

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) MILLER MENDEL, INC., a	)	
Washington Corporation,	)	
	)	
(2) TYLER MILLER, an Oregon State	)	
resident,	)	
	)	Case No. CIV-18-990-C
Plaintiffs,	)	
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
(1) THE CITY OF OKLAHOMA CITY, a	)	
municipal corporation,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT**

Plaintiffs, Miller Mendel, Inc. and Tyler Miller (collectively, “Plaintiffs”), by the undersigned counsel, assert this First Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B), amending as a matter of course, filed within twenty-one (21) days after Defendant, THE CITY OF OKLAHOMA CITY’s (“Defendant” or “Oklahoma City”) responsive pleading and motion under Fed. R. Civ. P. 12(b), and allege as follows:

**PARTIES**

1. Plaintiff Tyler Miller is a resident of the State of Oregon, and is the owner of all right, title, and interest in and to United States Patent No. 10,043,188 B2 (hereinafter, “the ‘188 Patent”).

2. Plaintiff Miller Mendel is a Washington corporation, wholly owned by Tyler Miller, with its principal place of business in Seattle, Washington, with exclusive license

granted by Mr. Miller of all right and interest to the '188 Patent with the right to sublicense to third parties.

3. Upon information and belief, Defendant Oklahoma City is a municipal corporation with its principal place of business in Oklahoma City, Oklahoma.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*, particularly at least Sections 271, 281 through 285, and 295 of Title 35 of the United States Code. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338. Defendant is situated and resides within this state and judicial district and is subject to personal jurisdiction.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400.

### **CLAIM FOR RELIEF** **(Patent Infringement)**

6. Plaintiffs adopt and re-allege each and every numbered paragraph above as if set forth verbatim herein at this point.

7. The '188 Patent entitled "Background Investigation Management Service," which issued on August 7, 2018. A true and correct copy of the '188 Patent is attached hereto as Exhibit "1" and by this reference incorporated herein.

8. The '188 Patent was duly and legally issued by the United States Patent & Trademark Office on August 7, 2018 after full and fair examination. Plaintiffs hold all right title and interest in and to the '188 Patent and possesses all rights of recovery under the '188 Patent.

9. Plaintiffs manufacture, market and sell through one or more licensees within the United States products, including eSOPH system, covered by the '188 Patent ("Plaintiffs' Licensed Products").

10. 35 USC § 271(a) provides that whoever uses any patented invention within the United States infringes the patent. *See also* Section 271(h).

11. Plaintiffs are informed and believes and based thereon alleges that Defendant had notice of the '188 Patent and/or that the filing of the original Complaint in this case constituted notice.

12. Plaintiffs are informed and believe and on that basis allege that Defendant Oklahoma City uses a product, the Guardian Alliance Technologies investigation software platform ("the Guardian Platform") as a response to its November 2017 Request for Proposal 181003 for a Police Applicant Tracking Software for the Oklahoma City Police Department which infringes one or more claims of the '188 Patent, including at least Claims 1, 5, and 15, and all elements thereof; that Defendant has, within the past six years infringed, and continues to literally and/or equivalently infringe one or more claims of the '188 Patent, including Claims 1, 5 and 15, and all elements thereof, by using the Guardian

Platform in this district without the consent or permission of Plaintiffs, including, for example, literally and/or equivalently infringing Claim 1 of the '188 Patent by using the Guardian Platform on a computing device with a processor and system memory, assisting an investigator in conducting a background investigation of an application within an organization by:

receiving a first set of program data comprising information identifying the applicant, the position, the organization, and the investigator;  
storing a new applicant entry in the system memory, the new applicant entry associated with the first set of program data;  
transmitting an applicant hyperlink to an applicant email address associated with the applicant, the applicant hyperlink for viewing an applicant set of electronic documents;  
receiving an applicant electronic response with a reference set of program data, wherein the reference set of program data comprises information regarding a reference source, wherein the reference source is a person, the program data including a reference email address associated with the reference source;  
determining a reference class of the reference source based on the reference set of program data;  
selecting a reference set of electronic documents based on the reference class of the reference source;  
transmitting a reference hyperlink to the reference email address, the reference hyperlink for viewing the reference set of electronic documents;  
receiving a reference electronic response to the reference set of electronic documents from the reference source;  
storing the reference electronic response in the system memory,  
associating the reference electronic response with the new applicant entry;  
and  
generating a suggested reference list of one or more law enforcement agencies based on an applicant residential address.

13. Plaintiffs are entitled to recover from Defendants the damages sustained by Plaintiffs as a result of Defendant's wrongful acts in an amount subject to proof at trial, but not less than a reasonable royalty.

14. Defendant's infringing use will cause ongoing and future harm to Plaintiffs, which may be difficult or impossible to reduce to a sum certain of money damages.

15. Plaintiffs have been and continue to be irreparably harmed by the acts of Defendant and this harm is not remediable by damages alone. A patent is a property right of limited duration. Every day of continuing infringement lessens, taints, and depletes the rights and entitlements granted by the '188 Patent. Every day of continuing infringement interferes with Plaintiffs' ability to realize value on the '188 Patent through licensing or directly marketing to others and/or through price erosion.

16. The public has an overriding interest in protecting patent rights and in the enforcement of patent laws.

17. Defendant's infringement of Plaintiffs' exclusive rights under the '188 Patent will continue to damage Plaintiffs' business, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

18. Defendant has infringed and continues to infringe the '188 Patent directly and/or through acts of inducement in violation of 35 U.S.C. § 271(a) and/or (b)

19. As a result of Defendant's infringement, Plaintiffs have suffered and continues to suffer damages in an amount to be determined at trial.

20. Unless Plaintiffs receive temporary, preliminary, and permanent injunctive relief enjoining Defendant's use of infringing products and systems, including the Guardian Platform, Plaintiffs will be irreparably injured.

21. Plaintiffs are informed and believe that Defendant's infringement of the '188 Patent has been willful and deliberate, entitling Plaintiffs to increased damages under 35 U.S.C. § 284, and, in addition, Defendant's conduct renders this an exceptional case under 35 U.S.C. § 285, thus entitling Plaintiffs to an award of attorney fees.

22. To the extent of any claim to sovereign immunity, Plaintiffs are informed and believe and therefore contend such immunity has been and/or should be considered to have been waived.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendant and for relief including:

1. Declaring the '188 Patent claims to be valid and infringed by Defendant;
2. Finding the Defendant liable for the infringement, and the damages flowing therefrom.
3. Awarding and ordering all damages suffered by Plaintiffs due to Defendant's infringement of the claims of the '188 Patent, including all amounts necessary to make Plaintiffs whole but not less than a reasonable royalty, pursuant to 35 U.S.C. § 284;

4. Awarding to Plaintiffs enhanced damages up to and including trebling of Plaintiffs' damages pursuant to 35 U.S.C. § 284, for Defendant's willful infringement;
5. Enjoining Defendant from using any products which infringe the '188 Patent, to wit, the Guardian Platform;
6. Awarding Plaintiffs their costs of suit, including the costs of experts and reasonable attorneys' fees pursuant to, *inter alia*, 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
7. Awarding pre- and post- judgment interest; and,
8. Awarding such other and further relief as may be just and proper.

Date: January 11, 2019

Respectfully submitted,

s/ Todd A. Nelson  
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**JURY TRIAL DEMANDED**

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of January 2019, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing. Based on the records currently on file in this case, the Clerk of the Court will transmit a Notice of Electronic Filing to the following registered participants of the ECF System:

Douglas J. Sorocco, Esq.  
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s/ Todd A. Nelson