1 JAMES V. FAZIO, III (CSB NO. 183353)
2 jamesfazio@sandiegoiplaw.com
   TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243042)
3 trevorcoddington@sandiegoiplaw.com
4 DONNY K. SAMPORNA (CSB NO. 316456)
   donnysamporna@sandiegoiplaw.com
5 SAN DIEGO IP LAW GROUP LLP
6 12526 High Bluff Drive, Suite 300
   San Diego, CA 92130
7 Telephone: (858) 792-3446
8 Facsimile: (858) 408-4422

9 Attorneys for Plaintiff,
10 CONFIDENT TECHNOLOGIES, INC.

11
                UNITED STATES DISTRICT COURT
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                CENTRAL DISTRICT OF CALIFORNIA
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15 | CONFIDENT TECHNOLOGIES, | CASE NO. CV18-03035 JAK |
   INC., a Delaware corporation, | (AGRX)
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                                 |
17 | Plaintiff, | **FIRST AMENDED COMPLAINT FOR:**
18 | vs. | **(1) PATENT INFRINGEMENT – 35 U.S.C. § 271; AND**
19 | FANDANGO MEDIA, LLC, a | **(2) DECLARATORY RELIEF**
   Virginia limited liability company, |
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21 | Defendant. | **DEMAND FOR JURY TRIAL**

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                    FIRST AMENDED COMPLAINT

Plaintiff Confident Technologies, Inc. (collectively, "Confident" or "Plaintiff"), by and through its attorneys, makes and files this First Amended Complaint against Defendant Fandango Media, LLC ("Fandango" or "Defendant"). In support of this First Amended Complaint, Plaintiff alleges as follows:

NATURE OF THE ACTION

1.   This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq*.

THE PARTIES

2.   Plaintiff Confident is a Delaware corporation with a principal place of business in Solana Beach, CA.

3.   Defendant Fandango is a Virginia limited liability company with a principal place of business in Universal City, CA.

JURISDICTION AND VENUE

4.   This Court has original and exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because Confident's claim of patent infringement arises under the laws of the United States, including 35 U.S.C. §§ 271.

5.   This Court has personal jurisdiction over Defendant because it has a continuous, systematic and substantial presence in this District, because it regularly conducts business and/or solicits business within this District, because it has committed and continues to commit patent infringement in this District, including without limitation by directing and controlling the methods claimed in United States Patent No. 8,621,578 ("the '578 patent") in this District.

6.   Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendant has done business, has infringed, and continues to infringe the '578 patent in this District, and has a regular and established place of business in this District.

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FACTUAL BACKGROUND

7.   On December 10, 2008, United States Patent Application No. 12/332,266 ("the '266 application") was filed covering methods and systems for protecting website forms from automated access. On December 31, 2013, the United States Patent and Trademark Office (PTO) duly and lawfully issued United States Patent No. 8,621,578 ("the '578 patent") from the '266 application, entitled "Methods and Systems for Protecting Website Forms from Automated Access." A true and correct copy of the '578 patent is attached hereto as **<u>Exhibit A</u>**. Confident owns all rights to the '578 patent via an Assignment, which was recorded at the PTO on February 4, 2015, at Reel/Frame 034886/0691.

8.   The '578 patent is directed to a method and system of telling apart a human from a computer using a graphical image verification system. The methods generally describe generating a matrix of images in response to an access request from a user, wherein at least one image is known to belong to a selected image category, at least one image is known to not belong to the selected image category, and at least one image is suspected to belong to the selected image category. The user is granted access to the website when the input from the user access device comprises selection of the at least one image known to belong to the selected image category and selection or omission of the at least one image suspected to belong to the selected image category. The information gathered from users concerning the image suspected to belong to the selected image category may be utilized to provide an interpretation as to the proper category for the suspected image.

9.   Defendant Fandango directs customers that wish to purchase movie tickets on-line to go to the www.fandango.com website and use Google's ReCaptcha V2 technology as a precondition to purchasing movie tickets. In addition, Fandango directs customers that wish to stream movies and/or television programs to its website, www.fandangonow.com, and use ReCaptcha V2 technology as a precondition to streaming content. Customers seeking to purchase

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1 movie tickets on-line or stream content are directed, by Fandango's website(s), to

2 complete a ReCaptcha V2 verification, as shown below:
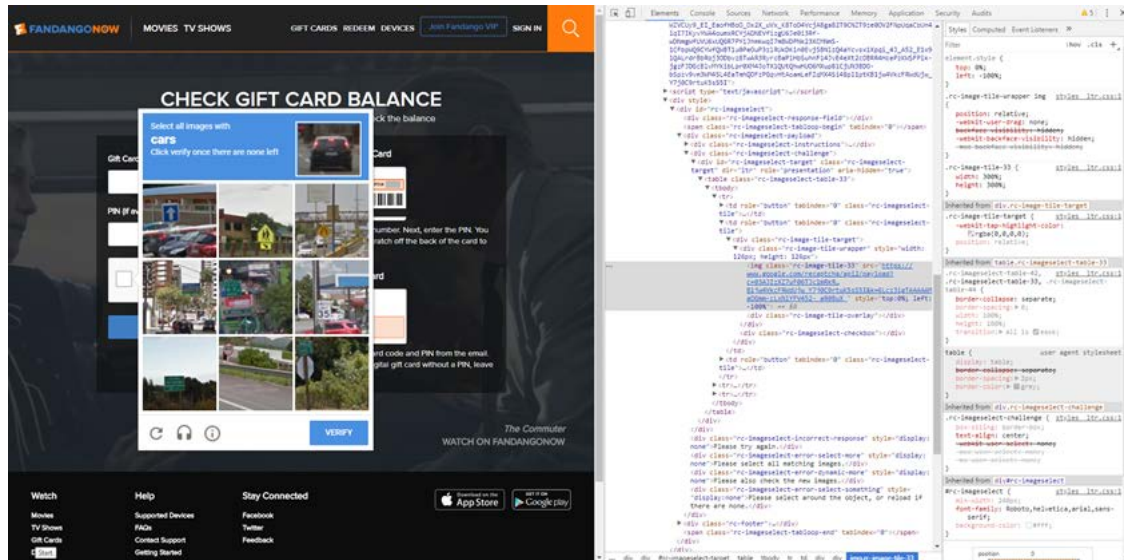
13 The right portion of the image shown above presents a portion of the code utilized

14 in Fandango's website. This code includes a Google service script which is

15 uniquely associated with Fandango.

16   10.   In order to use Google's ReCaptcha V2, Fandango registered a

17 ReCaptcha account with Google and obtained from Google a ReCaptcha V2 public

18 key and a private key. When a third party, e.g., user, wishes to access the Fandango

19 website (shown above) with the embedded service script, the Fandango website

20 contacts Google's server with Fandango's public key. The Google server then

21 provides the third party with a matrix of non-overlapping images (shown above)

22 and tokens identifying those images. The third party then enters his/her/its

23 interpretation of those images and submits those interpretations to Fandango's

24 website, along with the tokens associated with the images. Fandango's website then

25 sends the third party's interpretations and the tokens to Google's server using

26 Fandango's private key. The Google server then determines whether the third party

27 has interpreted the images sufficiently well that there is high confidence that the

28 third party is a human. The Google server then relays to Fandango's website its

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determination of whether or not there is high confidence that the third party is a human.

11.   The ReCaptcha V2 technology employed by Fandango's website and applications utilizes the claimed '578 technology in granting access to certain website content authorizing certain electronic transactions by presenting users with images wherein at least one image is known to belong to a selected image category, at least one image is known to not belong to the selected image category, and at least one image is suspected to belong to the selected image category. The user gains access by, inter alia, selecting one or more images that belong to the selected category. Fandango conditions participation of the customer in the ticket purchasing process upon performance of a step or steps of the '578 patented method, and establish the manner or timing of that performance.

FIRST CLAIM FOR RELIEF

(Infringement of the '578 patent)

12.   Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

13.   Fandango has infringed and continues to infringe, and/or induce infringement of the '578 patent, either literally or under the doctrine of equivalents. Fandango's infringing activities in the United States and this District include, among other things using ReCaptcha V2 technology to prevent abuse to its websites and apps that stream content or sell movie tickets to consumers.

14.   Fandango registered itself with Google in order to utilize Google's ReCaptcha V2 technology. Upon registration, Fandango received a unique public key and private key to enable use of Google's ReCaptcha V2 technology. Moreover, during registration, Fandango selected to specifically use Google's ReCaptcha V2, among other possible versions of ReCaptcha such as Invisible ReCaptcha, which does not infringe the '578 patent. Fandango incorporated a

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Google application programming interface (API) or service script into its website code in order to direct and control Google to provide ReCaptcha V2 verification upon certain conditions being met, e.g., a user request access to streamed content or movie tickets. The Google API in Fandango's website includes Fandango's public key obtained from Google. Without Fandango's registration, and without the inclusion of Google's API and Fandango's public key into Fandango's website, Fandango would not be able to utilize Google's ReCaptcha V2.

15.   As shown in **Exhibit B**, which is incorporated herein, Fandango infringes at least claim 1 of the '578 patent. Fandango directs and controls a Google server to perform the claimed steps of "generating a matrix of non-overlapping randomly selected images …" and "presenting the dynamic graphical arrangement of randomly selected images …" as recited in claim 1. For example, Fandango's website includes a Google service script that utilizes a public key registered by Fandango with Google. When a third party, e.g., user, wishes to access a Fandango website, the Fandango website contacts Google's server, which provides the third party with a matrix of non-overlapping images and tokens identifying those images, along with an image recognition task. Fandango's website conditions Google's performance of these steps upon a consumer requesting access to certain Fandango resources, e.g., streaming content or tickets.

16.   Fandango's website performs the step of "receiving an input from user access device …." as recited in claim 1. For example, upon presentation of the matrix of non-overlapping images, the third party then enters his/her/its interpretation of those images and submits those interpretations to Fandango's website, along with the tokens associated with the images. Google also performs this step at Fandango's direction and control because Fandango's website passes the third party's interpretations and the tokens associated with the images that it received from the third party, along with Fandango's private key to the Google server. Again, Fandango's website conditions Google's performance of this step

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upon a consumer requesting access to certain Fandango resources, e.g., streaming content or tickets.

17.   Fandango directs and controls the Google server to perform the step of "comparing the input …" as recited in claim 1. For example, Fandango's website sends the third party's interpretations and the tokens to Google's server using Fandango's private key, which then determines whether the third party has interpreted the images sufficiently well that there is high confidence that the third party is a human. The Google server then relays to Fandango's website its determination of whether or not there is high confidence that the third party is a human. Again, Fandango's website conditions Google's performance of this step upon a consumer requesting access to certain Fandango resources, e.g., streaming content or tickets.

18.   The infringement chart of Exhibit B is based on Confident's current understanding of Fandango's use of infringing ReCaptcha technology, which only considers publicly available information. The chart does not set forth all of Confident's infringement theories – Fandango's use of infringing ReCaptcha V2 technology embodies other claims set forth in the '578 patent.

19.   Confident reserves the right to amend or supplement its infringement theories upon more information becoming available through formal discovery and/or this Court completing its claim construction proceedings.

20.   Confident is informed and believes that Fandango, with actual knowledge of the '578 patent, induces Google to infringe the '578 patent, by requiring its consumers to solve a Google ReCaptcha V2 image recognition task to purchase tickets and/or stream content through Fandango's websites and mobile apps. Fandango directs and controls Google to perform all the steps recited in at least claim 1 of the '578 patent upon a Fandango consumer attempting to purchase tickets and/or streaming content through Fandango's websites and mobile apps. Fandango profits from the use of the infringing ReCaptcha V2 technology by,

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among other things, charging customers a service fee. Google benefits from said infringement by harnessing the power of humans to classify images presented in ReCaptcha V2 image recognition tasks to Fandango consumers.

21.   As part of Google's Terms of Service for its ReCaptcha V2 technology, Fandango agreed to "indemnify, defend and hold Google, its agents, affiliates, and licensors harmless from any claim, costs, losses, damages, liabilities, judgments and expenses (including reasonable fees of attorneys and other professionals), arising out of or in connection with any claims arising out of or related to [Fandango's] use of the [Google ReCaptcha V2] Services, Content, or Google brand features." reCAPTCHA Terms of Services. Fandango is therefore responsible for Google's infringement of the '578 patent.

22.   Defendant was aware or should have been aware or were willfully ignorant of the '578 patent by at least January of 2014.

23.   Upon information and belief, Defendant has generated millions of dollars in annual revenue from service fees and the use of Plaintiff's technology, exposing Fandango to significant liability for its infringement of the '578 patent.

24.   Upon information and belief, unless enjoined, Defendant, and/or others acting on behalf of Defendant, will continue their infringing acts, thereby causing irreparable harm to Confident for which there is no adequate remedy at law.

25.   As a result of Defendant's infringement of the '578 patent, Confident has suffered and will continue to suffer harm and injury, including monetary damages in an amount to be determined at trial, and is entitled to recovery of all said damages.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

26.   Plaintiff realleges and incorporate by reference the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

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27.   A dispute exists as to the infringement of the '578 patent.

28.   Confident is entitled to a declaration that Defendant infringes the '578 patent.

PRAYER FOR RELIEF

WHEREFORE, Confident prays for entry of judgment in its favor and against Defendant as follows:

(a)   An Order adjudging Defendant to have infringed, or induced the infringement of the '578 patent under 35 U.S.C. § 271;

(b)   A permanent injunction under 35 U.S.C. § 283 enjoining Defendant, its officers, directors, agents, servants, resellers, retailers, employees and attorneys, and those persons acting in concert or participation with them, from infringing or inducing the infringement of the '578 patent in violation of 35 U.S.C. § 271;

(c)   An award to Confident of its lost profits and/or a reasonably royalty on Defendant's fees;

(d)   An Order adjudicating that this is an exceptional case;

(e)   An award to Confident of all attorneys' fees and costs incurred by Confident in connection with this action under 35 U.S.C. § 285;

(f)   An award of pre-judgment and post-judgment interest and costs of this action against Defendant;

(g)   For such other and further relief as the Court deems just and proper.

Dated: September 4, 2018   SAN DIEGO IP LAW GROUP LLP

By: /s/Trevor Q. Coddington
     JAMES V. FAZIO, III
     TREVOR Q. CODDINGTON, PH.D.
     DONNY K. SAMPORNA

Attorneys for Plaintiff,
Confident Technologies, Inc.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: September 4, 2018   SAN DIEGO IP LAW GROUP LLP

By: /s/Trevor Q. Coddington
JAMES V. FAZIO, III
TREVOR Q. CODDINGTON, PH.D.
DONNY K. SAMPORNA

Attorneys for Plaintiff,
Confident Technologies, Inc.

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