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DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

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TX EASTERN-MARSHALL

BY \_\_\_\_\_

EPICREALM LICENSING, LP,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:05-CV-163
	§	
AUTOFLEX LEASING, INC., et al.,	§	
	§	
Defendants.	§	

EPICREALM LICENSING, LP,	§	
	§	
Plaintiff,	§	
	§	
v.	§	<u>2:05-CV-356</u>
	§	
FRANKLIN COVEY CO., et al.,	§	
	§	
Defendants.	§	

**PLAINTIFF'S SECOND AMENDED COMPLAINT**

Plaintiff, epicRealm Licensing, LP, brings this action for patent infringement and alleges the following:

**I. PARTIES**

1. Plaintiff epicRealm Licensing, LP ("epicRealm") is a Delaware limited partnership with its principal place of business in Dallas, Dallas County, Texas.

2. On information and belief, defendant Autoflex Leasing – Dallas, LP ("Autoflex") is a Texas limited partnership, with its principal place of business at 558 S. Central Expressway, Richardson, Texas 75080-6126, and is doing business in the Eastern District and elsewhere in the

State of Texas. Autoflex may be served with process by service on its registered agent, Andrew L. Adams, located at 558 S. Central Expressway, Richardson, Texas 75080-6126.

3. On information and belief, defendant eHarmony.com, Inc., ("eHarmony") is a California corporation, with its principal place of business at 300 North Lake Avenue, Suite 1111, Pasadena, California 91101. Although eHarmony has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code, eHarmony may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

4. On information and belief, defendant Friendfinder Network, Inc., ("Friendfinder") is a California corporation, with its principal place of business at 445 Sherman Avenue, Suite T, Palo Alto, California 94306. Although Friendfinder has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code, Friendfinder may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

5. On information and belief, defendant Grande Communications Networks, Inc., ("Grande") is a Delaware corporation, with its principal place of business at 401 Carlson Circle, San Marcos, Texas 78666-6730, and is doing business in the Eastern District and elsewhere in the State of Texas. Grande may be served with process by service on its registered agent, Andrew Keever, located at 401 Carlson Circle, San Marcos, Texas 78666-6730.

6. On information and belief, Transplace Texas, L.P., ("Transplace") is a Texas limited partnership, with its principal place of business at 5800 Granite Parkway, Suite 1000,

Plano, Texas 75024, and is doing business in the Eastern District and elsewhere in the State of Texas. Transplace may be served with process by service on its registered agent, Ellis McKinley, located at 5800 Granite Parkway, Suite 1000, Plano, Texas 75024.

7. On information and belief, defendant Franklin Covey Co. ("Franklin Covey") is a Utah corporation, with its principal place of business at 2200 West Parkway Boulevard, Salt Lake City, Utah 84119, Attention: Tami Donavon, Director of Legal Services. Although Franklin Covey has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code, Franklin Covey may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

8. On information and belief, defendant Clark Consulting, Inc., ("Clark") is a Delaware corporation, with its principal place of business at 102 S. Wynstone Park Dr. #100, North Barrington, Illinois, 60010, and is doing business in the Eastern District and elsewhere in the State of Texas. Clark may be served with process by service upon its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

9. On information and belief, defendant The Macerich Company ("Macerich") is a Maryland corporation, with its principal place of business at 401 Wilshire Blvd., Suite 700, Santa Monica, California 90401, Attention: Arthur M. Coppola, President and CEO. Although Macerich has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code,

Macerich may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

10. On information and belief, defendant Safelite Group, Inc., ("Safelite") is a Delaware corporation, with its principal place of business at 2400 Farmers Drive, Columbus, Ohio 43235, Attention: Dan Wilson, President and CEO. Although Safelite has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code, Safelite may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

11. On information and belief, defendant Herbalife International of America, Inc., ("Herbalife") is a California corporation, with its principal place of business at 1800 Century Park East, Los Angeles, California 90067, and is doing business in the Eastern District and elsewhere in the State of Texas. Herbalife may be served with process by service upon its registered agent, United States Corp. Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

12. On information and belief, defendant Pink Sheets, LLC, ("Pink Sheets") is a Delaware limited liability company, with its principal place of business at 304 Hudson St. 2nd Floor, New York, New York 10013, Attention: R. Cromwell Coulson, Chairman and CEO. Although Pink Sheets has done — and continues to do — business in the Eastern District and elsewhere in the State of Texas, it has not designated or maintained an agent for service of process in Texas. Accordingly, pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code, Pink Sheets may be served with process by service upon the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

## II. JURISDICTION AND VENUE

13. This infringement action arises under the patent laws of the United States, title 35, United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1338(a).

14. All of the defendants have done — and continue to do — business in the Eastern District of Texas. All defendants have minimum contacts with the Eastern District of Texas such that this venue is a fair and reasonable one. The defendants have committed purposeful acts or transactions in the State of Texas such that they reasonably knew and expected that they could be haled into a Texas court as a consequence of such activity. Accordingly, venue in the Eastern District of Texas is proper under 28 U.S.C. §§ 1391(b), 1400(b).

## III. PATENT INFRINGEMENT

15. On April 13, 1999, and July 2, 2002, United States Patent Nos. 5,894,554 and 6,415,335 B1, which are collectively referred to as the "epicRealm Patents," duly and legally issued. These two patents concern, among other things, systems and methods for managing dynamic Web page generation requests. Copies of the epicRealm Patents are attached hereto as Exhibits "A" and "B" and made a part hereof.

16. EpicRealm is the owner of the epicRealm Patents and has the right to enforce those patents with respect to the defendants.

17. On information and belief, defendants use systems and methods for managing dynamic Web page generation requests within the scope of one or more of the claims of the epicRealm Patents. As a result, all of the defendants have been and still are infringing one or more of the claims of the epicRealm Patents as defined by 35 U.S.C. § 271 (a), (b), and/or (c). EpicRealm has suffered damage by reason of defendants' infringement and will continue to suffer additional damage until this Court enjoins the infringing conduct.

18. To the extent that defendants have continued or do continue their infringing activities after receiving notice of the epicRealm Patents, such infringement is willful, entitling epicRealm to the recovery of increased damages under 35 U.S.C. § 284.

19. This is an "exceptional case" justifying an award of attorneys' fees and costs to epicRealm pursuant to 35 U.S.C. § 285.

20. EpicRealm believes that defendants will continue to infringe the epicRealm Patents unless enjoined by this Court. Such infringing activity causes epicRealm irreparable harm and will continue to cause such harm without the issuance of an injunction.

#### **IV. JURY DEMAND**

21. Plaintiff requests trial by jury pursuant to Federal Rule of Civil Procedure 38.

#### **V. PRAYER FOR RELIEF**

22. EpicRealm requests that the Court find in its favor and against defendants and that the Court grant the following relief:

- a. Judgment that one or more of the claims of the epicRealm Patents have been infringed, either literally and/or under the doctrine of equivalents, by defendants;
- b. Judgment in favor of epicRealm for the full amount of its actual damages caused by defendants' infringing activities, including an assessment of interest and costs;
- c. Judgment for increased damages for willful infringement pursuant to 35 U.S.C. § 284;
- d. Judgment that this is an "exceptional case" and awarding epicRealm its reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285;
- e. That defendants be permanently enjoined from further activity or conduct that infringes the claims of the epicRealm Patents; and
- f. That the Court award epicRealm such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Larry D. Carlson

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ATTORNEYS FOR PLAINTIFF  
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#### CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_\_, all counsel are being served with a copy of this document either: (1) by the Court's Electronic Filing System, pursuant to Local Rule CV-5(a)(3)(A), if they have consented to electronic service, or (2) by electronic mail, pursuant to Local Rule CV-5(e), if they have not so consented.

/s/ Larry D. Carlson  
Larry D. Carlson