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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

18 ACTIVERAIN CORP., a Washington
Corporation,

19 Plaintiff,

20 vs.

21 MOVE, INC., a Delaware corporation,

22 Defendant.

23 CASE NO.

COMPLAINT FOR:

- (1) Violation of California Trade Secrets Act
- (2) Breach of Contract
- (3) Unjust Enrichment
- (4) Promissory/Equitable Estoppel
- (5) Unfair Competition
- (6) Washington Unfair Business Practices Act
- (7) Fraud/Deceit

JURY DEMAND

2007 AUG -2 PM 4:34
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
JULIA KINNELLS

FILED

REV-07 5037 DDA(CTX)

1 COMES NOW PLAINTIFF, ACTIVERAIN CORP., who complains of
2 defendant MOVE, INC., and alleges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. The Court has jurisdiction pursuant to 28 U.S.C. § 1332, because the
5 amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and
6 costs, and is between citizens of different states.

7 2. Venue of this action lies in the United States District Court for the
8 Central District of California. 28 U.S.C. § 1391(a). Additionally, the claims alleged
9 herein include, in part, claims arising from a contract ("Mutual Nondisclosure
10 Agreement"), which provides that any action concerning it must be commenced in
11 courts located in Los Angeles County, California.

12 **II. PARTIES**

13 3. Plaintiff ActiveRain Corp. (hereinafter, "ActiveRain") is and was at all
14 times alleged herein a citizen of the State of Washington. ActiveRain is and was at
15 all times alleged herein a company duly organized and existing under the laws of the
16 State of Washington, with its principal place of business in Bothell, Washington.

17 4. On information and belief, Defendant Move, Inc. (hereinafter, "Move")
18 is and was at all times alleged herein a citizen of the States of Delaware and
19 California. On information and belief, Move is and was at all times alleged herein a
20 company duly existing and organized under the laws of the State of Delaware, with
21 its principal place of business in Westlake Village, California. Move owns and
22 operates websites including what it describes as its "flagship website" and the
23 official site of the National Association of Realtors, REALTOR.com.; as well as
24 Move.com (formerly Homestore.com); HomeBuilder.com; and SeniorHousingNet.

25 **III. STATEMENT OF FACTS**

26 5. ActiveRain is a Washington state company that provides a free social
27 network or "online" blogging community or platform for real estate agents, realtors,
28 mortgage professionals, builders, marketers, insurance brokers and other real estate

1 professionals, through the ActiveRain Real Estate Network (hereinafter, the
2 "ActiveRain Network"). The ActiveRain Network is accessed through ActiveRain's
3 website at www.activerain.com. The majority of ActiveRain's shareholders are
4 also Washington residents.

5 6. ActiveRain launched the ActiveRain Network in June 2006. Use of
6 and membership in the ActiveRain Network grew quite rapidly. Within three
7 months, the ActiveRain Real Estate Network had approximately 4,500 members.
8 Within six months, by the end of 2006, its membership had almost tripled, to over
9 12,000 members. By the end of March 2007, the membership had grown to almost
10 20,000, of whom approximately 12,000 were real estate agents. Hundreds of these
11 ActiveRain real estate agents and other members were and are Washington
12 residents.

13 7. The ActiveRain Real Estate Network was far ahead of others in the
14 industry with respect to its offerings, which include free blogging sites or
15 networking services for individual realtors and other innovative and robust social
16 networking services. ActiveRain quickly became a strong brand among realtors,
17 with a loyal membership base. It enjoyed a "first mover" advantage, including but
18 not limited to its marketing and community-building strategies, and operated the
19 country's most active real estate social network and blogging community, or
20 platform, on the internet. Its membership base of realtors and related persons
21 represented a valuable set of "early adopter" users in the market.

22 8. ActiveRain developed its ActiveRain Real Estate Network and the
23 related components – including but not limited to systems, methodologies, analyses,
24 processes, software, programming, protocols, and interfaces, marketing and
25 community-building strategies, business plans, financial models and pro formas
26 (collectively the "Confidential Information") – through the investment of substantial
27 time, skill, and/or money. ActiveRain's Confidential Information is valuable.
28 ActiveRain's Confidential Information is not generally known to the public, nor to

1 those in the trade or business or other persons who could obtain economic value
2 from it.

3 9. ActiveRain treated and treats its Confidential Information as
4 confidential and as trade secrets. ActiveRain undertook reasonable efforts to
5 maintain the secrecy of such Confidential Information, including, but not limited to,
6 through the use of confidentiality and/or non-disclosure agreements. In particular,
7 by admission of Move's representatives, ActiveRain's Confidential Information was
8 not known to Move before the events described herein.

9 10. At all relevant times herein, Move and its subsidiaries and/or affiliates
10 provided, among other things, website-based real estate content and decision support
11 tools to consumers to utilize before, during and after a move – as opposed to an
12 established or focused social network and online, blogging community for real
13 estate professionals, such as that provided by the ActiveRain Real Estate Network.

14 11. Despite substantial efforts, prior to the acts and omissions alleged
15 herein, Move had not been able to successfully develop, launch or market a social
16 network and blogging community or platform for real estate professionals
17 equivalent to that provided by the ActiveRain Real Estate Network.

18 12. Move acknowledged that ActiveRain had the "secret sauce," and had
19 captured "lightening in a bottle", with respect to its social networking and blogging
20 community services for real estate professionals, including but not limited to
21 ActiveRain's confidential marketing and community-building strategies. Move also
22 acknowledged that acquiring ActiveRain would provide it with very valuable
23 strategic and market advantages, including but not limited to preventing ActiveRain
24 from securing investment dollars or financing with which to further grow;
25 preventing it from being acquired by another competitor; preventing it from forming
26 strategic alliances or partnerships with competitors to Move; and optimizing Move's
27 Search Optimization Engine ("SEO") value for search engines, an area in which
28 Move was relatively weak.

1 13. Beginning in or about November 2006, Move approached ActiveRain
2 about a potential financing or purchase of ActiveRain by Move. Move assured
3 ActiveRain that it wanted to acquire ActiveRain, and gave it assurances in this
4 regard in order to convince ActiveRain to disclose its Confidential Information to
5 Move. Move communicated its intent to purchase ActiveRain through its
6 designated representatives, including its then-Executive Vice President for Strategy
7 and Corporate Development, Allan P. Merrill; and Errol G. Samuelson, then the
8 President of Move's affiliate or subsidiary, Top Producer Systems, and now the
9 President of REALTOR.com as well as an Executive Vice President of Move.

10 14. On or about January 16, 2007, in connection with these acquisition
11 discussions, Move presented ActiveRain with a Mutual Nondisclosure Agreement
12 (hereinafter "NDA"). Among other things, the NDA was supposed to assure
13 ActiveRain that the Confidential Information it provided Move would be kept
14 secure and used solely for purposes of conducting due diligence in connection with
15 the acquisition.

16 15. Through a series of additional meetings and discussions, ActiveRain
17 and Move continued to discuss Move's anticipated acquisition of ActiveRain.

18 16. On or about March 9, 2007, Move provided ActiveRain with a Letter of
19 Intent, which detailed the essential terms of Move's purchase of ActiveRain,
20 including a purchase price of \$30,000,000 in cash and "Earn-Outs," and
21 contemplating employment agreements with ActiveRain's owners and officers,
22 Matthew Heaton, Jonathan Washburn, and James Hillyerd; and further including the
23 schedule and calculation of payments.

24 17. Meanwhile, Move asked ActiveRain's owners and officers to forgo
25 growth and other business opportunities, and ActiveRain complied with these
26 requests in reliance upon Move's assurances regarding its intent to acquire
27 ActiveRain. For example, but not by way of limitation, Move required ActiveRain
28 to agree to a "no shop" agreement, and repeated extensions thereof, whereby

1 ActiveRain could not seek or even to discuss any investment or purchase
2 transactions with anyone except Move.

3 18. Move also asked ActiveRain to undertake and/or forego a number of
4 other acts in reliance upon Move's promises, representations and assurances
5 regarding its acquisition of ActiveRain. For instance, at the time Move approached
6 ActiveRain, ActiveRain was developing revenue-generating models and strategic
7 partnerships with other businesses, including direct competitors of Move, with
8 respect to the ActiveRain Real Estate Network. When ActiveRain officers
9 mentioned this to Move's representatives, they asked ActiveRain to cease
10 development of these models and partnerships, because, Move officials said, they
11 would not be useful to Move once it acquired ActiveRain. ActiveRain did as Move
12 required, in reliance on the representations and assurances made by Move, with
13 regard to the acquisition.

14 19. By way of further illustration, but not limitation, Move required
15 ActiveRain to cancel and/or delay valuable licensing contracts with key corporate
16 customers/vendors -- purportedly as part of closing the acquisition by Move. Again,
17 at Move's request, and in reliance upon the promises, representations and assurances
18 of Move with regard to the acquisition, ActiveRain delayed or cancelled these
19 contracts.

20 20. By way of additional example, and not limitation, Move asked
21 ActiveRain to close out its bank line of credit (which it used to operate the
22 ActiveRain Real Estate Network), also ostensibly as part of closing the acquisition
23 transaction. Once again, in reliance upon Move's promises, representations and
24 assurances about the acquisition, ActiveRain shut down its line of credit.

25 21. Move also kept ActiveRain's owners and officers occupied for many
26 weeks creating and providing documents about ActiveRain's business, methods, and
27 plans, to provide to Move under the auspices of "due diligence" concerning the
28

1 acquisition transaction, distracting them from spending their time and resources
2 operating and growing ActiveRain.

3 22. On or about March 15, 2007, Move, through its representatives Allan
4 P. Merrill and Errol G. Samuelson, informed ActiveRain that Move's Board of
5 Directors had unanimously approved the acquisition of ActiveRain. Move's
6 representatives further assured ActiveRain that final closing of the deal was
7 contingent only upon the tweaking of some minor details, such as one aspect of the
8 "Earn Out" formula; but that this would require ActiveRain showing Move some
9 more, and/or updated versions of, ActiveRain's Confidential Information. The
10 additional Confidential Information sought by Move included ActiveRain's entire
11 member or customer list(s) or roster(s), and detailed information regarding the
12 profiles for each member or customer. Move representatives told ActiveRain at this
13 time that the Board was comfortable with the total purchase price and other major
14 deal terms, and that the Board did not need to review the tweaking of the final minor
15 details prior to closing. Move representatives Jack Dennison and Allan P. Merrill
16 assured ActiveRain that the Move Board had authorized them to go ahead and close
17 the deal without further action by the Board, and told ActiveRain that they expected
18 to close the deal by April 13, 2007.

19 23. Move later asked ActiveRain to extend its no shop agreement, thereby
20 continuing to lock up ActiveRain and prevent it from seeking or even discussing
21 investment or purchase opportunities with anyone other than Move – ostensibly to
22 allow Move's deal team to obtain and review the additional Confidential
23 Information requested, and close the acquisition.

24 24. Relying upon Move's promises, representations and assurances,
25 ActiveRain extended the no shop agreement, and provided Move with still more of
26 its Confidential Information, as Move requested. And Move's acquisition of
27 ActiveRain was then scheduled to close on or about May 4, 2007.

28

1 25. At all times relevant herein, Move knew that the information provided
2 to it by ActiveRain was confidential, trade secrets, and/or subject to the NDA.
3 Move also knew, and intended, and/or was recklessly indifferent to whether,
4 ActiveRain would rely upon its promises, representations and assurances regarding
5 the acquisition to, among other things, cease development of its revenue-generating
6 models, cancel customer contracts, and cancel its bank line of credit.

7 26. On the morning of May 2, 2007, in response to concerns expressed by
8 ActiveRain about the amount of time it was taking to close the deal, Move
9 representatives further assured ActiveRain that the acquisition was still "on," and
10 said Move planned to announce its purchase of ActiveRain at the annual National
11 Association of Realtors ("NAR") meeting in Washington D.C. in mid-May, 2007.
12 At the same time, the Move representatives insisted that ActiveRain needed to
13 provide Move with still more, highly-sensitive Confidential Information – including
14 the member roster and profile information for the ActiveRain Real Estate Network
15 in an Excel spreadsheet or digital electronic format. This electronic format of the
16 ActiveRain Network member information was more manipulable and useable by
17 Move. The Confidential Information in this electronic format included scores of
18 distinct fields which could be sorted, reorganized, and manipulated, to reveal and
19 allow for ready utilization of still more proprietary and confidential trade secrets of
20 ActiveRain. Move's representatives told ActiveRain at this time that they needed
21 this additional, electronically-formatted, Confidential Information, in order to make
22 sure the Board was "comfortable" with the deal.

23 27. Again relying upon Move's promises, representations and assurances,
24 ActiveRain provided Move with this highly-sensitive material about its members
25 and its network or platform in electronic format, in anticipation of the supposed
26 impending closing. All of this electronic material required by Move was provided
27 by ActiveRain by the morning of May 3, 2007.

28

1 28. Within hours of its receipt of this especially-sensitive information in
2 unrestricted digital electronic format, Move told ActiveRain that it had "cancelled"
3 the deal.

4 29. Within days of acquiring this especially-sensitive ActiveRain Network
5 member information in unrestricted digital electronic format, and cancelling its
6 acquisition of ActiveRain, Move publicly announced that it was "roll[ing] out free
7 blogs for Realtors"; and announced it as its own, "new" real estate professional blog
8 network – through its "flagship [web]site," REALTOR.com. More specifically,
9 rather than announcing its purchase of ActiveRain at the mid-May NAR meeting in
10 Washington D.C., Move instead announced a "retooled" and "redesigned" version
11 of its REALTOR.com website, purportedly built on a "new software platform,"
12 which would make available a free blog site for realtors. See Exhibit A hereto.

13 30. On information and belief, Move used, and continues to use,
14 ActiveRain's Confidential Information in order to create and maintain this
15 "redesigned" and "retooled" REALTOR.com website network, providing free blogs
16 for real estate professionals. See also Exhibit B hereto.

17 31. At the time that Move cancelled its purchase of ActiveRain, Move
18 knew that it had acquired ActiveRain's Confidential Information under
19 circumstances giving rise to a duty to maintain its secrecy and limit its use; that it
20 had been acquired by improper means; that Move could not legally or properly use
21 ActiveRain's Confidential Information; and/or that ActiveRain had not consented to
22 Move's use of its Confidential Information. Despite such knowledge, on
23 information and belief Move decided to use, did use, and continues to use
24 ActiveRain's Confidential Information in order to launch, maintain and offer a free
25 real estate social network and blogging community, or platform, virtually identical
26 to that of ActiveRain. In addition, Move's misappropriation of ActiveRain's
27 Confidential Information was willful and malicious.

28

1 32. At the time that Move made its various promises, representations and
2 assurances to ActiveRain — including but not limited to requests that ActiveRain
3 extend the “no shop” (and non-investment) agreement, cancel its key contracts,
4 cease development of its revenue-generating models and strategic partnerships with
5 Move competitors, and cancel its bank line of credit — Move knew and intended
6 that, or was recklessly indifferent to whether, ActiveRain would rely on its
7 promises, representations, and assurances. ActiveRain did so, to its competitive
8 detriment; and to Move’s unfair competitive advantage.

9 33. Move’s conduct left ActiveRain in a maimed and disadvantaged market
10 position. Among other things, Move’s representations and assurances, and
11 ActiveRain’s reliance on them, stalled ActiveRain’s growth and business operations;
12 caused it to forego other investment and revenue opportunities with which to grow
13 the company; compromised its “first mover” leadership position in the field; and
14 otherwise left ActiveRain in a disadvantaged market position. Move, on the other
15 hand, gained valuable and unjust competitive advantages by “maiming” ActiveRain,
16 including but not limited to stalling ActiveRain’s growth, and rendering plaintiff
17 less desirable to other investors, purchasers and/or strategic partners, including
18 defendant Move’s competitors.

19 **IV. STATEMENT OF DAMAGES**

20 34. Defendant has acknowledged that ActiveRain was worth between thirty
21 (30) and thirty-three (33) million dollars.

22 35. As a result of the acts and/or omissions of defendant, ActiveRain has
23 suffered, is suffering, and will continue to suffer economic damages and competitive
24 injury, including but not limited to lost profits, lost market opportunity and market
25 share, and loss of business reputation and goodwill, in amounts not less than
26 \$33,000,000, or such other amounts as will be proven at trial.

27 36. As a result of the acts and/or omissions of defendant, Move has been
28 unjustly enriched in an amount of not less than \$33,000,000, or such other amounts

1 as will be proven at trial. ActiveRain is entitled to restitution or recovery of all
2 undue benefits Move has derived from its conduct toward ActiveRain..

3 37. As a result of the acts and/or omissions of defendant, ActiveRain has
4 suffered and will continue to suffer the loss of the purchase agreement between
5 Move and ActiveRain, including but not limited to the \$33,000,000 acquisition and
6 investment price, and/or in other amounts as will be proven at trial.

7 38. The acts and/or omissions of the defendant were willful, wanton,
8 reckless, malicious, oppressive, done with reckless disregard and/or without
9 reasonable ground for belief in the truth of the promises, representations, assurances
10 or concealments by Move and its officers and other representatives, for the rights of
11 ActiveRain, its shareholders and members. Plaintiff therefore prays for an award of
12 exemplary damages to the extent allowed by law, and in amounts as will be proved
13 at trial.

14 39. ActiveRain has retained counsel to represent it in this matter, and is
15 entitled to an award of attorneys' fees and costs pursuant to law, including but not
16 limited to California Civil Code § 3426.1 et seq., and Revised Code of Washington
17 Chapter 19.86.

18 **V. CAUSES OF ACTION**

19 **1. FIRST CAUSE OF ACTION**

20 **Violation of California Uniform Trade Secrets Act**

21 40. Plaintiff hereby re-alleges and incorporates by reference as though fully
22 set forth herein all prior paragraphs of this Complaint.

23 41. Plaintiff's Confidential Information is not generally known to the
24 public, nor to those in the trade or business or other persons who can obtain
25 economic value from it. Plaintiff has undertaken efforts that were and are
26 reasonable under the circumstances to maintain the secrecy of its Confidential
27 Information.

28

1 42. At all times relevant hereto, the California Uniform Trade Secrets Act,
2 Cal. Civ. Code § 3426.1 et seq. was in full force and effect and binding upon
3 defendant. By and through the acts and/or omissions alleged herein, defendant
4 misappropriated trade secrets of ActiveRain in violation of California Uniform
5 Trade Secrets Act, Cal. Civ. Code, § 3426.1 et seq., by improperly acquiring
6 ActiveRain's trade secret, Confidential Information and/or by improperly and
7 impermissibly using ActiveRain's trade secret, Confidential Information. In
8 addition, Move's misappropriation of ActiveRain's Confidential Information was
9 willful and malicious.

10 43. As a direct and proximate result of defendant's misappropriation of
11 plaintiff's trade secrets, ActiveRain has been damaged as alleged herein and in
12 amounts to be proven at trial.

13 2. **SECOND AND ALTERNATIVE CAUSE OF ACTION**

14 **Breach of Contract Under California Law**

15 44. Plaintiff hereby re-alleges and incorporates by reference as though fully
16 set forth herein all prior paragraphs of this Complaint.

17 45. ActiveRain and Move entered into a valid and enforceable contract
18 under California contract law, titled Mutual Nondisclosure Agreement ("NDA");
19 which further included inherent or implied covenants of good faith and fair dealing.

20 46. By and through the acts and omissions alleged herein, Move breached
21 that NDA, as well as the implied covenants of good faith and fair dealing, including
22 but not limited to, by appropriating and using ActiveRain's Confidential
23 Information without ActiveRain's consent.

24 47. As a direct and proximate result of defendant's breach of the NDA,
25 and/or the implied covenants of good faith and fair dealing therein, ActiveRain has
26 been damaged as alleged herein and in amounts to be proven at trial.

27
28

1 **3. THIRD AND ALTERNATIVE CAUSE OF ACTION**

2 **Violation of California Common Law of Unjust Enrichment**

3 48. Plaintiff hereby re-alleges and incorporates by reference as though fully
4 set forth herein all prior paragraphs of this Complaint.

5 49. Move has improperly received commercial and competitive benefits
6 from ActiveRain, and/or unjustifiably retained and used such benefits from
7 ActiveRain, at ActiveRain's expense. Such benefits include, but are not limited to,
8 having ActiveRain grant and extend a "no shop" (and non-investment) agreement,
9 so that it could not engage in discussions with other investors or purchasers; having
10 ActiveRain cease development of its revenue-generating models and strategic
11 partnerships with Move competitors; and having ActiveRain cancel key contracts
12 and cancel its bank line of credit — all of which left ActiveRain in a maimed and
13 disadvantaged market position, rendering it less competitive as well as less attractive
14 to other competitors for investment or acquisition, while unduly enhancing Move's
15 business, market position, reputation and opportunities.

16 50. By and through its conduct, Move has been unjustly enriched at the
17 expense of ActiveRain.

18 51. Plaintiff is entitled to restitution of all benefits Move has improperly
19 received, retained and/or used, as alleged herein, and in amounts to be proven at
20 trial.

21 **4. FOURTH AND ALTERNATIVE CAUSE OF ACTION**

22 **Violation of California Common Law of Promissory and/or Equitable Estoppel**

23 52. Plaintiff hereby re-alleges and incorporates by reference as though fully
24 set forth herein all prior paragraphs of this Complaint.

25 53. Defendant made clear and unambiguous promises, representations,
26 assurances and/or concealments of present fact, to ActiveRain.

27 54. ActiveRain relied upon Move's promises, representations, assurances
28 and/or concealments of present fact, to its substantial detriment or injury.

1 55. ActiveRain's reliance upon Move's promises, representations,
2 assurances and/or concealments of present fact was reasonable and foreseeable.

3 56. It would be unjust and inequitable to allow Move to avoid the
4 enforcement of the promises or misrepresentations it made to ActiveRain and/or to
5 avoid the obligations it assumed and has not performed.

6 57. Move's conduct violates the common-law doctrines of promissory
7 estoppel and/or equitable estoppel.

8 58. As a direct and proximate result of defendant's conduct, ActiveRain
9 has been damaged as alleged herein and in amounts to be proven at trial.

10 **5. FIFTH AND ALTERNATIVE CAUSE OF ACTION**

11 **Violation of California Common Law of Unfair Competition**

12 **(Breach of Confidential Relationship and Common Law Misappropriation)**

13 59. Plaintiff hereby re-alleges and incorporates by reference as though fully
14 set forth herein all prior paragraphs of this Complaint.

15 60. ActiveRain's Confidential Information is proprietary to it (property).

16 61. ActiveRain invested substantial time and money in development of its
17 Confidential Information.

18 62. Move has appropriated ActiveRain's Confidential Information at little
19 or no cost.

20 63. Move knew or should have known that it acquired ActiveRain's
21 Confidential Information by improper means, including but not limited to, through
22 misrepresentation and breach of its duty to maintain the secrecy of Plaintiff's
23 Confidential Information.

24 64. ActiveRain has been injured by Move's conduct.

25 65. Move's conduct violates the common-law doctrines of unfair
26 competition (common law breach of confidential relationship and
27 misrepresentation).

28

1 66. As a direct and proximate result of defendant's conduct, ActiveRain
2 has been damaged as alleged herein and in amounts to be proven at trial.

3 6. **SIXTH AND ALTERNATIVE CAUSE OF ACTION**

4 **Violation of Washington Unfair Business Practices Act**

5 67. ActiveRain hereby re-alleges and incorporates by reference as though
6 fully set forth herein all prior paragraphs of this Complaint.

7 68. ActiveRain is a Washington state company. The majority of
8 ActiveRain's shareholders are Washington residents. Hundreds of ActiveRain's real
9 estate members, and other members, are Washington residents. Move itself has
10 recognized that these members are loyal users of ActiveRain, using the ActiveRain
11 Real Estate Network's free Realtor blogging platform in their businesses, and with
12 regard to their property.

13 69. Through the acts and omissions alleged herein, Move has engaged in
14 unfair and/or deceptive acts or practices occurring in trade and commerce.

15 70. These unfair and/or deceptive acts or practices by Move have not only
16 directly and proximately caused injury to ActiveRain, its shareholders, and its
17 members, in their businesses, properties and/or use and enjoyment thereof, but also
18 impacts and threatens to impact the public interest of Washington state.

19 71. The unfair and/or deceptive acts or practices by Move were committed
20 in the course of defendant's business. Defendant advertises to the realtor market,
21 and to the public in general. Defendant actively solicited ActiveRain for purported
22 investment and/or acquisition by Move. ActiveRain is a small, private company;
23 and Move is a large, publicly-traded company. The parties occupied substantially
24 unequal bargaining positions.

25 72. In addition, Move is the same company formerly known as Homestore,
26 Inc. ("Homestore"). On its website, Move has referred to itself as "the new
27 Homestore." On information and belief, several of the company's officers were
28 recently under civil and criminal investigation and prosecution by the U.S.

1 Securities and Exchange Commission, the U.S. Attorney's Office for the Central
2 District of California, and the Federal Bureau of Investigation, for dishonest and
3 unfair practices in trade and commerce, including what the Securities and Exchange
4 Commission called an "extensive scheme" of "sham" transactions and other fraud.
5 This conduct by company executives, including its former CEO, resulted in several
6 criminal convictions, as well as shareholders receiving over \$4.6 million in civil
7 legal proceedings related to these prior fraud claims.

8 73. Move's acts alleged herein violate the Washington Unfair Business
9 Practices statute, RCW Chapter 19.86.

10 74. As a direct and proximate result of defendant's conduct, ActiveRain
11 has been damaged as alleged herein and in amounts to be proven at trial.

12 7. **SEVENTH AND ALTERNATIVE CAUSE OF ACTION**

13 **Violation of the California Common Law of Fraud/Deceit**

14 75. ActiveRain hereby re-alleges and incorporates by reference as though
15 fully set forth herein all prior paragraphs of this Complaint.

16 76. By and through the acts and omissions alleged herein, Move made
17 specific misrepresentations of material fact and/or concealed material facts to or/and
18 from ActiveRain – including but not limited to stating that it intended to purchase
19 ActiveRain when it did not so intend; representing that the Board had approved the
20 purchase subject only to tweaking a few minor details, such as one aspect of the
21 Earn Out formula; and reassuring ActiveRain on or about May 2, 2007 that the deal
22 was still on, subject to receiving still more highly-sensitive Confidential Information
23 from ActiveRain in manipulable and easily usable digital electronic format.

24 77. Move made its false representations of material fact and/or
25 concealments of material facts, with knowledge of their falsity, recklessly, and/or
26 without reasonable grounds for believing the truth of such representation or
27 concealments.

28

1 78. Move made these false representations and/or concealments of material
2 fact with the intent to induce ActiveRain's reliance upon them.

3 79. ActiveRain justifiably relied upon Move's false representations and/or
4 concealments of material fact.

5 80. ActiveRain has been damaged or injured by its justifiable reliance upon
6 Move's false representations and/or concealments of material fact.

7 81. Move's conduct violates the California common law of fraud/deceit
8 under Cal. Civ. Code §§ 1709, 1710.

9 82. As a direct and proximate result of defendant's fraudulent conduct,
10 ActiveRain has been damaged as alleged herein and in amounts to be proven at trial.

11 **VI. RESERVATION OF RIGHTS**

12 83. Plaintiff reserves the right to amend and supplement this Complaint.

13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff prays for the following relief, as set forth herein:

15 1. For injunctive relief, enjoining defendant, its affiliates, subsidiaries,
16 officers, directors, employees, and agents, or those acting in privity with them, from
17 offering, operating, or using the Confidential Information of ActiveRain or any
18 product, network, platform, or service derived from the Confidential Information of
19 ActiveRain;

20 2. For compensatory and consequential damages for actual loss, and for
21 other special or general damages, in an amount of not less than \$33,000,000 or such
22 other amounts as will be proven at trial;

23 3. For "benefit-of-the-bargain damages, placing ActiveRain in the
24 position it would have enjoyed had the false representations made by Move been
25 true;

26 4. For restitution of the unjust enrichment derived by defendant through
27 its improper receipt, retention and/or use of benefits received at ActiveRain's
28 expense, in an amount as will be proven at trial;

1 5. For payment of a reasonable royalty including but not limited to
2 pursuant to Cal Civ. Code § 3426.3, in an amount as will be proven at trial;

3 6. For exemplary damages to the fullest extent allowed, including but not
4 limited to pursuant to Cal. Civ. Code § 3426.3, Cal. Civ. Code § 1709, and Rev.
5 Code of Wash. Chapter 19.86; and in an amount as will be proven at trial;

6 7. For reasonable attorney's fees and costs;

7 8. For an award of interest, including but not limited to prejudgment
8 interest at the legal rate, according to proof; and

9 9. For such other relief as the Court deems just and proper.

10

11 DATED: August 2, 2007

McNAUL EBEL NAWROT & HELGREN
PLLC

12

13

By:

14

Jerry R. McNaul

15

Pro Hac Vice Forthcoming

16

Leslie J. Hagin

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Attorneys for Plaintiff

19 DATED: August 2, 2007

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

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By:

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Howard Weitzman (SBN 38723)

23

Jonathan P. Steinsapir (SBN 226281)

24

Attorneys for Plaintiff

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27

28

1 9. For such other relief as the Court deems just and proper.

2 DATED this 23^d day of July, 2007.

3 McNAUL EBEL NAWROT & HELGREN PLLC

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19 hweitzman@kwikalaw.com

20 Local Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby requests a jury trial for all claims for which it is entitled to a jury trial.

DATED: August 2, 2007

McNAUL EBEL NAWROT & HELGREN
PLLC

By: _____

Jerry R. McNaul

Pro Hac Vice Forthcoming

Leslie J. Hagin

Pro Hac Vice Forthcoming

Attorneys for Plaintiff

DATED: August 2, 2007

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: _____

Howard Weitzman (SBN 38723)

Jonathan P. Steinsapir (SBN 226281)

Attorneys for Plaintiff

1
2 **JURY DEMAND**

3 Plaintiff hereby requests a jury trial for all claims for which it is entitled to a jury
4 trial.

5 Dated: July 27th, 2007.

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7 By: 

8 Jerry R. McNaul

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COMPLAINT

EXHIBIT A

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Realtor.com rolls out free blogs for Realtors

Company also adding video capability, neighborhood data

Friday, May 18, 2007

By [Glenn Roberts Jr.](#)
[Inman News](#)

WASHINGTON, D.C. -- [Realtor.com](#) President Errol Samuelson today announced the availability of free blog sites for all Realtors and also announced several new and planned features for the popular property-search Web site, which is operated by Move Inc. and is affiliated with the National Association of Realtors trade group.

The retooled site, he said, is incorporating Web 2.0 principals such as consumer interaction, richer data and online video.

Realtors can sign up for a free Realtor.com blog at <http://www.featuredblogsignup.com>. A planned section at the Realtor.com site will allow consumers to view an assortment of blog posts individually chosen by site editors for inclusion on a featured blogs page at the site. These blog posts can direct traffic back to the Web sites of participating Realtor.com bloggers.

About 1,000 agents have been testing the blogging platform for the past four to five months, said Samuelson, who spoke during a session at the National Association of Realtors' annual legislative conference in the nation's capital.

Two weeks ago the company launched a redesigned version of its Web site, built on a new software platform, Samuelson said. New features include a new mapping platform that uses Microsoft's Virtual Earth and a counter that calculates the number of properties that match the search parameters and adjusts in real time as the user tweaks these parameters.

While it's free for Realtors to post basic property information at Realtor.com, the company charges for enhanced property ads that receive preferential placement at the site and have additional photos. Samuelson said that there are a range of additional features that will soon be released for those enhanced listings, and the company has no immediate plans to raise the cost for this service.

Enhanced listings will soon be capable of hosting embedded online video that can feature an individual property, agent or company, Samuelson said. He noted that popular online video site YouTube.com has been gaining viewers rapidly, and its audience is growing at a rate that is expected to eclipse the total cable television audience.

Enhanced listings will also be able to carry up to 25 photos as opposed to the current limit of six, he said.

Realtor.com is also planning to release detailed neighborhood information for enhanced listings that will feature a range of data on demographic, school and amenities for a given search area. This data will also be interactive with the site's property search and mapping, and Samuelson used the example of a consumer using the site to search for homes close to a church or synagogue.

"School information is a big factor when looking for a home," he said, and the new data will show the map locations of public and private schools for a given area, as well as detailed information such as the number of students per grade, test scores and other performance metrics. The neighborhood data will be available at the site within the next 30 days, he said.

Site developers are also building a neighborhood-finder feature that can locate suitable neighborhoods based on user preferences.

While the early days of the Web were somewhat like attending a theater event, Samuelson said that Web 2.0 "is more like an improv act -- and you're part of the show. The audience becomes participants."

And it's not just about technology, he said. "This isn't just a technology change -- I really do believe this is a cultural change."

In addition to YouTube.com, he also cited examples of a range of other popular Web 2.0 sites and tools, including wildly popular social network site MySpace.com, social bookmarking site del.icio.us, Yahoo's photo-sharing site flickr and question-and-answer site Yahoo Answers.

The new features at Realtor.com are intended to improve usability, provide more comprehensive content, extend the site's reach and to provide a forum for interaction between Realtors and consumers, Samuelson said.

Blogging is growing very rapidly, he said -- there are an estimated 23,000 new blogs created every day, or about one every three seconds. And there are an estimated 71 million existing blogs.

The Realtor.com-branded blogs will "give Realtors the opportunity to tell their story ... (it will) give every Realtor the opportunity to get up on the stage, talk about community, talk about trends," he said. "By providing greater transparency on the site I think consumers get to see the value (Realtors) provide."

Several more site enhancements are planned and will be phased in over time, he said. "Every 60 days you're going to see something new and improved ... put up on the site."

Samuelson did not discuss a secretive venture at Move Inc. that is being led by former Realtor.com President Allan Dalton and former National Association of Realtors Chief Economist David Lereah.

Send tips or a Letter to the Editor to glenn@inman.com, or call (510) 658-9252, ext. 137.

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EXHIBIT B

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Move unveils plans for social networking

'Investor Day' highlights integration of search with Web 2.0 tools

Tuesday, July 03, 2007

By Glenn Roberts Jr.
[Inman News](#)

Gigapixel cityscapes, user-supplied media content ranging from questions and answers to business ratings and personal profiles, and home improvement videos are among the barrage of new tools by real estate search company Move Inc.

It's part of a broad plan to integrate user-generated content and social-networking with the company's existing search sites, including [Realtor.com](#) and [Move.com](#). Company officials discussed the plans during an "Investor Day" presentation last Wednesday.

Among the offerings is high-resolution city imagery, which the company calls "Gigapixel Neighborhood Views," that allow users to zoom in on particular neighborhood areas. Errol Samuelson, president of Realtor.com and Top Producer Systems, demonstrated the technology to zoom in on San Francisco's famous, winding Lombard Street from an original view that included the entire city. "We're pretty excited about this technology," he said, which is expected to be available on the site this month.

In addition to the detailed imagery, Samuelson discussed other earlier-announced initiatives to bring neighborhood and school information, aggregated real estate-related blog postings, as well as richer media content such as video and interactive mapping, to the site. Other Move Inc. divisions, too, are incorporating this data to bring new options to searches for new homes and rental properties.

While the company historically has focused on consumers who are actively engaged in buying, selling or renting real estate and use its Web-search tools for a two- to three-month period, company officials said its new strategy seeks to draw a broader base of consumers who are in the "settling in" and "nesting phase" and keep them coming back to the site.

The new strategy represents a significant transformation for Move, said Lorna Borenstein, a former Yahoo executive who took the reins as Move Inc. president in May. "It reminds me a lot of Yahoo and Google and the lessons learned from the different approaches that were taken," she said of the Move Inc.'s shift.

Google, she said, "came along and optimized (its business model) for the consumer. Yahoo, unfortunately, is paying the price for that. If in the long run you don't optimize for the end user, for the consumer, you will always fall prey to someone who is optimizing for relevancy," she said.

Borenstein said that the Internet has served to amplify the importance of word-of-mouth communication by consumers, and that Move has an opportunity to build a platform that encourages online discussions.

She discussed the concept of "brand advocates," whom she described as "individuals who self-identify as being leaders in their own communities" and who "love to be looked to for advice" and recommendations. These Web-vocal consumers can help to spread the word about the company and its offerings, she said. "You need to figure out who your most influential constituents are. They will carry your message and amplify it far more than you ever could."

She added, "Search and social media are interwoven into the daily lives of these advocates. Social media is absolutely integral to our future." The company, she said, should "build an ecosystem around the most

Important purchase in peoples' lives -- and that is their home."

Samuelson said that a neighborhood search component that the company is launching will feature demographic information about neighborhood areas, and will allow consumers and Realtors alike to upload content such as photographs and videos. Mapping tools will display a variety of heat maps, such as color-coded displays of average listing price data, Samuelson said. Other neighborhood tools planned by Move divisions will allow consumers to enter personal profiles, participate in question-and-answer sessions, contribute photographs, videos and event information, and provide user-generated reviews of local businesses.

Eric Thorkilsen, president of consumer media for Move, said the company's ventures will facilitate targeted contextual advertising and neighborhood information to new homeowners, both offline and online. One of the online ventures allows neighborhood residents to post short descriptions of themselves and to connect with other neighborhood residents. The slogan for the initiative: "Neighborhoods are back. And you're in charge."

Thorkilsen said such tools can provide "an immediate and very emotional entry point" into a locally focused online community. "I think one of the most attractive features will be the ability for consumers to post pictures and events. Local newspapers have to be concerned about a site like this coming into the town," he said.

"It will become a go-to destination for not only the newcomers in a town but the longtime residents as well."

Another area at the Move.com site will be a "video-centric" home and garden destination, he said. "Video is really where it's happening with consumers online. We intend to be the leading player in providing it to them."

Mike Long, Move CEO, said that search technologies are integrating with social media, and, "We need to be part of that reality. When search and social networking combine that's when the leverage in our business model will be fully exploited."

Company officials did not provide any details about a secretive business venture, led by former Realtor.com President Allan Dalton and former National Association of Realtors Chief Economist David Lereah. Long said during the investor conference that the venture is not yet on the table for discussion.

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