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SUPERIOR COURT  
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D. STEPPE

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9 Attorneys for Plaintiff ILEVERAGE INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **CITY AND COUNTY OF SAN FRANCISCO**

CGC-12-517943

12 ILEVERAGE INC.,

Case No.

13 Plaintiff,

**COMPLAINT FOR LEGAL  
MALPRACTICE AND DEMAND FOR  
JURY TRIAL**

14 v.

**BY FAX**

15 IAN FEINBERG; FEINBERG, DAY,  
16 ALBERTI & THOMPSON LLP; MAYER  
BROWN LLP; and DOES 1-20,  
Defendants.

17 Plaintiff ILEVERAGE, INC. ("Plaintiff") complains and alleges as follows:

18 **I. INTRODUCTION**

19 1. This is an action brought by Plaintiff for a legal malpractice against Defendants  
20 IAN FEINBERG ("Feinberg"), FEINBERG, DAY, ALBERTI & THOMPSON LLP ("FDAT")  
21 and MAYER BROWN LLP ("Mayer Brown") (Feinberg, FDAT and Mayer Brown shall  
22 collectively be referred to herein as "Defendants").

23 2. Plaintiff alleges that it was represented by Defendants in a civil lawsuit and that  
24 Defendants failed to exercise reasonable care and skill in representing Plaintiff's legal interests  
25 to the detriment of Plaintiff. Plaintiff further alleges that it suffered damages and is therefore  
entitled to monetary relief as a result of this negligent and careless conduct of Defendants.

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1 **II. PARTIES**

2 3. Plaintiff is a Delaware Corporation with its principal place of business located in  
3 San Francisco, California.

4 4. Plaintiff is informed and believes, and on that basis alleges, that FDAT is an  
5 internationally recognized boutique patent expert law firm that is incorporated as a limited  
6 liability partnership and is licensed to do business in the State of California. FDAT operates  
7 from its offices located in Palo Alto, California.

8 5. Plaintiff is informed and believes, and on that basis alleges, that Mayer Brown is  
9 an internationally-recognized law firm that is incorporated as a limited liability partnership and  
10 is licensed to do business in the State of California. Mayer Brown has an office and it conducts  
11 business in Palo Alto, California.

12 6. Plaintiff is informed and believes, and on that basis alleges, that Feinberg, an  
13 individual citizen of the State of California, who is an attorney duly licensed to practice law in  
14 the State of California and who conducts business in Palo Alto, California.

15 7. Feinberg was an attorney at Mayer Brown until in or around January 2011 at  
16 which time he left the firm to become the founder and a partner at FDAT. At all relevant times  
17 herein, Feinberg was the lead counsel for Plaintiff.

18 8. The true names and capacities, whether individual, corporate, associate, or  
19 otherwise, of Defendants DOES 1 through 20, inclusive, are unknown to Plaintiff, who  
20 therefore sue said Defendants by such fictitious names pursuant to Code of Civil Procedure  
21 §474. Plaintiff will seek leave of the court to amend the complaint to show the true names and  
22 capacities of such Doe Defendants when they are ascertained. Plaintiff is informed and believes  
23 and on that basis alleges that each of the Doe Defendants is responsible in some manner for the  
24 damages alleged in this complaint.

25 **III. JURISDICTION AND VENUE**

26 9. Jurisdiction and venue are proper because Plaintiff's claims and causes of action  
27 arose in this county and all parties reside and/or do business in this county.

28 **IV. FACTUAL ALLEGATIONS**

**A. The Limelight-Twister Dispute**

10. Plaintiff is a patent brokerage firm that specializes in the sale of small portfolios  
of high quality patents, including the sale of patents and patent portfolios by auction.

1           11. In or around September 24, 2009, Plaintiff contracted with Allied Security Trust  
2 (“AST”) and its subsidiary, Twister Investment, LLC (“Twister”), to sell twelve of Twister’s  
3 patents and one patent application (the “Assets”) in a public on-line auction.

4           12. Plaintiff scheduled an auction to sell the Assets for March 16, 2010 (the  
5 “Auction”), and spent significant time, effort and resources in marketing the Assets and in  
6 inducing potential buyers of the Assets to participate in the public auction of the Assets.

7           13. To generate interest in the Auction, Plaintiff, together with Inflexion Point  
8 Strategy LLC (“Inflexion Point”), conducted a marketing campaign that included preparing  
9 various presentations, conducting conference calls and meetings, facilitating due diligence for  
10 potential buyers and sent marketing materials describing the strategic and financial values of the  
11 Assets to more than 100 companies identified as being potentially interested in purchasing the  
12 Assets.

13           14. Plaintiff sent emails soliciting interest in the Assets to various potential bidders.  
14 One of those emails was sent on February 4, 2010, to Limelight Networks Inc., a Delaware  
15 Corporation with a principle place of business in Tempe, Arizona (“Limelight”). Limelight is a  
16 provider of high performance Content Delivery Network (“CDN”) services that enables  
17 customers to transmit large amount of content over the internet safely, efficiently and reliably.

18           15. The Assets included certain CDN patents that had been purchased by AST and  
19 which Plaintiff had contracted to sell in the Auction. The solicitation email to Limelight  
20 provided that the patents offered related to Limelight’s services and there would be a strategic  
21 benefit to Limelight to participate in the Auction. On February 10, 2010, Plaintiff sent another  
22 email to Limelight with regard to some of the Assets that provided it would be in Limelight’s  
23 interest to acquire the Assets since they were not currently licensed under them.

24           16. After receiving the above-referenced emails, Limelight contacted Plaintiff and  
25 offered to purchase a license for some of the patents for \$50,000. Pursuant to its agreement  
26 with Twister, Plaintiff provided this offer to Twister, which in turn rejected the offer and  
27 requested that Plaintiff proceed with the Auction on March 16, 2010. Plaintiff confirmed to  
28 Limelight that Twister would not license the patents and requested that Plaintiff encourage  
Limelight to purchase the Assets at the Auction.

          17. On March 15, 2010, a day before the scheduled Auction, Limelight filed a  
Complaint for a Declaratory Judgment against AST and Twister in the United States District

1 Court for the District of Arizona, Action No. 2:10-cv-00585, alleging that AST and Twister had  
2 threatened Limelight with an action for infringement of the patents and sought declaratory relief  
3 on this issue (the “Twister Action”). A true and correct copy of the Complaint in the Twister  
4 Action is attached hereto as Exhibit “A.”

5 18. Limelight did not name Plaintiff as a party to the Twister Action. However, the  
6 gravamen of the lawsuit and the relief sought were based upon Plaintiff’s dealings with  
7 Limelight and the marketing campaign prior to the Auction.

8 19. While Limelight did not name Plaintiff in the Twister Action, the morning of the  
9 Auction, March 16, 2010, Limelight emailed Plaintiff a copy of the Twister Action. Plaintiff is  
10 informed and believes and thereon alleges that the reason Limelight emailed a copy of the  
11 Twister Action to Plaintiff was to cause Plaintiff to cancel or postpone the Auction.

12 20. Plaintiff immediately contacted Twister to discuss the implications of the filing  
13 of the Twister Action on the eve of Auction. Plaintiff and Twister agreed that they had no  
14 choice but to postpone the Auction because one of the key bidders, which previously had stated  
15 in writing that it was interested in participating in the Auction, informed Plaintiff and Twister  
16 that it would not participate in the Action after learning of the Twister Action. Plaintiff and  
17 Twister concluded that the other bidders also would not participate for the same reason, and this  
18 would result in a lower sale price for the Assets. Accordingly, on March 16, 2010, at 2:58 p.m.,  
19 Plaintiff sent an email to potential bidders advising them that the Auction was being postponed  
20 as a result of the complaint filed by Limelight.

21 21. Plaintiff is informed and believes and therefore alleges that the real purpose of  
22 the Twister Action was to delay or stop the Auction so that Limelight’s competitors could not  
23 purchase the Assets and preclude Limelight from using the Assets.

24 22. Plaintiff had anticipated that the Assets would have sold at the Auction for  
25 approximately \$12.5 million which would have resulted in a \$2.4 million estimated commission  
26 for Plaintiff.

27 23. However, because of the Twister Action, the Auction was put on hold.  
28 Subsequently, Plaintiff was advised by Twister and AST that they no longer were interested in  
the sale of the Assets in a public auction.

24. On March 26, 2010, Twister and Limelight issued a press release that the Twister  
Action had been settled, that Limelight would be granted a patent license for the disputed

1 patents, and that the Twister Action would be dismissed. Plaintiff is informed and believes that  
2 this settlement occurred because the filing of the Twister Action forced Twister to grant  
3 Limelight a license and that Limelight paid Twister a significant sum of money for this license.

4 25. That same day, while the Twister Action was still pending, Plaintiff sought the  
5 legal counsel of Feinberg, who was then a partner working at Mayer Brown, to determine if it  
6 had any rights or causes of action against Limelight as a result of its inability to sell the Assets  
7 due to the Twister Action. Plaintiff had a previous attorney-client relationship with Feinberg  
8 and Mayer Brown with regard to patent related issues. After meeting on March 26, 2010,  
9 Plaintiff retained Mayer Brown to assist in pursuing its rights and claims with regard to the lost  
10 business opportunity of selling the Assets.

11 26. While the Twister Action was still pending, Feinberg and Mayer Brown provided  
12 legal counsel to Plaintiff on the sale of the Assets and the Auction. However, Feinberg and  
13 Mayer Brown never advised Plaintiff to seek to join the Twister Action as a permissible or  
14 indispensable joinder.

15 27. Further, Feinberg and Mayer Brown never told Plaintiff that failure to join the  
16 Twister Action and the resolution of this action could result in Plaintiff's waiver of any rights  
17 and claims it may had against Limelight regarding the Auction and the sale of the Assets.

18 28. On March 31, 2010, the Twister Action was dismissed. After the dismissal of  
19 the action, Feinberg and Mayer Brown never advised Plaintiff to oppose or challenge the  
20 settlement agreement between Limelight and Twister or the dismissal of the Twister Action.

21 **B. Defendants' Representation of Plaintiff Before Filing a Lawsuit Against**  
22 **Limelight**

23 29. After the resolution of the Twister Action, Feinberg and Mayer Brown advised  
24 Plaintiff to bring a lawsuit against Limelight for the damages Plaintiff sustained as a result of  
25 the Twister Action, and particularly the loss of commission for conducting the Auction.

26 30. Upon information and belief, in or around April and May of 2010, Feinberg  
27 consulted his colleagues at Mayer Brown and conducted research about the prospect of Plaintiff  
28 bringing suit against Limelight. At no point, however, did Feinberg or Mayer Brown propose or  
discusse with Plaintiff the prospect of bringing a claim for abuse of process against Limelight  
for aborting the Auction by filing the Twister Action, exerting a settlement from Twister, and  
not naming Plaintiff as a party in the Twister Action.

1           31.     Furthermore, Feinberg and Mayer Brown neglected to advise Plaintiff on the  
2 litigation privilege, that the privilege will bar any action brought against Limelight in  
3 California, and that under Arizona law the litigation privilege is not likely to serve as a  
4 complete bar to Plaintiff's claims.

5           32.     Feinberg and Mayer Brown also never explained or advised Plaintiff that its  
6 claims could be barred in California under the litigation privilege using California's the Anti  
7 Strategic Lawsuit Against Public Participation ("Anti-SLAPP") statute, Code of Civil Procedure  
8 § 425.16, *et seq.* ("Anti-SLAPP Statute").

9           33.     Feinberg and Mayer Brown neglected to advise Plaintiff about the possibility  
10 that filing an action against Limelight based on the Twister Action might result in an Anti-  
11 SLAPP motion, and that if Limelight will prevail on this motion, Plaintiff's action will be  
12 dismissed and Plaintiff will be liable to pay Limelight mandatory attorneys' fees and costs of  
13 the litigation of the motion.

14           34.     In fact the only concern Feinberg brought up when discussing possible issues  
15 with the lawsuit was that some people thought the lawsuit might be protected by the First  
16 Amendment but that the question was close.

17           35.     Additionally, Feinberg and Mayer Brown decided to file suit for Plaintiff in a  
18 California state court rather than in federal court despite the fact that action should have been  
19 filed in federal court based on diversity jurisdiction because Limelight was a foreign  
20 corporation and the potential value of Plaintiff's claim well exceeded \$75,000. Had Plaintiff  
21 brought its action in federal court, the California Anti-SLAPP Statute could not have been  
22 applied and Plaintiff would at least not have been liable for Limelight's attorneys' fees and  
23 costs for the litigation of its claims.

24           36.     Similarly, Feinberg and Mayer Brown did not advise or suggest that Plaintiff file  
25 its claims in Arizona state or federal court. Again, the Anti-SLAPP Statute would not have  
26 applied in either of these jurisdictions. Furthermore, the Arizona litigation privilege is more  
27 lenient than that of California, and Plaintiff's claims would therefore have had a higher  
28 possibility of success in that jurisdiction.

          37.     In anticipation of filing suit against Limelight, in or around May 2010, Plaintiff  
requested that Feinberg and Mayer Brown provide Plaintiff with a list of Limelight's expected  
defenses. Despite this request, Feinberg and Mayer Brown again neglected to inform Plaintiff

1 of the likelihood that Plaintiff's claims against Limelight would result in an Anti-SLAPP  
2 motion and likely dismissal. In fact, the Anti-SLAPP Statute was not even mentioned in the  
3 analysis by Feinberg and Mayer Brown.

4 38. Feinberg and Mayer Brown filed a complaint of behalf of Plaintiff against  
5 Limelight on January 7, 2011, in San Francisco Superior Court (the "Limelight Action"). A  
6 true and correct copy of the Complaint in the Limelight Action is attached hereto as Exhibit  
7 "B." This was more than six months after Feinberg and Mayer Brown initiated research into  
8 Plaintiff's claims and more than ten months after Plaintiff originally sought legal counsel from  
9 Feinberg and Mayer Brown.

9 **C. Defendants' Representation of Plaintiff in the Limelight Action**

10 39. In response to the Limelight Action, on February 4, 2011, Limelight filed an  
11 Anti-SLAPP motion against Plaintiff alleging that the Limelight Action was based entirely on  
12 the filing of the Twister Action and thus barred in California.

13 40. After receiving the Anti-SLAPP motion, Feinberg or Mayer Brown did not  
14 advise Plaintiff to dismiss its lawsuit, rather Feinberg told Plaintiff that he believed the Anti-  
15 SLAPP motion was frivolous and the only next step was to oppose the motion.

16 41. Defendants then decided to excessively and unnecessarily litigate the Anti-  
17 SLAPP motion causing Limelight to engage in excessive and unwarranted motion practice of a  
18 relatively simple legal question.

19 42. Nevertheless, it was only after the Anti-SLAPP motion was filed that Defendants  
20 determined that under Arizona law Plaintiff's claims against Limelight could have succeeded in  
21 Arizona.

22 43. On March 7, 2011, FDAT substituted in for Mayer Brown and continued with  
23 the litigation of the Limelight Action with Feinberg still serving as lead trial counsel for  
24 Plaintiff.

25 44. On April 4, 2011 after the initial brief papers and supplemental brief papers were  
26 filed by the parties on the Anti-SLAPP motion, the San Francisco Superior Court found in favor  
27 of Limelight and granted that motion.

28 45. Limelight brought a motion for attorneys' fees and costs as a result of the  
decision on the Anti-SLAPP Motion, and Plaintiff was order to pay \$142,051.64 in attorneys'  
fees and costs to Limelight.





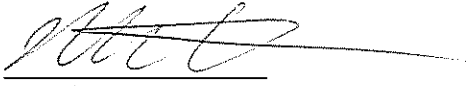


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- 4. For an award of reasonable attorneys' fees;
- 5. For all costs of suit; and
- 6. For such other and further relief as this Court deems just and proper.

Dated: February 3, 2012

PERETZ & ASSOCIATES

By: 

Yosef Peretz  
Emily A. Knoles  
Michael D. Burstein  
Attorneys for PLAINTIFF  
ILEVERAGE, INC.

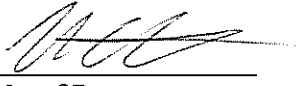
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all issues.

Dated: February 3, 2012

PERETZ & ASSOCIATES

By: 

Yosef Peretz  
Emily A. Knoles  
Michael D. Burstein  
Attorneys for PLAINTIFF  
ILEVERAGE, INC.