

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINDTHEBEST.COM, INC.;

Plaintiff,

v.

LUMEN VIEW TECHNOLOGY LLC;
DALTON SENTRY, LLC;
DECISIONSORTER, LLC; THE HILLCREST
GROUP, INC.; EILEEN C. SHAPIRO;
STEVEN J. MINTZ; and DOES 1 through 50,

Defendants.

No. _____

ECF CASE

FINDTHEBEST.COM, INC.'S
COMPLAINT

JURY TRIAL DEMANDED

DEFENDANT FINDTHEBEST.COM, INC.'S COMPLAINT

Plaintiff FindTheBest.com, Inc. ("FTB" or "Plaintiff"), alleges the following claims against Defendants Lumen View Technology LLC ("Lumen"), Dalton Sentry, LLC ("Dalton"), DecisionSorter, LLC ("DecisionSorter"), Hillcrest Group, Inc ("Hillcrest"), Eileen C. Shapiro ("Shapiro"), Steven J. Mintz ("Mintz"), and DOES 1 through 50 (collectively "Defendants"):

NATURE OF THIS ACTION

1. This is a civil action brought under the Federal Racketeering Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 *et seq.* "RICO") and state laws, including abuse of process, malicious prosecution, extortion, and violation of Cal. Bus. & Prof. Code § 17200,

against Defendants based upon their association together for the common purpose of extorting money out of individuals and entities, including FTB, based upon false, objectively unreasonable, and baseless claims of patent infringement. Defendants entered into agreements with one another and formed a series of “shell” entities for the purpose of filing frivolous patent infringement actions and extorting “licensing fees” or settlements from FTB and others, who are the target of those infringement actions. Defendants bring their patent infringement lawsuits without probable cause, without conducting proper due diligence and investigation to have a reasonable belief of infringement, and without a good faith belief that their targets are infringing on the patent.

2. Defendants are the holders, licensors, licensees, assignors, or assignees of patents covering abstract, fundamental business-related concepts that they do not use in any of their own commercial enterprises. Rather, Defendants bring serial lawsuits based on alleged infringement of these patents by legitimate businesses, like FTB, that use similar fundamental business-related concepts (but not the same concepts), even though they do not actually infringe any claims of Defendants’ patents.

3. At all times Defendants either know that the targets of their lawsuits are not infringing upon their patents or have not done proper due diligence and investigation to have reason to believe that the targets have infringed their patents; however, they use the legal process and the threat of huge legal expenses associated with defending a patent infringement lawsuit, threats of criminal prosecution, threats of disruption to the target’s business, and threats of public embarrassment to extort “licensing fees” or settlements from their victims in exchange for a dismissal of the frivolous patent infringement suit. Defendants do so knowing that the cost of

fighting their patent infringement suits and the disruption to the target's business are more exorbitant and costly than the "licensing fees" or settlement Defendants seek to extort.

4. Defendants create multiple layers of "shell entities" so that their victims have little chance (and therefore little incentive) to recover any monetary relief as a result of Defendants' conduct. These "shell entities" are undercapitalized, do not operate any legitimate business, and do not have any actual offices. As such, these "shell entities" avoid numerous burdens of litigation – *e.g.* the disruption to business and the expense of compiling discovery responses – which they inflict on their victims.

5. Defendants have continuously engaged in this pattern and practice of filing false claims and using such threats to harass, annoy and intimidate their victims into paying "licensing fees" or settlements to which Defendants are not entitled. Since their formation of Lumen 18 months ago, Defendants have filed more than 20 patent infringement lawsuits based upon the same patent they allege FTB infringes, the majority of which were dismissed with prejudice after Lumen (in accordance with its agreement with the other Defendants) extorted "licensing fees" or settlements from those defendants. Defendants have asserted many more patent infringement claims using different shell entities and patents apparently related to the patent it alleged against FTB.

PARTIES

6. FTB is a Delaware corporation with its principal place of business located at 101 Innovation Place, #A, Santa Barbara, California 93108.

7. Eileen C. Shapiro is a resident of Massachusetts and the co-inventor of United States Patent No. 8,069,073 ("the '073 Patent"), the patent referenced in Lumen's Complaint in Case No. 13 CV 3599 (Doc. No. 1) pending in this Court.

8. Steven J. Mintz is a resident of River, New Jersey and the co-inventor of the '073 Patent. Mintz is a managing member of DecisionSorter.

9. Hillcrest is a Massachusetts Corporation formed by Shapiro and Mintz for the purpose of carrying out the racketeering activity described herein, to hide their involvement in the extortion of "licensing fees" and settlements from their victims and the public, and to avoid the expense and burden of litigation. On information and belief, Shapiro is the President, Chief Executive Officer, Chief Financial Officer, Treasurer, Secretary, and Director of Hillcrest.

10. On information and belief, Hillcrest is a manager of DecisionSorter and many other "shell entities" created by Shapiro and Mintz.

11. DecisionSorter is a Massachusetts Limited Liability Company formed by Shapiro and Mintz for the purpose of carrying out the racketeering activity described herein, to hide their involvement in the extortion of "licensing fees" and settlements from their victims and the public, and to avoid the expense and burden of litigation. DecisionSorter's registered agent for service of process is Hillcrest located at 20 University Road, Cambridge, MA 02138. DecisionSorter was the original assignee of the '073 Patent.

12. On information and belief, FTB alleges that DecisionSorter has no actual business address or business office because it conducts no legitimate business and has no business operations. DecisionSorter is a non-practicing entity, meaning that it does not research and develop new technology but rather acquires patents and licenses the technology for the purpose of filing patent infringement lawsuits and improperly extorting "licensing fees" and settlements.

13. Dalton is a Delaware Limited Liability Company formed by Shapiro and Mintz for the purpose of carrying out the racketeering activity described herein, to hide their involvement in the extortion of "licensing fees" and settlements from their victims and the public

and to avoid the expense and burden of litigation. Dalton's registered agent for service of process is located at 2711 Centerville Rd., Suite 400, Wilmington, DE 19808.

14. On information and belief, FTB alleges Dalton has no actual business address or business office because it conducts no legitimate business and has no business operations. Dalton is a non-practicing entity, meaning that it does not research and develop new technology but rather acquires patents and licenses the technology for the purpose of filing patent infringement lawsuits and improperly extorting "licensing fees" and settlements.

15. On or about September 29, 2010, DecisionSorter purported to assign its rights to the '073 Patent to Dalton.

16. Lumen is a Delaware Limited Liability Company formed by Shapiro and Mintz for the purpose of carrying out the racketeering activity described herein, to hide their involvement in the extortion of "licensing fees" and settlements from their victims and the public, and to avoid the expense and burden of litigation. Lumen's registered agent for service of process is located at 113 Barksdale Professional Center, Newark, DE, 19711.

17. On information and belief, FTB alleges that Lumen has no actual business address or business office because it conducts no legitimate business and has no business operations. Lumen is a non-practicing entity, meaning that it does not research and develop new technology but rather acquires patents and licenses the technology for the purpose of filing patent infringement lawsuits and improperly extorting "licensing fees" and settlements. On information and belief, Lumen is a shell entity with no ostensible purpose, assets or operation other than as serving as a medium for Shapiro and Mintz to conduct their criminal enterprise.

18. On or about March 1, 2012 Dalton purported to assign its rights to the '073 Patent to Lumen. On information and belief, the purpose of this assignment was to enable Lumen to file frivolous patent infringement lawsuits against FTB and others.

19. Lumen now claims to be the exclusive licensee of the '073 Patent, however, FTB alleges on information and belief that Shapiro and Mintz still hold an economic interest in the '073 Patent and benefit from the herein alleged illegal enterprise.

20. Shapiro and Mintz are the individuals directing the affairs of Lumen, DecisionSorter, Dalton and Hillcrest through a pattern of improper tortious acts and illegal conduct described in this Complaint, which cause financial harm to FTB and others.

21. Lumen, DecisionSorter, Dalton, Hillcrest, Shapiro and Mintz have engaged in a pattern of racketeering activity, have each committed numerous criminal acts as part of their scheme to defraud and extort FTB, and others, and have each participated in the operation or management of the criminal enterprise.

22. At all times, the Defendants were and are acting in concert with one another, in accordance with their agreement, with a common purpose of carrying out the illegal enterprise and tortious acts described herein.

23. At all time Defendants were aiding and abetting one another in that for each alleged predicate act described herein, each Defendant was associated with the wrongful conduct, participated in that conduct with the intent to bring it about, and sought by their actions to make it succeed.

24. Alternatively, FTB alleges that Defendants operate as a single economic unit and are so dominated by the will of Shapiro and Mintz, and are used not to transact lawful business

but to commit extortion and other illegal acts for the benefit of Shapiro and Mintz, that they cease to be separate units and are, in fact, the alter ego of Shapiro and Mintz.

25. Defendants DOES 1-50, inclusive, are individuals and entities not yet known to Plaintiff because Defendants have concealed their identity through a series of shell entities. Once their identities are ascertained, the names of those individuals will be substituted in place of DOE designations.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over FTB's claims under 28 U.S.C. §§ 1331 and 1332, and under the RICO Act 18 U.S.C. §§ 1961 *et seq.* This Court has supplemental jurisdiction over FTB's other claims pursuant to 28 U.S.C. § 1367.

27. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), as a substantial number of the events giving rise to this action occurred in this District and under 18 U.S.C. § 1965.

28. This Court may exercise personal jurisdiction over Lumen because Lumen consented to the personal jurisdiction of this Court by filing a complaint against FTB in this Court. All Defendants have purposefully availed themselves of the laws and protections of New York by filing or causing to be filed multiple patent infringement lawsuits in this district and by abusing the process of the New York courts to cause harm to FTB (and others) as further alleged herein. It may assert personal jurisdiction over the other Defendants pursuant to 18 U.S.C. § 1965 and because Defendants used the process of this Court to attempt to extort money from FTB and carry-out its illegal enterprise.

FACTUAL BASIS FOR CLAIMS

A. Lumen View's Pattern and Practice of Filing Frivolous Lawsuits.

29. On November 29, 2011, the United States Patent and Trademark Office (“USPTO”) issued Patent No. 8,069,073 (the “’073 Patent”), entitled “System and Method For Facilitating Bilateral And Multilateral Decision-Making.” A copy of this Patent is attached hereto as Exhibit A.

30. Lumen contends that the ‘073 Patent covers the computer enabled process of matching two-party or multi-party preferences through a conjoint analysis. More specifically, the patent purportedly covers a process whereby two or more people enter preferences, rank their preferences and then a computer uses an algorithm to arrive at an optimal meeting point based upon both preferences. Importantly, the patent purports to cover only circumstances where **two or more individuals provide preferences** (“bilateral and multilateral decision-making”); i.e., it does not purport to cover circumstances where **one** individual provides preferences (“unilateral decision-making”).

31. In fact, in prosecuting the patent and distinguishing the claims from prior art, the inventors represented to the USPTO “that the claims require that conjoint analysis be applied to both sides in a matching situation....” This was distinct from the prior art, which disclosed unilateral conjoint analysis. The inventors made this representation to avoid a determination that the invention was obvious and non-patentable.

32. Lumen claims to be the exclusive licensee of the ‘073 Patent. However, FTB alleges, on information and belief, that Shapiro and Mintz still have an economic interest in the ‘073 Patent and financially benefit from the illegal acts described herein. In fact, Lumen’s current attorney made such a representation.

33. On information and belief, Shapiro and Mintz formed Lumen for the purpose of pursuing patent infringement lawsuits based upon the '073 Patent. Specifically, Lumen was formed on February 23, 2012. The '073 Patent was assigned to Lumen on March 1, 2012. Lumen filed its first of more than twenty patent infringement suits eight days later on March 9, 2012 (*Lumen View Technology, LLC v. Avotus, Inc.*, Case No. 12-CV-00291 (D.Del.)). In the last 18 months, Lumen has filed more than twenty patent infringement lawsuits across the United States claiming infringement of the '073 Patent.

34. Lumen uses general “form” complaints in furtherance of its scheme so that each complaint is nearly identical aside from changes to the name of the defendant. In this regard, it is apparent that Defendants do not engage in any meaningful pre-filing investigation.

35. On information and belief, Shapiro and Mintz have also used other “shell entities” such as Blackstone River, LLC, NewsGems LLC, Gooseberry Natural Resources LLC, Vertigo Holdings LLC, Kolomoki Mounds LLC, and others; to bring frivolous patent infringement suits based upon other patents they own or in which they hold an economic interest and extort license fees or settlements (to which they are not entitled) from their victims. For example, Shapiro and Mintz used these entities to bring patent infringement suits based upon their claimed right to at least three other broad patents. Two of these patents also purport to cover systems and methods for facilitating bilateral and multilateral decision-making and the third purports to cover the basic concept of generating a news or press release online. Using these vague patents and shell companies, Shapiro and Mintz have filed a dozen lawsuits against multiple parties over the past three to four years. On information and belief, most (if not all) of these lawsuits were voluntarily dismissed by Shapiro’s and Mintz’s shell entities after extorting licensing fees from their victims.

36. On information and belief, FTB alleges that, in each case, Defendants follow the same format:

a. Defendants conduct no investigation into the products or services offered by the alleged infringer, but simply do a broad internet search for companies that offer any type of matching service. Because the concept of matching two parties is as old as Adam and Eve, this general search reveals numerous company websites.

b. Defendants then file a lawsuit against the company (“target”) without conducting any further good-faith investigation into whether the target actually practices the process purportedly covered by the ‘073 Patent and without first notifying the target of the ‘073 Patent or the alleged infringement.

c. Defendants conduct no further investigation into the target’s “accused products or services” to determine how they operate and whether they actually infringe upon the ‘073 Patent even after representations by the target that its accused services or products do not practice the claimed invention.

d. In each and every case, Defendants serve the complaint on the target with a letter stating that the target may avoid the cost of filing a responsive pleading if it is willing to pay Lumen a “licensing fee.” The letter further threatens that if the target fights the lawsuit through “early motion practice” or otherwise, Lumen will increase its settlement demands and engage in “all motion practice as well as protracted discovery” to drive up litigation costs and disrupt its target’s business.

e. Neither Lumen’s letter nor its complaint, describe how the target is infringing the patent. Rather, the letter advises the target that it should be prepared to describe its use of and revenue generated from the ‘073 Patent.

f. A true and correct copy of the letter Defendants sent to FTB is attached hereto as Exhibit B and incorporated herein by reference.

g. In some cases, when Defendants' targets show indications that they intend to defend themselves, Defendants (using Lumen) threaten to contact the target's customers, or add them to the litigation, which would effectively put the target out of business due to lost business and escalating indemnification costs. In fact, in the case of one lawsuit (targeting RealMatch), Defendants named the target's customers in the complaint to exert greater pressure on the target.

h. In all cases, Defendants settle the lawsuits before any challenge to the patent's validity, any claim construction, or any discovery into Defendants' enterprise. This is intentional to avoid disclosing the ownership and relationship among Defendants.

37. In reality the threats made by Defendants (through Lumen) are as hollow, false, and misleading as are the allegations in their complaints. Defendants have no good faith belief that the target is actually infringing the '073 Patent, have no desire to restrain the target from operating in the manner Defendants allege infringes the '073 Patent, have no intention of engaging in "full-scale litigation" to enforce their purported rights under the '073 Patent, and will not increase their settlement demand if the target responds to the complaint or engages in early motion practice. In fact, despite these representations, in the case of FTB, Defendants' settlement demand remained the same after FTB filed an answer to the complaint. And as a last-ditch effort to avoid having to defend its infringement position, Lumen offered a "one-day-only" settlement offer that was discounted by \$30,000 if FTB would not file an answer to the complaint.

38. In fact, on at least one occasion, when Defendants discovered *after filing their patent lawsuit* that the target did not have the funds to pay a “licensing fee,” Defendants dismissed their lawsuit without prejudice and without taking any steps to enjoin the alleged use of their patent. On information and belief, Defendants intend to file another lawsuit against this target when Defendants can wrongfully extract more money from it. This is because Defendants do not use the inventions claimed in the ‘073 Patent, maintain the ‘073 Patent for the sole purpose of filing lawsuits, and have no real business or competitive interest in deterring infringement of the ‘073 Patent.

39. Because Lumen exists for no purpose other than to file patent infringement lawsuits, it can wage a one-sided war on its victims. Specifically, unlike its targets, Lumen faces no disruption to its business as a result of the lawsuits. Lumen has no legitimate business, therefore, it does not have business records, employees, offices or operations. Accordingly, it has no employees inconvenienced by, and no business disrupted by, subpoenas, discovery, document preservation, depositions, or other incidents of litigation. Since Defendants do not manufacture or produce anything, they have no fear of counter infringement claims. Moreover, because of the “shell game” Defendants play, Lumen has far fewer documents and witnesses to produce and it has no concern regarding its reputation in the marketplace. Thus, Lumen faces far fewer litigation costs than its victims. Since Lumen is undercapitalized and holds no “real” assets, its victims have little recourse.

B. Defendants File a Frivolous Lawsuit Against FTB to Extort Illegal Fees.

40. FTB owns and manages the website FindtheBest.com. The website is a research hub that provides consumers with unbiased, data-driven comparisons of a wide array of search topics ranging from subjects such as colleges, cars, ski resorts, and dog breeds, to name a few.

41. Importantly, FTB's website provides only unilateral matching because only one party – the consumer visiting the website – inserts preferences. The website then uses publically-available information to match consumers with products/services matching their preferences. Functionally, FTB's website provides consumers information similar to Consumer Reports, which first offered its services online in 1987.

42. On or about May 30, 2013, FTB received a threatening letter from Lumen's attorney (acting on behalf of all Defendants and at the direction of Shapiro and Mintz) enclosing a complaint that Lumen filed against FTB alleging infringement of the '073 Patent (*Lumen View Technology LLC v. Findthebest.com, Inc.*, Case No. 13-CV-3599 (S.D.N.Y.). (Exh. B)

43. Lumen's letter stated that FTB's "AssistMe feature meets one or more claims of the '073 Patent" and that the enclosed complaint had already been filed in the Southern District of New York. (Exh. B.)

44. The letter further advised that a response to the complaint must be filed within 21 days but "If Company is interested in avoiding the need for filing a responsive pleading, you must contact us (prior to the date of Company's Response) to discuss license terms. To facilitate such discussions, please be prepared to discuss the extent of the Company's use of and revenues generated from the features described in the Complaint." (Exh. B.)

45. To create a sense of urgency, the letter falsely represented that the complaint was already served on the company's New York registered agent, when in truth it was served weeks later on FTB's Chief Marketing Officer.

46. The letter threatened that if FTB did not immediately pay Lumen a "licensing fee," Lumen would use the litigation process to disrupt FTB's business and increase expenses for FTB. Specifically, the letter threatened "full-scale litigation" and "all motion practice as well as

protracted discovery” if FTB chose to defend the litigation rather than pay a licensing fee. (Exh. B.) The letter also warned that, if FTB “engage[d] in early motion practice,” Lumen would “reevaluate and likely increase Plaintiff’s settlement demand.” It went on to state: “Please be advised that for each nondispositive motion filed by Company, Plaintiff will incorporate an escalator into its settlement demand to cover the costs of its opposition papers and argument.” (Exh. B.)

47. To further intimidate FTB, the letter outlined the disruption to FTB’s business that would result if FTB refused to immediately pay the licensing fee. The letter broadly described electronically stored information (“ESI”) and demanded that FTB take steps to preserve all “accessible and *inaccessible* ESI ... without limitation, from six (6) years prior to the date of the filing of the Suit up to the present time, and ongoing, in any way relating to the products implicated by the ‘073 Patent.” (Exh. B (emphasis added).) Lumen also demanded that FTB take steps to prevent alteration and erasure of virtually all data and information FTB keeps or creates in operating its business, including “information *unrelated to the Suit* that [employees, officers or others] regard as personal, confidential or embarrassing.” The letter even recommended “confiscating” and “sequestering” electronic devices owned by “certain individuals with significant knowledge of Company’s products implicated by the ‘073 Patent.” In other words, the letter made it clear that, if FTB fought Lumen’s baseless patent infringement suit, Lumen would ensure that FTB’s key employees would be wrapped up in the litigation causing serious disruption to FTB’s business.

48. The letter further demonstrates that Defendants use the discovery process, not to investigate and prove their patent infringement claims, but to merely harass, intimidate, injure and annoy FTB (and their other targets).

49. The message Defendants intend to convey by this letter is that FTB (and other targets) should settle or pay the licensing fee without a fight, not because Lumen's claims are meritorious, but because Lumen will use the litigation process to cause significant financial hardship and disruption to FTB's (and other targets') business.

50. The letter Lumen sent to FTB and the complaint filed by Lumen are nearly identical to those sent to, and filed against, other targets of its '073 Patent Infringement Suits.

51. The complaint Lumen filed against FTB is objectively baseless as no reasonable person could determine after a good faith investigation that FTB infringes upon the '073 Patent.

52. On information and belief, FTB alleges that at all relevant times Defendants knew that FTB was not infringing upon the '073 Patent.

53. Shortly after receiving Lumen's Complaint, FTB's Director of Operations ("DO") contacted Lumen's attorney listed on the complaint to discuss the recently filed lawsuit and gain a better understanding of why Lumen believed FTB was infringing upon the '073 Patent.

54. During the discussion, it became apparent from statements made by Lumen's attorney that the Complaint was filed without probable cause and for the sole purpose of extorting illegal "licensing fees" or a "nuisance settlement" from FTB.

55. Lumen's attorney lacked any understanding of the publicly-available manner in which FTB's website operated and could give no factual explanation for why he believed FTB infringed upon the '073 Patent.

56. Lumen's attorney could not explain, and lacked even a basic understanding of, the process purportedly covered by the '073 Patent.

57. FTB's DO explained in that conversation that FTB did not in any way use a *bilateral or multilateral process*. However, Lumen's attorney refused to discuss such matter and

simply reiterated Lumen's position that FTB would have to pay "licensing fees" to avoid filing a responsive pleading.

58. Because the DO's conversation with Lumen was less than informative, FTB's Chief Executive Officer ("CEO") subsequently telephoned Shapiro and left a message explaining who he was and stating that he was calling to gain a better understanding of the claims alleged against FTB and the '073 Patent.

59. After leaving a second voicemail message, Shapiro returned the CEO's call. In that conversation, Shapiro would only confirm that she was the co-inventor of the '073 Patent but claimed to no longer own the patent.

60. Shortly thereafter, Lumen's attorney contacted FTB's counsel and stated that its CEO called Shapiro a "patent troll." According to Lumen's attorney, calling someone a "patent troll" constituted a "hate crime" under "Ninth Circuit precedent." Lumen's attorney then represented that Lumen and Shapiro would report FTB to Judge Cote and pursue criminal charges unless: (1) the CEO apologized to Shapiro; (2) FTB financially compensated Shapiro; (3) FTB financially compensated Lumen's attorney; and (4) FTB settled the civil patent infringement lawsuit by paying a licensing fee. The attorney further stated that this offer was good until close of business that day. On information and belief, Lumen's attorney was acting at the direction of Shapiro and Mintz to conduct their enterprise affairs.

61. These threats were made in bad faith, with knowledge that neither FTB nor its CEO committed a crime and/or without a good faith belief that FTB or its CEO committed a crime. The threats were made for the purpose of intimidating FTB and its CEO and extorting money from FTB. This threat of criminal prosecution had no reasonable relevance to the patent infringement lawsuit, was extraneous to the action, and in no way furthered the ends of justice.

62. On or about July 24, 2013, Lumen served FTB with initial disclosures in connection with its patent infringement action against FTB. Those disclosures further demonstrated that Lumen's action was frivolous and that it was, in fact, filed without a good faith investigation or probable case. Lumen names only one individual likely to have discoverable information, Jerald Dawkins. Although Lumen later amended its initial disclosures, it did so only to add the two named inventors in an effort to avoid FTB's communications with those individuals.

63. On or about August 8, 2013, FTB's CEO contacted Jerald Dawkins, who informed the CEO that he had never heard of FTB.

64. Lumen also served FTB with Interrogatories and Requests for Production. On information and belief, those request are "form" requests Defendants use in any patent infringement case they file in which its victim files an answer before paying a "licensing fee." On information and belief, Defendants have a template with data fields where Defendants simply input the victim's name into these form requests without any additional thought or analysis, without any regard for the local rules or specific patent rules applicable to each lawsuit, and without any consideration of the target's services or products. As such, many of these requests are nonsensical, improper and impermissible. For example, most (if not all) of the discovery requests served on FTB were premature and/or improper pursuant to the Local Patent Rules of the United States District Courts for the Southern District of New York, Rule 5, Local Rules of United States District Courts for the Southern District of New York, Rule 33.3 and other statutes and rules of procedure. Accordingly, these discovery requests are simply intended to annoy and harass FTB and saddle FTB with increased litigation costs so that FTB will acquiesce to Lumen's demands and settle the frivolous lawsuit or pay illegal "licensing fees."

65. On August 30, 2103, Lumen served FTB via email with a Disclosure of Asserted Claims and Infringement Contentions (“Infringement Contentions”) as required by the Local Patent Rules of the Southern District of New York. Lumen’s Infringement Contentions further demonstrate Defendants’ failure to properly investigate before filing a patent infringement action against FTB. Most notably, Lumen contentions are vague, identify FTB’s entire “website” as the “Accused Product or Service,” and provide little supporting detail. Lumen improperly attempts to string together screenshots from different services provided by FTB as evidence of infringement.

66. Despite its threats, Lumen has not increased its settlement demand to FTB even though FTB opted to fight its complaint. Although Lumen’s threats have continued (as described herein), Lumen has continued to demand the same settlement amount.

67. Specifically, upon service of Lumen’s complaint, Defendants offered to dismiss their patent infringement suit if FTB paid an \$85,000 “licensing fee.” When FTB rejected that offer and informed Lumen that it would fight the frivolous lawsuit, Lumen made a last-ditch effort to persuade FTB to “settle” by dropping its licensing fee the day before FTB’s answer was due to \$55,000. Lumen stated that this “offer” was a “one-day only offer” that would expire when FTB filed its responsive pleading the next day. On information and belief, Lumen reduced the “licensing fee” at the direction of and/or with the knowledge of Shapiro and Mintz because Defendants have no interest in the outcome of the patent litigation, have no desire to enjoin FTB’s alleged infringement, know that FTB does not infringe upon the ‘073 Patent, and do not intend to engaged in “full scale litigation.”

68. Contrary to Lumen’s representations that it would continue to increase its settlement demands, after FTB filed its answer to the patent infringement lawsuit, Lumen (at the

direction and with the knowledge of Defendants) again offered to drop the lawsuit in exchange for a \$85,000 “licensing fee.”

69. As a result of Defendants’ wrongful acts, as described herein, FTB has sustained injury to its business and property, including, but not limited to, damage to its business reputation, disruption of its business affairs, and expenses incurred investigating and defending FTB’s frivolous claims

COUNT 1
RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)
18 U.S.C. § 1961 et seq.
(Against All Defendants)

70. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

71. At all relevant times, FTB is a person within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

72. At all relevant times, Shapiro and Mintz are persons within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c), each of whom (through an express agreement) direct the affairs of Lumen, DecisionSorter, Dalton and Hillcrest through a pattern of improper tortious acts and illegal conduct described in this Complaint, which cause financial harm to FTB and others.

73. Lumen, DecisionSorter, Dalton and Hillcrest, in any combination associated in fact, are an “Enterprise,” as defined by 18 U.S.C. § 1961(4), controlled and directed by Shapiro and Mintz, associated together in fact for the common purpose of filing frivolous patent infringement cases and extorting “licensing fees” and/or settlements from individuals and entities who do not actually infringe upon the patent at issue in the lawsuits. The Defendants have a continuing and ongoing relationship that has endured for several years and has resulted in more

than twenty patent infringement lawsuits enabling Defendants to extort unlawful “settlements” and “licensing fees” to which they are not entitled.

74. Each of the Defendants participated in the operation or management of the Enterprise. Among other things, Shapiro and Mintz direct the affairs of the enterprise, DecisionSorter, Dalton, and Hillcrest serve as “holding companies” set up to conceal Shapiro’s and Mintz’s involvement in the enterprise, to hide exculpatory evidence and other materials that would assist their victims in defeating the patent infringement claims, and to funnel, hide, and shield the improper financial gains that result from the Enterprise. Lumen is the “front” of the enterprise that, acting upon the direction of Shapiro and Mintz, files the litigation and carries out the threats and fraudulent conduct further described herein.

75. At all relevant times, the Enterprise was engaged in, and its activities affected interstate commerce within the meaning of 18 U.S.C. § 1962(c).

76. The Defendants conducted or participated, directly or indirectly, in the conduct, management, or operation of the Enterprise’s affairs through a “pattern of racketeering activity” within the meaning of 18 U.S.C. § 1961(5) and in violation of 18 U.S.C. § 1962(c), to wit:

*Extortion in Violation of Hobbs Act, 18 U.S.C. § 1951 and
California State Penal Law §§ 518, 519, 524*

77. At all times material to this Complaint, FTB was engaged in interstate commerce and in an industry that affects interstate commerce.

78. Defendants, individually or collectively, conducted the affairs of the Enterprise through numerous acts of extortion, attempted extortion and conspiracy to commit extortion in violations of 18 U.S.C. § 1951, which constitute “predicate acts” under 18 U.S.C. § 1961 in furtherance of their overall scheme to defraud and enhance their wealth through improper means.

79. As described herein, Defendants have threatened frivolous lawsuits and criminal prosecution unless FTB paid substantial sums of money. The Defendants did so with the intent and effect of causing a reasonable fear of economic loss on the part of FTB, to disrupt FTB's business operations, and to disrupt and encourage FTB to abandon its defense of the frivolous patent infringement lawsuit initiated by Defendants.

80. Similarly, the Defendants' wrongfully attempted to appropriate FTB's property by instilling fear that, if the property was not delivered, the Defendants would accuse FTB and its CEO of a crime and FTB and its CEO would face additional expense, embarrassment, business disruption, damage to their reputation, and legal fees.

81. Defendants also used litigation and the discovery process without any interest in the outcome of the litigation, but with the intent to harm FTB's business and persuade FTB to pay a "licensing fee" even though Defendants knew (or reasonably should have known) that FTB was not infringing upon the '073 Patent.

82. Defendants' conduct did in fact instill fear in FTB, causing additional interruptions to FTB's business, causing the harm Defendants so intended, including additional legal fees, disruption to FTB's business, injury to FTB and its CEO's reputation and disruption of FTB's defense to Lumen's patent infringement complaint.

Mail Fraud, 18 U.S.C. 1341 and Wire Fraud, 18 U.S.C. § 1343

83. As described herein, the Defendants engaged in a scheme to defraud and extort substantial sums of money and property from FTB.

84. In furtherance of their scheme, and as described herein, the Defendants transmitted, or caused to be transmitted, by means of wire communication in interstate or foreign

commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme.

85. Specifically, Defendants delivered their threats, false representations regarding the nature of the '073 Patent, their purported right to "licensing fees," their "settlement demands," and their threats of criminal prosecution via email and telephone. Defendants used the U.S. Postal Service and/or private mail carriers to deliver its letter and complaint to FTB and other victims, both of which were used to deliver threats and intimidate FTB.

86. The Defendants participated in the scheme to defraud and extort FTB by knowingly, willfully, and threatening FTB with the specific intent to deceive and/or defraud FTB into paying the Defendants illegal licensing fees and settlements.

87. The Defendants' false and misleading statements were relied upon by FTB and have caused FTB substantial damages, as further described herein.

88. The Defendants participated in the scheme to defraud and extort knowingly, willfully, and with the specific intent to deceive and/or defraud FTB into paying the Defendants.

89. The Defendants' false and misleading statements were relied upon by FTB and have caused FTB substantial damages.

90. Each of the Defendants have engaged in multiple predicate acts, as described herein. The conduct of each of the Defendants constitutes a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5).

91. FTB was injured in its business and property by reason of the Defendants' violations of 18 U.S.C. § 1962(c). The injuries to FTB caused by reason of the violations of 18 U.S.C. § 1962(c) include, but are not limited to, damage to FTB's reputation and goodwill, disruption to FTB's business, legal fees and costs in defending itself from Defendants'

objectively baseless, improperly motivated sham patent lawsuit and threats of criminal prosecution.

92. Further, these injuries to FTB were a direct, proximate, and reasonably foreseeable result of the violation of 18 U.S.C. § 1962. FTB has been and will continue to be injured in its business and property in an amount to be proven at trial.

93. Pursuant to 18 U.S.C. § 1964(c), FTB is entitled to recover treble damages plus costs and attorneys' fees from the RICO Defendants.

94. FTB seeks a preliminary and/or permanent injunction to enjoin the Defendants from filing any more frivolous patent infringement lawsuits.

COUNT II
CONSPIRACY TO VIOLATE RICO (18 U.S.C. 1962(d))
(Against All Defendants)

95. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

96. Defendants Shapiro, Mintz, DecisionSorter, Dalton and Hillcrest, individually and collectively conspired with Lumen to commit wire fraud, extortion and violate the RICO statute as described herein.

97. FTB was injured in its business and property by reason of the Defendants' violations of 18 U.S.C. § 1962. The injuries to FTB caused by reason of the violations of 18 U.S.C. § 1962 include, but are not limited to, damage to FTB's reputation and goodwill, disruption to FTB's business, legal fees and costs in defending itself from Defendants' objectively baseless, improperly motivated, sham patent lawsuit and threats of criminal prosecution.

98. Further, these injuries to FTB were a direct, proximate, and reasonably foreseeable result of the violation of 18 U.S.C. § 1962. FTB has been and will continue to be injured in its business and property in an amount to be proven at trial.

99. Pursuant to 18 U.S.C. § 1964(c), FTB is entitled to recover treble damages plus costs and attorneys' fees from the RICO Defendants.

COUNT III
EXTORTION
(Against all Defendants)

100. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

101. As set forth *supra*, Defendants agreed to accomplish the unlawful purpose of commencing frivolous patent infringement actions against FTB and others, without probable cause or a good faith investigation for the purpose of extracting money from FTB and these other victims.

102. As part of this agreement, Shapiro and Mintz transferred their rights to the '073 Patent to the "shell entities," DecisionSorter, Dalton, and Hillcrest, and then to Lumen to allow Lumen to initiate a litigation campaign. At all times the Defendants had an agreement that the illegal funds obtained through this scheme would be collected for Shapiro and Mintz and Shapiro and Mintz would maintain a secret interest in the '073 Patent.

103. The agreement and scheme created by Defendants constitutes fraud and extortion and is contrary to public policy.

104. Defendants used the process of this Court for the collateral purpose of extorting money from FTB and others because at no time did Defendants have any desire to deter or enjoin

any alleged patent infringement or protect their purported rights to the '073 Patent. Defendants did not believe (or did not reasonably believe) that FTB was, in fact, infringing the '073 Patent.

105. Despite threats of criminal prosecution, Defendants had no good faith belief that FTB or its CEO committed any crime, but simply used this threat in an effort to extort funds from FTB.

106. As a proximate result of the actions taken by Defendants, FTB has suffered disruption to its business, loss of business goodwill, substantial litigation expense, and other damages in an amount to be proven at trial.

COUNT IV
ABUSE OF PROCESS
(Against All Defendants)

107. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

108. Defendants entered into an agreement and created “shell entities” and license agreements for the purpose of commencing patent infringement actions against FTB and others, based upon a vague patent for the purpose of extracting money from FTB and other victims.

109. At all times, Defendants did not intend to enjoin infringement of the '073 Patent and did not use the process to do so, or in any way protect the '073 Patent. Instead, Defendants used the process of this Court to extort money from FTB and others and to harm FTB's business.

110. Defendants also used the discovery process to harass, annoy, injure and intimidate FTB, rather than to actually discover information relevant to their patent infringement claims or to prove their claims.

111. As a proximate result of the actions taken by Defendants, FTB has suffered disruption to its business, loss of business goodwill, substantial litigation expense, and other damages in an amount to be proven at trial.

COUNT V
CIVIL CONSPIRACY
(Against all Defendants)

112. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

113. Defendants Shapiro and Mintz formed an agreement for the purposes of engaging in a nationwide pattern and practice of baseless threats, fraud, misrepresentations, unfair competition, and extortion from businesses and individuals, including FTB.

114. Each Defendant participated in, contributed to, and substantially assisted one another in the commission of the wrongful conduct described herein, including violation of RICO, abuse of process, extortion and violation of Cal. Bus. & Prof. Code § 17200.

115. In furtherance of that conspiracy, Shapiro and Mintz formed DecisionSorter, Dalton, Hillcrest, and Lumen (all “shell entities” that are undercapitalized) and created and/or executed various licensing agreements between themselves and those entities so that Lumen could serve as the vehicle for filing frivolous and unfounded patent infringement lawsuits and delivery unsubstantiated and absurd threats (including threats of criminal prosecution) for the purpose of extorting money from FTB, and others.

116. Through these unlawful acts, as further described herein, Defendants have damaged FTB by causing FTB to expend substantial sums investigating, defending and preparing to defend against fraudulent and baseless threats and claims; disrupting FTB’s business

operations; damaging FTB's goodwill and business reputation, and other damages to be proven at trial.

COUNT VI
CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.
(Against All Defendants)

117. FTB re-alleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth herein.

118. Defendants' conduct described herein constitutes unfair, unlawful and/or fraudulent business acts or practices under Cal. Bus. & Prof. Code § 17200 et seq., including for example, but not limited to, making affirmative misrepresentations and omissions about the need to take a license to the '073 Patent, the alleged scope of the '073 Patent, and the characterization of FTB's CEO's alleged statement to Shapiro as "a hate crime"; engaging in a broad scheme to use fear in an effort to extort license fees for amounts to which Defendants were not entitled; filing frivolous patent infringement actions; threatening Defendants with unfounded claims of criminal prosecution; and abuse of process and violations of RICO, as alleged above.

119. Misconduct and injuries pertaining to the conduct referenced herein have occurred within California, either of which gives rise to a § 17200 claim. With respect to injury in California, FTB's principal place of business is in California. Thus, the disruption to FTB's business caused by Defendants' misconduct occurred in California as did its damages. With respect to misconduct, Defendants' letter demanding licensing fees was sent to FTB in California and Defendants' threats were made to FTB in California.

120. As a result of Defendants' conduct, as described herein, FTB's business was disrupted, as its officers, directors and key employees had to devote significant time and

resources to defend FTB from Defendants' frivolous and false claims. Plaintiff also suffered damage to its business goodwill and reputation.

121. Plaintiff is entitled to remedies, including a permanent injunction barring continued commission of the unlawful activities alleged herein, and restitution.

PRAYER FOR RELIEF ON FTB'S COMPLAINT

WHEREFORE, FTB prays for the following relief against Defendants on FTB's Complaint, as follows:

1. For judgment in favor of FTB on all claims;
2. For general damages according to proof at trial,
3. For restitutionary damages;
4. For trebled damages according to statutes, 18 U.S.C. § 1964(c);
5. For pre-judgment interest according to statute;
6. For FTB's reasonable attorneys' fees and costs according to statute, 18 U.S.C. § 1964(c);
7. For injunctive relief;
8. For such other legal and equitable relief as the Court may deem FTB is entitled to receive.

Dated:

Respectfully submitted,

By: /s/ Joseph S. Leventhal

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