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5	Attorneys for Plaintiff Electronic Creations	
6	Corporation	
7	UNITED STATES DISTRICT COURT	
8	NORTHERN DISTRICT OF CALIFORNIA	
9	ELECTRONIC CREATIONS CORPORATION,	Case No
10	Plaintiff,	
11	V.	COMPLAINT FOR DECLARATORY RELIEF
12	ASCENT REAL ESTATE, INC.,	
13	Defendant.	
14		
15	Plaintiff Electronic Creations Corporation ("ECC" or "Plaintiff"), for its Complaint	
16	against Defendant Ascent Real Estate, Inc. ("Ascent" or "Defendant"), alleges:	
17	NATURE OF 1	THE SUIT
18	1. This action seeks a court declaratio	n that ECC's use of the ascentrealestate.com
19	domain name does not infringe on or dilute any	valid and protectable trademark owned by
20	Ascent, including the marks A ASCENT REAL	ESTATE (and design) and ASCENT REAL
21	ESTATE.	
22	JURISDICTION A	AND VENUE
23	2. This is an action for declaratory relie	ef brought under 28 U.S.C. §§ 2201 and 2202,
24	and under the Lanham Act, 15 U.S.C. §§ 1114(1)(a)), 1125(a) and 1125(c). This Court has federal
25	question jurisdiction over this action pursuant to 1	5 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and
26	1338(a).	
27	3. Venue is proper in this Court pursu	uant to 28 U.S.C. § 1391 because ECC does
28	business in this district and a substantial part of the events giving rise to this litigation occurred in	
		COMPLAINT FOR DECLARATORY RELIEF
		COM LANTI I ON DECLANATOR I RELIEF

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this district, including the marketing and sales of services associated with the accused infringing
 domain name and website.

4. This Court has personal jurisdiction over Ascent because, on information and
belief, it does business in and throughout the State of California and therefore has purposefully
availed itself of the laws of the State in which this judicial district sits.

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PARTIES

7 5. Plaintiff ECC is a corporation organized and existing under the laws of the state of
8 Colorado, having a principal business address of 1275 Fourth Street, Suite 276, Santa Rosa, CA
9 95404. ECC is registered to do business in California under the name ELCR.

On information and belief, Defendant Ascent is a corporation organized and
 existing under the laws of the State of California, having a principal place of business at Bankers
 Hill, 410 Kalmia, San Diego, California 92101. On information and belief, Ascent does business
 throughout the State of California. On information and belief, Ascent was established in 2005.

BACKGROUND

ECC and Its Business

16 7. Established in 1996, ECC is an Internet development company that provides
17 unique electronic services tailored for the web including building, leasing, and managing
18 websites.

19 8. ECC manages websites, e-mail accounts, and Internet domain names (web
20 addresses) for clients across the globe.

9. ECC's websites are solid and reliable, with user interfaces that speak of utter
simplicity while allowing the highest functionality and the most complex interaction with a
database. ECC's websites provide valuable information, tools, and services to consumers.

24 10. ECC's websites include. for example, ascentrealestate.com. 25 PropertyAppraisal.com, GoAuto.com, Pup.com, ElectronicCreations.com, VH.com, Cobb.com, 26 SonomaProperty.com, CommercialProperties.com, ElectronicAppraisal.com, CyberRealty.com, 27 DuckPond.com, MT.org, Petaluma.org, We.org, IllinoisTrader.com, IowaTrader.com, 28 MichiganTrader.com, MinnesotaTrader.com, OhioTrader.com, and WisconsinTrader.com.

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- 1 11. Internet domain names, or "web addresses," such as the domain name at the center 2 of this dispute, have an exceedingly high value because domain names are needed to locate and 3 access Internet websites and there are a limited number of available domain names.
 - ECC'S Registration and Use of the Ascentrealestate.com Domain Name

5 12. ECC is the owner of the ascentrealestate.com domain name and acquired the 6 domain name because the Ascent brand is positive and uplifting, and has religious connotations 7 for one of the principals of ECC. ECC's portfolio of Ascent formative domain names includes 8 the following: AscentRealEstate.com, AscendRealEstate.com, AscensionHomes.com. 9 AscensionProperties.com, AscensionProperty.com, AscensionRealEstate.com, and 10 AscensionRealty.com.

13. ECC has used the ascentrealestate.com domain name to display webpages 11 12 containing information about various services related to real estate.

13 14. ECC has used and/or licensed the ascentrealestate.com domain name continuously 14 since acquiring the domain name.

15 15. ECC has displayed a website through the ascentrealestate.com domain name that 16 includes a search function for real estate which is provided by ZipRealty, Inc. ("ZipRealty"). 17 Upon information and belief, ZipRealty is a corporation organized under the laws of the State of 18 California with its principal place of business at 2000 Powell Street, Suite 300, Emeryville, 19 California 94608.

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Ascent's Accusation of Trademark Infringement and Lanham Act Violations

21 16. On information and belief, Ascent was formed as a corporation with the state of 22 California on April 4, 2005.

23

17. On information and belief, Ascent or its principal registered the domain name 24 ascentrealestate.net on or about March 30, 2005 after learning that ascentrealestate.com had 25 already been registered.

26 18. Ascent claims ownership of two U.S. registered trademarks: A ASCENT REAL 27 ESTATE (and Design), Registration No. 3,195,161; and ASCENT REAL ESTATE, Registration 28 No. 4,230,114 (referred to herein collectively as "the Ascent Marks").

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1	19. The mark A ASCENT REAL ESTATE (and Design), Registration No. 3,195,161,	
2	was issued by the U.S. Patent and Trademark Office on January 2, 2007. The application for the	
3	mark A ASCENT REAL ESTATE (and Design), Registration No. 3,195,161, was filed on June 2,	
4	2005.	
5	20. Registration No. 3,195,161 claims a sworn date of first use of the trademark in	
6	U.S. interstate commerce of April 4, 2005-the same day that Ascent was incorporated.	
7	21. Registration No. 3,195,161 includes a sworn affidavit by Ascent that "to the best	
8	of his/her knowledge and belief no other person, firm, corporation, or association has the right to	
9	use the mark in commerce, either in the identical form thereof or in such near resemblance thereto	
10	as to be likely, when used on or in connection with the goods/services of such other person, to	
11	cause confusion, or to cause mistake, or to deceive."	
12	22. The mark ASCENT REAL ESTATE, Registration No. 4,230,114, was issued by	
13	the U.S. Patent and Trademark Office on October 23, 2012. The application for the mark	
14	ASCENT REAL ESTATE, Registration No. 4,230,114, was filed on March 21, 2012.	
15	23. Registration No. 4,230,114 claims a sworn date of first use of the trademark in	
16	U.S. interstate commerce of April 1, 2005-three days before Ascent was incorporated.	
17	24. Registration No. 4,230,114 includes a sworn affidavit by Ascent that "to the best	
18	of his/her knowledge and belief no other person, firm, corporation, or association has the right to	
19	use the mark in commerce, either in the identical form thereof or in such near resemblance thereto	
20	as to be likely, when used on or in connection with the goods/services of such other person, to	
21	cause confusion, or to cause mistake, or to deceive."	
22	25. On April 8, 2013, Ascent sent a letter ("Ascent April 2013 Letter") to ECC's	
23	business partner ZipRealty, asserting Ascent's purported rights associated with the Ascent Marks.	
24	See Exhibit A.	
25	26. A copy of the Ascent April 2013 Letter was sent by Ascent to ECC.	
26	27. The Ascent April 2013 Letter asserted that ZipRealty's use of the term "Ascent	
27	Real Estate" in the ascentrealestate.com domain name infringes Ascent's trademarks, is	
28	actionable under the Lanham Act, and that such conduct is actionable under California state law	
	4 COMPLAINT FOR DECLARATORY RELIEF	

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as trademark infringement, unfair competition, injury to business reputation, and trademark
 dilution.

3 28. The Ascent April 2013 Letter further demanded that ZipRealty, Inc. cease and
4 desist from all further use of "Ascent Real Estate."

5 29. ECC, via a letter dated April 30, 2013 ("ECC April 2013 Letter"), responded to
6 Ascent's threat of trademark infringement and the other purported legal violations. *See* Exhibit
7 B.

8 30. In the ECC April 2013 Letter, ECC also requested that Ascent retract its claim of 9 trademark infringement and other purported violations. ECC further warned that, if Ascent did 10 not retract its claims, ECC would consider pursuing: (1) the cancellation of Ascent's trademark 11 registrations on grounds of priority; (2) a claim of tortious interference; and (3) a declaration of 12 the lawfulness of ECC's actions under the Lanham Act and the Anticybersquatting Consumer 13 Protection Act ("ACPA").

14 31. Ascent responded in writing via a letter dated June 14, 2013 ("Ascent June 2013
15 Letter"). *See* Exhibit C.

16 32. In the Ascent June 2013 Letter, Ascent did not withdraw its accusations of
17 trademark and other violations set forth in its April 2013 Letter. In the Ascent June 2013 Letter,
18 Ascent reiterated its belief that "ECC and ZipRealty are in violation of the Lanham Act."

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<u>COUNT I</u>

CLAIM FOR DECLARATORY RELIEF

(Declaration of No Trademark Infringement)

22 33. ECC incorporates herein by reference each and every allegation contained in
23 Paragraphs 1-32 above, as though fully set forth herein.

34. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is
an actual and existing controversy between ECC and Ascent in that Ascent has demanded that
ECC and its business partner cease using the ascentrealestate.com domain name and transfer the
ascentrealestate.com domain name to Ascent. Ascent has not renounced the threatened claims
against ECC under the Lanham Act and common law.

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1	35. ECC contends that Ascent's use of the ascentrealestate.com domain name	
2	infringes the Ascent Marks, among other contentions.	
3	36. ECC disputes Ascent's contentions, and contends, among other things, that ECC's	
4	use of the ascentrealestate.com domain name does not infringe or dilute any valid federal	
5	trademark registration or common law trademark right owned by Ascent, does not constitute	
6	unfair competition, and does not cause injury to Ascent's business reputation.	
7	37. In light of such controversy between the parties, ECC seeks a declaration from this	
8	Court that ECC's use of the ascentrealestate.com domain name does not infringe or dilute any	
9	valid trademark registrations owned by Ascent or any common law rights Ascent may have	
10	accrued through the use of the Ascent Marks and does not violate any applicable common law or	
11	statutory unfair competition law.	
12	38. Such a declaration is necessary and proper at this time in that, among other things,	
13	such a declaration will establish whether ECC and its business partner ZipRealty, Inc. may	
14	continue using the ascentrealestate.com domain name.	
15	<u>COUNT II</u>	
	CLAIM FOR DECLARATORY RELIEF	
16	CLAIM FOR DECLARATORY RELIEF	
	CLAIM FOR DECLARATORY RELIEF (Declaration of No Cyberpiracy)	
16 17 18		
17	(Declaration of No Cyberpiracy)	
17 18 19	(Declaration of No Cyberpiracy)39. ECC incorporates herein by reference each and every allegation contained in	
17 18 19 20	(Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein.	
17 18 19 20 21	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is 	
17 18 19 20 21 22	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that 	
17 18	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that ECC and its business partner cease using the ascentrealestate.com domain name. Ascent has not 	
17 18 19 20 21 22 23	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that ECC and its business partner cease using the ascentrealestate.com domain name. Ascent has not renounced the threatened claim against ECC under the Anticybersquatting Consumer Protection 	
 17 18 19 20 21 22 23 24 	(Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that ECC and its business partner cease using the ascentrealestate.com domain name. Ascent has not renounced the threatened claim against ECC under the Anticybersquatting Consumer Protection Act.	
 117 118 119 200 211 222 223 224 225 	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that ECC and its business partner cease using the ascentrealestate.com domain name. Ascent has not renounced the threatened claim against ECC under the Anticybersquatting Consumer Protection Act. 41. The actions described above by ECC evidence the absence of a bad faith intent to 	
 17 18 19 20 21 22 23 24 25 26 	 (Declaration of No Cyberpiracy) 39. ECC incorporates herein by reference each and every allegation contained in Paragraphs 1-38 above, as though fully set forth herein. 40. By virtue of the Ascent April 2013 Letter and the Ascent June 2013 Letter, there is an actual and existing controversy between ECC and Ascent in that Ascent has demanded that ECC and its business partner cease using the ascentrealestate.com domain name. Ascent has not renounced the threatened claim against ECC under the Anticybersquatting Consumer Protection Act. 41. The actions described above by ECC evidence the absence of a bad faith intent to profit, within the meaning of Anticybersquatting Consumer Protection Act, by ECC. 	

by ECC that	
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on or use of the	
In light of such controversy between the parties, ECC seeks a declaration from this	
Court that ECC's registration and use of the ascentrealestate.com domain name does not violate	
46. Such a declaration is necessary and proper at this time in that, among other things,	
such a declaration will establish whether ECC and its business partner ZipRealty, Inc. may	
continue using the ascentrealestate.com domain name.	
WHEREFORE, ECC respectfully requests of this Court:	
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es, pursuant to	
with this	
ATORY RELIEF	

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1	3. That ECC be awarded such other and further relief as the Court may deem just and
2	proper.
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4 5	Dated: October 7, 2013Respectfully submitted,
6	/s/ Anthony II. Son
7	<u>/s/ Anthony H. Son</u> By: Anthony H. Son
8	WILEY REIN LLP
9	Anthony H. Son
10	Attorneys for Plaintiff ELECTRONIC CREATIONS CORPORATION
11	ELECTRONIC CREATIONS CORPORATION
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	8 COMPLAINT FOR DECLARATORY RELIEF