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10
11 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

12 **NEXT LIGHTING CORP.,**

13 Plaintiff,

14 v.

15 **CREE, INC.,**

16 Defendant.
17

Case No.

**ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff NEXT Lighting Corp. (“Plaintiff” or “NEXT”) files this complaint for patent
2 infringement against Cree, Inc. (“Cree” or “Defendant”) and states as follows:

3 **THE PARTIES**

4 1. NEXT is a corporation organized and existing under the laws of Delaware. NEXT, through
5 its predecessor entity, was founded in San Francisco in 2009 with a vision to develop
6 environmentally friendly lighting solutions for the mass market. NEXT is an innovator in the
7 lighting market, having developed extensible lighting platforms, control solutions, and efficient,
8 low-glare lighting systems that optimize light distribution. An overview of some of NEXT’s
9 innovations is available at www.nextlighting.com/products.

10 2. Upon information and belief, Defendant Cree, Inc. is a corporation organized under the laws
11 of the State of North Carolina, with its principal place of business located at 4600 Silicon Dr.,
12 Durham, NC 27703.

13 **JURISDICTION AND VENUE**

14 3. This is an action for patent infringement arising under the patent laws of the United States,
15 Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C.
16 §§1331 and 1338(a).

17 4. Venue is proper in this District under 28 U.S.C. 1400(b). On information and belief,
18 Defendant has committed acts of infringement in this District by selling, importing, and/or offering
19 for sale the products alleged herein to infringe NEXT’s patent in this District. On information and
20 belief, Defendant operates a place of business in this District at 18275 Serene Drive, Morgan Hill,
21 California 95037, at which a number of Defendant’s employees are assigned. The foregoing
22 location constitutes a regular and established place of business with this District. Thus, venue is also
23 proper in this District because Defendant maintains a regular and established place of business
24 within this District.

25 5. This Court has personal jurisdiction over the Defendant. Defendant has conducted and does
26 conduct business within the State of California and within this District. Defendant purposefully and
27 voluntarily sold one or more of the infringing products with the expectation that they will be
28 purchased by and used by consumers in this District. These infringing products have been and

1 continue to be purchased by and used by consumers in this District. Defendant has committed acts
2 of patent infringement within the United States and, more particularly, within this District.

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4 **INFRINGEMENT OF UNITED STATES PATENT NO. 8,491,165**

5 1. NEXT incorporates the above paragraphs as if fully set forth herein.

6 2. On July 23, 2013, United States Patent No. 8,491,165 (“the ’165 patent”) entitled
7 “Lighting Unit Having Lighting Strips with Light Emitting Elements and a Remote Luminescent
8 Material” was duly and legally issued after full and fair examination. NEXT is the owner of all right,
9 title, and interest in and to the ’165 patent by assignment, with full right to bring suit to enforce the
10 patent, including the right to recover for past infringement damages and the right to recover future
11 royalties, damages, and income. A copy of the ’165 patent is attached hereto as Exhibit A.

12 3. Claim 34 of the ’165 patent states:

13 A lighting strip comprising:

14 a linear support structure;

15 an at least partially reflective reflector extending substantially along the length of said
16 support; and

17 a plurality of open-air light emitting elements disposed along the length of said support
18 structure, wherein light from said light emitting elements does not pass through
19 secondary optics, and wherein the light from said light emitting elements is reflected
20 at least once before leaving the lighting strip.

21 4. Defendant has infringed and continues to infringe (literally and/or under the doctrine
22 of equivalents) one or more claims of the ’165 patent in this judicial district and elsewhere in the
23 United States, by making, using, importing, selling, and offering for sale lighting products that
24 incorporate the claimed lighting unit design. The products described below, and reasonably similar
25 products, are collectively known as the “Accused Products”. On information and belief, the
26 Accused Products have been purchased by end-users located in this judicial district, installed in
27 locations within this judicial district, and used by persons within this judicial district.

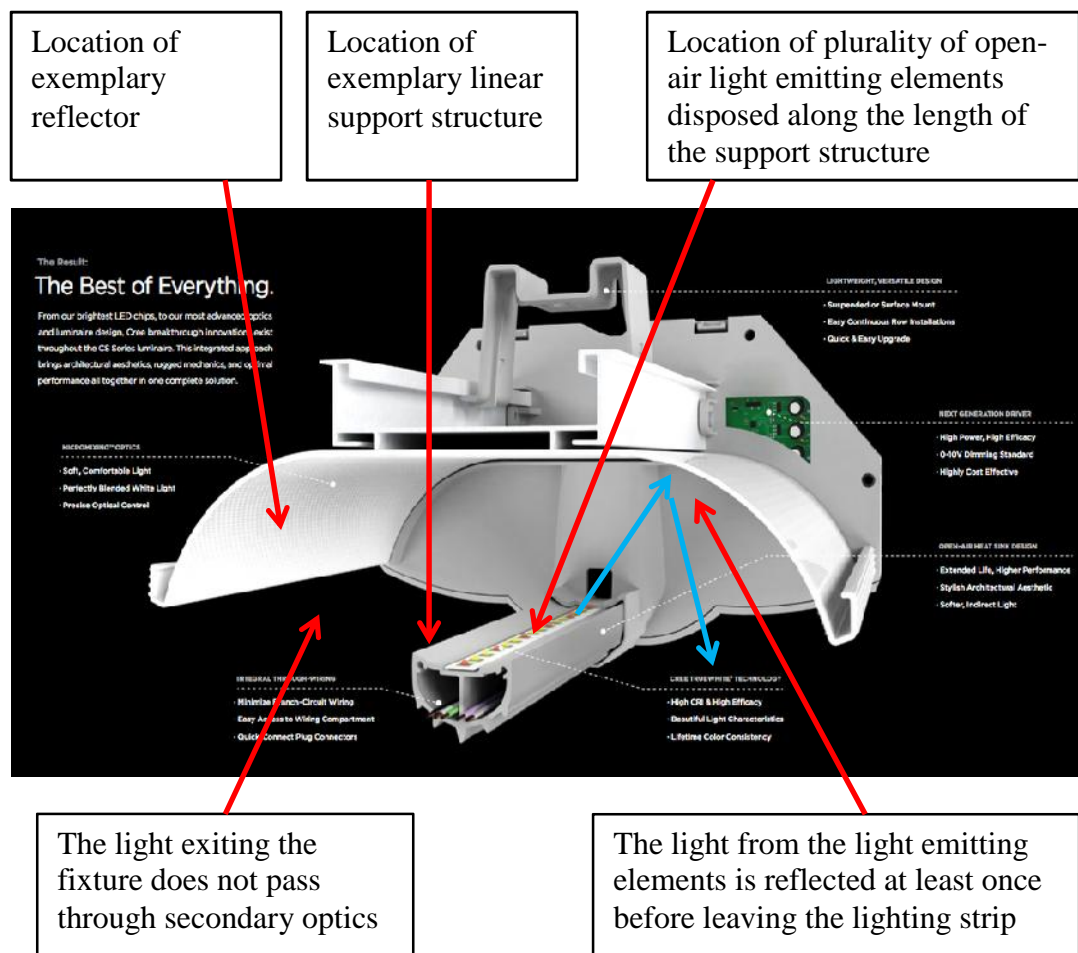
28 5. One example of Defendant’s infringing products is Defendant’s “CS-series” lighting
product.

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LED Linear Luminaire / CS Series / Cree Lighting (Nov. 14, 2018),
<https://lighting.cree.com/products/indoor/suspended-ambient/cs-series>.

6. Defendant’s CS Series Luminaire is a lighting strip incorporating a linear support structure. The CS Series Luminaire uses a reflector extending substantially along the length of the support. The CS Series Luminaire’s reflector uses a high-reflectance finish. The CS Series Luminaire also incorporates a plurality of open-air light emitting elements disposed along the length of the support structure. The LEDs are disposed along the length of the support structure. Light from the CS Series Luminaire’s LEDs does not pass through secondary optics. Light from the CS Series Luminaire’s LEDs is reflected at least once before leaving the lighting strip. The CS Series Luminaire meets each and every limitation of claim 34 of the ’165 patent.



CREE CS 18 8 foot Linear Low Bay Luminaire | CS18 – EarthLED.com (Nov. 14, 2018), <https://www.earthled.com/products/cree-cs-18-8-led-linear-low-bay-luminaire-1?variant=260405120> (annotated).

1 7. Defendant has infringed and continues to infringe (literally and/or under the doctrine
2 of equivalents) one or more claims of the '165 patent in this judicial district and elsewhere in the
3 United States, by making, using, importing, selling, and offering for sale the Accused Products that
4 incorporate the claimed lighting unit design.

5 8. Defendant has been at no time, either expressly or impliedly, licensed under the '165
6 patent.

7 **INFRINGEMENT OF UNITED STATES PATENT NO. 8,684,566**

8 9. NEXT incorporates the above paragraphs as if fully set forth herein.

9 10. On April 1, 2014, United States Patent No. 8,684,566 (“the '566 patent”) entitled
10 “Lighting Unit with Indirect Light Source” was duly and legally issued after full and fair
11 examination. NEXT is the owner of all right, title, and interest in and to the '566 patent by
12 assignment, with full right to bring suit to enforce the patent, including the right to recover for past
13 infringement damages and the right to recover future royalties, damages, and income. A copy of the
14 '566 patent is attached hereto as Exhibit B.

15 11. Claim 1 of the '566 patent states:

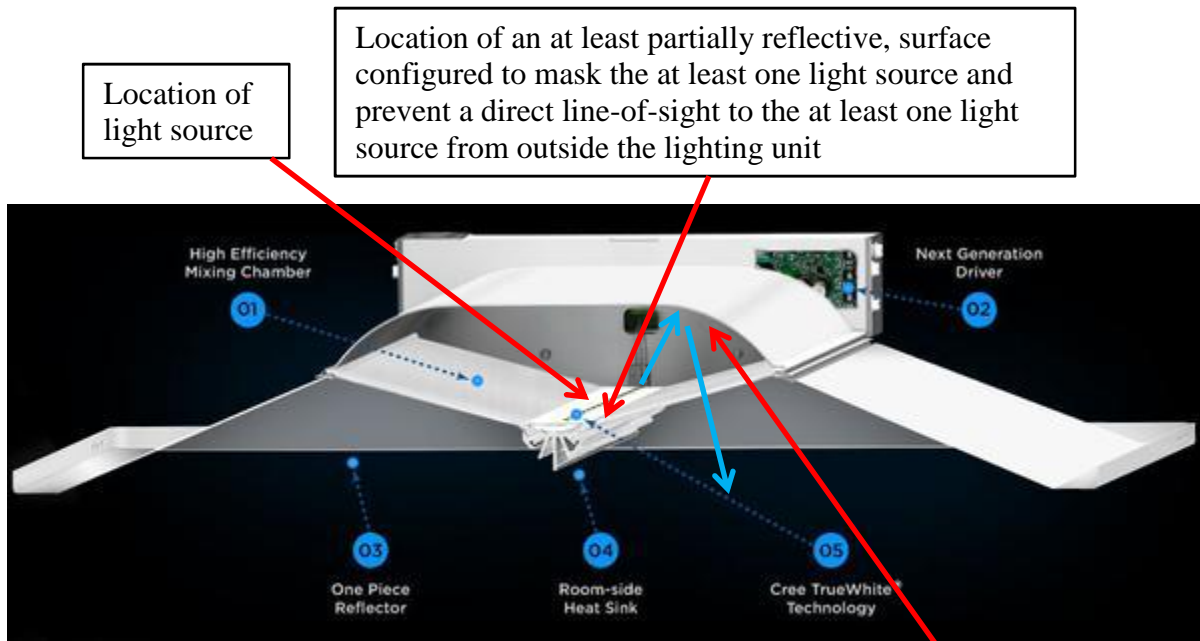
16 A lighting unit comprising
17 at least one light source;
18 a first, at least partially reflective, surface configured to mask the at least one light source
19 and prevent a direct line-of-sight to the at least one light source from outside the
20 lighting unit; and
21 a second, at least partially reflective, surface configured to receive light reflected from
22 the first surface and redistribute the light reflected from the first surface in one or
23 more directions.
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1 12. Defendant has infringed and continues to infringe (literally and/or under the doctrine
2 of equivalents) one or more claims of the '566 patent in this judicial district and elsewhere in the
3 United States, by making, using, importing, selling, and offering for sale the Defendant's CR Series
4 Luminaire that incorporate the claimed lighting unit design.



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14 *Architectural LED Lighting and Fixtures | CREE Lighting* (Nov. 14, 2018),
15 <https://lighting.cree.com/products/indoor/troffers/cr-series> (“Downloads” tab; “Literature Product”;
16 “Cree CR Series Troffers Sales Sheet”).

1 13. Defendant's CR Series Luminaire is a lighting unit that uses LEDs as the light source.
 2 The CR Series Luminaire uses a first surface that masks the LEDs and prevents a direct line-of-sight
 3 to the LEDs from outside the lighting unit. The CR Series Luminaire also uses a second surface that
 4 is configured to receive light from the first surface and redistribute the light in multiple directions.
 5 The CR Series Luminaire meets each and every limitation of claim 1 of the '566 patent.



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 8 Location of light source

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 10 Location of an at least partially reflective, surface
 11 configured to mask the at least one light source and
 12 prevent a direct line-of-sight to the at least one light
 13 source from outside the lighting unit

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 17 Location of an at least partially reflective, surface configured to
 18 receive light reflected from the first surface and redistribute the
 19 light reflected from the first surface in one or more directions

20 *CREE CR Series LED Troffers – EarthLED.com* (Nov. 14, 2018),
 21 <https://www.earthled.com/collections/cree-cr-series-led-troffers> (annotated).

22 14. Defendant has infringed and continues to infringe (literally and/or under the doctrine
 23 of equivalents) one or more claims of the '566 patent in this judicial district and elsewhere in the
 24 United States, by making, using, importing, selling, and offering for sale the Accused Products that
 25 incorporate the claimed lighting unit design.

26 15. Defendant has been at no time, either expressly or impliedly, licensed under the '566
 27 patent.
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1 16. Defendant's acts of infringement have caused damage to NEXT. NEXT is entitled to
2 recover from Defendant the damages sustained by NEXT as a result of the wrongful acts of
3 Defendant in an amount subject to proof at trial.

4 17. To the extent required by law, NEXT has complied with the provisions of 35 U.S.C. §
5 287.

6 18. Since at least June 18, 2018, Defendant has had knowledge of the '165 and '566
7 patents by its receipt of a letter from NEXT. Upon information and belief, since at least on or about
8 June 18, 2018, Defendant has had knowledge of its infringement of the '165 patent.

9 19. Upon information and belief, since at least the filing and/or the date of service of the
10 Original Complaint in this action, Defendant has had knowledge of the '165 and '566 patents and
11 has had knowledge of its infringement of the '165 and '566 patents.

12 20. Defendant's infringement of the '165 and '566 patents continues to be willful and
13 deliberate, entitling NEXT to enhanced damages and attorneys' fees. Additional allegations
14 regarding Defendant's knowledge of the '165 and '566 patents and willful infringement will likely
15 have evidentiary support after a reasonable opportunity for discovery. Upon information and belief,
16 the risks of infringement were known to Defendant and/or were so obvious under the circumstances
17 that the infringement risks should have been known. Upon information and belief, Defendant has no
18 reasonable non-infringement theories. Upon information and belief, Defendant has not attempted
19 any design change to avoid infringement. Defendant's actions of being made aware of its
20 infringement, not developing any non-infringement theories, not attempting any design change, and
21 not ceasing its infringement constitute egregious behavior beyond typical infringement.

22 21. Further and in the alternative, at least since the filing and service of the Original
23 Complaint, Defendant has been and now is actively inducing infringement of at least claim 34 of the
24 '165 patent in violation of 35 U.S.C. § 271(b). In addition, at least since the filing and service of the
25 First Amended Complaint, Defendant has been and now is actively inducing infringement of at least
26 claim 1 of the '566 patent in violation of 35 U.S.C. § 271(b). Users of the Accused Products directly
27 infringe at least claim 34 of the '165 patent and claim 1 of the '566 patent when they use the
28 Accused Products in the ordinary, customary, and intended way. Defendant's affirmative acts of

1 selling the Accused Products, causing the Accused Products to be manufactured and distributed, and
 2 providing instruction manuals for the Accused Products have induced and continue to induce
 3 Defendant’s manufacturers, resellers, and/or end-users to make or use the Accused Products in their
 4 normal and customary way to infringe the ’165 and ’566 patents. For example, it can be reasonably
 5 inferred that retailers will re-sell the infringing products, and that end-users will use the infringing
 6 products, which will cause the Accused Products that are the subject of the claimed invention to be
 7 used. By way of example only, the lighting products that are the subject of the claimed invention are
 8 used when one of the Accused Products is turned on and its LEDs illuminated. In addition,
 9 Defendant provides instructional materials, such as user guides, that specifically teach end-users to
 10 use the Accused Products. For example, Defendant makes available installation guides pertaining to
 11 the Accused Products at
 12 <http://api.icentera.com/v2/getfile.aspx?f=EB63EF0998D2274EBCEEBD59A7D9A8A8EEFEA2DD>
 13 [D2A2D193A778A0223A5D89D31F83B0BA2BEB0315](http://api.icentera.com/v2/getfile.aspx?f=EB63EF0998D2274EBCEEBD59A7D9A8A8EEFEA2DD) and
 14 <http://api.icentera.com/v2/getfile.aspx?f=EB63EF0998D2274EBCEEBD59A7D9A8A8EEFEA2DD>
 15 [D2A2D193A778A0223A5D89D3EB03D0EFFF6FBFB2](http://api.icentera.com/v2/getfile.aspx?f=EB63EF0998D2274EBCEEBD59A7D9A8A8EEFEA2DD). By providing such instructions,
 16 Defendant knows (and has known), or was willfully blind to the probability that its actions have, and
 17 continue to, actively induce infringement. These actions have induced and continue to induce the
 18 direct infringement of the ’165 and ’566 patents by end-users, businesses, distributors, resellers, and
 19 sales representatives.

DEMAND FOR JURY TRIAL

NEXT hereby demands a jury for all issues so triable.

PRAAYER

WHEREFORE, NEXT respectfully requests that the Court:

1. Enter judgment that Defendant has infringed the ’165 and ’566 patents;
2. A judgment and order permanently enjoining Defendant and its directors, officers, employees, agents, parents, subsidiaries, affiliates, and all persons in active concert or participation with it from infringement or inducement to infringe of the ’165 and ’566 patents, including the

1 making, use, sale, offer for sale, distribution, or promotion of products and/or services falling within
2 the scope of the claims of the '165 and '566 patents pursuant to 35 U.S.C. § 283;

3 3. A judgment and order requiring Defendant to pay NEXT damages sufficient to
4 compensate NEXT for Defendant's infringement of the '165 and '566 patents, in an amount not less
5 than NEXT's lost profits and/or a reasonable royalty and interest and costs, pursuant to 35 U.S.C. §
6 284, and supplemental damages for any continuing post-verdict infringement up until entry of final
7 judgment with an accounting, as needed;

8 4. A judgment and order awarding NEXT enhanced damages, pursuant to 35 U.S.C. §
9 284, if Defendant's acts of infringement of the '165 and '566 patents are determined to be willful;

10 5. An award of all costs and reasonable attorney's fees against Defendant, pursuant to
11 35 U.S.C. §§ 284 and 285, based on its infringement of the '165 and '566 patents; and

12 6. Award any other relief deemed just and equitable.

13 Dated: December 18, 2018

/s/ Lewis E. Hudnell, III
Lewis E. Hudnell, III (CA SBN 218736)
Counsel for Plaintiff NEXT Lighting Corp.

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