

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KLEIN & HEUCHAN, INC.,

Plaintiff,

v.

COSTAR REALTY INFORMATION, INC.,
and COSTAR GROUP, INC,

Defendants.

Civil Action No. 8:08-cv-01227-JSM-MSS

**DEFENDANTS' MOTION TO DISMISS OR TO TRANSFER VENUE
AND INCORPORATED MEMORANDUM OF LAW**

Defendants CoStar Realty Information, Inc. and CoStar Group, Inc. (collectively, "CoStar"), by their attorneys, hereby move to dismiss the complaint filed by plaintiff Klein & Heuchan, Inc. ("K&H") under the court's discretionary authority to determine whether and when to entertain a declaratory judgment action (*Wilton v. Seven Falls Co.*, 515 U.S. 277, 283 (1995)). In the alternative, CoStar moves to transfer venue to the U.S. District Court for the District of Maryland, Greenbelt Division, under 28 U.S.C. § 1404(a).

I. INTRODUCTION

This declaratory judgment action is duplicative of another case that is currently pending before the U.S. District Court for the District of Maryland, in which CoStar is the plaintiff. The Maryland action arises out of the same dispute, raises the same issues, and involves the same parties as does this case. The Maryland case names an additional party and includes additional claims (including a federal copyright claim) that are not included here. The Maryland action

thus would also result in a more complete resolution of the parties' dispute. Moreover, the circumstances surrounding K&H's filing of this case suggest that it was purely the result of forum-shopping. K&H was aware of CoStar's intent to file the Maryland action, the additional party, and the copyright claim, but nevertheless chose to file this declaratory judgment action in Florida state court to avoid the more appropriate forum of Maryland district court.

Allowing these two parallel cases to proceed in two different federal district courts would result in a waste of the court's and the parties' resources and would run the risk of inconsistent results. This case should therefore either be dismissed outright or transferred to Maryland district court.

II. BACKGROUND

The dispute giving rise to both this case and the parallel action in Maryland arises out of the unauthorized access to CoStar databases by Scott Bell ("Bell"), who is an employee or independent contractor of the plaintiff in this action, Klein & Heuchan, Inc. ("K&H"). (See Complaint, Case No. 8:08-cv00663-AW, District of Maryland, Greenbelt Division ("Maryland Complaint") ¶¶ 19-25, (Ex. A).) CoStar's licensees, which primarily include commercial real estate brokers, search CoStar's internet-based databases by numerous search fields to find the type of property desired. (*Id.* ¶¶ 10, 13.) CoStar believes that Bell inappropriately used a username and password that he had obtained from his previous employer (who was a licensee of CoStar) to obtain unauthorized access to CoStar's information databases. (*Id.* ¶¶ 22-23.)

K&H is not a licensee of CoStar. Bell's wrongful use of the username and password that he obtained from his previous employer for the benefit of K&H constitutes copyright infringement by K&H and Bell. After it became aware of Bell's unauthorized use, CoStar

forwarded a draft complaint to K&H outlining its claims, and suggested in the cover letter that the parties discuss a resolution short of litigation. (May 28, 2008 letter from Mr. Curtis Ricketts of CoStar to K&H and Bell at 1 (Ex. B).) In that letter, CoStar informed K&H that because its discussions with K&H to date had been unable to resolve their dispute, CoStar intended to file the complaint unless they could come to an agreement by June 3, 2008. (*Id.*) The claims in the draft complaint included a copyright claim and a breach of contract claim against K&H. (*Id.*)

On June 4, 2008, just one week after CoStar forwarded the draft complaint, CoStar received notice from K&H's counsel that K&H had filed a declaratory judgment action against CoStar in Florida state court. (June 4, 2008 letter from J. Paul Raymond (K&H's counsel) to Jonathan Coleman (CoStar's General Counsel and Secretary) (Ex. C).) Regardless of being on notice that the Maryland Complaint contained a copyright claim, K&H did not reference that claim in its declaratory judgment complaint filed in Florida state court ("Florida Complaint"). Instead, the Florida Complaint references only a contractual dispute between CoStar and K&H. (*See* Florida Complaint ¶¶ 15-18 (Dkt. 2).)

On June 17, 2008, CoStar filed a complaint against K&H and Bell in Maryland district court alleging: (1) direct copyright infringement against Bell; (2) contributory and vicarious copyright infringement against K&H; (3) violation of 18 U.S.C. § 1030 (fraud and related activity in connection with computers) against Bell; and (4) breach of contract against Bell.¹

¹ On March 13, 2008, CoStar filed a similar complaint in Maryland district court against different defendants. (Complaint and Electronic Filing Receipt, Case No. 08-CV-663-AW, U.S. District Court, District of Maryland (Ex. D).) That case is assigned to the same district court judge as is the Maryland case against K&H and Bell. (Docket Reports, Case No. 08-CV-663-AW and Case No. 08-CV-01575-AW, U.S. District Court, District of Maryland (Exs. E and F).) The defendants in the March 13 case are not directly related to K&H or Bell; however, CoStar believes that those defendants, like the defendants here, illegally accessed CoStar's databases through the unauthorized use of usernames and passwords, and are liable for, among other things, copyright infringement.

(Maryland Complaint at 8-12 (Ex. A).) CoStar's copyright and § 1030 claims against Bell are based in part on Bell's unauthorized access and use of the CoStar databases on 132 occasions for a total of 46 hours, involving 'hits' to 12,829 pages on the CoStar website. ((Declaration of Steven J. Williams ¶¶ 4-5 (Ex. G) ("Williams Decl."); *see also* Maryland Complaint ¶ 51; ¶¶ 19-33, 44-48 (Ex. A).) CoStar believes that K&H is liable for contributory copyright infringement by virtue of the fact that, among other things, it provided Bell with office space, computers, and internet access with which Bell accessed CoStar's databases. (See Maryland Complaint ¶¶ 37-43 (Ex. A).) CoStar's breach of contract claim against Bell is based on his breach of CoStar's Terms of Use that appear on CoStar's website at the Subscriber Login Area.² (See *id.* ¶¶ 49-50, 13-18.)

CoStar removed K&H's state court action to this court on June 25, 2008. (Notice of Removal (Dkt. 1).) CoStar now moves for dismissal of this case on the ground that K&H filed this action in anticipation of CoStar's Maryland action. In the event that the Court does not dismiss this action, it should instead transfer this case to the district court in Maryland, which is where CoStar had originally intended to file suit against K&H and Bell, and which is the appropriate venue for resolution of the parties' dispute.

III. ARGUMENT

A. **This Court Should Exercise Its Discretion to Dismiss K&H's Incomplete Declaratory Judgment Action**

Under well established Supreme Court authority, this Court has the discretion to dismiss this incomplete declaratory judgment action. Although the Declaratory Judgment Act grants federal district courts jurisdiction to hear declaratory judgment actions, the Act does not *require*

² The Terms of Use also contain a forum selection clause under which the user agrees to exclusive jurisdiction and venue in Maryland. (Williams Decl. ¶ 3 (Ex. G) and Ex. 1 (CoStar

the courts to hear such actions.³ *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494 (1942). Rather, “district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 283 (1995). If a court decides not to entertain the declaratory proceeding, it may either stay or dismiss the federal action. *Wilton*, 515 U.S. at 287.

In exercising that discretion, courts may consider a number of factors, depending on the circumstances of the case. *See Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005) (“The factors relevant in deciding whether to hear a declaratory judgment action are equitable in nature.”). Among the factors courts may consider are the questions of whether the declaratory judgment action will completely resolve the parties’ dispute, and whether the declaratory judgment action was filed in apparent anticipation of another pending proceeding that would fully resolve the parties’ dispute. *Ven-Fuel v. Department of the Treasury*, 673 F.2d 1194, 1195 (11th Cir. 1982); *see* Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, 10B *Federal Practice and Procedure* § 2759 at 543 (“One of the most important considerations that may induce a court to deny declaratory relief is that the judgment sought would not settle the controversy between the parties.”) (1998) (hereinafter, “Wright & Miller”); *id.* § 2758 at 514-19 (a “declaratory action may be dismissed or stayed if the other suit will satisfactorily resolve the controversy between the parties.”).

Terms of Use) at 11); *see also* Maryland Complaint ¶ 18 (Ex. A.)

³ The Federal Declaratory Judgment Act (as opposed to Florida’s Declaratory Judgment Act) applies because declaratory relief is a procedural matter, and in diversity cases, federal law applies with respect to procedural issues. *Townhouses of Highland Beach Condominium Assn., Inc. v. QBE Ins. Corp.*, 504 F. Supp. 2d 1307, 1309-10 (S.D. Fla. 2007) (applying Federal Declaratory Judgment Act in case that had originally been brought under Florida’s Declaratory Judgment Act but that had been removed to federal court from state court); *accord Fernandez v. Scottsdale Ins. Co.*, No. 8:07-cv-598-T-30EAJ, 2007 WL 2209280 at *1 (M.D. Fla. July 30, 2007) (Moody, J.); *see also Manuel*, 430 F.3d at 1183 n. 3.

These factors weigh heavily in favor of dismissal. As an initial matter, the Florida action will not fully resolve the dispute between the parties. Although the suits arise out of the same dispute, raise essentially the same issues, and involve the same parties, the Florida action is woefully deficient in the claims and parties it includes. First, the issues raised by the parties' dispute, which arises out of Bell's illegal access to CoStar's copyrighted photographs and K&H's involvement in that illegal access are not included in the single, contractual claim raised by the Florida Complaint, but are instead fully encompassed by the claims raised by the Maryland Complaint: direct copyright infringement against Bell; contributory copyright infringement against K&H; violation of § 1030 against Bell; and breach of contract against Bell. K&H's attempt to couch the dispute as solely a breach of contract action should not be allowed to succeed, especially given that CoStar has not asserted, and no longer intends to assert, a breach of contract action against K&H, rendering K&H's declaratory judgment action arguably moot.

Second, the Maryland case would also allow for a more complete resolution of all claims against all parties, as Scott Bell is a party to the Maryland Complaint but is not party to the Florida Complaint. Bell is a necessary party to this suit. Fed. R. Civ. P. 19(a). As an initial matter, the Florida Complaint itself refers to him, alleging that Bell was an authorized user of CoStar's databases (which of course is an allegation that CoStar denies). (Florida Complaint ¶ 12 (Dkt. 2).) Moreover, the court cannot accord complete relief among the existing parties to this suit without Bell, as it is Bell's direct copyright infringement on which CoStar's copyright infringement claim against K&H is based. *See* Fed. R. Civ. P. 19(a)(1)(A). Put simply, dismissal of this case is warranted because this case would not result in a complete resolution of the parties' dispute with respect to all claims against all parties. *See Ven-Fuel*, 673 F.2d at 1195.

Dismissal is also warranted because the circumstances surrounding K&H's filing of this declaratory judgment action in Florida state court strongly suggest that K&H filed this case in an attempt to forum-shop in anticipation of CoStar's filing of its complaint in Maryland. K&H received a letter from CoStar on May 28, 2008 informing it that CoStar intended to file a suit against it. The draft complaint attached to the letter included a copyright claim. K&H was therefore well aware that CoStar intended to bring a copyright claim against it in federal court in Maryland. Moreover, K&H was also aware that Scott Bell was the employee or independent contractor who was accessing CoStar's website, as evidenced by K&H's references to Bell in its declaratory judgment complaint. (Florida Complaint ¶¶ 11-12 (Dkt. 2).) Despite having been aware of the existence of CoStar's federal copyright claim and of Bell's involvement in the dispute, K&H nonetheless filed a declaratory judgment complaint in Florida state court that only references a contractual dispute between K&H and CoStar. It is fair to infer from these facts that K&H filed the present declaratory judgment action in anticipation of the Maryland lawsuit in order to force CoStar to litigate its claims in Florida state court.

K&H's attempt to forum-shop and to exclude CoStar's copyright claim by filing this incomplete declaratory judgment action in state court should not be allowed to succeed. Because the Maryland case would resolve the controversy between the parties more thoroughly than would this action, this declaratory judgment action should be dismissed under the Court's discretionary authority. *Wilton*, 515 U.S. at 283; *Ven-Fuel*, 673 F.2d at 1195.

B. If This Case Is Not Dismissed, It Should Be Transferred to the District of Maryland

K&H's blatant forum-shopping also compels transfer of this case to Maryland, even if it is not dismissed. Transfer is further supported by the balance of convenience factors.

1. This Case Should Be Transferred to Maryland Because K&H's Filing of its Declaratory Judgment Complaint in Florida State Court Constitutes Impermissible Forum-Shopping

Under 28 U.S.C. § 1404(a), a district court has the discretion to transfer a case to another district in which venue is proper “[f]or the convenience of the parties and witnesses in the interest of justice.”⁴ The district court makes an individualized, case-by-case determination regarding whether to transfer based on principles of fairness and convenience. *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964); *see also Brown v. General Life Ins. Co.*, 934 F.2d 1193, 1197 (1991).

Ordinarily, there is a presumption that, when parties have instituted competing or parallel litigation in two federal courts, the court that was the first to have jurisdiction should hear the case. *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Haydu*, 675 F.2d 1169, 1174 (11th Cir. 1982). An exception to the first-filed rule, however, provides that a court may depart from that rule “where one party, on notice of a potential lawsuit, files a declaratory judgment action in its home forum” in an attempt to forum-shop. *Jasper Corp. v. Natl. Union Fire Ins. Co. of Pittsburgh, PA*, No. 98-2532-CIV-T-17E, 1999 WL 781808 at *5-6 (M.D. Fla. Sept. 3, 1999); *see also Soroka v. Lee Techn. Servs., Inc.*, No. 1:06-CV-0710-TWT, 2006 WL 1734277 at *4-5 (N.D. Ga. June 19, 2006) (transferring declaratory judgment action filed for forum-shopping purposes and collecting cases holding

⁴ Venue would be proper in Maryland. An action, such as this one, in which jurisdiction is based upon diversity of citizenship, may be brought in a judicial district where “a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” 28 U.S.C. § 1391(a)(2). The illegal access to CoStar’s password-protected services and copyrighted photographs occurred in Maryland, where CoStar’s computers and internet servers are located. (*See Williams Decl.* ¶ 6 (Ex. G).) Moreover, the defendants in this declaratory judgment action are both Maryland corporations, and venue is therefore also proper on that basis. 28 U.S.C. § 1391(a)(1) (venue is proper in district where “where any defendant resides, if all defendants reside in the same State.”)

same). Forum-shopping is not an activity that the first-filed rule protects. *See Jasper*, 1999 WL 781808 at *5. Instead, in deciding a motion to transfer, the most important considerations are conservation of judicial resources and the avoidance of conflicting rulings. *See id.*

As discussed above, it is fair to infer that K&H's filing of the declaratory judgment action in Florida state court constitutes impermissible forum-shopping. K&H received notice on May 28, 2008 that CoStar intended to file a complaint against it in federal court in Maryland alleging claims of contract and copyright infringement. K&H was aware that Bell was the employee upon whose actions CoStar's allegations were based. K&H nonetheless filed a declaratory judgment complaint in state court that references only the contractual rights and obligations, and omits any mention of CoStar's federal copyright claim and Bell.

In short, if this case is not dismissed, this case should be transferred on the ground that it is a declaratory judgment action filed for forum-shopping purposes. *See Soroka*, 2006 WL 1734277 at *5 (transferring case where court found that forum-shopping concerns motivated the plaintiff to file declaratory judgment action); *Jasper*, 1999 WL 781808 at *6 (transferring case in part on ground that plaintiff filed declaratory action in Florida in "race to the courthouse").

2. The Balance of Convenience Factors Also Favors Transfer to Maryland

The balance of the other convenience factors considered under a 1404(a) motion also favors transfer. The § 1404(a) analysis is "flexible and individualized," and the factors that a court considers on a motion to transfer are case-specific. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). Factors considered include: the relative ease of access to sources of proof, the convenience of the parties and the witnesses, the locus of operative facts, the plaintiff's interest in its original choice of forum, and trial efficiency and the interests of justice, based on a totality of the circumstances. *See Manuel*, 430 F.3d at 1135 n. 1.

The balance of factors favor Maryland. The CoStar companies named in this action are both have their principal places of business in Bethesda, Maryland. (See Maryland Complaint ¶¶ 1, 2 (Ex. A).) The witnesses who would testify on behalf of CoStar all work out of CoStar's Bethesda, Maryland, office. (Williams Decl. ¶ 6 (Ex. G).) Scott Bell, a necessary party to this action, is subject to a forum-selection clause pursuant to which he consented to jurisdiction and venue in Maryland.⁵ The relevant evidence is located in Maryland – the computer servers, on which access records are kept, are located in Maryland and all of the documents upon which CoStar would rely to prove its defenses and any claims it would join, are located at CoStar's Bethesda, Maryland, office. (*Id.*) The injury to CoStar resulting from the unauthorized access to CoStar's computer databases was felt by CoStar in Maryland. The weight accorded a plaintiff's choice of forum also favors CoStar, which is the true plaintiff in this declaratory judgment action.

⁵ By virtue of his having clicked "accept" to CoStar's Terms of Use as they appear at the "Subscriber Login Area" on CoStar's Internet-based database, Bell "irrevocably consent[ed] to the exclusive jurisdiction of the federal and state courts located in the State of Maryland for any action to enforce these Terms of Use." (Williams Decl. ¶ 3 (Ex. G) and Ex. 1 (CoStar Terms of Use) at 11.) See *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972) (forum selection clauses "are prima facie valid and should be enforced . . ."); *P & S Business Machines, Inc. v. Canon USA, Inc.*, 331 F.3d 804, 808 (11th Cir. 2003). Bell's agreement to the Terms of Use therefore requires that CoStar's dispute with Bell be resolved in Maryland.

Finally, as discussed at length above, considerations of trial efficiency and the interests of justice based on a totality of the circumstances, by far favor CoStar. Transfer to the District of Maryland would permit consolidation of both cases, and would result in a more complete resolution of all the actual claims, against all parties, that are raised by the parties' dispute. Moreover, CoStar has brought a similar case, against different defendants, that is currently pending in Maryland district court before the same district judge who is assigned to CoStar's case against Klein & Heuchan and Bell. (Docket Reports, Case No. 08-CV-663-AW and Case No. 08-CV-01575-AW, U.S. District Court, District of Maryland (Exs. E and F).) Transferring this case to Maryland would allow the same judge to resolve the parallel issues in both cases thus avoiding a duplication of efforts and reducing the risk of inconsistent results.

Under the totality of the circumstances, Maryland is the more appropriate venue for this case and it should be transferred there.

IV. CONCLUSION

For the foregoing reasons, CoStar respectfully requests that the Court grant this motion and dismiss this case outright, or in the alternative transfer venue to the District Court for the District of Maryland, Greenbelt Division.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to J. Paul Raymond and Jeff Gibson, MacFarlane Ferguson & McMullen, P. O. Box 1669, Clearwater, FL 33757.

s/William C. Guerrant, Jr.
Attorney

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

COSTAR REALTY INFORMATION, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

and

COSTAR GROUP, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

Plaintiffs,

v.

KLEIN & HEUCHAN, INC.
1744 Belcher Rd, Suite 200
Clearwater, FL 33765

and

SCOTT BELL
1744 Belcher Rd, Suite 200
Clearwater, FL 33765

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiffs COSTAR REALTY INFORMATION, INC., a Delaware Corporation, and COSTAR GROUP, INC., a Delaware Corporation (collectively "CoStar" or "Plaintiffs"), for their Complaint against Defendants KLEIN & HEUCHAN, INC. ("K&H") and SCOTT BELL ("BELL"), allege as follows:

PARTIES

1. CoStar Realty Information, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland, 20814-5388.

2. CoStar Group, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland, 20814-5388.

3. Defendant K&H is, upon information and belief, a Florida corporation, organized and existing under the laws of the Florida, with its principal place of business located at 1744 Belcher Rd, Suite 200, Clearwater, FL 33765.

4. Defendant BELL is, upon information and belief, a Florida resident and works exclusively on behalf of, and at the direction of Defendant K&H out of K&H's principal place of business located at 1744 Belcher Rd, Suite 200, Clearwater, FL 33765.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over the action pursuant to 28 U.S.C. § 1331 as an action that arises under the laws of the United States. The Court further has exclusive federal jurisdiction pursuant to 28 U.S.C. § 1338(a) as a case arising under the Copyright Act. This Court has subject matter jurisdiction over CoStar's claims for unauthorized access to computers and related claims pursuant to 18 U.S.C. § 1030.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

7. Personal jurisdiction over K&H is proper in this District because: (a) through BELL's acceptance of CoStar's online Terms of Use, which contain a forum selection clause, K&H has consented to jurisdiction in this District; (b) it has purposefully directed its unlawful behavior at this District by knowingly and willfully receiving the benefits of the use of CoStar's services, which is based out of Maryland; (c) by its knowing and willful facilitation of the use of CoStar's proprietary database by BELL, it has committed tortious and other actionable acts alleged herein with foreseeable consequences in this District, and has caused actual tortious injury in this District; (d) because K&H willfully received the benefits of the use of CoStar's services subject to the Terms of Use for the www.costar.com website, which contains a forum selection clause requiring that cases be brought in Maryland; and (e) K&H has frequently and consistently engaged in business contacts with CoStar employees in Maryland as a part of over 1,000 contacts between K&H and CoStar over the past 10 years.

8. Personal jurisdiction over Bell is proper in this District because: (a) by agreeing to the Terms of Use for the www.costar.com website, Bell has consented to the jurisdiction of this Court; (b) by his use of CoStar's proprietary database he has committed tortious and other actionable acts alleged herein with foreseeable consequences in this District, and have caused actual tortious injury in this District; and (c) he has purposefully directed his unlawful behavior at this District by repeated electronic activity and interaction with CoStar's computer servers in Bethesda, MD when logging into the subscription service at the www.costar.com website for business purposes.

BACKGROUND

9. CoStar is a leading national commercial real estate information services provider. At enormous effort and expense, CoStar has created state-of-the-art software technology and research methods to develop one of the most comprehensive commercial real estate information databases available. CoStar currently employs the services of approximately 1000 trained research professionals, including a field research force with over 120 research photographers and a fleet of over 100 specially equipped field research vehicles, that canvass the country, building information and analysis and photographs that are integrated into an enormous database that is updated daily.

10. CoStar's photographs and the other information in CoStar's databases are not part of a repository of information generally available for free. CoStar licenses its information services to businesses, including primarily commercial real estate brokers, asset managers, mortgage lenders, investors, owners, property managers, security analysis, REIT professionals and appraisers/mortgage underwriters. CoStar's information licenses, among other things, enable its licensees to find for themselves or their customers available space for tenants, to match buyers to properties for sale, find tenants, research brokers, locate market-related information, and to value commercial real estate sales transactions. CoStar's licensees can search CoStar's database by selecting from the more than 150 fields of information and analysis included in the file for each property to find those properties that suit their needs. CoStar's licensees can search through CoStar's information in thousands of different ways to analyze various real estate markets, and thus access to CoStar's database greatly reduces the need for CoStar's licensees to spend money on conducting research to locate much of the very same information already collected, organized, developed and analyzed by CoStar.

11. With the exception of a very limited amount of its information services CoStar makes available for no charge on the Internet at <http://www.CoStar.com>, access to CoStar's information services is offered only to authorized users. Interested members of the general public can become authorized users either (a) by entering into an online agreement for *ad hoc* access and use, or (b) by entering into a written license agreement and subscribing to one or more of CoStar's information services.

12. Access to CoStar's subscription information services and their associated databases is limited to those authorized users who gain authorization solely pursuant to written license agreements, which limit their access and use of CoStar's databases to specific numbers of licensed users and licensed sites. Licensed users are limited to employees of the licensee, or independent contractors working out of the licensed site and exclusively for the licensee.

13. Once a party executes a license agreement with CoStar, each of its authorized users is provided with a user identification and password and is given authorized use for Internet-based access to CoStar's subscription information services within the terms of the user's specific license. An authorized user must input a valid user identification and password at the "Subscriber Login Area" to gain authorized access to CoStar's restricted access information services for which they are licensed. The Subscriber Login Area contains prominent notices advising the user on each occasion of their use. "By logging in you are agreeing to CoStar's terms of use." and "Access restricted to licensed users. Sharing of passwords is prohibited." The authorized user must scroll through and "accept" the applicable online Terms of Use the first time they use the product as well as at periodic intervals thereafter. Furthermore, a warning appears at the bottom of the homepage that reads: "By using this site, you agree to our Terms of Use." Here too, by clicking on the underlined phrase, the user can view the terms of use.

14. The Terms of Use provide:

By accessing or using this Site (or any part thereof), you agree to be legally bound by the terms and conditions that follow (the "Terms of Use") as we may modify them from time to time. These Terms of Use apply to your use of this Site, including the CoStar services and products offered via the Site. **They constitute a legal contract between you and CoStar, and by accessing or using any part of the Site you represent and warrant that you have the right, power and authority to agree to and be bound by these Terms of Use.** If you do not agree to the Terms of Use, or if you do not have the right, power, and authority to agree to and be bound by these Terms of Use, you may not use the Site. (emphasis added).

15. In addition, the Terms of Use specifically note that "[p]ortions of the [website] are available only to individuals or entities who purchase a subscription ('Subscribers') and who, as specified in these Terms of Use and/or in the associated written license agreement between the Subscriber and CoStar that authorizes use of the information or product(s) (the 'License Agreement'), are Authorized Users (as defined below) under such a subscription."

16. Under the header "Prohibited Uses," the Terms of Use provide that "you shall not ... [a]ccess any portion of the [databases] unless you are an Authorized User for such [databases] using the Passcodes assigned to you by CoStar to access the components and services of the [databases] that your subscription authorizes you to access, subject to the terms contained therein and in these Terms of Use."

17. The Terms of Use also state that "[u]pon your breach of any term of these Terms of Use or the License Agreement, CoStar's remedies shall include any monetary benefits that accrued to you as a result of the breach, any damages incurred by CoStar related to your breach and any other damages and relief available at law or in equity." The terms of use further provide that "CoStar shall be entitled to recover all costs, including attorney's fees."

18. Finally, the Terms of Use provide that the user “irrevocably consent[s] to the exclusive jurisdiction of the federal and state courts located in the State of Maryland for any action to enforce these Terms of Use.”

EVENTS GIVING RISE TO THE LAWSUIT

19. One of CoStar’s customers (“CUSTOMER”) signed a License Agreement with CoStar for access to the CoStar Property Professional®, CoStar Comps® and CoStar Tenant® commercial real estate information databases and related software.

20. Under Sections 1, 2 and 12 of CUSTOMER’s License Agreement with CoStar, CUSTOMER agreed, among other things: (a) not to provide third parties with access to or use of the CoStar database service, (b) not to sub-license or resell CoStar’s information services to others, (c) not to share the CUSTOMER-specific IDs and passwords assigned by CoStar, and (d) not to store, copy or export any portion of the licensed CoStar database service into any database or other software program, except as explicitly permitted by the CoStar-Resource License Agreement or by express written consent of CoStar.

21. One of CUSTOMER’s users was BELL, who was, upon information and belief, CUSTOMER’s employee or an independent contractor working exclusively for CUSTOMER. Upon information and belief, in December 2006 BELL ceased to be associated with CUSTOMER.

22. After BELL ceased to be associated with CUSTOMER, BELL began an association with K&H soon thereafter. Upon information and belief, BELL operates either as an employee of K&H or as an independent contractor working exclusively for K&H. Upon information and belief, BELL works out of K&H’s offices, is supplied with computer equipment and an Internet connection, and is presented to the public as a K&H employee, including on K&H’s website,

http://www.kleinandheuchan.com/our_people.htm. As such, K&H has, at all times since BELL's association with K&H, the right and ability to observe and to control BELL's conduct.

23. Instead of terminating use of the CoStar user name and password provided to him through CUSTOMER once he associated with K&H, BELL continued to access the services to which CUSTOMER had subscribed. BELL's use of CoStar's services was for the purpose of benefitting K&H and within his responsibilities as an employee of or independent contractor for K&H.

24. K&H supplied all the facilities necessary for BELL to access CoStar's services including, upon information and belief, office space, computer equipment, and an Internet connection. Upon information and belief, BELL's use of CoStar's services was open and notorious in K&H's offices, and K&H knew that BELL was using CoStar's services and made no effort to prevent BELL from using CoStar's services.

25. By gaining unauthorized access to CoStar's products, BELL was able to make unauthorized copies and displays of CoStar's copyrighted databases and copyrighted photographs on K&H's computers.

COUNT I
DIRECT COPYRIGHT INFRINGEMENT AGAINST BELL

26. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 26 of the Complaint.

27. CoStar owns valid copyrights in the compilations of data, information, and original content that form its databases of commercial real estate property information. CoStar has registered its copyrights in those compilations with the United States Copyright Office on a regular basis.

28. CoStar owns valid copyrights in millions of commercial real estate photographs taken by CoStar photographers. CoStar has registered the vast majority of those photographs with the United States Copyright Office on a quarterly basis.

29. By virtue of his unauthorized access to CoStar's products, BELL has infringed CoStar's copyrights in its database compilations, including by reproducing, distributing and/or displaying original and protectable expression covered by CoStar's compilation copyrights.

30. By virtue of his unauthorized access to CoStar's products, BELL has infringed CoStar's copyrights in its commercial real estate photographs, including by reproducing, distributing and/or displaying such photographs. Upon information and belief, BELL has infringed CoStar's copyrights in more than 100 photographs. A partial list of these photographs, as well as the copyright registrations corresponding to such photographs, are attached hereto as Exhibit A.

31. BELL's infringement of CoStar's copyrights was willful and with notice of CoStar's copyrights in its database compilations and its photographs.

32. Because CoStar registered its copyrights in the database compilations and commercial real estate photographs infringed by BELL prior to their infringement and/or within three months of the publication of such copyrighted works, CoStar is entitled to an award of statutory damages of no less than \$750 and up to \$150,000 per work, as well as the attorney's fees and costs of prosecuting this action.

33. As a result of BELL's infringement, CoStar has suffered an injury for which there is no adequate remedy at law and that requires injunctive relief.

COUNT II
CONTRIBUTORY AND VICARIOUS COPYRIGHT INFRINGEMENT BY K&H

34. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 34 of the Complaint.

35. As set forth in Paragraphs 27 through 34, BELL has infringed CoStar's copyrights.

36. K&H, by virtue of the fact that it provided BELL with office space, computers, and Internet access through which BELL infringed CoStar's copyrights, materially contributed to BELL's infringement of CoStar's copyrights.

37. K&H provided such material contribution to BELL knowing or with reason to know that BELL would access CoStar's Internet website and thus infringe CoStar's copyrights.

38. As a result of K&H's conduct in facilitating BELL's infringement of CoStar's copyrights, K&H is liable for contributory copyright infringement. K&H's contributory infringement was willful.

39. By virtue of the fact that K&H had control over the means by which BELL obtained access to CoStar, K&H had the right and ability to control BELL's infringing conduct.

40. Upon information and belief, K&H has obtained a direct financial benefit from BELL's infringement of CoStar's copyrights.

41. As a result of K&H's conduct, K&H is liable for vicarious copyright infringement. K&H's vicarious infringement was willful.

42. Because CoStar registered its copyrights in the database compilations and commercial real estate photographs infringed by BELL prior to his infringement and/or within three months of the publication of such copyrighted works, CoStar is entitled to an award of statutory damages of no less

than \$750 and up to \$150,000 per work, as well as the attorney's fees and costs of prosecuting this action. K&H is responsible for such statutory damages as a joint tortfeasor with BELL.

43. As a result of K&H's infringement, CoStar has suffered an injury for which there is no adequate remedy at law and that requires injunctive relief.

COUNT III
VIOLATION BY BELL OF § 18 U.S.C. 1030:
FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS

44. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 44 of the Complaint.

45. The computer system on which CoStar's databases reside is a computer used in interstate commerce or communication, and is thus a protected computer under 18 U.S.C. § 1030.

46. When BELL accessed the passcode-protected portions of the CoStar Internet website, BELL intentionally accessed a protected computer without authorization.

47. BELL's unauthorized access of a protected computer has caused damage to CoStar that has amounted in an aggregated loss of over \$5,000 during a one-year period.

48. BELL's conduct has harmed and will continue to harm CoStar. As a result, CoStar has suffered and will continue to suffer losses, damages, and irreparable injury, in amounts not yet ascertained. CoStar's remedy at law is not itself adequate to compensate it for injuries inflicted by BELL. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT IV
BREACH OF CONTRACT AGAINST BELL

49. CoStar re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 49 of the Complaint.

50. By accessing CoStar's Internet website, BELL agreed to be bound by the terms of use agreement of CoStar's website. CoStar's website terms of use agreement is a valid contract.

51. BELL breached the terms of use agreement by, *inter alia*, accessing and using the CoStar databases without authorization from CoStar on 132 occasions for a total of 46 hours, involving "hits" to 12,829 pages on the CoStar Website.

52. CoStar has been injured by BELL's breach as described above. Among other things, BELL's breach of contract has caused CoStar to lose the license fee revenue associated with granting licenses to CoStar products. Some of CoStar's injury as a result of BELL's breach resulted in damages to CoStar in an amount to be proven at trial. CoStar will not have an adequate remedy at law for its entire injury, however, as some of its injury is irreparable. Accordingly, CoStar is entitled to damages and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, CoStar asks that this Court:

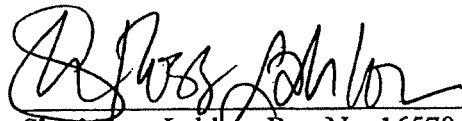
- (1) Enter a judgment against BELL that he has breached its contract with CoStar;
- (2) Grant a preliminary and permanent injunction (a) restraining and enjoining K&H and any of its principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, from making any unauthorized access to or use of any CoStar database service; and (b) ordering K&H and any of its principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, to permanently delete and destroy all portions of any CoStar database service within their

possession, and within ten (10) days provide CoStar with a signed affidavit certifying completion of such deletion/destruction;

- (3) Enter judgment against Defendants and in favor of CoStar for compensatory damages;
- (4) For an award of statutory damages of up to \$11,450,000 as a result of Defendants' willful infringement of CoStar's copyrights.
- (5) For an award of the costs of this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505 and other applicable laws.
- (6) Enter judgment against Defendants and in favor of CoStar for prejudgment interest, costs and attorneys' fees; and
- (7) Grant CoStar such other and further relief as is just.

Dated: June 17, 2008

Respectfully submitted,



Shari Ross Lahlou, Bar. No. 16570
William J. Sauer, Bar No. 17355
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone (202) 624-2500
Facsimile (202) 628-5116

Attorneys for Plaintiffs CoSTAR REALTY
INFORMATION, INC., a Delaware Corporation,
and CoSTAR GROUP, INC., a Delaware
Corporation

EXHIBIT B



Fax Cover Sheet

re-send-doc. pages 9+10

Date 5/28/08
Pages 11 (including cover)

Pat

To **Mark Klein**

Company Klein & Heuchan
Phone Number 727-441-1951
Fax Number 727-449-1724
From Curtis Ricketts
cricketts@costar.com

Company CoSTAR Group, Inc.

Address Headquarters
2 Bethesda Metro Center, 10TH Floor
Bethesda, MD 20814
Phone (301) 280-4705

Web site address <http://www.costar.com>

As our discussions concerning Klein & Heuchan's unauthorized use of CoStar's services have been unable to resolve our dispute, I am forwarding to you a draft of a complaint that CoStar intends to file against Klein & Heuchan unless we can come to a resolution by the close of business on Tuesday June 3rd. Unfortunately, once our legal department has authorized the filing of this complaint, we can no longer offer a resolution on the terms we have discussed as a result of the legal costs CoStar will have incurred.

We remain open to discussing this dispute with you.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

COSTAR REALTY INFORMATION, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

and

COSTAR GROUP, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

Plaintiffs,

v.

KLEIN & HEUCHAN, INC.
1744 Belcher Rd, Suite 200
Clearwater, FL 33765

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiffs COSTAR REALTY INFORMATION, INC., a Delaware Corporation, and COSTAR GROUP, INC., a Delaware Corporation (collectively "CoStar" or "Plaintiffs"), for their Complaint against Defendant KLEIN & HEUCHAN, INC. ("K&H"), alleges as follows:

PARTIES

1. CoStar Realty Information, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland, 20814-5388.

2. CoStar Group, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland, 20814-5388.

3. Defendant K&H is, upon information and belief, a Florida corporation, organized and existing under the laws of the Florida, with its principal place of business located at 1744 Belcher Rd, Suite 200, Clearwater, FL 33765.

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction over the action pursuant to 28 U.S.C. § 1331 as an action that arises under the laws of the United States. The Court further has exclusive federal jurisdiction pursuant to 28 U.S.C. § 1338(a) as a case arising under the Copyright Act. This Court has subject matter jurisdiction over CoStar's claims for unauthorized access to computers and related claims pursuant to 18 U.S.C. § 1030.

5. This Court has diversity jurisdiction over the action pursuant to 28 U.S.C. § 1332. The controversy is between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court has supplemental jurisdiction over Plaintiffs' claims arising under the laws of Maryland pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiffs' claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

7. Personal jurisdiction over K&H is proper in this District because: (a) by agreeing to the Terms of Use for the www.costar.com website, K&H has consented to the jurisdiction of this Court; (b) by their use of CoStar's proprietary database they have committed tortious and other actionable acts alleged herein with foreseeable consequences in this District, and have caused actual tortious injury in this District; and (c) they have purposefully directed their unlawful behavior at this District by repeated electronic activity and interaction with CoStar's computer servers in Bethesda, MD when logging into the subscription service at the www.costar.com website for business purposes.

BACKGROUND

8. CoStar is a leading national commercial real estate information services provider. At enormous effort and expense, CoStar has created state-of-the-art software technology and research methods to develop one of the most comprehensive commercial real estate information databases available. CoStar currently employs the services of approximately 1000 trained research professionals, including a field research force with over 120 research photographers and a fleet of over 100 specially equipped field research vehicles, that canvass the country, building information and analysis and photographs that are integrated into an enormous database that is updated daily.

9. CoStar's photographs and the other information in CoStar's databases are not part of a repository of information generally available for free. CoStar licenses its information services to businesses, including primarily commercial real estate brokers, asset managers, mortgage lenders, investors, owners, property managers, security analysis, REIT professionals and appraisers/mortgage underwriters. CoStar's information licenses, among other things, enable its licensees to find for themselves or their customers available space for tenants, to match buyers to properties for sale, find tenants, research brokers, locate market-related information, and to value commercial real estate sales

transactions. CoStar's licensees can search CoStar's database by selecting from the more than 150 fields of information and analysis included in the file for each property to find those properties that suit their needs. CoStar's licensees can search through CoStar's information in thousands of different ways to analyze various real estate markets, and thus access to CoStar's database greatly reduces the need for CoStar's licensees to spend money on conducting research to locate much of the very same information already collected, organized, developed and analyzed by CoStar.

10. With the exception of a very limited amount of its information services CoStar makes available for no charge on the Internet at <http://www.CoStar.com>, access to CoStar's information services is offered only to authorized users. Interested members of the general public can become authorized users either (a) by entering into an online agreement for *ad hoc* access and use, or (b) by entering into a written license agreement and subscribing to one or more of CoStar's information services.

11. Access to CoStar's subscription information services and their associated databases is limited to those authorized users who gain authorization solely pursuant to written license agreements, which limit their access and use of CoStar's databases to specific numbers of licensed users and licensed sites. Licensed users are limited to employees of the licensee, or independent contractors working out of the licensed site and exclusively for the licensee.

12. Once a party executes a license agreement with CoStar, each of its authorized users is provided with a user identification and password and is given authorized use for Internet-based access to CoStar's subscription information services within the terms of the user's specific license. An authorized user must input a valid user identification and password at the

13. "Subscriber Login Area" to gain authorized access to CoStar's restricted access information services for which they are licensed. The Subscriber Login Area contains prominent notices advising the user on each occasion of their use. "By logging in you are agreeing to CoStar's terms of use." and "Access restricted to licensed users. Sharing of passwords is prohibited." The authorized user must scroll through and "accept" the applicable online Terms of Use the first time they use the product as well as at periodic intervals thereafter. Furthermore, a warning appears at the bottom of the homepage that reads: "By using this site, you agree to our Terms of Use." Here too, by clicking on the underlined phrase, the user can view the terms of use.

14. The Terms of Use provide:

By accessing or using this Site (or any part thereof), you agree to be legally bound by the terms and conditions that follow (the "Terms of Use") as we may modify them from time to time. These Terms of Use apply to your use of this Site, including the CoStar services and products offered via the Site. **They constitute a legal contract between you and CoStar, and by accessing or using any part of the Site you represent and warrant that you have the right, power and authority to agree to and be bound by these Terms of Use.** If you do not agree to the Terms of Use, or if you do not have the right, power, and authority to agree to and be bound by these Terms of Use, you may not use the Site. (emphasis added).

15. In addition, the Terms of Use specifically note that "[p]ortions of the [website] are available only to individuals or entities who purchase a subscription ('Subscribers') and who, as specified in these Terms of Use and/or in the associated written license agreement between the Subscriber and CoStar that authorizes use of the information or product(s) (the 'License Agreement'), are Authorized Users (as defined below) under such a subscription."

16. Under the header "Prohibited Uses," the Terms of Use provide that "you shall not ... [a]ccess any portion of the [databases] unless you are an Authorized User for such [databases] using the

Passcodes assigned to you by CoStar to access the components and services of the [databases] that your subscription authorizes you to access, subject to the terms contained therein and in these Terms of Use.”

17. The Terms of Use also state that “[u]pon your breach of any term of these Terms of Use or the License Agreement, CoStar’s remedies shall include any monetary benefits that accrued to you as a result of the breach, any damages incurred by CoStar related to your breach and any other damages and relief available at law or in equity.” The terms of use further provide that “CoStar shall be entitled to recover all costs, including attorney’s fees.”

18. Finally, the Terms of Use provide that the user “irrevocably consent[s] to the exclusive jurisdiction of the federal and state courts located in the State of Maryland for any action to enforce these Terms of Use.”

EVENTS GIVING RISE TO THE LAWSUIT

19. One of CoStar’s customers (“CUSTOMER”) signed a License Agreement with CoStar for access to the CoStar Property Professional®, CoStar Comps® and CoStar Tenant® commercial real estate information databases and related software.

20. Under Sections 1, 2 and 12 of CUSTOMER’s License Agreement with CoStar, CUSTOMER agreed, among other things: (a) not to provide third parties with access to or use of the CoStar database service, (b) not to sub-license or resell CoStar’s information services to others, (c) not to share the CUSTOMER-specific IDs and passwords assigned by CoStar, and (d) not to store, copy or export any portion of the licensed CoStar database service into any database or other software program, except as explicitly permitted by the CoStar-Resource License Agreement or by express written consent of CoStar.

21. K&H obtained access to CUSTOMER's user names and passwords and then used CUSTOMER's user name and password improperly to access and use CoStar's commercial real estate information subscription services for their own commercial purposes without a valid license or any other authorization from CoStar.

22. By gaining unauthorized access to CoStar's products, K&H was able to make unauthorized copies and displays of CoStar's copyrighted databases and copyrighted photographs on K&H's computers.

COUNT I
BREACH OF CONTRACT

23. CoStar re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 22 of the Complaint.

24. By accessing CoStar's Internet website, K&H agreed to be bound by the terms of use agreement of CoStar's website. CoStar's website terms of use agreement is a valid contract.

25. K&H breached the terms of use agreement by, *inter alia*, accessing and using the CoStar databases without authorization from CoStar on 132 occasions for a total of 46 hours, involving "hits" to 12,829 pages on the CoStar Website.

26. CoStar has been injured by K&H's breach as described above. Among other things, K&H's breach of contract has caused CoStar to lose the license fee revenue associated with granting licenses to CoStar products. Some of CoStar's injury as a result of K&H's breach resulted in damages to CoStar in an amount to be proven at trial. CoStar will not have an adequate remedy at law for its entire injury, however, as some of its injury is irreparable. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT II
COPYRIGHT INFRINGEMENT

27. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 26 of the Complaint.

28. CoStar owns valid copyrights in the compilations of data, information, and original content that form its databases of commercial real estate property information. CoStar has registered its copyrights in those compilations with the United States Copyright Office on a regular basis.

29. CoStar owns valid copyrights in millions of commercial real estate photographs taken by CoStar photographers. CoStar has registered the vast majority of those photographs with the United States Copyright Office on a quarterly basis.

30. By virtue of its unauthorized access to CoStar's products, K&H has infringed CoStar's copyrights in its database compilations, including by reproducing, distributing and/or displaying original and protectable expression covered by CoStar's compilation copyrights.

31. By virtue of its unauthorized access to CoStar's products, K&H has infringed CoStar's copyrights in its commercial real estate photographs, including by reproducing, distributing and/or displaying such photographs. Upon information and belief, K&H has infringed CoStar's copyrights in at least 103 photographs. A partial list of these photographs, as well as the copyright registrations corresponding to such photographs, are attached hereto as Exhibit A.

32. K&H's infringement of CoStar's copyrights was willful and with notice of CoStar's copyrights in its database compilations and its photographs.

33. Because CoStar registered its copyrights in the database compilations and commercial real estate photographs infringed by K&H prior to their infringement and/or within three months of the publication of such copyrighted works, CoStar is entitled to an award of statutory damages of no less

than \$750 and up to \$150,000 per work, as well as the attorney's fees and costs of prosecuting this action.

34. As a result of K&H's infringement, CoStar has suffered an injury for which there is no adequate remedy at law and that requires injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, CoStar asks that this Court:

- (1) Enter a judgment against K&H that it has breached its contract with CoStar;
- (2) Grant a preliminary and permanent injunction (a) restraining and enjoining K&H and any of its principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, from making any unauthorized access to or use of any CoStar database service; and (b) ordering K&H and any of its principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, to permanently delete and destroy all portions of any CoStar database service within their possession, and within ten (10) days provide CoStar with a signed affidavit certifying completion of such deletion/destruction;
- (3) Enter judgment against Defendants and in favor of CoStar for compensatory damages;
- (4) For an award of statutory damages of up to \$11,450,000 as a result of Defendants' willful infringement of CoStar's copyrights.
- (5) For an award of the costs of this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505 and other applicable laws.
- (6) Enter judgment against Defendants and in favor of CoStar for prejudgment interest, costs and attorneys' fees; and

(7) Grant CoStar such other and further relief as is just.

Respectfully submitted,

Attorneys for CoSTAR REALTY
INFORMATION, INC., a Delaware Corporation,
and CoSTAR GROUP, INC., a Delaware
Corporation

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0383
CONNECTION TEL 917274491724
SUBADDRESS
CONNECTION ID
ST. TIME 05/29 11:27
USAGE T 01'59
PGS. SENT 11
RESULT OK



Fax Cover Sheet

Date 5/28/08
Pages 11 (including cover)

To **Mark Klein**

Company Klein & Heuchan
Phone Number 727-441-1951
Fax Number 727-449-1724
From Curtis Ricketts
cricketts@costar.com

Company CoSTAR Group, Inc.

Address Headquarters
2 Bethesda Metro Center, 10TH Floor
Bethesda, MD 20814

Phone (301) 280-4705

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0384
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SUBADDRESS
CONNECTION ID
ST. TIME 05/29 13:02
USAGE T 01'02
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RESULT OK



Fax Cover Sheet

re-send-doc pages 9+10

Date 5/28/08
Pages 11 (including cover)

Pat

To **Mark Klein**

Company Klein & Heuchan
Phone Number 727-441-1951
Fax Number 727-449-1724
From Curtis Ricketts
cricketts@costar.com

Company CoSTAR Group, Inc.

Address Headquarters
2 Bethesda Metro Center, 10TH Floor
Bethesda, MD 20814
Phone (301) 280-4705

EXHIBIT C

MACFARLANE FERGUSON & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

1501 SOUTH FLORIDA AVENUE
LAKELAND, FLORIDA 33803
(863) 680-9908 FAX (863) 683-2849

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625 COURT STREET
P. O. BOX 1669 (ZIP 33757)
CLEARWATER, FLORIDA 33758
(727) 441-8966 FAX (727) 442-8470

IN REPLY REFER TO:

Post Office Box 1669
Clearwater, FL 33757
jpr@macfar.com

June 4, 2006

**VIA FACSIMILE (301) 656-7146
and CERTIFIED MAIL – RETURN RECEIPT**

Jonathan Coleman, Esquire
General Counsel & Secretary
CoSTAR Group, Inc.
2 Bethesda Metro Center, 10th Floor
Bethesda, MD 20814

Re: *Klein & Heuchan, Inc. v. COSTAR Realty Information, Inc. and
COSTAR Group, Inc.*
Pinellas County Case No.: 08-8290-CI-15

Dear Mr. Coleman:

This firm has the pleasure of representing Klein & Heuchan, Inc. We were forwarded correspondence from Mr. Curtis Ricketts alleging that our client used CoStar's services without authorization. Mr. Ricketts' May 28, 2008 correspondence included a draft lawsuit alleging breach of contract and copyright infringement and indicated that the Complaint would be filed against my client unless the parties could resolve their differences by Tuesday, June 3, 2008.

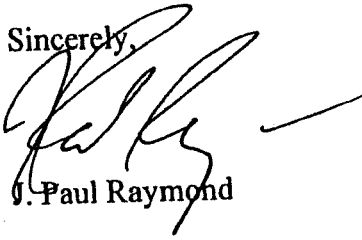
Unfortunately, Mr. Ricketts refused to respond to our repeated attempts at dialog made via telephone and e-mail. For your convenience I am enclosing a copy of my previous correspondence. Because I received no response, we were given no option but to file a lawsuit seeking a declaratory judgment pursuant to the Florida Declaratory Judgment Act. Enclosed please find a courtesy copy of the lawsuit filed today in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, Civil Division. Please let me know if you are authorized to and willing to accept service of the Complaint. If not, I will have the action served by process server.

Jonathan Coleman, Esquire
June 4, 2008
Page 2

We remain willing to discuss this matter with you further but dialogue is a two-way street.

I await your response.

Sincerely,



J. Paul Raymond

JPR/jg

cc: Curtis Rickets
(via facsimile (301) 656-7146) and electronic mail (crickets@costar.com)
Klein & Heuchan, Inc.

Paul Raymond

From: Paul Raymond
Sent: Monday, June 02, 2008 1:45 PM
To: 'cricketts@costar.com'

This firm represents Klein and Heuchan, Inc. Mark Klein forwarded your email of May 28, 2008, and discussed with me the circumstances surrounding your claim.

It appears that a sales agent, who is an independent contractor and not an employee of my client, was formerly with another firm that has an account with your firm. He evidently was granted a license to use your services and his authority to use those services evidently was not terminated upon his dissociation with his former national firm. For these purposes, we will accept your assertion that this individual continued to access your website as a licensed user. If he did so, he did so for himself and not per the instructions or at the request of my client. If you have any facts to the contrary, please provide them.

It is my understanding that these facts were disclosed to you and that you have threatened a suit in Maryland, a jurisdiction in which my client has no nexus, and provided a copy of the proposed lawsuit. The draft makes allegations that are not true and that you must know are not true. It is my understanding that you indicated that you would not file the lawsuit if my client subscribed to your company's services and then received further communication indicating that the person who made such offer had no authority to do so.

It is my understanding that as a CCIM firm, my client was provided free use of your services as a promotion for a limited time. Mark Klein accessed your firm's web site during that "complimentary" period and determined that the services your firm offered were not helpful in its, primarily local, commercial brokerage business, and never again accessed your firm's site. Again, if you have any facts to the contrary, please provide them.

I placed a call to you last week and again today in an effort to discuss this matter with you. I have not received a return to my call and write to you in an effort to open a dialogue. I look forward to speaking with you.

J. Paul Raymond, Esq.
Macfarlane Ferguson & McMullen
P.O. Box 1669 Clearwater, FL 33757
625 Court Street Clearwater, FL 33756
Main: (727) 441-8966
Direct: (727) 444-1406
Fax: (727) 442- 8470
jpr@macfar.com



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IRS Circular 230 Disclosure: Any tax advice in this communication is not intended or written by Macfarlane Ferguson & McMullen to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or other matter addressed herein.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

KLEIN & HEUCHAN, INC.,
a Florida Corporation

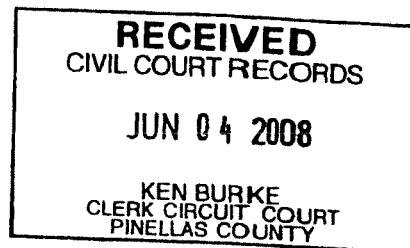
Plaintiff,

v.

Case No. 08-8290CI-15

COSTAR REALTY INFORMATION, INC.,
a foreign Corporation and
COSTAR GROUP, INC.,
a foreign Corporation

Defendants.



COMPLAINT

Plaintiff KLEIN & HEUCHAN, INC., a Florida Corporation (hereinafter "K&H") hereby sues Defendants COSTAR REALTY INFORMATION, INC., a foreign Corporation and COSTAR GROUP, INC., a foreign Corporation (hereinafter collectively "COSTAR") and alleges as follows:

1. This is an action for a declaratory judgment pursuant to the Florida Declaratory Judgment Act, Chapter 86, Florida Statutes.
2. Plaintiff K&H is a Florida Corporation, organized and existing under the laws of the State of Florida.
3. Plaintiff K&H is authorized to and conducts business in Pinellas County, Florida as a licensed real estate broker.

4. Defendant COSTAR REALTY INFORMATION, INC. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located in Bethesda, Maryland.

5. Defendant COSTAR REALTY INFORMATION, INC. conducts business throughout the State of Florida including Pinellas County, Florida.

6. Defendant COSTAR GROUP, INC. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located in Bethesda, Maryland.

7. Defendant COSTAR GROUP, INC. conducts business throughout the State of Florida including Pinellas County, Florida.

8. COSTAR is a national commercial real estate information service provider that has created and maintains a commercial real estate information database. Access to this commercial real estate information database is obtained via the internet.¹

9. COSTAR charges a fee for access to the COSTAR database and only permits access by authorized users.

10. K&H is a licensed real estate broker.

11. Scott Bell is a licensed agent and independent contractor of K&H.

12. At all times material, Scott Bell was an authorized user of the COSTAR database.

13. COSTAR claims that K&H obtained access to the COSTAR database by obtaining authorized users' user names and passwords and accessed the COSTAR database for its own commercial purpose without a valid license or any other authorization from COSTAR.

¹ The internet based commercial real estate information database is hereinafter referred to as the "COSTAR database".

14. K&H did not obtain access to the COSTAR database by obtaining authorized users' user names and passwords and did not access the COSTAR database for its own commercial purpose without a valid license or any other authorization from COSTAR.

15. COSTAR claims that K&H accessed the COSTAR database and that by accessing the COSTAR database it agreed to be bound by the terms of use agreement of the website maintained by COSTAR.

16. COSTAR claims that K&H breached this phantom agreement and that COSTAR was injured as a result of this breach.

17. K&H is unsure as to what phantom agreement COSTAR alleges has been breached.

18. Plaintiff K&H is in doubt as to its rights and obligations.

19. Plaintiff K&H is in further doubt as to the existence or nonexistence of any legal relationship between COSTAR and K&H.

20. This is a bona fide, present and practical need for declaration of rights.

21. The declaration concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.


22. An immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts.

23. The relief sought is not merely giving of legal advice or the answer to questions propounded for curiosity.

WHEREFORE, Plaintiff KLEIN & HEUCHAN, INC, prays that this Court declare Plaintiff KLEIN & HEUCHAN, INC.'s rights and obligations as they relate to: (1) COSTAR REALTY INFORMATION, INC., and COSTAR GROUP, INC., and that Plaintiff KLEIN &

HEUCHAN, INC. have no obligation(s) pursuant to the phantom terms of service agreement alleged by COSTAR REALTY INFORMATION, INC., and COSTAR GROUP, INC.

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EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CoSTAR REALTY INFORMATION, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

and

CoSTAR GROUP, INC.,
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814,

Plaintiffs,

v.

MARK FIELD D/B/A ALLIANCE
VALUATION GROUP
2858 Via Bellota
San Clemente, CA 92673,

LAWSON VALUATION GROUP, INC.
8895 N. Military Trail, Suite 304E
Palm Beach Gardens, FL 33410-6263,

RUSS A. GRESSETT
5625 FM 1960 West, Suite 509
Houston, TX 77069,

GERALD A. TEEL COMPANY, INC.
974 Campbell Rd, Suite 204
Houston, TX 77024-2813, and

JOHN DOES 1-5
Addresses Currently Unknown

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiffs COSTAR REALTY INFORMATION, INC., a Delaware Corporation, and COSTAR GROUP, INC., a Delaware Corporation (collectively "CoStar" or "Plaintiffs"), for their Complaint against Defendants MARK FIELD D/B/A ALLIANCE VALUATION GROUP, LAWSON VALUATION GROUP, INC., RUSS A. GRESSETT, GERALD A. TEEL COMPANY, INC., and JOHN DOE 1-5 alleges as follows:

PARTIES

1. CoStar Realty Information, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland 20814-5388.

2. CoStar Group, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business and corporate offices located at 2 Bethesda Metro Center, 10th Floor, Bethesda, Maryland 20814-5388.

3. Defendant MARK FIELD D/B/A ALLIANCE VALUATION GROUP ("ALLIANCE") is, upon information and belief, a California resident doing business as a sole proprietorship under the name Alliance Valuation Group. ALLIANCE has its principal place of business located at 2858 Via Bellota, San Clemente, California 92673.

4. Defendant LAWSON VALUATION GROUP, INC. ("LAWSON") is, upon information and belief, an Florida corporation, organized and existing under the laws of the Florida, with its principal place of business located at 8895 N. Military Trail, Suite 304E, Palm Beach Gardens, Florida 33410.

5. Defendant RUSS A. GRESSETT ("GRESSETT") is, upon information and belief, a Texas resident doing business as TGC Realty Counselors, with a principal place of business located at 5625 FM 1960 West, Suite 509, Houston, TX 77069.

6. Defendant GERALD A. TEEL COMPANY, INC., ("GATEEL") is, upon information and belief, an Texas corporation, organized and existing under the laws of the Texas, with its principal place of business located at 974 Campbell Rd, Suite 204, Houston, TX 77024-2813.

7. Plaintiff is unaware of the true names and capacities, whether individual, corporate, associate or otherwise, of Defendants JOHN DOE 1-5 ("DOES") and therefore sues these Defendants, and each of them, by such fictitious names. The DOES include persons and entities acting in concert with the named Defendants in connection with the actions complained of herein. Plaintiff will seek leave of this Court to amend this Complaint when the status and identities of these Defendants are ascertained. Upon information and belief, the identities of the DOES are known to one or more of the named Defendants.

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction over the action pursuant to 28 U.S.C. § 1331 as an action that arises under the laws of the United States. The Court further has exclusive federal jurisdiction pursuant to 28 U.S.C. § 1338(a) as a case arising under the Copyright Act. This Court has subject matter jurisdiction over CoStar's claims for unauthorized access to computers and related claims pursuant to 18 U.S.C. § 1030.

9. This Court has diversity jurisdiction over the action pursuant to 28 U.S.C. § 1332. The controversy is between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court has supplemental jurisdiction over Plaintiffs' claims arising

under the laws of Maryland pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiffs' claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

11. Personal jurisdiction over ALLIANCE is proper in this District because ALLIANCE has, by written contract, consented to the jurisdiction of this Court and has committed the tortious acts alleged herein with foreseeable consequences in this District.

12. Personal jurisdiction over GRESSETT, LAWSON, GATEEL, and DOES is proper in this District because: (a) by agreeing to the Terms of Use for the www.costar.com website each has consented to the jurisdiction of this Court; (b) by their use of CoStar's proprietary database with the assistance of ALLIANCE, they are availing themselves of the contractual benefits provided by CoStar to ALLIANCE and thus should be subject to the same jurisdictional requirements as ALLIANCE; (c) they have committed tortious and other actionable acts alleged herein with foreseeable consequences in this District, and have caused actual tortious injury in this District; and (d) they have purposefully directed their unlawful behavior at this District by repeated electronic activity and interaction with CoStar's computer servers in Bethesda, MD when logging into the subscription service at the www.costar.com website for business purposes.

BACKGROUND

13. CoStar is a leading national commercial real estate information services provider. At enormous effort and expense, CoStar has created state-of-the-art software technology and research

methods to develop one of the most comprehensive commercial real estate information databases available. CoStar currently employs the services of approximately 800 trained research professionals, including a field research force with over 120 research photographers and a fleet of over 100 specially equipped field research vehicles, that canvass the country, building information and analysis and photographs that are integrated into an enormous database that is updated daily.

14. CoStar's photographs and the other information in CoStar's databases are not part of a repository of information generally available for free. CoStar licenses its information services to businesses, including primarily commercial real estate brokers, asset managers, mortgage lenders, investors, owners, property managers, security analysis, REIT professionals and appraisers/mortgage underwriters. CoStar's information licenses, among other things, enable its licensees to find for themselves or their customers available space for tenants, to match buyers to properties for sale, find tenants, research brokers, locate market-related information, and to value commercial real estate sales transactions. CoStar's licensees can search CoStar's database by selecting from the more than 150 fields of information and analysis included in the file for each property to find those properties that suit their needs. CoStar's licensees can search through CoStar's information in thousands of different ways to analyze various real estate markets, and thus access to CoStar's database greatly reduces the need for CoStar's licensees to spend money on conducting research to locate much of the very same information already collected, organized, developed and analyzed by CoStar.

15. With the exception of a very limited amount of its information services CoStar makes available for no charge on the Internet at <http://www.CoStar.com>, access to CoStar's information services is offered only to authorized users. Interested members of the general public can become authorized users either (a) by entering into an online agreement for *ad hoc* access and use, or (b) by

entering into a written license agreement and subscribing to one or more of CoStar's information services.

16. Access to CoStar's subscription information services and their associated databases is limited to those authorized users who gain authorization solely pursuant to written license agreements, which limit their access and use of CoStar's databases to specific numbers of licensed users and licensed sites. Licensed users are limited to employees of the licensee, or independent contractors working out of the licensed site and exclusively for the licensee.

17. Once a party executes a license agreement with CoStar, each of its authorized users is provided with a user identification and passcode and is given authorized use for Internet-based access to CoStar's subscription information services within the terms of the user's specific license. An authorized user must input a valid user identification and passcode at the "Subscriber Login Area" to gain authorized access to CoStar's restricted access information services for which they are licensed.

18. The Subscriber Login Area contains prominent notices advising the user on each occasion of their use. "By logging in you are agreeing to CoStar's terms of use." and "Access restricted to licensed users. Sharing of passcodes is prohibited." The authorized user must scroll through and "accept" the applicable online Terms of Use the first time they use the product as well as at periodic intervals thereafter. Furthermore, a warning appears at the bottom of the homepage that reads: "By using this site, you agree to our Terms of Use." Here too, by clicking on the underlined phrase, the user can view the terms of use.

19. The Terms of Use provide:

By accessing or using this Site (or any part thereof), you agree to be legally bound by the terms and conditions that follow (the "Terms of Use") as we may modify them from time to time. These Terms of Use apply to your use of this Site, including the CoStar services and products

offered via the Site. **They constitute a legal contract between you and CoStar, and by accessing or using any part of the Site you represent and warrant that you have the right, power and authority to agree to and be bound by these Terms of Use.** If you do not agree to the Terms of Use, or if you do not have the right, power, and authority to agree to and be bound by these Terms of Use, you may not use the Site. (emphasis added).

20. In addition, the Terms of Use specifically note that “[p]ortions of the [website] are available only to individuals or entities who purchase a subscription (‘Subscribers’) and who, as specified in these Terms of Use and/or in the associated written license agreement between the Subscriber and CoStar that authorizes use of the information or product(s) (the ‘License Agreement’), are Authorized Users (as defined below) under such a subscription.”

21. Under the header “Prohibited Uses,” the Terms of Use provide that “you shall not ... [a]ccess any portion of the [databases] unless you are an Authorized User for such [databases] using the Passcodes assigned to you by CoStar to access the components and services of the [databases] that your subscription authorizes you to access, subject to the terms contained therein and in these Terms of Use.”

22. The Terms of Use also state that “[u]pon your breach of any term of these Terms of Use or the License Agreement, CoStar’s remedies shall include any monetary benefits that accrued to you as a result of the breach, any damages incurred by CoStar related to your breach and any other damages and relief available at law or in equity.” The terms of use further provide that “CoStar shall be entitled to recover all costs, including attorney’s fees.”

23. Finally, the Terms of Use provide that the user “irrevocably consent[s] to the exclusive jurisdiction of the federal and state courts located in the State of Maryland for any action to enforce these Terms of Use.”

EVENTS GIVING RISE TO THE LAWSUIT

24. ALLIANCE signed an 11-user License Agreement with CoStar in June 2002 for access to the CoStar COMPS® commercial real estate information databases and related software. ALLIANCE signed a new, 11-user License Agreement for access to the CoStar COMPS® in November 2004.

25. Under Sections 1, 2 and 12 of ALLIANCE's License Agreement with CoStar, ALLIANCE agreed, among other things: (a) not to provide third parties with access to or use of the CoStar database service, (b) not to sub-license or resell CoStar's information services to others, (c) not to share the ALLIANCE-specific IDs and passcodes assigned by CoStar, and (d) not to store, copy or export any portion of the licensed CoStar database service into any database or other software program, except as explicitly permitted by the CoStar-Resource License Agreement or by express written consent of CoStar.

26. In violation of these provisions in ALLIANCE's License Agreement with CoStar, ALLIANCE provided its user names and passcodes directly or indirectly to one or more individuals at third-party firms, including GRESSETT, LAWSON and DOES, who used the user name and passcode improperly to access and use CoStar's commercial real estate information subscription services for their own commercial purposes without a valid license or any other authorization from CoStar. As a result of ALLIANCE's breach of its License Agreement with CoStar, third parties were able to use CoStar's commercial real estate information services without paying the subscription and license fees that other firms pay for the service.

27. In violation of these provisions in ALLIANCE's License Agreement with CoStar, ALLIANCE provided a user name and passcode to GRESSETT, who then further distributed such user

name and passcode to other individuals, including but not limited to GATEEL and DOES, who then used the user name and passcode improperly to access and use CoStar's commercial real estate information subscription services for their own commercial purposes without a valid license or any other authorization from CoStar. As a result of GRESSETT's breach of its contract with CoStar, third parties were able to use CoStar's commercial real estate information services without paying the subscription and license fees that other firms pay for the service.

28. In violation of these provisions in ALLIANCE's License Agreement with CoStar, ALLIANCE provided the user names and passcodes assigned to it to LAWSON, GRESSETT, GATEEL and DOES who used such user names and passcodes improperly to access and use CoStar's commercial real estate information subscription services for LAWSON's, GRESSETT's, GATEEL's and DOES' commercial purposes without authorization from CoStar. As a result of ALLIANCE's breach of its License Agreement with CoStar, neither LAWSON, GRESSETT, GATEEL nor DOES acquired valid licenses from CoStar for the services they accessed.

29. By gaining unauthorized access to CoStar's products, LAWSON, GRESSETT, GATEEL and DOES, were able to make unauthorized copies and displays of CoStar's copyrighted databases and copyrighted photographs. By sharing its user names and passcodes with LAWSON, GRESSETT, GATEEL, and DOES, ALLIANCE was knowingly and materially contributing to that conduct. Absent ALLIANCE providing CoStar user names and passcodes to LAWSON, GRESSETT, GATEEL and DOES, they would not have been able to gain such access and make such unauthorized copies and displays of CoStar's copyrighted works.

30. Upon information and belief, at least one Defendant, LAWSON, paid ALLIANCE a fee for its unauthorized access to a CoStar user name and passcode. The payment of fees to ALLIANCE

further underscores the knowing illegality of Defendants' conduct. Plaintiff is further investigating whether one or more DOES paid ALLIANCE fees for their unauthorized access to a CoStar user name and passcode.

COUNT I
BREACH OF CONTRACT BY ALLIANCE

31. CoStar re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 30 of the Complaint.

32. The License Agreement between ALLIANCE and CoStar is a valid contract.

33. ALLIANCE breached the License Agreement by providing, either directly or indirectly, CoStar user names and passcodes to LAWSON, GRESSETT, GATEEL and DOES, who are not employees of ALLIANCE or independent contractors working out of ALLIANCE's office, who then accessed and used the CoStar database service without CoStar's authorization or consent.

34. CoStar has been injured by ALLIANCE's breaches as described above. Among other things, ALLIANCE's breach of contract has caused CoStar to lose the license fee revenue associated with granting licenses to LAWSON, GRESSETT, GATEEL and DOES. Some of CoStar's injury as a result of ALLIANCE's breaches resulted in damages to CoStar in an amount to be proven at trial. CoStar will not have an adequate remedy at law for its entire injury, however, as some of its injury is irreparable. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT II
BREACH OF CONTRACT BY LAWSON, GRESSETT, GATEEL AND DOES

35. CoStar re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 34 of the Complaint.

36. By accessing CoStar's Internet website, LAWSON, GRESSETT, GATEEL and DOES agreed to be bound by the Terms of Use agreement of CoStar's website. CoStar's website Terms of Use agreement is a valid contract.

37. LAWSON, GRESSETT, GATEEL and DOES each breached the Terms of Use agreement by, *inter alia*, accessing and using the CoStar databases without authorization from CoStar.

38. CoStar has been injured by LAWSON's, GRESSETT's, GATEEL's and DOES' breaches as described above. Among other things, LAWSON's, GRESSETT's, GATEEL's and DOES' breach of contract has caused CoStar to lose the license fee revenue associated with granting licenses them licenses to CoStar products. Some of CoStar's injury as a result of ALLIANCE's breaches resulted in damages to CoStar in an amount to be proven at trial. CoStar will not have an adequate remedy at law for its entire injury, however, as some of its injury is irreparable. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT III
FRAUD BY ALLIANCE AND GRESSETT

39. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 38 of the Complaint.

40. As alleged above, on information and belief, ALLIANCE obtained its license to make authorized access to CoStar's database by fraud and deceit when it failed to identify the true purposes it intended to make of the authorized user identifications and passcodes it was provided pursuant to the License Agreement. ALLIANCE made representations to CoStar and its employees and agents that it would limit its use of the licensed CoStar products to its employees or independent contractors working exclusively for ALLIANCE.

41. GRESSETT accessed CoStar's database and products by fraud and deceit when he identified himself as employees of or independent contractors working exclusively for ALLIANCE by using the user names and passcodes assigned to ALLIANCE by CoStar. Had CoStar been aware that GRESSETT was not an employee of or independent contractor working exclusively for ALLIANCE, CoStar would have denied such access.

42. Defendants' fraudulent conduct, including their false denials of wrongdoing, has been improper, willful, wanton and/or in reckless disregard of CoStar's rights. Defendants have been unjustly enriched as a result of their unauthorized access. Defendants' conduct has harmed and will continue to harm CoStar. As a result, CoStar has suffered and will continue to suffer losses and irreparable injury, in amounts not yet ascertained. CoStar's remedy at law is not itself adequate to compensate it for injuries inflicted by Defendants. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT IV
TORTIOUS INTERFERENCE WITH CONTRACT
AND PROSPECTIVE BUSINESS RELATIONSHIP BY ALLIANCE

43. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 42 of the Complaint.

44. ALLIANCE was at all pertinent times aware of CoStar's standard licensing terms, including its prohibition of the sharing of user names and passcodes.

45. ALLIANCE intentionally, maliciously and unjustifiably interfered with CoStar's prospective business relationships with potential subscribers by providing one or more of the ALLIANCE user names and passcodes to LAWSON, GRESSETT, GATEEL and DOES.

46. ALLIANCE intentionally, maliciously and unjustifiably induced LAWSON, GRESSETT, GATEEL and DOES to breach contracts with CoStar, namely the online Terms of Use at

www.costar.com, by providing, either directly or indirectly, one or more ALLIANCE user names and passcodes to LAWSON, GRESSETT, GATEEL and DOES.

47. CoStar has been damaged as a result of ALLIANCE's interference, which was improper, willful, wanton and/or in reckless disregard of CoStar's rights. Additionally, ALLIANCE has been unjustly enriched by their interference.

COUNT V
COPYRIGHT INFRINGEMENT BY LAWSON, GRESSETT, GATEEL AND DOES

48. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 47 of the Complaint.

49. CoStar owns valid copyrights in the compilations of data, information, and original content that form its databases of commercial real estate property information. CoStar has registered its copyrights in those compilations with the United States Copyright Office on a regular basis.

50. CoStar owns valid copyrights in millions of commercial real estate photographs taken by CoStar photographers. CoStar has registered the vast majority of those photographs with the United States Copyright Office on a quarterly basis.

51. By virtue of their unauthorized access to CoStar's products, LAWSON, GRESSETT, GATEEL and DOES have infringed CoStar's copyrights in its database compilations, including by reproducing, distributing and/or displaying original and protectable expression covered by CoStar's compilation copyrights.

52. By virtue of their unauthorized access to CoStar's products, LAWSON, GRESSETT, GATEEL and DOES have infringed CoStar's copyrights in its commercial real estate photographs, including by reproducing, distributing and/or displaying such photographs, in violation of 17 U.S.C. § 501 et seq. Upon information and belief, LAWSON, GRESSETT, GATEEL and DOES have infringed

CoStar's copyrights in at least 67 photographs. A list of these photographs, as well as the copyright registration numbers corresponding to such photographs, are attached hereto as Exhibit A.

53. LAWSON's, GRESSETT's, GATEEL's and DOES' infringement of CoStar's copyrights was willful and with notice of CoStar's copyrights in its database compilations and its photographs.

54. Because CoStar registered its copyrights in the database compilations and commercial real estate photographs infringed by LAWSON, GRESSETT, GATEEL and DOES prior to their infringement and/or within three months of the publication of such copyrighted works, CoStar is entitled to an award of statutory damages of no less than \$750 and up to \$150,000 per work, as well as the attorney's fees and costs of prosecuting this action, pursuant to 17 U.S.C. § 501 et seq.

55. As a result of LAWSON's, GRESSETT's, GATEEL's and DOES' infringement, CoStar has suffered an injury for which there is no adequate remedy at law and that requires injunctive relief.

COUNT VI
COPYRIGHT INFRINGEMENT BY ALLIANCE

56. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 55 of the Complaint.

57. As set forth in Paragraphs 48 through 55, LAWSON, GRESSETT, GATEEL and DOES have each infringed CoStar's copyrights.

58. ALLIANCE, by virtue of the fact that it had possession of CoStar user names and passcodes, had access to CoStar products and CoStar's Internet website. By providing such CoStar user names and passcodes to LAWSON and GATEEL, ALLIANCE materially contributed to LAWSON and GATEEL's infringement of CoStar's copyrights.

59. ALLIANCE directly or indirectly provided such CoStar user names and passcodes with knowledge that LAWSON, GRESSETT, GATEEL and DOES would use such user names and passcodes to access CoStar's Internet website and thus infringe CoStar's copyrights.

60. As a result of ALLIANCE's conduct in facilitating and materially contributing to LAWSON's, GRESSETT's, GATEEL's and DOES' infringement of CoStar's copyrights, ALLIANCE is liable for contributory copyright infringement. ALLIANCE's contributory infringement was willful.

61. By virtue of the fact that ALLIANCE had control over the user names and passcodes assigned by CoStar, ALLIANCE had the right and ability to control use of those user names and passcodes by LAWSON, GRESSETT, GATEEL and DOES.

62. Upon information and belief, at least LAWSON paid ALLIANCE for the use of the CoStar user names and passcodes assigned to ALLIANCE, and thus ALLIANCE has obtained a direct financial benefit from LAWSON's infringement of CoStar's copyrights. CoStar is continuing to investigate whether the other Defendants, including the DOES, also paid ALLIANCE for the use of the CoStar user names and passcodes

63. As a result of ALLIANCE's conduct, ALLIANCE is liable for vicarious copyright infringement. ALLIANCE's vicarious infringement was willful.

64. Because CoStar registered its copyrights in the database compilations and commercial real estate photographs infringed by LAWSON, GRESSETT, GATEEL and DOES prior to their infringement and/or within three months of the publication of such copyrighted works, CoStar is entitled to an award of statutory damages of no less than \$750 and up to \$150,000 per work, as well as the attorney's fees and costs of prosecuting this action, pursuant to 17 U.S.C. § 501 et seq. ALLIANCE is

responsible for such statutory damages as a joint tortfeasor with LAWSON, GRESSETT, GATEEL and DOES.

65. As a result of ALLIANCE's infringement, CoStar has suffered an injury for which there is no adequate remedy at law and that requires injunctive relief.

COUNT VII
VIOLATION BY LAWSON, GRESSETT, GATEEL and DOES OF § 18 U.S.C. 1030:
FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS

66. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 65 of the Complaint.

67. The computer system on which CoStar's databases reside is a computer used in interstate commerce or communication, and is thus a protected computer under 18 U.S.C. § 1030.

68. When LAWSON, GRESSETT, GATEEL and DOES accessed the passcode-protected portions of the CoStar Internet website, LAWSON, GRESSETT, GATEEL and DOES intentionally accessed a protected computer without authorization.

69. LAWSON's, GRESSETT's, GATEEL's and DOES' unauthorized access of a protected computer has caused damage to CoStar that has amounted in an aggregated loss of over \$5,000 during a one-year period.

70. LAWSON's, GRESSETT's, GATEEL's and DOES' conduct has harmed and will continue to harm CoStar. As a result, CoStar has suffered and will continue to suffer losses, damages, and irreparable injury, in amounts not yet ascertained. CoStar's remedy at law is not itself adequate to compensate it for injuries inflicted by LAWSON, GRESSETT, GATEEL and DOES. Accordingly, CoStar is entitled to damages and injunctive relief.

COUNT VIII
CIVIL RICO VIOLATIONS BY ALL DEFENDANTS

71. CoStar realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 70 of the Complaint.

72. Defendants' infringement of CoStar's copyright was willful and for the purpose of commercial advantage or private financial gain. Furthermore, the total retail value of access to CoStar's copyrighted works, as well as the copies made therefrom, exceeds \$1,000.

73. Defendants' infringement of CoStar's copyrights was thus criminal copyright infringement under 17 U.S.C. § 506. Such criminal copyright infringement is a predicate activity that supports a Civil RICO claim under 18 U.S.C. § 1961.

74. Through their consistent interactions and dealings with each other, and because their relationship is in part based upon the willful and criminal infringement of CoStar's copyrights and other rights, Defendants are associated in fact and constitute an "enterprise" for the purposes of 18 U.S.C. § 1961(4).

75. Defendants have engaged in conduct that forms a pattern of racketeering activity for the purposes of 18 U.S.C. § 1961, namely criminal copyright infringement, over the past four years, including by the aforementioned infringement of CoStar's copyrights.

76. CoStar has been directly injured by Defendants' racketeering activity.

77. Defendants are thus liable under Civil RICO for the injury they have caused CoStar.

PRAYER FOR RELIEF

WHEREFORE, CoStar asks that this Court:

- (1) Enter a judgment against ALLIANCE that it has breached its contract with CoStar;

(2) Enter a judgment against LAWSON, GRESSETT, GATEEL and DOES that they have breached their contracts with CoStar;

(2) Grant a preliminary and permanent injunction (a) restraining and enjoining Defendants and any of their principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, from (i) making any unauthorized access to or use of any CoStar database service, (ii) interfering with CoStar's current or prospective contracts pertaining to use and access of any CoStar's database, and (iii) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (ii) above; and (b) ordering Defendants and any of their principals, officers, agents, servants, employees, attorneys, successors and assigns, and all persons in active concert or participation with them, to permanently delete and destroy all portions of any CoStar database service within their possession, and within ten (10) days provide CoStar with a signed affidavit certifying completion of such deletion/destruction;

(3) Enter judgment against Defendants and in favor of CoStar for disgorgement of any amounts by which they was unjustly enriched;

(4) Enter judgment against Defendants and in favor of CoStar for compensatory damages;

(5) Enter judgment against Defendants and in favor of CoStar for punitive damages;

(6) For an award of statutory damages of \$10,050,000 as a result of Defendants' willful infringement of CoStar's copyrights.

(7) For an award of treble damages pursuant to 18 U.S.C. § 1961 and other applicable laws.

(8) For an award of the costs of this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505, 18 U.S.C. § 1961, and other applicable laws.

(6) Enter judgment against Defendants and in favor of CoStar for prejudgment interest, costs and attorneys' fees; and

(7) Grant CoStar such other and further relief as is just.

Dated: March 13, 2008

Respectfully submitted,

/s/ Shari Ross Lahlou

Shari Ross Lahlou, Bar. No. 16570

Crowell & Moring LLP

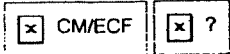
1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone (202) 624-2500

Facsimile (202) 628-5116

Attorneys for Plaintiffs CoSTAR REALTY
INFORMATION, INC., a Delaware Corporation,
and CoSTAR GROUP, INC., a Delaware
Corporation



- [Civil](#)
- [Criminal](#)
- [Query](#)
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- [Utilities](#)
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Complaints and Other Initiating Documents

8:08-cv-00663 CoStar Realty Information, Inc. et al v. MARK FIELD D/B/A ALLIANCE VALUATION GROUP et al

Processing
Processing... please wait.

U.S. District Court

District of Maryland

Notice of Electronic Filing

The following transaction was entered by Lahlou, Shari on 3/13/2008 at 11:22 AM EDT and filed on 3/13/2008

Case Name: CoStar Realty Information, Inc. et al v. MARK FIELD D/B/A ALLIANCE VALUATION GROUP et al
Case Number: 8:08-cv-663
Filer: CoStar Realty Information, Inc.
Costar Group, Inc.

Document Number: 1

Docket Text:
COMPLAINT against MARK FIELD D/B/A ALLIANCE VALUATION GROUP, LAWSON VALUATION GROUP, INC., RUSS A GRESSETT, GERALD A. TEEL COMPANY, INC., JOHN DOES 1-5 (Filing fee \$ 350 receipt number 0416000000001665243.), filed by CoStar Realty Information, Inc., Costar Group, Inc.. (Attachments: # (1) Exhibit Exhibit A, # (2) Civil Cover Sheet, # (3) LR 103 Corporate Disclosure, # (4) Summons - Teel, # (5) Summons - Lawson, # (6) Summons - Field, # (7) Summons - Gressett) (Lahlou, Shari)

8:08-cv-663 Notice has been electronically mailed to:

Shari Ross Lahlou slahlou@crowell.com

8:08-cv-663 Notice will not be electronically delivered to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1046883720 [Date=3/13/2008] [FileNumber=1761368-0

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Document description:Exhibit Exhibit A

Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

Electronic document Stamp:

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Document description: LR 103 Corporate Disclosure

Original filename:n/a

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Original filename:n/a

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Original filename:n/a

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Original filename:n/a

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Document description: Summons - Gressett

Original filename:n/a

Electronic document Stamp:

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EXHIBIT E

**U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:08-cv-00663-AW**

CoStar Realty Information, Inc. et al v. Mark Field, et al
Assigned to: Judge Alexander Williams, Jr
Demand: \$9,999,000
Cause: 17:501 Copyright Infringement

Date Filed: 03/13/2008
Jury Demand: Defendant
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

CoStar Realty Information, Inc.

represented by **Shari Ross Lahlou**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Email: ssarich@crowell.com
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ATTORNEY TO BE NOTICED

Plaintiff

CoStar Group, Inc.

represented by **Shari Ross Lahlou**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sanya Sarich
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

William J Sauers
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Mark Field
doing business as
Alliance Valuation Group

represented by **R Wayne Pierce**
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Annapolis, MD 21401-7015
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Defendant

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Email: sbrier@eapdlaw.com

*PRO HAC VICE
ATTORNEY TO BE NOTICED*

Defendant

Russ A. Gressett

represented by **Mary Olga Lovett**
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12025308544
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Email: schneebaums@gtlaw.com
ATTORNEY TO BE NOTICED

Defendant

Gerald A. Teel Company, Inc.

Defendant

John Does 1-5

Defendant

Pathfinder Mortgage Company

represented by **R Wayne Pierce**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
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03/13/2008	<u>1</u>	COMPLAINT against MARK FIELD D/B/A ALLIANCE VALUATION GROUP, LAWSON VALUATION GROUP, INC., RUSS A GRESSETT, GERALD A. TEEL COMPANY, INC., JOHN DOES 1-5 (Filing fee \$ 350 receipt number 0416000000001665243.), filed by CoStar Realty Information, Inc., Costar Group, Inc.. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Civil Cover Sheet, # <u>3</u> LR 103 Corporate Disclosure, # <u>4</u> Summons - Teel, # <u>5</u> Summons - Lawson, # <u>6</u> Summons - Field, # <u>7</u> Summons - Gressett)(Lahlou, Shari) (Entered: 03/13/2008)
03/13/2008	<u>2</u>	Local Rule 103.3 Disclosure Statement by CoStar Realty Information, Inc., CoStar Group, Inc. (elt, Deputy Clerk) (Entered: 03/13/2008)
03/13/2008	<u>3</u>	Summons Issued 20 days as to Mark Field, Lawson Valuation Group, Inc., Russ A. Gressett, Gerald A. Teel Company, Inc. (elt, Deputy Clerk) (Entered: 03/13/2008)
03/19/2008	<u>4</u>	MOTION to Appear Pro Hac Vice for Sanya Sarich on behalf of CoStar Realty Information, Inc., CoStar Group, Inc. Filing fee \$ 50, receipt number 0416000000001670721. by CoStar Realty Information, Inc., CoStar Group, Inc. (Lahlou, Shari) (Entered: 03/19/2008)
03/19/2008	<u>5</u>	PAPERLESS ORDER granting <u>4</u> Motion to Appear Pro Hac Vice for attorney Sanya Sarich on behalf of CoStar Realty Information, Inc., CoStar Group, Inc.. Signed by Clerk on 3/19/2008. (ts, Deputy Clerk) (Entered: 03/19/2008)
04/03/2008	<u>6</u>	AMENDED COMPLAINT against all defendants, filed by CoStar Realty Information, Inc., CoStar Group, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit Summons - Pathfinder)(Lahlou, Shari) (Entered: 04/03/2008)
04/04/2008	<u>7</u>	Summons Issued 20 days as to Pathfinder Mortgage Company. (elt, Deputy Clerk) (Entered: 04/04/2008)
04/08/2008	<u>8</u>	MOTION to Appear Pro Hac Vice for Simeon D. Brier on behalf of Lawson Valuation Group, Inc. Filing fee \$ 50, receipt number 84637012375. by Lawson Valuation Group, Inc. (elt, Deputy Clerk) (Entered: 04/08/2008)
04/08/2008	<u>9</u>	MOTION to Appear Pro Hac Vice for Gary A. Woodfield on behalf of Lawson Valuation Group, Inc. Filing fee \$ 50, receipt number 84637012374. by Lawson Valuation Group, Inc. (elt, Deputy Clerk) (Entered: 04/08/2008)
04/09/2008	<u>10</u>	PAPERLESS ORDER granting <u>8</u> Motion to Appear Pro Hac Vice for attorney Simeon D. Brier on behalf of Lawson Valuation Group, Inc.. Directing attorney Simeon D. Brier to register on-line for CM/ECF at http://www.mdd.uscourts.gov/attorney/registration.asp . Signed by Clerk on 4/9/2008. (ts, Deputy Clerk) (Entered: 04/09/2008)
04/09/2008	<u>11</u>	PAPERLESS ORDER granting <u>9</u> Motion to Appear Pro Hac Vice for attorney Gary A. Woodfield on behalf of Lawson Valuation Group, Inc.. Directing attorney Gary A. Woodfield to register on-line for CM/ECF at http://www.mdd.uscourts.gov/attorney/registration.asp . Signed by Clerk on 4/9/2008. (ts, Deputy Clerk) (Entered: 04/09/2008)
04/09/2008	<u>12</u>	MOTION for Extension of Time (<i>Unopposed</i>) by Lawson Valuation Group, Inc. Responses due by 4/28/2008 (Attachments: # <u>1</u> Exhibit A - Proposed Order)(Armstrong, James) (Entered: 04/09/2008)

04/10/2008	<u>14</u>	MOTION to Appear Pro Hac Vice for Mary-Olga Lovett on behalf of Russ A. Gressett Filing fee \$ 50, receipt number 84637012409. by Russ A. Gressett (elt, Deputy Clerk) (Entered: 04/14/2008)
04/14/2008	<u>13</u>	MOTION to Appear Pro Hac Vice for Pamela Ferguson on behalf of Russ A. Gressett Filing fee \$ 50, receipt number 84637012408. by Russ A. Gressett (elt, Deputy Clerk) (Additional attachment(s) added on 4/15/2008: # <u>1</u> Proh Hac) (rank, Deputy Clerk). (Additional attachment(s) added on 4/15/2008: # pro hac) (rank, Deputy Clerk). (Entered: 04/14/2008)
04/14/2008	<u>15</u>	PAPERLESS ORDER "Granting" <u>12</u> Motion for Extension of Time (Unopposed) Signed by Judge Alexander Williams, Jr on 4/14/08 (Williams, Alexander) (Entered: 04/14/2008)
04/14/2008	<u>16</u>	PAPERLESS ORDER granting <u>14</u> Motion to Appear Pro Hac Vice for attorney Mary-Olga Lovett on behalf of Russ A. Gressett. Directing attorney Mary-Olga Lovett to register on-line for CM/ECF at http://www.mdd.uscourts.gov/attorney/registration.asp . Signed by Clerk on 4/14/08. (cmns, Deputy Clerk) (Entered: 04/14/2008)
04/14/2008	<u>17</u>	MOTION for Extension of Time by Russ A. Gressett Responses due by 5/1/2008 (Attachments: # <u>1</u> Exhibit A)(Schneebaum, Steven) (Entered: 04/14/2008)
04/15/2008	<u>18</u>	PAPERLESS ORDER granting <u>13</u> Motion to Appear Pro Hac Vice for attorney Pamela A Ferguson on behalf of Russ A. Gressett. Directing attorney Pamela A Ferguson to register on-line for CM/ECF at http://www.mdd.uscourts.gov/attorney/registration.asp . Signed by Clerk on 4/15/08. (cmns, Deputy Clerk) (Entered: 04/15/2008)
04/16/2008	<u>19</u>	Local Rule 103.6.c. (Attachments: # <u>1</u> Exhibit First Amended Complaint With Marked Changes)(Lahlou, Shari) (Entered: 04/16/2008)
04/16/2008	<u>20</u>	NOTICE of Appearance by William J Sauers on behalf of CoStar Realty Information, Inc., CoStar Group, Inc. (Sauers, William) (Entered: 04/16/2008)
04/16/2008	<u>21</u>	SUMMONS Returned Executed by CoStar Realty Information, Inc., CoStar Group, Inc.. Gerald A. Teel Company, Inc. served on 3/18/2008, answer due 4/7/2008. (Lahlou, Shari) (Entered: 04/16/2008)
04/16/2008	<u>22</u>	SUMMONS Returned Executed by CoStar Realty Information, Inc., CoStar Group, Inc.. Lawson Valuation Group, Inc. served on 3/17/2008, answer due 4/7/2008. (Lahlou, Shari) (Entered: 04/16/2008)
04/16/2008	<u>23</u>	SUMMONS Returned Executed by CoStar Realty Information, Inc., CoStar Group, Inc.. Mark Field served on 3/22/2008, answer due 4/11/2008. (Lahlou, Shari) (Entered: 04/16/2008)
04/16/2008	<u>24</u>	SUMMONS Returned Executed by CoStar Realty Information, Inc., CoStar Group, Inc.. Russ A. Gressett served on 3/24/2008, answer due 4/14/2008. (Lahlou, Shari) (Entered: 04/16/2008)
04/21/2008	<u>25</u>	PAPERLESS ORDER "Granting" <u>17</u> Motion for Extension of Time Signed by Judge Alexander Williams, Jr on 4/21/08 (Williams, Alexander) (Entered: 04/21/2008)
04/21/2008	<u>26</u>	ANSWER to <u>6</u> Amended Complaint by Mark Field.(Pierce, R) (Entered: 04/21/2008)
04/21/2008	<u>27</u>	NOTICE by Mark Field <i>Disclosure</i> (Pierce, R) (Entered: 04/21/2008)

04/29/2008	<u>28</u>	ANSWER to <u>6</u> Amended Complaint by Pathfinder Mortgage Company.(Pierce, R) (Entered: 04/29/2008)
04/29/2008	<u>29</u>	NOTICE by Pathfinder Mortgage Company <i>Disclosure</i> (Pierce, R) (Entered: 04/29/2008)
05/01/2008	<u>30</u>	MOTION to Dismiss <i>Amended Complaint (with Supporting Memorandum)</i> by Lawson Valuation Group, Inc. Responses due by 5/19/2008 (Attachments: # <u>1</u> Exhibit A - Declaration of Douglas B. Lawson)(Woodfield, Gary) (Entered: 05/01/2008)
05/01/2008	<u>31</u>	NOTICE by Lawson Valuation Group, Inc. of <i>Disclosure</i> (Woodfield, Gary) (Entered: 05/01/2008)
05/01/2008	<u>32</u>	MOTION to Dismiss for Lack of Jurisdiction, MOTION to Dismiss, MOTION to Transfer Case by Russ A. Gressett Responses due by 5/19/2008 (Attachments: # <u>1</u> Affidavit Russ A. Gressett)(Ferguson, Pamela) (Entered: 05/01/2008)
05/19/2008	<u>33</u>	RESPONSE in Opposition re <u>30</u> MOTION to Dismiss <i>Amended Complaint (with Supporting Memorandum)</i> , <u>32</u> MOTION to Dismiss for Lack of Jurisdiction MOTION to Transfer Case filed by CoStar Realty Information, Inc., CoStar Group, Inc.. Replies due by 6/2/2008. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit 1 to Exhibit B, # <u>4</u> Exhibit 2 to Exhibit B, # <u>5</u> Exhibit 3 to Exhibit B, # <u>6</u> Exhibit 4 to Exhibit B, # <u>7</u> Exhibit 5 to Exhibit B)(Sauers, William) (Entered: 05/19/2008)
05/19/2008	<u>34</u>	Request for Hearing re <u>33</u> Response in Opposition to Motion, <u>30</u> MOTION to Dismiss <i>Amended Complaint (with Supporting Memorandum)</i> , <u>32</u> MOTION to Dismiss for Lack of Jurisdiction MOTION to Transfer Case. (Sauers, William) (Entered: 05/19/2008)
05/28/2008	<u>35</u>	STIPULATION <i>Proposed Final Judgment as to Defendant Gerald A. Teel Co., Inc.</i> by CoStar Realty Information, Inc., CoStar Group, Inc.. (Sauers, William) (Entered: 05/28/2008)
05/30/2008	<u>36</u>	MOTION for Extension of Time to File Response/Reply as to <u>33</u> Response in Opposition to Motion, (<i>Unopposed</i>) by Lawson Valuation Group, Inc. Responses due by 6/16/2008 (Attachments: # <u>1</u> Exhibit A - Proposed Order)(Brier, Simeon) (Entered: 05/30/2008)
05/30/2008	<u>37</u>	PAPERLESS ORDER granting re [<u>36</u> MOTION for Extension of Time to File Response/Reply as to <u>33</u> Response in Opposition to Motion, (<i>Unopposed</i>). Signed by Judge Alexander Williams, Jr on 05/30/08. (gc, Chambers) (Entered: 05/30/2008)
06/02/2008	<u>38</u>	MOTION for Extension of Time to File Response/Reply by Russ A. Gressett. Responses due by 6/19/2008 (Attachments: # <u>1</u> Exhibit Order Granting Defendant Russ A. Gressett's Unopposed Motion For Enlargement of Time)(Ferguson, Pamela) (Entered: 06/02/2008)
06/03/2008	<u>39</u>	PAPERLESS ORDER "Approving" <u>35</u> Stipulation of Proposed Final Judgment as to Defendant Gerald A. Teel Co., Inc. filed by CoStar Realty Information, Inc., CoStar Group, Inc. Signed by Judge Alexander Williams, Jr on 6/3/08 (Williams, Alexander) (Entered: 06/03/2008)
06/03/2008	<u>40</u>	PAPERLESS ORDER "Granting" <u>38</u> Unopposed Motion for Extension of Time to File Response/Reply Signed by Judge Alexander Williams, Jr on 6/3/08 (Williams, Alexander) (Entered: 06/03/2008)

06/03/2008	<u>41</u>	[FILED IN ERROR- Docketed as No. 39] PAPERLESS ORDER GRANTING re <u>35</u> Stipulation filed by CoStar Realty Information, Inc., CoStar Group, Inc.. Signed by Judge Alexander Williams, Jr on 06/03/08. (gc, Chambers) Modified on 6/3/2008 (ch, Deputy Clerk). (Entered: 06/03/2008)
06/16/2008	<u>42</u>	MOTION for Extension of Time by Lawson Valuation Group, Inc. Responses due by 7/3/2008 (Attachments: # <u>1</u> Exhibit)(Woodfield, Gary) (Entered: 06/16/2008)
06/17/2008	<u>43</u>	RESPONSE in Opposition re <u>42</u> MOTION for Extension of Time filed by CoStar Realty Information, Inc., CoStar Group, Inc.. Replies due by 7/1/2008. (Sauers, William) (Entered: 06/17/2008)
06/17/2008	<u>44</u>	MOTION for Extension of Time to File Response/Reply by Russ A. Gressett. Responses due by 7/7/2008 (Attachments: # <u>1</u> Exhibit Exhibit A - Affidavit and Verification of Christopher C. Miller, # <u>2</u> Exhibit Exhibit B - Order Granting Defendant Russ A. Gressett's Motion For Enlargement of Time)(Ferguson, Pamela) (Entered: 06/17/2008)
06/20/2008	<u>45</u>	REPLY to Response to Motion re <u>32</u> MOTION to Dismiss for Lack of Jurisdiction MOTION to Transfer Case <i>and Objections to Responsive Evidence</i> filed by Russ A. Gressett. (Ferguson, Pamela) (Entered: 06/20/2008)
06/23/2008	<u>46</u>	REPLY to Response to Motion re <u>42</u> MOTION for Extension of Time, <u>30</u> MOTION to Dismiss <i>Amended Complaint (with Supporting Memorandum)</i> filed by Lawson Valuation Group, Inc.. (Woodfield, Gary) (Entered: 06/23/2008)
06/25/2008	<u>47</u>	ORDER granting <u>42</u> Motion for Extension of Time, that the Court will accept Defendant Lawson's Reply, filed on June 23, 2008; granting <u>44</u> Motion for Extension of Time to File Response/Reply; that the Court will accept Defendant Gressett's Reply, filed on June 20, 2008. Signed by Judge Alexander Williams, Jr on 6/25/2008. (elt, Deputy Clerk) (Entered: 06/25/2008)

EXHIBIT F

**U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:08-cv-01575-AW**

CoStar Realty Information, Inc. et al v. Klein & Heuchan, Inc. et al
Assigned to: Judge Alexander Williams, Jr
Demand: \$9,999,000
Cause: 17:101 Copyright Infringement

Date Filed: 06/17/2008
Jury Demand: None
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

CoStar Realty Information, Inc.

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ATTORNEY TO BE NOTICED

Plaintiff

CoStar Group, Inc.

represented by **Shari Ross Lahlou**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William J Sauers
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Klein & Heuchan, Inc.

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 Baltimore, MD 21202
 14107836300
 Fax: 14107836410
 Email: pmfinamore@niles-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Scott Bell

Date Filed	#	Docket Text
06/17/2008	<u>1</u>	COMPLAINT against Scott Bell, Klein & Heuchan, Inc. (Filing fee \$ 350 receipt number 0416000000001757356.), filed by CoStar Realty Information, Inc., CoStar Group, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet, # <u>3</u> Summons - Bell, # <u>4</u> Summons - Klein)(Sauers, William) (Entered: 06/17/2008)
06/17/2008	<u>2</u>	Local Rule 103.3 Disclosure Statement by CoStar Realty Information, Inc., CoStar Group, Inc. identifying Corporate Parent CoStar Group, Inc. for CoStar Realty Information, Inc... (Sauers, William) (Entered: 06/17/2008)
06/19/2008	<u>3</u>	Summons Issued 20 days as to Scott Bell, Klein & Heuchan, Inc. (ch, Deputy Clerk) (Entered: 06/19/2008)
07/14/2008	<u>4</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>1</u> Complaint, by Klein & Heuchan, Inc.. Responses due by 7/31/2008 (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Text of Proposed Order)(Finamore, Paul) (Entered: 07/14/2008)
07/15/2008	<u>5</u>	PAPERLESS ORDER "Granting" <u>4</u> Motion for Extension of Time to File Response/Reply Signed by Judge Alexander Williams, Jr on 7/15/08 (Williams, Alexander) (Entered: 07/15/2008)

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KLEIN & HEUCHAN, INC.,

Plaintiff,

v.

COSTAR REALTY INFORMATION, INC.,
and COSTAR GROUP, INC,

Defendants.

Civil Action No. 8:08-cv-01227-JSM-MSS

DECLARATION OF STEVEN J. WILLIAMS

I, Steven J. Williams, declare as follows:

1. My name is Steven J. Williams. I am employed by CoStar Group, Inc. ("CoStar") as the Assistant Director of the Fraud, Theft & Litigation Team. The statements in this declaration are based upon personal knowledge and I would testify to such statements under oath if called upon as a witness.

2. I have been working in CoStar's legal department since September of 2003 in various capacities related to the investigation of unauthorized use of CoStar's services. As a result of my experience, I have become very familiar with CoStar's policies, practices, and procedures for both licensing its online products, providing service to its clients, investigating theft of its products, as well as the technological tools it uses to do those things.

3. Attached to this Declaration as Exhibit 1 is a true and accurate copy of CoStar's Online Terms of Use. Users of CoStar's services is presented with CoStar's Online Terms of Use the first time they log in to CoStar's website. Before they may begin using CoStar's

products, they must click "I Accept" to the Online Terms of Use. Without indicating such acceptance, the person is not able to use CoStar's products. In addition, CoStar's software periodically requires users to review the Online Terms of Use again and to confirm their acceptance of those Terms of Use.

4. CoStar keeps internal records of each log-in session made to its products. These records are kept in CoStar's ordinary course of business and reflect the data gathered from CoStar's website as well as the information available from a user's computer and the Internet related to a particular log-on session.

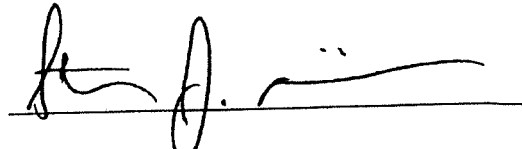
5. Those records show that one or more persons using a user name and password assigned to Scott Bell logged on to CoStar's website on at least 148 occasions for a total of over 49 hours, involving "hits" to 14,025 pages on the CoStar website. By virtue of having logged on to CoStar's website, Scott Bell accordingly would have had to indicate his acceptance to CoStar's Online Terms of Use. I am attaching a true and correct copy of a log of the log-ins under the name Scott Bell as Exhibit 2 to this declaration.

6. I understand that CoStar is requesting a transfer of venue to Maryland from the Middle District of Florida. It would be inconvenient for CoStar if this case remained in Florida. CoStar's computer servers, on which access records are kept, are located in Maryland. All of the documents upon which CoStar would rely to prove Bell's use of CoStar's website and products, its ownership and registration of the photographs and databases infringed by Bell and K&H, and CoStar's damages, are all located in Maryland at CoStar's Bethesda, Maryland, offices. In addition, all of the witnesses who would testify on behalf of CoStar in defense of CoStar and in support of CoStar's claims all work out of CoStar's Bethesda office. It would be inconvenient

for both CoStar and its employee witnesses to travel to Florida for depositions, discovery, hearings, and any trial in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July at ²⁰⁰⁸ Bethesda, Maryland.



Steven J. Williams

EXHIBIT 1

COSTAR TERMS OF USE

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Purpose of Site

The Site is designed to provide information about commercial real estate and CoStar and its affiliates. The information and services offered on or through this Site are provided solely for general business information, do not constitute real estate, legal, tax, accounting or other professional advice, or an offer to sell or lease real estate, and may not be used for personal, family or household purposes or to determine an individual's eligibility for credit, insurance, or employment.

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The information, data, text, software, photographs, images, graphics, organization, layout, design, and other content contained on or provided through this Site (collectively, the "Content") are proprietary to CoStar and its licensors, and are protected by copyright and other U.S. and international intellectual property rights, laws and treaties. The Content includes proprietary databases (the "Database") of commercial real estate information, which, by way of example, include information, text, photographic and other images and data contained therein (collectively, the "Information") and the proprietary organization and structures for categorizing, sorting and displaying such information, and the related software ("Software"). The Site, Content, Database, Information, Software and any portion of the foregoing, including any derivatives, successors, updates or modifications provided thereto and any information derived from the use of the Database, including as a result of the verification of any portion of the Information, are collectively referred to herein as the "Product".

Those portions of the Product that may be accessed by the general public and that do not require any use of Passcodes (as defined below) are referred to as the "Non-Passcode Protected Product". Those portions of the Product that require use of Passcodes for access and are available only to individuals or entities ("CoStar Clients"), or those acting through them, who enter into a License Agreement (as defined below) with CoStar that authorizes access to such CoStar service are referred to as the "Passcode Protected Product".

The Passcode Protected Product includes, for example, the CoStar Property Professional™, CoStar COMPS Professional™, CoStar Exchange® and CoStar Tenant® services as well as the CoStar COMPS Express®, CoStar Property Express™, and CoStar Commercial MLS™ services. A "License Agreement" is defined as either (i) a written hand-signed contract between a CoStar Client and CoStar that authorizes access to a CoStar service, or (ii) an online contract between the CoStar Client and CoStar that is formed by online registration and acceptance of these Terms of Use and that authorizes access to a CoStar service.

Only Authorized Users for a Passcode Protected Product may access such product and they may access it solely using the user name, password and, if applicable, key token (collectively, the "Passcodes") assigned to such user by CoStar. No Authorized User may share his Passcodes with any other person, nor may an Authorized User allow any other person to use or have access to his Passcodes. An Authorized User is defined as an individual (a) employed by a CoStar Client or an Independent Contractor (as defined below) of a CoStar Client at a site identified in the License Agreement, and (b) who is specified in the License Agreement as a user of a specific Passcode-Protected Product. An "Independent Contractor" is defined as an individual person working solely for the CoStar Client and not another company with real estate information needs and performing substantially the same services for such CoStar Client as an employee of such CoStar Client.

Free Trial

From time to time, in CoStar's sole discretion, CoStar may offer a free trial period ("Free Trial") to certain individuals ("Free Trial Participant") chosen by CoStar to participate in the free trial. Unless terminated sooner by CoStar, the Free Trial shall last for the length of time specified in the email from CoStar that distributes Passcodes to the Free Trial Participant. The terms set forth in that email, combined with these Terms of Use, shall constitute a License Agreement between CoStar and the Free Trial Participant relating to such individual's access to and use of the associated Passcode Protected Product being offered through the Free Trial. During the Free Trial the Free Trial Participant shall be considered an Authorized User and a CoStar Client (as defined in these Terms of Use) and may use the Passcode Protected Product during the Free Trial subject to and solely in accordance with the terms outlined in such License Agreement relating to the Free Trial (which includes these Terms of Use).

Permitted Uses

Subject to the provisions in these Terms of Use, you may use the Non-Passcode Protected Product (or, if you are an Authorized User, subject to the provisions in your License Agreement and these Terms of Use, you may use the applicable Passcode-Protected Product), in the ordinary course of your business for:

- (1) Your internal research purposes;
- (2) Providing information regarding particular properties and market trends to your clients and prospective clients;
- (3) Marketing properties;
- (4) Supporting your valuation, appraisal or counseling regarding a specific property; and
- (5) Creating periodic general market research reports for in-house use or for clients' or prospective clients' use, provided that such reports do not contain building-specific or tenant-specific information and are not commercially or generally distributed.

Subject to the provisions in your License Agreement and these Terms of Use, you may print information or copy information into word processing, spreadsheet and presentation programs (or other software programs with the express written consent of CoStar), so long as the level of information being printed or copied is reasonably tailored for your purposes, insubstantial and used in compliance with these use and copying provisions.

Notwithstanding the foregoing, the information you access through the "Free Building Lookup" feature on this Site may only be viewed by you for your individual, non-commercial use while

visiting this Site.

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Notwithstanding anything to the contrary herein, you shall not:

- (1) Access any portion of a Passcode-Protected Product unless you are an Authorized User for such Passcode-Protected Product using the Passcodes assigned to you by CoStar to access the components and services of the Passcode-Protected Product that your License Agreement authorizes you to access, subject to the terms contained therein and in these Terms of Use;
- (2) Access or use any portion of the Product if you are a direct or indirect competitor of CoStar, nor shall you provide, disclose or transmit any portion of the Product to any direct or indirect competitor of CoStar (by way of example, a "direct or indirect competitor" of CoStar includes, but is not limited to, Internet listing services or other real estate information services and employees, independent contractors and agents of such services);
- (3) Use or distribute any Information from the Product, including Information that has been verified or confirmed by you or anyone else, to directly or indirectly create or contribute to the development of any database or product;
- (4) Modify, merge, decompile, disassemble, translate, decode or reverse engineer any portion of the Product, or use any data mining, gathering or extraction tool, or any robot, spider or other automatic device or manual process, to monitor or copy any portion of the Product;
- (5) Use, reproduce, publish or compile any portion of the Product for the purpose of selling or licensing any portion of the Product or making any portion of the Product publicly available;
- (6) Store, copy or export any portion of the Product into any database or other software, except as expressly set forth in the Permitted Uses above;
- (7) Upload, post or otherwise publish any portion of the Product on, or provide access to any portion of the Product through, the Internet, any bulletin board system, any other electronic network, any data library, any listing service or any other data sharing arrangement, except that you may e-mail a report containing Information that complies with the Permitted Use provisions set forth above to a limited number of your clients and prospective clients;
- (8) Upload, post, e-mail or otherwise transmit any Information, data, text, software, photographs, images, graphics, or other content to or through the Product, or use any portion of this Product in a manner, that:
 - is unlawful, threatening, abusive, harmful, libelous, tortious, defamatory, false, misleading, obscene, vulgar, racially or ethnically offensive or otherwise objectionable;
 - infringes any patent, copyright, trademark, trade secret, or other proprietary right of any party or violates the privacy or publicity rights of any party;
 - constitutes unlawful advertising or fraudulent, unfair or deceptive practices, "spam," or any other form of unlawful solicitation, including the Kansas non-solicitation law (K.S.A. 45-230), which, with limited exceptions, prohibits anyone from knowingly selling, giving or receiving, for the purpose of selling or offering for sale any property or service to persons

listed therein, any list of names and addresses contained in or derived from Kansas public records;

- contains software viruses or any other computer code, files or programs that are designed to or have the capability to interrupt, modify, damage, improperly access, disable, destroy or limit the functionality of the Product or servers or networks connected thereto or the activities of other users of the Product or of any computer software or hardware or telecommunications equipment; or
- you do not have a right to transmit under any law, contractual obligation (i.e., nondisclosure agreement) or fiduciary duty;

(9) Impersonate any person or entity, or falsely state or otherwise misrepresent any registration information, or otherwise disguise the origin of any information, data, text, software, photographs, images, graphics, or other content posted on or transmitted through the Product; and

(10) Use any portion of the Product to encourage or engage in illegal activity, stalk or harass another person, or violate these Terms of Use or any applicable local, state, national or international law, rule, regulation or ordinance, including without limitation, state and local real estate practice, spam or privacy laws.

Fees

You are responsible for the timely payment of any fees incurred by your use of components and services available on the Site or via links to other web sites, and all taxes applicable to your use of the Product.

WE RESERVE THE RIGHT, AT ANY TIME AND FROM TIME TO TIME, TO PROSPECTIVELY CHANGE THE NATURE AND AMOUNT OF FEES CHARGED FOR ACCESS TO THE PRODUCT OR ANY OF THE COMPONENTS OR SERVICES AVAILABLE ON THE PRODUCT, AND THE MANNER IN WHICH SUCH FEES ARE ASSESSED.

If you are accessing the Passcode Protected Product, you agree: (1) to provide CoStar with accurate and complete registration and billing information and to promptly update such information in the event it changes; and (2) to pay any applicable license fees or other fees incurred by your use of the Passcode-Protected Product.

Termination

You acknowledge and agree that CoStar may interrupt or terminate or block your access to the Product or portions thereof at any time. In the event that occurs, you shall cease using any portion of the Product, permanently delete or destroy all portions of the Product within your possession, custody or control, and, upon written request from CoStar, certify, in writing, your compliance with this provision.

If you are a CoStar Client, your License Agreement sets forth an initial term that expires on a specified date and that may automatically renew for a specified length. Following termination or non-renewal of your License Agreement, you shall cease using any portion of the Product. In addition, you shall permanently delete or destroy all portions of the Product within your possession, custody or control and, upon written request from CoStar, certify, in writing, your compliance with this provision.

Confidentiality Within Web Version of CoStar Property Professional™

The documents stored in the "My Survey" section of the CoStar Property Professional™ service are intended to be confidential and private. Except as otherwise provided herein, CoStar personnel shall not review or disclose to others the documents or other information stored there. Authorized access is designed to be restricted to the Authorized User(s) that store the information there and other users designated by such Authorized User(s) to have access to the information.

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You represent and warrant that (a) you own or have the full right, power and authority to grant to CoStar use of and rights in and to all Submitted Content that you upload, post, e-mail or otherwise transmit to or via the Product; (b) your license of such content to CoStar hereunder does not, and the use or license of such content by CoStar to third parties will not, infringe any right or interest owned or possessed by any third party; and (c) there are no claims, judgments or settlements to be paid by you, or pending claims or litigation, relating to such content.

Information about You

When you use the Product, CoStar collects both personally and non-personally identifying information about you and your use of the Product. Such information includes (a) what you intentionally submit to us while using the Product, including, for example, by filling out forms with your contact information or by logging in with your UserID and password, and (b)

Information that may be collected automatically while you use the Product, including, for example, your IP address, your IP host, session duration, and "click stream" data that tracks user activity in the Product.

We generally use or disclose the information we collect through the Product to conduct research on and to improve the Product, to perform customer service and support, to fulfill your requests for services, and to provide you with information regarding our services, including service-related announcements.

In some but not all circumstances, at the time you submit personally identifiable information, we may provide you with the opportunity to "opt out" of some uses or disclosures of personally identifiable information. In addition, regardless of whether you exercise an opportunity to opt out, CoStar reserves the right to use or disclose the information we collect whenever we have reason to believe that use or disclosure may be necessary to identify possible violations of these Terms of Use or a separate License Agreement, to identify, contact or bring legal action against persons or entities who may be violating your rights, our rights or the rights of others, or if we believe that we are required to do so to respond to legal process or otherwise to comply with law. We also reserve the right to use and disclose the information we collect to protect the security of our software, products and services, web sites, users, and to protect ourselves from liability or in connection with a merger, acquisition or liquidation.

CoStar takes steps to protect the security of the personally identifiable information we collect, including, for example, physical, electronic, and procedural safeguards.

Although the Product can technically be viewed by children, we do not knowingly request personally identifiable information from them nor does the Product publish content that is targeted to children. No information should be submitted to, or posted at, the Product by visitors under 18 years of age.

If you have a further question, please notify us by e-mail at webmaster@costar.com. We will do our best to look into your request and respond promptly.

Links; Framing

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The Product is provided for general information only and should not be relied upon or used as the basis for making significant decisions without consulting primary or more accurate, more

complete or more timely sources of information. Any reliance upon the Product shall be at your own risk. Neither we, nor any third party involved in creating, producing or delivering the Product, is responsible if the Product is not accurate, complete or current. Neither we, nor any third party involved in creating, producing or delivering the Product, has any responsibility for any consequence relating directly or indirectly to any action or inaction that you take based on the Product.

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ANY UNAUTHORIZED USE OF THE PRODUCT. IN ADDITION, IF YOU HAVE NOT PAID ANY FEES TO COSTAR TO ACCESS THE PRODUCT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NONE OF THE COSTAR PARTIES SHALL BE LIABLE FOR ANY DIRECT DAMAGES ARISING FROM, RELATING TO OR RESULTING FROM THE PRODUCT, THESE TERMS OF USE, OR YOUR USE OR INABILITY TO USE ANY OF THE FOREGOING. THESE LIMITATIONS OF LIABILITY INCLUDE DAMAGES FOR ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAYS, COMPUTER VIRUSES, YOUR LOSS OF PROFITS, LOSS OF DATA, UNAUTHORIZED ACCESS TO AND ALTERATION OF YOUR TRANSMISSIONS AND DATA, AND OTHER TANGIBLE AND INTANGIBLE LOSSES.

NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL THE MAXIMUM AGGREGATE, CUMULATIVE LIABILITY OF THE COSTAR PARTIES FOR ANY AND ALL REASONS TO ANY PARTY FOR DAMAGES, DIRECT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT, THESE TERMS OF USE, OR A SEPARATE LICENSE AGREEMENT EXCEED THE TOTAL AMOUNT OF LICENSE FEES ACTUALLY PAID TO COSTAR UNDER THE RELEVANT LICENSE AGREEMENT BETWEEN THE RELEVANT COSTAR CLIENT AND COSTAR DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE SUCH CLAIM AROSE, REGARDLESS OF THE CAUSE OR FORM OF ACTION. RECOVERY OF THIS AMOUNT SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE COSTAR CLIENT OR ANY OTHER PARTY FOR ANY APPLICABLE DAMAGES.

UNDER NO CIRCUMSTANCES WILL ANY OF THE COSTAR PARTIES BE HELD LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR ANY OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF, BASED ON, OR RESULTING FROM, OR IN CONNECTION WITH THE PRODUCT, THESE TERMS OF USE, OR YOUR USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF COSTAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION OF DAMAGES IS INDEPENDENT OF THE EXCLUSIVE REMEDY DESCRIBED ABOVE AND SURVIVES IN THE EVENT SUCH REMEDY FAILS.

NONE OF THE COSTAR PARTIES SHALL HAVE ANY LIABILITY FOR ANY DAMAGES RESULTING FROM ANY FAILURE TO PERFORM ANY OBLIGATION HEREUNDER OR FROM ANY DELAY IN THE PERFORMANCE THEREOF DUE TO CAUSES BEYOND COSTAR'S CONTROL, INCLUDING, WITHOUT LIMITATION, INDUSTRIAL DISPUTES, ACTS OF GOD OR GOVERNMENT, PUBLIC ENEMY, WAR, FIRE, OTHER CASUALTY, FAILURE OF ANY LINK OR CONNECTION WHETHER BY COMPUTER OR OTHERWISE, OR FAILURE OF TECHNOLOGY OR TELECOMMUNICATIONS OR OTHER METHOD OR MEDIUM OF STORING OR TRANSMITTING THE PRODUCT.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

ALL OF THESE LIMITATIONS APPLY REGARDLESS OF THE CAUSE OR FORM OF ACTION, WHETHER THE DAMAGES ARE CLAIMED UNDER THE TERMS OF A CONTRACT, TORT OR OTHERWISE, AND EVEN IF WE OR OUR REPRESENTATIVES HAVE BEEN NEGLIGENT OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION ARISING OUT OF OR PERTAINING TO THESE TERMS OF USE MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

User Data

If you create any settings, surveys, fields or functions in the Product or input, add or export any

data into or from the Product (collectively, the "User Data"), none of the CoStar Parties shall have any liability or responsibility for any of such User Data, including the loss, destruction or use by third parties of such User Data. It is your responsibility to make back-up copies of such User Data.

Your Liability

If you cause a technical disruption of the Product, you agree to be responsible for any and all liabilities, costs and expenses (including reasonable attorneys' fees and costs of enforcement) arising from or related to that disruption. Upon your breach of any term of these Terms of Use or a separate License Agreement, CoStar's remedies shall include any damages and relief available at law or in equity as well as interruption and/or termination of your access to the Product or any portion thereof and permanent deletion or destruction of all portions of the Product within your possession, custody or control. If CoStar retains any third party to obtain any remedy to which it is entitled under these Terms of Use or a separate License Agreement, CoStar shall be entitled to recover all costs, including attorney's fees or collection agency commissions, CoStar incurs.

Indemnity

You agree to indemnify, defend, and hold harmless the CoStar Parties from and against any third party action, suit, claim or demand and any associated losses, expenses, damages, costs and other liabilities (including reasonable attorneys' fees), arising out of or relating to your (and your users') Submitted Content, use or misuse of any portion of the Product, or your violation of these Terms of Use or a separate License Agreement. You shall cooperate as fully as reasonably required in the defense of any such claim or demand. CoStar and any third party involved in creating, producing, or delivering the Product reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, at your expense, and you shall not in any event settle any such matter without the written consent of CoStar and any such third party.

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Last updated: May 24, 2006

EXHIBIT 2

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