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MY NEMESIS, LLC, a California limited liability company

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

PATENT

MY NEMESIS, LLC, a California limited liability company,

Plaintiff,

vs.

Turtle Beach Corporation, a Nevada domestic corporation, and Does 1 to 100;

Defendants.

Case No.

**COMPLAINT FOR JUDGMENT OF
INFRINGEMENT OF PATENT
8,055,004 AND FOR TEMPORARY
AND PERMANENT INJUNCTIONS**

DEMAND FOR JURY TRIAL

MY NEMESIS, LLC, herein after referred as ("MY NEMESIS") a California limited liability company, by its undersigned attorney, for its Complaint ("Complaint") against Turtle Beach Corporation, hereinafter referred as ("TBC") a Nevada domestic corporation, and Does 1 to 100, alleges on personal knowledge as to its own acts and on information and belief as to the actions of others, as follows:

THE PARTIES

1. Plaintiff MY NEMESIS, LLC is a limited liability company registered at California and located at 334 Santana Row, Suite 342, San Jose, CA 95128.

2. Upon information and belief, the Defendant Turtle Beach Corporation is a Nevada Domestic Corporation with NV Business ID as NV20101413903 which has its principal place of business located at 701 S Carson Street, Suite 200, Carson City, NV 89701 and is headquartered in California at 12220 Scripps Summit Drive, Suite 100 San Diego, CA 92131.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. Upon information and belief, TBC is subject to personal jurisdiction by this Court. TBC has committed such purposeful acts and/or transactions in the State of California that it reasonably knew and/or expected that it could be haled into a California court as a consequence of such activity. TBC makes, uses, and/or sells infringing products within the Northern District of California and has a continuing presence and the requisite minimum contacts with the Northern District of California, such that this venue is a fair and reasonable one.
5. Upon information and belief, TBC has transacted and, at the time of the filing of this Complaint, is continuing to transact business within the Northern District of California.
6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) because a substantial part of the events giving rise to claims occurred in the Northern District of California.

BACKGROUND

- 1 7. On November 8, 2011 United States Patent No. 8,055,004 (“the ‘004 patent”)
2 entitled “FIBER OPTIC EARPIECE TO REDUCE RADLATION TRANSMITTED
3 TO A CELL PHONE USER” was duly and legally issued to the inventors and
4 Amit J. Ronen and Alon Konchitsky. (Exhibit A, the ‘004 Patent)
5
- 6 8. MY NEMESIS, the Plaintiff acquired ownership interest of the said ‘004 patent
7 from the inventors/assignors Admit J. Ronen and Alon Konchitsky. The Plaintiff
8 is the owner of any and all rights, title and interest over the ‘004 patent (patent-
9 in-suit). (Exhibit B – U.S. Patent Assignments)
10
- 11 9. The ‘004 patent pertains to wireless phone technology. More particularly, the
12 invention relates to a protective, radiation free earpiece to protect the user from
13 RF energy radiation emanating from a phone apparatus and to provide an
14 enhanced, high-quality communication signal between the cell phone and an
15 earpiece. Claimed embodiments include an earpiece using optical fiber that
16 shields the human brain from radio frequency radiation generated by wireless
17 phones and similar radio devices. Claimed embodiments prevent unwanted
18 exposure to potentially harmful radiation and provide an enhanced
19 communication path between a cell phone and ear-piece.
20
- 21 10. According to 35 U.S.C. 154(a)(1), ownership of a patent gives the patent owner
22 the right to exclude others from making, using, offering for sale, selling, or
23 importing into the United States the invention claimed in the patent. Therefore
24 the Plaintiff in this instant action has the right to exclude others from
25 manufacturing, selling, using and importing the claimed devices and methods in
26 United States of U.S. patent 8,055,004 (“the ‘004 patent”, or “patent-in-suit”).
27
28

1 11. Defendant TBC is an audio technology company with expertise and experience
2 in commercializing, and marketing products across a range of markets.
3 Defendant is a worldwide provider of headsets for use across multiple
4 platforms, including video game and entertainment consoles, handheld
5 consoles, personal computers, tablets and mobile devices.
6

7 12. One of the products of the Defendant TBC is sometimes sold as "Turtlebeach's
8 XP510" (hereinafter referred as "the infringing product") through ecommerce
9 websites and through Defendant TBC's own Online Shopping portal to many
10 countries including the United States.
11

12 13. The infringing product is purported and or advertised to provide various features
13 such as an audio advantage with interference-free, Dual-Band Wi-Fi Wireless
14 and Dual-Stage Audio Processing for immersive Dolby Digital Surround Sound.
15 The infringing product is further advertised to stream music to a user's headset
16 via Bluetooth, to enjoy theater audio with the new movie preset and allows
17 taking a user's headset anywhere connected to user's phone, tablet or portable
18 game system. The infringing product uses a rechargeable battery.
19
20

21 14. The infringing product is advertised to have a Standard USB Port, 20Hz - 20kHz
22 Speaker Frequency Response, Compatible with Mobile Devices, Rechargeable
23 Headset Power and Rechargeable Battery with 15 hours life, Bluetooth/2.5mm
24 jack (Xbox 360) Console Chat Connection, Digital Signal Processor for EQ
25 Presets, Master and Mic Monitor Volume Controls with Audio Mute functionality,
26 auto shut down 10 minutes after no signal, 50mm speakers, 2.4/5GHz Digital
27 Wireless Carrier Transmission, Removable Microphone Design, Fabric Earpads
28

1 with Foam Cushioning, 2.5mm to 3.5mm stereo cable Mobile Device
2 Connection, Over Ear Earcup Design, 2.5mm jack to controller, Xbox 360 Chat
3 Connection, PS3 Mic Connection based on Bluetooth, Console with Xbox One,
4 PS4, Xbox 360, PS3, Mobile, Optical Output, and USB Transmitter Power.
5

6 15. According to the Defendant's advisements and marketing literature, the
7 infringing product's USB Transmitter Power comes with 30ft Wireless Range, 3ft
8 Cable Length, Surround Sound Processing, Bluetooth/2.5mm jack (Xbox 360),
9 RF/w Channel-hopping, 2.5mm jack for Xbox 360 Chat, Amplified Power, 5.1
10 Dolby Surround Sound for Audio output, and Optical Audio, Bluetooth, 3.5mm
11 stereo (Mobile) for Audio input.
12

13 16. Defendant's infringements specifically pertain to Claim 1 of the '004 patent.
14 Defendant used a copy cat approach in manufacturing the infringing product
15 using the features claimed in the '004 patent and to give an impression of a
16 new product sometimes called "Turtlebeach's XP510."
17

18 17. The infringing product adopts a removable microphone assembly and an
19 earpiece assembly wherein the microphone assembly receives an analog sound
20 signal with a pitch shifter acting as a parallel to serial converter for the
21 microphone along with a signal processing unit which is used to convert a serial
22 to parallel data converter. Thus, the infringing product comprises a detachable
23 microphone assembly, a pitch shifter and a signal processing unit for the usage
24 similar to the claim limitations of the '004 patent.
25
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18. Below are the screenshots of the infringing product and the accompanying process that comprises a microphone assembly (red rectangle) used with an earpiece assembly (green rectangle) wherein the microphone is used to receive analog sound signal:

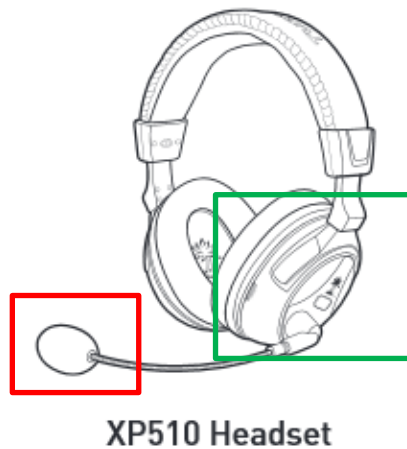


FIG. 1

Mic Tab

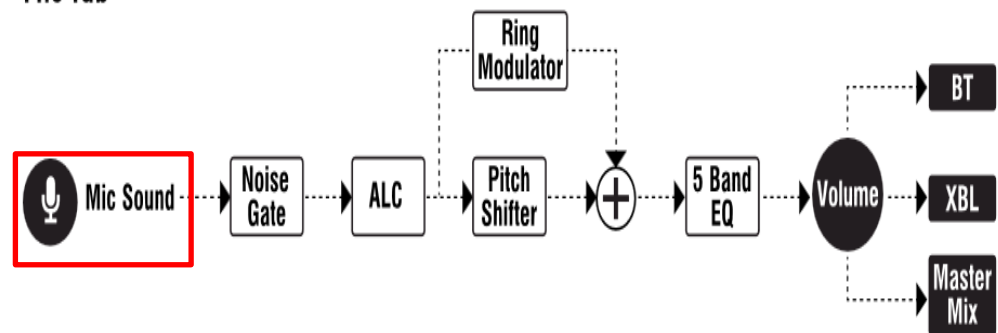


FIG. 2

19. Below is the screenshot of the infringing product comprising a pitch shifter used as a parallel to serial converter similar to the claim limitations of the '004 patent:

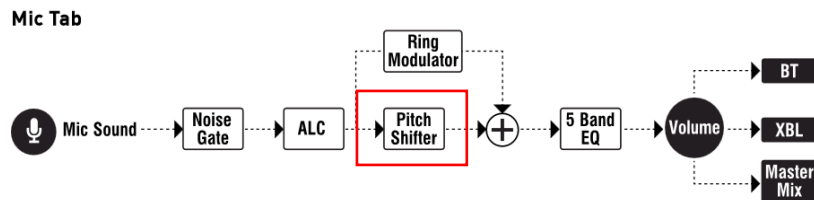


FIG. 3

20. Below is the screenshot of the infringing product comprising a signal processing unit that acts as a serial to parallel converter similar to the claim limitations of the '004 patent:

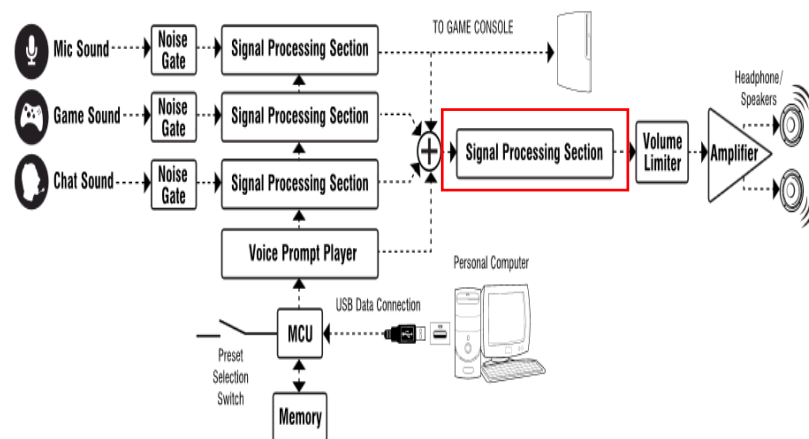


FIG. 4

21. The infringing product further includes an action enhancer that amplifies intense sounds from weapons and explosions, a voice amp that amplifies chat volume, a ring modulator that acts as optical modulator, and a volume limiter comprising a secondary memory chip which is used to store preset instructions. These features are derived from an amplifier, optical modulation, and second memory chip comprised in the microphone assembly related to the claim limitations of the '004 patent. The infringing product also comprises a digital to analog conversion similar to the claims limitations of the '004 patent.

22. Below are marketing screenshots of the infringing product, the infringing product comprising a ring modulator that acts as optical modulator and a volume limiter comprising a secondary memory chip which is used to store preset instructions, all similar to the claim limitations of the '004 patent:

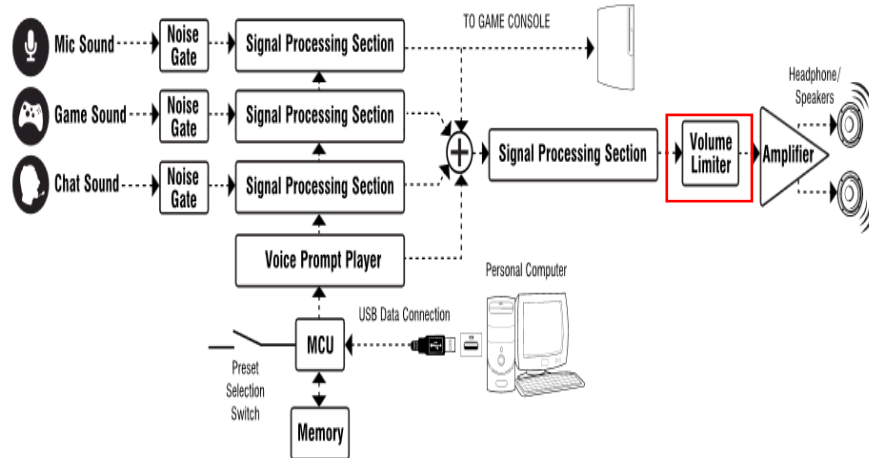


FIG. 5

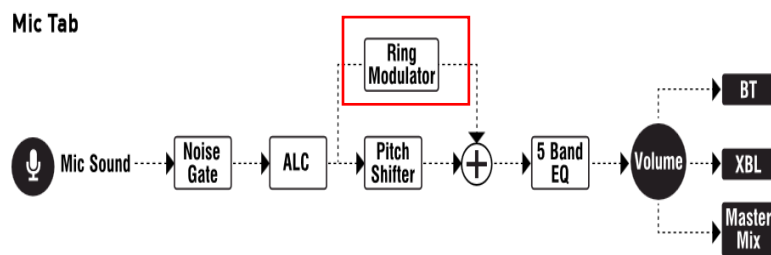


FIG. 6

23. The infringing product comprises an ALC (analog to digital converter) (as shown in Fig. 7), digital optical cable (as shown in Fig. 8), an optical medium (as shown in Fig. 7), and a signal processing unit comprising a DAC Converter as a means to input a signal into the microphone component of a phone including a memory

chip and a means for demodulation (as shown in Fig. 9). These features/aspects of the infringing product are similar to the means of optical modulation and conversion mechanisms embodied in the claim limitations of the '004 patent.

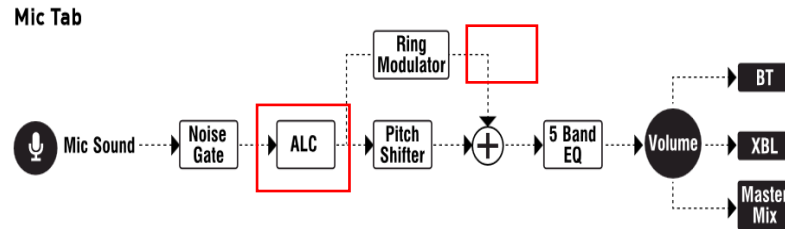


FIG. 7

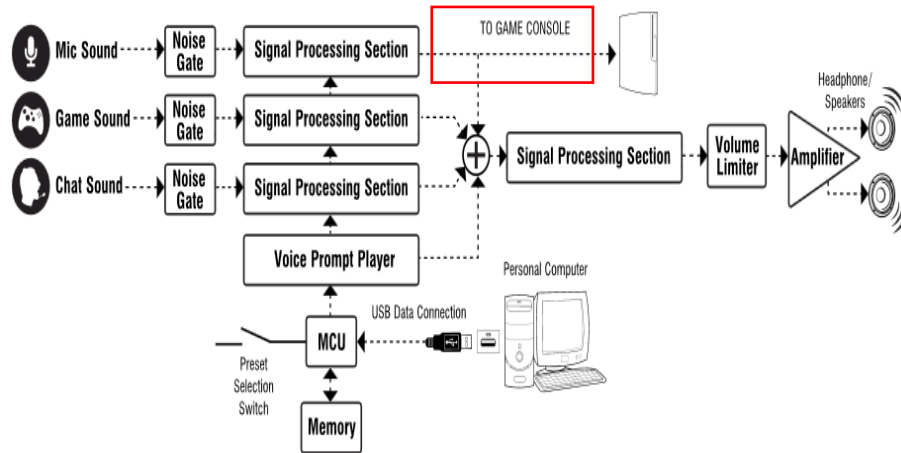


FIG. 8

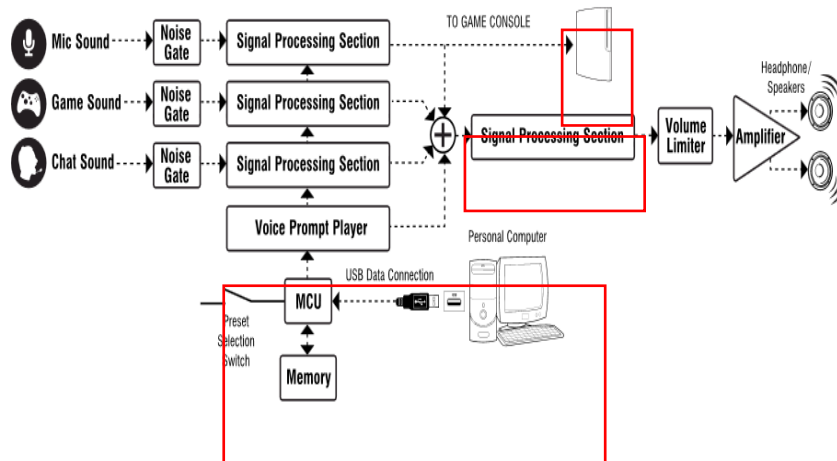


FIG. 9

24. The infringing product does not emit RF transmission as the Exposure Information of the infringing product states that “No SAR Certificate” is required. It means that the infringing product shields human brain from harmful effect of RF/EM. Since there is no need of a Specific Absorption Rate Certification, it is clear that the infringing product shields human brain from harmful effect of RF/EM similar to the claim limitations of the ‘004 patent (Exhibit C).
25. The earpiece assembly of the infringing product comprises a microphone; a means of accepting a Speaker Out signal from a phone; an amplifier; and a speaker similar to the claim limitations of ‘004 patent as shown below:

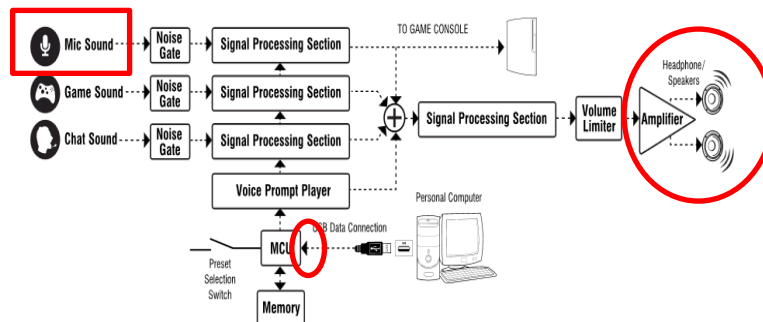


FIG. 10

26. The earpiece assembly of the infringing product further includes an analog to optic converter; an optic to analog converter; and a second analog to optic converter similar to the claim limitations of '004 patent along with the other limitations in terms of an optical fiber transmission medium and a connection assembly capable of entering a phone or a microphone in component. The infringing product earpiece assembly also has an optical TOSLINK digital audio input compatible with 48 kHz digital audio stream and S/PDIF Digital Audio optical output systems in line with the claim limitations of '004 patent along with a second optical fiber transmission medium; and a second optic to analog converter as given in the TBC specification as shown below:

Specifications

- Audio Connection: Digital Optical
- Headset Power: Rechargeable Battery
- Transmitter Power: USB
- Headset Connection: 2.4/5 GHz
- Dual-Band Wifi Wireless

FIG. 11

27. The patent infringement arising from Defendant's Turtlebeach's XP510 is further delineated in a comparative analysis and diagrammatic representation which maps the Defendant's infringing product to the limitations of claim 1 of the '004 patent. (Exhibit D)

28. Plaintiff My Nemesis, herein by virtue of the ownership granted by the assignor(s) of the '004 patent, claims damages for infringement for the reason that the Defendant has not acquired any consent/license/assignment/ownership of the '004 patent.

Cause of Action

(Claim for Patent Infringement against TBC)

29. Plaintiff hereby restates and re-alleges the allegations set forth in the above paragraphs and incorporates them by reference.

30. My Nemesis is the owner of the '004 patent with the exclusive right to enforce the '004 patent against infringers, recover for past, present, future infringements, violations thereof and collect damages for all relevant times, including the right to prosecute this action.

31. My Nemesis is informed and believes, and based thereon alleges, that TBC has made, used, offered to sell, and/or sold within the United States, and/or imported into the United States the infringing product that infringe the claims of the '004 patent, literally and/or under the doctrine of equivalents, in violation of statutory rights of the plaintiff My Nemesis.

32. My Nemesis is informed and believes, and based thereon alleges, that Defendant TBC was aware of the '004 patent at the time it engaged in its directly and indirectly infringing activities and, in any event, was aware of the '004 patent at least as early as the service date of this complaint.

33. Moreover, on information and belief, the Defendant TBC manufactured, sold and/or offered for sale and/or imported the infringing product, Turtlebeach's XP510, and is continuing to do so, to customers and others knowing the same to infringe the '004 patent, and, through its marketing, packaging, product literature,

1 user manuals, technical support, and other published and electronic materials
2 and resources related to the infringing product Turtlebeach's XP510, actively
3 encouraged and specifically intended its customers and others to use the
4 Turtlebeach's XP510, in the United States in a manner that TBC knew to be
5 infringing, and such customers and others actually directly infringed the '004
6 patent.
7

8 34. As a result of TBC's unlawful infringement of the '004 patent, My Nemesis has
9 suffered and will continue to suffer damage. My Nemesis is entitled to recover
10 from Defendant TBC, the damages adequate to compensate for such
11 infringement, which have yet to be determined.
12

13 35. Upon information and belief, Defendant TBC has acted and is continuing to act
14 despite an objectively high likelihood that its actions constituted direct and/or
15 indirect infringement of a valid patent, and, on information and belief, TBC knew
16 or should have known of that objectively high risk.
17

18 36. TBC's acts herein constitute willful and deliberate infringement, entitling My
19 Nemesis to enhanced damages under 35 U.S.C. § 284 and reasonable attorney
20 fees and costs. TBC's acts of infringement of the '004 patent herein have been
21 made, and/or are being made at the time of service of this complaint, with full
22 knowledge about the rights of My Nemesis in the patent.
23

24 37. TBC's acts of infringement have caused and will continue to cause irreparable
25 harm to My Nemesis unless and until enjoined by this Court.
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PRAYER FOR RELIEF

WHEREFORE, MY NEMESIS requests that the Court enter judgment in its favor and against TBC on its Complaint with prejudice as follows:

- A. That TBC be held to have infringed upon the '004 patent.
- B. That a temporary and permanent injunction be granted pursuant to 35 U.S.C. § 283, enjoining TBC, and each of its agents, servants, employees, principals, officers, attorneys, successors, assignees, and all those in active concert or participation with TBC, including related individuals and entities, customers, representatives, OEMs, dealers, and distributors from further acts of (1) infringement, (2) contributory infringement, and (3) active inducement to infringe with respect to the claims of the '004 patent.
- C. That TBC, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the '004 patent, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the '004 patent during the life of the claims of the '004 patent, without the express written authority of My Nemesis.

- 1 D. That TBC be directed to fully compensate My Nemesis for all damages
2 attributable to TBC's infringement of the '004 patent in an amount according
3 to proof at trial.
4
- 5 E. That this case be deemed exceptional.
6
- 7 F. That all damages awarded be trebled.
8
- 9 G. That TBC be ordered to deliver to MY NEMESIS, for destruction of all
10 products that infringe the '004 patent, at My Nemesis' option.
11
- 12 H. That TBC be required to account for all gains, profits, advantages, and
13 unjust enrichment derived from its violation of law.
14
- 15 I. That MY NEMESIS, be awarded reasonable attorneys fees.
16
- 17 J. That MY NEMESIS, be awarded the costs of suit and an assessment of
18 interest.
19
- 20 K. That MY NEMESIS have such other, further and different relief as the Court
21 deems proper.
22

23 DATED: April 14, 2017

24 By /s/ Steven A. Nielsen

25 Steven A. Nielsen
26 Attorneys for Plaintiff

27 MY NEMESIS, LLC, a California limited liability
28 company

JURY DEMAND

Pursuant to Fed.R. Civ. P. 38(b), MY NEMESIS, LLC demands a trial by jury of all issues triable of right by jury.

By /s/ Steven A. Nielsen
Steven A. Nielsen

Attorneys for Plaintiff

MY NEMESIS, LLC, a California limited liability company