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

MOTIVE TECHNOLOGIES, INC.

Plaintiff,

v.

FLEET CONNECT SOLUTIONS LLC,

Defendant.

CASE NO. : 3:22-cv-6083

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
AND INVALIDITY**

DEMAND FOR JURY TRIAL

Plaintiff Motive Technologies, Inc. (“Plaintiff” or “Motive”) for its Complaint against Defendant Fleet Connect Solutions LLC (“FCS” or “Defendant”), by and through its undersigned counsel, hereby alleges as follows:

1 **NATURE OF THE ACTION**

2 1. This is an action for declaratory judgment under the Declaratory Judgment Act,
3 28 U.S.C. § 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* Motive
4 seeks declarations that U.S. Patent Nos. 6,549,583 (“583 Patent”); 6,633,616 (“616 Patent”);
5 7,092,723 (“723 Patent”); 7,206,837 (“837 Patent”); and 7,260,153 (“153 Patent”) are invalid
6 and are not and have not been infringed by Motive or its customers. Taken together, the
7 foregoing patents are referred to herein as the “Patents-in-Suit.”

8 2. An immediate, real, and justiciable controversy exists between Motive and FCS
9 as to whether the Patents-in-Suit are invalid and have been infringed.

10 **THE PARTIES**

11 3. Plaintiff Motive Technologies, Inc. is a Delaware corporation, with its primary
12 office located at 55 Hawthorne Street, Suite 400, San Francisco, California 94105.

13 4. Upon information and belief, Defendant Fleet Connect Solutions LLC (“FCS”) is
14 a limited liability company formed under the laws of Texas.

15 **JURISDICTION AND VENUE**

16 5. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
17 and under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

18 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
19 §§ 1331, 1338(a), 2201(a) and 2202.

20 7. The Court also has personal jurisdiction over FCS because FCS has purposely
21 conducted its patent enforcement activities in this District and towards Motive, a resident of this
22 District. Defendant’s enforcement efforts have included sending a letter to Motive alleging
23 infringement of several of FCS’s patents, including three of the Patents-in-Suit; communications
24 with counsel representing Motive regarding licensing FCS’s patents, including three of the
25 Patents-in-Suit; and filing lawsuits against Motive’s customers alleging that Motive products,
26 developed, offered for sale and sold in this District and elsewhere infringe the Patents-in-Suit.

1 8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and
2 1391(c).

3 **THE PATENTS-IN-SUIT**

4 9. On April 15, 2003, the United States Patent and Trademark Office (“USPTO”)
5 issued the ’583 Patent, entitled “Optimum Phase Error Metric for OFDM Pilot Tone Tracking in
6 Wireless LAN.” James A. Crawford is listed as the sole inventor on the face of the ’583 Patent.
7 The ’583 Patent expired on or about February 21, 2021. A copy of the ’583 Patent is attached
8 hereto as Exhibit 1 and incorporated herein by reference.

9 10. On October 14, 2003, the USPTO issued the ’616 Patent, entitled “OFDM Pilot
10 Tone Tracking for Wireless LAN.” James A. Crawford is listed as the sole inventor on the face
11 of the ’616 Patent. The ’616 Patent and the ’583 Patent are related. Specifically, the application
12 that led to the ’616 Patent was a continuation-in-part of the application that led to the ’583
13 Patent. The ’616 Patent expired on or about February 21, 2021. A copy of the ’616 Patent is
14 attached hereto as Exhibit 2 and incorporated herein by reference.

15 11. On August 15, 2006, the USPTO issued the ’723 Patent, entitled “System and
16 Method for Communicating Between Mobile Units.” Richard Himmelstein is listed as the sole
17 inventor on the face of the ’723 Patent. The ’723 Patent expired on or about November 22,
18 2020. A copy of the ’723 Patent is attached hereto as Exhibit 3 and incorporated herein by
19 reference.

20 12. On April 17, 2007, the USPTO issued the ’837 Patent, entitled “Intelligent Trip
21 Status Notification.” Doree Duncan Seligmann is listed as the sole inventor on the face of the
22 ’837 Patent. The term of the ’837 Patent will end on or about September 12, 2024. A copy of
23 the ’837 Patent is attached hereto as Exhibit 4 and incorporated herein by reference.

24 13. On August 21, 2007, the USPTO issued the ’153 Patent, entitled “Multi Input
25 Multi Output Wireless Communication Method and Apparatus Providing Extended Range and
26 Extended Rate Across Imperfectly Estimated Channels.” Daniel Nathan Nissani (Nissensohn) is
27 listed as the sole inventor on the face of the ’153 Patent. The term of the ’153 Patent will end on
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1 or about April 22, 2025. A copy of the '153 Patent is attached hereto as Exhibit 5 and
2 incorporated herein by reference.

3 14. Upon information and belief, FCS owns all substantial rights, title and interest in
4 and to the Patents-in-Suit.

5 **FACTUAL BACKGROUND**

6 15. Founded in 2013 and based in San Francisco, Motive, formerly known as Keep
7 Truckin, Inc. (“Keep Truckin”), is a leader in fleet management technology and the leading
8 provider of artificial intelligence-powered hardware and software designed to connect and
9 automate the operations of businesses that power the physical economy. Motive’s cutting-edge
10 hardware and cloud-based software help companies improve the safety and efficiency of their
11 operations. Motive offers an integrated fleet management system spanning video-based driver
12 safety, Electronic Logging Device (ELD) compliance, GPS tracking, dispatch, and fuel and
13 maintenance to meet the needs of customers ranging from small trucking companies to Fortune
14 500 enterprises. Motive currently has over 2,500 employees.

15 16. Motive’s products are offered for sale through the company’s website,
16 <https://gomotive.com/>.

17 17. Motive is an innovator in its industry and is the owner of U.S. Patent No.
18 10,621,873, which issued on April 14, 2020 and is entitled, “Systems and Methods for
19 Generating Geofences.”

20 18. On August 27, 2020, Mr. Daniel Mitry sent a letter on behalf of FCS to Keep
21 Truckin (now Motive) (“the FCS Letter”) at Keep Truckin’s office in San Francisco. A copy of
22 the FCS Letter is attached hereto as Exhibit 6. The FCS Letter identified Mr. Mitry as a member
23 of FCS. The FCS Letter did not identify a mailing address or corporate address for FCS. The
24 office phone number identified for Mr. Mitry includes an area code of 212, a New York City
25 area code.

26 19. The FCS Letter alleged that FCS is the assignee of sixteen patents, including three
27 of the Patents-in-Suit. The FCS Letter further stated FCS “believes that KeepTruckin is making,
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1 using, selling and/or offering for sale, as well as instructing KeepTruckin’s customers to use,
2 products and/or services using technology claimed in the [identified sixteen patents].” See Ex. 6.

3 20. Attached to the FCS Letter were claim charts for each of the sixteen patents,
4 purporting to show that Keep Truckin’s products and/or services infringe each patent.

5 21. On September 25, 2020, Keep Truckin/Motive responded to the FCS Letter
6 explaining that Keep Truckin/Motive did not believe it needed a license to the identified patents,
7 but agreed to look at any additional information that FCS could provide. On the same date, FCS
8 responded to Keep Truckin/Motive that FCS believed the information they had already provided
9 was sufficient, but offered to have a call with Keep Truckin/Motive.

10 22. Almost a year later, on September 24, 2021, FCS filed two lawsuits in the
11 Western District of Texas asserting ten of its patents against customers of Motive which are not
12 at issue here. See *Fleet Connect Solutions LLC v. Precision Drilling Corp.*, No. 6:21-cv-00987-
13 ADA (W.D. Tex.) (the “Precision Drilling Case”), and *Fleet Connect Solutions LLC v. Flying*
14 *Star Transport, LLC*, No. 6:21-cv-00988-ADA (W.D. Tex.) (the “Flying Star Case”)
15 (collectively, “First Customer Suits”). In each Complaint, FCS delineates the “KeepTruckin
16 Asset Tracking System, KeepTruckin Asset Gateway, KeepTruckin Asset Gateway Dashboard,
17 KeepTruckin Vehicle Gateway, KeepTruckin C-ELD, KeepTruckin GPS Tracking Application,
18 and the KeepTruckin app, and associated hardware, software, and functionality” as the “Accused
19 Instrumentalities.” See Second Amended Complaint, ECF No. 65, No. 6:21-cv-00987-ADA, at ¶
20 11; Amended Complaint, ECF No. 45, No. 6:21-cv-00988-ADA, at ¶ 13.

21 23. On December 17, 2021, Motive filed a declaratory judgement action in this
22 District against FCS seeking declarations that Motive does not infringe the ten patents asserted
23 by FCS in the First Customer Suits and that these patents are invalid. See *Keep Truckin, Inc. v.*
24 *Fleet Connect Solutions LLC*, No. 5:21-cv-09775-EJD (N.D. Cal.) (“First DJ Action”).

25 24. The First Customer Suits and First DJ Action are currently pending.

26 25. On August 23, 2022, FCS filed a lawsuit in the Eastern District of Texas asserting
27 all of the Patents-in-Suit at issue here against other customers of Motive, Heritage-Crystal Clean,
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1 LLC and AET Environmental, Inc., in connection with products provided by Motive to these
2 companies. *See Fleet Connect Solutions LLC v. Heritage-Crystal Clean, LLC, et al.*, No. 2:22-
3 cv-00327-JRG-RSP (E.D. Tex.) (the “Heritage-Crystal Case”). A copy of the Complaint from
4 the Heritage-Crystal Case is attached hereto as Exhibit 7.

5 26. The Complaint filed in the Heritage-Crystal Case delineates the “Asset Tracking
6 System, Asset Gateway, Asset Gateway Dashboard, Vehicle Gateway, C-ELD, GPS Tracking
7 Application, the Motive Driver (KeepTruckin) app, and associated hardware, software,
8 applications, and functionality associated with those products and solutions manufactured [by
9 Motive Technologies, Inc. f/k/a Keep Truckin, Inc.” as the “Accused Instrumentalities.” *See Ex.*
10 7 at ¶ 21.

11 27. The Complaint filed in the Heritage-Crystal Case further alleges that the Accused
12 Instrumentalities practice at least one claim of each of the Patents-in-Suit. *See Ex. 7* at ¶¶ 30-32,
13 39-42, 51-52, 60-61, and 74-75.

14 28. The Complaint filed in the Heritage-Crystal Case cites to and attaches as exhibits
15 printouts from Motive’s website, <https://gomotive.com/>. *See, e.g.*, Exhibit 7 at ¶ 25, and Exhibits
16 H, I and J to the Complaint.

17 **COUNT I**

18 **(Declaration of Non-Infringement of the ’583 Patent)**

19 29. Motive restates and realleges the allegations set forth in paragraphs 1 through 28
20 above and incorporates them by reference.

21 30. In the Complaint filed in the Heritage-Crystal Clean Case, FCS alleges that the
22 Defendants infringe at least Claim 1 of the ’583 Patent “by using, providing, supplying, or
23 distributing” Motive’s products and services to “perform a method of pilot phase error estimation
24 in an orthogonal frequency division multiplexed (OFDM) receiver.” *See Ex. 7* at ¶¶ 30-32.

25 31. Exemplary Claim 1 of the ’583 Patent recites:
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Limitation	Claim Language
1[Preamble]	A method of pilot phase error estimation in an orthogonal frequency division multiplexed (OFDM) receiver comprising:
1[a]	determining pilot reference points corresponding to a plurality of pilots of an OFDM preamble waveform; and
1[b]	estimating an aggregate phase error of a subsequent OFDM data symbol relative to the pilot reference points using complex signal measurements corresponding to each of the plurality of pilots of the subsequent OFDM data symbol and the pilot reference points;
1[c]	wherein the estimating step comprises performing a maximum likelihood-based estimation using the complex signal measurements corresponding to each of the plurality of pilots of the subsequent OFDM data symbol and the pilot reference points.

Ex. 1 at 14:50-65.

32. According to the Complaint filed in the Heritage-Crystal Clean Case, the Defendants allegedly infringe Claim 1 of the '583 Patent by using Motive's products and services to perform the claimed method. *See* Ex. 7 at ¶¶ 30-32.

33. Motive has not infringed and does not infringe any valid and enforceable claim of the '583 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, sale, and/or offer for sale of Motive's products and/or services.

34. Motive has not instructed its customers to use Motive's products and services, and Motive's customers have not used Motive's products and services, in a manner that infringes or has infringed any valid and enforceable claim of the '583 Patent.

35. By way of example, Motive's products and services do not satisfy at least limitation 1[c] of Claim 1.

36. All of the claims of the '583 Patent either recite limitations corresponding to limitation 1[c], or depend from a claim that recites this limitation. Dependent claims cannot be infringed if the independent claim from which they depend is not infringed. Therefore, Motive

1 does not infringe any claim of the '583 Patent for at least the same reason described above for
2 Claim 1.

3 37. There exists a substantial, immediate, and real controversy between Motive and
4 FCS regarding Motive's alleged infringement of the '583 Patent that warrants the issuance of a
5 declaratory judgment.

6 38. A judicial declaration is necessary and appropriate so that Motive may ascertain
7 its rights regarding the '583 Patent, including its rights to manufacture, use, offer to sell, sell,
8 and/or import from and/or to this judicial district its products and services.

9 39. Motive is entitled to a declaration that it has not and does not infringe the '583
10 Patent.

11 **COUNT II**

12 **(Declaration of Invalidity of the '583 Patent)**

13 40. Motive restates and realleges the allegations set forth in paragraphs 1 through 39
14 above and incorporates them by reference.

15 41. The '583 Patent is invalid at least under 35 U.S.C. § 102 and/or 35 U.S.C. § 103
16 because its claims are anticipated and/or rendered obvious by prior art. By way of example,
17 Claim 1 is invalid under 35 U.S.C. § 102 and/or 35 U.S.C. § 103 because it is anticipated and/or
18 rendered obvious in view of at least Korean Patent No. 1998-076494, U.S. Patent No. 6,618,352,
19 U.S. Patent No. 6,754,170 and the IEEE Std 802.11a-1999 Part 11: Wireless LAN Medium
20 Access Control (MAC) and Physical Layer (PHY) specifications: High-speed Physical Layer in
21 the 5GHz Band publication and standard.

22 42. Claim 1 of the '583 is also invalid under 35 U.S.C. § 112, first paragraph, for
23 lacking adequate and enabling written description of the recited inventions. For example, the
24 following claim limitation, recited at least in Claim 1, is invalid under 35 U.S.C. § 112, first
25 paragraph, because the specification fails to describe or enable the full breadth of the claim:
26 "performing a maximum likelihood-based estimation using the complex signal measurements
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1 corresponding to each of the plurality of pilots of the subsequent OFDM data symbol and the
 2 pilot reference points.”

3 43. The claims of the ’583 Patent are also invalid because they are directed to non-
 4 statutory subject matter without reciting an inventive concept, and therefore are not patent-
 5 eligible under 35 U.S.C. § 101. Specifically, the claims of the ’583 Patent are directed to
 6 abstract ideas and append no more than conventional steps, specified at a high level of
 7 generality, to methods well known in the art.

8 44. At least because FCS has accused Motive’s products and services of infringing
 9 the ’583 Patent, via use by Motive’s customers, a substantial, immediate, and real controversy
 10 therefore exists between Motive and FCS regarding Motive’s alleged infringement of any valid
 11 and enforceable claim recited in the ’583 Patent.

12 45. For at least the forgoing reasons, each and every claim of the ’583 Patent is
 13 invalid for failing to satisfy one or more of the conditions for patentability specified in Title 35
 14 of the United States Code, including without limitation Sections 101, 102, 103 and/or 112.

15 **COUNT III**

16 **(Declaration of Non-Infringement of the ’616 Patent)**

17 46. Motive restates and realleges the allegations set forth in paragraphs 1 through 45
 18 above and incorporates them by reference.

19 47. In the Complaint filed in the Heritage-Crystal Clean Case, FCS alleges that the
 20 Defendants infringe at least Claim 12 of the ’616 Patent “by using, providing, supplying, or
 21 distributing” Motive’s products and services to “perform a method of pilot phase error estimation
 22 in an orthogonal frequency division multiplexed (OFDM) receiver.” *See* Ex. 7 at ¶¶ 39-42.

23 48. Exemplary Claim 12 of the ’616 Patent recites:

Limitation	Claim Language
12[Preamble]	A method of pilot phase error estimation in an orthogonal frequency division multiplexed (OFDM) receiver comprising:
12[a]	determining pilot reference points corresponding to a plurality of pilots of an OFDM preamble waveform;

Limitation	Claim Language
12[b]	processing, in a parallel path to the determining step, the OFDM preamble waveform with a fast Fourier transform;
12[c]	determining a phase error estimate of a subsequent OFDM symbol relative to the pilot reference points; and
12[d]	processing, in the parallel path to the determining step, the subsequent OFDM symbol with the fast Fourier transform;
12[e]	wherein the determining the phase error estimate step is completed prior to the completion of the processing the subsequent OFDM symbol with the fast Fourier transform in the parallel path.

Ex. 2 at 31:63-32:14.

49. According to the Complaint filed in the Heritage-Crystal Clean Case, the Defendants allegedly infringe Claim 12 of the '661 Patent by using Motive's products and services to perform the claimed method. *See* Ex. 7 at ¶¶ 39-42.

50. Motive has not infringed and does not infringe any valid and enforceable claim of the '616 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, sale, and/or offer for sale of Motive's products and/or services.

51. Motive has not instructed its customers to use Motive's products and services, and Motive's customers have not used Motive's products and services, in a manner that infringes or has infringed any valid and enforceable claim of the '616 Patent.

52. By way of example, Motive's products and services do not satisfy at least limitation 12[b] of Claim 12.

53. All of the claims of the '616 Patent either recite limitations corresponding to limitation 12[b], or depend from a claim that recites this limitation. Dependent claims cannot be infringed if the independent claim from which they depend is not infringed. Therefore, Motive does not infringe any claim of the '616 Patent for at least the same reason described above for Claim 12.

1 66. The FCS Letter also included claim charts comparing Claim 19 of the '723 Patent
2 to Motive's products and services, alleging that Motive infringes the '723 Patent by making,
3 using, selling and/or offering for sale products and services using technology claimed in the '723
4 Patent. *See* Ex. 6, '723 Patent Claim Chart.

5 67. Exemplary Claim 19 of the '723 Patent, the only claim of the '723 Patent
6 included in the claim charts attached to the FCS Letter, recites:

Limitation	Claim Language
19[Preamble]	A system for transmitting voice or data communications between a plurality of remote units, the system having an input including the voice or data communications and user input, each remote unit comprising:
19[a]	a unique identifier;
19[b]	a transceiver configured to receive data by a wireless communication and to down-convert the received data from radio frequency (RF) to baseband, and to up-convert baseband data to RF for transmission as a wireless communication;
19[c]	a global positioning system receiver configured to receive a position signal;
19[d]	a microprocessor configured to receive the position signal and the received communication, and to generate the baseband communication by constructing at least one data packet from a plurality of data fields, at least one of the data fields including information derived from the position signal, the unique identifier of a sending remote unit, and the unique identifier of a receiving remote unit; and
19[e]	a memory configured to store the received data, the user input including information unique to the user, and said unique identifier.

7 Ex. 3 at 16:20-43.

8 68. According to FCS's claim chart, the Motive "Vehicle Gateway device (a remote
9 unit operating as a hotspot) and associated software and applications, including the [Motive] app
10 ... transmit and receive voice or data communications with one or more other remote units,
11 including one or more other [Motive] Vehicle Gateways operating as a hotspot." *See* Ex. 6, '723
12 Patent Claim Chart.
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1 example, the following claim limitations, recited at least in Claim 19, lack written description:

2 (a) “a transceiver configured to receive data by a wireless communication and to down-convert
3 the received data from radio frequency (RF) to baseband, and to up-convert baseband data to RF
4 for transmission as a wireless communication”; and (b) “a microprocessor configured to receive
5 the position signal and the received communication, and to generate the baseband
6 communication by constructing at least one data packet from a plurality of data fields, at least
7 one of the data fields including information derived from the position signal, the unique
8 identifier of a sending remote unit, and the unique identifier of a receiving remote unit.”

9 78. The claims of the '723 Patent are also invalid because they are directed to non-
10 statutory subject matter without reciting an inventive concept, and therefore are not patent-
11 eligible under 35 U.S.C. § 101. Specifically, the claims of the '723 Patent are directed to
12 abstract ideas and append no more than conventional steps, specified at a high level of
13 generality, to methods well known in the art.

14 79. At least because FCS has accused Motive of infringing the '723 Patent in
15 connection with its making, using, selling and/or offering for sale Motive's products and/or
16 services, a substantial, immediate, and real controversy therefore exists between Motive and FCS
17 regarding Motive's alleged infringement of any valid and enforceable claim recited in the '723
18 Patent.

19 80. For at least the forgoing reasons, each and every claim of the '723 Patent is
20 invalid for failing to satisfy one or more of the conditions for patentability specified in Title 35
21 of the United States Code, including without limitation Sections 101, 102, 103, and/or 112.

22 **COUNT VII**

23 **(Declaration of Non-Infringement of the '837 Patent)**

24 81. Motive restates and realleges the allegations set forth in paragraphs 1 through 80
25 above and incorporates them by reference.

26 82. In the Complaint filed in the Heritage-Crystal Clean Case, FCS alleges that the
27 Defendants infringe at least Claim 1 of the '837 Patent “by using, selling, offering to sell,
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1 providing, supplying, or distributing” Motive’s products and services that implement technology
 2 claimed in the ’837 Patent. *See* Ex. 7 at ¶¶ 60-61.

3 83. The FCS Letter also included claim charts comparing Claim 1 of the ’837 Patent
 4 to Motive’s products and services, alleging that Motive infringes the ’837 Patent by making,
 5 using (including via testing), selling and/or offering for sale, as well as instructing Motive’s
 6 customers to use, products and services using technology claimed in the ’837 Patent. *See* Ex. 6,
 7 ’837 Patent Claim Chart.

8 84. Claim 1 of the ’837 Patent, the only claim of the ’837 Patent included in the claim
 9 charts attached to the FCS Letter, recites:

Limitation	Claim Language
1[Preamble]	A method comprising:
1[a]	(i) receiving a location of a mobile communications device that is in transit to a destination;
1[b]	(ii) estimating the time-of-arrival bounds for said mobile communications device at said destination for a confidence interval based on: (a) said location, and (b) at least one historical travel time statistic; and
1[c]	(iii) sending the time-of-arrival bounds to said mobile communications device

18 Ex. 4 at 6:28-37.

19 85. According to FCS’s claim chart, Motive “makes, uses (including via testing), sells
 20 and/or offers for sale, and/or instructs customer[s] to use the GSP [sic] Tracking Application” ...
 21 which “estimates time-of-arrival bounds (e.g., a delivery window)” and “send[s] the time-of-
 22 arrival bounds to [the] mobile communications device.” *See* Ex. 6, ’837 Patent Claim Chart

23 86. Motive has not infringed and does not infringe any valid and enforceable claim of
 24 the ’837 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the
 25 manufacture, use, sale, and/or offer for sale of Motive’s products and/or services.
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1 87. Motive has not instructed its customers to use Motive’s products and services, and
2 Motive’s customers have not used Motive’s products and services, in a manner that infringes or
3 has infringed any valid and enforceable claim of the ’837 Patent.

4 88. By way of example, Motive’s products and services, including Motive’s Route
5 Optimization Software, does not satisfy at least limitation 1[b] of Claim 1.

6 89. All of the claims of the ’837 Patent depend from Claim 1, and dependent claims
7 cannot be infringed if the independent claim from which they depend is not infringed.
8 Therefore, Motive does not infringe any claim of the ’837 Patent for at least the same reasons
9 described above for Claim 1.

10 90. There exists a substantial, immediate, and real controversy between Motive and
11 FCS regarding Motive’s alleged infringement of the ’837 Patent that warrants the issuance of a
12 declaratory judgment.

13 91. A judicial declaration is necessary and appropriate so that Motive may ascertain
14 its rights regarding the ’837 Patent, including its rights to manufacture, use, offer to sell, sell,
15 and/or import from and/or to this judicial district its products and services.

16 92. Motive is entitled to a declaration that it has not and does not infringe the ’837
17 Patent.

18 **COUNT VIII**

19 **(Declaration of Invalidity of the ’837 Patent)**

20 93. Motive restates and realleges the allegations set forth in paragraphs 1 through 92
21 above and incorporates them by reference.

22 94. The ’837 Patent is invalid at least under 35 U.S.C. § 102 and/or 35 U.S.C. § 103
23 because its claims are anticipated and/or rendered obvious by prior art. By way of example,
24 Claim 1 is invalid under 35 U.S.C. § 102 and/or 35 U.S.C. § 103 because it is anticipated and/or
25 rendered obvious in view of at least U.S. Patent Nos. 6,650,948; 6,351,707; 6,591,188;
26 6,675,089; 7,714,778; and 6,484,092, and a publication entitled, “Genesis and Advanced
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1 Traveler Information Systems (ATIS): Killer Applications for Mobile Computer,” Shekhar, et
2 al., Mobidata Workshop Nov. 1994

3 95. The claims of the ’837 Patent are also invalid under 35 U.S.C. § 112, first
4 paragraph, for lacking adequate and enabling written description of the recited inventions. For
5 example, the following claim limitation recited at least in Claim 1 lacks written description:
6 “estimating the time-of-arrival bounds for said mobile communications device at said destination
7 for a confidence interval based on: (a) said location, and (b) at least one historical travel time
8 statistics.”

9 96. The claims of the ’837 Patent are also invalid because they are directed to non-
10 statutory subject matter without reciting an inventive concept, and therefore are not patent-
11 eligible under 35 U.S.C. § 101. Specifically, the claims of the ’837 Patent are directed to
12 abstract ideas and append no more than conventional steps, specified at a high level of
13 generality, to methods well known in the art.

14 97. At least because FCS has accused Motive of infringing the ’837 Patent in
15 connection with its making, using, selling and/or offering for sale, as well as instructing Motive’s
16 customers to use, Motive’s products and/or services, a substantial, immediate, and real
17 controversy therefore exists between Motive and FCS regarding Motive’s alleged infringement
18 of any valid and enforceable claim recited in the ’837 Patent.

19 98. For at least the forgoing reasons, each and every claim of the ’837 Patent is
20 invalid for failing to satisfy one or more of the conditions for patentability specified in Title 35
21 of the United States Code, including without limitation Sections 101, 102, 103, and/or 112.

22 **COUNT IX**

23 **(Declaration of Non-Infringement of the ’153 Patent)**

24 99. Motive restates and realleges the allegations set forth in paragraphs 1 through 98
25 above and incorporates them by reference.

26 100. In the Complaint filed in the Heritage-Crystal Clean Case, FCS alleges that the
27 Defendants infringe at least Claim 1 of the ’153 Patent “by using, selling, offering to sell,
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1 providing, supplying, or distributing” Motive’s products and services to “perform a method for
 2 evaluating a channel of a multiple-input multiple-output (“MIMO”) wireless communication
 3 system.” *See* Ex. 7 at ¶¶ 74-75.

4 101. The FCS Letter also included claim charts comparing certain claims of the ’153
 5 Patent to Motive’s products and services, alleging that Motive infringes the ’153 Patent by
 6 making, using, selling and/or offering for sale, as well as instructing Motive’s customers to use,
 7 products and services using technology claimed in the ’153 Patent. *See* Ex. 6, ’153 Patent Claim
 8 Chart.

9 102. Exemplary Claim 1 of the ’153 Patent recites:

Limitation	Claim Language
1[Preamble]	A method for evaluating a channel of a multiple-input multiple-output (MIMO) wireless communication system, wherein said communication system comprises at least two communication devices having a plurality of radiating elements for the parallel transmission of data sub-streams, comprising:
1[a]	defining a channel matrix metric, said channel matrix metric comprising a respective predefined function of channel matrix singular values for each of said data sub-streams, such that each of said predefined functions provides a measure of cross-talk signal to noise ratio (SNR) for said respective sub-stream;
1[b]	obtaining an estimated channel matrix;
1[c]	performing a singular value decomposition (SVD) of said estimated channel matrix to obtain estimated channel singular values, said singular value decomposition comprising a left-hand unitary weighting matrix, a diagonal matrix of said estimated channel singular values, and a right-hand unitary weighting matrix; and
1[d]	calculating a respective crosstalk measure for each of said sub-streams from said channel matrix metric and said estimated channel singular values

23 Ex. 5 at 16:37-58.

24 103. According to FCS’s claim chart, Motive “makes, uses (including via testing), sells
 25 and/or offers for sale, and/or instructs customer[s] to use a Vehicle Gateway (“Gateway”) which
 26 are communication units that ... are adapted for wireless communications using 802.11n.” *See*
 27 Ex. 6, ’153 Patent Claim Chart.

1 104. Motive has not infringed and does not infringe any valid and enforceable claim of
2 the '153 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the
3 manufacture, use, sale, and/or offer for sale of Motive's products and/or services.

4 105. Motive has not instructed its customers to use Motive's products and services, and
5 Motive's customers have not used Motive's products and services, in a manner that infringes or
6 has infringed any valid and enforceable claim of the '153 Patent.

7 106. By way of example, Motive's products and services do not satisfy at least the
8 Preamble of Claim 1.

9 107. All of the claims of the '153 Patent either recite limitations corresponding to
10 limitation 1[Preamble], or depend from a claim that recites this limitation. Dependent claims
11 cannot be infringed if the independent claim from which they depend is not infringed.
12 Therefore, Motive does not infringe any claim of the '153 Patent for at least the same reason
13 described above for Claim 1.

14 108. There exists a substantial, immediate, and real controversy between Motive and
15 FCS regarding Motive's alleged infringement of the '153 Patent that warrants the issuance of a
16 declaratory judgment.

17 109. A judicial declaration is necessary and appropriate so that Motive may ascertain
18 its rights regarding the '153 Patent, including its rights to manufacture, use, offer to sell, sell,
19 and/or import from and/or to this judicial district its products and services.

20 110. Motive is entitled to a declaration that it has not and does not infringe the '153
21 Patent.

22 **COUNT X**

23 **(Declaration of Invalidity of the '153 Patent)**

24 111. Motive restates and realleges the allegations set forth in paragraphs 1 through 110
25 above and incorporates them by reference.

26 112. The '153 Patent is invalid at least under 35 U.S.C. § 102 and/or 35 U.S.C. § 103
27 because its claims are anticipated and/or rendered obvious by prior art. By way of example,
28

1 Claim 1 is invalid under 35 U.S.C. § 102 and/or 35 U.S.C. § 103 because it is anticipated and/or
2 rendered obvious in view of at least U.S. Patent Nos. 6,885,746; 7,613,248; and 7,796,544; U.S.
3 Patent Application Publication Nos. 2004/00042556; 2003/0185309; and 2003/0185310;
4 International Patent Publication WO/2001078254; publication entitled, “Multi-user Techniques
5 and MIMO Transmission for VDSL,” Cendrillon, et al., published April 1, 2002; publication
6 entitled, “Evaluation of MIMO Spatial Multiplexing for Wireless LAN with Channel Models
7 from Experimental Data,” Gasparini, et al, published June 2022; and publication entitled “Space-
8 time Signaling in Multi-antenna Systems,” Health, published November 2001.

9 113. The claims of the ’153 Patent are also invalid because they are directed to non-
10 statutory subject matter without reciting an inventive concept, and therefore are not patent-
11 eligible under 35 U.S.C. § 101. Specifically, the claims of the ’153 Patent are directed to
12 abstract ideas and append no more than conventional steps, specified at a high level of
13 generality, to methods well known in the art.

14 114. At least because FCS has accused Motive of infringing the ’153 Patent in
15 connection with its making, using, selling and/or offering for sale, as well as instructing Motive’s
16 customers to use, Motive’s products and/or services, a substantial, immediate, and real
17 controversy therefore exists between Motive and FCS regarding Motive’s alleged infringement
18 of any valid and enforceable claim recited in the ’153 Patent.

19 115. For at least the forgoing reasons, each and every claim of the ’153 Patent is
20 invalid for failing to satisfy one or more of the conditions for patentability specified in Title 35
21 of the United States Code, including without limitation Sections 101, 102, and/or 103.
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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Motive prays for judgment:

3 A. declaring that Motive has not infringed and does not infringe any valid and
4 enforceable claim of the Patents-in-Suit;

5 B. declaring that each claim of the Patents-in-Suit is invalid;

6 C. declaring that this case is exceptional under 35 U.S.C. § 285 and awarding Motive
7 its attorneys' fees, costs, and expenses incurred in this action;

8 D. granting Motive such other and further relief in law or in equity as this Court
9 deems just or proper.

10 **DEMAND FOR JURY TRIAL**

11 Motive demands a trial by jury on all issues so triable.

12
13 DATED: October 14, 2022

14 Respectfully submitted,
15 **KELLEY DRYE & WARREN LLP**
16 Michael J. Zinna (*Pro Hac Vice* forthcoming)
17 David G. Lindenbaum (*Pro Hac Vice* forthcoming)
18 Vincent M. Ferraro (*Pro Hac Vice* forthcoming)
19 Andrew W. Homer

20 */s/ Andrew W. Homer*
21 Andrew Homer

22 *Attorneys for Plaintiff*
23 *MOTIVE TECHNOLOGIES, INC.*
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