusive licensees of violating Nebraska state law, including but not limited to NEB. REV. STAT. §§ 59-1602, 87-302, and/or 87-303.01.

130. The Nebraska AG July 18 letter alleged that at least some of the so-called “demand letters” sent by MPHJ’s exclusive licensees, or by Farney Daniels on their behalf, contained “infringement assertions [that] are unsubstantiated.”

131. On information and belief, Defendants Bruning, Cookson, and/or Lopez intended the allegation in the preceding Paragraph to apply to at least some of the letters sent by the Farney Daniels firm on behalf of MPHJ and its exclusive licensees.

132. Defendants Bruning, Cookson, and/or Lopez intend the Cease and Desist Order contained within the Nebraska AG July 18 letter to prevent the Farney Daniels firm from representing Intervenor-Plaintiff MPHJ or its exclusive licensees with respect to litigation of the Klein Patents, with respect to at least some of the companies who were sent a First Letter, Second Letter and Third Letter.

133. Defendants Bruning, Cookson, and/or Lopez intend the Cease and Desist Order contained within the Nebraska AG July 18 letter to prevent the Farney Daniels firm from representing Intervenor-Plaintiff MPHJ or its exclusive licensees with respect to any company in Nebraska or having operations in Nebraska.

134. Defendants Bruning, Cookson, and/or Lopez intend the Cease and Desist Order contained within the Nebraska AG July 18 letter to prevent the Farney Daniels firm from representing Intervenor-Plaintiff MPHJ or its exclusive licensees with respect to sending patent-related letters.

135. In its Cease and Desist Order, and in subsequent briefing and argument in the above-captioned case, the AG Defendants have argued that the sending of the First Letter, Second Letter, and/or Third Letters by MPHJ's exclusive licensees or their counsel violates Nebraska law and is unlawful.

136. In its Cease and Desist Order, and in subsequent briefing and argument in the above-captioned case, the AG Defendants have argued that the sending of the First Letter, Second Letter, and/or Third Letters by MPHJ's exclusive licensees or their counsel violates Nebraska law that is not preempted by federal law or the U.S. Constitution.

**A U.S. Patent Owner Has Rights Which Are Violated By The July 18 Cease and Desist Order**

137. The rights of a patent owner under the U.S. Constitution, the U.S. patent laws, and federal laws, includes at least the right to provide notice of its patents.

138. The rights of a patent owner under the U.S. Constitution, the U.S. patent laws, and federal laws, includes at least the right to license its patents.

139. The rights of a patent owner under the U.S. Constitution, the U.S. patent laws, and federal laws, includes at least the right to communicate inquiries related to potential infringement of its patents.

140. The rights of a patent owner under the U.S. Constitution, the U.S. patent laws, and federal laws, includes at least the right to notify others of the intention to enforce the patents.

141. The rights of a patent owner under the U.S. Constitution, the U.S. patent laws, and federal laws, includes at least the right to take action to enforce the patents against infringers.

142. The rights of a U.S. patent owner recited above are collectively referred to herein as “U.S. Patent Rights.”

143. A U.S. patent owner’s U.S. Patent Rights do not change based upon the number of infringers, or potential infringes of the patents.

**A Patent Owner’s U.S. Patent Rights Are The Same Regardless Of Whether Or Not It Practices The Patent Or Was The Original Assignee**

144. A patent owner’s U.S. Patent Rights are not affected, restricted, changed or different on the basis of whether the patent owner itself has a business practice in the patents, or was the original assignee of the patents, or itself employed the inventors of the patents.

145. A patent owner who does not practice the patents has the same U.S. Patent Rights as a patent owner who does practice rights, except for considerations involving potential injunctive relief.

146. The AG Defendants have no basis to contend that either of the two preceding allegations is false.

**The AG Defendants Did No Reasonable Investigation And Have No Lawful Basis To Contend That The Klein Patents Are Invalid, Or That It Is Objectively Baseless or Subjectively Baseless to Presume Them To Be Valid**

147. On information and belief, the AG Defendants conducted no reasonable investigation to determine whether, and have no lawful basis to contend, the Klein Patents are invalid, or whether it was objectively baseless or subjectively baseless to presume them to be valid.

148. Under U.S. patent law, a U.S. Patent is presumed valid.

149. Under U.S. patent law, a U.S. patent is presumed valid even if no court has ruled on the validity of the patent.

150. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had not formed an opinion that any of the claims of the Klein Patents were invalid, taking into account the factors that must, in law, be considered in reaching such a conclusion.

151. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had not obtained a copy of the prosecution history of any of the Klein Patents.

152. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had not obtained a copy of the prior art considered by the U.S. Patent Office with respect to the Klein Patents during the prosecution of the patent applications which led to those patents.

153. Under U.S. patent law, assessing the validity of any claim of a U.S. patent requires construing the scope of the terms in such claim.

154. Under U.S. patent law, to assess the proper claim construction to be accorded any claim of a U.S. patent, one must consider at least the patent specification, the other claims of the patent, the prosecution history related to the patent, and the prior art related to the patent.

155. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants did not construe any claim of any of the Klein Patents in a manner required by U.S. Patent Law.

156. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any claim of the Klein Patents was invalid.

157. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to assert it was objectively baseless to believe or assert the Klein Patents were not invalid.

158. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to assert it was subjectively baseless to believe or assert the Klein Patents were not invalid.

**The AG Defendants Did No Reasonable Investigation And Have No Lawful Basis To Contend That The Klein Patents Cannot Reasonably Be Believed To Be Infringed By At Least Some Companies In Nebraska, Including Companies To Whom MPHJ's Exclusive Licensees And Counsel Sent Letters, Or That Any Such Belief or Assertion Is Objectively Baseless or Subjectively Baseless**

159. On information and belief, the AG Defendants conducted no reasonable investigation to determine whether, and have no lawful basis to contend, at least some claims of the Klein Patents may be infringed by at least some companies to whom MPHJ's exclusive licensees or their counsel sent letters, or that any such belief that such companies potentially infringe was objectively baseless or subjectively baseless.



160. Under U.S. patent law, to assess infringement of any claim of a U.S. patent, the claim first must be properly construed in accordance with law.

161. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had not engaged in a proper construction of any claim of the Klein Patents.

162. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had conducted no reasonable investigation to support a conclusion that any Nebraska recipient of a First Letter, Second Letter, or Third Letter did not infringe at least one claim of the Klein Patents.

163. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any Nebraska recipient of a First Letter, Second Letter, or Third Letter did not infringe at least one claim of the Klein Patents.

164. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be objectively baseless to believe or assert that any Nebraska recipient of a First Letter, Second Letter, or Third Letter might infringe at least one claim of the Klein Patents.

165. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be subjectively baseless to believe or assert that any Nebraska recipient of a First Letter, Second Letter, or Third Letter might infringe at least one claim of the Klein Patents.

**The AG Defendants Did No Reasonable Investigation And Have No Lawful Basis To Contend That The First, Second and Third Letters Did Not Have, As At Least One Lawful Purpose, To Satisfy The Pre-Suit Investigation Under Rule 11, Or That A Belief That Such Purpose Was Reasonable And Lawful Was Objectively Baseless Or Subjectively Baseless**

166. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be objectively baseless to send any Nebraska recipient of a First Letter, Second Letter, or Third Letter an inquiry regarding that recipient's potential infringement as part of a pre-suit investigation.

167. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be subjectively baseless to send any Nebraska recipient of a First Letter, Second Letter, or Third Letter an inquiry regarding that recipient's potential infringement as part of a pre-suit investigation.

168. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that a Nebraska recipient of a First Letter, Second Letter, or Third Letter did not need a license to the Klein Patents if it in fact infringed the Klein Patents.

169. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be objectively baseless to ask a Nebraska recipient of a First Letter, Second Letter, or Third Letter reasonably suspected of infringement of the Klein Patents, but who denied such infringement, to provide reasonable support for such denial.

170. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that it would be subjectively baseless to ask a Nebraska recipient of a First Letter, Second Letter, or Third Letter reasonably suspected

of infringement of the Klein Patents, but who denied such infringement, to provide reasonable support for such denial.

171. On information and belief, under U.S. patent law, a U.S. patent owner has the right to threaten a patent infringer with suit for infringement.

172. On information and belief, under U.S. patent law, and the Federal Rules of Civil Procedure, a patent owner may satisfy its Rule 11 obligation to conduct a reasonable pre-suit investigation with respect to a Likely Private Infringer by making inquiry of the Likely Private Infringer regarding the suspected infringement.

173. On information and belief, if a Likely Private Infringer refuses to respond to a patent infringement inquiry such as described in the preceding paragraph, a U.S. patent owner may file a patent infringement suit against that Likely Private Infringer consistent with Rule 11 of the Federal Rules of Civil Procedure.

174. On information and belief, a U.S. patent owner who has made reasonable inquiry of a Likely Private Infringer that has failed to respond, has a First Amendment right to provide such Likely Private Infringer with a draft complaint which may be filed against such Likely Private Infringer if it fails to respond by denying infringement, or, if it infringes, taking a license.

**With Respect To The Actions Or Statements Of MPHJ, Its Exclusive Licensees Or Farney Daniels Accused By The AG Defendants, The AG Defendants' Accusations Were Made Without Reasonable Investigation And Without Any Evidence Or Lawful Basis To Contend Such Actions Or Statements Were Without Lawful Basis**

175. On information and belief, with respect to the actions or statements of MPHJ, its exclusive licensees, or Farney Daniels accused by the AG Defendants, the AG Defendants' accusations were made without reasonable investigation and without any evidence or lawful basis to contend such actions or statements were without lawful basis.

**• Accusations By The AG Defendants In The July 18 Cease and Desist Order And In Briefing To This Court Are Unlawful And Without Reasonable Basis**

176. Under U.S. patent law, there is no immunity or protection afforded to any company with respect to another's U.S. Patent Rights on grounds that the particular company is part of a "vulnerable group."

177. Under U.S. patent law, there is no immunity from infringement for nonprofit organizations.

178. Under U.S. patent law, there is no immunity from infringement based upon the size of any infringer.

179. Under U.S. patent law, there is no immunity from infringement based upon the revenue of any infringer.

180. Under U.S. patent law, there is no immunity from infringement based upon the ability of any infringer to retain counsel.

181. Under U.S. patent law, there is no immunity from infringement based upon the ability of any infringer to pay for fees or costs to defend any patent litigation in the event such infringer refuses a patent license.

182. Under U.S. patent law, there is no immunity from infringement based upon the experience of any infringer with the U.S. patent laws.

183. Under U.S. patent law, there is no immunity from infringement based upon the type of business of any infringer.

184. Under U.S. patent law, there is no immunity from infringement for infringers engaged in the medical profession.

185. Under U.S. patent law, there is no numerical limit to the number of infringers against who a patent owner may exercise its U.S. Patent Rights.

186. Under U.S. patent law, the U.S. Patent Rights of a patent owner may be exercised with respect to any and all parties who are infringing.

187. Under U.S. patent law, the U.S. Patent Rights of notice and inquiry that be lawfully exercised with respect to any Likely Private Infringer may also be lawfully exercised against any similarly situated Likely Private Infringer.

188. The allegation in the preceding paragraph is true without regarding to the number of Likely Private Infringers.

189. Under U.S. patent law, it is not unlawful to send a Likely Private Infringer an inquiry regarding patent infringement and refer such recipient to a website where copies of the relevant patents may be obtained.

190. Under U.S. patent law, and the U.S. Constitution and other federal law, it is not unlawful for a patent owner to attempt to license its patents to infringers without bringing suit.

191. Under U.S. patent law, and the U.S. Constitution and other federal law, it is consistent with public policy for a patent owner to attempt to first license the patents without bringing suit.

192. Under U.S. patent law, and the U.S. Constitution and other federal law, a patent owner's rights include electing to refrain from filing suit.

193. Under U.S. patent law, and the U.S. Constitution and other federal law, a patent owner may threaten suit, but then delay suit or choose not to sue.

194. The AG Defendants have no basis to contend that any of the eighteen preceding allegations is false.

195. The AG Defendants have no basis to contend that any exercise by MPHJ, its exclusive licensees, or their counsel, of any of the above-enumerated eighteen rights or permitted

actions was, in the circumstances of sending letters related to the Klein Patents, objectively baseless.

196. The AG Defendants have no basis to contend that any exercise by MPHJ, its exclusive licensees, or their counsel, of any of the above-enumerated eighteen rights or permitted actions was, in the circumstances of sending letters related to the Klein Patents, subjectively baseless.

197. The AG Defendants' contention that MPHJ, its exclusive licensees, or their counsel had no reasonable basis to identify a Nebraska recipient of a First, Second or Third Letter is a contention made without reasonable investigation and without any lawful basis.

198. The AG Defendants' contention that it is unlawful under Nebraska law to request a response within two or three weeks from a recipient of a letter such as the First, Second or Third Letters in Exhibits B1-B3 is without basis in law.

199. The AG Defendants conducted no investigation prior to July 18, 2013 from which they obtained any information to support a contention that any statement made in the First, Second or Third Letters such as those in Exhibits B1-B3 was inaccurate.

200. The AG Defendants conducted no investigation prior to July 18, 2013 from which they obtained any information to support a contention that any statement made in the First, Second or Third Letters such as those in Exhibits B1-B3 was objectively baseless.

201. The AG Defendants conducted no investigation prior to July 18, 2013 from which they obtained any information to support a contention that any statement made in the First, Second or Third Letters such as those in Exhibits B1-B3 was subjectively baseless.

**• Accusations By The AG Defendants By Reference To The Vermont Complaint Were Unlawful And Without Reasonable Basis**

202. In their briefing before the Court in which they alleged wrongdoing by MPHJ, its exclusive licensees, and its counsel, the AG Defendants attached the Complaint against MPHJ filed by the Vermont Attorney General (“the Vermont Complaint”).

203. On information and belief, the AG Defendants assert that the conduct of MPHJ, its exclusive licensees, and its counsel, was unlawful on the bases cited in the Vermont Complaint.

204. On information and belief, the AG Defendants conducted no independent investigation into any of the accusations in the Vermont Complaint.

205. On information and belief, as of July 18, 2013, the AG Defendants had no evidence or basis to conclude that any accusations or contentions in the Vermont Complaint were grounded in law or fact.

206. On information and belief, as of July 18, 2013, the AG Defendants had no evidence or basis to conclude that any action or statement accused in the Vermont Complaint was objectively baseless.

207. On information and belief, as of July 18, 2013, the AG Defendants had no evidence or basis to conclude that any action or statement accused in the Vermont Complaint was subjectively baseless.

208. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding whether there had been a “positive response” to licensing efforts related to the Klein Patents was objectively baseless at the time such letter was sent.

209. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding whether there had been a “positive response” to licensing efforts related to the Klein Patents was subjectively baseless at the time such letter was sent.

210. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding whether there had been a “positive response” to licensing efforts related to the Klein Patents was material to the essential message of the letter.

211. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding the number of companies, or percentage of companies, that have responded by taking a license pursuant to licensing efforts related to the Klein Patents was objectively baseless at the time such letter was sent.

212. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding the number of companies, or percentage of companies, that have responded by taking a license pursuant to licensing efforts related to the Klein Patents was subjectively baseless at the time such letter was sent.

213. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that any statement of the First Letter regarding the number of companies, or percentage of companies, that have responded by taking a license pursuant to licensing efforts related to the Klein Patents was material to the essential message of the letter.



214. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that MPHJ, at all times relevant to this Complaint in Intervention, was not identified as the assignee of the Klein Patents in the records of the U.S. Patent Office.

215. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no lawful basis to conclude that MPHJ's ownership of subsidiaries who also served as exclusive licensees with defined exclusivity prevented any person from learning that MPHJ was the assignee of record in the U.S. Patent Office.

216. Under U.S. patent law, and the U.S. Constitution and other federal law, it is not unlawful for a patent owner to offer a patent license at an opening offer price that is higher than the patent owner may ultimately be willing to accept.

217. Under U.S. patent law, the Federal Rules of Civil Procedure, the U.S. Constitution and other federal law, a U.S. patent owner may send patent notice, patent licensing, and patent inquiry letters to a recipient without first satisfying the same level of investigation as is required under Rule 11 for bringing suit.

218. Under U.S. patent law, the U.S. Constitution and other federal law, a patent owner may threaten suit for infringement without first retaining counsel in the state of the infringer.

219. Under U.S. patent law, the U.S. Constitution and other federal law, a counsel for a patent owner may send correspondence into another state exercising such patent owner's U.S. Patent Rights, including the right to threaten suit for infringement, without the patent owner first retaining counsel in the recipient's state.

220. Under U.S. patent law, the U.S. Constitution and other federal law, suggesting to a Likely Private Infringer that it may be prudent to retain qualified patent counsel to respond to a patent infringement inquiry letter, cannot be objectively baseless.

221. Under U.S. patent law, the U.S. Constitution and other federal law, suggesting to a Likely Private Infringer that it may be prudent to retain qualified patent counsel to respond to a patent infringement inquiry letter, cannot be subjectively baseless.

222. Under U.S. patent law, the U.S. Constitution and other federal law, suggesting to a Likely Private Infringer that it may be prudent to retain qualified patent counsel to respond to a patent infringement inquiry letter, cannot be unlawful.

223. Under U.S. patent law, the U.S. Constitution and other federal law, it is not objectively baseless for a U.S. patent owner to seek a payment for a license that is less than the cost of a suit for patent infringement on the same patent.

224. Under U.S. patent law, the U.S. Constitution and other federal law, it is not subjectively baseless for a U.S. patent owner to seek a payment for a license that is less than the cost of a suit for patent infringement on the same patent.

225. Under U.S. patent law, a patent owner may grant exclusive licenses within a particular field of use.

226. Under U.S. patent law, a patent owner may grant exclusive licenses within a particular part of the United States.

227. Under U.S. patent law, a patent owner may grant exclusive licensees the right to sublicense patents within their area of exclusivity.

228. Under U.S. patent law, and the U.S. Constitution, a U.S. patent owner may exercise any of its U.S. patent rights by reliance upon an attorney.

229. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude whether MPHJ and its exclusive licensees had bona fide reasons for not yet bringing suit.

230. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude that under U.S. patent law and the U.S. Constitution, that a U.S. patent owner is obligated to bring suit if it has threatened to bring suit.

231. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude whether any reasons MPHJ and its exclusive licensees may have had for not yet bringing suit were objectively baseless.

232. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude whether any reasons MPHJ and its exclusive licensees may have had for not yet bringing suit were subjectively baseless.

233. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude that U.S. patent law, the U.S. Constitution, or federal law required a U.S. patent owner to inform or educate a potential infringer regarding how to assess potential infringement.

234. On information and belief, prior to the issuance of the July 18 Cease and Desist Order, the AG Defendants had no basis to conclude that U.S. patent law, the U.S. Constitution, or federal law required a U.S. patent owner who notified a company of the patent owner's U.S. patent rights, either by providing patent notice, offering a patent license, making an infringement inquiry, or threatening suit, to provide a copy of the identified U.S. patent to the recipient.

235. Under U.S. patent law, there is no requirement that a potential infringer be aware of a patent or its infringement in order to have liability for such infringement.

**The Activities Related to the Klein Patents of MPHJ, its Exclusive Licensees, and its Counsel Did Not Violate Any Nebraska Law**

236. A justiciable and immediate controversy exists as to whether Plaintiff MPHJ or its exclusive licensees, or the Farney Daniels firm, violated any Nebraska law in the sending of any letters into the State of Nebraska.

237. On information and belief, sending a letter containing statements such as those contained in the letters attached hereto as Exhibits B1-B3, does not constitute activities with respect to any “goods or services” as that term is used in NEB. REV. STAT. § 87-302.

238. On information and belief, sending a letter containing statements such as those attached hereto as Exhibits B1-B3, does not constitute activities that would qualify as any conduct enumerated under subparts 1-19 of NEB. REV. STAT. § 59-1602.

239. On information and belief, statements made in the letters attached hereto as Exhibits B2-B3 would additionally be immune from any assertion of violation of NEB. REV. STAT. § 87-302, under the doctrine of litigation privilege.

240. On information and belief, statements made in the letters attached hereto as Exhibits B2-B3 would additionally be immune from any assertion of violation of NEB. REV. STAT. § 59-1602, under the doctrine of litigation privilege.

241. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that any communication by the Farney Daniels firm on behalf of Intervenor-Plaintiff MPHJ or its exclusive licensees into the State of Nebraska was “objectively baseless.”

242. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted

any investigation, nor obtained information from which they could base a conclusion that any communication by the Farney Daniels firm on behalf of Plaintiff MPHJ or its exclusive licensees into the State of Nebraska was “subjectively baseless.”

243. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the First Letter sent by MPHJ’s exclusive licensees was “objectively baseless.”

244. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the First Letter sent by MPHJ’s exclusive licensees was “subjectively baseless.”

245. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the Second Letter sent by MPHJ’s exclusive licensees was “objectively baseless.”

246. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the Second Letter sent by MPHJ’s exclusive licensees was “subjectively baseless.”

247. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the Third Letter sent by MPHJ’s exclusive licensees was “objectively baseless.”

248. On information and belief, prior to July 18, 2013, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had conducted any investigation, nor obtained information from which they could base a conclusion that the Third Letter sent by MPHJ's exclusive licensees was "subjectively baseless."

249. On information and belief, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, has any good faith basis to allege that federal law does not preempt any Nebraska state law as it may apply to the sending of the letters in Exhibits B1-B3, or the filing of any complaint for patent infringement on behalf of Plaintiff MPHJ and/or its exclusive licensees, absent proof that such letters were objectively baseless, and also subjectively baseless.

250. On information and belief, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had any good faith basis to conclude that, given the federal law regarding personal jurisdiction with respect to the sending of letters such as those in Exhibit B1, that Intervenor-Plaintiff MPHJ or its exclusive licensees could be subject to personal jurisdiction in the State of Nebraska based upon the sending of the letters in Exhibit B1.

251. On information and belief, neither Defendants Bruning, Cookson, or Lopez, nor any person acting at their direction or under their control, had any good faith basis to conclude that, given the federal law regarding personal jurisdiction with respect to the sending of letters such as those in Exhibits B2-B3, that the Farney Daniels firm could be subject to personal jurisdiction in the State of Nebraska on the basis of sending those letters on behalf of MPHJ or its exclusive licensees.

252. Under the U.S. Constitution and U.S. patent laws, even federal law related to unfair competition, including but not limited to 15 U.S.C. §§1, 2, 45, 1117 & 1125, may not impair the rights of a U.S. patent owner to exercise its notice, inquiry, licensing and enforcement rights unless it is shown that the actions of the U.S. patent owner were objectively baseless and subjectively baseless.

253. The conduct of the AG Defendants in issuing the July 18 Cease and Desist Order has no lawful basis in any federal law, including but not limited to 15 U.S.C. §§1, 2, 45, 1117 & 1125.

254. Here, the actions of MPHJ, its exclusive licensees, and its counsel related to the sending of the First, Second and Third Letters was not objectively baseless.

255. Here, the actions of MPHJ, its exclusive licensees, and its counsel related to the sending of the First, Second and Third Letters was not subjectively baseless.

256. The AG Defendants have conducted no reasonable investigation, and have no lawful basis to contend that either of the two previous allegations are false.

257. The AG Defendants have conducted no reasonable investigation, and have no lawful basis, to assert that any of the First, Second and Third Letters sent to companies in Nebraska was unsubstantiated, false, misleading, or deceptive.

258. The sending of the First Letter did not violate Nebraska law.

259. The sending of the Second Letter did not violate Nebraska law.

260. The sending of the Third Letter did not violate Nebraska law.

261. Even if the sending of the First, Second or Third Letters otherwise violated Nebraska State Law, application of that law would be preempted unless the respective Letters are pled and proven to be both objectively baseless and subjectively baseless.

**The July 18 Cease and Desist Order is Unlawful and Unlawfully Impairs MPHJ's Rights as a U.S. Patent Owner**

262. The allegations and actions taken by Defendants Bruning, Cookson, and Lopez alleging that actions taken by or on behalf of MPHJ or its exclusive licensees with respect to its assertion of its U.S. Patent Rights under the Klein Patents are in violation of Nebraska state laws has served to impair the U.S. Patent Rights of MPHJ and its exclusive licensees, including their ability to exercise their lawful rights with respect to the Klein Patents, by impairing, among other things, their rights to:

- (a) send patent-related letters to actual or potential infringers operating in the state of Nebraska without fear of suit by Defendants Bruning, Cookson, and Lopez;
- (b) exercise their constitutional right to counsel of their choice in assisting them in enforcing their U.S. patent rights without fear of a violation of any Nebraska state law;
- (c) send letters regarding patents to companies who may have Nebraska operations, but who are incorporated outside of Nebraska, and headquartered outside of Nebraska, using counsel of their choice, without fear of being accused of violation of Nebraska state law;
- (d) use counsel of their choice in litigating patent infringement suits asserting the Klein Patents in courts outside of Nebraska against companies who may have Nebraska operations, without fear of being sued or found liable for violation of Nebraska state law; and/or
- (e) enter into licensing discussions with parties infringing the Klein Patents without having such parties discount the value of the Klein Patents by virtue of allegations that the assertion of the patent rights may be limited by alleged violations of Nebraska state law.

263. A patent is a time-limited asset.



264. The July 18 Order impaired the enforcement of the Klein Patents for at least some time and to some degree.

265. The impairment described in the preceding paragraph comprises an unconstitutional taking under the Fifth and Fourteenth Amendments.

**A Justiciable and Immediate Controversy Exists With Respect to Whether MPHJ, its Exclusive Licensees, or its Counsel Violated any Nebraska Law**

266. A justiciable and immediate controversy exists with respect to whether the sending of the First Letter, or letters substantively equivalent to the First Letter, to companies in Nebraska, or with operations in Nebraska, by MPHJ or its exclusive licensees, violates Nebraska state law, or similar federal law, and the July 18 Cease and Desist Order.

267. A justiciable and immediate controversy exists as to whether the filing by Farney Daniels of patent infringement suits against Nebraska companies, or companies having operations in Nebraska, violates Nebraska state law, and the July 18 Cease and Desist Order.

268. The application of the Cease & Desist Order to Farney Daniels to prevent the Firm from sending letters the same or similar to the First, Second or Third Letters, on behalf of MPHJ or its exclusive licensees in the future, comprises an unconstitutional “prior restraint” of Free Speech and violation of the First and Fourteenth Amendments to the U.S. Constitution.

269. Any application under Nebraska state law to sanction or preclude the sending by Intervenor-Plaintiff MPHJ or its exclusive licensees the First Letter or letters substantially equivalent to the First Letter would violate the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

- (a) the First Amendment to the U.S. Constitution;
- (b) the Fifth Amendment to the U.S. Constitution;
- (c) the Fourteenth Amendment to the U.S. Constitution;

(d) Title 35, U.S. Code; and

(e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

270. The actions of Intervenor-Plaintiff MPHJ and its exclusive licensees in preparing, and in sending the First Letter to Likely Nebraska Private Infringers did not violate any Nebraska state law.

271. Any order or sanction against Intervenor-Plaintiff MPHJ, or its relevant exclusive licensees, related to preparing or sending the First Letter, or letters substantially equivalent to the First Letter, to Likely Nebraska Private Infringers on grounds that doing so violates any Nebraska state law, would mean the promulgator of such order or sanction has violated the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

(a) the First Amendment to the U.S. Constitution;

(b) the Fifth Amendment to the U.S. Constitution;

(c) the Fourteenth Amendment to the U.S. Constitution;

(d) Title 35, U.S. Code; and

(e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

272. Any application under Nebraska state law to sanction or preclude the sending by Intervenor-Plaintiff MPHJ or its exclusive licensees the Second Letter or letters substantially equivalent to the Second Letter would violate the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

(a) the First Amendment to the U.S. Constitution;

(b) the Fifth Amendment to the U.S. Constitution;

(c) the Fourteenth Amendment to the U.S. Constitution;

(d) Title 35, U.S. Code; and

(e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

273. The actions of Intervenor-Plaintiff MPHJ and its exclusive licensees in preparing, and in sending the Second Letter to Likely Nebraska Private Infringers did not violate any Nebraska state law.

274. Any order or sanction against counsel or authorized representatives of Intervenor-Plaintiff MPHJ related to preparing or sending the Second Letter or letters substantially equivalent to the Second Letter to Likely Nebraska Private Infringers on grounds that doing so violates any Nebraska state law, would mean the promulgator of such order or sanction has violated the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

- (a) the First Amendment to the U.S. Constitution;
- (b) the Fifth Amendment to the U.S. Constitution;
- (c) the Fourteenth Amendment to the U.S. Constitution;
- (d) Title 35, U.S. Code; and
- (e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

275. Any application under Nebraska state law to sanction or preclude the sending by Intervenor-Plaintiff MPHJ or its exclusive licensees the Third Letter or letters substantially equivalent to the Third Letter would violate the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

- (a) the First Amendment to the U.S. Constitution;
- (b) the Fifth Amendment to the U.S. Constitution;
- (c) the Fourteenth Amendment to the U.S. Constitution;
- (d) Title 35, U.S. Code; and

(e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

276. The actions of Intervenor-Plaintiff MPHJ and its exclusive licensees in preparing, and in sending the Third Letter to Likely Nebraska Private Infringers did not violate any Nebraska state law.

277. Any order or sanction against counsel or authorized representative of Plaintiff MPHJ related to preparing or sending the Third Letter or letters substantially equivalent to the Third Letter to Likely Nebraska Private Infringers on grounds that doing so violates any Nebraska state law, would mean the promulgator of such order or sanction has violated the rights of Intervenor-Plaintiff MPHJ and its relevant exclusive licensees under at least:

- (a) the First Amendment to the U.S. Constitution;
- (b) the Fifth Amendment to the U.S. Constitution;
- (c) the Fourteenth Amendment to the U.S. Constitution;
- (d) Title 35, U.S. Code; and
- (e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

## COUNT II

### VIOLATION BY DEFENDANTS BRUNING, COOKSON, AND LOPEZ IN THEIR OFFICIAL CAPACITY OF INTERVENOR-PLAINTIFF MPHJ’S RIGHTS UNDER 42 U.S.C. § 1983, AND THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

278. Intervenor-Plaintiff MPHJ repeats and realleges the allegations of all of the preceding paragraphs as though fully set forth herein.

279. Intervenor-Plaintiff MPHJ and its exclusive licensees reasonably prefer to be represented by recognized and experienced patent counsel.

280. Intervenor-Plaintiff MPHJ and its exclusive licensees, upon investigation, reasonably believed, and still believe, that Farney Daniels PC is such counsel.

281. Intervenor-Plaintiff MPHJ and its exclusive licensees reasonably consider the litigation and licensing experience provided by Farney Daniels to be a key component of their ability to properly and successfully identify infringers, reach licensing agreements with those infringers, and bring suit if necessary and appropriate with respect to infringers who will not agree to a license.

282. As part of the representation by Farney Daniels, Intervenor-Plaintiff MPHJ or its exclusive licensees authorized Farney Daniels to send the Second Letter and Third Letter described above.

283. On information and belief, Intervenor-Plaintiff MPHJ and its exclusive licensees believe and assert that Farney Daniels has knowledge and experience with respect to the infringement issues related to the parties to whom letters the same or similar to those in Exhibits B1-B3 were sent.

**Lawful Purposes and Rights Related to Relevant Correspondence**

284. The First Letter represents a lawful exercise of the sender's First Amendment rights to provide notice of its patent rights.

285. The AG Defendants lack any evidence that it was "objectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to provide notice of its patent rights.

286. The AG Defendants lack any evidence that it was "subjectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to provide notice of its patent rights.

287. The First Letter represents a lawful exercise of the sender's First Amendment rights to provide notice of potential infringement.

288. The AG Defendants lack any evidence that it was "objectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to provide notice of potential infringement.

289. The AG Defendants lack any evidence that it was "subjectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to provide notice of potential infringement.

290. The First Letter represents a lawful exercise of the sender's First Amendment rights to offer a patent license.

291. The AG Defendants lack any evidence that it was "objectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to offer a patent license.

292. The AG Defendants lack any evidence that it was "subjectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to offer a patent license.

293. The First Letter represents a lawful exercise of the sender's First Amendment right to make reasonable inquiry regarding suspected infringement.

294. The AG Defendants lack any evidence that it was "objectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to make reasonable inquiry regarding suspected infringement.

295. The AG Defendants lack any evidence that it was "subjectively baseless" to send the First Letter as an exercise of the sender's First Amendment rights to make reasonable inquiry regarding suspected infringement.

296. The Second Letter represents a lawful exercise of the sender's First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender's behalf.

297. The AG Defendants lack any evidence that it was "objectively baseless" to send the Second Letter as an exercise of the sender's First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender's behalf.

298. The AG Defendants lack any evidence that it was "subjectively baseless" to send the Second Letter as an exercise of the sender's First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender's behalf.

299. The Second Letter represents a lawful exercise of the sender's First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender's behalf.

300. The AG Defendants lack any evidence that it was "objectively baseless" to send the Second Letter as an exercise of the sender's First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender's behalf.

301. The AG Defendants lack any evidence that it was "subjectively baseless" to send the Second Letter as an exercise of the sender's First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender's behalf.

302. The Second Letter represents a lawful exercise of the sender's First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender's behalf.

303. The AG Defendants lack any evidence that it was “objectively baseless” to send the Second Letter as an exercise of the sender’s First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender’s behalf.

304. The AG Defendants lack any evidence that it was “subjectively baseless” to send the Second Letter as an exercise of the sender’s First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender’s behalf.

305. The Second Letter represents a lawful exercise of the sender’s First Amendment right to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender’s behalf.

306. The AG Defendants lack any evidence that it was “objectively baseless” to send the Second Letter as an exercise of the sender’s First Amendment rights to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender’s behalf.

307. The AG Defendants lack any evidence that it was “subjectively baseless” to send the Second Letter as an exercise of the sender’s First Amendment rights to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender’s behalf.

308. The Third Letter represents a lawful exercise of the sender’s First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender’s behalf.

309. The AG Defendants lack any evidence that it was “objectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender’s behalf.



310. The AG Defendants lack any evidence that it was “subjectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to provide notice of its patent rights, and the rights of its counsel to provide such notice on the sender’s behalf.

311. The Third Letter represents a lawful exercise of the sender’s First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender’s behalf.

312. The AG Defendants lack any evidence that it was “objectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender’s behalf.

313. The AG Defendants lack any evidence that it was “subjectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to provide notice of potential infringement, and the rights of its counsel to provide such notice on the sender’s behalf.

314. The Third Letter represents a lawful exercise of the sender’s First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender’s behalf.

315. The AG Defendants lack any evidence that it was “objectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender’s behalf.

316. The AG Defendants lack any evidence that it was “subjectively baseless” to send the Third Letter as an exercise of the sender’s First Amendment rights to offer a patent license, and the rights of its counsel to transmit such an offer on the sender’s behalf.

317. The Third Letter represents a lawful exercise of the sender's First Amendment right to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender's behalf.

318. The AG Defendants lack any evidence that it was "objectively baseless" to send the Third Letter as an exercise of the sender's First Amendment rights to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender's behalf.

319. The AG Defendants lack any evidence that it was "subjectively baseless" to send the Third Letter as an exercise of the sender's First Amendment rights to make reasonable inquiry regarding suspected infringement, and the rights of its counsel to make such inquiry on the sender's behalf.

320. The Third Letter represents a lawful exercise of the sender's First Amendment right to make it clear to a recipient that an infringement suit may be brought to seek remedy for infringement, and the rights of its counsel to make it clear that an infringement suit may be brought.

321. The AG Defendants lack any evidence that it was "objectively baseless" to send the Third Letter as an exercise of the sender's First Amendment rights to make it clear to a recipient that an infringement suit may be brought to seek remedy for infringement, and the rights of its counsel to make it clear that an infringement suit may be brought.

322. The AG Defendants lack any evidence that it was "subjectively baseless" to send the Third Letter as an exercise of the sender's First Amendment rights to make it clear to a recipient that an infringement suit may be brought to seek remedy for infringement, and the rights of its counsel to make it clear that an infringement suit may be brought.

**Lawful Purpose and Right to Engage Farney Daniels and Unlawful Impairment of That Right**

323. As part of the representation by Farney Daniels, Intervenor-Plaintiff MPHJ and its exclusive licensees have authorized Farney Daniels to investigate and prepare for litigation against Likely Infringers and Likely Private Infringers.

324. On information and belief, Intervenor-Plaintiff MPHJ believes and asserts that Farney Daniels has knowledge and experience with respect to the infringement issues and related issues in such suits such that it would be of detriment to Intervenor-Plaintiff MPHJ to not have Farney Daniels admitted *pro hac vice*, as is customary, to serve as lead counsel in these cases.

325. In the July 18 Nebraska AG Letter, Defendants Bruning, Cookson, and Lopez communicated in part a Cease & Desist Order to Farney Daniels, ordering the Firm to “immediately cease and desist the initiation of any and all new patent infringement enforcement efforts within the State of Nebraska pending the outcome of this office’s investigation pursuant to § 87-303.03(1)(b).”

326. NEB. REV. STAT. § 87-303.03(1)(b) provides: “The Attorney General, in addition to other powers conferred upon him or her by the Uniform Deceptive Trade Practices Act: ... (b) [m]ay issue a cease and desist order, with or without prior hearing, against any person engaged in activities in violation of the act, directing such person to cease and desist from such activity.”

327. On information and belief, Defendants Bruning, Cookson, and Lopez intend the Cease & Desist Order to apply to prevent Farney Daniels from representing Intervenor-Plaintiff MPHJ or its exclusive licensees in sending any patent-related letters.

328. On information and belief, Defendants Bruning, Cookson, and Lopez intend the Cease & Desist Order to apply to prevent Farney Daniels from representing Intervenor-Plaintiff

MPHJ or its exclusive licensees in filing or representing MPHJ in any litigation, a least involving companies in Nebraska, or having operations in Nebraska.

329. On information and belief, at least one of Defendants Bruning, Cookson, and Lopez, or parties authorized by them, communicated at least to CenturyLink that they consider their Cease and Desist Order to have at least some relevance to litigation in federal courts outside of Nebraska where a client wishes Farney Daniels to engage in representation in that litigation.

330. On information and belief, Defendants Bruning, Cookson, and/or Lopez prior to July 18, 2013, had not learned of any facts to support a position that Intervenor-Plaintiff MPHJ's choice of Farney Daniels was not reasonable, at least because:

- (a) the senior attorneys at Farney Daniels possess substantial experience in both patent litigation and licensing;
- (b) that at least some of the attorneys at the Firm have technical backgrounds relevant to the MPHJ Patents;
- (c) at least some of the attorneys at the Firm have experience in dealing with technical experts who may be relevant to licensing and enforcement of the Klein Patents; and
- (d) because the national recognition of individual attorneys at Farney Daniels, and of the Firm collectively, enhances Intervenor-Plaintiff MPHJ's ability to maximize the effectiveness and efficiency of the legal representation that it requires in its enforcement effort with respect to the Klein Patents, and justifies its strong preference to be represented by Farney Daniels as lead counsel in the present case.

331. On information and belief, absent the actions taken by Defendants Bruning, Cookson, and Lopez as reflected in the July 18 Nebraska AG Letter, the admission to federal

district courts by lawyers at Farney Daniels to serve as lead counsel in any litigation brought by MPHJ and its exclusive licensees would be customarily granted.

332. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease & Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ or its exclusive licensees in any patent infringement suit filed in federal court in Nebraska, or in any court where a defendant has at least some operations in Nebraska.

333. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease and Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ and its exclusive licensees in any case involving companies who have at least some operations in Nebraska, assuming that attorneys at that Firm otherwise obtained permission for such representation in the relevant court *pro hac vice*.

334. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease & Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ or its exclusive licensees by sending letters either asserting patent infringement, inquiring as to potential patent infringement, or providing notice of the Klein Patents, to any company incorporated in or headquartered in Nebraska, or who may have at least some operations in Nebraska.

335. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease & Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ or its exclusive licensees by sending letters asserting patent infringement.

336. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease & Desist Order issued by them precludes any attorney at Farney Daniels

from communicating an inquiry as to potential patent infringement to any company who may be infringing Intervenor-Plaintiff MPHJ's patents who may, in part, be conducting such infringing activities in Nebraska, whether or not the letter to be sent to such company is sent into Nebraska or elsewhere.

337. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease and Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ or its exclusive licensees by sending letters either asserting patent infringement, or inquiring as to potential patent infringement, to any company incorporated in or headquartered in Nebraska who may be infringing the Klein Patents.

338. On information and belief, it is the position of Defendants Bruning, Cookson, and Lopez that the Cease and Desist Order issued by them precludes any attorney at Farney Daniels from representing MPHJ and its exclusive licensees by sending letters either asserting patent infringement, or inquiring as to potential patent infringement, to any company who may be infringing the Klein Patents who may, in part, be conducting such infringing activities in Nebraska, whether or not the letter to be sent to such company is sent into Nebraska or elsewhere.

339. On information and belief, Intervenor-Plaintiff MPHJ and its exclusive licensees have a right to retain counsel to have that counsel send letters on their behalf notifying a party reasonably believed to be infringing a patent owned by them of that potential infringement, and to inquire as to the same. Such right is protected by at least the First, Fifth, Fourteenth Amendments to the U.S. Constitution.

340. On information and belief, the rights of MPHJ and its exclusive licensees or their counsel to send letters such as those identified in Exhibit B1-B3 or to bring suit on the Klein

Patents, cannot be impeded or impaired by any state law in Nebraska by virtue of the Supremacy Clause, and the Preemption Doctrine, absent allegation and proof that the actions of MPHJ, its exclusive licensees and its counsel was both objectively baseless and subjectively baseless.

341. On information and belief, Defendants Bruning, Cookson, and Lopez conducted no reasonable investigation and had no reasonable basis to believe or assert that any statements contained in the letters in Exhibits B1-B3 contain any statements related to the Klein Patents or their potential infringement that was objectively baseless.

342. On information and belief, Defendants Bruning, Cookson, and Lopez conducted no reasonable investigation and had no reasonable basis to believe or assert that any statements contained in the letters in Exhibits B1-B3 contain any statements related to the Klein Patents or their potential infringement that was subjectively baseless.

343. On information and belief, the Cease & Desist Order issued by Defendants Bruning, Cookson, and Lopez deprived and deprives Intervenor-Plaintiff MPHJ and its exclusive licensees of its choice of counsel to send letters regarding the Klein Patents notifying identified infringers in Nebraska of their infringement, or inquiring of potential infringers identified in Nebraska of their potential infringement.

344. On information and belief, the Cease & Desist Order issued by Defendants Bruning, Cookson, and Lopez was without basis in law.

345. On information and belief, the Cease & Desist Order issued by Defendants Bruning, Cookson, and Lopez was issued without reasonable investigation.

346. On information and belief, the Cease & Desist Order issued by Defendants Bruning, Cookson, and Lopez was issued without a hearing.

347. On information and belief, the regulation of the practice of law is reserved to the Nebraska Supreme Court.

348. On information and belief, Defendants Bruning, Cookson and/or Lopez, or persons acting at their direction or under their control, do not have the authority to regulate law firm conduct or regulate the practice of law within the state of Nebraska.

349. On and information and belief, the practice of law in this Court, and the admission to practice *pro hac vice* before this Court, or any other federal district court are governed by the rules and decisions of such Court.

350. On and information and belief, Defendants Bruning, Cookson, and/or Lopez, or persons acting at their direction or under their control, do not have authority to direct or regulate the practice of law before this Court, or to determine which attorneys are permitted to practice before this Court.

351. On information and belief, the Cease & Desist Order issued by Defendants Bruning, Cookson, and Lopez, deprived and continues to deprive Intervenor-Plaintiff MPHJ and its exclusive licensees of its right to choice of counsel in violation of at least:

- (a) the First Amendment to the U.S. Constitution;
- (b) the Fifth Amendment to the U.S. Constitution;
- (c) the Fourteenth Amendment to the U.S. Constitution;
- (d) Title 35, U.S. Code; and
- (e) Article VI, Clause 2 of the U.S. Constitution (“the Supremacy clause”).

**PRAYER FOR RELIEF**

WHEREFORE, Intervenor-Plaintiff respectfully demands judgment for itself and against Defendants as follows:



**PRAYER FOR RELIEF – COUNT I**

A. A declaration that neither Intervenor-Plaintiff MPHJ, its exclusive licensees, nor their counsel acting on their behalf, have violated Nebraska Consumer Protection Act, NEB. REV. STAT. § 59-1601 *et seq.* (Reissue 2010, Supp. 2012).

B. A declaration that neither Intervenor-Plaintiff MPHJ, its exclusive licensees, nor their counsel acting on their behalf, have violated The Uniform Deceptive Trade Practices Act, NEB. REV. STAT. § 87-301 *et seq.* (Reissue 2008, Supp. 2010).

C. A declaration that neither Intervenor-Plaintiff MPHJ, its exclusive licensees, nor their counsel acting on their behalf, have violated any federal law in sending the First, Second or Third Letters.

D. Such preliminary and permanent injunctive relief as Intervenor-Plaintiff may show itself to be entitled.

E. Such other and further relief at law or in equity as the Court deems just and proper.

**PRAYER FOR RELIEF – COUNT II**

F. An order enjoining Defendants Bruning, Cookson, and Lopez, and any of their authorized agents or representatives in their official capacity from enforcing the Cease & Desist Order provided in the July 18 Nebraska AG Letter with respect to Farney Daniels PC, or specific attorneys in that Firm, or otherwise admitted by this Court to represent MPHJ or its exclusive licensees in any case filed now, or later filed in federal district court.

G. An order enjoining Defendants Bruning, Cookson, and Lopez, and any of their authorized agents or representatives from enforcing in their official capacity the Cease and Desist Order provided in the July 18 Nebraska AG Letter with respect to Farney Daniels PC, or

specific attorneys in that Firm, from representing MPHJ or its exclusive licensees in the sending of letters related to their Patents to parties in the State of Nebraska, or to companies outside the State of Nebraska who may also have operations in Nebraska.

H. Such preliminary and permanent injunctive relief as Intervenor-Plaintiff may show itself to be entitled.

I. Such other and further relief at law or in equity as the Court deems just and proper.

#### **JURY DEMAND**

J. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Intervenor-Plaintiff demands a trial by jury on all issues triable as such.

#### **PLACE OF TRIAL**

Pursuant to NE Civ. R. 40.1(b), Intervenor-Plaintiff hereby requests that trial of this case take place in Omaha, Nebraska.

October 8, 2013

MPHJ TECHNOLOGY INVESTMENTS,  
LLC, inclusive of its subsidiaries,  
Intervenor-Plaintiff

By: /s/ W. Bryan Farney \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served November 8, 2013, with a copy of this document via the Court's CM/ECF system.

/s/ W. Bryan Farney  
W. Bryan Farney