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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10

11 MAGICJACK, LP,

12 Plaintiff,

13 v.

14 HAPPY MUTANTS LLC,

15 Defendant.
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CASE NO. CIV 091108

**NOTICE OF MOTION AND MOTION OF
DEFENDANT HAPPY MUTANTS LLC
FOR ATTORNEYS' FEES AND COSTS
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 425.16;**

**MEMORANDUM OF POINTS AND
AUTHORITIES; AND**

**DECLARATION OF MARC E. MAYER IN
SUPPORT**

Date: December 1, 2009
Time: 9:00 a.m.
Location: Dept. J
Judge: Honorable Verna Adams
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2 **NOTICE OF MOTION**
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4 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**
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6 **PLEASE TAKE NOTICE** that, on December 1, 2009 at 9:00 a.m. or as soon thereafter as
7 the matter may be heard, in Department J of the Marin County Superior Court located at 3501
8 Civic Center Drive, San Rafael, California 94903, defendant Happy Mutants LLC ("Boing
9 Boing") will and hereby does move the Court for an award of attorneys' fees and costs in the
10 amount of \$77,636.85 against plaintiff MagicJack, LP ("MagicJack") and in favor of Boing Boing.
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12 The motion is made pursuant to Code of Civil Procedure Section 425.16(c) and is based on
13 the following grounds: (1) Boing Boing prevailed, in full, on its anti-SLAPP motion; (2) judgment
14 having been entered in Boing Boing's favor, Boing Boing is entitled to recover its attorneys' fees
15 and costs incurred in this action under Code of Civil Procedure Section 425.16(c); and (3) the fees
16 and costs Boing Boing incurred in obtaining the judgment in this action (and in seeking its
17 attorneys' fees) are reasonable and fully recoverable.
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19 The motion is supported by this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the concurrently filed declaration of Marc E. Mayer, the pleadings and papers on
21 file in this action, and such other and further support as Boing Boing may provide at or before the
22 time of hearing.
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24 DATED: August 20, 2009

MITCHELL SILBERBERG & KNUPP LLP

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26 By: 

Marc E. Mayer
Attorneys for Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

On May 27, 2009, this Court granted the special motion of Defendant Happy Mutants LLC (“Boing Boing”) to strike the Complaint of plaintiff MagicJack, LP (“MagicJack”) pursuant to California’s anti-SLAPP statute, Cal. Code Civ. P. § 425.16 (the “anti-SLAPP motion”). That ruling terminated this case in its entirety and rendered Boing Boing the prevailing party in this action. As such, Boing Boing is entitled to recover its attorneys’ fees and costs incurred in its defense of this action pursuant to the *mandatory* fee provision of the anti-SLAPP statute, Cal. Code Civ. P. § 425.16(c). That provision states that a defendant who prevails in an action subject to the anti-SLAPP statute “shall” be entitled to recover his or her attorneys’ fees and costs.

It is well-established that a prevailing SLAPP defendant is entitled to recover attorneys’ fees irrespective of the reasonableness of the plaintiff’s claim. Here, not only were MagicJack’s claims against Boing Boing frivolous from the outset, but Boing Boing had to defend against them in order to protect its right to speak about important public policy issues. The entirety of MagicJack’s claims in this action, for defamation and unfair competition, arose from a few obviously hyperbolic and opinionated phrases contained in a short Internet “blog” post (the “Boing Boing Post”). Far from defamatory, the phrases at issue plainly were no more than colorful expressions of the author’s views about certain terms contained in MagicJack’s end-user license agreement (“EULA”). Accordingly, the article at issue (and the phrases therein) not only were fully protected by the First Amendment, but concerned matters in the public interest, including “consumer information affecting a large number of persons.” Carver v. Bonds, 135 Cal. App. 4th 328, 492-93 (2005) (issues pertaining to consumer protection are matters of “public interest”). For those reasons, the Court adopted in full its tentative ruling, finding both that all of the claims fell within the “public interest” prong of the anti-SLAPP statute and that MagicJack could not prevail on the merits. See Notice of Ruling [Declaration of Marc E. Mayer (“Mayer Decl.”), ¶16, Ex. F].

MagicJack was represented in this action by highly competent and experienced litigation counsel. MagicJack and its counsel certainly should have known that the alleged defamatory

1 statements were statements of opinion and not actionable. MagicJack also should have recognized
2 that the claims likely would be subject to California's anti-SLAPP statute, and thus that fees
3 would be awardable to Boing Boing if it were to prevail. Nevertheless, MagicJack elected to
4 pursue this action, apparently hoping that when faced with a lawsuit by a major law firm, Boing
5 Boing would immediately cave to MagicJack's demands and remove the article from its website,
6 issue an apology and retraction, and pay damages. Additionally, even though MagicJack failed to
7 ever contact Boing Boing, it sought **punitive damages** against Boing Boing – apparently for *in*
8 *terrorem* effect, since MagicJack and its counsel must have known that punitive damages were not
9 recoverable under Cal. Civ. Code § 48a. MagicJack then vigorously opposed Boing Boing's
10 Special Motion to Strike (filing a detailed 15-page opposition and two declarations). And, after a
11 tentative ruling was issued in Boing Boing's favor, MagicJack continued to force Boing Boing to
12 incur substantial attorneys' fees by electing to argue against the tentative ruling, knowing that
13 Boing Boing's counsel would be required to travel to Marin County and spend several hours
14 preparing for oral argument.

15 MagicJack's decision to file this action, seek massive and improper damages, and then
16 vigorously pursue the action through final judgment, forced Boing Boing to incur tens of
17 thousands of dollars in attorneys' fees and costs. This includes the attorneys' fees that Boing
18 Boing necessarily (and reasonably) incurred in connection with the anti-SLAPP motion; and other
19 related litigation activities, such as reviewing and analyzing the Complaint, researching MagicJack
20 and its EULA, participating in discussions with its counsel, filing the anti-SLAPP motion,
21 reviewing MagicJack's opposition, preparing reply papers, and preparing for and attending the
22 hearing on the anti-SLAPP motion.¹ This sum also includes \$6,526.10 in costs, such as filing
23 fees, copying costs, messenger and delivery costs, court services, and travel costs. In addition,
24 Boing Boing should be awarded \$27,192.75 for estimated fees and costs incurred to prepare this
25 motion, to prepare a reply memorandum, to prepare for and attend the hearing on this motion, and
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27 ¹ The anti-SLAPP motion is not a responsive pleading. Accordingly, it was necessary for Boing
28 Boing, in addition to filing the anti-SLAPP motion, to prepare and file its demurrer and motion to
strike punitive damages, lest it risk waiver of its right to do so at a later date.

1 in connection with various settlement negotiations. Boing Boing attempted to resolve this attorneys'
2 fees dispute without the necessity of a motion. However, after it appeared that the parties had
3 reached a deal, MagicJack suddenly reneged on its agreement and demanded that additional
4 conditions be placed on the settlement (including conditions that Boing Boing expressly told
5 MagicJack were not acceptable at the outset of the settlement negotiations.) These conditions
6 included restrictions on Boing Boing's ability to speak about the litigation and about the amount it
7 spent litigating this case. Boing Boing should be compensated for the numerous wasted hours that
8 MagicJack forced Boing Boing to spend connection with the settlement negotiations MagicJack
9 ultimately sabotaged. See Mayer Decl., Ex. H. Thus, the total attorneys' fees and costs sought by
10 this motion are \$77,636.85.

11 This was a First Amendment case. As a publisher and commentator on public policy
12 issues, Boing Boing had no choice other than to defend this action. As a matter of public policy,
13 and in order to effectuate the intent and purpose of the SLAPP statute, it is critical that Boing
14 Boing be fully compensated for its decision to present a defense to MagicJack's claims in this
15 action and vindicate its right to speak openly about controversial topics. See Cohen v. Virginia
16 Elec. & Power Co., 617 F. Supp. 619, 623 (E.D. Va. 1985) ("we must remember that it wasn't the
17 defendant who chose to litigate"), aff'd, 788 F.2d 247 (4th Cir. 1986). Accordingly, the Court
18 should order MagicJack to pay Boing Boing \$77,636.85 in attorneys' fees and related expenses.
19 These sums are reasonable, were incurred in good faith, and are fully recoverable under Code of
20 Civil Procedure Section 425.16(c).

21
22 **I. BOING BOING IS ENTITLED TO RECOVER ITS ATTORNEYS' FEES AND**
23 **COSTS INCURRED IN DEFENDING THE ACTION.**

24 The anti-SLAPP statute provides: "In any action subject to subdivision (b), a prevailing
25 defendant on a special motion to strike *shall* be entitled to recover his or her attorney's fees and
26 costs." Code Civ. Proc. § 425.16(c) (emphasis added). An award of attorneys' fees to a prevailing
27 defendant is *mandatory*. Ketchum v. Moses, 24 Cal. 4th 1122, 1131 (2001) ("[A]ny SLAPP
28 defendant who brings a successful motion to strike is entitled to mandatory attorney fees."); Paulus

1 v. Bob Lynch Ford, Inc., 139 Cal. App. 4th 659, 685 (2006) (“The anti-SLAPP statute *requires* an
2 award of attorney fees to a prevailing defendant.”) (emphasis in original).

3 This Court’s May 27, 2009, order granting Boing Boing’s anti-SLAPP motion and striking
4 MagicJack’s Complaint plainly rendered Boing Boing the prevailing defendant. As such, under
5 Section 425.16(c), Boing Boing is entitled to recover the attorneys’ fees and costs it reasonably
6 incurred in extricating itself from this action. Wilkerson v. Sullivan, 99 Cal. App. 4th 443, 448
7 (2002) (“The statute is broadly construed so as to effectuate the legislative purpose of reimbursing
8 the prevailing defendant for expenses incurred in extricating himself or herself from a baseless
9 lawsuit.”); Robertson v. Rodriguez, 36 Cal. App. 4th 347, 362 (1995) (“The right of prevailing
10 defendants to recover their reasonable attorney fees under section 425.16 adequately compensates
11 them for the expense of responding to a baseless lawsuit.”)²

12 Moreover, under Code of Civil Procedure Section 425.16(c), Boing Boing is entitled to be
13 reimbursed for *all* attorneys’ fees and costs it incurred in obtaining judgment in its favor,
14 including fees incurred in filing and arguing this motion for fees. See Tuchscher Dev. Enter., Inc.
15 v. San Diego Unified Port District, 106 Cal. App. 4th 1219, 1230-1231, 1248 (2003) (affirming
16 trial court’s award to respondents of “\$55,900 in attorneys’ fees, which included fees incurred in
17 opposing discovery requests as well as [a] reconsideration motion; the court found those fees
18 sufficiently connected to the [special] motion to strike and thus recoverable under the statute, [i.e.,
19 Code of Civ. Proc. § 425.16(c)].”); Dowling v. Zimmerman, 85 Cal. App. 4th 1400, 1425 (2001)
20 (“We hold that in order to effectuate the purpose of the anti-SLAPP statute and the Legislature’s
21 intent to deter SLAPP suits, ...a [prevailing] defendant ... is entitled to recover an award of
22 reasonable attorney fees under the mandatory provisions of subdivision (c) of that section in order
23 to compensate the retained counsel for the legal services provided in connection with both the
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25 ² It is well-established that Boing Boing was entitled to bring this motion for fees after the anti-
26 SLAPP motion was granted. American Humane Ass’n v. Los Angeles Times Commc’n, 92 Cal.
27 App. 4th 1095, 1104 (2001) (holding that “total cost of the special motion to strike and any related
28 discovery permitted by the court can be more accurately computed if a section 425.16, subdivision
(c) motion for fees is filed after the request is granted;” awarding attorneys’ fees “incurred: in
connection with the special motion to strike incurred in the trial court prior to the filing of the
notice of appeal; on appeal; and after the issuance of the remittitur.”).

1 special motion to strike, and the recovery of attorney fees and costs under that subdivision.”);
2 Ketchum v. Moses, *supra*, 24 Cal. 4th at 1141 (“follow[ing] the rule of the overwhelming
3 majority of courts that have considered the question ... [w]e hold ... that, absent circumstances
4 rendering the award unjust, fees recoverable [under Section 425.16(c)] ... ordinarily include
5 compensation for *all hours reasonably spent*, including those necessary to establish and defend
6 the fee claim.”) (emphasis added).

7 There is good reason for this rule, and it is especially compelling here. If there was some
8 risk that a defendant such as Boing Boing might not receive all of the attorneys’ fees it incurred in
9 defending the action, then newspapers, Internet blogs, political activists, and any other members of
10 the public would be forced to engage in a balancing test every time they spoke on a controversial
11 issue: namely, balancing the right to speak on that public issue with the potential cost of doing so,
12 including the legal fees potentially incurred if he or she were to be sued. The result would be a
13 chilling effect on speech and other activities affecting the public, for fear that the activities could
14 result in some uncompensated expenditure of attorneys’ fees. Wilkerson v. Sullivan, 99 Cal. App.
15 4th 443, 448 (2002) (“The legislative purpose underlying section 425.16 is to alleviate SLAPP
16 suits by requiring a plaintiff to reimburse a prevailing defendant for expenses incurred in
17 extricating himself or herself from a baseless lawsuit.”).

18 19 **II. THE ATTORNEYS’ FEES AND COSTS BOING BOING INCURRED AND SEEKS** 20 **TO RECOVER ARE REASONABLE**

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22 Courts recognize that it is expensive for a defendant to achieve a dismissal at an early stage
23 of the case, even if the lawsuit is meritless. As a result, courts have awarded significant attorneys’
24 fees (far more than sought here) to defendants who have prevailed on anti-SLAPP motions. See,
25 e.g., Metabolife Int’l Inc. v. Wornick, 213 F. Supp. 2d 1220, 1228 (S.D. Cal. 2002) (court awarded
26 \$318,688 fees and costs to defendant prevailing on an anti-SLAPP motion). Indeed, as this Court
27 noted at the hearing on the anti-SLAPP motion, the stakes were high for all parties, and thus it was
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1 not surprising that briefing was extensive and Boing Boing's analysis and defense of the claims
2 was substantial and carefully considered.

3 Despite the speciousness of MagicJack's claims, Boing Boing could not ignore them, take
4 victory for granted, or fail to present the earliest and best defense. MagicJack sought to recover
5 from Boing Boing compensatory damages, punitive damages, and purported reputational damages,
6 including damages from alleged lost sales of MagicJack products in an amount "according to
7 proof" (Complaint, Prayer), potentially hundreds of thousands or millions of dollars. Moreover,
8 MagicJack hired highly experienced counsel, at one of the largest and most prestigious law firms
9 in the country³, to file its case and oppose the anti-SLAPP motion. MagicJack apparently
10 dedicated at least three attorneys to the case, including two associates and a senior partner, Beth
11 Parker, who is a highly seasoned litigator with more than 25 years of trial and appellate
12 experience. Mayer Decl., Ex. G. Boing Boing thus knew from the outset that this was likely to be
13 a hard-fought and expensive case. As such, Boing Boing's counsel was justified in taking this
14 case very seriously, expending significant time researching the law, carefully briefing the relevant
15 issues, responding to the (numerous) arguments raised – and dozens of cases cited – in
16 MagicJack's opposition memorandum, and preparing for the oral argument.

17 Decisions made by MagicJack also increased the cost of this litigation. MagicJack could
18 have contacted Boing Boing before filing its lawsuit, or even shortly after it filed its lawsuit, to
19 discuss the article or its claims. MagicJack also could have framed its Complaint differently,
20 including by not demanding for punitive and special damages, which it should have known would
21 not have been recoverable in these circumstances. Those demands not only required Boing Boing
22 to file a motion to strike, but raised the stakes of this action and Boing Boing's potential exposure.
23 Finally, once the SLAPP motion was filed, MagicJack could have offered to dismiss the action.
24 Instead, it filed a lengthy opposition, raising a host of issues, many of which it certainly knew
25 were without merit (such as its frivolous argument that the Boing Boing Post was "commercial
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27 ³ According to its website, Arnold & Porter LLP is "an international law firm of over 650
28 attorneys, [with] offices in Washington, DC, Northern Virginia, New York, Los Angeles, Denver,
San Francisco, London and Brussels." Mayer Decl., ¶ 17, Ex. G.

1 speech"). At the very least, MagicJack could have submitted on the Court's well-reasoned and
2 clear tentative ruling, and thus prevented Boing Boing from incurring additional attorneys' fees
3 preparing for and attending the hearing. MagicJack and its counsel certainly knew that Boing
4 Boing would be entitled to recover its fees in the event that Boing Boing prevailed in its anti-
5 SLAPP motion, and thus now cannot fairly complain about being required to compensate Boing
6 Boing for these fees.

7 The Court also should award Boing Boing all of the fees it incurred in collecting its
8 attorneys' fees, including fees incurred in connection with this motion and attempting to negotiate
9 a settlement of the attorneys' fees issue and avoid this motion. In an effort to stem the substantial
10 cost of this litigation (and knowing that MagicJack's litigation tactics would result in a costly
11 battle over attorneys' fees), on **June 22**, several weeks before its attorneys' fees motion was due,
12 Boing Boing approached MagicJack to inquire as to whether it would agree to compensate Boing
13 Boing for its attorneys' fees without the necessity of a motion. MagicJack did not respond to that
14 request until **July 15** – nearly a month later and only days before Boing Boing's motion was due
15 to be filed. And even then, MagicJack only offered one-half of the total fees incurred by Boing
16 Boing (\$25,000). As a result, Boing Boing was forced to incur substantial fees preparing and
17 finalizing its motion for attorneys' fees. On July 22, 2009, just **two days** before the motion was
18 due to be filed, MagicJack finally substantially increased its offer. Boing Boing accepted that
19 offer, contingent upon MagicJack's agreement that (1) it was not releasing MagicJack for any
20 claims other than those arising from the prosecution of this lawsuit, and (2) the settlement
21 agreement would not include a confidentiality clause or a non-disparagement clause, and thus
22 Boing Boing's right to speak about the lawsuit would not be curtailed. MagicJack accepted those
23 conditions, and over the following two weeks the parties prepared and finalized a settlement
24 agreement. However, the day after the final settlement agreement was circulated for execution,
25 MagicJack suddenly reneged on its offer, stating that it would only sign the agreement if Boing
26 Boing entered into a confidentiality agreement and agreed not to speak about the settlement
27 agreement or its attorneys' fees. In the meantime, Boing Boing had incurred another \$9,095.25
28 engaging in these settlement negotiations, as well as substantial fees in connection with preparing

1 and finalizing its attorneys' fees motion and filing stipulations to extend the time to file the
2 motion.

3 As detailed below and in the concurrently filed declaration of Marc E. Mayer ("Mayer
4 Decl."), as a result of MagicJack's defamation claim, Boing Boing was forced to expend
5 approximately \$43,918.00 in attorneys' fees and \$6,526.10 in costs defending this action. All of
6 these fees were directly related to or, at a minimum, were "inextricably intertwined" with the anti-
7 SLAPP motion. Kearney v. Foley and Lardner, Case No. 05-CV-2112, 2008 WL 761089, *3
8 (S.D. Cal. March 18, 2008). The anti-SLAPP motion (and the various activities related thereto)
9 required extensive time, effort, and legal skill due to the important First Amendment and public
10 policy issues raised by the Complaint. Boing Boing's counsel was required to, *inter alia*, review
11 and analyze the Complaint; communicate and advise the client; prepare declarations; research
12 numerous issues of law related to the anti-SLAPP motion; conduct factual research into
13 MagicJack and its EULA; conduct research into EULAs and the public policy implications of the
14 Boing Boing article at issue; draft and revise the anti-SLAPP motion and reply papers; review and
15 analyze MagicJack's Opposition memorandum and declaration; prepare and finalize numerous
16 exhibits and appendices; communicate with the court regarding scheduling; and prepare for and
17 attend oral argument. See Mayer Decl., ¶¶ 7-9;11-13.⁴

18 Boing Boing also has incurred \$21,692.75 in connection with the attorneys' fees motion
19 (and subsequent settlement talks) and estimates that it will incur an additional approximately
20 \$5,500 to read and analyze any opposition, draft a reply, and appear for the hearing of the motion.
21 Mayer Decl. ¶ 15. The Court therefore should award the additional amount of \$28,192.75 in fees
22 and costs. See Dowling v. Zimmerman, *supra*, 85 Cal. App. 4th at 1425 ("We hold that in order to
23 effectuate the purpose of the anti-SLAPP statute and the Legislature's intent to deter SLAPP suits,
24 a defendant... is entitled to recover an award of reasonable attorney fees under the mandatory

25 ⁴ Boing Boing spent a nominal amount of time preparing and filing the demurrer and the motion
26 to strike punitive damages. The demurrer made essentially the same arguments as the second
27 prong of the anti-SLAPP motion, and time spent preparing the demurrer was used in preparing and
28 finalizing the anti-SLAPP motion. See Kearney 2008 WL 761089, *3 (awarding attorneys' fees
incurred in connection with related motion to dismiss where legal theories in SLAPP motion and
motion to dismiss were "inextricably intertwined.")

1 provisions of subdivision (c) of that section in order to compensate the retained counsel for the
2 legal services provided in connection with *both* the special motion to strike, *and the recovery of*
3 *attorney fees and costs under that subdivision.*") (emphasis added).).

4 Finally, Boing Boing incurred \$6,526.10 in additional, necessary expenses in connection
5 with the anti-SLAPP motion. These include costs for filing fees, photocopying, on-line legal
6 research, word processing, messenger and delivery services, court filing services, and travel
7 expenses. Such expenses were necessary and customary, were actually incurred by Boing Boing,
8 and should be reimbursed. Mayer Decl., ¶ 13.

9 This matter was appropriately staffed, and Boing Boing's counsel, Mitchell Silberberg &
10 Knupp LLP ("MSK") made every effort to avoid duplication of effort and otherwise minimize the
11 attorneys' fees incurred. Almost all of the work was performed by one partner (Marc Mayer),
12 with assistance from one associate (Jill Rubin). Additionally, the hourly rates Boing Boing's
13 counsel charged Boing Boing were reasonable and competitive with hourly rates usually charged
14 by other similar law firms in Los Angeles, especially given the special expertise of the lawyers
15 involved in defending the case. Mayer Decl. ¶ 14, Ex. E (Pricewaterhouse Coopers LLP Billing
16 Rate & Associate Salary Survey). Mr. Mayer, who has been a licensed California attorney for 12
17 years, customarily bills at an hourly rate of \$500 per hour. Mayer Decl. ¶ 6, Exs. A, C. Ms.
18 Rubin, who has been a licensed attorney for four years, customarily bills at an hourly rate of \$340.
19 Mayer Decl. ¶ 6, Exs. A, C. Boing Boing also received other discounts in the form of fee write
20 downs or write-offs, all of which are reflected in the fee statements attached to Mr. Mayer's
21 declaration. Id.

22 MSK's representation of Boing Boing also was conducted efficiently and at reasonable
23 costs, especially given the quality of work and end result. Both Mr. Mayer and Ms. Rubin have
24 extensive experience in matters pertaining to the Internet, intellectual property, end-user license
25 agreements, and the First Amendment. Mr. Mayer has worked closely with Boing Boing on other
26 intellectual property and First Amendment matters, and MSK handles Boing Boing's corporate
27 and transactional matters. As a result, MSK was prepared to commence its defense of this action
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1 immediately after Boing Boing was served, without being required to familiarize itself with Boing
2 Boing's business practices.

3 With this motion, Boing Boing submits substantial evidence to document the fees and
4 costs it incurred.⁵ All of these fees and costs were actually incurred by Boing Boing, and were
5 necessary to defend Boing Boing. Mayer Decl., ¶ 12, Exs. C, D.

6
7 **III. CONCLUSION**

8 Consistent with the intent of the anti-SLAPP statute, it is MagicJack, not Boing Boing,
9 who must pay the fees and costs Boing Boing incurred in extricating itself from this action. Based
10 on the above, Boing Boing respectfully requests that the Court award its attorneys' fees and costs
11 pursuant to Section 425.16(c) in the amount of \$77,636.85.

12
13 DATED: August 20, 2009

MITCHELL SILBERBERG & KNUPP LLP

14
15 By:  _____

Marc E. Mayer
Attorneys for Defendant

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25 ⁵ Boing Boing has been accurate in calculating the fees incurred. At the beginning of the case,
26 Boing Boing's counsel set up a special matter number for capturing time spent on this case.
27 Mayer Decl., ¶¶ 10-11, Exs. A, C. The fees sought in this motion were recorded under that matter
28 number. Id. Boing Boing's attorneys were very diligent in recording time to this matter number
to capture the time at issue in this motion. In preparing this motion, Mr. Mayer reviewed every
entry that was billed to Boing Boing since this case was filed and verified that the time was
correctly billed to the applicable matter. Id.

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1 Rob Rader, and I have developed close working relationships with the five principals of Boing
2 Boing, Cory Doctorow, David Pescovitz, Xeni Jardin, John Battelle, and Mark Frauenfelder.

3
4 **MSK's Representation of Boing Boing**

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6 4. This action was the first time that Boing Boing ever had been sued. Accordingly,
7 immediately upon receiving the Complaint, Boing Boing contacted MSK and requested that we
8 handle the defense of this action. Because of our familiarity with Boing Boing, its principals, and
9 its editorial philosophy, as well as my familiarity with the SLAPP statute and First Amendment
10 law, we were immediately prepared to analyze and defend the action.

11
12 5. Additionally, because MagicJack's Complaint was filed by Arnold & Porter LLP, a
13 major and prestigious law firm, a decision had to be made early on as to whether Boing Boing could
14 bear the initial financial burden of presenting a SLAPP motion and litigating its right to publish
15 critical commentary about corporate practices. Ultimately, because of the important public policy
16 issues presented by MagicJack's complaint, and the concern that the failure to present a defense
17 would diminish Boing Boing's reputation by signaling to the public that Boing Boing would tailor
18 its content to corporate pressure, combined with Boing Boing's commitment to truth of the
19 Internet "blog" post at issue in this action, it was decided that Boing Boing had no viable choice
20 other than to vigorously defend this action.

21
22 6. In an effort to ensure that our defense of this action was handled efficiently and
23 expertly, it was decided that I would be the person primarily responsible for handling Boing
24 Boing's defense, with some assistance from MSK associate Jill Rubin. Ms. Rubin is a fourth-year
25 associate with expertise in entertainment, intellectual property, and new media matters. My billing
26 rate (which is my rate on this case) is \$500 per hour. Ms. Rubin's billing rate (which is her rate on
27 this case) is \$340 per hour.
28

1 7. Because of my relationship with Boing Boing, and my prior experience with
2 SLAPP motions, I performed the vast majority of work in connection with this action. In
3 litigating this action, I made every effort to keep my time to a minimum, and only performed those
4 activities that I believed were necessary to Boing Boing's defense of this action. I personally
5 performed most of the writing and legal analysis in connection with Boing Boing's anti-SLAPP
6 motion, and I personally coordinated with Boing Boing principal Cory Doctrow with respect to the
7 preparation of his declaration in support of the anti-SLAPP motion.

8
9 8. Ms. Rubin also performed other limited discrete tasks, including legal research,
10 analysis, and preparation of court filings. I assigned and/or supervised all of the work performed
11 by Ms. Rubin on this case. Ms. Rubin's assistance helped keep to a minimum the overall costs of
12 this litigation.

13
14 9. MSK partner Christopher Leonard and Of Counsel Rob Rader performed discrete,
15 limited tasks. Mr. Rader is Boing Boing's transactional and corporate attorney. Mr. Rader
16 reviewed Boing Boing's court filings and participated in some communications with Boing Boing.
17 Mr. Leonard assisted with related insurance matters.

18
19 **MSK's Defense of This Action on Behalf of Boing Boing**

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21 10. At the time that Boing Boing received the Complaint, and learned that it had been
22 sued by a major telecommunications company (claiming to be the largest telephone company in
23 the world), represented by Arnold and Porter, it was immediately apparent that this would be a
24 hard-fought, high-stakes case. It also was clear from the allegations, which contained claims for
25 punitive damages and lost revenue, that Boing Boing's potential exposure could be quite
26 significant. Accordingly, the decision was made to carefully research the issues involved, present
27 consistently high-quality written work-product, and be prepared for any manner and number of
28 arguments that might be raised by MagicJack and Arnold and Porter. Attached hereto as Exhibit

1 G is a true and correct copy of a printout of selected pages from Arnold & Porter LLP's website
2 located at <http://www.arnoldandporter.com>. This printout was printed by me from the Internet on
3 or about June 24, 2009.

4
5 11. Boing Boing's concerns were borne out. After filing its lawsuit, MagicJack never
6 once contacted Boing Boing to discuss the lawsuit, explain why the lawsuit had been filed, or
7 explain why it had never asked for a retraction before filing the lawsuit. Accordingly, I was
8 required to immediately begin preparing the anti-SLAPP motion and researching the First
9 Amendment issues implicated in the lawsuit. Moreover, after the anti-SLAPP motion was filed,
10 MagicJack never once contacted me to discuss whether the motion might be resolved without
11 further expense. Instead, MagicJack filed a detailed Opposition, citing dozens of cases, containing
12 two declarations, and making a variety of specious arguments, including that the post at issue was
13 "commercial speech" and not entitled to First Amendment Protection. Accordingly, I was
14 required to spend several hours reviewing MagicJack's papers (and the dozens of cases it cited)
15 and preparing a reply memorandum.

16
17 12. At approximately 2:30 p.m. on May 27, 2009, I received from the Court the
18 tentative ruling in Boing Boing's favor, granting the anti-SLAPP motion. Shortly thereafter, I
19 received a telephone call from Mr. Kevin Bovard at Arnold & Porter. Mr. Bovard informed me
20 that MagicJack would be requesting a hearing to contest the tentative ruling. I told Mr. Bovard
21 that this was unfortunate, as I was hoping to avoid the additional expense to Boing Boing of
22 traveling to Marin County. Mr. Bovard told me that he was sorry I had to travel, but MagicJack's
23 decision had been made. Accordingly, I immediately flew to San Francisco and spent the
24 remainder of the day (as well as part of the next morning) preparing for the oral argument.

25
26 13. On May 28, 2009, after approximately 30 minutes of oral argument, the Court
27 adopted its tentative ruling in its entirety. Attached hereto as Exhibit F is a true and correct copy
28 of Notice of Ruling, filed on May 28, 2009 in this action.

1 **The Attorneys' Fees Motion and Subsequent Settlement Negotiations**

2
3 14. Following the May 28, 2009, hearing, MagicJack never contacted me to discuss
4 any potential resolution of the issue of Boing Boing's attorneys' fees, and the recovery of those
5 attorneys' fees under the anti-SLAPP statute.
6

7 15. Because it became apparent that Boing Boing would incur significant costs filing
8 the motion for attorneys' fees, responding to MagicJack's Opposition papers, and appearing for
9 oral argument, we made the decision that notwithstanding MagicJack's silence, we would offer
10 MagicJack the opportunity to compensate Boing Boing for its fees without the expense of a
11 motion. Thus, on June 22, 2009, I sent a letter to MagicJack's counsel, Beth Parker, advising Ms.
12 Parker that Boing Boing had incurred approximately \$50,000 in attorneys' fees and costs in its
13 defense of this action, and inquiring as to whether MagicJack would agree to compensate Boing
14 Boing for these costs. A true and correct copy of my June 22, 2009, letter is attached hereto as
15 Exhibit H. I requested that MagicJack respond to my letter no later than June 25, 2009.
16

17 16. On June 25, 2009, I received an e-mail from Ms. Parker stating that her client was
18 not yet prepared to respond to my letter. Ms. Parker and I exchanged a few e-mails, but for the
19 subsequent three weeks I never received a substantive response to my letter, or any offer to
20 compensate Boing Boing for its attorneys' fees and costs. Accordingly, Boing Boing had no
21 choice but to work on its motion for attorneys' fees and prepare the motion for filing, which at that
22 time was due to be filed on July 27, 2009.
23

24 17. Finally, on July 15, 2009, I received a phone call from Ms. Parker's partner,
25 Roberta Horton, in Arnold & Porter's Washington DC office. Ms. Horton advised me that
26 MagicJack was prepared to pay \$25,000 to settle the attorneys' fees claim. On July 17, 2009, I
27 sent a letter to Ms. Horton and Ms. Parker rejecting that offer. A true and correct copy of my July
28 17 letter is attached hereto as Exhibit H.

1
2 18. Later on July 17, I received a telephone call from Ms. Horton, increasing
3 MagicJack's offer to \$40,000. On July 20 or 21, 2009, I advised Ms. Horton that this offer also
4 was not acceptable, because Boing Boing had incurred more than \$50,000 in attorneys' fees.
5

6 19. On July 21 or 22, 2009, Ms. Horton advised me that MagicJack was prepared to
7 compensate Boing Boing for \$50,000 in attorneys' fees, but only if the parties agreed to mutual
8 general releases. I told Ms. Horton that this condition was not acceptable, because Boing Boing
9 had not sued MagicJack and therefore it would be unfair to require it to consent to a general
10 release. I told Ms. Horton that Boing Boing had merely sought compensation, not a settlement
11 agreement. However, I advised her, in no uncertain terms, that a settlement would be acceptable if
12 (1) the release of MagicJack was limited to its filing and prosecution of the lawsuit (e.g. attorneys'
13 fees, malicious prosecution), and (2) there was no agreement of confidentiality or non-
14 disparagement. I advised Ms. Horton that as an Internet journal, it was critically important that
15 Boing Boing be able to speak about the lawsuit. Ms. Horton told me that these terms were
16 acceptable. I immediately drafted a settlement agreement, which I sent to Ms. Horton on July 23,
17 2009.
18

19 20. Over the next two weeks, Ms. Horton, Ms. Parker, and I worked out the details of
20 the settlement agreement. On August 5, 2009, a final version of the settlement agreement was
21 prepared, and was circulated for execution. Boing Boing was prepared to sign the settlement
22 agreement. However, on August 10, 2009, Ms. Parker suddenly advised me that contrary to the
23 settlement terms I discussed with Ms. Horton, MagicJack was no longer prepared to execute a
24 settlement agreement that did not contain a confidentiality clause. I told Ms. Parker that Boing
25 Boing would agree to keep the settlement amount confidential, but that it was important that
26 Boing Boing be able to speak about the lawsuit, including the amount of fees it incurred and the
27 amount it ultimately came out-of-pocket for its defense. Ms. Parker advised me that this proposal
28 was unacceptable, that MagicJack did not want discussion of the lawsuit on the "Blogosphere,"

1 and that MagicJack had hoped that the settlement agreement would put an end to any further
2 publicity about the matters at issue in the lawsuit. Ms. Parker and I continued to discuss the
3 settlement agreement, but Ms. Parker was unable to provide me with her client's final position
4 prior to deadline for filing this motion.

5
6 21. I estimate that I spent at least 4 hours discussing and negotiating the settlement
7 agreement. Additionally, Ms. Rubin spent at least 3 hours preparing stipulations to continue the
8 deadline for filing the motion for attorneys' fees pending the execution of the settlement
9 agreement.

10
11 22. Following the collapse of the settlement agreement, I estimate that Ms. Rubin and I
12 each spent another 3 hours updating and revising the motion for attorneys' fees.

13
14 **MSK's Billing Statements**

15
16 23. I am familiar with the manner in which MSK attorneys record their time and
17 prepare client invoices in the normal course and scope of MSK's business. These billing records
18 are initially prepared at or around the time of the billing event and are recorded under specific
19 numbers assigned to a client and the matter. Because we represent Boing Boing in more than one
20 matter, at the beginning of the case, I caused MSK's accounting department to set up a separate
21 matter number for capturing time spent on this case. The fees and costs sought in this case were
22 recorded under that matter number to capture the time at issue in this case. In preparing this
23 motion, I reviewed every entry that was billed to Boing Boing since this case was filed and
24 verified that the time was correctly billed to the applicable matter.

25
26 24. Attached hereto as Exhibit A is a chart reflecting all of the attorneys' fees billed in
27 this matter on a month-by-month basis, broken down by billing attorney and hourly rate. Attached
28 hereto as Exhibit B is a chart reflecting all of the costs incurred and billed in this matter. Exhibits

1 A and B were prepared at my direction by an MSK paralegal. Exhibits A and B accurately reflect
2 of the actual time and costs billed to Boing Boing, as contained on Exhibit C, which is a true and
3 correct copy of all MSK invoices sent to Boing Boing in connection with this matter.
4

5 25. The invoices attached hereto as Exhibit C reflect that MSK attorneys performed the
6 following tasks: reviewing and analyzing the Complaint; preparing declarations; legal research;
7 factual research into MagicJack and its EULA; research into EULAs and the public policy
8 implications of the Boing Boing article at issue; drafting and revising the anti-SLAPP motion and
9 reply papers; reviewing and analyzing MagicJack's Opposition memorandum and declaration;
10 preparing and finalizing numerous exhibits and appendices; communicating with the court
11 regarding scheduling; preparing for, traveling to, and arguing the hearing on the anti-SLAPP
12 motion; filing the demurrer and motion to strike punitive damages; preparing and filing the motion
13 for attorneys' fees; and attempting to seek an informal resolution of the attorneys' fees issue. All
14 of these tasks were necessary to Boing Boing's defense of this action. Additionally, the demurrer
15 and anti-SLAPP motion were prepared in tandem, as they involved the same issues, and thus
16 research and drafting conducted for one motion was used for the other. Exhibit C has been
17 partially redacted to protect work product and/or attorney client communications; however, we
18 have undertaken to redact as little of the invoices as possible.
19

20 26. In addition to the attorneys' fees incurred by Boing Boing in connection with this
21 action, Boing Boing incurred certain necessary costs in defending this action, as reflected on
22 Exhibits B and D. These included costs for filing fees, photocopying, on-line legal research, word
23 processing, messenger and delivery services, court filing services, and travel expenses. All of the
24 costs reflected in Exhibit B and D were actually incurred, and paid, by Boing Boing.
25

26 27. The standard hourly rates set forth in Exhibit A reflect MSK's customary charges
27 for the type of work performed. In addition, MSK recently participated in a survey conducted by
28 PricewaterhouseCoopers LLP, comparing the billing rates of medium-sized law firms in the Los

1 Angeles area. The results of this confidential survey indicate that MSK's billing rates in this
2 action were (and remain) customary and reasonable, falling within the average range of billing
3 rates of other medium-sized law firms in Los Angeles. Attached hereto as Exhibit E are true and
4 correct copies of relevant excerpts of the PricewaterhouseCoopers LLP survey of billing rates.
5

6 28. In addition to the sums referenced above, I estimate that Boing Boing will incur
7 approximately \$27,192.75 to file the instant motion, read and analyze any opposition, draft a
8 reply, and appear for the hearing of the motion. This estimate is based on the following: Based on
9 invoices to date, Boing Boing spent \$21,692.75 preparing and filing its motion. I expect to spend
10 approximately 4 hours reviewing any opposition and preparing a reply brief; and I expect to spend
11 approximately 4 hours preparing for and attending the hearing on this motion (if such a motion is
12 necessary). I also estimate the costs for necessary filing fees, photocopying, on-line legal
13 research, word processing, messenger and delivery services, court filing services, and travel
14 expenses to be approximately \$1,500.
15

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.
18

19 Executed this 20th day of August, 2009, at Los Angeles California.
20

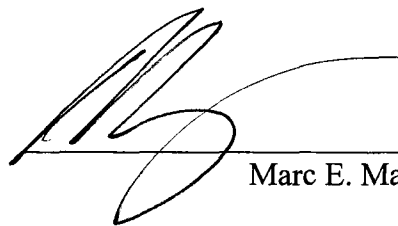
21 
22 _____
23 Marc E. Mayer
24
25
26
27
28

EXHIBIT A

EXHIBIT A

Happy Mutants LLC v. MagicJack LLP

Breakdown of Attorneys' Fees By Month

March 2009

Timekeeper	Hours Billed	Rate	Total
Chris Leonard	.5	\$590.00	\$ 295.00
Marc Mayer	15	\$500.00	\$7,500.00
Rob Rader	2	\$500.00	\$1,000.00
Jill Rubin	2.3	\$340.00	\$ 782.00

April 2009

Chris Leonard	.3	\$590.00	\$ 177.00
Marc Mayer	18	\$500.00	\$ 9,000.00
Rob Rader	4	\$500.00	\$ 2,000.00
Jill Rubin	17.8	\$340.00	\$ 6,052.00

May 2009

Chris Leonard	.8	\$590.00	\$ 472.00
Rob Rader	4.1	\$500.00	\$ 2,050.00
Marc Mayer	28.7	\$500.00	\$ 14,350.00
Jill Rubin	2.0	\$340.00	\$ 680.00

EXHIBIT A

Happy Mutants LLC v. MagicJack LLP

Breakdown of Attorneys' Fees By Month

June 2009

Chris Leonard	.2	\$590.00	\$ 118.00
Rob Rader	1.8	\$500.00	\$ 900.00
Marc Mayer	11.20	\$500.00	\$ 5,600.00
Jill Rubin	13.70	\$340.00	\$ 4,658.00
Kiersten Stensland	4.3	\$205.00	\$ 881.50

July 2009

Rob Rader	2.8	\$500.00	\$ 1,400.00
Marc Mayer	4.80	\$500.00	\$ 2,400.00
Jill Rubin	12.40	\$340.00	\$ 4,126.00
Kiersten Stensland	2.9	\$205.00	\$ 594.50

Total: \$ 65,126.00

EXHIBIT B

EXHIBIT B

Happy Mutants LLC v. MagicJack LLP

Breakdown of Costs

3/19/09	Filing Fees/ U.S. Legal Mgmt. MCSC, San Rafael 3/19/09	\$ 33.00
3/19/09	Research Copying/ U.S. Legal Mgmt – MCSC San Rafael	\$151.25
4/30/09	Photocopying, Printing, Scanning	\$1,071.75
4/30/09	On Line Legal Research- Westlaw	\$198.24
4/30/09	Word Processing	\$81.25
4/17/09	Delivery Services- First Legal San Francisco	\$68.00
4/16/09	Delivery Services- First Legal San Francisco	\$68.00
4/16/09	Filing Fees/ U.S. Legal Mgmt. MCSC, San Rafael	\$390.00
4/16/09	Filing Fees/ U.S. Legal Mgmt. MCSC, San Rafael	\$40.00
4/16/09	Court Filing Service/ U.S. Legal Mgmt. – MCSC, San Rafael	\$92.12
4/16/09	Court Filing Service/ U.S. Legal Mgmt. – MCSC, San Rafael	\$92.12
5/19/09	Court Filing Service/U.S. Mgmt. – MCSC, San Rafael	\$99.00
5/21/09	Delivery Services – Beth H. Parker, San Francisco	\$10.77
5/26/09	Four Points - Lodging San Rafael	\$156.14
5/26/09	Enterprise Rent-A-Car - Auto Rental	\$100.34
5/26/09	Southwest Airlines	\$368.20
5/27/09	Airport Parking	\$33.54
5/28/09	Court Filing Services/U.S. Legal Mgmt. – MCSC, San Rafael	\$72.25
5/31/09	On Line Legal Research - Westlaw	\$2,373.81
6/30/09	Photocopying, Printing and Scanning	\$6.75
6/30/09	On Line Legal Research – Westlaw	\$1,019.07

8/19/09	Photocopying, Printing and Scanning	\$92.75
8/19/09	On Line Legal Research - Westlaw	\$392.00
	Total Costs	\$7,010.85

EXHIBIT C

Happy Mutants LLC
 60 29th Street, #662
 San Francisco, CA 94111
 ATTN: David Pescovitz

00407 41227
 Invoice: 221385

May 7, 2009
 Page 5

Magicjack LP adv. Happy Mutants, LLC

Fees through April 30, 2009:

03/18/09	Review and analyze complaint by MagicJack; conferences with R. Rader regarding lawsuit; review and analyze blog posting, SLAPP statute.	M. MAYER	0.60	300.00
03/18/09	Review emails regarding lawsuit; telephone conference with M. Mayer; telephone conference with D. Pescovitz, M. Mayer.	R. RADER	1.00	NO CHARGE
03/19/09	Review and analysis of complaint and insurance issues; Conferences with M. Mayer and insurance broker.	C. LEONARD	0.50	295.00
03/19/09	Telephone conference with D. Pescovitz, C. Doctorow regarding defamation claim; telephone conferences with E. Szylo regarding insurance coverage issues; draft SLAPP motion.	M. MAYER	1.70	850.00
03/19/09	Leave voicemail for M. Mayer; telephone conference with M. Mayer; conference with M. Mayer.	R. RADER	0.50	250.00
03/20/09	Draft and revise SLAPP motion; telephone conferences review and analyze complaint; legal research regarding defamation claims.	M. MAYER	3.80	1,900.00
03/22/09	Draft SLAPP motion; legal research regarding same.	M. MAYER	0.80	400.00
03/23/09	Legal research regarding SLAPP motion; telephone conference with insurance adjuster regarding indemnity for defense of defamation claims; draft and revise SLAPP motion.	M. MAYER	1.10	550.00

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Happy Mutants LLC
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 San Francisco, CA 94111
 ATTN: David Pescovitz

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May 7, 2009
 Page 6

03/23/09	Conference with M. Mayer regarding strategy on case.	R. RADER	0.20	NO CHARGE
03/24/09	Legal research regarding SLAPP motion; draft SLAPP motion.	M. MAYER	1.50	750.00
03/25/09	Draft and revise SLAPP motion.	M. MAYER	1.10	550.00
03/26/09	Draft and revise SLAPP motion; legal research regarding same.	M. MAYER	1.70	850.00
03/27/09	Draft demurrer;	J. RUBIN	1.60	544.00
03/27/09	Draft and revise SLAPP motion; e-mail correspondence with D. Pescovitz, C. Doctorow regarding judicial assignment, SLAPP motion.	M. MAYER	1.10	550.00
03/27/09	Review M. Mayer email, send comments to M. Mayer conference with M. Mayer; conference with J. Rubin regarding same.	R. RADER	0.80	400.00
03/29/09	Review draft SLAPP motion.	R. RADER	0.70	350.00
03/30/09	Revise C. Doctorow declaration; research regarding C. Doctorow declaration; revise demurrer and SLAPP motion	J. RUBIN	0.70	238.00
03/30/09	Revise declaration of Cory Doctorow.	M. MAYER	1.20	600.00
03/30/09	Conference with M. Mayer regarding draft SLAPP; review YMax website.	R. RADER	0.40	200.00
04/01/09	Revise SLAPP motion; telephone conference with CNA insurance regarding same.	M. MAYER	0.40	200.00
04/03/09	Emails and analysis re coverage issues and inquiry from carrier	C. LEONARD	0.20	118.00
04/07/09	Call clerk in Marin county to calendar motion; research motion deadlines; draft email regarding SLAPP motion calendaring issues; revise SLAPP motion	J. RUBIN	1.50	510.00

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Happy Mutants LLC
 60 29th Street, #662
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May 7, 2009
 Page 7

04/07/09	Review and revise SLAPP motion; conferences with J. Rubin regarding demurrer, scheduling, hearing on SLAPP motion.	M. MAYER	1.20	600.00
04/08/09	Draft motion to strike; draft request for judicial notice for website	J. RUBIN	1.00	340.00
04/08/09	Revise demurrer and motion to strike; legal research regarding same.	M. MAYER	1.30	650.00
04/09/09	Revise motion to strike, demurrer and supporting documents	J. RUBIN	2.90	986.00
04/09/09	Revise demurrer and motion to strike; draft and revise request for judicial notice; research regarding defamation ; revise Doctorow declaration.	M. MAYER	1.30	650.00
04/09/09	Review insurance coverage emails; telephone conference with M. Mayer regarding same; conference with J. Rubin regarding EULA.	R. RADER	0.60	300.00
04/10/09	Revise motion to strike	J. RUBIN	1.60	544.00
04/10/09	Draft and revise demurrer, motion to strike, SLAPP motion.	M. MAYER	1.20	600.00
04/12/09	Review pleadings and make comments.	R. RADER	2.10	1,050.00
04/13/09	Draft and revise demurrer, SLAPP motion, Doctrow declaration.	M. MAYER	1.60	800.00
04/13/09	Conferences with M. Mayer, J. Rubin regarding pleadings.	R. RADER	0.50	250.00
04/14/09	Telephone call with Marin county clerk regarding scheduling issues; revise request for judicial notice; draft notice of non-California authorities, revise demurrer and supporting documents	J. RUBIN	4.00	1,360.00

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Happy Mutants LLC
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May 7, 2009
 Page 8

04/14/09	Draft request for judicial notice; finalize and revise demurrer, motion to strike; review and analyze letter from CNA insurance; conferences with J. Rubin regarding same; review and analyze appendix of non-California authorities; revise Doctorow declaration in support of SLAPP motion.	M. MAYER	3.20	1,600.00
04/15/09	Email re coverage/duty to defend.	C. LEONARD	0.10	59.00
04/15/09	Revise and prepare demurrer and supporting documents for filing	J. RUBIN	2.70	918.00
04/15/09	Finalize and file demurrer, supporting papers, motion to strike, declarations; draft and revise request for judicial notice; revise and finalize SLAPP motion; e-mail correspondence with client regarding same; conferences with J. Rubin	M. MAYER	2.80	1,400.00
04/16/09	Revise SLAPP motion and draft and revise supporting documents	J. RUBIN	3.80	1,292.00
04/16/09	Revise and finalize SLAPP motion; legal research regarding same; draft request for judicial notice; review and revise table of authorities; research regarding defenses; draft and revise J. Rubin declaration; revise and finalize Mayer and Doctorow declarations; review and finalize exhibits to SLAPP motion; research regarding Boing Boing republication of Beschizza Post.	M. MAYER	3.70	1,850.00
04/16/09	Conference with M. Mayer, D. Steinberg regarding tactics.	R. RADER	0.20	100.00
04/17/09	Finalize and coordinate filing of SLAPP motion.	M. MAYER	0.40	NO CHARGE

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Happy Mutants LLC
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 San Francisco, CA 94111
 ATTN: David Pescovitz

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May 7, 2009
 Page 9

04/17/09	Telephone conference with M. Mayer	R. RADER	0.20	100.00
04/20/09	Research regarding defenses to SLAPP motion.	M. MAYER	1.00	500.00
04/20/09	Review email correspondence; conference with M. Mayer regarding status.	R. RADER	0.10	50.00
04/22/09	Research regarding discovery on SLAPP motion.	M. MAYER	0.30	150.00
04/29/09	Conference with R. Rader regarding scheduling issues	J. RUBIN	0.30	102.00
04/29/09	Conference with J. Rubin regarding scheduling for reply	R. RADER	0.30	150.00

Total Fees:

\$26,806.00

Billing Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
C. LEONARD	0.80 hours at	\$590.00 =	472.00
R. RADER	6.40 hours at	\$500.00 =	3,200.00
M. MAYER	32.60 hours at	\$500.00 =	16,300.00
J. RUBIN	20.10 hours at	\$340.00 =	6,834.00
SUMMARY TOTALS	59.90		26,806.00

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Happy Mutants LLC
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May 7, 2009
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Costs Advanced and In-House Services through April 30, 2009:

04/22/09	Filing Fees/U.S. Legal Mgmt. MCSC, San Rafael, 3/19/09	33.00	
04/22/09	Research/Copying/U.S. Legal Mgmt. - MCSC, San Rafael, 3/19/09	151.25	
04/30/09	Photocopying, Printing and Scanning	1,071.75	
04/30/09	On Line Legal Research - Westlaw	198.24	
04/30/09	Word Processing	81.25	
	Total Costs:		\$1,535.49
	Total Fees & Costs:		\$28,341.49

Happy Mutants LLC
 60 29th Street, #662
 San Francisco, CA 94111
 ATTN: David Pescovitz

00407 41227-00009
 Invoice: 223579

June 18, 2009
 Page 2

Magicjack LP adv. Happy Mutants, LLC

Fees through May 31, 2009:

05/05/09	Conference with M. Mayer regarding status, strategy.	R. RADER	0.20	100.00
05/14/09	Review and analyze opposition; prepare research materials for reply	J. RUBIN	1.00	340.00
05/14/09	Review and analyze MagicJack opposition to SLAPP motion; draft reply brief; legal research regarding same; review cases cited by MagicJack.	M. MAYER	3.70	1,850.00
05/14/09	Review emails; conferences with M. Mayer regarding opposition to SLAPP.	R. RADER	0.20	100.00
05/15/09	Draft and revise reply memorandum in support of SLAPP motion; legal research regarding same.	M. MAYER	4.10	2,050.00
05/17/09	Revise reply memorandum.	M. MAYER	1.80	900.00
05/18/09	Revise reply memorandum; draft declaration of Marc Mayer in support of SLAPP motion; research regarding same; e-mail correspondence with clients regarding reply memorandum.	M. MAYER	3.80	1,900.00
05/18/09	Review draft reply and give comments to M. Mayer.	R. RADER	1.60	800.00
05/19/09	Finalize reply memorandum and prepare for filing.	M. MAYER	3.20	1,600.00
05/19/09	Review and respond to M. Mayer, D. Pescovitz emails.	R. RADER	0.20	100.00
05/21/09	Review and analysis of insurance issues; Prepare e-memo re insurance issues	C. LEONARD	0.80	472.00
05/21/09	Review and analyze letter.	M. MAYER	0.20	100.00

REDACTED

Happy Mutants LLC
 60 29th Street, #662
 San Francisco, CA 94111
 ATTN: David Pescovitz

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June 18, 2009
 Page 3

05/22/09	Prepare for hearing on SLAPP motion; review cases cited by MagicJack; telephone conference with insurance carrier.	M. MAYER	1.40	700.00
05/26/09	Prepare for hearing on SLAPP motion; review and analyze tentative ruling; conferences with R. Rader regarding SLAPP motion, hearing; telephone conference with Arnold & Porter regarding tentative ruling, hearing on SLAPP motion; travel to San Francisco.	M. MAYER	4.40	2,200.00
05/26/09	Telephone conference with M. Mayer regarding proposed decision; review tentative decision; conferences with M. Mayer; telephone conference with D. Pescovitz, M. Mayer; review and respond to email strategy questions.	R. RADER	1.70	850.00
05/27/09	Prepare for and attend hearing on SLAPP motion; travel to Los Angeles; draft notice of ruling.	M. MAYER	5.30	2,650.00
05/28/09	Telephone calls to insurance; legal research regarding attorneys' fees motion; conference with J. Rubin regarding attorneys' fees motion; draft and revise notice of ruling; e-mail correspondence with clients regarding attorneys' fees issues.	M. MAYER	0.80	400.00
05/28/09	Review and respond to _ emails regarding attorneys' fees.	R. RADER	0.20	100.00
05/29/09	Draft fees motion	J. RUBIN	1.00	340.00
Total Fees:				\$17,552.00

REDACTED

Happy Mutants LLC
60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

00407 41227-00009
Invoice: 223579

June 18, 2009
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Billing Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
C. LEONARD	0.80 hours at	\$590.00 =	472.00
R. RADER	4.10 hours at	\$500.00 =	2,050.00
M. MAYER	28.70 hours at	\$500.00 =	14,350.00
J. RUBIN	2.00 hours at	\$340.00 =	680.00
SUMMARY TOTALS	35.60		17,552.00

Costs Advanced and In-House Services through May 31, 2009:

05/13/09	Delivery Services - First Legal San Francisco, 4/17/09	68.00	
05/13/09	Delivery Services - First Legal San Francisco, 4/16/09	68.00	
05/29/09	Filing Fees/U.S. Legal Mgmt. MCSC, San Rafael, 4/16/09	390.00	
05/29/09	Filing Fees/U.S. Legal Mgmt. MCSC, San Rafael, 4/16/09	40.00	
05/29/09	Court Filing Service/U.S. Legal Mgmt. - MCSC, San Rafael, 4/16/09	92.12	
05/29/09	Court Filing Service/U.S. Legal Mgmt. - MCSC, San Rafael, 4/16/09	92.12	
05/31/09	On Line Legal Research - Westlaw	2,373.81	
Total Costs:			\$3,124.05
Total Fees & Costs:			\$20,676.05

Happy Mutants LLC
 60 29th Street, #662
 San Francisco, CA 94111
 ATTN: David Pescovitz

00407 41227-00009
 Invoice: 224507

July 9, 2009
 Page 2

Magicjack LP adv. Happy Mutants, LLC

Fees through June 30, 2009:

06/01/09	Telephone conference with Court regarding demurrer, pending motions; draft attorneys' fees motion, letter to MagicJack.	M. MAYER	0.50	250.00
06/02/09	Research regarding fee motion; draft fee motion.	M. MAYER	0.30	150.00
06/02/09	Review emails regarding attorneys' fees, insurance; telephone conference with D. Pescovitz.	R. RADER	0.20	100.00
06/05/09	E-mail correspondence with D. Pescovitz	M. MAYER	0.20	100.00
06/10/09	Draft and revise motion for attorneys' fees.	M. MAYER	3.40	1,700.00
06/11/09	Draft and revise motion for attorneys' fees.	M. MAYER	1.30	650.00
06/17/09	Emails regarding of fees pending motion for attorney fees.	C. LEONARD	0.20	118.00
06/17/09	Review and revise fees motion	J. RUBIN	2.20	748.00
06/17/09	Revise motion for attorneys' fees; e-mail correspondence with clients regarding same; research regarding recovery of costs.	M. MAYER	1.40	700.00
06/17/09	Review and respond to C. Doctorow, D. Pescovitz, M. Mayer, C. Leonard emails.	R. RADER	0.20	100.00
06/18/09	Draft fees motion	J. RUBIN	4.00	1,360.00
06/18/09	Review and revise motion for attorneys' fees; conferences with J. Rubin regarding same.	M. MAYER	0.90	450.00

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July 9, 2009
Page 3

06/19/09	Telephone conference with J. Kaufman regarding fees motion; revise fees motion	J. RUBIN	1.40	476.00
06/19/09	Revise motion for attorneys' fees; e-mail with clients regarding same.	M. MAYER	0.80	400.00
06/20/09	Review motion for attorneys' fees.	R. RADER	1.20	600.00
06/21/09	Send comments to M. Mayer on fee motion.	R. RADER	0.20	100.00
06/22/09	Conference with M. Mayer and R. Rader regarding fees motion; revise fees motion	J. RUBIN	1.90	646.00
06/22/09	Review and revise attorneys' fees motion; review attorneys' fees statements for use in motion; revise letter to MagicJack regarding attorneys' fees.	M. MAYER	0.90	450.00
06/24/09	Prepare fees motion and legal research regarding same	J. RUBIN	1.60	544.00
06/24/09	Telephone conference with J. Rubin; revise breakdowns of fees and costs; prepare exhibits to motion for fees.	K. STENSLAND	2.10	430.50
06/24/09	Conferences with J. Rubin regarding attorneys' fees motion; review exhibits for attorneys' fees motion.	M. MAYER	0.50	250.00
06/25/09	Revise and cite check fees motion	J. RUBIN	2.60	884.00
06/25/09	Prepare exhibits and appendix to motion for fees.	K. STENSLAND	2.20	451.00
06/25/09	Revise motion for attorneys' fees.	M. MAYER	0.70	350.00
06/26/09	Research regarding timing of motion for attorneys' fees; telephone conference with B. Parker regarding same.	M. MAYER	0.30	150.00

Total Fees:

\$12,157.50

MITCHELL SILBERBERG & KNUPP LLP

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July 9, 2009
Page 4

Billing Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
C. LEONARD	0.20 hours at	\$590.00 =	118.00
R. RADER	1.80 hours at	\$500.00 =	900.00
M. MAYER	11.20 hours at	\$500.00 =	5,600.00
J. RUBIN	13.70 hours at	\$340.00 =	4,658.00
K. STENSLAND	4.30 hours at	\$205.00 =	881.50
SUMMARY TOTALS	31.20		12,157.50

Costs Advanced and In-House Services through June 30, 2009:

06/10/09	Delivery Services - Beth H. Parker, San Francisco, 5/21/09	10.77
06/19/09	Airfare - M. Mayer, Oakland, 5/26/09	368.20
06/29/09	Court Filing Service/U.S. Legal Mgmt. - MCSC, San Rafael, 5/19/09	99.00
06/29/09	Court Filing Service/U.S. Legal Mgmt. - MCSC, San Rafael, 5/28/09	72.75
06/04/09	Lodging - M. Mayer - San Rafael, 5/26/09	156.14
06/04/09	Parking - M. Mayer - LAX, 5/27/09	33.54
06/04/09	Auto Rental - M. Mayer - San Rafael, 5/26/09	100.34
06/30/09	Photocopying, Printing and Scanning	6.75
06/30/09	On Line Legal Research - Westlaw	1,019.07
	Total Costs:	\$1,866.56
	Total Fees & Costs:	\$14,024.06

IN ACCOUNT WITH
LAW OFFICES
MITCHELL, SILBERBERG & KNUPP LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064

FID #: 95-1883538
TELEPHONE (310) 312-2000
FAX (310) 312-3100

Happy Mutants LLC
60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

00407 41227-00009
INVOICE: *****

August 19, 2009
Page: 2

Magicjack LP adv. Happy Mutants, LLC
41227-00009

07/01/09	Review and analyze letter from insurance carrier.	M . MAYER	.10	50.00
07/01/09	Telephone call to Marin County clerk regarding fees motion calendaring	J . RUBIN	.20	68.00
07/06/09	Revise motion for attorneys' fees.	M . MAYER	.20	100.00
07/08/09	Revise settlement proposal	J . RUBIN	.30	102.00
07/09/09	E-mail correspondence with B. Parker regarding settlement.	M . MAYER	.10	50.00
07/10/09	Revise settlement proposal	J . RUBIN	.90	306.00
07/13/09	Revise motion for attorneys' fees.	M . MAYER	.50	250.00
07/13/09	Conference with M. Mayer regarding fees motion; revise fees motion	J . RUBIN	1.70	578.00
07/13/09	E-mail from J. Rubin; calculate additional fees and costs; revise exhibits.	K . STENSLAND	1.80	369.00

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FID #: 95-1883538
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August 19, 2009
Page: 3

07/14/09	Revise fees motion; conference with M. Mayer and K. Stensland regarding same	J . RUBIN	.30	102.00
07/14/09	Draft email. to K. Stensland regarding revised bills and chart for fees motion; draft email to M. Mayer regarding fees motion	J . RUBIN	.10	34.00
07/14/09	Telephone conference with J. Rubin; prepare exhibits to fees motion.	K . STENSLAND	1.10	225.50
07/15/09	Telephone conference with Arnold & Porter regarding attorneys' fees; e-mail correspondence with D. Pescovitz regarding same; finalize motion for attorneys' fees.	M . MAYER	.40	200.00
07/15/09	Review and respond to emails regarding MagicJack counter-offer.	R . RADER	.10	50.00
07/17/09	Draft and revise letter to Arnold & Porter; telephone conference with Arnold & Porter.	M . MAYER	.50	250.00
07/20/09	Telephone conference with D. Pescovitz regarding settlement issues.	M . MAYER	.20	100.00
07/20/09	Telephone calls with Marin County clerk regarding hearing date; email correspondence regarding same	J . RUBIN	.30	102.00

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TELEPHONE (310) 312-2000
FAX (310) 312-3100

Happy Mutants LLC
60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

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August 19, 2009
Page: 4

07/20/09	Conference with M. Mayer regarding settlement on attorneys' fees; telephone conference with D. Pescovitz regarding same.	R . RADER	.50	250.00
07/21/09	Negotiations with Arnold & Porter regarding settlement, attorneys' fees issues.	M . MAYER	.30	150.00
07/21/09	Review and respond to M. Mayer and D. Pescovitz emails regarding attorneys' fees; conference with M. Mayer regarding same; telephone conference with D. Pescovitz regarding same.	R . RADER	.50	250.00
07/22/09	Revise settlement agreement, joint stipulation regarding attorneys' fees; telephone conferences with R. Horton, Arnold & Porter regarding settlement; conferences with R. Rader regarding settlement issues; telephone conference with D. Pescovitz regarding settlement; finalize motion for attorneys' fees.	M . MAYER	1.30	650.00
07/22/09	Prepare fees motion for filing; telephone call to Marin County clerk to calendar hearing date; draft stip and settlement agreement	J . RUBIN	3.10	1,054.00

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11377 WEST OLYMPIC BOULEVARD
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FID #: 95-1883538
TELEPHONE (310) 312-2000
FAX (310) 312-3100

Happy Mutants LLC
60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

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INVOICE: *****

August 19, 2009
Page: 5

07/22/09	Conferences with M. Mayer regarding latest settlement offers; conference with J. Rubin regarding same; telephone conference with M. Mayer, D. Pescovitz regarding same; review email to Arnold & Porter from M. Mayer; review M. Mayer email summarizing status.	R . RADER	.60	300.00
07/23/09	Revise stipulation and settlement; draft emails regarding same; prepare stipulation for filing	J . RUBIN	2.80	952.00
07/23/09	Review M. Mayer emails regarding attorneys' fees settlement; telephone conference with D. Pescovitz regarding same; telephone conference with M. Mayer, J. Rubin regarding same; conference with J. Rubin regarding same.	R . RADER	.40	200.00
07/24/09	Conference with J. Rubin regarding filing stipulation.	R . RADER	.20	100.00
07/27/09	Conferences with J. Rubin regarding stipulation regarding continuance of deadline for filing attorneys' fees motion; legal research regarding same.	M . MAYER	.30	150.00
07/27/09	Revise stipulation and supporting paperwork; prepare for filing	J . RUBIN	1.60	544.00
07/27/09	Telephone call to Marin County regarding stipulation	J . RUBIN	.20	68.00

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60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

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INVOICE: *****

August 19, 2009
Page: 6

07/28/09	E-mail correspondence with Arnold & Porter regarding settlement agreement.	M . MAYER	.20	100.00
07/28/09	Telephone call with Marin County clerk regarding stipulation and fees motion	J . RUBIN	.10	34.00
07/29/09	Review and analyze revised settlement agreement.	M . MAYER	.20	100.00
07/29/09	Review markup of settlement agreement from B. Parker	J . RUBIN	.20	68.00
07/29/09	Conference with M. Mayer regarding settlement; review and comment on proposed settlement.	R . RADER	.30	150.00
07/30/09	Revise settlement agreement.	M . MAYER	.50	250.00
07/30/09	Review and comment on draft settlement agreement.	R . RADER	.20	100.00
08/05/09	Draft stipulation for extension of time to file fees motion	J . RUBIN	.60	204.00

Total fees: \$8,610.50

*** SUMMARY ***

M. MAYER	4.80 hours at \$500.00 =	2400.00
J. RUBIN	12.40 hours at \$340.00 =	4216.00
R. RADER	2.80 hours at \$500.00 =	1400.00
K. STENSLAND	2.90 hours at \$205.00 =	594.50
SUMMARY TOTALS	22.90	\$8,610.50

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FAX (310) 312-3100

Happy Mutants LLC
60 29th Street, #662
San Francisco, CA 94111
ATTN: David Pescovitz

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INVOICE: *****

August 19, 2009
Page: 7

Costs Advanced and In-house Services through August 19, 2009

08/19/09 Photocopying, Printing and Scanning
08/19/09 On Line Legal Research - Westlaw

92.75
392.00

Total costs:

\$484.75

Total Fees & Costs:

\$9,095.25

EXHIBIT D

U.S. Legal Management Services, Inc

Mail Payments to:
U. S. Legal Management Services, Inc.
File 749286
Los Angeles, CA 90074-9286

invoice

INVOICE NUMBER	CUSTOMER
1114074	
INVOICE DATE	INVOICE AMOUNT
3/31/09	

MITCHELL SILBERBERG & KNUPP LLP (L)
LINDA THRASH
11377 W OLYMPIC BLVD, 2ND FL
LOS ANGELES, CA 90064

BILLING QUESTIONS CALL:
BILLING DEPT(213)402-9013
PAYMENT QUESTIONS CALL:
PAYMENT DEPT(213)402-9007

TAX ID#	CUSTOMER	INVOICE	PERIOD END	AMOUNT	PAGE	
		1114074	3/31/09		11	U S LEGAL MANAGEMENT

3/19/09	4322308	BAR	MCSC-SAN RAFAEL 3501 CIVIC CENTER DRIVE SAN RAFAEL CA 94903 Caller: LINDSEY L X7953 Case No.: CIV091108-PLS COPY Signed: OBTAINED	MITCHELL SILBERBERG & KNUPP LLP (L) 11377 WEST OLYMPIC BOULEVARD LOS ANGELES CA 90064 Case Title: COMPLT AND RET TODAY Ref: 41227-00000 MAYER	Base Chg : 125.00 Research : 37.50 StkOt/Misc: 16.25- Fuel Chge : 5.00 Adv/wit ck: 33.00	184.2
Total Charges for Ref. - 41227-00000 MAYER:				184.25		

Continue

INVOICE PAYMENT DUE UPON RECEIPT



Invoice Number

9-170-97848

Invoice Date

Apr 24, 2009

Account Number

Page

25 of 34

Picked up: Apr 16, 2009

Cust Ref: 41227-00009-04131

Ref #2

Payor: Shipper

Ref #3

Business Closed or Adult Recipient Unavailable - Delivery Not Completed.

Distance Based Pricing, Zone 4

1st attempt Apr 17, 2009 at 07:02 AM.

Automation WBUS
Tracking ID 790170448539
Service Type FedEx First Overnight
Package Type FedEx Box
Zone 04
Packages 1
Rated Weight 4.0 lbs, 1.8 kgs
Delivered Apr 17, 2009 09:04
Svc Area A1
Signed by A.DANIEL
FedEx Use 000000000/0000010/_

Sender
Lindsey LEE
Mitchell Silberberg & Knupp LL
11377 W. Olympic Blvd.
LOS ANGELES CA 90064 US

Recipient
First Legal San Francisco
1138 Howard St
SAN FRANCISCO CA 94103 US

Transportation Charge

68.00

Total Charge

USD

\$68.00 ✓

41227-00009-04131- Reference Subtotal

USD

\$68.00



Invoice Number

9-170-97848

Invoice Date

Apr 24, 2009

Account Number

Page

26 of 34

Picked up: Apr 15, 2009

Cust Ref: 41227-00009-04131

Ref #2

Payor: Shipper

Ref #3

Distance Based Pricing, Zone 4

Package Delivered to Recipient Address - Release Authorized

Automation WBUS
Tracking ID 792148256988
Service Type FedEx First Overnight
Package Type FedEx Box
Zone 04
Packages 1
Rated Weight 4.0 lbs, 1.8 kgs
Delivered Apr 16, 2009 06:48
Svc Area A1
Signed by see above
FedEx Use 000000000/0000010/02

Sender
Lindsey LEE
Mitchell Silberberg & Knupp LL
11377 W. Olympic Blvd.
LOS ANGELES CA 90064 US

Recipient
First Legal San Francisco
1138 Howard St
SAN FRANCISCO CA 94103 US

Transportation Charge

68.00

Total Charge

USD

\$68.00 ✓

41227-00009-04131- Reference Subtotal

USD

\$68.00



Invoice Number

9-210-61547

Invoice Date

May 29, 2009

Account Number

Page

16 of 23

Picked up: May 20, 2009

Cust Ref: 41227-00009-04131

Ref #2

Payor: Shipper

Ref #3

Distance Based Pricing, Zone 4

Automation WBUS
Tracking ID 790666495719
Service Type FedEx Standard Overnight
Package Type FedEx Envelope
Zone 04
Packages 1
Rated Weight N/A
Delivered May 21, 2009 12:32
Svc Area A1
Signed by .MYCINO
FedEx Use 000000000/0000222/_

Sender
Lindsey LEE
Mitchell Silberberg & Knupp LL
11377 W. Olympic Blvd.
LOS ANGELES CA 90064 US

Recipient
Beth H. Parker
Arnold & Porter LLP
275 Battery St Ste 2700
SAN FRANCISCO CA 94111 US

Transportation Charge

19.95

Discount

-9.18

Total Charge

USD

\$10.77 ✓

41227-00009-04131- Reference Subtotal

USD

\$10.77



Mail Payments to:
U. S. Legal Management Services, Inc.
File 749286
Los Angeles, CA 90074-9286

invoice

INVOICE #	CUSTOMER
1115176	
INVOICE DATE	INVOICE AMOUNT
4/30/09	

MITCHELL SILBERBERG & KNUPP LLP (L)
 11377 W OLYMPIC BLVD, 2ND FL
 LOS ANGELES, CA 90064

BILLING QUESTIONS CALL:
 BILLING DEPT(213)402-9013
 PAYMENT QUESTIONS CALL:
 PAYMENT DEPT(213)402-9007

TAX ID#	CUSTOMER	INVOICE	PERIOD/END	AMOUNT	PAGE	
		1115176	4/30/09		10	U S LEGAL MANAGEMENT

4/16/09	4342852	BFL	MITCHELL SILBERBERG & KNUPP LLP (L) 11377 WEST OLYMPIC BOULEVARD LOS ANGELES CA 90064 Caller: LINDSEY x7953 Case No.: CIV 091108 Signed: filed	MCSC-SAN RAFAEL 3501 CIVIC CENTER DRIVE SAN RAFAEL CA 94903 Case Title: MAGIC JACK V HAPPY Ref: 41227-00009	Base Chg : 98.00 StkOt/Misc: 9.80- Fuel Chge : 3.92 Adv/wit Ck: 390.00	482.
4/16/09	4343553	BFL	MITCHELL SILBERBERG & KNUPP LLP (L) 11377 WEST OLYMPIC BOULEVARD LOS ANGELES CA 90064 Caller: lidnsey x7953 Case No.: CIV091108-MAGICJACK Signed: filed/rej/ps	MCSC-SAN RAFAEL 3501 CIVIC CENTER DRIVE SAN RAFAEL CA 94903 Case Title: VS HAPPY MUTANTA - Ref: 41227-00009	Base Chg : 98.00 StkOt/Misc: 9.80- Fuel Chge : 3.92 Adv/wit Ck: 40.00	132.
Total Charges for Ref. - 41227-00009:				614.24		

Continue

INVOICE PAYMENT DUE UPON RECEIPT



Invoice Number	Invoice Date	Account Number	Page
9-210-61547	May 29, 2009	0904-4497-2	16 of 23

Picked up: May 20, 2009

Payor: Shipper

Distance Based Pricing, Zone 4

Cust. Ref.: 41227-00009-04131

Ref.#3:

Ref.#2:

Automation WBUS
Tracking ID 790666495719
Service Type FedEx Standard Overnight
Package Type FedEx Envelope
Zone 04
Packages 1
Rated Weight N/A
Delivered May 21, 2009 12:32
Svc Area A1
Signed by .MYCINO
FedEx Use 000000000/0000222/_

Sender
Lindsey LEE
Mitchell Silberberg & Knupp LL
11377 W. Olympic Blvd.
LOS ANGELES CA 90064 US

Recipient
Beth H. Parker
Arnold & Porter LLP
275 Battery St Ste 2700
SAN FRANCISCO CA 94111 US

Transportation Charge	19.95
Discount	-9.18
Total Charge	USD \$10.77

41227-00009-04131- Reference Subtotal	USD	\$10.77
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Continued on next page

U.S. Legal Management Services, Inc



Mail Payments to:
U. S. Legal Management Services, Inc.
File 749286
Los Angeles, CA 90074-9286

invoice

INVOICE #	CUSTOMER
1116504	11084
INVOICE DATE	INVOICE AMOUNT
5/31/09	7,589.78

MITCHELL SILBERBERG & KNUPP LLP (L)
 11377 W OLYMPIC BLVD, 2ND FL
 LOS ANGELES, CA 90064

BILLING QUESTIONS CALL:
 BILLING DEPT(213)402-9013
 PAYMENT QUESTIONS CALL:
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TAX ID#	CUSTOMER	INVOICE	PERIOD END	AMOUNT	PAGE	
34-2003879	11084	1116504	5/31/09	7,589.78	8	U S LEGAL MANAGEMENT

5/19/09	4367517	BFX	MITCHELL SILBERBERG & KNUPP LLP (L) 11377 WEST OLYMPIC BOULEVARD LOS ANGELES CA 90064 Caller: LINDSEY X7953 Case No.: CIV091108-MAGIC JACK Signed: FILED	MCSC-SAN RAFAEL 3501 CIVIC CENTER DRIVE SAN RAFAEL CA 94903 Case Title: VS HAPPY MUTANTS-POS Ref: 41227-00009	Base Chg : 72.75 Ship/Fax : 26.25	99.00
BRANCH FAX FILE						
5/28/09	4373710	BFX	MITCHELL SILBERBERG & KNUPP LLP (L) 11377 WEST OLYMPIC BOULEVARD LOS ANGELES CA 90064 Caller: LINDSEY X7953 Case No.: CIV0911087-MAGICJACK Signed: filed	MCSC-SAN RAFAEL 3501 CIVIC CENTER DRIVE SAN RAFAEL CA 94903 Case Title: V HAPPY MUTANTS- NTC Ref: 41227-00009	Base Chg : 72.75	72.75
BRANCH FAX FILE						
Total Charges for Ref. - 41227-00009:				171.75		
						Please pay -> Continued

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FOURPOINTS.COM/SANRAFAEL • TEL (415) 479 8800 • FAX (415) 479 2342

GUEST Marc Mayer ROOM 421 TRAVEL AGENT Executours Inc.
RATE 120.00 Ste 460
PERSONS 1 1901 Ave Of The Stars
FOLIO 158782 EX-A Los Angeles, CA 90067-60
PAGE 1 CHARGE TO
ARRIVE 26-MAY-09 19:40
DEPART 27-MAY-09
PAYMENT MC

DATE	REFERENCE	DESCRIPTION	DEBIT	CREDIT
26-MAY-09	RT421	Room Charge		120.00
26-MAY-09	RT421	Occupancy Tax		12.00
26-MAY-09	RT421	Tourism Assesment		1.20
26-MAY-09	RT421	California Tourism Tax		0.04
26-MAY-09	2709	Lounge		22.90

Balance Due 156.14

EXPENSE REPORT SUMMARY

Date	Room	Food/Bev	Telcom	MISC	Other	Total	Payment
26-MAY-09	133.20	0.00	0.00	0.00	22.94	156.14	0.00
Total	133.20	0.00	0.00	0.00	22.94	156.14	0.00

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I agree to remain personally liable for the payment of this account if the corporation or other third party billed fails to pay part or all of these charges.

As a Starwood Preferred Guest, you could have earned 286
Starpoints for this visit. Please provide your member number
or enroll today.

Marc Mayer

FOLIO 158782 26-MAY-09

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FRANCISCO

7600 EARTHART RD STE 7
OAKLAND, CA 946214518

(510) 567-1760

Branch: 1002201

Ticket: 565058 Ref#: 59MVY6

MARC MAYER

Out: 05/26/2009 6:34 PM

In: 05/27/2009 11:31 AM

Vehicle: 2009 NISSAN VERS 4DS

Vehicle License: 6FGD585

TIME & DISTANCE

1@ \$59.99/DAY = \$59.99

DW

1@ \$8.99/DAY = \$8.99

PA1/PEC

1@ \$5.00/DAY = \$5.00

REFUELING CHARGE = \$0.00

CFC CHARGE = \$10.00

TOURISM FEE 2.5000% = \$1.50

AIRPORT CONCESSION

11.1000% = \$8.21

SALES TAX 9.7500% = \$6.65

Total Charges: \$100.34

Balance Due: \$100.34

Charge To: MC XXXXXXXXXXXXXXXX

Thank you for renting from

Enterprise Rent-a-Car

To reserve a car use:

1 (800) RENT-A-CAR

or

www.enterprise.com



ME 6:30 AM - 11:00 PM TH 6:30 AM - 11:00 PM
FR 6:30 AM - 11:00 PM SA 6:30 AM - 11:00 PM
SU 6:30 AM - 11:00 PM REF# 59MVY6

NUMBER OF VEHICLE: ENTERPRISE RENT-A-CAR COMPANY OF SAN FRANCISCO
ANCH ADDRESS: 7600 ARCADIA RD STE 7, OAKLAND, CA 946214518 (510) 547-1750

DATE 05/26/2009		RENTAL TYPE RETAIL	SOURCE # WALKUP	I.D. # 046	RENTAL AGREEMENT NO. D	56505
RENTER FM MAYER		MARC				DAY & 24 HOUR PERIOD
ORIGINAL VEHICLE		5284 VEHICLE \$15.00/HOUR				3154 \$59.99/DAY
COLOR BLUE	LICENSE NO. 6F6053	BILL TO COMPANY N				NO CHARGE MILEAGE
MODEL LXSA	ECAR# LM688	ATTN: PHONE EXT.				
MILEAGE IN OUT 19906	EMPLOYEE #	REFERENCE NUMBER 100.34				
CONDITION AND FUEL LEVEL AGREED TO BY RENTER		ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL. I REQUEST OWNER'S PERMISSION TO ALLOW: NO OTHER DRIVERS PERMITTED				
NO DAMAGE		WHO IS UNDER MY CONTROL AND DIRECTION TO DRIVE VEHICLE FOR ME AND ON MY BEHALF I AM RESPONSIBLE FOR THEIR ACTS WHILE THEY ARE DRIVING AND FOR FULFILLING TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT (AGREEMENT). USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.				
PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S): E+ WALKUP ICAR BLUE SHRT		OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.				
MAGE WAIVER NOTICE: ENTERPRISE RENT-A-CAR COMPANY ACKNOWLEDGES RECEIPT OF ORAL DISBURSE THAT DAMAGE DRIVER MAY BE DUPLICATION OF COVERAGE MAINTAINED UNDER HIS OR HER OWN POLICY OF MOTOR VEHICLE INSURANCE. THE PURCHASE OF DAMAGE WAIVER IS OPTIONAL AND MAY BE DECLINED.		RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AND ASSUMES DAMAGE RESPONSIBILITY. SEE PAGE 2, PARAGRAPH 6. RENTER: X Declines DW		RENTER ACCEPTS OPTIONAL DAMAGE WAIVER (DW) AT FEE SHOWN IN COLUMN TO RIGHT SEE DW NOTICE TO LEFT AND PAGE 3, PARAGRAPH 16. DW IS NOT INSURANCE. RENTER: X Accepts DW		\$8.99/DAY
		RENTER DECLINES OPTIONAL PERSONAL ACCIDENT INSURANCE COVERAGE (PAI/PEC) SEE PAGE 2, PARAGRAPH 8 AND 10. RENTER: X Declines PAI/PEC		RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE COVERAGE (PAI/PEC) AT FEE SHOWN IN COLUMN TO RIGHT SEE PAGE 3, PARAGRAPH 18. RENTER: X Accepts PAI/PEC		\$9.00/DAY
		RENTER DECLINES OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) SEE PAGE 2, PARAGRAPH 7. RENTER: X Declines SLP		RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT SEE PAGE 3, PARAGRAPH 17. RENTER: X Accepts SLP		\$11.99/DAY
ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT, WHICH CONSISTS OF PAGES 1 THROUGH 4. I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON PAGES 1 THROUGH 4 OF THIS AGREEMENT AND BY MY SIGNATURE BELOW I AM THE "RENTER" UNDER THIS AGREEMENT. BY SIGNING BELOW, I AM AUTHORIZING OWNER TO PROCESS CHARGES ON MY CREDIT CARD(S) AND/OR DEBIT CARD(S) FOR ADVANCE DEPOSITS, INCREMENTAL AUTHORIZATIONS DEPOSITS AND CHARGES INCURRED, AS WELL AS PAYMENTS REFUSED BY A THIRD PARTY TO WHOM BILLING WAS DIRECTED. I CERTIFY THAT THE DRIVER'S LICENSE(S) PRESENTED IS CURRENTLY VALID AND IS NOT SUSPENDED, EXPIRED, REVOKED, CANCELLED OR SURRENDERED.						FUEL CHARGE \$3.65/GALLON
REPLACEMENT VEHICLE		RENTER: X		DATE 05/26/2009		
COLOR	LICENSE NO.	OWNER REF: X		EMPL E92208		SAVED THE DAY AIRPORT CONCESSION 11.10% DOW CHARGE \$10.00 THURSDAY FEE 2.50%
MODEL	ECAR#	I WILL RETURN CAR BY DATE 05/26/2009		DEPOSIT(S) AMOUNT \$200.00		
MILEAGE IN OUT	EMPLOYEE #	TIME 12:30 PM		PAID BY 05/26/2009		
CONDITION AND FUEL LEVEL AGREED TO BY RENTER		ADDITIONAL INFORMATION				ESTIMATED TOTAL
NO DAMAGE						TOTAL CHARGES
						DEPOSITS
						REFUNDS
						AMOUNT DUE
						CLOSED BY
						PAID BY CASH CHECK CHARGE
						RECEIPT OF CASH REFUND
						DATE
						AMOUNT RECEIVED

AIRPORTS VALET PRKG SV
8919 S SEPULVEDA
LOS ANGELES, CA 90045

TERMINAL ID: 884226700
MERCHANT #: 227201915997

MC

#XXXXXXXXXXXX

SALE

BATCH: 000837

INVOICE: 009445

DATE: MAY 27, 09

TIME: 14:23

SQ: 007

AUTH NO: 093671

MOSE/SERVICES

\$28.54

TIP

5

TOTAL

CUSTOMER COPY



ATTENTION

Executours/A member of The Tzell Travel Group
1901 Ave of the Stars #460
Los Angeles, California 90067
310-552-0786
310-552-2622

PASSENGER INFORMATION

Company Name: MITCHELL, SILBERBERG AND KNUPP LLP
Company Number: 011020
Date Issued: May 19, 2009
Agency Confirmation: IAHWSY
Agent: 35
Invoice #: 0250742
Ref: 41227-00009
First Name: MARC
Last Name: MAYER
Street Address: 11377 WEST OLYMPIC BLVD
City: LOS ANGELES
State: CA
Zip Code: 90064

FLIGHT

Tuesday May 26, 2009
http://www.southwest.com/travel_center/retrieveCheckinDoc.html
Air Vendor: SOUTHWEST AIRLINES
Flight Number: 683
From: LOS ANGELES
Departs: 11:00 AM
To: OAKLAND
Arrives: 12:10 PM
Seat:
Ticket Confirmation: JXAYSI
Aircraft: BOEING 737-70
Class of Service: ECONOMY CLASS
Operated By: SOUTHWEST AIRLINES
BAGGAGE FEES MAY APPLY
DEPART: TERMINAL 1
FLIGHT TIME: 01HR 10MIN
ARRIVE: TERMINAL 2

HOTEL

Tuesday May 26, 2009
Hotel Vendor: SHERATON HOTELS
Confirmation #: C134422551
Hotel Name: FOUR POINTS SAN RAFAEL
Hotel Address: 1010 NORTHGATE DR
SAN RAFAEL CA 94903

FONE 415-479-8800
FAX 415-479-2342
Check-in Date: May 26, 2009
Check-out Date: May 27, 2009
Number of Rooms: 1
Number of Persons: 1
Number of Nights: 1
Rate: 120.00 USD
TRADITIONAL NON-SMOKING: FOUR
FREE WI-FI AND BOTTLED WATER:
CANCEL 01 DAYS PRIOR TO ARRIVAL
GUARANTEED LATE ARRIVAL
RQST NONSMK KING

FLIGHT

Wednesday May 27, 2009
http://www.southwest.com/travel_center/retrieveCheckinDoc.html
Air Vendor: SOUTHWEST AIRLINES
Flight Number: 151
From: OAKLAND
Departs: 02:00 PM
To: LOS ANGELES
Arrives: 03:20 PM
Seat:
Ticket Confirmation: JXAYSI
Aircraft: BOEING 737-70
Class of Service: ECONOMY CLASS
Operated By: SOUTHWEST AIRLINES
BAGGAGE FEES MAY APPLY
DEPART: TERMINAL 2
FLIGHT TIME: 01HR 20MIN
ARRIVE: TERMINAL 1

Miscellaneous

Friday November 27, 2009
Start Date: November 27, 2009
Description: LOS ANGELES
45.00 PP NONREFUNDABLE TRANSACTION FEE
INVOICE INFORMATION
Invoice #:0250742
Sub Total:\$ 45.00
Air Fare:\$ 323.20
Total Air Fare:\$ 323.20
Total:\$ 368.20
Total Payment:\$ 368.20
Balance Due:\$ 0.00

PAYMENT HISTORY

5/19/2009
CREDIT CARD
XXXXXXXXXXXXX1341
\$ 323.20
5/19/2009
CREDIT CARD
XXXXXXXXXXXXX1341
\$ 45.00

GENERAL INFORMATION

AIR TICKET

WN6465372626

MAYER MARC

REMARKS

* * * * *
ALL REFUNDS ARE SUBJECT TO A 25.00 PROCESSING FEE.
EXCHANGES ARE SUBJECT TO APPLICABLE TICKETING FEE FOR
THE NEW TICKET. THESE FEES ARE IN ADDITION TO
ANY AIRLINE OR VENDOR IMPOSED PENALTIES OR CHARGES
* * * * *
CHECKED BAGGAGE POLICIES VARY BY AIRLINE AND
ADDITIONAL FEES MAY APPLY. PLEASE CHECK WITH
YOUR AIRLINE FOR CURRENT RULES AND RESTRICTIONS
* * * * *

EXHIBIT E

Practice Area by Location Report

Litigation (non-IP) - Los Angeles (xNYC) (49 members)

Issued: *October 2008*

Firm: 0165 - Los Angeles
Litigation (non-IP)

Confidential

This report is intended solely for the information of Partners and authorized employees of the firm.

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2008 BILLING RATE & ASSOCIATE SALARY SURVEY ^{plus} Mid-Year "Lite" Release

Litigation (non-IP)

Litigation (non-IP) - Los Angeles (xNYC) (49 members)


Partner Standard Billing Rates

As of July 1, 2008

	Your Firm		Group		Your Firm		Group		
	Rate	Rank / Of	1 st Quartile	Median	3 rd Quartile	% Change - 1 Year	% Change - 2 year	% Change - 1 year 1 st Quartile	Median 3 rd Quartile % Change - 2 Year
Equity Partners									
High									
Middle									
Low									
Average									
<u>Avg. by Years of Experience</u>									
10 Years or Less									
11 - 15 Years									
16 - 20 Years									
21 - 25 Years									
26 - 30 Years									
31 - 35 Years									
> 35 Years									
Non-Equity Partners									
High									
Middle									
Low									
Average									
<u>Avg. by Years of Experience</u>									
10 Years or Less									
11 - 15 Years									
16 - 20 Years									
> 20 Years									
All Partner Composite									
High									
Middle									
Low									
Average									
Contract Partner Average									

** omitted due to insufficient data
 ‡ less than 75% population response

REDACTED

PRICEWATERHOUSECOOPERS 

2008 BILLING RATE & ASSOCIATE SALARY SURVEY ^{plus} Mid-Year "Lite" Release

Litigation (non-IP)

Litigation (non-IP) - Los Angeles (xNYC) (49 members)

Non-Partner Timekeeper Standard Billing Rates

As of July 1, 2008

	Your Firm		Group			Your Firm		Group		
	Rate	Rank / Of	1 st Quartile	Median	3 rd Quartile	% Change - 1 Year	% Change - 2 Year	1 st Quartile	Median	3 rd Quartile
Associates & Senior Attorneys										
Class of										
2008										
2007										
2006										
2005										
2004										
2003										
2002										
2001										
Prior										
All Associates & Senior Attys										
All Associates (excl Sr. Attys)										
Other Attorney Averages										
Of Counsel										
Staff Attorneys										
All Attorney Average										
Contract Associate Average										
Other Timekeeper Averages										
Lobbyists										
Specialists										
Litigation Support										
Patent Agents										
Case Clerks										
Law Clerks/Trust Accts.										
Legal Assistants										
High										
Middle										
Low										
Average										

** omitted due to insufficient data
 ‡ less than 75% population response

REDACTED


PRICEWATERHOUSECOOPERS 

EXHIBIT F

1 MITCHELL SILBERBERG & KNUPP LLP
2 MARC E. MAYER (SBN 190969)
3 JILL P. RUBIN (SBN 240019)
4 11377 West Olympic Boulevard
5 Los Angeles, California 90064-1683
6 Telephone: (310) 312-2000
7 Facsimile: (310) 312-3100

8 Attorneys for Defendant
9 Happy Mutants LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

MAGICJACK, LP,

Plaintiff,

v.

HAPPY MUTANTS LLC,

Defendant.

CASE NO. CIV 091108

NOTICE OF RULING

Date: May 27, 2009
Time: 9:00 a.m.
Location: Department J
Judge: Honorable Verna A. Adams

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2
3 **PLEASE TAKE NOTICE** that, on May 27, 2009, the Motion of Defendant Happy
4 Mutants, LLC ("Happy Mutants") to Strike Complaint Of Plaintiff MagicJack, LP ("MagicJack")
5 Pursuant to California's Anti-SLAPP Statute, Cal. Code Civ. P. § 425.16 (the "Motion") came on
6 for hearing in Department J of the above-entitled court, the Honorable Verna A. Adams presiding.
7 Marc Mayer of Mitchell Silberberg & Knupp LLP appeared on behalf of Happy Mutants. Beth
8 Parker and Kevin Bovard of Arnold & Porter LLP appeared on behalf of MagicJack.

9
10 After considering all of the papers submitted in support of and in opposition to the Motion,
11 and having heard argument from counsel, the Court GRANTED the Motion.

12
13 A copy of the Court's tentative ruling, adopted in full, is attached hereto as Exhibit A.

14
15 DATED: May 28, 2009

MITCHELL SILBERBERG & KNUPP LLP
Marc E. Mayer
Jill P. Rubin

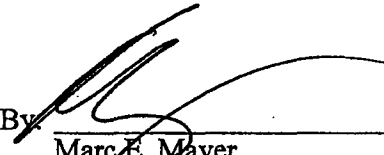
16
17
18 By 
19 Marc E. Mayer
20 Attorneys for Defendant
21 Happy Mutants LLC
22
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24
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EXHIBIT A

MARIN SUPERIOR COURT

DATE: 05/27/09 TIME: 9:00 A.M. DEPT: J CASE NO: CV091108

PRESIDING: HON. VERNA A. ADAMS

REPORTER: SUE FITZSIMMONS

CLERK: JANET MINKIEWICZ

PLAINTIFF: MAGICJACK, LP

vs.

DEFENDANT: HAPPY MUTANTS LLC

NATURE OF PROCEEDINGS: NOTICE OF MOTION – TO STRIKE COMPLAINT
PURSUANT TO ANTI-SLAPP STATUTE, CCP 425.16 [DEFT] HAPPY MUTANTS LLC

RULING

DEFENDANT'S SPECIAL MOTION TO STRIKE COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 425.16 IS GRANTED.

PLAINTIFF'S CLAIMS ARISE FROM PROTECTED ACTIVITY SINCE THE
STATEMENTS INVOLVE CONSUMER INFORMATION AFFECTING A LARGE
NUMBER OF PERSONS. (SEE *WILBANKS V. WOLK* (2004) 121 CAL.APP.4TH 883, 898-
900; *CARVER V. BONDS* (2005) 135 CAL.APP.4TH 328, 343-344, AND *GILBERT V.
SYKES* (2007) 147 CAL.APP.4TH 13, 23-24; SEE ALSO WEIL AND BROWN, CAL.
PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL (TRG 2008) § 7:800.) THE
POSTING ON DEFENDANT'S WEBSITE PROVIDES INFORMATION ABOUT
PLAINTIFF'S PRODUCT NOT ONLY TO THE "SUBSTANTIAL" NUMBER OF
PEOPLE WHO HAVE ALREADY PURCHASED THE DEVICE, BUT ALSO TO
OTHER CONSUMERS WHO MIGHT BE CONSIDERING PURCHASING SUCH A
DEVICE.

PLAINTIFF HAS NOT ESTABLISHED A PROBABILITY OF PREVAILING ON ITS
CLAIMS. AS TO THE STATEMENT REGARDING THE HOMEPAGE COUNTER,
PLAINTIFF'S OWN EVIDENCE SHOWS THAT THE COUNTER IS NOT COUNTING
VISITORS TO THE WEBSITE AS A VISITOR VISITS THE SITE. INSTEAD, THE
VISITOR IS SEEING AN ESTIMATE. IT IS NOT PROBABLE THAT THE TRIER OF
FACT WOULD THEREFORE FIND UNTRUE THE STATEMENT THAT THE
COUNTER IS "A FAKE." FURTHER, PLAINTIFF MAKES NO CONNECTION
BETWEEN "TOTAL DAILY VISITORS" AND "PEOPLE [WHO] CAME FOR A FREE
TRIAL." IN OTHER WORDS, IT OFFERS NO EVIDENCE THAT EACH DAILY

VISITOR, AS COUNTED BY THE METHODS DESCRIBED BY DECLARANT WILLIAMS, "CAME FOR A FREE TRIAL." AS TO THE STATEMENTS BASED ON THE EULA, SUCH STATEMENTS, READ IN CONTEXT, DO NOT IMPLY THAT PLAINTIFF IS EAVESDROPPING ON ITS CUSTOMERS' CALLS. INSTEAD, THE STATEMENTS CLEARLY CONSTITUTE THE OPINION OF THE AUTHOR THAT ANALYZING PHONE NUMBERS FOR PURPOSES OF TARGETED ADVERTISING AMOUNTS TO "SPY[ING]," "SNOOP[ING]," AND "SYSTEMATIC PRIVACY INVASION."

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF MARIN

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
5 11377 West Olympic Boulevard, Los Angeles, California 90064-1683, and my business email
6 address is mem@msk.com.

7 On May 28, 2009, I served a copy of the foregoing document(s) described as **NOTICE OF**
8 **RULING** on the interested parties in this action at their last known address as set forth below by
9 taking the action described below:

10 Beth H. Parker
11 Rhonda L. Stewart
12 275 Battery Street, Suite 2700
13 San Francisco, CA 94111

14 *Attorneys for Plaintiff*

15 ☒ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set
16 forth above, and deposited each envelope in the mail at Los Angeles, California. Each
17 envelope was mailed with postage thereon fully prepaid.

18 ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s)
19 designated by the carrier, with delivery fees provided for, and addressed as set forth above, and
20 deposited the above-described document(s) with in the ordinary course of business, by
21 depositing the document(s) in a facility regularly maintained by the carrier or delivering the
22 document(s) to an authorized driver for the carrier.

23 ☐ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed
24 envelope(s), and caused personal delivery by of the document(s) listed above to
25 the person(s) at the address(es) set forth above.

26 ☐ **BY PLACING FOR COLLECTION AND MAILING:** I placed the above-mentioned
27 document(s) in sealed envelope(s) addressed as set forth above, and placed the envelope(s) for
28 collection and mailing following ordinary business practices. I am readily familiar with the
firm's practice for collection and processing of correspondence for mailing with the United
States Postal Service. Under that practice it would be deposited with the U.S. Postal Service
on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los
Angeles, California 90064-1683 in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at :
m. on the parties listed at the email addresses above and, to the best of my knowledge, the
transmission was complete and without error in that I did not receive an electronic notification
to the contrary.

☐ **BY FAX:** On , at am/pm, from facsimile number (310) ,
before placing the above-described document(s) in sealed envelope(s) addressed as set forth
above, I sent a copy of the above-described document(s) to each of the individuals set forth
above at the facsimile numbers listed above. The transmission was reported as complete and

1 without error. The transmission report was properly issued by the transmitting facsimile
2 machine, and a copy of that report is attached hereto.

3 I declare under penalty of perjury under the laws of the State of California that the above is
4 true and correct.

5 Executed on May 28, 2009, at Los Angeles, California.

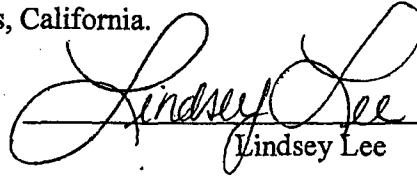
6 
Lindsey Lee

EXHIBIT G

ARNOLD & PORTER LLP

With roots in the days of the New Deal and an outstanding record of commitment, excellence, and innovation, Arnold & Porter LLP stands today as a preeminent international law firm.

Arnold & Porter attorneys, practicing in more than 25 distinct areas of the law, conduct business on six continents. Our global reach, experience, and deep knowledge allow us to work across geographic, cultural, technological, and ideological borders, serving clients whose business needs require US, EU, or cross-border regulatory, litigation, and transactional services.

Commitment to our clients, community, and values. We provide the full breadth of legal resources to represent all of our clients' interests. Through interdisciplinary collaboration and specialized experience in our clients' industries, we are able to offer truly innovative and effective solutions that align with both clients' short- and long-term business objectives.

For those clients who cannot afford legal counsel, we maintain a broad and meaningful pro bono practice. With a lengthy record of excellence, we remain committed to the community at large. In 2008, we were one of the top five pro bono firms named by *The American Lawyer*, with an average of 132 pro bono hours per lawyer.

In all of our work, we stay true to our core values. We maintain a diverse workplace, a collegial work environment, and an unyielding commitment to inclusiveness. In 2009, FORTUNE magazine named Arnold & Porter one of the "100 Best Companies to Work For." This marks the seventh consecutive year our firm has been so honored. Ranked No. 21, Arnold & Porter was the most highly placed law firm of the firms ranked in 2009.

Excellence in the practice of law. We set our standards high, expect the best from our attorneys, and return top-tier work on behalf of our clients. Our tradition of excellence is distinguished, and our attorneys are widely respected in the US and abroad. Our attorneys are leaders in their fields, speak frequently throughout the world on the firm's core practice areas, and are published widely in legal journals, industry and mass media, and "hot topic" books.

Our team is not only comprised of top lawyers from America and Europe's best colleges and law schools, but of doctors, biologists, chemists, public policy professionals, and former high-ranking officials from the US government. In fact, over 80 of our partners have served in positions in the US government, from the Federal Trade Commission to the Department of Justice to the US Congress. Their insider perspectives are integral to understanding the legal and policy frameworks in which complex business and legal issues arise, and how best to structure transactions and overcome litigation and regulatory challenges.

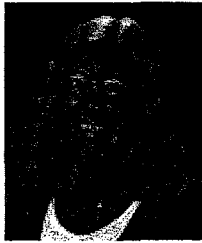
Arnold & Porter is recognized throughout the US, EU, and the world for excellence in the practice of law. In 2009, *Chambers Global* named 14 Arnold & Porter attorneys as "Leaders in their Field" in the areas of life sciences (global); competition/antitrust (Belgium, Europe-wide, US, and global); international arbitration (Latin America); intellectual property; international trade, and outsourcing (US). *PLC Which lawyer? Yearbook* 2009 ranked 46 Arnold & Porter lawyers in 20 areas. The firm was ranked by PLC as "Leading" in competition/anti-trust, life sciences, corporate real estate, corporate/M&A, and environment. Arnold & Porter received Honorable Mention recognition in *The American Lawyer's* "Litigation Department of the Year" 2008 feature. *The American Lawyer* also ranked the firm No. 8 on its "A-List" of top 20 firms in the country, the fifth time the firm has made the list since its inception in 2003.

Innovation in our work and in the world. We continue to build a reputation for legal work that is not only effective, but that is often groundbreaking. Whether working on a precedent-setting case or structuring a transaction in a truly original way, we endeavor to be innovative in approach and transformational in impact. As our practice embraces the rapidly changing international landscape, our firm has become a powerful partner for global business. We serve sovereign governments, US and European businesses as they expand into emerging markets, multinational corporations as they conduct business in a multitude of locations, and international businesses seeking to navigate the waters of US and European business, regulation, and law. We believe business transformation in a global economy requires innovation and open market access, and by providing the legal structure and foundation for both, we enable our clients to effectively provide products and services to the world's vast marketplace.

The firm remains committed to partnering with our clients for the future. We offer counsel on the emerging topics in law, regulation, and policy. We remain at the forefront of legal policy issues and new developments in the law—whether they be in securities law, environmental law, hedge funds, product liability, or nanotechnology—and we continue to expand our experience and services into emerging markets of the global economy.

[Download the firm brochure](#)

ARNOLD & PORTER LLP



Beth H. Parker

Partner

San Francisco
tel: +1 415.356.3051
fax: +1 415.356.3099
Beth.Parker@aporter.com

Practice Focus

Beth H. Parker, a civil litigator, focuses on intellectual property, complex commercial, antitrust, constitutional, and civil rights matters. She has regularly litigated cases involving patent invalidity and infringement; unfair competition; copyright, trademark, service mark, and trade dress infringement; trade disparagement; defamation; false advertising; privacy and First Amendment rights; antitrust issues; misappropriation of trade secrets and employees; and violation of constitutional rights. These cases often include breach of contract and tort claims. She has extensive experience in temporary restraining orders and preliminary injunction cases.

Ms. Parker has tried cases in both state and federal court, most recently a three-week jury trial in the Northern District, a three-week bench trial in the Northern District, and a two-week jury trial in the Central District of California. She has handled numerous appeals in state and federal courts, including the Second, Eighth, Ninth and Federal Circuits and the United States Supreme Court.

Ms. Parker also has extensive experience resolving disputes without the expense and time of litigation. She routinely handles mediations, both as a lawyer and mediator. She has negotiated and drafted licenses, agreements and policies involving intellectual properties and privacy; handled trademark clearance, registrations, cancellation and opposition proceedings in the Patent and Trademark Office; and has advised clients on a wide spectrum of intellectual property and unfair competition issues.

A significant part of Ms. Parker's practice has been on pro bono matters. Recently, she led the trial team in Planned Parenthood's successful challenge to the first federal attempt to criminalize abortion since *Roe v. Wade*. After a three-week trial, the trial judge found the federal abortion ban unconstitutional on three separate grounds. The decision was unanimously affirmed by the Ninth Circuit although reversed by the US

PRACTICE AREAS

Intellectual Property »
Litigation »
Privacy »

EDUCATION

JD, Harvard Law School,
1982
BA in Architecture and Urban
Studies, *honors in major*,
magna cum laude, Yale
University, 1977

ADMISSIONS

California
US District Court for the
Central District of California
US District Court for the
Eastern District of California
US District Court for the
Northern District of California
Supreme Court of the United
States
US Court of Appeals for the
Federal Circuit
US Court of Appeals for the
Eighth Circuit
US Court of Appeals for the
Ninth Circuit
US District Court for the
District of Hawaii
US District Court for the
Western District of
Washington
California State Courts

Supreme Court. She has represented Planned Parenthood's Bay Area affiliates for two decades in a wide variety of matters. Ms. Parker also led two class action challenges to the conditions of confinement in the San Francisco jails. These cases resulted in the planned demolition of California's oldest jail, the construction of three state-of-the-art jail facilities, the reduction of overcrowding, and the provision of recreation and healthcare for pretrial detainees. She had the City of San Francisco found in contempt and the fines assessed diverted toward programs designed to reduce chronic overcrowding.

Ms. Parker also serves as a mediator and early neutral evaluator for the United States District Court of the Northern District of California in patent, trademark, copyright, and unfair competition cases. She speaks regularly about electronic discovery, intellectual property, privacy, reproductive rights and gender issues.

Representative Matters

Antitrust / Intellectual Property

- Prevailed in representation of electronic payments company in antitrust and trademark infringement action, which sought US\$600 million (pre-trebling) in damages. Dismissed all of plaintiff's claims on summary judgment, and defeated plaintiff's summary judgment motions. Defeated request for injunctive relief. *Visa USA, Inc. v. First Data Corp.*, 2006 US Dist. LEXIS 32891 (N.D.Cal. 2006); 2006 US Dist. LEXIS 18482 (N.D.Cal. 2006); 369 F. Supp. 2d 1121 (N.D. Cal. 2005); 2004 US Dist. LEXIS 22475 (N.D. Cal. 2004); 241 F. Supp. 2d 1100 (N.D. Cal. 2003)
- Represented electronic data company in case alleging, violation of Cartwright Act, breach of contract, unfair competition, Franchise Act violations, misappropriation of trade secrets, and implied copyright license. Successfully defeated temporary restraining order and preliminary injunction. Case reversed after majority of claims dismissed on summary judgment. *Wrapsidy v. Nielsen Media Research*, Santa Clara Superior Court

Patent

- Lead trial counsel in patent infringement case involving design patents for light infringing diodes. Eliminated virtually all damage claims on summary judgment
- Defended leading internet retailer against claims of patent infringement involving :30 sound clips; case settled after majority of claims invalidated on summary judgment. *Intouch Group Inc. v. Amazon.com*, Northern District of California
- Prosecuted patent infringement action involving transgenic mice used to research Alzheimer's disease on behalf of pharmaceutical company. Patent upheld on appeal after district court found it invalid on summary judgment. *Elan Pharmaceuticals, Inc. v. Mayo Foundation*, 304 F.3d 1221, 314 F.3d 1299, 346 F.3d 1051 (Fed. Cir. 2003)
- Prosecuted software patent infringement action regarding 1-click® e-commerce ordering system on behalf of leading on-line retailer. Leading Federal Circuit

case establishing standards for preliminary injunctions. *Amazon.com, Inc. v. Barnesandnoble.com Inc.*, 239 F.3d 1343 (Fed. Cir. 2001)

Misappropriations of trade secrets

- Defended medical device company and its executives against claims of misappropriation of trade secrets, employee raiding, breach of contract and unfair competition; case settled after majority of plaintiff's claims dismissed. *Acculmage Diagnostics Corp v. TeraRecon, Inc.*, 260 F. Supp. 2d 941 (N.D. Cal. 2003)
- Prosecuted action for patent infringement, breach of contract and misappropriation of trade secrets for leading game developer. Case successfully settled shortly after complaint filed. *Wizards of the Coast v. Nintendo*, Western District of Washington

Copyright / Trademark / Trade Dress

- Prosecuted major building developer for infringing copyright of neighboring developer's architectural plans. Case settled for substantial amount with established infringement on summary judgment
- Defended toy manufacturer against claims of trade dress and trademark infringement. *Mattel, Inc. v. Artin, USA*, Central District of California
- Defended clothing retailer and manufacturer against copyright infringement claims. Case dismissed for nominal sum. *Yellow River v. Title 9 Sports*, Southern District of New York

Constitutional / Privacy


- Prevailed in challenge to first federal ban on abortion since *Roe v. Wade*. After three week trial, trial court found Act unconstitutional on three separate grounds, unanimously affirmed by Ninth Circuit, although reversed by the US Supreme Court. *Planned Parenthood Fed'n v. Ashcroft*, 320 F. Supp. 2d 957 (N.D. Cal. 2004), *aff'd* 435 F.3d 1163 (9th Cir.), Supreme Court (2006)
- Obtained writ of mandate preventing disclosure of identities, home addresses, and phone numbers of Planned Parenthood staff and volunteers to anti-choice protestors. *Planned Parenthood Golden Gate v. Foti*, 83 Cal. App. 4th 347 (2000)
- Obtained permanent injunctions, post trial (in federal and state court), against anti-choice protestors for invading clinic, harassing doctors, and violating patients' constitutional privacy rights. *Planned Parenthood of San Mateo County v. Holy Angels Church*, 765 F.Supp. 617 (N.D.Cal. 1991); *Planned Parenthood v. Operation Rescue*, 50 Cal. App. 4th 290 (1996), cert. denied, 522 U.S. 811 (1997)

ARNOLD & PORTER LLP

NEWS > PRESS RELEASES

Prominent IP Litigator Beth Parker Joins Arnold & Porter In San Francisco

Contact: **Patricia O'Connell** 

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SAN FRANCISCO, June 23, 2008 -- Arnold & Porter LLP announced today that prominent intellectual property litigator Beth Parker will join the firm's San Francisco office as a partner. Ms. Parker has significant trial and appellate experience including several lengthy trials in the past few years.

"Beth is a top-notch litigator who will help anchor our IP litigation practice in San Francisco and add depth to our intellectual property practice in the US and London," said Arnold & Porter Chair Thomas Milch. "We welcome her to the firm."

"Beth is well respected by her colleagues in the Bay Area and she brings a high-profile, broad-based IP litigation practice with her to Arnold & Porter," said Trent Norris, head of the San Francisco office. "Her capabilities in complex litigation, IP counseling and trademark prosecution will expand our capabilities on the West Coast and nationally."

Ms. Parker's primary work has been in intellectual property and constitutional rights, as well as trade dress privacy and unfair competition. She has substantial experience in patent litigation involving the Internet, semiconductor and biotechnology sectors. She has litigated cases involving complex commercial, antitrust, and constitutional and civil rights issues. She has tried cases in state and federal court, and handled a number of appeals before the Ninth, Federal, Second and Eighth Circuits, and the US Supreme Court.

Her trademark practice includes negotiating and drafting licenses, agreements and policies regarding IP and privacy; handling trademark clearance, registrations, cancellation and opposition proceedings in the Patent and Trademark Office; and advising clients on a wide spectrum of IP and unfair competition issues. Ms. Parker also has a substantial pro bono practice and has represented Planned Parenthood's Bay Area affiliates for two decades on a variety of matters.

"I am thrilled to join such an outstanding team of lawyers at Arnold & Porter," said Ms. Parker. "The firm has a sophisticated and international IP practice and an outstanding commitment to core professional values, most notably public service. These factors all combined to make Arnold & Porter the right fit for my practice."

The addition of Ms. Parker continues the firm's expansion on the West Coast, extending the reach of the firm's core practice areas. In March 2008, a team of three partners led by Mr. Norris, and including Angel Garganta and Monty Agarwal, joined the San Francisco office. Their practices, which focus on consumer class actions, intellectual property, product liability and environmental matters, complement the firm's existing practices in other offices in the United States and Europe. Two counsel with related practices have also joined within the past month: trademark lawyer Diane Lambillotte (Los Angeles) and consumer protection and product liability lawyer Sarah Esmaili (San Francisco).

Arnold & Porter's IP practice is international in scope, with close to 90 lawyers practicing in nearly all of the firm's offices. The firm's IP capabilities cover a broad range of complex matters, in both litigation and counseling, including patents, copyrights, trademarks, rights of publicity, trade secrets and related issues. Arnold & Porter has extensive experience in dealing with

corporate and governmental entities, international partners and investors throughout Europe, Asia, and North America. The group's lawyers work with a broad range of complex legal regimes in Europe, the US and other regions and are well known for dealing with the problems that arise from applying the law to new technologies.

Arnold & Porter LLP, an international law firm of over 650 attorneys, has offices in Washington, DC, Northern Virginia, New York, Los Angeles, Denver, San Francisco, London and Brussels. The firm, founded in 1946, maintains more than 25 practice areas spanning a broad spectrum of the law, with a primary focus on litigation, transactional matters and regulatory issues.

EXHIBIT H



Marc E. Mayer
A Professional Corporation
(310) 312-3154 Phone
(310) 231-8354 Fax
mem@msk.com

June 22, 2009

VIA E-MAIL AND U.S. MAIL

Beth H. Parker, Esq.
Arnold & Porter LLP
275 Battery St., Suite 2700
San Francisco, CA 94111

Re: MagicJack LP v. Happy Mutants LLC, Case No. 091108

Dear Ms. Parker:

I am writing to discuss the above-captioned matter.

As you know, since our client prevailed on its Special Motion to Strike, pursuant to the anti-SLAPP statute, Cal. Code Civ. P. § 425.16(c), Happy Mutants is entitled to recover its attorneys' fees and costs incurred in defending the action. Indeed, under the anti-SLAPP statute, an award of attorneys' fees to the defendant is mandatory. Ketchum III v. Moses, 24 Cal. 4th 1122, 1131 (2001) ("[A]ny SLAPP defendant who brings a successful motion to strike is entitled to *mandatory* attorney fees.") (emphasis added).

We estimate that Happy Mutants has incurred in excess of \$50,000 in attorneys' fees and costs defending this action. This includes time spent analyzing the complaint, researching and preparing the SLAPP motion and reply memorandum, and preparing for and attending the May 27 hearing. Moreover, as I advised Mr. Bovard on May 26, the time spent preparing for and attending the May 27 hearing (including my travel between Los Angeles and Marin County) could have been avoided had your client elected to submit on the tentative ruling.

Happy Mutants is prepared to promptly file its motion for attorneys' fees and costs. However, in an effort to put a close to this matter without the expenditure of additional attorneys' fees in filing our motion for attorneys' fees (which also will be recoverable), please let us know whether you will compensate us for our attorneys' fees and costs (approximately \$50,000) in order to avoid further motion practice.



Marc E. Mayer
A Professional Corporation
(310) 312-3154 Phone
(310) 231-8354 Fax
mem@msk.com

July 17, 2009

VIA E-MAIL AND U.S. MAIL

Roberta Horton, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206

Beth H. Parker, Esq.
Arnold & Porter LLP
275 Battery St., Suite 2700
San Francisco, CA 94111

Re: MagicJack LP v. Happy Mutants LLC, Case No. 091108

Dear Ms. Horton and Ms. Parker:

I am writing to follow-up on my telephone conversation with Ms. Horton of earlier this week, in which MagicJack offered our client the sum of \$25,000 in reimbursement for its attorneys' fees and costs in this action.

Unfortunately, that sum does not come close to covering our client's overall attorneys' fees and costs. As noted in my prior letter, just in connection with the SLAPP motion, our client incurred approximately \$50,000, comprising approximately \$45,000 in legal fees, and more than \$6,000 in costs, including the costs of messengers and court services, on-line legal research, copying, and travel. We are, of course, prepared to fully document these fees and costs before the Court. Additionally, given the long (nearly one-month) delay between our June 22 letter and our telephone call, our client now has necessarily incurred some significant attorneys' fees and costs in researching and preparing its motion for attorneys' fees.

We believe that MagicJack knew or should have known at the time it filed this lawsuit that it was frivolous and would be subject to the ant-SLAPP statute, and as a result MagicJack would be liable for our client's attorneys' fees and costs. Additionally, we believe that MagicJack unnecessarily raised the stakes of this action by, among other things, seeking punitive damages and an unspecified amount of lost profits. In the meantime, we note that MagicJack deliberately made the decision not to contact Boing Boing or its attorneys at any time either prior to or after the filing of this action. Thus, our clients had no choice but to vigorously defend this action and spend the necessary time and diligence in doing so.

Finally, we maintain that Judge Adams' decision was correct, well-reasoned, and amply supported by the caselaw. Accordingly, we do not believe that there would be any merit to an appeal of that decision. Of course, if MagicJack elects to pursue an appeal and our client is successful, we will seek our attorneys' fees and costs in defending that appeal.

If your client is prepared to fully compensate Boing Boing for its attorneys' fees and costs, please let me know. Otherwise, we will proceed with our motion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc E. Mayer', with a long horizontal flourish extending to the right.

Marc E. Mayer
of
MITCHELL SILBERBERG & KNUPP LLP

MEM/mem

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

5 On August 21, 2009, I served a copy of the foregoing document(s) described as **NOTICE**
6 **OF MOTION AND MOTION OF DEFENDANT HAPPY MUTANTS LLC FOR**
7 **ATTORNEYS' FEES AND COSTS PURSUANT TO CODE OF CIVIL PROCEDURE**
8 **SECTION 425.16; MEMORANDUM OF POINTS AND AUTHORITIES; AND**
9 **DECLARATION OF MARC E. MAYER IN SUPPORT** on the interested parties in this action
at their last known address as set forth below by taking the action described below:

10 *Attorneys for Plaintiff*

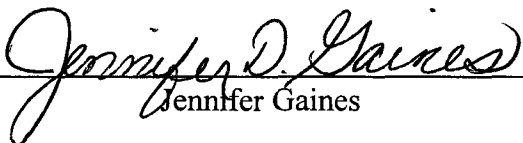
11 Beth H. Parker
12 Rhonda L. Stewart
13 Arnold & Porter LLP
14 275 Battery Street, Suite 2700
San Francisco, CA 94111

E-mail: Beth.Parker@aporter.com
Rhonda.Goldstein@aporter.com
Fax: (415) 356-3099

15 ☒ **BY PLACING FOR COLLECTION AND MAILING:** I placed the above-mentioned
16 document(s) in sealed envelope(s) addressed as set forth above, and placed the envelope(s)
17 for collection and mailing following ordinary business practices. I am readily familiar
18 with the firm's practice for collection and processing of correspondence for mailing with
the United States Postal Service. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic
Boulevard, Los Angeles, California 90064-1683 in the ordinary course of business.

19 I declare under penalty of perjury under the laws of the State of California that the above is
20 true and correct.

21 Executed on August 21, 2009, at Los Angeles, California.

22 
23 Jennifer Gaines