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8 Attorneys for Plaintiff,
9 ENVIANCE, INC.

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 ENVIANCE, INC., a Delaware Corporation,
13 Plaintiff,

14 vs.

15 ENVIANCE SERVICES LLC; ENERGY
16 SERVICES ACQUISITIONS II, INC., a
17 Delaware Corporation; RECES LLC, a Texas
18 Domestic Limited Liability Company; and
19 DOES 1 through 50, inclusive,
20 Defendants.

CASE NO. '12CV1374 CAB BLM

**COMPLAINT FOR TRADEMARK
INFRINGEMENT (15 USC 1114);
VIOLATION OF 15 USC 1125(a); UNFAIR
COMPETITION UNDER CALIFORNIA
LAW (Ca BPC 17200 et seq); COMMON
LAW TRADEMARK INFRINGEMENT**

DEMAND FOR JURY TRIAL

21 Plaintiff ENVIANCE, INC., appearing through undersigned counsel, states as follows:

PARTIES

22 1. Plaintiff ENVIANCE, INC., a Delaware corporation (hereinafter, "Plaintiff" or "Enviance"),
23 is duly organized and existing under the laws of the State of Delaware, with its principal place of business at
24 5780 Fleet Street, Suite 200, Carlsbad, California.

25 2. Plaintiff is informed and believes and based thereon alleges that Defendant ENVIANCE
26 SERVICES LLC (hereinafter, "ES" or "Defendant(s)") is a limited liability company existing under the laws
27 of Texas with its principal places of business at 2100 West Loop South, Suite 210 Houston, Texas 77027
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1 and 1127 Eldridge Pkwy, Houston Texas 77077. On information and belief, ES is a general contractor
2 primarily engaged in environmental compliance assessment, deficiency mitigation and continuous
3 conformance needs in the oil and gas sector.

4 3. Plaintiff is informed and believes and based thereon alleges that Defendant ENERGY
5 SERVICES ACQUISITIONS II, INC. (hereinafter, "ESA2" or "Defendant(s)") is a corporation existing
6 under the laws of the State of Delaware with its principal place of business at 2100 West Loop South
7 Suite 210 Houston, Texas 77027. On information and belief, ESA2 is a general contractor primarily
8 engaging in providing services for energy assets, covering integrity, rehabilitation & maintenance and project
9 services in North America and the Gulf of Mexico.

10 4. Plaintiff is informed and believes and based thereon alleges that Defendant RECES LLC
11 (hereinafter, "RECES" or "Defendant(s)") is a domestic limited liability company existing under the laws of
12 the State of Texas with its principal place of business at 1127 Eldridge Pkwy, Houston Texas 77077.
13 RECES is a general contractor primarily engaging in environmental consulting services in the oil & gas,
14 petrochemical, pipeline & transport, refining, and chemical manufacturing industries.

15 5. Plaintiff is presently uninformed of the true names or capacities of the defendants sued herein
16 under the fictitious names DOES 1-50, inclusive (collectively hereinafter, "Defendants"). Plaintiff is
17 informed and believes, and thereupon alleges, that these Defendants fictitiously named as Doe engaged in, or
18 are in some manner responsible for, the wrongful conduct and damages to Plaintiff alleged herein. Plaintiff
19 therefore sues these Doe Defendants by such fictitious names and will amend or seek leave to amend this
20 pleading to substitute the true names and capacities of said Doe Defendants when they are ascertained.

21 **NATURE OF THIS ACTION; JURISDICTION OF THE COURT**

22 6. This is an action for trademark infringement and violation of the Trademark Act of 1946, as
23 amended, 15 U.S.C. §§ 1051 *et seq.* ("Lanham Act"), unfair competition under the statutory law of
24 California and common law trademark infringement.

25 7. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121, 28
26 U.S.C. §§ 1331 and 1338 (a) and (b), and has supplemental jurisdiction under 28 U.S.C. § 1367(a) over
27 Plaintiff's state law claims.

1 ENVIANCE in International Classes 35 and 36. On March 24, 2003, a request to divide the application was
2 made for International Class 42. The application for International Class 42 was granted Registration No.
3 2,762,766 on September 9, 2003. The registration lists the services as ““consultation in the fields of
4 environmental regulation, health, safety and compliance, substance testing, waste disposal and brownfield
5 redevelopment; providing information in the fields of environmental regulation, health, safety and
6 compliance, substance testing, waste disposal and brown field redevelopment via global computer network.”
7 The application for international classes 35 and 36 was granted Registration No. 2,976,477 on July 26, 2005.
8 The registration lists the services as “dissemination of advertising for others via global computer network” in
9 class 35 and “financial management services; insurance underwriting services in the fields of marine, fire,
10 accident, home, life and environmental risk; electronic funds transfer services” in class 36. Copies of these
11 registrations are attached hereto as Exhibits “B” and “C”, respectively, and are incorporated herein by these
12 references. These registrations are valid and subsisting.

13 15. Plaintiff’s Marks are inherently distinctive. Each of the Marks serves to identify and indicate
14 the source of Enviance’s goods and services to the consuming public, and to distinguish its goods and
15 services from those of others, including those advertised and sold by Defendants. Over the years, Enviance
16 has prominently used and promoted the Marks in advertising, promotion, and various other ways.
17 Enviance’s sales and advertising expenditures under the Marks have been extensive. Enviance has invested
18 considerable effort and resources in advertising and promoting its business and services using the Marks.
19 Enviance advertises on the internet, in catalogs and other publications, at trade shows and other venues and
20 media.

21 16. As a result of Enviance’s long usage and extensive promotion of the Marks, the Marks are
22 distinctive to designate Enviance, and they distinguish Enviance and its goods and services from others,
23 including those advertised and sold by Defendants. The Marks are well-known and widely recognized to
24 consumers, and Enviance has developed exclusive and valuable goodwill and strong federal and common
25 law rights in the Marks as a result of the usage and promotion of the Marks.

26 17. Pursuant to the Lanham Act, Enviance’s registrations identified above constitute prima
27 facie evidence of: (a) validity of the ENVIANCE marks and of the registration of those marks; (b)
28

1 Enviance’s ownership of the ENVIANCE marks; and (c) Enviance’s exclusive right to use the ENVIANCE
2 marks on or in connection with the goods and services stated in the registrations. 15 U.S.C. §§ 1057(b) and
3 1115(a). In addition, Enviance’s registrations constitute constructive notice of Enviance’s claim of
4 ownership of the ENVIANCE marks. See 15 U.S.C. § 1072. Indeed, the registrations identified in Exhibits
5 “A”, “B”, and “C” have become incontestable pursuant to 15 U.S.C. § 1065. That the ENVIANCE marks
6 have become incontestable is conclusive evidence of their validity and their respective registrations, and of
7 Enviance’s exclusive right to use them in commerce. See 15 U.S.C. § 1115(b).

8 **DEFENDANTS’ ACTIVITIES**

9 18. Plaintiff is informed and believes, and thereon alleges, that years after Enviance began using
10 and/or registered the Marks, Defendants ESA2 and RECES formed ENVIANCE SERVICES LLC as a joint
11 venture to provide environmental compliance assessment, deficiency mitigation and continuous conformance
12 services for the oil and gas sector. In the course of that, at least as of 2012, Defendants began to use the
13 terms “ENVIANCE”, “ENVIANCE SERVICES, LLC” and “ENVIANCE SERVICES” in interstate
14 commerce to promote, advertise, offer for sale and otherwise market themselves, E2 and their foregoing
15 services. The terms “ENVIANCE”, “ENVIANCE SERVICES, LLC” and “ENVIANCE SERVICES” as
16 used by Defendants are collectively referred to herein as the “Infringing Marks.” For example, Defendants
17 have named and widely promoted E2 under and in connection with the Infringing Marks, and further as a
18 result, Defendants’ use of the Infringing Marks and Defendants connection and association with the
19 Infringing Marks has been publicly disseminated in interstate commerce and among common and/or related
20 marketing and business channels and locations of commerce to those of Plaintiff. For example, on April 25,
21 2012, Frost and Sullivan, a global business research and marketing firm promoted ENVIANCE SERVICES
22 LLC through a widely published White Paper that can be found through multiple oil industry websites. A
23 press release referencing such publication is attached as Exhibit “D.”

24 19. Defendants’ use of the same or substantially similar marks as Plaintiff’s Marks to advertise
25 and sell the same or substantially similar products and services produced and offered by Plaintiff in the same
26 or substantially similar channels and locations of commerce is without the permission, license or authority of
27 Enviance, and such use violates Plaintiff’s federal and common law rights in the Marks.

1 20. Plaintiff is informed and believes and based thereon alleges Defendants have continued their
2 infringement of the Marks with knowledge of Enviance's prior registration and/or use of the Marks.
3 Plaintiff is informed and believes and based thereon alleges that Defendants undertook these actions with
4 the intent of confusing consumers, so that they could trade on and receive the benefit of the goodwill built up
5 by Enviance at great labor and expense over many years.

6 **EFFECT OF DEFENDANTS' ACTIVITIES ON CONSUMERS AND/OR ENVIANCE**

7 21. Defendants' use of the Infringing Marks in the manner described above is likely to confuse
8 customers and potential customers of the parties as to whether some affiliation, connection or association
9 exists between Defendants and Enviance, or as to the origin, sponsorship, or approval of the parties' goods
10 and/or services.

11 22. Defendants' use of the Infringing Marks in the manner described above falsely indicates to
12 the purchasing public that the goods and/or services of Defendants originate with Enviance, or are affiliated,
13 connected or associated with Enviance, or are sponsored, endorsed, or approved by Enviance, or are in some
14 manner related to Enviance.

15 23. Defendants' use of the Infringing Marks in the manner described above falsely designates the
16 origin of the goods and/or services of Defendants, and falsely and misleadingly describes and represents
17 material facts with respect to the goods, websites and/or commercial activities of Defendants.

18 24. Defendants' use of the Infringing Marks in the manner described above enables Defendants to
19 trade on and receive the benefit of goodwill in those marks, which Enviance has built up at great labor and
20 expense over many years.

21 25. Defendants' use of the Infringing Marks in the manner described unjustly enriches
22 Defendants at Enviance's expense.

23 26. Defendants' use of the Infringing Marks in the manner described above prevents Enviance
24 from controlling the nature and quality of goods and services provided under those marks and places the
25 valuable reputation and goodwill of Enviance in Defendants' hands, over which Enviance has no control.

26 27. The activities of Defendants have caused irreparable injury to Enviance and to the public, and
27 unless restrained by this Court, will continue to cause irreparable injury to Enviance and to the public.
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COUNT I: FEDERAL TRADEMARK INFRINGEMENT 15 USC 1114

The ENVIANCE Mark

28. Plaintiff repeats the allegations from paragraphs 1-27 above as if fully set forth herein.

29. The acts of Defendants complained of herein constitute infringement of Plaintiff's federally registered trademark ENVIANCE in violation of 15 U.S.C. § 1114(1).

30. The acts of Defendants described herein have been willful and in bad faith, making this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

31. Plaintiff has been damaged by the acts of Defendants in an amount currently unknown.

COUNT II: VIOLATION OF 15 USC 1125a

The ENVIANCE Mark

32. Plaintiff repeats the allegations from paragraphs 1-31 above as if fully set forth herein.

33. The acts of Defendants complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

34. Plaintiff has been damaged by the acts of Defendants in an amount currently unknown.

COUNT III: UNFAIR COMPETITION UNDER STATE LAW

35. Plaintiff repeats the allegations from paragraphs 1-34 above as if fully set forth herein.

36. The acts of Defendants complained of herein constitute unfair competition in violation of California Business & Professions Code § 17200 et seq.

37. Plaintiff has been damaged by the acts of Defendants in an amount currently unknown.

COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT

38. Plaintiff repeats the allegations from paragraphs 1-37 above as if fully set forth herein.

39. The acts of Defendants complained of herein constitute common law trademark infringement by Defendants.

40. Plaintiff has been damaged by the acts of Defendants in an amount currently unknown.

PRAYER FOR RELIEF

WHEREFORE, Enviance prays for entry of judgment against Defendants as follows:

1. Defendants, their parents, subsidiaries, directors, officers, members, managers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them be preliminarily and permanently enjoined and restrained:

a. From using the Infringing Marks, or Plaintiff's Marks (or any variation thereof, whether alone or in combination with any other word(s) or element(s)), or any mark, name, domain name, or other designation which depicts, contains, or consists of any name or mark confusingly similar to the Marks;

b. From advertising, displaying, selling, or otherwise distributing (whether in physical or electronic or any other form), any and all advertisements, marketing or promotional materials, product packaging, signage, banners, invoices, pamphlets, leaflets, flyers and the like, as well as any goods (products, samples and the like) containing the Infringing Marks, or Plaintiff's Marks (or any variation thereof, whether alone or in combination with any other word(s) or element(s)), or any mark, name, domain name, or other designation which depicts, contains, or consists of any name or mark confusingly similar to the Marks;

c. From registering, attempting to register, or maintaining any trademark registration, trademark, trade name, domain name, trade designation, or other indicia of origin or source containing the Infringing Marks, or Plaintiff's Marks (or any variation thereof, whether alone or in combination with any other word(s) or element(s)), or any mark, name, domain name, or other designation which depicts, contains, or consists of any name or mark confusingly similar to the Marks;

d. From committing any acts or making any statements calculated, or the reasonably foreseeable consequence of which would be, to infringe Plaintiff's Marks;

e. From committing any acts or making any statements calculated, or reasonably foreseeable consequence of which would be, to infringe any of Enviance's trademark rights in Plaintiff's Marks, or to confuse, mislead, or deceive consumers as to sponsorship, approval or affiliation of Enviance by, with, or of Defendants, and;

f. From conspiring with, aiding, assisting or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

1 2. Consistent with paragraph (1)(a) above, Defendants be ordered to remove from sale or
2 display, and recall, any and all products, catalogs, advertisements, and any other items or goods bearing the
3 Infringing Marks, or Plaintiff's Marks, or any word or words confusingly similar thereto. Defendants also be
4 ordered to submit to the Court and serve upon Plaintiff within thirty (30) days after entry and service of an
5 injunction, a written report detailing gross sales of any goods or services in connection with the Infringing
6 Marks, Plaintiff's Marks, or any word or words confusingly similar thereto.

7 3. Defendants be required to deliver to the Court for destruction, or show proof of destruction
8 of, any and all products, labels, signs, prints, advertisements, signage, packages, wrappers, catalogs, internet
9 web pages, and any other materials in its possession or control bearing the Infringing Marks, or Plaintiff's
10 Marks, or any other mark, name, or designation that includes the Marks (or any variation thereof, whether
11 alone or in combination with any other word(s) or element(s)).

12 4. Defendants be ordered to file with this Court and to serve upon Plaintiff within thirty (30)
13 days after the entry and service on Defendants of an injunction, a report in writing and under oath setting
14 forth in detail the manner and form in which Defendants have complied with the injunction.

15 5. Plaintiff recovers all damages it has sustained as a result of the activities of Defendants.

16 6. Pursuant to 15 U.S.C. § 1117, Enviaance be awarded treble damages and attorneys' fees for
17 willful infringement and exceptional circumstances.

18 7. An accounting be directed to determine the profits of Defendants resulting from activities
19 complained of herein, and that such profits be paid over to Plaintiff, increased as the Court finds to be just
20 under the circumstances of this case.

21 8. Defendants be required to account for and pay over to Plaintiff any benefit and unjust
22 enrichment obtained at Plaintiff's expense from its wrongful actions.

23 9. Plaintiff be awarded its costs and fees related to this action, including but not limited to
24 reasonable attorneys' fees.

25 10. Plaintiff be awarded prejudgment and post-judgment interest.
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DEMAND FOR JURY TRIAL

Plaintiff ENVIANCE, INC. hereby demands trial by jury.

Dated: June 7, 2012

WALKER, PENDERGRASS & TIETSWORTH LLP

By:

/s Kent M. Walker

KENT M. WALKER

kent@kentmwalker.com

Attorney for Plaintiff ENVIANCE, INC.

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