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Real Estate Alliance Ltd.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 MOVE, INC., NATIONAL
15 ASSOCIATION OF REALTORS, and
16 NATIONAL ASSOCIATION OF NEW
HOME BUILDERS,

17 Plaintiffs,

18 v.

19 REAL ESTATE ALLIANCE LTD. and
20 EQUIAS TECHNOLOGY
DEVELOPMENT LLC,

21 Defendants.

22 REAL ESTATE ALLIANCE LTD.,

23 Counterclaim-Plaintiff,

24 v.

25 MOVE, INC., NATIONAL
26 ASSOCIATION OF REALTORS;
KELLER WILLIAMS REALTY, INC.;
27 NORCAL GOLD, INC. d/b/a RE/MAX
GOLD, INC.; FRANK HOWARD
ALLEN REALTORS; ALAIN PINEL
28 REALTORS, INC.; RE/MAX
INTERNATIONAL, INC.; BRAD

CASE NO. CV 07-02185

Hon. George H. King

**AMENDED ANSWER AND
COUNTERCLAIMS AND
ADDITIONAL CLAIMS –
CLASS ACTION**

Case Filed: April 3, 2007
Counterclaims Filed: August 8, 2007
Am. Complaint Filed: October 14, 2008
Trial Date: TBD

DEMAND FOR JURY TRIAL

1 KORB; CHRISTY MORRISON;
2 PAYMON GHAFOURI; ORANGE
3 COUNTY MULTIPLE LISTING
4 SERVICE, INC. d/b/a SOUTHERN
5 CALIFORNIA MLS; GEORGIA MLS,
6 INC.; METROLIST SERVICES, INC.;
7 DELAWARE VALLEY REAL
8 ESTATE INFORMATION
9 NETWORK, INC. d/b/a TREND;
10 NATIONAL ASSOCIATION OF NEW
11 HOME BUILDERS; PULTE HOMES,
12 INC.; THE RYLAND GROUP, INC.;
13 SHEA HOMES; TAYLOR
14 MORRISON, INC. f/k/a TAYLOR
15 WOODROW, INC.; AVALONBAY
16 COMMUNITIES, INC.; ESSEX
17 PROPERTY TRUST, INC.; BRE
18 PROPERTIES, INC.; RIVERSTONE
19 RESIDENTIAL GROUP, LLC;
20 eNEIGHBORHOODS, LLC;
21 RAPATTONI CORPORATION; THE
22 FIRST AMERICAN CORPORATION;
23 FIDELITY NATIONAL REAL
24 ESTATE SOLUTIONS, LLC;
25 BIRDVIEW.COM, INC. d/b/a
26 BIRDVIEW TECHNOLOGIES;
27 ADVANCED ACCESS;
28 iHOMEFINDER, INC.; CIS DATA
SYSTEMS, INC.; DELTA MEDIA
GROUP, INC.; DIVERSE
SOLUTIONS, LLC; WANISOFT
CORPORATION; TREND
SOFTWARE, INC. d/b/a
PROPERTYMINDER; and others
similarly situated,,

Counterclaim-Defendants.

Pursuant to this Court’s Order on Joint Stipulation Regarding Case Management, dated September 24, 2008 [Dkt Entry No. 125] and this Court’s Order dated October 22, 2008 [Dkt Entry No. 152], Defendant and Counterclaim-Plaintiffs Real Estate Alliance Ltd. (“REAL”) by its attorneys Proskauer Rose LLP and Lipton, Weinberger & Husick, hereby answers Plaintiffs’ Amended Complaint and amends its counterclaim, filed on August 8, 2007, and asserts additional claims as follows based upon knowledge as to its own acts and actions and upon information and belief as to all other matters.

1 REAL does not answer Paragraphs 90-122 of Plaintiffs' Amended
2 Complaint but rather has filed a motion to dismiss the claims asserted therein.
3 Equias does not answer any of the allegations of Plaintiffs' Amended Complaint
4 but rather has filed a motion to dismiss all of the claims asserted therein. As to the
5 Paragraphs 1-89 of Plaintiffs' Amended Complaint, REAL states as follows:

6 1. REAL lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations contained in paragraph 1, and, therefore, denies the
8 same.

9 2. REAL lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations contained in paragraph 2, and, therefore, denies the
11 same.

12 3. REAL lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations contained in paragraph 3, and, therefore, denies the
14 same.

15 4. REAL admits that it is a corporation formed and existing under the
16 laws of the state of Delaware and is located at P.O. Box 587, Southeastern, PA
17 19399. REAL denies the remaining allegations contained in paragraph 4.

18 5. REAL lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations contained in paragraph 5, and, therefore, denies the
20 same.

21 **JURISDICTION AND VENUE**

22 6. REAL admits that REAL has asserted claims for patent infringement
23 against Plaintiffs but denies the remainder of Paragraph 6.

24 7. The allegations contained in paragraph 7 are legal conclusions to
25 which no response is required. To the extent that a response is deemed to be
26 required, REAL admits that paragraph 5 purports to state the basis for subject
27 matter jurisdiction over Plaintiffs' counterclaims. REAL denies any remaining
28 allegations contained in paragraph 7.

1 8. The allegations contained in paragraph 8 are legal conclusions to
2 which no response is required. To the extent that a response is deemed to be
3 required, REAL admits that it does not contest personal jurisdiction in this judicial
4 district in connection with the claims at issue. REAL denies any remaining
5 allegations contained in paragraph 8.

6 9. REAL admits that the Court has ruled that venue is proper in this
7 Court and otherwise denies the allegations in paragraph 9.

8 10. REAL lacks knowledge and information sufficient to form a belief as
9 to the truth of the allegations contained in paragraph 10, except admits that Move
10 purports to operate the Move websites, display real estate properties available for
11 sale, rental or lease, and permit users of the Move websites to locate available real
12 estate properties based on certain search criteria. REAL denies any remaining
13 allegations contained in paragraph 10.

14 11. REAL lacks knowledge and information sufficient to form a belief as
15 to the truth of the allegations contained in paragraph 11, and, therefore, denies the
16 same.

17 12. REAL lacks knowledge and information sufficient to form a belief as
18 to the truth of the allegations contained in paragraph 12, and, therefore, denies the
19 same.

20 13. REAL lacks knowledge and information sufficient to form a belief as
21 to the truth of the allegations contained in paragraph 13, and, therefore, denies the
22 same.

23 14. REAL lacks knowledge and information sufficient to form a belief as
24 to the truth of the allegations contained in paragraph 14, except admits that NAR is
25 the predominate real estate industry trade organization in the United States. REAL
26 denies any remaining allegations contained in paragraph 14.

27 15. REAL admits the allegations contained in paragraph 15.
28

1 16. REAL lacks knowledge and information sufficient to form a belief as
2 to the truth of the allegations contained in paragraph 16, and, therefore, denies the
3 same.

4 17. REAL lacks knowledge and information sufficient to form a belief as
5 to the truth of the allegations contained in paragraph 17, and, therefore, denies the
6 same.

7 18. REAL lacks knowledge and information sufficient to form a belief as
8 to the truth of the allegations contained in paragraph 18, and, therefore, denies the
9 same.

10 19. REAL admits that MOVE purports to operate a “New Homes” link on
11 MOVE.com on NAHB’s behalf. REAL denies any remaining allegations
12 contained in paragraph 19.

13 20. REAL denies each and every allegation contained in paragraph 20,
14 except admits that REAL is the owner of the ‘576 patent and refers the Court to the
15 ‘576 patent for its contents.

16 21. REAL denies each and every allegation contained in paragraph 21,
17 except admits that REAL is the owner of the ‘989 patent and refers the Court to the
18 ‘989 patent for its contents.

19 22. REAL denies each and every allegation contained in paragraph 22,
20 except admits that REAL entered into an agreement with Equias which speaks for
21 itself.

22 23. REAL denies each and every allegation contained in paragraph 23.

23 24. REAL lacks knowledge and information sufficient to form a belief as
24 to the truth of the allegations contained in paragraph 24 and, therefore, denies the
25 same.

26 25. REAL lacks knowledge and information sufficient to form a belief as
27 to the truth of the allegations contained in paragraph 25 and, therefore, denies the
28 same.

1 26. REAL lacks knowledge and information sufficient to form a belief as
2 to the truth of the allegations contained in paragraph 26, and, therefore, denies the
3 same.

4 **DEFENDANTS’ UNLAWFUL ACTIONS**

5 27. REAL denies each and every allegation contained in paragraph 27.

6 28. REAL denies each and every allegation contained in paragraph 28.

7 29. REAL denies each and every allegation contained in paragraph 29.

8 30. REAL denies each and every allegation contained in paragraph 30.

9 31. REAL denies each and every allegation contained in paragraph 31.

10 32. REAL denies the allegations contained in paragraph 32, except admits
11 that it filed a patent infringement lawsuit on or about March 11, 2008, which has
12 since been consolidated with this action, against NAR and other defendants. The
13 allegations against NAR concerned the operation of at least certain of the MOVE
14 websites and infringement of the ‘576 and ‘989 Patents. REAL denies any
15 remaining allegations contained in paragraph 32.

16 33. REAL denies each and every allegation contained in paragraph 33.

17 34. REAL denies the allegations contained in paragraph 34, except admits
18 that it filed a patent infringement lawsuit on or about March 11, 2008, which has
19 since been consolidated with this action, against NAHB and other defendants. The
20 allegations against NAHB concerned the operation of at least certain of the MOVE
21 websites and infringement of the ‘576 and ‘989 Patents. REAL denies any
22 remaining allegations contained in paragraph 34.

23 35. REAL denies each and every allegation contained in paragraph 35.

24 36. The allegations contained in paragraph 36 are legal conclusions, to
25 which no response is required. To the extent that a response is deemed to be
26 required, REAL admits that Plaintiffs have infringed the ‘576 and ‘989 Patents and
27 that REAL filed a complaint against NAR and NAHB and a counterclaim against
28

1 MOVE alleging the same. REAL denies any remaining allegations contained in
2 Paragraph 36.

3 **FIRST CLAIM FOR RELIEF**

4 37. REAL incorporates by reference its answers to paragraphs 1 through
5 36 as if fully set forth herein.

6 38. The allegations contained in paragraph 38 are legal conclusions, to
7 which no response is required. To the extent that a response is deemed to be
8 required, REAL admits that Plaintiffs have infringed the '576 Patent and that
9 REAL filed a complaint against NAR and NAHB and a counterclaim against
10 MOVE alleging the same. REAL denies any remaining allegations contained in
11 Paragraph 38.

12 39. REAL denies each and every allegation contained in paragraph 39.

13 40. REAL denies each and every allegation contained in paragraph 40.

14 41. REAL admits that Plaintiffs' claim purports to seek a declaration that
15 the claims of the '576 Patent are invalid. REAL denies any remaining allegations
16 contained in paragraph 41.

17 **SECOND CLAIM FOR RELIEF**

18 42. REAL incorporates by reference its answers to paragraphs 1 through
19 41 as if fully set forth herein.

20 43. The allegations contained in paragraph 43 are legal conclusions, to
21 which no response is required. To the extent that a response is deemed to be
22 required, REAL admits that Plaintiffs have infringed the '576 Patent and that
23 REAL filed a complaint against NAR and NAHB and a counterclaim against
24 MOVE alleging the same. REAL denies any remaining allegations contained in
25 Paragraph 43.

26 44. REAL denies each and every allegation contained in paragraph 44.

27 45. REAL denies each and every allegation contained in paragraph 45.

28

1 46. REAL admits that Plaintiffs' claim purports to seek a declaration that
2 they are not infringing the '576 Patent. REAL denies any remaining allegations
3 contained in paragraph 46.

4 47. REAL admits that Plaintiffs' claim purports to seek a declaration that
5 users of the MOVE websites and Enhanced Listing subscribers of the MOVE
6 websites are not infringing the '576 Patent. REAL denies any remaining
7 allegations contained in paragraph 47.

8 **THIRD CLAIM FOR RELIEF**

9 48. REAL incorporates by reference its answers to paragraphs 1 through
10 47 as if fully set forth herein.

11 49. The allegations contained in paragraph 49 are legal conclusions, to
12 which no response is required. To the extent that a response is deemed to be
13 required, REAL admits that Plaintiffs have infringed the '576 Patent and that
14 REAL filed a complaint against NAR and NAHB and a counterclaim against
15 MOVE alleging the same. REAL denies any remaining allegations contained in
16 Paragraph 49.

17 50. REAL denies each and every allegation contained in paragraph 50.

18 51. REAL denies each and every allegation contained in paragraph 51.

19 52. REAL admits that Plaintiffs' claim purports to seek a declaration that
20 the claims of the '576 Patent are unenforceable. REAL denies any remaining
21 allegations contained in paragraph 52 of the Amended Complaint.

22 **FOURTH CLAIM FOR RELIEF**

23 53. REAL incorporates by reference its answers to paragraphs 1 through
24 52 as if fully set forth herein.

25 54. The allegations contained in paragraph 38 are legal conclusions, to
26 which no response is required. To the extent that a response is deemed to be
27 required, REAL admits that Plaintiffs have infringed the '989 Patents and that
28 REAL filed a complaint against NAR and NAHB and a counterclaim against

1 MOVE alleging the same. REAL denies any remaining allegations contained in
2 Paragraph 54.

3 55. REAL denies each and every allegation contained in paragraph 55.

4 56. REAL denies each and every allegation contained in paragraph 56.

5 57. REAL admits that Plaintiffs' claim purports to seek a declaration that
6 the claims of the '989 Patent are invalid. REAL denies any remaining allegations
7 contained in paragraph 57.

8 **FIFTH CLAIM FOR RELIEF**

9 58. REAL incorporates by reference its answers to paragraphs 1 through
10 57 as if fully set forth herein.

11 59. The allegations contained in paragraph 43 are legal conclusions, to
12 which no response is required. To the extent that a response is deemed to be
13 required, REAL admits that Plaintiffs have infringed the '989 Patent and that
14 REAL filed a complaint against NAR and NAHB and a counterclaim against
15 MOVE alleging the same. REAL denies any remaining allegations contained in
16 Paragraph 59.

17 60. REAL denies each and every allegation contained in paragraph 60.

18 61. REAL denies each and every allegation contained in paragraph 61.

19 62. REAL admits that Plaintiffs' claim purports to seek a declaration that
20 they are not infringing the '989 Patent. REAL denies any remaining allegations
21 contained in paragraph 62.

22 63. REAL admits that Plaintiffs' claim purports to seek a declaration that
23 users of the MOVE websites and Enhanced Listing subscribers of the MOVE
24 websites are not infringing the '989 Patent. REAL denies any remaining
25 allegations contained in paragraph 63.

26 **SIXTH CLAIM FOR RELIEF**

27 64. REAL incorporates by reference its answers to paragraphs 1 through
28 63 as if fully set forth herein.

1 76. REAL denies the allegations contained in paragraph 76 on
2 information and belief.

3 77. REAL lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations contained in paragraph 77 and, therefore, denies the
5 same.

6 78. REAL denies the allegations contained in paragraph 78 on
7 information and belief.

8 79. To the extent that REAL understands the allegations contained in
9 paragraph 79, which are unlimited in time, nonspecific as to the type of software or
10 version, and vague, REAL denies the allegations contained in paragraph 79.

11 80. REAL denies the allegations contained in paragraph 80 on
12 information and belief.

13 81. The allegations contained in paragraph 81 are legal conclusions, to
14 which no response is required. To the extent that a response is deemed to be
15 required, REAL denies the allegations contained in paragraph 81.

16 82. REAL admits that the continuation-in-part application from which the
17 '989 patent issued claims the benefit of the previously filed application from which
18 the '576 patent issued. REAL denies any remaining allegations contained in
19 paragraph 82.

20 83. REAL admits that 37 C.F.R. § 1.56 currently imposes "a duty to
21 disclose to the Office all information known to that individual to be material to
22 patentability as defined in [§ 1.56(b)]," including material information "which
23 became available between the filing date of the prior application and the national
24 or PCT international filing date of the continuation-in-part application." REAL
25 denies any remaining allegations contained in paragraph 83.

26 84. REAL denies the allegations contained in paragraph 84 on
27 information and belief.
28

1 85. REAL admits that Mr. Tornetta executed a declaration in connection
2 with the prosecution of the '576 patent and refers to that declaration for its
3 contents. REAL also admits that Mr. Tornetta executed declarations in connection
4 with the prosecution of the '989 patent and refers to those declarations for their
5 contents. REAL denies any remaining allegations contained in paragraph 85.

6 86. REAL denies the allegations contained in paragraph 86 on
7 information and belief.

8 87. The allegations contained in paragraph 87 are legal conclusions, to
9 which no response is required. To the extent that a response is deemed to be
10 required, REAL denies the allegations contained in paragraph 87.

11 88. The allegations contained in paragraph 88 are legal conclusions, to
12 which no response is required. To the extent that a response is deemed to be
13 required, REAL denies the allegations contained in paragraph 88.

14 89. REAL admits that Plaintiffs' claim purports to seek a declaration that
15 the claims of the '989 Patent are unenforceable. REAL denies any remaining
16 allegations contained in paragraph 89.

17 90. - 122. As and for REAL's answer to paragraphs 90-122, REAL has
18 moved to dismiss MOVE's claims stated therein.

19 **REAL'S AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims fail to state a claim upon which relief may be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred by the doctrine of unclean hands.

24 **THIRD AFFIRMATIVE DEFENSE**

25 Plaintiffs' claims are barred by the doctrine of estoppel.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims are barred by the doctrine of waiver.

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FIFTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims fail to state a claim because Plaintiffs have infringed the Patents-in-Suit, as set forth in the counterclaims alleged below.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims fail to state a claim because Plaintiffs have induced infringement of the Patents-in-Suit, as set forth in the counterclaims alleged below.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims fail to state a claim because Plaintiffs have contributed to the infringement of the Patents-in-Suit, as set forth in the counterclaims alleged below.

EIGHTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs purport to allege fraud in connection with their claims seeking a declaratory judgment of unenforceability, such claims fails to allege the circumstances constituting fraud with the requisite particularity required by Federal Rule of Civil Procedure 9(b).

NINTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims are preempted in part by federal law.

ADDITIONAL AFFIRMATIVE DEFENSES

REAL reserves the right to assert additional defenses that may become known or that are appropriate up to and including the time of trial.

REAL’S COUNTERCLAIMS

NATURE OF THE CLAIMS

1. These counterclaims and additional claims (the “REAL Claims”) arise from the massive, nationwide infringement of United States Patent No. 4,870,576 issued September 26, 1989 (the “’576 Patent”) and United States Patent No. 5,032,989 issued July 16, 1991 (the “’989 Patent”) (the ’576 Patent and the ’989 Patent are referred to collectively as the “Patents”) by plaintiff Move, Inc.

1 (“MOVE”) and by the additional defendants named in these claims, which are
2 liable for infringement based on their conduct related to, supportive of, and
3 intertwined with the business of MOVE, and for related conduct alleged herein.

4 2. As set forth more fully in the Patents, the Patents describe methods for
5 locating available real estate properties for sale, lease, or rental using a database of
6 available properties, and displaying the approximate location of such properties on
7 a map of an area of interest. The Patents describe zooming in on an area of
8 interest, displaying the approximate locations of available properties within the
9 zoomed area, and, among other things, identifying information about the available
10 properties in that area.

11 3. The Patents represent pioneering, landmark inventions, dating back to
12 1986 when the patent application for the '576 Patent was filed. At that time,
13 personal computers were in their infancy; the Internet was virtually unheard of.
14 The inventor, Mark Tornetta, is a graduate of the Moore School of Engineering at
15 the University of Pennsylvania, and his family was active in the real estate
16 business. As an engineer with a practical knowledge of real estate, Mr. Tornetta
17 recognized that the emerging personal computer technology could be used to great
18 effect to assist real estate professionals and their customers in locating available
19 real estate properties, information about which was typically shared among brokers
20 and agents who belonged to various “multiple listings services.” Working
21 diligently with an early personal computer and maps he initially drew himself, Mr.
22 Tornetta developed the first system to implement the invention and display the
23 location of available properties on zoom-enabled maps. Mr. Tornetta is currently
24 the principal shareholder of defendant and counterclaim-plaintiff REAL, to which
25 the Patents have been assigned.

26 4. MOVE’s infringement is enormous and is central to the selling or
27 leasing of real estate throughout the United States. MOVE owns, controls,
28 maintains, and/or operates a number of websites including MOVE.com,

1 REALTOR.com, HomeBuilder.com, RentNet.com, and SeniorHousingNet.com
2 (the “MOVE Websites”). MOVE infringes the Patents by using the claimed
3 methods to display on zoom-enabled maps on these websites the location of more
4 than three million real estate properties presently available for sale or rent
5 throughout the country. MOVE claims that the MOVE Websites attract almost 10
6 million unique users each month. During the past six years of operation, the
7 infringing MOVE Websites have been used to promote tens of millions of
8 available real estate properties. Through their trade association and otherwise,
9 defendants have publicly recognized that the electronic mapping function of their
10 websites is a key determinant of their success.

11 5. MOVE receives real estate listings displayed on its websites with the
12 substantial involvement of the National Association of Realtors (“NAR”). NAR
13 promotes itself as the predominant real estate industry trade organization in the
14 United States and claims to have almost 1.3 million members throughout the
15 country consisting of various real estate professionals. One of the infringing
16 MOVE Websites, REALTOR.com, is NAR’s official website, which MOVE
17 operates under contractual agreements with NAR and under NAR’s direction and
18 control. NAR’s members are real estate brokerage firms and/or agents, who use
19 the MOVE Websites, including Move.com and REALTOR.com, to promote their
20 listings of available properties, thereby employing MOVE to use the patented
21 methods to their own commercial advantage.

22 6. With respect to residential real estate that is listed for sale by real
23 estate agents and brokers throughout the country, MOVE generally obtains
24 property listings from agents and brokers in conjunction with nearly one thousand
25 entities that operate regional multiple listing services (“MLS’s”), which also have
26 infringed the Patents. Typically, a brokerage firm or real estate agent is a member
27 of a regional MLS (which is usually itself a member of NAR), along with other
28 brokers and agents in the same region. Contracts between MLS’s and their

1 members generally provide that members are obligated to transmit their property
2 listings promptly to the MLS so that the broker and agent members may share their
3 listings with each other. The MLS will, in turn, transmit those listings to MOVE
4 under separate agreements.

5 7. MOVE also receives information concerning available real estate
6 properties from builders of new homes and from owners or managers of rental
7 properties, all of which use the MOVE Websites to promote their listings of
8 available properties and employ MOVE to use the patented methods for their own
9 commercial advantage. MOVE also operates the “Official New Homes” website
10 for the National Association of Home Builders (“NAHB”), found on Move.com.

11 8. Under well-established principles of patent law, both MOVE and
12 those persons who employ MOVE to use the patented methods on their behalf –
13 including NAR, brokers, agents, MLS’s, new home builders, NAHB, and rental
14 property owners and managers – are liable as infringers and must compensate
15 REAL to the fullest extent permitted by law. The defendants have substantially
16 benefitted from their use of the patented methods. The use of the Internet and
17 mapping capabilities is an indispensable tool in the real estate industry and the
18 MOVE Websites are used to facilitate real estate transactions involving, in the
19 aggregate, billions of dollars.

20 9. In addition to using the MOVE Websites, many brokers and agents,
21 large and small, own, maintain, and/or operate their own websites displaying the
22 same property listings that they provide to MOVE. These brokers and agents
23 additionally have infringed the Patents by using the methods of the Patents to
24 display the location of available real estate properties on their websites. The
25 MLS’s also operate their own websites and computer systems and, like MOVE and
26 the brokers and agents who maintain infringing websites, the MLS’s likewise have
27 infringed the Patents by using the claimed methods to display available properties
28 – the same property listings that are shared with MOVE – on zoom-enabled maps.

1 10. Firms that provide computer software, computer hosting services, or
2 other computer systems using the methods of the Patents are also liable for
3 infringement of the Patents. They have provided such computer systems to the
4 MLS's, brokers, and/or agents described above, which own, operate, and/or
5 maintain their own infringing websites using real estate listings that are shared
6 with MOVE. These technology companies are liable as direct infringers,
7 contributory infringers, or inducers in their own right.

8 11. As alleged in more detail herein, the REAL Claims include claims
9 against (a) MOVE; (b) NAR and NAHB; (c) certain brokers, agents, MLS's, new
10 home builders, and rental property owners/managers who use the MOVE Websites
11 to promote their properties, some of whom, in addition, operate their own
12 infringing websites; and (d) technology companies who provide infringing
13 software enabling MLS's, brokers, and agents to operate infringing websites in
14 connection with the property listings shared with MOVE. As compensation for
15 these industry-wide acts of infringement, REAL is entitled to, among other
16 damages, a reasonable royalty in connection with each broker, agent, MLS, new
17 home builder, rental property owner/manager, or other person who has had one or
18 more property listings included in any of the MOVE Websites during the pertinent
19 period, and additional damages from all defendants who otherwise have infringed
20 the Patents.

21 12. The infringing brokers, agents, MLS's, new home builders, and rental
22 property owners and managers are named personally for the damages they have
23 caused and as representatives of appropriately defined classes of similarly situated
24 persons or entities in accordance with Fed. R. Civ. P. 23. Adjudication of certain
25 issues on a class-wide basis is appropriate and warranted here because the number
26 of actual infringers is so numerous that joinder of all members is impracticable,
27 there are questions of law or fact common to the classes, the claims or defenses of
28 the representative parties are typical of the claims or defenses of the classes, and

1 the representative parties will fairly and adequately protect the interests of the
2 classes.

3 **JURISDICTION AND VENUE**

4 13. This civil action arises under the Patent Laws of the United States,
5 Title 35 of the United States Code, and this Court has jurisdiction over this action
6 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7 14. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) and
8 § 1391(b) and (c).

9 15. This Court has personal jurisdiction over MOVE and the other
10 defendants named herein because they reside in or do business in the State of
11 California and in this District. Additionally, many of the acts of infringement
12 complained of herein resulted from defendants' actions in the State of California
13 and in this District. Defendants have further purposefully engaged in acts targeted
14 at this District that have caused harm in this District; they have entered into
15 agreements with residents of this State and District, including MOVE; and they
16 have availed themselves of the privilege of conducting activities in this State and
17 District.

18 **THE PARTIES**

19 **Counterclaim-Plaintiff REAL**

20 16. REAL is a corporation formed and existing under the laws of the State
21 of Delaware and is located at P.O. Box 587, Southeastern, Pennsylvania 19399.

22 **Counterclaim-Defendant MOVE**

23 17. MOVE is a corporation organized and existing under the laws of the
24 State of Delaware and is located at 30700 Russell Ranch Road, Westlake Village,
25 California 91362.

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1 **Defendant NAR**

2 18. NAR is a corporation organized and existing under the laws of the
3 State of Illinois and is located at 430 North Michigan Avenue, Chicago, Illinois
4 60611.

5 **Broker Defendants**

6 19. Keller Williams Realty, Inc. (“Keller Williams Realty”) is a
7 corporation organized and existing under the laws of the State of Texas and is
8 located at 807 Las Cimas Parkway, Suite 200, Austin, Texas 78746.

9 20. Norcal Gold, Inc. d/b/a RE/MAX Gold, Inc. (“RE/MAX Gold”) is a
10 corporation organized and existing under the laws of the State of California and is
11 located at 2339 Gold Meadow Way, Suite 210, Gold River, California 95670.

12 21. Frank Howard Allen Realtors (“Frank Howard Allen Realtors”) is a
13 corporation organized and existing under the laws of the State of California and is
14 located at 1013 Second Street, Novato, California 94945.

15 22. Alain Pinel Realtors, Inc. (“Alain Pinel Realtors”) is a corporation
16 organized and existing under the laws of the State of California and is located at
17 12772 Saratoga Sunnyvale Road, Suite 1000, Saratoga, California 95070.

18 23. RE/MAX International, Inc. (“RE/MAX, Inc.”) is a corporation
19 organized and existing under the laws of the State of Colorado and is located at
20 5075 S. Syracuse Street, Denver, Colorado 80237.

21 24. Keller Williams Realty, RE/MAX Gold, Frank Howard Allen
22 Realtors, Alain Pinel Realtors, and RE/MAX, Inc. are each real estate brokers;
23 collectively they are referred to herein as the “Broker Defendants,” and are sued in
24 their individual capacities and as representatives of the Broker Class.

25 **Agent Defendants**

26 25. Brad Korb is an individual doing business at 3813 W. Magnolia
27 Boulevard, Burbank, California 91505.

28

1 26. Christy Morrison is an individual doing business at 11890 Donner
2 Pass Road, Suite 6, Truckee, California 96161.

3 27. Paymon Ghafouri is an individual doing business at 3201 Oak Knoll
4 Suite A, Redwood City, California 94062.

5 28. Brad Korb, Christy Morrison, and Paymon Ghafouri are each real
6 estate agents; collectively they are referred to herein as the “Agent Defendants”
7 and are sued in their individual capacities and as representatives of the Agent
8 Class.

9 **MLS Defendants**

10 29. Orange County Multiple Listing Service, Inc. d/b/a Southern
11 California MLS (“Southern California MLS”) is a corporation formed and existing
12 under the laws of the State of California and is located at 101 E. Lincoln Avenue,
13 Suite 120/200, Anaheim, California 92805.

14 30. Georgia MLS, Inc. (“Georgia MLS”) is a corporation formed and
15 existing under the laws of the State of Georgia and is located at 1414 Montreal
16 Road, Tucker, Georgia 30084.

17 31. Metrolist Services, Inc. (“Metrolist Services”) is a corporation formed
18 and existing under the laws of the State of California and is located at 1164 West
19 National Drive, Suite 60, Sacramento, California 95834.

20 32. Delaware Valley Real Estate Information Network, Inc. d/b/a TREND
21 (“TREND”) is a corporation formed and existing under the laws of the
22 Commonwealth of Pennsylvania and its principal place of business is located at
23 660 American Avenue, Suite 203, King of Prussia, Pennsylvania 19406.

24 33. Southern California MLS, Georgia MLS, Metrolist Services, and
25 TREND are each an MLS, collectively are referred to herein as the “MLS
26 Defendants” and are sued in their individual capacities and as representatives of
27 the MLS Class.
28

1 **Defendant NAHB**

2 34. NAHB is a trade organization and is located at 1201 15th Street, NW,
3 Washington, DC 20005.

4 **New Home Builder Defendants**

5 35. Pulte Homes, Inc. (“Pulte Homes”) is a corporation formed and
6 existing under the laws of the State of Michigan and is located at 100 Bloomfield
7 Hills Parkway, Suite 300, Bloomfield Hills, Michigan 48304.

8 36. The Ryland Group, Inc. (“Ryland Group”) is a corporation formed
9 and existing under the laws of the State of Maryland and is located at 24025 Park
10 Sorrento, Suite 400, Calabasas, California 91302.

11 37. Shea Homes (“Shea Homes”) is a limited partnership formed and
12 existing under the laws of the State of California and is located at 655 Brea Canyon
13 Road, Walnut, California 91789.

14 38. Taylor Morrison, Inc. f/k/a Taylor Woodrow, Inc. (“Taylor Woodrow”)
15 is a corporation formed and existing under the laws of the State of Delaware and is
16 located at 8430 Enterprise Circle, Suite 100, Bradenton, Florida 34202.

17 39. Pulte Homes, Ryland Group, Shea Homes, and Taylor Woodrow are
18 each companies that construct new homes; collectively they are referred to herein
19 as the “New Home Builders Defendants” and are sued in their individual capacities
20 and as representatives of the New Home Builder Class.

21 **Rental Property Defendants**

22 40. AvalonBay Communities, Inc. (“AvalonBay”) is a corporation formed
23 and existing under the laws of the State of Maryland and is located at 2900
24 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314.

25 41. Essex Property Trust, Inc. (“Essex Property”) is a corporation formed
26 and existing under the laws of the State of Maryland and is located at 925 East
27 Meadow Drive, Palo Alto, California 94303.

28

1 42. BRE Properties, Inc. (“BRE Properties”) is a corporation formed and
2 existing under the laws of the State of Maryland and is located at 525 Market
3 Street, 4th Floor, San Francisco, California 94105-2712.

4 43. Riverstone Residential Group, LLC (“Riverstone Residential”) is a
5 limited liability company formed and existing under the laws of the State of
6 Delaware and is located at 2001 Bryan Street, Suite 3750, Dallas, TX 75201.

7 44. AvalonBay, Essex Property, BRE Properties, and Riverstone
8 Residential are each owners or managers of rental properties; collectively they are
9 referred to herein as the “Rental Property Defendants” and are sued in their
10 individual capacities and as representatives of the Rental Property Class.

11 **Technology Provider Defendants**

12 45. Technology providers fall into two categories. The first, referred to
13 as “Enterprise Software Providers,” provide services to MLS’s by designing and
14 manufacturing software for sale or license, or by providing computer hosting
15 services, that allows an MLS to operate a website and use the patented methods to
16 display available properties on its website. The second, referred to as “IDX
17 Software Providers,” provide similar services to brokers and agents. IDX is an
18 abbreviation for “Internet Data eXchange,” which describes the process by which
19 brokers and agents are able to obtain property listings from MLS’s.

20 **Enterprise Software Provider Defendants**

21 46. eNeighborhoods, LLC (“eNeighborhoods”) is a limited liability
22 company formed and existing under the laws of the State of Virginia and is located
23 at 100 W. Plume Street, Norfolk, Virginia 23510. eNeighborhoods is also an IDX
24 Software Provider.

25 47. Rapattoni Corporation (“Rapattoni”) is a corporation formed and
26 existing under the laws of the State of California and is located at 98 W. Cochran
27 Street, Simi Valley, California 93065.

28

1 48. The First American Corporation (“First American”) is a corporation
2 formed and existing under the laws of the State of California and is located at 1
3 First American Way, Santa Ana, California 92707. First American is also an IDX
4 Software Provider.

5 49. Fidelity National Real Estate Solutions, LLC (“Fidelity”) is a limited
6 liability company formed and existing under the laws of the State of Delaware and
7 is located at 2510 Red Hill Avenue, Santa Ana, California 92705. Fidelity is also
8 an IDX Software Provider.

9 50. Collectively, eNeighborhoods, Rapattoni, First American, and Fidelity
10 are referred to herein as the “Enterprise Software Provider Defendants.”

11 **IDX Software Provider Defendants**

12 51. Birdview.com, Inc. d/b/a Birdview Technologies (“Birdview
13 Technologies”) is a corporation formed and existing under the laws of the State of
14 Illinois and is located at Phoenix Tower, 3200 Southwest Freeway, Suite 3300,
15 Houston, Texas 77027.

16 52. Advanced Access (“Advanced Access”) is a corporation formed and
17 existing under the laws of the State of Georgia and its principal place of business is
18 located at 8101 East Kaiser Boulevard, Suite 130, Anaheim, California 92808.

19 53. iHomeFinder, Inc. (“iHomeFinder”) is a corporation formed and
20 existing under the laws of the State of California and is located at 1900 Addison
21 Street, Suite 300, Berkeley, California 94704.

22 54. CIS Data Systems, Inc. (“CIS Data Systems”) is a corporation formed
23 and existing under the laws of the State of California and is located at 2030
24 Franklin Street, Suite 500, Oakland, California 94612.

25 55. Delta Media Group, Inc. (“Delta Media”) is a corporation formed and
26 existing under the laws of the State of California and is located at 4883 Dressler
27 Road NW, Suite 300, Canton, Ohio 44718.

28

1 56. Diverse Solutions, LLC (“Diverse Solutions”) is a limited liability
2 company formed and existing under the laws of the State of Delaware and its
3 principal place of business is located at 30162 Tomas, Suite 100, Rancho Santa
4 Margarita, California 92688.

5 57. Wanisoft Corporation (Wanisoft”) is a corporation formed and
6 existing under the laws of the State of Tennessee and is located at 6025 Lee
7 Highway, Suite 326-5, Chattanooga, Tennessee 37421.

8 58. Trend Software, Inc. d/b/a PropertyMinder (“PropertyMinder”) is a
9 corporation formed and existing under the laws of the State of California and is
10 located at 1101 So. Winchester Boulevard, Suite P-298, San Jose, California
11 95128.

12 59. Collectively, Birdview Technologies, Advanced Access,
13 iHomeFinder, CIS Data Systems, Delta Media, Diverse Solutions, Wanisoft, and
14 PropertyMinder are referred to herein as the “IDX Software Provider Defendants.”

15 60. Consistent with the Order on Joint Stipulation Regarding Case
16 Management, MOVE, NAR, and NAHB, collectively, are classified as the
17 “Primary Defendants,” and the Broker Defendants, the Agent Defendants, the MLS
18 Defendants, the New Home Builder Defendants, the Rental Property Defendants,
19 the Enterprise Software Provider Defendants, and the IDX Software Provider
20 Defendants are classified as the “Secondary Defendants.”

21 **Common Action by Defendants**

22 61. Each of MOVE and the other defendants has infringed the Patents,
23 either literally and/or under the doctrine of equivalents, in violation of some or all
24 subsections of 35 U.S.C. § 271, by virtue of (a) that defendant’s own infringing
25 conduct; (b) that defendant’s use of MOVE to employ the patented methods on
26 such defendant’s behalf and for that defendant’s benefit; or in the alternative, (c)
27 the participation and combined actions of that defendant and all or some of the
28 other defendants, or others under its direction or control, who act in concert with

1 MOVE or the MOVE enterprise, or who act jointly or with some relationship
2 found sufficient in law, such as, for example, to establish vicarious liability, or as
3 part of a single or related enterprise, which combination of actions (Defendants'
4 "Collective Conduct") constitutes the performance of each step of one or all of the
5 claims of the Patents.

6 **CLASS ACTION ALLEGATIONS**

7 62. REAL brings this action as a class action against classes of brokers,
8 agents, MLS's, new home builders, and rental property owners/managers, pursuant
9 to Federal Rules of Civil Procedure 23(a), 23(b)(1), (b)(2), (b)(3), and/or 23(c)(4)
10 initially defined as follows:

11 (a) The "Broker Class" consists of all real estate brokers who have
12 had at least one available real estate property listing displayed on the
13 MOVE Websites.

14 (b) The "Agent Class" consists of all real estate agents who have
15 had at least one available real estate property listing displayed on the
16 MOVE Websites.

17 (c) The "MLS Class" consists of all MLS's who have had at
18 least one available real estate property listing displayed on the MOVE
19 Websites.

20 (d) The "New Home Builder Class" consists of all new home
21 builders who have had at least one available real estate property listing
22 displayed on the MOVE Websites.

23 (e) The "Rental Property Class" consists of all rental property
24 owners/ managers who have had at least one available real estate
25 property listing displayed on the MOVE Websites.

26 63. This action has been brought and may properly be maintained as a
27 class action, pursuant to Fed. R. Civ. P. 23(a)(1)-(4), Fed. R. Civ. P. 23(b)(1), (2),
28 (3), and/or Fed. R. Civ. P. 23(c)(4) and the case law thereunder.

1 64. Numerosity of the Classes – Fed. R. Civ. P. 23(a)(1). The members of
2 each Class are so numerous that joinder of all members is impracticable:

3 (a) The Broker Class: NAR claims to have thousands of members
4 who are brokers. In consideration of the contractual obligations that members have
5 to NAR concerning the sharing of property listings, substantial numbers of NAR’s
6 broker-members, if not the large majority, are submitting property listings that
7 appear on one or more of the MOVE Websites, making them members of the
8 Broker Class;

9 (b) The Agent Class: NAR claims to have hundreds of thousands
10 of members who are agents. In consideration of the contractual obligations that
11 members have to NAR concerning the sharing of property listings, a substantial
12 number of NAR’s agent-members, if not the large majority, are submitting
13 property listings that appear on one or more of the MOVE Websites, making them
14 members of the Agent Class;

15 (c) The MLS Class: Approximately 800-900 MLS’s are members
16 of NAR. MLS-members of NAR have a contractual obligation to submit the
17 property listings they collect to NAR and MOVE. These listings appear on one or
18 more of the MOVE Websites, making these MLS-members of NAR members of
19 the MLS Class. MOVE claims it has “relationships with approximately 900
20 MLS’s nationwide, which aggregate local property listings by geographic location
21 and allow us to display their listing content on our REALTOR.com® site”;

22 (d) The New Home Builder Class: NAHB claims that
23 approximately one-third of its 235,000 members are home builders. Thus, there
24 are approximately 75,000 home builder-members of NAHB. A large portion of
25 these 75,000 members submit listings that appear on one or more of the MOVE
26 Websites, particularly the New Homes Move.com website;

27 (e) The Rental Property Class: There are over 50,000 companies
28 across the United States that are in the business of leasing residential properties.

1 At least 50 of these companies, which own or manage apartments and rental
2 properties, submit listings that appear on the MOVE Websites at present, and the
3 total number is likely substantially higher.

4 65. Typicality – Fed. R. Civ. P. 23(a)(3). The named Class defendants for
5 each of the Classes have defenses typical of their respective Classes because their
6 position as to REAL is the same as the other Class members. Those defenses
7 include claimed patent invalidity, patent unenforceability, defenses based on claim
8 construction, and non-infringement of the Patents with respect to the employment
9 of MOVE for the commercial benefit of each member of the Classes.

10 66. Adequacy – Fed. R. Civ. P. 23(a)(4). The named Class defendants
11 will fairly and adequately protect the interests and represent the members of each
12 Class. The class representatives of each Class include some of the largest and most
13 well-funded companies or individuals in each Class. The named class
14 representatives for each Class have no interests relating to this patent infringement
15 action that are in such conflict with those of their respective Class so as to preclude
16 their acting as representatives of the defendant class.

17 67. Superiority – Fed. R. Civ. P. 23(b)(3). A class action is superior to all
18 other available means for the fair and efficient adjudication of REAL's claims. It
19 would be virtually impossible for REAL individually to sue each of the members
20 of each of the Classes to redress effectively the wrongs done to it. Furthermore,
21 even if REAL could undertake such individualized litigation, the court system
22 could not. Individualized litigation would create the danger of inconsistent or
23 contradictory judgments because, for example, REAL's Patents might be construed
24 differently and inconsistently in different actions, and, as a result, might be found
25 valid and enforceable as to some members of the Classes and invalid and/or
26 unenforceable as to others. Individualized litigation would also increase the delay
27 and expense to all parties and the court system from the complex legal and factual
28 issues of the case. By contrast, the class action device presents far fewer

1 management difficulties, is, in fact, manageable, and provides the benefits of single
2 adjudication, economies of scale, and comprehensive supervision by a single court.
3 The members of the Classes are reasonably ascertainable through methods typical
4 of class action practice and procedure and through the defendants' own records.
5 The benefits of adjudicating this controversy as a class action far outweigh the
6 difficulties, if any, in managing the Classes.

7 68. Existence and Predominance of Common Questions of Law and Fact
8 – Fed. R. Civ. P. 23(a)(2), 23(b)(3). Numerous common questions of law and/or
9 fact exist as to all of the Classes of defendants, and, specifically, to each of the
10 Classes, and these common issues predominate over any questions affecting solely
11 individual members of the Classes. Among the questions of law and fact common
12 to the Class are: the validity of the Patents, the enforceability of the Patents, claim
13 construction of the Patents, and infringement of the Patents through the use of
14 MOVE for the commercial benefit of each member of the Classes.

15 69. Certification under Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2).
16 Certification is also appropriate under Fed. R. Civ. P. 23(b)(1) and/or (b)(2)
17 because:

18 (a) The prosecution of separate actions against individual Class
19 members would create a risk of inconsistent or varying adjudications with respect
20 to individual Class members which would establish incompatible standards of
21 conduct for defendants;

22 (b) The prosecution of separate actions against individual Class
23 members would create a risk of adjudications which would, as a practical matter,
24 be dispositive of the interests of other Class members not parties to the
25 adjudications, or substantially impair or impede their ability to protect their
26 interests; and
27
28

1 (c) Defendants have acted or refused to act on grounds generally
2 applicable to the Class, thereby making appropriate final injunctive or declaratory
3 relief with respect to the Class as a whole.

4 70. Reasonable notice shall be given as directed by the Court to the
5 Classes as provided by Fed. R. Civ. P. 23(c)(2)(A). If a class is certified pursuant
6 to Fed. R. Civ. P. 23(c)(2)(B), the best notice practicable under the circumstances,
7 including, where appropriate, individual notice to all members who can be
8 identified through reasonable efforts, must be given. Notice should include, but
9 not be limited to, notice provided on the MOVE Websites, notice through NAR to
10 all of its members, and notice through NAHB to all of its members.

11 **FACTS COMMON TO ALL CLAIMS**

12 **The Patents**

13 71. As described more fully above and in the Patents themselves, the
14 Patents describe methods for locating available real estate properties for sale, lease,
15 or rent using a database of available properties and displaying the approximate
16 location of such properties on a map of an area of interest. The Patents describe
17 zooming in on an area of interest, displaying the approximate locations of available
18 properties within the zoomed area, and, among other things, identifying
19 information about the available properties in that area.

20 72. The Patents have been assigned by the inventor, Mark Tornetta, to
21 REAL, which, among other things, holds the sole and exclusive right to make, use,
22 and sell under the Patents and the right to enforce the Patents against alleged
23 infringers. Any and all conditions precedent to suit by REAL have been satisfied,
24 waived, or rendered inapplicable as a matter of law.

25 **Defendants' Infringing Conduct**

26 73. MOVE infringes the Patents by using the patented methods to display
27 on zoom-enabled maps on the MOVE Websites the locations of over three million
28 available real estate property listings at any time, including existing homes, newly

1 constructed homes, and rental properties; according to MOVE, the MOVE
2 Websites attract almost 10 million unique users each month. The additional
3 defendants make use of the MOVE Websites, thereby infringing the Patents in
4 their own right; in many cases, they also maintain their own infringing websites, as
5 described below.

6 **Listings of Existing Homes**

7 74. MOVE, NAR, MLS's, brokers, and agents work together to aggregate
8 and disseminate information regarding available real estate properties using the
9 MOVE Websites. As described below, they are parties to various agreements that
10 provide for the property listings to be supplied to MOVE for display on zoom-
11 enabled maps on the MOVE Websites.

12 75. With a current membership approaching 1.3 million, NAR has been
13 the predominant real estate trade organization in the United States for decades.
14 When it became clear that the Internet would play a critical role in the conduct of
15 real estate transactions, NAR established an official website, REALTOR.com, on
16 which its members could list properties with confidence that the integrity and
17 ownership rights in the listing data would be protected.

18 76. As a trade organization, NAR sought a corporate partner to run its
19 website and has contracted with MOVE to maintain and operate REALTOR.com
20 for the benefit of NAR's members. Under certain agreements, MOVE operates
21 REALTOR.com and also is entitled to use NAR property listings and information
22 on other of the MOVE Websites. NAR owns a portion of MOVE's stock and
23 occupies a seat on the board of directors of MOVE and at least one of MOVE's
24 subsidiaries. NAR has stated that its ownership of a portion of MOVE's stock
25 provides it with "substantial controls" over MOVE.

26 77. NAR imposes those controls strictly and monitors MOVE's operation
27 of REALTOR.com on a daily basis. In exchange for receiving property listing
28 content for its Websites, MOVE has "agreed to provide revenue back to NAR and

1 to the data providers, the MLS's." Some "MLS's share this revenue with the
2 brokers who supply the listings to the MLS." NAR considers its Internet strategy
3 to have been "incredibly successful," the result of which was the creation of "the
4 category leader in on-line real estate and the most effective vehicle in existence to
5 bring together Realtors and customers."

6 78. In conjunction with NAR and subject to its control, MOVE gathers
7 the property listings and information from regional MLS's throughout the United
8 States and occasionally directly from brokers. MOVE uses this information in its
9 operation of the MOVE Websites, including REALTOR.com and MOVE.com.

10 79. Available real estate property listing data is collected and makes its
11 way to MOVE through a series of steps. Generally, property owners contact
12 agents seeking an agent's assistance in selling their property. Real estate agents
13 are affiliated with a broker, which in turn must be licensed by the state. An agent
14 collects information concerning the property from the seller and, either himself or
15 herself, or using the services of the broker with which he or she is affiliated, enters
16 that information into a standardized form (which may be completed using a
17 computer system), including sufficient information to determine the mapping
18 coordinates of the property. This information becomes a property listing.

19 80. The agent, or its affiliated broker, then submits the property listing to
20 the regional MLS to which he or she subscribes or belongs. An MLS exists
21 typically to serve brokers and agents who are members of local chapters of NAR.
22 These local chapters, generally covering a county or several adjacent counties,
23 form an MLS to accumulate the property listings submitted by their member
24 brokers and agents, thus creating what is referred to as a multiple listing service, or
25 MLS. Membership in the NAR local chapter obligates a broker or agent to submit
26 his or her listings promptly to the MLS. The MLS thus allows brokers and agents
27 to be able to share and advertise each other's listings, referred to as broker
28 reciprocity, thereby increasing the variety and number of their business

1 transactions. These property listings aggregated by, and shared through, the MLS
2 are then provided to MOVE for display on the MOVE Websites.

3 81. MLS's also generally have websites to inform their contributing
4 brokers and agents of the available properties in the region. MLS's sometimes also
5 allow consumers access to the property listings on their websites. In many cases,
6 the MLS's use the steps of the patented methods to display the location of
7 available real estate on their websites.

8 82. Many brokers and agents that share property listings through their
9 MLS's also have websites on which they advertise these properties. These brokers
10 and agents also have infringed the Patents by using the patented methods to display
11 the location of available properties on their websites.

12 **New Home Builders and Rental Property Owners and Managers**

13 83. New home builders and rental property owners/managers also provide
14 available real estate listing information to MOVE, which MOVE includes on the
15 MOVE Websites for display using the patented methods.

16 84. NAHB and MOVE have contracted for MOVE to serve as NAHB's
17 official "New Homes" website for the listing of its members' available properties.

18 85. Many new home builders and rental property owners/managers
19 themselves also operate their own websites advertising their own properties and
20 use the patented methods to display the location of available real estate on those
21 websites.

22 **Technology Providers**

23 86. Most MLS's, brokers, and agents use technology providers to build,
24 maintain, and operate their websites. Technology providers design the software to
25 operate the websites under contracts with their MLS, broker, and agent clients and
26 provide guidance to their clients, including manuals, as to how the software and
27 website features function.

28

1 87. Certain MLS's have engaged Enterprise Software Providers to design
2 systems to work with the property listings received from the MLS's broker and
3 agent members and make those property listings available on the MLS's website.
4 These websites display the location of available real estate properties on maps with
5 zooming capability through the use of the patented methods.

6 88. Brokers and agents engage IDX Software Providers to design systems
7 that allow them to maintain their own websites on which they can advertise
8 available property listings including a subset of those accumulated by their MLS.
9 These websites display the location of available real estate on maps with zooming
10 capability through the use of the patented methods.

11 89. In order to maintain a website that can advertise property listings
12 obtained from an MLS, an agent or broker must enter into a three-party agreement
13 between itself, an IDX Software Provider, and the MLS, under which the MLS
14 grants the IDX Software Provider access to its property listings for purposes of
15 designing the broker's or agent's system, under specific terms and conditions.

16 **The Importance of the Internet and Mapping to the Real Estate Business**

17 90. According to NAR, over three-quarters of homebuyers search for a
18 home online and one in four find the home they ultimately purchase on the
19 Internet. Websites owned or controlled by NAR members account for the majority
20 of real estate-related Internet traffic and leads.

21 91. One of the most significant benefits that NAR acknowledges its
22 members have is "timely access to uniform real property information, including,
23 but not limited to, mapping data." "Technologies such as sophisticated mapping
24 capabilities . . . allow consumers to gather more information about properties and
25 neighborhoods even before contacting" a NAR-member broker or agent.

26 ///

27 ///

28 ///

1 **CLAIM I: INFRINGEMENT OF THE PATENTS AGAINST MOVE**

2 92. REAL realleges Paragraphs 1 through 91 as if fully stated herein.

3 93. MOVE has infringed the Patents under all applicable paragraphs of 35
4 U.S.C. § 271. MOVE has made, used, sold, and/or offered for sale websites,
5 software, products and/or services that performed all of the steps in one or more
6 claims of the Patents, all without authority or license, and therefore has infringed,
7 either literally and/or under the doctrine of equivalents, the Patents in violation of
8 35 U.S.C. § 271(a). The acts of infringement included, without limitation,
9 ownership, control, operation, maintenance and/or use of the MOVE Websites and
10 use of the patented methods to display available real estate properties on the
11 MOVE Websites.

12 94. MOVE alternatively has infringed the Patents, either literally and/or
13 under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a) by virtue of its
14 participation in the Collective Conduct, including without limitation, its
15 participation and combined actions with some or all or some of the other
16 defendants, or others under its direction and control, who act in concert with
17 MOVE, or who act jointly or with some relationship found sufficient in law, such
18 as, for example, to establish vicarious liability, or as part of a single or related
19 enterprise, which combination of actions constituted the performance of each step
20 of one or more of the claims of the Patents.

21 95. MOVE, itself, or by virtue of its participation in the Collective
22 Conduct, has actively induced others in the United States to practice all of the steps
23 of the Patents, either literally or under the doctrine of equivalents, all without
24 authority or license, and therefore has infringed the Patents in violation of 35
25 U.S.C. § 271(b).

26 96. MOVE, itself, or by virtue of its participation in the Collective
27 Conduct, also has offered to sell within the United States one or more components
28 for use in practicing one or more claims of the Patents, either literally or under the

1 doctrine of equivalents, which constitutes a material part of the invention, knowing
2 the same to be especially made or especially adapted for use in an infringement of
3 the Patents and not a staple article or commodity of commerce suitable for
4 substantial noninfringing use, all without authority or license, and is thus liable as a
5 contributory infringer of the Patents in violation of 35 U.S.C. § 271(c).

6 97. MOVE has committed acts that demonstrated a knowing or reckless
7 disregard of REAL's rights and an objectively high likelihood that its actions
8 constituted infringement of the Patents, thus constituting willful infringement of
9 the Patents and warranting the assessment of enhanced damages under 35 U.S.C. §
10 284.

11 98. As a direct and proximate result of MOVE's conduct, REAL is
12 entitled to damages in amounts to be determined at trial.

13 **CLAIM II: INFRINGEMENT OF THE PATENTS AGAINST NAR**

14 99. REAL realleges Paragraphs 1 through 98 as if fully stated herein.

15 100. NAR has infringed the Patents under all applicable paragraphs of 35
16 U.S.C. § 271. NAR made, used, sold, and/or offered for sale websites, software,
17 products, and/or services that performed all of the steps in one or more claims of
18 the Patents, all without authority or license, and therefore has infringed, either
19 literally and/or under the doctrine of equivalents, the Patents in violation of 35
20 U.S.C. § 271(a). The acts of infringement included, without limitation, ownership,
21 control, operation, maintenance, and/or use of the REALTOR.com website, one of
22 the MOVE Websites, and use of the patented methods to display available real
23 estate properties on that website.

24 101. NAR alternatively has infringed the Patents, either literally and/or
25 under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a) by virtue of its
26 participation in the Collective Conduct, including without limitation, its
27 participation and combined actions with some or all or some of the other
28 defendants, or others under its direction and control, who act in concert with it, or

1 who act jointly or with some relationship found sufficient in law, such as, for
2 example, to establish vicarious liability, or as part of a single or related enterprise,
3 which combination of actions constitutes the performance of each step of one or
4 more of the claims of the Patents.

5 102. NAR, itself, or by virtue of its participation in the Collective Conduct,
6 also has actively induced others in the United States to practice all of the steps of
7 the Patents, either literally or under the doctrine of equivalents, all without
8 authority or license, and therefore has infringed the Patents in violation of 35
9 U.S.C. § 271(b).

10 103. NAR, itself, or by virtue of its participation in the Collective Conduct,
11 has offered to sell within the United States one or more components for use in
12 practicing one or more claims of the Patents, either literally or under the doctrine
13 of equivalents, which constitutes a material part of the inventions, knowing the
14 same to be especially made or especially adapted for use in an infringement of the
15 Patents and not a staple article or commodity of commerce suitable for substantial
16 noninfringing use, all without authority or license, and is thus liable as a
17 contributory infringer of the Patents in violation of 35 U.S.C. § 271(c).

18 104. NAR has committed acts that demonstrated a knowing or reckless
19 disregard of REAL's rights and an objectively high likelihood that its actions
20 constituted infringement of the Patents, thus constituting willful infringement of
21 the Patents and warranting the assessment of enhanced damages under 35 U.S.C. §
22 284.

23 105. As a direct and proximate result of NAR's conduct, REAL is entitled
24 to damages in amounts to be determined at trial.

25 **CLAIM III: INFRINGEMENT OF THE PATENTS AGAINST NAHB**

26 106. REAL realleges Paragraphs 1 through 105 as if fully stated herein.

27 107. NAHB has infringed the Patents under all applicable paragraphs of 35
28 U.S.C. § 271. NAHB has made, used, sold, and/or offered for sale websites,

1 software, products, and/or services that perform all of the steps in one or more
2 claims of the Patents, all without authority or license, and therefore has infringed
3 either literally and/or under the doctrine of equivalents, the Patents in violation of
4 35 U.S.C. § 271(a). The acts of infringement included, without limitation,
5 ownership, control, operation, maintenance, and/or use of the Move.com New
6 Homes website – available at www.move.com/new-homes and
7 www.homebuilder.com – and use of the patented methods to display available real
8 estate properties on that website.

9 108. NAHB alternatively has infringed the Patents, either literally and/or
10 under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a) by virtue of its
11 participation in the Collective Conduct, including without limitation, its
12 participation and combined actions with some or all or some of the other
13 defendants, or others under its direction and control, who act in concert with it, or
14 who act jointly or with some relationship found sufficient in law, such as, for
15 example, to establish vicarious liability, or as part of a single or related enterprise,
16 which combination of actions constituted the performance of each step of one or
17 more of the claims of the Patents.

18 109. NAHB, itself, or by virtue of its participation in the Collective
19 Conduct, also has actively induced others in the United States to practice all of the
20 steps of the Patents, either literally or under the doctrine of equivalents, all without
21 authority or license, and therefore has infringed the Patents in violation of 35
22 U.S.C. § 271(b).

23 110. NAHB, itself, or by virtue of its participation in the Collective
24 Conduct, also has offered to sell within the United States one or more components
25 for use in practicing one or more claims of the Patents, which constitutes a material
26 part of the inventions, knowing the same to be especially made or especially
27 adapted for use in an infringement of the Patents and not a staple article or
28 commodity of commerce suitable for substantial noninfringing use, all without

1 authority or license, and is thus liable as a contributory infringer of the Patents in
2 violation of 35 U.S.C. § 271(c).

3 111. NAHB has committed acts that demonstrated a knowing or reckless
4 disregard of REAL's rights and an objectively high likelihood that its actions
5 constituted infringement of the Patents, thus constituting willful infringement of
6 the Patents and warranting the assessment of enhanced damages under 35 U.S.C. §
7 284.

8 112. As a direct and proximate result of NAHB's conduct, REAL is
9 entitled to damages in amounts to be determined at trial.

10 **CLAIM IV: INFRINGEMENT OF THE PATENTS**

11 **AGAINST THE BROKER DEFENDANTS AND BROKER CLASS**

12 113. REAL realleges Paragraphs 1 through 112 as if fully stated herein.

13 114. The Broker Defendants and members of the Broker Class have
14 infringed the Patents under all applicable paragraphs of 35 U.S.C. § 271. The
15 Broker Defendants and members of the Broker Class are and have made, used,
16 sold, and/or offered for sale websites, software, products, and/or services that
17 perform all of the steps in one or more claims of the Patents, all without authority
18 or license, and therefore are and have been infringing, either literally and/or under
19 the doctrine of equivalents, the Patents in violation of 35 U.S.C. § 271(a). The acts
20 of infringement included, without limitation, use of the MOVE Websites to
21 promote their listings of available properties, thereby employing MOVE to infringe
22 all of the steps in one or more claims of the Patents, all without authority or
23 license, for their own commercial advantage.

24 115. The Broker Defendants and members of the Broker Class have
25 alternatively infringed the Patents, either literally and/or under the doctrine of
26 equivalents, in violation of 35 U.S.C. § 271(a) by virtue of their participation in the
27 Collective Conduct, including without limitation, their participation and combined
28 actions with some or all or some of the other defendants, or others under their

1 direction and control, who act in concert with them, or who act jointly or with
2 some relationship found sufficient in law, such as, for example, to establish
3 vicarious liability, or as part of a single or related enterprise, which combination of
4 actions constituted the performance of each step of one or more of the claims of the
5 Patents.

6 116. The Broker Defendants and members of the Broker Class, themselves,
7 or by virtue of their participation in the Collective Conduct, also have actively
8 induced others in the United States to practice all of the steps of the Patents, either
9 literally or under the doctrine of equivalents, all without authority or license, and
10 therefore are and have been infringing the Patents in violation of 35 U.S.C. §
11 271(b).

12 117. The Broker Defendants and members of the Broker Class, themselves,
13 or by virtue of their participation in the Collective Conduct, have offered to sell
14 within the United States one or more components for use in practicing one or more
15 claims of the Patents, either literally or under the doctrine of equivalents, which
16 constitutes a material part of the inventions, knowing the same to be especially
17 made or especially adapted for use in an infringement of the Patents and not a
18 staple article or commodity of commerce suitable for substantial noninfringing use,
19 all without authority or license, and thus are liable as contributory infringers of the
20 Patents in violation of 35 U.S.C. § 271(c).

21 118. Each Broker Defendant, in addition, has infringed the Patents, either
22 literally or under the doctrine of equivalents, in violation of all applicable
23 paragraphs of 35 U.S.C. § 271 in connection with each Broker Defendant's
24 ownership, control, operation, maintenance, and/or use of its own website, as
25 identified below, and each Broker Defendant's use of the patented methods to have
26 displayed available real estate properties on its website, without authority or
27 license from REAL. The websites owned, controlled, operated, maintained, and/or
28 used by each of the Broker Defendants are as follows:

- 1 (a) www.kw.com by Broker Defendant Keller Williams Realty;
- 2 (b) http://remaxgold.com by Broker Defendant RE/MAX Gold;
- 3 (c) www.fhallen.com by Broker Defendant Frank Howard Allen Realtors;
- 4 (d) www.apr.com by Broker Defendant Alain Pinel Realtors;
- 5 (e) www.remax.com by Broker Defendant RE/MAX Inc.

6 119. The Broker Defendants and members of the Broker Defendants Class
7 have committed acts that demonstrated a knowing or reckless disregard of REAL's
8 rights and an objectively high likelihood that their actions constituted infringement
9 of the Patents, thus constituting willful infringement of the Patents and warranting
10 the assessment of enhanced damages under 35 U.S.C. § 284.

11 120. As a direct and proximate result of the Broker Defendants' and
12 members of the Broker Class' conduct, REAL is entitled to damages in amounts to
13 be determined at trial.

14 **CLAIM V: INFRINGEMENT OF THE PATENTS**

15 **AGAINST THE AGENT DEFENDANTS AND AGENT CLASS**

16 121. REAL realleges Paragraphs 1 through 120 as if fully stated herein.

17 122. The Agent Defendants and members of the Agent Class have
18 infringed the Patents under all applicable paragraphs of 35 U.S.C. § 271. The
19 Agent Defendants and members of the Agent Class have made, used, sold, and/or
20 offered for sale websites, software, products, and/or services that perform all of the
21 steps in one or more claims of the Patents, all without authority or license, and
22 therefore have infringed, either literally and/or under the doctrine of equivalents,
23 the Patents in violation of 35 U.S.C. § 271(a). The acts of infringement included,
24 without limitation, use of the MOVE Websites to promote their listings of
25 available properties, thereby employing MOVE to infringe all of the steps in one or
26 more claims of the Patents, all without authority or license, for their own
27 commercial advantage.
28

1 123. The Agent Defendants and members of the Agent Class have
2 alternatively infringed the Patents, either literally and/or under the doctrine of
3 equivalents, in violation of 35 U.S.C. § 271(a) by virtue of their participation in the
4 Collective Conduct, including without limitation, their participation and combined
5 actions with some or all or some of the other defendants, or others under their
6 direction and control, who act in concert with them, or who act jointly or with
7 some relationship found sufficient in law, such as, for example, to establish
8 vicarious liability, or as part of a single or related enterprise, which combination of
9 actions constituted the performance of each step of one or more of the claims of the
10 Patents.

11 124. The Agent Defendants and members of the Agent Class, themselves,
12 or by virtue of their participation in the Collective Conduct, also have actively
13 induced others in the United States to practice all of the steps of the Patents, either
14 literally or under the doctrine of equivalents, all without authority or license, and
15 therefore have infringed the Patents in violation of 35 U.S.C. § 271(b).

16 125. The Agent Defendants and members of the Agent Class, themselves,
17 or by virtue of their participation in the Collective Conduct, have offered to sell
18 within the United States one or more components for use in practicing one or more
19 claims of the Patents, either literally or under the doctrine of equivalents, which
20 constitutes a material part of the inventions, knowing the same to be especially
21 made or especially adapted for use in an infringement of the Patents and not a
22 staple article or commodity of commerce suitable for substantial noninfringing use,
23 all without authority or license, and thus are liable as contributory infringers of the
24 Patents in violation of 35 U.S.C. § 271(c).

25 126. Each Agent Defendant, in addition, has infringed the Patents, either
26 literally or under the doctrine of equivalents, in violation of all applicable
27 paragraphs of 35 U.S.C. § 271 in connection with each Agent Defendant's
28 ownership, control, operation, maintenance, and/or use of its own website, as

1 identified below, and each Agent Defendant's use of the patented methods to have
2 displayed available real estate properties on its website, without authority or
3 license from REAL. The websites owned, controlled, operated, maintained, and/or
4 used by each of the Agent Defendants are as follows:

5 (a) www.yourburbankconnection.com by Agent Defendant Brad
6 Korb;

7 (b) www.truckeetahoeresortproperties.com by Agent Defendant
8 Christy Morrison;

9 (c) www.paymonshome.com by Agent Defendant Paymon
10 Ghafouri.

11 127. The Agent Defendants and members of the Agent Class have
12 committed acts that demonstrated a knowing or reckless disregard of REAL's
13 rights and an objectively high likelihood that their actions constituted infringement
14 of the Patents, thus constituting willful infringement of the Patents and warranting
15 the assessment of enhanced damages under 35 U.S.C. § 284.

16 128. As a direct and proximate result of the Agent Defendants' and
17 members of the Agent Class' conduct, REAL is entitled to damages in amounts to
18 be determined at trial.

19 **CLAIM VI: INFRINGEMENT OF THE PATENTS**

20 **AGAINST THE MLS DEFENDANTS AND MLS CLASS**

21 129. REAL realleges Paragraphs 1 through 128 as if fully stated herein.

22 130. The MLS Defendants and members of the MLS Class have infringed
23 the Patents under all applicable paragraphs of 35 U.S.C. § 271. The MLS
24 Defendants and members of the MLS Class are and have made, used, sold, and/or
25 offered for sale websites, software, products, and/or services that perform all of the
26 steps in one or more claims of the Patents, all without authority or license, and
27 therefore have infringed, either literally and/or under the doctrine of equivalents,
28 the Patents in violation of 35 U.S.C. § 271(a). The acts of infringement included,

1 without limitation, use of the MOVE Websites to promote their listings of
2 available properties, thereby employing MOVE to infringe all of the steps in one or
3 more claims of the Patents, all without authority or license, for their own
4 commercial advantage.

5 131. The MLS Defendants and members of the MLS Class have
6 alternatively infringed the Patents, either literally and/or under the doctrine of
7 equivalents, in violation of 35 U.S.C. § 271(a) by virtue of their participation in the
8 Collective Conduct, including without limitation, their participation and combined
9 actions with some or all or some of the other defendants, or others under their
10 direction and control, who act in concert with them, or who act jointly or with
11 some relationship found sufficient in law, such as, for example, to establish
12 vicarious liability, or as part of a single or related enterprise, which combination of
13 actions constituted the performance of each step of one or more of the claims of the
14 Patents.

15 132. The MLS Defendants and members of the MLS Class, themselves, or
16 by virtue of their participation in the Collective Conduct, also have actively
17 induced others in the United States to practice all of the steps of the Patents, either
18 literally or under the doctrine of equivalents, all without authority or license, and
19 therefore are and have been infringing the Patents in violation of 35 U.S.C. §
20 271(b).

21 133. The MLS Defendants and members of the MLS Class, themselves, or
22 by virtue of their participation in the Collective Conduct, have offered to sell
23 within the United States one or more components for use in practicing one or more
24 claims of the Patents, either literally or under the doctrine of equivalents, which
25 constitutes a material part of the inventions, knowing the same to be especially
26 made or especially adapted for use in an infringement of the Patents and not a
27 staple article or commodity of commerce suitable for substantial noninfringing use,
28

1 all without authority or license, and thus are liable as contributory infringers of the
2 Patents in violation of 35 U.S.C. § 271(c).

3 134. Each MLS Defendant, in addition, has infringed the Patents, either
4 literally or under the doctrine of equivalents, in violation of all applicable
5 paragraphs of 35 U.S.C. § 271 in connection with each MLS Defendant's
6 ownership, control, operation, maintenance, and/or use of its own website, as
7 identified below, and each MLS Defendant's use of the patented methods to have
8 displayed available real estate properties on its website, without authority or
9 license from REAL. The websites owned, controlled, operated, maintained, and/or
10 used each of the MLS Defendants are as follows:

- 11 (a) <http://socalmls.frogpond.com> by MLS Defendant Southern
12 California MLS;
- 13 (b) www.georgiamls.com by MLS Defendant Georgia MLS;
- 14 (c) www.metrolistmls.com by MLS Defendant Metrolist Services;
- 15 (d) www.trendmls.com by MLS Defendant TREND.

16 135. The MLS Defendants and members of the MLS Class have committed
17 acts that demonstrated a knowing or reckless disregard of REAL's rights and an
18 objectively high likelihood that their actions constituted infringement of the
19 Patents, thus constituting willful infringement of the Patents and warranting the
20 assessment of enhanced damages under 35 U.S.C. § 284.

21 136. As a direct and proximate result of the MLS Defendants' and
22 members of the MLS Class' conduct, REAL is entitled to damages in amounts to
23 be determined at trial.

24 **CLAIM VII: INFRINGEMENT OF THE PATENTS AGAINST THE NEW**
25 **HOME BUILDER DEFENDANTS AND NEW HOME BUILDER CLASS**

26 137. REAL realleges Paragraphs 1 through 136 as if fully stated herein.

27 138. The New Home Builder Defendants and members of the New Home
28 Builder Class have infringed the Patents under all applicable paragraphs of 35

1 U.S.C. § 271. The New Home Builder Defendants and members of the New Home
2 Builder Class have made, used, sold, and/or offered for sale websites, software,
3 products, and/or services that perform all of the steps in one or more claims of the
4 Patents, all without authority or license, and therefore have infringed, either
5 literally and/or under the doctrine of equivalents, the Patents in violation of 35
6 U.S.C. § 271(a). The acts of infringement included, without limitation, use of the
7 MOVE Websites to promote their listings of available properties, thereby
8 employing MOVE to infringe all of the steps in one or more claims of the Patents,
9 all without authority or license, for their own commercial advantage.

10 139. The New Home Builder Defendants and members of the New Home
11 Builder Class have alternatively infringed the Patents, either literally and/or under
12 the doctrine of equivalents, in violation of 35 U.S.C. § 271(a) by virtue of their
13 participation in the Collective Conduct, including without limitation, their
14 participation and combined actions with some or all or some of the other
15 defendants, or others under their direction and control, who act in concert with
16 them, or who act jointly or with some relationship found sufficient in law, such as,
17 for example, to establish vicarious liability, or as part of a single or related
18 enterprise, which combination of actions constituted the performance of each step
19 of one or more of the claims of the Patents.

20 140. The New Home Builder Defendants and members of the New Home
21 Builder Class, themselves, or by virtue of their participation in the Collective
22 Conduct, also have actively induced others in the United States to practice all of
23 the steps of the Patents, either literally or under the doctrine of equivalents, all
24 without authority or license, and therefore have infringed the Patents in violation of
25 35 U.S.C. § 271(b).

26 141. The New Home Builder Defendants and members of the New Home
27 Builder Class, themselves, or by virtue of their participation in the Collective
28 Conduct, also have offered to sell within the United States one or more

1 components for use in practicing one or more claims of the Patents, either literally
2 or under the doctrine of equivalents, which constitutes a material part of the
3 inventions, knowing the same to be especially made or especially adapted for use
4 in an infringement of the Patents and not a staple article or commodity of
5 commerce suitable for substantial noninfringing use, all without authority or
6 license, and thus are liable as contributory infringers of the Patents in violation of
7 35 U.S.C. § 271(c).

8 142. Each New Home Builder Defendant, in addition, has infringed the
9 Patents, either literally or under the doctrine of equivalents, in violation of all
10 applicable paragraphs of 35 U.S.C. § 271 in connection with each New Home
11 Builder Defendant's ownership, control, operation, maintenance, and/or use of its
12 own website, as identified below, and each New Home Builder Defendant's use of
13 the patented methods to have displayed available real estate properties on its
14 website, without authority or license from REAL. The websites owned, controlled,
15 operated, maintained, and/or used each of the New Home Builder Defendants are
16 as follows:

- 17 (a) <http://pulte.com> by New Home Builder Defendant Pulte
18 Homes;
- 19 (b) www.ryland.com by New Home Builder Defendant Ryland
20 Group;
- 21 (c) www.sheahomes.com by New Home Builder Defendant Shea
22 Homes;
- 23 (d) www.taylorwoodrowna.com by New Home Builder Defendant
24 Taylor Woodrow.

25 143. The New Home Builder Defendants and members of the New Home
26 Builder Class have committed acts that demonstrated a knowing or reckless
27 disregard of REAL's rights and an objectively high likelihood that their actions
28 constituted infringement of the Patents, thus constituting willful infringement of

1 the Patents and warranting the assessment of enhanced damages under 35 U.S.C. §
2 284.

3 144. As a direct and proximate result of the New Home Builder
4 Defendants' and members of the New Home Builder Class' conduct, REAL is
5 entitled to damages in amounts to be determined at trial.

6 **CLAIM VIII: INFRINGEMENT OF THE PATENTS AGAINST THE**
7 **RENTAL PROPERTY DEFENDANTS AND RENTAL PROPERTY CLASS**

8 145. REAL realleges Paragraphs 1 through 144 as if fully stated herein.

9 146. The Rental Property Defendants and members of the Rental Property
10 Class have infringed the Patents under all applicable paragraphs of 35 U.S.C. §
11 271. The Rental Property Defendants and members of the Rental Property Class
12 have made, used, sold, and/or offered for sale websites, software, products, and/or
13 services that performed all of the steps in one or more claims of the Patents, all
14 without authority or license, and therefore are and have been infringing, either
15 literally and/or under the doctrine of equivalents, the Patents in violation of 35
16 U.S.C. § 271(a). The acts of infringement included, without limitation, use of the
17 MOVE Websites to promote their listings of available properties, thereby having
18 employed MOVE to infringe all of the steps in one or more claims of the Patents,
19 all without authority or license, for their own commercial advantage.

20 147. The Rental Property Defendants and members of the Rental Property
21 Class alternatively have infringed the Patents, either literally and/or under the
22 doctrine of equivalents, in violation of 35 U.S.C. § 271(a) by virtue of their
23 participation in the Collective Conduct, including without limitation, their
24 participation and combined actions with some or all or some of the other
25 defendants, or others under their direction and control, who act in concert with
26 them, or who act jointly or with some relationship found sufficient in law, such as,
27 for example, to establish vicarious liability, or as part of a single or related
28

1 enterprise, which combination of actions constituted the performance of each step
2 of one or more of the claims of the Patents.

3 148. The Rental Property Defendants and members of the Rental Property
4 Class, themselves, or by virtue of their participation in the Collective Conduct, also
5 have actively induced others in the United States to practice all of the steps of the
6 Patents, either literally or under the doctrine of equivalents, all without authority or
7 license, and therefore have infringed the Patents in violation of 35 U.S.C. § 271(b).

8 149. The Rental Property Defendants and members of the Rental Property
9 Class, themselves, or by virtue of their participation in the Collective Conduct, also
10 have offered to sell within the United States one or more components for use in
11 practicing one or more claims of the Patents, either literally or under the doctrine
12 of equivalents, which constitutes a material part of the inventions, knowing the
13 same to be especially made or especially adapted for use in an infringement of the
14 Patents and not a staple article or commodity of commerce suitable for substantial
15 noninfringing use, all without authority or license, and thus are liable as
16 contributory infringers of the Patents in violation of 35 U.S.C. § 271(c).

17 150. Each Rental Property Defendant, in addition, has infringed the
18 Patents, either literally or under the doctrine of equivalents, in violation of all
19 applicable paragraphs of 35 U.S.C. § 271 in connection with each Rental Property
20 Defendant's ownership, control, operation, maintenance and/or use of its own
21 website, as identified below, and each Rental Property Defendant's use of the
22 patented methods to have displayed available real estate on its website, without
23 authority or license from REAL. The websites owned, controlled, operated,
24 maintained, and/or used by each of the Rental Property Defendants are as follows:

25 (a) www.avaloncommunities.com by Rental Property Defendant

26 AvalonBay;

27 (b) www.essexapartmenthomes.com by Rental Property Defendant

28 Essex Property;

1 (c) www.breproperties.com by Rental Property Defendant BRE
2 Properties;

3 (d) www.riverstoneres.com/riverstone/home.asp by Rental
4 Property Defendant Riverstone Residential.

5 151. The Rental Property Defendants and members of the Rental Property
6 Class have committed acts that demonstrated a knowing or reckless disregard of
7 REAL's rights and an objectively high likelihood that their actions constituted
8 infringement of the Patents, thus constituting willful infringement of the Patents
9 and warranting the assessment of enhanced damages under 35 U.S.C. § 284.

10 152. As a direct and proximate result of the Rental Property Defendants'
11 and members of the Rental Property Class' conduct, REAL is entitled to damages
12 in amounts to be determined at trial.

13 **CLAIM IX: INFRINGEMENT OF THE PATENTS**
14 **AGAINST THE ENTERPRISE SOFTWARE PROVIDER DEFENDANTS**

15 153. REAL realleges Paragraphs 1 through 152 as if fully stated herein.

16 154. The Enterprise Software Provider Defendants have infringed the
17 Patents under all applicable paragraphs of 35 U.S.C. § 271. The Enterprise
18 Software Provider Defendants have made, used, sold, and/or offered for sale
19 websites, software, products, and/or services that performed all of the steps in one
20 or more claims of the Patents, all without authority or license, and therefore have
21 infringed, either literally and/or under the doctrine of equivalents, the Patents in
22 violation of 35 U.S.C. § 271(a). The acts of infringement included, without
23 limitation, the manufacture, use of, sale of, or offering for sale of, the following
24 products:

25 (a) NDX by Enterprise Software Provider Defendant
26 eNeighborhoods;

27 (b) Rapattoni MLS by Enterprise Software Provider Defendant
28 Rapattoni;

1 (c) Tempo and MLXchange by Enterprise Software Provider
2 Defendant First American;

3 (d) Paragon and RExplorer by Enterprise Software Provider
4 Defendant Fidelity.

5 155. The Enterprise Software Provider Defendants alternatively have
6 infringed the Patents, either literally and/or under the doctrine of equivalents, in
7 violation of 35 U.S.C. § 271(a) by virtue of their participation in the Collective
8 Conduct, including without limitation, their participation and combined actions
9 with some or all or some of the other defendants, or others under their direction
10 and control, who act in concert with them, or who act jointly or with some
11 relationship found sufficient in law, such as, for example, to establish vicarious
12 liability, or as part of a single or related enterprise, which combination of actions
13 constituted the performance of each step of one or more of the claims of the
14 Patents.

15 156. The Enterprise Software Provider Defendants, themselves, or by
16 virtue of their participation in the Collective Conduct, have actively induced others
17 in the United States to practice all of the steps of the Patents, either literally or
18 under the doctrine of equivalents, all without authority or license, and therefore
19 have infringed the Patents in violation of 35 U.S.C. § 271(b).

20 157. The Enterprise Software Provider Defendants, themselves, or by
21 virtue of their participation in the Collective Conduct, also have offered to sell
22 within the United States one or more components for use in practicing one or more
23 claims of the Patents, either literally or under the doctrine of equivalents, which
24 constitutes a material part of the inventions, knowing the same to be especially
25 made or especially adapted for use in an infringement of the Patents and not a
26 staple article or commodity of commerce suitable for substantial noninfringing use,
27 all without authority or license, and thus are liable as contributory infringers of the
28 Patents in violation of 35 U.S.C. § 271(c).

1 158. The Enterprise Software Provider Defendants have committed acts
2 that demonstrate a knowing or reckless disregard of REAL's rights and an
3 objectively high likelihood that their actions constituted infringement of the
4 Patents, thus constituting willful infringement of the Patents and warranting the
5 assessment of enhanced damages under 35 U.S.C. § 284.

6 159. As a direct and proximate result of the Enterprise Software Provider
7 Defendants' conduct, REAL is entitled to damages in amounts to be determined at
8 trial.

9 **CLAIM X: INFRINGEMENT OF THE PATENTS**
10 **AGAINST THE IDX SOFTWARE PROVIDER DEFENDANTS**

11 160. REAL realleges Paragraphs 1 through 159 as if fully stated herein.

12 161. The IDX Software Provider Defendants have infringed the Patents
13 under all applicable paragraphs of 35 U.S.C. § 271. The IDX Software Provider
14 Defendants have made, used, sold, and/or offered for sale websites, software,
15 products, and/or services that performed all of the steps in one or more claims of
16 the Patents, all without authority or license, and therefore have infringed, either
17 literally and/or under the doctrine of equivalents, the Patents in violation of 35
18 U.S.C. § 271(a). The acts of infringement included, without limitation, the
19 manufacture, use of, sale of, or offering for sale of, the following products:

- 20 (a) Agent Site by IDX Software Provider Defendant Birdview
21 Technologies;
- 22 (b) Advanced Access Classic and Quick Homes by IDX Software
23 Provider Defendant Advanced Access;
- 24 (c) iHomeFinder by IDX Software Provider Defendant
25 iHomeFinder;
- 26 (d) iHouse and IDX Pro by IDX Software Provider Defendant CIS
27 Data;
- 28

1 (e) Property Pursuit by IDX Software Provider Defendant Delta
2 Media;

3 (f) dsSearchAgent by IDX Software Provider Defendant Diverse
4 Solutions;

5 (g) Close Realty by IDX Software Provider Defendant Wanisoft;

6 (h) PropertyMinder by IDX Software Provider Defendant
7 PropertyMinder.

8 162. The IDX Software Provider Defendants alternatively have infringed
9 the Patents, either literally and/or under the doctrine of equivalents, in violation of
10 35 U.S.C. § 271(a) by virtue of their participation in the Collective Conduct,
11 including without limitation, their participation and combined actions with some or
12 all of the other defendants, or others under their direction and control, who act in
13 concert with them, or who act jointly or with some relationship found sufficient in
14 law, such as, for example, to establish vicarious liability, or as part of a single or
15 related enterprise, which combination of actions constituted the performance of
16 each step of one or more of the claims of the Patents.

17 163. The IDX Software Provider Defendants, themselves, or by virtue of
18 their participation in the Collective Conduct, also have actively induced others in
19 the United States to practice all of the steps of the Patents, either literally or under
20 the doctrine of equivalents, all without authority or license, and therefore have
21 infringed the Patents in violation of 35 U.S.C. § 271(b).

22 164. The IDX Software Provider Defendants, themselves, or by virtue of
23 their participation in the Collective Conduct, also have offered to sell within the
24 United States one or more components for use in practicing one or more claims of
25 the Patents, either literally or under the doctrine of equivalents, which constitutes a
26 material part of the inventions, knowing the same to be especially made or
27 especially adapted for use in an infringement of the Patents and not a staple article
28 or commodity of commerce suitable for substantial noninfringing use, all without

1 authority or license, and thus are liable as contributory infringers of the Patents in
2 violation of 35 U.S.C. § 271(c).

3 165. The IDX Software Provider Defendants have committed acts that
4 demonstrate a knowing or reckless disregard of REAL's rights and an objectively
5 high likelihood that their actions constituted infringement of the Patents, thus
6 constituting willful infringement of the Patents and warranting the assessment of
7 enhanced damages under 35 U.S.C. § 284.

8 166. As a direct and proximate result of the IDX Software Provider
9 Defendants' conduct, REAL is entitled to damages in amounts to be determined at
10 trial.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, REAL respectfully requests that the Court grant the
13 following relief:

14 (a) an order directing that all defendants pay REAL's damages in an
15 amount adequate to compensate for their infringements of the Patents, together
16 with costs and prejudgment and postjudgment interest;

17 (b) an order trebling the above damages pursuant to 35 U.S.C. § 284
18 because of the knowing, willful, and wanton nature of defendants' conduct;

19 (c) an order concluding that this case is exceptional and directing that
20 defendants pay REAL's attorneys' fees in this action pursuant to 35 U.S.C. § 285,
21 together with the costs and disbursements of this action;

22 (d) dismiss Plaintiffs' complaint in its entirety with prejudice;

23 (e) declare that Plaintiffs take nothing by reason of their claims against
24 REAL; and

25 (f) such other and further relief as the Court deems just and proper.
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28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, REAL hereby demands trial by jury of all issues properly triable by jury in this case.

DATED: October 29, 2008 PROSKAUER ROSE LLP

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