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11

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 MOVE, INC., NATIONAL
ASSOCIATION OF REALTORS, and
17 NATIONAL ASSOCIATION OF
HOME BUILDERS

18 Plaintiffs,

19 vs.

20 REAL ESTATE ALLIANCE LTD.
21 and EQUIAS TECHNOLOGY
DEVELOPMENT

22 Defendants.
23

Case No. 2:07-CV-02185
Assigned to: George H. King

SECOND AMENDED COMPLAINT
FOR

- 1. Declaratory Relief
- 2. Interference with Contractual Relations
- 3. Intentional Interference with Prospective Economic Advantage
- 4. Unfair Competition
- 5. Unfair Business Practices
- 6. Libel

24 DEMAND FOR JURY TRIAL
25

AMENDED COMPLAINT

1
2 Plaintiffs MOVE, INC., NATIONAL ASSOCIATION OF REALTORS, and
3 NATIONAL ASSOCIATION OF HOME BUILDERS (collectively “Plaintiffs”) file
4 this Second Amended Complaint for Declaratory Judgment under The Federal
5 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, Intentional Interference with
6 Contractual Relations, Intentional Interference with Prospective Economic
7 Advantage, Common Law Unfair Competition, Unfair and Deceptive Trade
8 Practices Under California Business and Professions Code Section 17200, and Libel
9 against Defendants REAL ESTATE ALLIANCE LTD., and EQUIAS
10 TECHNOLOGY DEVELOPMENT (collectively “Defendants”), and in support of
11 their Complaint allege:

12 **THE PARTIES**

13 1. Plaintiff, MOVE, INC., (“Move”) is a corporation organized and
14 existing under the laws of the State of Delaware, having its principal place of
15 business at 30700 Russell Ranch Road, Westlake Village, California 91362, and is
16 doing business in this State and District.

17 2. Plaintiff, NATIONAL ASSOCIATION OF REALTORS, (“NAR”) is a
18 corporation organized and existing under the laws of the State of Illinois, having its
19 principal place of business at 430 N. Michigan Avenue, Chicago, Illinois 60611, and
20 is doing business in this State and District.

21 3. Plaintiff, NATIONAL ASSOCIATION OF HOME BUILDERS,
22 (“NAHB”) is a business league, having its principal place of business at 1201 15th
23 Street, NW, Washington, DC 20005, and is doing business in this State and District

24 4. Defendant REAL ESTATE ALLIANCE LTD. (“REAL”) is a
25 corporation formed and existing under the laws of the state of Delaware, located at
26 P.O. Box 587, Southeastern, Pennsylvania 19399, and is doing business in this State
27 and District.

1 Move derives substantial revenue from advertisers who advertise and others who
2 enhance listings appearing on the Move websites. The Move websites are
3 interactive websites that, among other things, display real estate properties that are
4 available for sale. Users of the Move websites can use the Move websites to search
5 a database for, and locate, available real estate properties based on search criteria,
6 such as location, price, number of bedrooms, etc.

7 11. Move obtains the data necessary to create, develop and maintain the
8 database supporting the Move websites from multiple listing services (“MLS
9 providers”) and, occasionally, real estate brokers. Because the inventory of
10 properties offered for sale is constantly changing, Move must ensure that each
11 relevant Move website’s database remains current. Therefore, in order to maintain
12 and continue operating the Move websites, it is critical for Move to continue
13 establishing and maintaining relationships with local MLS providers and brokers
14 around the country in order, among other things, for them to provide current data to
15 Move.

16 12. Move also sells Enhanced Listings to real estate agents, real estate
17 brokers and others. Move’s Enhanced Listing Subscribers are able to enhance the
18 information about their real estate listings that is available on the Move websites.
19 For instance, an Enhanced Listing agent may be able to include additional
20 photographs of the available property, custom remarks regarding a property, a link to
21 the agent’s personal website, a link to the website of a broker, a scrolling text
22 banner, or an open house indicator, among other enhancements.

23 13. Move derives substantial revenues from sales of Enhanced Listings.

24 14. NAR is the predominate real estate industry trade organization in the
25 United States, with approximately 1.3 million members nationwide.

26 15. REALTOR.com is an “Official Site” of NAR.

27 16. Move operates REALTOR.com pursuant to an Operating Agreement
28 with NAR.

1 17. NAHB is a business organization comprising approximately 235,000
2 members.

3 18. NAHB's membership includes home builders, home remodelers, and
4 more than eight hundred state and local associations.

5 19. NAHB's membership also includes professionals working in closely
6 related fields within the housing industry, such as mortgage finance and building
7 products and services.

8 20. Move operates the "Official New Homes" website of NAHB, which
9 may be found at Move.com.

10 21. Defendant REAL alleges that it has title to and is the owner of whatever
11 rights, if any, may exist in United States Patent No. 4,870,576 ("the '576 patent")
12 issued September 26, 1989. The '576 patent is directed to a particular method for
13 searching available real estate properties for sale on a computer using a map.

14 22. Defendant REAL alleges that it has title to and is the owner of whatever
15 rights, if any, may exist in United States Patent No. 5,032,989 ("the '989 patent")
16 issued July 16, 1991. The '989 patent is a continuation-in-part of the '576 patent
17 and also is directed to a particular method for searching and locating available real
18 estate properties for sale, lease or rental on a computer using a map.

19 23. Upon information and belief, Defendant Equias was established in 2005
20 by Scott Tatro, the president and sole operating officer of Equias.

21 24. Upon information and belief, Equias is REAL's agent responsible for
22 soliciting licenses for the '576 and '989 patents (collectively the "Patents-in-Suit").

23 25. Upon information and belief, Equias was formed to operate the website
24 located at www.findahome.com (hereinafter "Equias's competitive website").

25 26. Upon information and belief, Equias's competitive website was
26 designed as a real estate search portal with interactive mapping technologies that
27 allow consumers to access MLS data.
28

1 27. Upon information and belief, Equias's competitive website was
2 intended to directly compete with the Move websites.

3 28. Upon information and belief, on December 30, 1997, Mark Tornetta,
4 the named inventor of the '576 and '989 patents and co-founder of REAL, sent a
5 letter to Richard Jansen, the then-president of Realselect Inc., the predecessor to
6 Move, asserting that REALTOR.com may be infringing the '989 patent.

7 29. Upon information and belief, in or around 1998, Mr. Tornetta insisted
8 that Move enter into a license under the '989 patent.

9 30. Upon information and belief, in or around 1998, Move denied that any
10 of the Move Websites infringed the '989 patent, and declined to enter a license under
11 the '989 patent.

12 31. Following Move's denial that it infringed the '989 patent and its refusal
13 to enter into a license under the '989 patent, Move continued to operate the Move
14 websites, and REAL did not assert any further allegations of infringement of the
15 '989 patent for at least seven (7) years.

16 32. In reliance on REAL not further asserting infringement during that
17 time, Move committed significant time and resources to develop the Move websites,
18 as well as the relationships with MLS providers and real estate brokers and the
19 databases that support the Move websites.

20 **REAL'S TORTIOUS ACTIONS.**

21 33. On March 11, 2008, REAL filed a patent litigation lawsuit (Case 2:08 -
22 cv- 01657) against NAR and NAHB, accusing NAR and NAHB of infringing the
23 '576 and '989 Patents through its association with Move and the Move websites. In
24 particular, REAL accused NAR and NAHB of working in the aggregate with Move,
25 Multiple Listing Services (MLS's), real estate brokers, and individual real estate
26 agents to disseminate information regarding real estate properties using the Move
27 websites in a manner that infringes both the '576 and '989 patents.

28

1 34. In addition to the allegations contained in REAL's complaint against
2 NAR and NAHB, REAL has made, and is continuing to make, public statements in
3 the press and to potential investors in Move, as well as private statements to
4 individuals within the real estate industry, alleging that the Move websites infringe
5 the '576 and '989 patents and that those agents, brokers and others who have
6 property listings appearing on the Move websites are liable for patent infringement,
7 accusations REAL knows to be false.

8 35. In addition, in connection with REAL's marketplace accusations of
9 infringement, REAL has knowingly made a number of harmful and false statements
10 about Move and NAR for the purpose of harming Move and NAR's reputation and
11 destroying their business relationships.

12 36. Such statements include a May 2005 communication between Andrew
13 Rooke, the president of REAL, and the Wall Street Journal, in which Mr. Rooke
14 characterized the '989 Patent as the "classic map search for real estate sales" which
15 "has become the industry standard."

16 37. In Mr. Rooke's May 2005 communication with the Wall Street Journal,
17 Mr. Rooke falsely stated that NAR had "induced" the "agent community" into
18 infringing the Patents-in-Suit, and he offered to give the Wall Street Journal an
19 "opportunity to bring some very interesting facts to light that could potentially cast a
20 dark shadow on the NAR."

21 38. Mr. Rooke further indicated that members of NAR may not be
22 interested in taking a license to the '576 and '989 patents unless "a few eyes are
23 opened."

24 39. Further, on November 9, 2005, Mr. Rooke contacted a number of Move
25 investors, informing the investors of a meeting he recently had with Move
26 executives. In that communication, Mr. Rooke claimed that Move had stated it was
27 "keenly interested in taking a license under the '989 Patent," when in fact that was
28 not the case. Mr. Rooke offered to fill the investors in on the details of his meeting

1 with Move as well as “the actions they [Move] have taken since our meeting” and
2 insinuated that Move had purposefully concealed the meeting from its investors.

3 40. Upon information and belief, in March of 2008, REAL settled its
4 lawsuit against a real estate agent named Robert Freedman. Upon information and
5 belief, as a condition of settlement, REAL required Mr. Freedman to publish on
6 REAL’s website an “Open Letter to Members of the National Association of
7 Realtors” which letter contained a number of false and defamatory statements,
8 including statements that Move and NAR have (1) intentionally and willfully
9 disregarded and infringed the patents-in-suit, (2) concealed facts regarding REAL
10 and its patents to its membership, and (3) intentionally set out to “destroy” Mr.
11 Tornetta.

12 41. Further, on information and belief, REAL has threatened those
13 members of the real estate industry on whom Move relies to operate the Move
14 website that unless they enter into a license under the ’989 and ’576 patents they will
15 be liable for tens of thousands of dollars in damages for patent infringement, all the
16 while knowing that neither the Move websites nor the activities of these industry
17 participants infringe REAL’s patents.

18 42. The foregoing statements, allegations and threats by REAL have placed
19 a cloud over Move’s right and ability to maintain and operate the Move websites.

20 **EQUIAS’S TOURTIOUS ACTIONS.**

21 43. Equias has made, and is continuing to make, public statements in the
22 press, and is otherwise alleging that Move websites infringe the ’576 and ’989
23 patents.

24 44. Upon information and belief, in 2005, Scott Tatro of Equias was
25 interviewed about the patent infringement lawsuit REAL instituted in Pennsylvania
26 against a real estate agent named Diane Sarkisian. In that interview, published in
27 October of 2005 by “Red Herring,” Mr. Tatro falsely claimed that “we’ve had NAR
28 tell us that they think the patent is legit, but the patent holder is too small, so it did

1 not have the legal staying power,” deceptively suggesting that NAR simply tramples
2 over the rights of small inventors, which is false.

3 45. Upon information and belief, in August of 2005, Mr. Tatro registered
4 the Domain Name <fullylicensed.info> and began operating a website under that
5 name (“Fully Licensed website”).

6 46. Upon information and belief, while the Fully Licensed website was
7 operated by Equias, much of the content for the site was received directly from
8 REAL, and Equias was operating the website in its capacity as REAL’s licensing
9 agent.

10 47. Upon information and belief, the content of the Fully Licensed website
11 was directed almost exclusively to tarnishing the reputation of Move and NAR.

12 48. Upon information and belief, on one page of the Fully Licensed
13 website, users were encouraged to “read the Incriminating Details” concerning
14 NAR’s infringement of the ’989 Patent and its efforts to “circle the wagons” to avoid
15 buying a licensing fee from Defendants.

16 49. Upon information and belief, within the “Incriminating Details” link
17 was a timeline of events concerning the Patents-in-Suit, dating as far back as 1986.

18 50. Upon information and belief, included within the timeline of events
19 were a number of false and defamatory accusations directed toward Move and NAR,
20 including accusations that: (1) NAR is “actively participating in [a] misinformation
21 campaign” to “discredit and/or disrupt” the Patents-in-Suit, (2) after being “caught”
22 in the act of infringement, Move revised its mapping technology for the sole purpose
23 of mitigating damages associated with such infringement, and (3) NAR’s attorney
24 admitted that “most agents’ listings appear on one or more sites that pretty much
25 follow the claims of the patent” and that the reason NAR did not acquire a license
26 was because “the patent holder was small and didn’t have the money or staying
27 power to enforce the patents.”
28

1 51. The Fully Licensed website also asked “Does the N.A.R. Trample
2 Property Rights?” to which it responds “If you ask Mark Tornetta of REAL llc . . .
3 the answer will undoubtedly be yes.”

4 52. Upon information and belief, in order to visually illustrate how NAR
5 purportedly tramples on the property rights of others, the Fully Licensed website
6 also included a “PowerPoint Editorial” which consisted of an animated depiction of
7 a NAR representative declaring that NAR respects the property rights of others
8 “unless of course we are talking about intellectual property rights.”

9 53. The PowerPoint then indicated that NAR is unethical and its business
10 practices are guided solely by the desire for money as opposed to ethics.

11 54. The Fully Licensed website also made a number of false claims about a
12 meeting between a senior Move executive and REAL, including that during the
13 meeting, the Move executive “related the company’s long-standing knowledge that
14 REAL’s patent was both valid and being widely-infringed across the real estate
15 industry. [The executive] further stated that during the preceding years, this patent,
16 along with several others, was exhaustively researched by IP counsel at a cost
17 reaching into the millions of dollars.”

18 55. Also accessible from the Fully Licensed website, was a page entitled
19 “Tip of the Iceberg,” (the content of which is presently publicly published at the
20 Domain Name <equias.com>) in which Equias made a number of false and
21 defamatory statements about Move and NAR, including allegations that: (1)
22 “[c]ertain companies . . . have been influenced by the NAR’s questionable tactics”,
23 (2) “If real estate agents and brokers advertise or market their properties using
24 computers in this manner whether they pay for the service . . . on a fee basis like
25 REALTOR.com, they become an infringer. The NAR and HOMESTORE [i.e.
26 Move] knew this years ago”, (3) “While HOMESTORE [i.e. Move] executives were
27 busy cooking the books and padding their pockets with illicit revenues in 2000-2002
28 . . . they appear to have been carelessly and callously dragging under, otherwise

1 innocent, real estate agents and brokers into the chilling waters of this infringement
2 nightmare”, (4) “If you are an average real estate agent earning around \$45,000/yr,
3 you could be looking at \$18-\$25,000 in damages after defending yourself in a
4 federal court case. . . . [C]ivil penalties for cheating aren’t based on how much it
5 would’ve cost if you played fair”, (5) “THE BIG LIE is that the NAR actually
6 believes the disinformation campaign that they are peddling about this patent
7 throughout the industry. In fact, quite the contrary . . .”, and (6) “[M]ore than
8 1,000,000 honest and hardworking real estate agents and brokers [] have unwittingly
9 been submerged and brought under this enormous mountain of infringement. After
10 you read the facts, and examine the history of the parties involved, ask yourself, do
11 you really trust HOMESTORE [i.e. Move] and the NAR to be your barometer of
12 integrity when it comes to this issue?” Upon information and belief, Equias
13 published the statements contained on <fullylicensed.info> and <equias.com> in its
14 capacity as REAL's agent.

15 56. Upon information and belief, Equias has also made, and is continuing to
16 make, statements to MLS providers and real estate brokers alleging that the Move
17 websites infringe the '576 and '989 patents.

18 57. Further, on information and belief, Equias has made public statements
19 extorting real estate agents and brokers into subscribing to Equias’s competitive
20 website, depriving Move of substantial revenue.

21 58. Further, on information and belief, Equias has threatened users of
22 Move’s websites that unless they stop using the Move websites and subscribe to
23 Equias’s competitive website, they will be sued for patent infringement.

24 59. Further, on information and belief, Equias has threatened subscribers to
25 Move’s Enhanced Listings that unless they stop listing properties on the Move
26 websites and instead subscribe Equias’s competitive website, they will be sued for
27 patent infringement and otherwise face “legal penalties.”

28

1 60. The foregoing statements, allegations and threats by Equias have placed
2 a cloud over Move's right and ability to maintain and operate the Move websites.

3 61. There is an actual, substantial and justiciable controversy between
4 Plaintiffs and Defendants of sufficient immediacy and reality to warrant the
5 rendering of a declaratory judgment by this Court. Defendants have made
6 unambiguous and direct threats of infringement regarding the '576 the '989 patents
7 with respect to Move, NAR, NAHB and users of the Move websites.

8 **FIRST CLAIM FOR RELIEF**

9 (Alleged by all Plaintiffs against REAL)

10 (Declaratory Judgment of Invalidity of the '576 Patent)

11 62. Plaintiffs incorporate by reference Paragraphs 1 through 61 above as if
12 set forth fully herein.

13 63. There is an actual and justiciable controversy between Plaintiffs and
14 REAL concerning Defendants' allegations that the Move, NAR and NAHB and
15 those who use the Move websites are infringing the '576 patent.

16 64. The '576 patent (and each and every claim thereof) is invalid for failure
17 to comply with the provisions of one or more sections of the Patent Act, 35 U.S.C.
18 §§ 1, *et seq.*

19 65. As a direct and proximate result of Defendants' assertion of the '576
20 patent against Plaintiffs, and users of the Move websites, Plaintiffs are suffering
21 irreparable injury to their reputation and goodwill in an amount that cannot presently
22 be ascertained and cannot be adequately compensated by monetary relief alone.

23 66. Plaintiffs seek a declaration that the claims of the '576 patent are
24 invalid.

25 **SECOND CLAIM FOR RELIEF**

26 (Alleged by all Plaintiffs against REAL)

27 (Declaratory Judgment of Non-Infringement of the '576 Patent)

28

1 67. Plaintiffs incorporate by reference Paragraphs 1 through 66 above as if
2 set forth fully herein.

3 68. There is an actual and justiciable controversy between Plaintiffs and
4 REAL concerning Defendants’ allegations that Move, NAR, NAHB and those who
5 use or list property on the Move websites are infringing the ‘576 patent.

6 69. Plaintiffs do not infringe any of the claim of the ‘576 patent.

7 70. As a direct and proximate result of Defendants’ assertion of the ‘576
8 patent against Plaintiffs, as well as users of the Move websites, Plaintiffs are
9 suffering irreparable injury to their reputation and goodwill in an amount that cannot
10 presently be ascertained and cannot be adequately compensated by monetary relief
11 alone.

12 71. Plaintiffs seek a declaration that Move, NAR, NAHB and those who
13 use or list property on the Move websites do not infringe the ‘576 patent.

14 **THIRD CLAIM FOR RELIEF**

15 (Alleged by all Plaintiffs against REAL)

16 (Declaratory Judgment of Unenforceability of the ‘576 Patent)

17 72. Plaintiffs incorporate by reference Paragraphs 1 through 71 above as if
18 set forth fully herein.

19 73. There is an actual and justiciable controversy between Plaintiffs and
20 REAL concerning Defendants’ allegations that Move, NAR, NAHB and those who
21 use or list property on the Move websites are infringing the ‘576 patent.

22 74. The ‘576 patent is unenforceable on the grounds that it has been and is
23 being misused by Defendants by virtue of their repeated assertion of the ‘576 patent
24 against Plaintiffs and to those with whom Plaintiffs do business, while, upon
25 information and belief, Defendants know the ‘576 patent is invalid and/or not
26 infringed by Plaintiffs.

27 75. As a direct and proximate result of Defendants’ assertion of the ‘576
28 patent against Move, NAR, NAHB and those who use or list property on the Move

1 websites, Plaintiffs are suffering irreparable injury to their reputation and goodwill
2 in an amount that cannot presently be ascertained and cannot be adequately
3 compensated by monetary relief alone.

4 76. Plaintiffs seek a declaration that the claims of the '576 patent are
5 unenforceable.

6
7 **FOURTH CLAIM FOR RELIEF**

8 (Alleged by all Plaintiffs against REAL)

9 (Declaratory Judgment of Invalidity of the '989 Patent)

10 77. Plaintiffs incorporate by reference Paragraphs 1 through 76 above as if
11 set forth fully herein.

12 78. There is an actual and justiciable controversy between Plaintiffs and
13 REAL concerning Defendants' allegations that Move, NAR, NAHB and those who
14 use or list property on the Move websites are infringing the '989 patent.

15 79. Upon information and belief, the '989 patent (and each and every claim
16 thereof) is invalid for failure to comply with the provisions of one or more sections
17 of the Patent Act, 35 U.S.C. §§ 1, *et seq.*

18 80. As a direct and proximate result of Defendants' assertion of the '989
19 patent against Move, NAR, NAHB and those who use or list property on the Move
20 websites, Plaintiffs are suffering irreparable injury to their reputation and goodwill
21 in an amount that cannot presently be ascertained and cannot be adequately
22 compensated by monetary relief alone.

23 81. Plaintiffs seek a declaration that the claims of the '989 patent are
24 invalid.

25 **FIFTH CLAIM FOR RELIEF**

26 (Alleged by all Plaintiffs against REAL)

27 (Declaratory Judgment of Non-Infringement of the '989 Patent)

1 82. Plaintiffs incorporate by reference Paragraphs 1 through 81 above as if
2 set forth fully herein.

3 83. There is an actual and justiciable controversy between Plaintiffs and
4 Defendants concerning Defendants' allegations that Move, NAR, NAHB and those
5 who use or list property on the Move websites are infringing the '989 patent.

6 84. Plaintiffs do not infringe any claim of the '989 patent.

7 85. As a direct and proximate result of Defendants' assertion of the '989
8 patent against Move, NAR, NAHB and those who use or list property on the Move
9 websites, Plaintiffs are suffering irreparable injury to their reputation and goodwill
10 in an amount that cannot presently be ascertained and cannot be adequately
11 compensated by monetary relief alone.

12 86. Plaintiffs seek a declaration that Move, NAR, NAHB and those who
13 use or list property on the Move websites do not infringe the '989 patent.

14 **SIXTH CLAIM FOR RELIEF**

15 (Alleged by all Plaintiffs against REAL)

16 (Declaratory Judgment of Unenforceability of the '989 Patent)

17 87. Plaintiffs incorporate by reference Paragraphs 1 through 86 above as if
18 set forth fully herein.

19 88. There is an actual and justiciable controversy between Plaintiffs and
20 REAL concerning Defendants' allegations that Move, NAR, NAHB and those who
21 use or list property on the Move websites infringe the '989 patent.

22 89. The '989 patent is unenforceable on the grounds that it has been and is
23 being misused by Defendants by virtue of their repeated assertion of the '989 patent
24 against Move, NAR, NAHB and those who use or list property on the Move
25 websites, while, upon information and belief, Defendants know the '989 patent is
26 invalid and/or not infringed by Plaintiffs or those who use or list property on the
27 Move websites.

28

1 90. As a direct and proximate result of Defendants' assertion of the '989
2 patent against Move, NAR, NAHB and those who use or list property on the Move
3 websites, Plaintiffs are suffering irreparable injury to their reputation and goodwill
4 in an amount that cannot presently be ascertained and cannot be adequately
5 compensated by monetary relief alone.

6 91. Plaintiffs seek a declaration that the claims of the '989 patent are
7 unenforceable.

8 **SEVENTH CLAIM FOR RELIEF**

9 (Alleged by all Plaintiffs against REAL)

10 (Declaratory Judgment of Unenforceability of the '989 Patent for Inequitable
11 Conduct)

12 92. Plaintiffs incorporate by reference Paragraphs 1 through 91 above as if
13 set forth fully herein.

14 93. The '989 Patent is unenforceable for inequitable conduct that occurred
15 during the prosecution of the '989 Patent.

16 94. The application for the '576 Patent was filed March 19, 1986.

17 95. The application for the '989 Patent was filed April 24, 1989.

18 96. Upon information and belief, Mark Tornetta, the named inventor of the
19 '989 Patent, wrote a piece of software called "WORKPLACE" at least as early as
20 1987.

21 97. Upon information and belief, the WORKPLACE software was
22 described in a published article in The Times Herald on April 22, 1988.

23 98. Upon information and belief, the WORKPLACE software was
24 described in a published article in the Chester County Biz on July 15, 1988.

25 99. Upon information and belief, Mark Tornetta sold the WORKPLACE
26 software and provided it to a company called Synermation at least as early as 1988.
27
28

1 100. Upon information and belief, Synermation implemented a commercial
2 product called the "WORKPLACE Network" using the WORKPLACE software
3 provided by Mark Tornetta.

4 101. Upon information and belief, Mark Tornetta admitted under oath that
5 the WORKPLACE software was in public use or on sale prior to 1988, more than
6 one year before the filing date of the '989 Patent.

7 102. Upon information and belief, the WORKPLACE software permits a
8 computer user to create a database of real estate properties, display maps, zoom in
9 on maps, zoom in on maps to display a higher level of detail, select areas to display,
10 and display a plurality of available real estate properties on the maps.

11 103. Upon information and belief, Mr. Tornetta has admitted that each and
12 every version of the WORKPLACE software could perform all the limitations of at
13 least claim 1 of the '989 Patent.

14 104. Mr. Tornetta knew or should have known of the materiality of the
15 WORKPLACE software to the patentability of the '989 Patent as the
16 WORKPLACE software establishes a prima facie case of unpatentability of the
17 claims in the '989 Patent.

18 105. The '989 Patent is a continuation-in-part application stemming from the
19 application which eventually issued as the '576 Patent.

20 106. In any continuation-in-part application, an applicant has a duty under 37
21 C.F.R. § 1.56 to disclose to the United States Patent Office all known material
22 information which became available between the filing date of the prior application
23 and the filing date of the continuation-in-part application.

24 107. Mark Tornetta and his attorneys had a duty to disclose the
25 WORKPLACE software to the United States Patent Office.

26 108. Mark Tornetta executed a declaration acknowledging "the duty to
27 disclose material information as defined in Title 37, Code of Federal Regulations, §
28 1.56(a) which occurred between the filing date of the prior application and the

1 national or PCT international filing date of this application,” i.e., between the filing
2 dates of the ‘576 Patent application and the ‘989 Patent application.

3 109. Despite their knowledge of the materiality of the WORKPLACE
4 software to the ‘989 Patent, Mr. Tornetta and his attorneys intentionally withheld the
5 WORKPLACE software from the PTO during the prosecution of the ‘989 Patent.

6 110. Upon information and belief, by withholding the WORKPLACE
7 software from the PTO during prosecution of the ‘989 Patent, Mr. Tornetta practiced
8 a fraud on the PTO and violated his duty of disclosure through bad faith and
9 intentional misconduct.

10 111. Consequently, all claims of the ‘989 Patent are unenforceable due to
11 inequitable conduct.

12 112. Plaintiffs seek a declaration that the claims of the ‘989 patent are
13 unenforceable for inequitable conduct.

14 **EIGHTH CLAIM FOR RELIEF**

15 (Alleged by Move against all Defendants)

16 (Intentional Inference With Contractual Relations)

17 113. Move incorporates by reference Paragraphs 1 through 112 above as if
18 set forth fully herein.

19 114. Move has contracts with MLS providers to receive data relating to
20 available real estate listings for the Move websites.

21 115. Move has contracts with its Enhanced Listing subscribers that allow
22 subscribers to enhance the information related to their real estate listings found on
23 the Move websites

24 116. Upon information and belief, Defendants knew of these contracts.

25 117. Upon information and belief, Defendants intended to disrupt the
26 performance of these contracts by asserting that those who use or list property on the
27 Move websites are infringing the Patents-in-Suit, by threatening those who use or
28 list property on the Move websites with patent infringement litigation that will

1 render them liable for tens of thousands of dollars in damages, and by knowingly
2 making false and damaging statements about Move and NAR intended to impugn
3 the integrity and reputation of Move and NAR and impede upon their contractual
4 relationships.

5 118. Defendants' assertions of infringement are objectively baseless.

6 119. Defendants' conduct has disrupted and/or made more difficult the
7 performance of its contracts.

8 120. Move has been and continues to be harmed financially by Defendants'
9 conduct.

10 121. Defendants' conduct was and continues to be a substantial factor in
11 causing Move's harm.

12 122. Defendants' conduct was done in bad faith with oppression, fraud, and
13 malice, and with full knowledge that the '576 patent and the '989 patent are invalid
14 and/or not infringed and that its claims of infringement are objectively baseless.
15 Further, Defendants' oppressive, fraudulent, and malicious acts were done with the
16 knowledge, intent, authorization and/or ratification of their respective corporate
17 officers, directors, and managing agents thereby entitling Move to punitive damages
18 to punish and deter Defendants from continuing such acts.

19 **NINTH CLAIM FOR RELIEF**

20 (Alleged by Move against all Defendants)

21 (Intentional Inference with Prospective Economic Advantage)

22 123. Move incorporates by reference Paragraphs 1 through 122 above as if
23 set forth fully herein.

24 124. Move has had economic relationships with MLS providers, real estate
25 brokers, real estate agents, and Enhanced Listing subscribers that likely have
26 resulted in and would likely continued to have resulted in economic benefit to Move.

27 125. Defendants knew of these relationships.
28

1 126. Defendants intended to disrupt these relationships by asserting that
2 those who use or list property on the Move websites are infringing the Patents-in-
3 Suit, by threatening those who use or list property on the Move websites with patent
4 infringement litigation that will render them liable for tens of thousands of dollars in
5 damages, and by knowingly making false and damaging statements about Move and
6 NAR intended to impugn the integrity and reputation of Move and NAR.

7 127. Defendants' actions were intentionally done to discourage continued
8 use of Move's websites and to interfere with Move's ability to establish and
9 maintain relationships with MLS providers, real estate brokers, and real estate agents
10 which relationships are necessary for Move to maintain current data for the Move
11 websites and which are the basis for the Move websites' ad revenue and Enhanced
12 Listing subscription revenue.

13 128. Move's relationships with agents and brokers and others who list
14 property information on the Move websites have been disrupted by Defendants'
15 conduct.

16 129. Move has been financially harmed by Defendants' wrongful conduct.

17 130. Defendants' conduct was done with oppression, fraud, and malice, and
18 with full knowledge that the '576 patent and the '989 patent are invalid and/or not
19 infringed and that its assertions of infringement are objectively baseless. Further,
20 Defendants' oppressive, fraudulent, and malicious acts were done with the
21 knowledge, intent, authorization and/or ratification of their respective corporate
22 officers, directors, and managing agents thereby entitling Move to punitive damages
23 to punish and deter Defendants from continuing such acts.

24 **TENTH CLAIM FOR RELIEF**

25 (Alleged by Move and NAR against all Defendants)

26 (Unfair Competition Under California Common Law)

27 131. Move and NAR incorporate by reference Paragraphs 1 through 130
28 above as if set forth fully herein.

1 132. Defendants' false statements and baseless threats of infringement
2 against Move, NAR, NAHB and those who use or list property on the Move
3 websites constitute unfair, false, misleading, and deceptive acts or practices in or
4 affecting commerce because they are likely to and do enable Defendants to prevent
5 continued use of the Move websites and interfere with Move's ability to establish
6 and maintain relationships with MLS providers, brokers, and Enhanced Listing
7 subscribers which relationships are necessary for Plaintiffs to maintain its Move
8 websites.

9 133. Defendants' false statements and baseless threats of infringement were
10 intended to divert those who use and list property on the Move websites to Equias's
11 competitive website or to otherwise refrain from using the Move websites.

12 134. Defendants' aforesaid acts have been done with full knowledge that the
13 '576 patent and the '989 patent are invalid and/or not infringed. Further,
14 Defendants' oppressive, fraudulent, and malicious acts were done with the
15 knowledge, intent, authorization and/or ratification of their respective corporate
16 officers, directors, and managing agents thereby entitling Move and NAR to punitive
17 damages to punish and deter Defendants from continuing such acts.

18 135. Defendants' foregoing unlawful acts constitute unfair competition
19 under the common law of California. Further, said acts have damaged and will
20 continue to damage Move's contracts, prospective economic advantage, goodwill,
21 and business reputation, causing harm which, unless enjoined, will continue to cause
22 irreparable harm.

23 **ELEVENTH CLAIM FOR RELIEF**

24 (Alleged by Move and NAR against all Defendants)

25 (Unfair and Deceptive Trade Practices Under

26 California Business and Professions Code Section 17200, *et seq.*)

27 136. MOVE and NAR incorporate by reference Paragraphs 1 through 135
28 above as if set forth fully herein.

1 137. Defendants' false statements and baseless threats of infringement
2 constitute unfair, false, misleading, and deceptive acts or practices in or affecting
3 commerce because they are likely to, and do, enable Defendants to prevent
4 continued use of the Move websites and interfere with Move's ability to establish
5 and maintain relationships with MLS providers, brokers, and Enhanced Listing
6 subscribers which relationships are necessary for Plaintiffs to maintain its Move
7 websites.

8 138. Defendants' false statements and baseless threats of infringement were
9 intended to divert those who use and list property on the Move websites to Equias's
10 competitive website or to otherwise refrain from using the Move websites.

11 139. Defendants' false statements and baseless threats of infringement are
12 harmful to Move and the public in general in that these acts have and continue to
13 interfere with Move's contractual relations, prospective economic advantage, and
14 goodwill and in that these acts also wrongfully interfere with the lawful use of the
15 Move website by others.

16 140. Defendants' aforesaid acts have been with oppression, fraud, and
17 malice, and with full knowledge that the Patents-in-Suit are invalid and/or not
18 infringed. Further, Defendants' oppressive, fraudulent, and malicious acts were
19 done with the knowledge, intent, authorization and/or ratification of their respective
20 corporate officers, directors, and managing agents thereby entitling Move and NAR
21 to punitive damages to punish and deter Defendants from continuing such acts.

22 141. Defendants' foregoing unlawful acts constitute unfair and deceptive
23 trade practices under California Business Law and Professions Code Section 17200
24 Et Seq. Further, said acts have damaged and will continue to damage Move's
25 contracts, prospective economic advantage, goodwill, and business reputation,
26 causing harm which, unless enjoined, will continue to cause irreparable harm.

27 **TWELTH CLAIM FOR RELIEF**

28 (Alleged by Move and NAR against all Defendants)

1 (Libel Under California Civil Code Section 45)

2 142. Move and NAR incorporate by reference Paragraphs 1 through 141
3 above as if set forth fully herein.

4 143. Upon information and belief, Defendants' have made public and non-
5 public statements against Move and NAR that are both false and harmful to the
6 reputations of Move and NAR.

7 144. Upon information and belief, Defendants have authored publications
8 about Move and NAR that are both false and harmful to the reputations of Move and
9 NAR, including the publications described in Paragraphs 33, 36-40, 44, and 48-55
10 above.

11 145. Defendants' false statements are of such an egregious nature as to
12 deprive Move and NAR of the favor and esteem of the public and the patronage and
13 trade of its customers, including but not limited to MLS providers, real estate
14 brokers, real estate agents, and Enhanced Listing subscribers.

15 146. Defendants' foregoing unlawful acts constitute libel under California
16 Civil Code Sections 45 and 45 (a).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment:

19 1. Declaring that United States Patent No. 4,870,576 and each claim
20 thereof is invalid;

21 2. Declaring that Plaintiffs and users of the Move websites do not infringe
22 any valid claim of United States Patent No. 4,870,576;

23 3. Declaring that United States Patent No. 4,870,576 and each claim
24 thereof is unenforceable as against Plaintiffs as a result of Defendants' misuse
25 thereof;

26 4. Temporarily, preliminarily and permanently enjoining Defendants and
27 their agents, representatives, successors, licensees, assigns, and others acting in
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1 concert with them from asserting United States Patent No. 4,870,576 against
2 Plaintiffs and any person, corporation or other entity affiliated therewith;

3 5. Temporarily, preliminarily and permanently enjoining Defendants and
4 their agents, representatives, successors, licensees, assigns, and others acting in
5 concert with them from making any public statements or other allegations that
6 United States Patent No. 4,870,576 is infringed by Plaintiffs and/or any users of the
7 MOVE web sites;

8 6. Declaring that United States Patent No. 5,032,989 and each claim
9 thereof is invalid;

10 7. Declaring that Plaintiffs and users of the Move websites do not infringe
11 any valid claim of United States Patent No. 5,032,989;

12 8. Declaring that United States Patent No. 5,032,989 and each claim
13 thereof is unenforceable as against Plaintiffs as a result of Defendants' misuse
14 thereof;

15 9. Declaring that United States Patent No. 5,032,989 and each claim
16 thereof is unenforceable for inequitable conduct that occurred during the prosecution
17 of the '989 Patent;

18 10. Temporarily, preliminarily and permanently enjoining Defendants and
19 their agents, representatives, successors, licensees, assigns, and others acting in
20 concert with them from asserting United States Patent No. 5,032,989 against
21 Plaintiffs and any person, corporation or other entity affiliated therewith;

22 10. Temporarily, preliminarily and permanently enjoining Defendants and
23 their agents, representatives, successors, licensees, assigns, and others acting in
24 concert with them from making any public statements or other allegations that
25 United States Patent No. 5,032,989 is infringed by Plaintiffs and/or any users of the
26 Move websites;

27 11. Awarding Move and NAR actual compensatory damages in an amount
28 to be proved at trial;

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12. Awarding Move and NAR punitive damages;

13. Awarding Move and NAR the amount of any profits derived in any way by Defendants from Defendants' wrongful acts;

14. Awarding Move and NAR any amount by which Defendants have been unjustly enriched as a result of their wrongful acts;

15. Awarding Move and NAR treble damages in an amount to be proved at trial pursuant to California Business and Professions Code Section 17082;

16. Awarding Move and NAR their reasonable attorneys' fees and other litigation expenses pursuant to California Business and Professions Code Section 17082;

17. Awarding Plaintiffs their attorneys' fees and cost occurred in this action, pursuant to 35 U.S.C. § 285;

1
2 18. Awarding Plaintiffs such further and additional legal and equitable
3 relief as the Court may deem just and proper.

4
5 Dated: January 12, 2009

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any issue triable by a jury.

Dated: January 12, 2009

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