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16
17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AFTERGLOW, LLC,

20 Plaintiff,

21 v.

22 BRIGHT PATH LIGHTING, INC.,

23 Defendant.

Case No.

COMPLAINT FOR:

- 24 (1) **INFRINGEMENT OF U.S.**
25 **PATENT NO. 8,479,423; AND**
26 (2) **INFRINGEMENT OF U.S.**
27 **PATENT NO. 8,286,378**

DEMAND FOR JURY TRIAL

1
2 Plaintiff AfterGlow, LLC (“AfterGlow”), by its undersigned counsel, alleges as follows
3 for its Complaint against defendant Bright Path Lighting, Inc. (“Bright Path”, “BPL”, and/or
4 “Defendant”).

5 **THE NATURE OF THIS ACTION**

6 1. AfterGlow brings this action against BPL for willful patent infringement pursuant to 35
7 U.S.C. §§ 281, 284, & 285, for infringement of one or more claims of U.S. Patent Nos. 8,479,423 and
8 8,286,378 (“the ’423 Patent” and “the ’378 Patent”, respectively, and collectively the “AfterGlow
9 Patents”). The AfterGlow Patents are directed to photoluminescent devices including
10 photoluminescent exit signs like those manufactured and sold by BPL. BPL has blatantly and
11 willfully infringed the AfterGlow Patents and has refused to cease its infringing actions necessitating
12 this lawsuit.
13

14 **THE PARTIES**

15 2. Plaintiff AfterGlow is a limited liability company organized and existing under the laws
16 of the Commonwealth of Virginia, having its headquarters and principal place of business at 999
17 Shenandoah Shores Road, Unit A, Front Royal, VA 22630. AfterGlow is a Service-Disabled, Veteran-
18 Owned, Small Business (SDVOSB) that provides its customers with cost effective photoluminescent
19 safety solutions including exit and other signs.
20

21 3. Defendant Bright Path Lighting is a domestic California stock corporation, assigned
22 California Corporate No. C2534237, having its headquarters and principal place of business at 2910 E.
23 Heaton Avenue, Suite B, Fresno, CA 93721.
24

25 **JURISDICTION AND VENUE**

26 4. This is an action for patent infringement arising under the laws of the United States, 35
27 U.S.C. § 1 *et seq.*
28

1 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
2 and 1338(a), federal question and 28 U.S.C. § 1332 diversity jurisdiction.

3 6. This Court has personal jurisdiction over BPL as it is a company registered to do
4 business and doing business in the state of California and in this District at 2910 E. Heaton Avenue,
5 Fresno, California. Further, BPL has, among other things, directly or through intermediaries,
6 committed acts within California and this District giving rise to this action and/or regularly does
7 business, derives substantial revenues, and has established minimum contacts with California such that
8 the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.
9

10 7. Venue is proper in the Eastern District of California and the Fresno Division pursuant
11 to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) and Eastern District Local Rule 120(d) (Fed. R. Civ. P.
12 3). Upon information and belief, BPL has maintained a regular and established place of business and
13 is doing business in this judicial district, and has committed acts of infringement and is causing injury
14 to AfterGlow in this judicial district.
15

16 **BACKGROUND AND GENERAL ALLEGATIONS**

17 **AfterGlow and the AfterGlow Patents**

18 8. AfterGlow has been in business since February 11, 2011 and provides a range of
19 photoluminescent (PL) – non-electrical, nonradioactive, glow-in-the-dark – products used as safety
20 markings in structures and air, land and sea vehicles. AfterGlow’s products include entrance, exit and
21 other signage, tapes, paints, appliques and EXIT signs listed to UL 924 that provide lighting without
22 electricity, batteries, LEDs or radioactive materials.
23

24 9. As PL materials absorb ultraviolet light from ambient light, they simultaneously begin
25 storing energy and releasing some portion of it as visible light. Upon removal of the light source, the
26 stored energy release continues, producing a highly visible, surface illumination that fades over a
27 period of time. PL materials glow in the dark if power is lost or in reduced lighting scenarios, such as
28 if smoke obscures overhead lighting. Unlike electrically powered systems, which rely on back up

1 batteries or emergency generators and their finite fuel supplies, PL emergency egress marking systems
2 are virtually fail safe, reduce Green House Gases (GHG) and, because no electricity is needed, do not
3 require bulb replacement or monthly/annual testing or maintenance.

4 10. The AfterGlow Patents, copies of which are attached as **Exhibits A and B**
5 respectively, are each directed to PL devices including, but not limited to, PL EXIT signs.

6 11. The '423 Patent was legally issued by The United States Patent and Trademark Office
7 on July 9, 2013, the inventors of which were Richard James Martin, Gregory Louis Bender, Thomas
8 Wells Brignall, Jr., and Herbert George Jones.

9 12. The '378 Patent was legally issued by The United States Patent and Trademark Office
10 on October 16, 2012, the inventors of which were Richard James Martin, Gregory Louis Bender,
11 Thomas Wells Brignall, Jr., and Herbert George Jones.

12 13. The AfterGlow Patents have each been assigned to, and are currently owned by,
13 AfterGlow.

14 14. The AfterGlow Patents' claims are directed primarily to various embodiments of PL
15 devices having, among other things, a weight and volumetric concentration of phosphor particles in a
16 polymer matrix that is greater in a first region than a second region. Advantageously, the first region
17 having the greater concentration may be disposed adjacent or near a light-emitting surface of the
18 device, thereby allowing a greater number of phosphors to emit light relative to devices having the
19 phosphors distributed more evenly.

20 **BPL and its Willful Infringement**

21 15. BPL is a direct competitor of AfterGlow. BPL is a company that also sells PL products,
22 including EXIT signs (the "Accused Products").

23 16. Among other products, BPL sells certain PL EXIT signs rated for 100' visibility,
24 including the Centurion 100' EXIT signs, that make use of AfterGlow's patented technology. A
25
26
27
28

1 representative copy of BPL's website offering this particular infringing product is attached as **Exhibit**

2 **C.**

3 17. In or about February 2018, AfterGlow identified BPL's sales of infringing products.
4 Afterglow sent a letter to BPL on April 26, 2018 citing AfterGlow's two patents. Upon receipt of the
5 letter, BPL requested AfterGlow discuss the letter and its implications. On May 1, 2018 AfterGlow
6 contacted and spoke with Mr. Khachig Hovanessian, CEO of BPL, and informed him of AfterGlow's
7 rights in the AfterGlow Patents and their applicability to, at least, the 100' PL EXIT signs being sold
8 by BPL. Mr. Havanessian agreed to send one of BPL's 100' PL EXIT signs for analysis by AfterGlow
9 to confirm that it was covered by the AfterGlow Patents. Despite multiple communications, BPL never
10 sent the sign to AfterGlow.
11

12 18. With BPL failing to provide the promised sign, AfterGlow purchased one of BPL's
13 signs and conducted its own analysis. AfterGlow's testing confirmed that BPL's 100' PL EXIT sign
14 infringes claims of both the '423 Patent and the '378 Patent.
15

16 19. Attached at **Exhibit D** is a photograph of BPL's EXIT sign that was tested by
17 AfterGlow.

18 20. Attached at **Exhibit E** is one of the letters from the BPL sign that includes the
19 "polymer matrix" claimed in the AfterGlow Patents. The BPL sign's letters were then examined under
20 both a scanning electron microscope and one or more optical microscopes. (See **Exhibits F & G.**)
21 This testing demonstrated that the letters in BPL's sign include "a plurality of UV or visible-light
22 excited phosphor particles included in the polymer matrix," and that "the phosphor particles hav[e] a
23 concentration greater in an exterior region of the polymer matrix . . . than in an interior region of the
24 polymer matrix."
25

26 21. On October 2, 2018, counsel for AfterGlow wrote to BPL notifying it that testing
27 confirmed BPL's infringement and demanding that BPL cease further manufacture and sales of
28 infringing products.

1 22. BPL eventually responded and did not contest infringement, but asserted flawed
2 arguments related to the validity of the AfterGlow Patents that AfterGlow analyzed and debunked.
3 Subsequently, BPL maintained its refusal to cease its infringement and continues to promote and sell
4 its infringing products to the marketplace including BPL's 100' PL EXIT signs and other signs (e.g.,
5 BPL's 75' PL EXIT signs) that, upon information and belief, infringe Afterglow's patent rights.

6 **COUNT I**

7 **Infringement of U.S. Patent No. 8,479,423**

8
9 23. The allegations of paragraphs 1-22 above are hereby re-alleged and incorporated herein
10 by reference.

11 24. AfterGlow is the current assignee and owner of the '423 Patent.

12 25. BPL has infringed, and continues to infringe, at least claims 1-5, 9, 12, and 17 of the
13 '423 Patent, under 35 U.S.C. § 271(a), by making and selling the Accused Products in the United
14 States. BPL continues to make its 100' PL EXIT sign.

15 26. BPL does not have a license or permission to the use the '423 Patent.

16
17 27. BPL has been willfully infringing the '423 Patent since at least April, 2018 when it
18 received communications from AfterGlow regarding the AfterGlow Patents, and no later than its
19 receipt of AfterGlow's October 2, 2018 letter. Upon information and belief, BPL has no good faith
20 defense to AfterGlow's infringement allegations and has refused to cease selling products or to engage
21 in further attempts to reach a business resolution. Instead, BPL has intentionally continued its
22 infringement.

23 28. As a result of BPL's willful infringement of the '423 Patent, AfterGlow has suffered
24 and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty
25 in excess of the jurisdictional limit of \$75,000.00, exclusive of interest and costs.
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COUNT II

Infringement of U.S. Patent No. 8,286,378

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3 29. The allegations of paragraphs 1-28 above are hereby re-alleged and incorporated herein
4 by reference.

5 30. AfterGlow is the owner of the '378 Patent.

6 31. BPL has infringed, and continues to infringe, at least claims 1, 5, 11, 19-21, and 29-30
7 of the '378 Patent, under 35 U.S.C. § 271(a), by making and selling the Accused Products in the
8 United States. BPL continues to make its 100' PL EXIT sign.
9

10 32. BPL does not have a license or permission to the use the '378 Patent.

11 33. BPL has been willfully infringing the '378 Patent since at least April, 2018 when it
12 received communication from AfterGlow regarding the AfterGlow Patents, and no later than its
13 receipt of AfterGlow's October 2, 2018 letter. Upon information and belief, BPL has no good faith
14 defense to AfterGlow's infringement allegations and has refused to cease selling products or to engage
15 in further attempts to reach a business resolution. Instead, BPL has intentionally continued its
16 infringement.
17

18 34. As a result of BPL's willful infringement of the '378 Patent, AfterGlow has suffered
19 and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty
20 in excess of the jurisdictional limit of \$75,000.00, exclusive of interest and costs.
21

PRAYER FOR RELIEF

22 A. For a Judgment declaring that Defendant has infringed the AfterGlow Patents, in that
23 the inventions claimed by the AfterGlow Patents have been used by or for Defendant without license
24 or lawful right;
25

26 B. For a judgment declaring that BPL's infringement of the AfterGlow Patents has been
27 willful;
28

1 C. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining BPL from
2 further acts of infringement;

3 D. For a judgment awarding AfterGlow compensatory damages as a result of BPL's
4 infringement sufficient to reasonably and entirely compensate AfterGlow for said infringement of the
5 AfterGlow Patents in an amount to be determined at trial;

6 E. For a judgment declaring that this case is exceptional and awarding AfterGlow its
7 expenses, costs and attorneys' fees in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal
8 Rules of Civil Procedure;

9 F. For a judgment awarding AfterGlow prejudgment interest pursuant to 35 U.S.C. § 284,
10 and a further award of post judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such
11 judgment is paid.

12 G. For a judgment awarding AfterGlow enhanced damages under 35 U.S.C. § 284; and

13 H. For such other relief to which AfterGlow is entitled under the applicable United States
14 laws and regulations or as this Court deems just and proper.
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16 DATED: April 24, 2019

17
18 WILLIAMS MULLEN
19 and
WANGER JONES HELSLEY PC

20 By: /s/ Richard T. Mathews
21 Richard T. Mathews
22 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Plaintiff hereby demands trial by jury as to all claims in this litigation.

DATED: April 24, 2019

WILLIAMS MULLEN
and
WANGER JONES HELSLEY PC

By: /s/ Richard T. Matthews
Richard T. Matthews
Attorneys for Plaintiff

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