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8 Attorneys for Plaintiff Pelco, Inc.

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 Pelco, Inc., a Delaware Corporation,

12 Plaintiff,

13 v.

14 CRIMINAL ACTIVITY  
15 SURVEILLANCE, LLC a Delaware  
Company,

16 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

1                                    **COMPLAINT FOR DECLARATORY JUDGMENT**

2            Plaintiff Pelco, Inc. (“Pelco”), by and through its attorneys, for its complaint  
3 against Defendant Criminal Activity Surveillance LLC (“CAS”), allege as follows:

4                                    **THE PARTIES**

5            1.        Pelco, Inc. is a corporation organized and existing under the laws of  
6 Delaware with its principal place business at 3500 Pelco Way, Clovis, California  
7 93612.

8            2.        Pelco’s facilities in Clovis, California employ over 1,450 people and  
9 serve as the operational headquarters for Pelco’s business.

10          3.        CAS is a Delaware limited liability company with a principal place of  
11 business at 6136 Frisco Square Boulevard, Suite 385, Frisco, Texas 75034.

12          4.        The President of CAS, Mr. Matt Vella, primarily works out of an office  
13 located in Newport Beach, California. On information and belief, Mr. Vella also  
14 resides in the State of California. Mr. Vella is also the President of Acacia Research  
15 Group LLC (“ARG”) and the President of Acacia Research Corporation (“ARC”).

16          5.        The Chief Financial Officer of CAS, Mr. Clayton Haynes, also primarily  
17 works out of an office located in Newport Beach, California. On information and  
18 belief, Mr. Haynes also resides in the State of California. Mr. Haynes is also the CFO  
19 of ARG and the CFO of ARC.

20          6.        The Senior Vice President of CAS, Ms. Tisha Stender, is also a Senior  
21 Vice-President of Licensing for ARG. On information and belief, Ms. Stender also  
22 maintains an office in California.

23          7.        The CEO of CAS, Mr. Marvin Key, is also the CEO of ARG and the  
24 Senior Vice President of ARC. On information and belief, Mr. Key also maintains an  
25 office in California.

26          8.        On information and belief, CAS has no board members other than Mr.  
27 Vella, Mr. Haynes, Ms. Stender and Mr. Key.

28          9.        On information and belief, CAS has no full-time employees.

1           10. CAS is a wholly-owned subsidiary of ARG which is a wholly owned  
2 subsidiary of ARC. ARG's headquarters and ARC's office is located at 500 Newport  
3 Center Drive, 7th Floor, Newport Beach, CA 92660.

4           11. On information and belief, CAS is currently the exclusive licensee of  
5 Reissue Patent No. RE42,690 ("the '690 Patent") and holds all substantive rights,  
6 including the exclusive right to enforce and collect damages for past, present and  
7 future infringement of the '690 Patent.

8           12. On information and belief, CAS's sole source of revenue is from the  
9 licensing of the '690 Patent.

10          13. On information and belief, CAS expects to generate revenue from  
11 licensing the '690 Patent to Pelco, whose principal business operations and  
12 headquarters are located in the State of California.

13          14. CAS has accused products of infringing the '690 patent which are  
14 manufactured, sold and/or offered for sale in California.

15                                   **JURISDICTION AND VENUE**

16          15. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C.  
17 §§ 2201 and 2202, for a declaration pursuant to the patent laws of the United States,  
18 35 U.S.C. § 1 et seq., that the '690 Patent is not infringed by Pelco and/or that the  
19 '690 Patent is invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

20          16. This Court has subject matter jurisdiction under 28 U.S.C. § 1331  
21 (federal question) and 28 U.S.C. § 1338(a) (action arising under an Act of Congress  
22 relating to patents). This Court has personal jurisdiction over CAS because it has  
23 constitutionally sufficient contacts with California so as to make personal jurisdiction  
24 proper in this Court. CAS's business operations are directed to companies located in  
25 California; it has accused products of infringing the '690 Patent that are made, sold,  
26 and/or offered for sale in California; its board members maintain offices in California;  
27 and its parent corporations either maintain offices or are headquartered in California.

28          17. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b),

(c) and 1400(b).

### **GENERAL ALLEGATIONS**

18. On September 15, 2011, CAS filed a Complaint in the Eastern District of Texas (the “Texas Litigation”) alleging, *inter-alia*, that Pelco’s products infringe one or more claims of the ‘690 Patent. The complaint further alleged that Pelco’s products and activities induce others, including purchasers and users of at least some configurations of Pelco’s security systems with its own video analytics or incorporating video analytics of ObjectVideo to infringe the ‘690 Patent.

19. On March 12, 2012, CAS served its initial infringement contentions in the Texas litigation against Pelco. In those infringement contentions, CAS alleged that Pelco’s Object Left Behind and Tailgating algorithms infringe claims 6, 24 and 29 of the ‘690 Patent.

20. Since the filing of CAS’s complaint, CAS’s counsel and experts have reviewed Pelco’s source code on three separate occasions in Chicago, Illinois.

21. At the time of the filing of the Texas Litigation, CAS had no rights in the ‘690 Patent because ARC failed to assign its exclusive license to the ‘690 Patent to CAS. Accordingly, CAS lacked standing to institute the Texas Action. CAS cannot cure the lack of standing that existed at time of the filing of the Texas Action, and as such, the Texas Action must be dismissed.

22. By virtue of CAS’s actions, Pelco is in reasonable apprehension of an imminent patent infringement suit relating to the ‘690 Patent.

23. Pelco denies that it infringes any valid claim of the ‘690 Patent.

24. An actual and justiciable controversy exists between Pelco and CAS concerning whether Pelco and/or its customers infringe any valid claim of the ‘690 Patent. Pelco now seeks a declaratory judgment that it does not infringe any valid claim of the ‘690 Patent and/or that the claims of the ‘690 Patent are invalid.

**FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT OF  
NONINFRINGEMENT OF THE '690 PATENT**

25. Pelco incorporates by reference paragraph 1 through 24 above as though fully set forth herein.

26. By virtue of CAS's complaint, infringement contentions, and letters, an actual controversy exists between Pelco and CAS as to whether Pelco's products and/or one or more Pelco customers infringe the '690 Patent.

27. Without limiting the generality of the foregoing and by way of example only, products sold in the United States that include the accused Pelco's software do not meet, either literally or under the doctrine of equivalents, at least the following claim elements of claims 6, 24 and 29 of the '690 patent: (a) "sampling a relative movement ... of the individual with respect to a moved, movable or moving object"; (b) "electronically comparing the sampled relative movement of the individual with known characteristics of movements that area indicative of an individual having criminal intent"; (c) "determining a level of criminal intent of the individual based on the compared sampled movement of the individual"; and (d) generating a signal indicating that a predetermined level of criminal intent is present if the determined level of criminal intent of the individual establishes that the predetermined level of criminal intent is present."

28. Pelco's software cannot link an Object Left Behind (or Abandoned Object) event with a Tailgating (or "Enters/Exit Counting" or "Object Counting") event using a logical AND operation.

29. CAS has not configured one of Pelco's products in the allegedly infringing manner.

30. For these and other reasons, Pelco is not directly infringing, contributorily infringing, or actively inducing others to infringe valid claims of the '690 patent.

31. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of

1 respective rights of the parties with respect to Pelco's non-infringement of the '690  
2 patent is necessary and appropriate under the circumstances.

3 **FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT OF**  
4 **INVALIDITY OF THE '690 PATENT**

5 32. Pelco incorporates by reference paragraph 1 through 31 above as though  
6 fully set forth herein.

7 33. By virtue of CAS's complaint, infringement contentions, and letters, an  
8 actual controversy exists between Pelco and CAS as to whether the claims of the '690  
9 Patent are valid.

10 34. Each claim of the '690 patent is invalid and void because it fails to  
11 comply with one or more of the conditions and requirements of the patent laws,  
12 including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112, and/or the rules,  
13 regulations, laws, and decisions pertaining thereto for, at least, the reasons set forth in  
14 Pelco's preliminary invalidity contentions, which were served on CAS in the Texas  
15 Litigation on July 18, 2012.

16 35. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of  
17 respective rights of the parties with respect to whether each claim of the '690 Patent is  
18 invalid and void is necessary and appropriate under the circumstances.

19 **PRAYER**

20 WHEREFORE, Pelco requests entry of judgment in its favor and against CAS  
21 as follows:

22 a. For a declaration that Pelco does not infringe any valid claim of the  
23 '690 Patent;

24 b. For a declaration that each claim of the '690 patent is invalid and  
25 void because it fails to comply with one or more of the conditions and requirements of  
26 the patent laws, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112;

27 c. Finding the case exceptional and awarding Pelco its attorneys fees  
28 pursuant to 35 U.S.C. § 285, 28 U.S.C. § 1927, and the Court's inherent powers; and

d. For such other relief as the Court may deem just and proper.

**Demand for Jury Trial**

Pursuant to Federal Rule of Civil Procedure 38(b), Pelco hereby demands a trial by jury of all issues so triable in this action.

DATED: February 22, 2013

JENNER & BLOCK LLP

/s/ Brent Caslin

Brent Caslin

Attorney for Pelco, Inc.