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PRELIMINARY STATEMENT

After more than two years of litigation, which included more than seventy depositions and the production of enormous volumes of documents and source code, this action proceeded to trial during a three-week period in January 2017. At that time, ZeniMax was able to finally “let the light in” and present in open court — rather than hidden away in the court filings that Defendants fought so hard to keep sealed — the full extent of Defendants’ misconduct here.

During the three weeks of trial, the jury heard from more than twenty witnesses — including Defendants *themselves*, their own employees, the parties’ experts, and an independent Court-appointed forensics expert. That testimony showed that the myth that Defendants had long peddled to the media that their virtual reality (“VR”) technology was developed independently by Defendant Palmer Luckey (who could not even code software) was obviously untrue: that was a cover story used to hide the fact that this complex VR technology was actually stolen. The evidence at trial instead revealed the true story of Oculus: that company was built on a foundation of *ZeniMax’s* technology.

The evidence showed that Plaintiffs, highly respected video game companies with a remarkable legacy of innovation in the industry, achieved in 2012 a breakthrough in complex virtual reality technology that had eluded many sophisticated tech companies for years. ZeniMax’s latest innovation was led by Defendant John Carmack, a singularly experienced and highly proficient former ZeniMax Technical Director and programmer (now the Chief Technology Officer for *Oculus*) long before he ever came into contact with any of the Defendants. Indeed, by the time he contacted Luckey, Carmack had already created breakthrough software that solved critical virtual reality technology problems that had confounded VR researchers for years. Carmack’s contact with Luckey in May 2012 resulted in Luckey essentially providing a *single* element to Carmack’s incredible work: a pair of

inexpensive, wide optic lenses that Luckey had purchased for about \$10 and installed in a head mounted display he called the Rift. It is an understatement to say that the primitive Rift headset which Luckey sent to Carmack was not operable, contained *no* software (much less the cutting edge software needed to create VR), and did not allow the user to experience any kind of VR (to say nothing of a compelling and immersive VR demonstration). Yet that was the extent of Luckey's "contribution" to Carmack's efforts. Carmack made this groundbreaking VR software (which solved such thorny VR problems as latency and lens distortion) compatible with the Rift headset he decided to use for his upcoming reveal. Days later, Carmack demonstrated ZeniMax's extraordinary VR technology to the industry in ZeniMax's booth at the E3 conference in June 2012. No other Defendants were present or helped develop that VR technology shown. As Carmack had predicted, it was met with great critical acclaim: attendees heralded ZeniMax's technology as the first commercially-viable virtual reality product.

In the aftermath of the excitement surrounding the E3 demonstration of VR, Luckey, Iribe, and two other friends of Iribe, came together to create a VR business as Oculus. But they had a problem: none of them knew how to develop the complex VR technology needed for this business, nor did they have the necessary capital. Only ZeniMax had the VR technology that Oculus needed. Instead, Luckey sought access to that VR technology from Carmack which ZeniMax agreed to disclose to Luckey pursuant to a Non-Disclosure Agreement ("NDA"). That NDA specifically stated, among other things, that all the VR technology was owned exclusively by ZeniMax.

The jury learned that, almost immediately after signing that NDA, Luckey and Oculus began making use of ZeniMax's technology in direct violation of that contract (and against ZeniMax's express instructions). For many months, Oculus exploited ZeniMax's technology

and brand — including programs and source code on which ZeniMax has validly-registered copyrights and other highly valuable marks that ZeniMax owns — in its effort to solicit investors for the venture and to develop a commercial VR product. When Oculus needed virtual reality demonstrations to present to potential investors, it used ZeniMax’s. When Oculus needed code to develop its software development kit or SDK, it used ZeniMax code. And when Oculus and its coders needed expertise to solve the ongoing technical problems of VR, they asked Carmack (who was still a ZeniMax employee) for technical solutions. All the VR technology Oculus obtained from ZeniMax was owned by ZeniMax alone.

The extensive documentary record and witness testimony at trial made clear that Defendants’ theft of ZeniMax’s technology was not a matter of conjecture or speculation. There was direct, irrefutable proof of substantial, continuing transfers of ZeniMax’s VR technology (including source code) to the Defendants over many months, all of which Oculus desperately needed and used. All that technology was — and remains — the exclusive property of ZeniMax. For example, the jury heard testimony by an Oculus programmer, Lee Cooper, who spent months trying unsuccessfully to solve chromatic aberration, but finally “solved” it within 24 hours after he was sent Carmack’s code. The frequency and extent of the technology transfers were significant: the jury learned that one of the founders of Oculus brought a large desktop computer to id Software’s office in Dallas, Texas to download massive VR files from ZeniMax (which Defendants used to develop their business and solicit investors). The jury also learned that Defendant Brendan Iribe, the CEO of Oculus, sent a written proposal to Plaintiffs seeking a license for the source code “shared” by Carmack that ZeniMax owned and which powered the Oculus headset. This and other evidence established beyond question that the foundation of Oculus was built using ZeniMax VR technology. By the end of the presentation of evidence in

this three-week trial, it was painfully clear to the jury that the success of Oculus and the gross enrichment of its founders were the result of Defendants' blatant (and continued) theft of ZeniMax's intellectual property. Moreover, there was an ugly record that showed how Defendants (well aware of their misdeeds) went to great lengths to illegally cover up these undeniable truths.

Indeed, Defendants' carefully-curated and oft-repeated assertion that ZeniMax's claims were "ridiculous and absurd" fell apart before the jury on the very first day of testimony. Carmack was forced to admit that during his last days of employment at ZeniMax, he stole thousands of confidential documents and literally millions of lines of source code, including the industry leading *id Tech*® 5 engine, from his long-time employer. (App'x (Vol. I)¹ Ex. A, at 3 (ECF No. 923, at 160:12-18).)

The extent and scope of Defendants' deliberate wrongdoing by these seemingly respectable Defendants was stunning, and continued to unfold before the jury over the remaining course of trial. By the time both sides rested, the jury had heard extraordinary evidence that Defendants, well aware of their misconduct, went to great lengths not to get caught. For example, the jury read text messages from Defendant Iribe instructing senior Oculus staff not to discuss matters in emails as those are "permanent" and "can be used as evidence in court" — not exactly the words of an honest businessman. In addition, the jury heard uncontradicted evidence that files on Defendants' devices were wiped in the days immediately following their receiving notice of this lawsuit, and then lied about their destruction of evidence in a sworn affidavit submitted to this Court. ZeniMax's efforts to uncover evidence detailing that destruction of

¹ In connection with this Motion, ZeniMax files herewith two appendices. The first, referenced as "App'x (Vol. I)" herein contains documents that are available publicly (and used in open court during trial), and the second, referenced as "App'x (Vol. II)" contains documents treated confidentially by the Court during trial.

evidence — after ZeniMax learned that Mr. Carmack had researched on Google how to wipe a Mac hard drive — were met by bitter resistance by the Defendants for more than a year. Ultimately, an independent computer forensic expert appointed by the Court found, as ZeniMax has suspected all along, that files on Oculus computers were intentionally wiped right after ZeniMax sent notice of this lawsuit (and right after Carmack’s Google search).

The jury heard how the Defendants “cashed in” as a result of their many misdeeds: each individual Defendant made hundreds of millions of dollars. For its part, Facebook received highly valuable technology before its competitors did, and then touted this new platform to Wall Street. Carmack, the unrepentant thief — who was once paid nearly \$100 million to develop technology for ZeniMax when that company bought id Software — conspired to funnel the VR technology he developed for ZeniMax to Oculus and then secretly negotiated a deal to join Oculus. As a result of that move, Carmack cashed in *again* for another \$100 million on the back of ZeniMax’s stolen technology. Having financed, supported, promoted and owning the critical VR research that started this new industry, what did ZeniMax and id Software get? Not a dime: just the costs of this lawsuit and having its reputation maligned by Defendants who accused them of being unknown interlopers making a money grab. The jury was asked to rectify those wrongs.

In response to that request, the jury resoundingly found in favor of ZeniMax on the majority of the claims asserted against Defendants, and rejected the two counterclaims that Carmack raised against ZeniMax. Specifically, the jury unanimously found that (i) Oculus breached the NDA with ZeniMax by taking ZeniMax VR technology and using it as its own, for which the jury awarded ZeniMax \$200,000,000; (ii) Oculus infringed ZeniMax’s copyrights by using its computer code unlawfully to establish and build its business, for which the jury awarded ZeniMax \$50,000,000; and (iii) Brendan Iribe, Palmer Luckey, and Oculus intentionally

and knowingly engaged in the false designation of ZeniMax's intellectual property as belonging to Oculus, for which the jury awarded ZeniMax \$150,000,000, \$50,000,000, and \$50,000,000 as to each of those Defendants, respectively. The jury upheld the claim of unlawful conversion, finding that John Carmack was liable for taking ZeniMax's property, including the proprietary source code for its game, *RAGE*®, and thousands of ZeniMax's confidential documents which were secretly downloaded to a USB drive.

ZeniMax, as the prevailing party, now respectfully requests that the Court enter the proposed judgment submitted herewith on the \$500,000,000 jury verdict. ZeniMax further requests that this Court enter judgment in favor of ZeniMax providing for (i) prejudgment and post-judgment interest on the jury award; (ii) treble damages as to ZeniMax's claim for false designation of origin; (iii) an award of ZeniMax's reasonable attorneys' fees and expenses incurred in connection with this litigation (estimated to be nearly \$40 million); and (iv) a permanent injunction to prevent future infringement or breaches by Defendants of ZeniMax's copyrights, contracts, or trademarks.²

ARGUMENT

I. THE COURT SHOULD ENTER FINAL JUDGMENT IN FAVOR OF ZENIMAX IN AT LEAST THE AMOUNT OF \$500 MILLION

On January 9, 2017, this matter came on for jury trial before this Court. On February 1, 2017, the jury returned a verdict in favor of ZeniMax for \$500,000,000 in damages. (*See* ECF No. 914.) Federal Rule of Civil Procedure 58(d) permits a party to request entry of final

² The bases on which that injunction request is brought are more specifically addressed in ZeniMax's Motion For Entry Of Permanent Injunction, filed herewith.

judgment.³ Among other claims, the jury entered a verdict in favor of ZeniMax on its breach of contract, copyright, conversion, and false designation of origin claims. (*Id.* at 21-76.) The jury also denied Defendant Carmack’s counterclaims. (*Id.* at 82-86.) The Fifth Circuit grants “generous deference” to jury findings. *See Richter, S.A. v. Bank Of Am. Nat. Trust & Sav. Ass’n*, 939 F.2d 1176, 1197-98 (5th Cir. 1991). Based upon these findings, and the evidence presented at trial, the Court should promptly enter judgment in favor of ZeniMax in substantially the same form submitted herewith.

II. ZENIMAX IS ENTITLED TO PREJUDGMENT AND POST-JUDGMENT INTEREST ON THE JURY AWARD

A. Prejudgment Interest Is Due To ZeniMax On The Breach Of Contract Claim And Should Be Calculated From May 21, 2014 (The Date ZeniMax Filed Its Complaint)

ZeniMax is further entitled to prejudgment interest from Oculus based on the jury’s finding that Defendants breached the NDA. (*See* ECF No. 914, at 40-49.)

Applicable standard. Under Texas law, “[p]rejudgment interest is ‘compensation allowed by law as additional damages for lost use of the money due as damages during the lapse of time between the accrual of the claim and the date of judgment.’” *Int’l Turbine Servs., Inc. v. VASP Brazilian Airlines, Inc.*, 278 F.3d 494, 499 (5th Cir. 2002) (quoting *Johnson & Higgins Of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 528 (Tex. 1998)) (affirming award of prejudgment interest under Texas common law). The Texas Supreme Court has recognized two separate bases for the award of prejudgment interest: (1) an enabling statute; and (2) general

³ ZeniMax brings this request for entry of judgment without waiving its right to later file any motions regarding the Court’s final judgment (once entered). Rule 58(d) specifically provides that a “party may request that judgment be set out in a separate document as required by Rule 58(a)” and the advisory committee notes to that Rule specify that this is intended “to avoid delays” and to provide for “prompt commencement of the periods for motions, appeals, and execution or other enforcement.” Fed. R. Civ. P. 58(d).

principles of equity. *Id.* ZeniMax’s breach of contract claim does not fall within any statutory provisions, and therefore an award of prejudgment interest is governed by Texas common law.

Id.

Equitable prejudgment interest “is awarded as a matter of course when the trier of fact finds that damages accrued before the time of judgment, and such an award is not generally a matter for the trial court’s discretion.” *Bituminous Cas. Corp. v. Vacuum Tanks, Inc.*, 75 F.3d 1048, 1057 (5th Cir. 1996) (internal quotes and citations omitted) (affirming award of prejudgment interest under Texas common law following trial). Under this standard, “an equitable award of prejudgment interest should be granted to a prevailing plaintiff *in all but exceptional circumstances.*” *Meaux Surface Prot., Inc. v. Fogleman*, 607 F.3d 161, 172 (5th Cir. 2010) (emphasis added) (vacating district court’s denial of prejudgment interest award and remanding for further consideration under Texas common law following jury trial). No such exceptional circumstances exist here, such that only the applicable rate and time frame need be determined.⁴

⁴ The Fifth Circuit has found “exceptional circumstances” in only a few narrow settings not applicable here. *See, e.g., Hondo Oil & Gas Co. v. Texas Crude Operator, Inc.*, 970 F.2d 1433, 1439 (5th Cir. 1992) (affirming denial of prejudgment interest award where such a grant would require a contradictory ruling that defendant both did not violate the statute at issue and yet still owed prejudgment interest for violation of that statute); *Richter, S.A.*, 939 F.2d at 1197-98 (affirming denial of prejudgment interest because in that “most unusual” Texas lender liability action the determination that defendant was liable at all “was extremely close,” and plaintiffs prevailed “due in large part to the generous deference [the Fifth Circuit] applies . . . to jury findings”). This case is not among those few exceptions in which prejudgment interest should not be awarded. On the contrary, the evidence presented at trial confirms that Oculus knowingly acted over the course of many months in breaching its contractual obligations to ZeniMax. There are no “exceptional circumstances” here and prejudgment interest therefore should be awarded. *See City of Milwaukee v. Cement Div., Nat. Gypsum Co.*, 515 U.S. 189, 196 (1995) (vacating denial of prejudgment interest and holding that neither the “good faith dispute” between the parties over liability nor the “magnitude of the plaintiff’s fault” was sufficient to establish “exceptional circumstances”); *Charla Aldous, P.C. v. Darwin Nat’l Assurance Co.*, Civ. A. No. 3:13-CV-3310-L, 2016 WL 1258486, at *1 (N.D. Tex. Mar. 31, 2016) (rejecting
(cont’d)

Applicable rate. When, as here, an interest rate is not specified in the parties' contract, prejudgment interest is calculated based on the statutory post-judgment interest rate provided in Section 304.003 of the Texas Finance Code. Section 304.003 states that the post-judgment interest rate is "five percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System . . . is less than five percent[.]" Tex. Fin. Code Ann. § 304.003(c)(2). The current prime rate as of the date of this filing is less than five percent. See <https://www.federalreserve.gov/releases/h15/>. As such, the applicable prejudgment interest rate is five percent.

Applicable time frame. Under both Texas common law and the Texas Finance Code, prejudgment interest for breach of contract damages begins to accrue on the date the suit was filed — here, May 21, 2014. See Tex. Fin. Code Ann. § 304.104; *Johnson & Higgins of Texas, Inc.*, 962 S.W.2d at 532 (affirming prejudgment interest on breach of contract claim following jury trial). Accordingly, the Court should award ZeniMax prejudgment simple interest on the breach of contract damages award of \$200,000,000 calculated from May 21, 2014 through the date of entry of judgment, at the rate of five percent per annum.⁵

B. Prejudgment Interest Is Due To ZeniMax On The Copyright Claim And Should Be Calculated From December 2012 (The Date The Infringement Began)

ZeniMax also is entitled to prejudgment interest from Oculus on the jury's finding that Oculus infringed ZeniMax's copyrights. (See ECF No. 914, at 21-40.)

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plaintiff's request to exclude prejudgment interest because the issues of law, though complicated, were not exceptional); *The Cadle Co. v. Sweet & Brousseau, P.C.*, Civ. A. No. 3:97-CV298-L, 2007 WL 1958915, at *10 (N.D. Tex. June 28, 2007) (exceptional circumstances did not exist where case was delayed for years by defendant's bankruptcy).

⁵ A table attached hereto as Exhibit 1 shows this calculation for various potential dates of entry of judgment.

Applicable standard. When a cause of action arises out of a federal statute, federal law governs the award of prejudgment interest. *Powell v. Penhollow*, 260 F. App’x 683, 691 (5th Cir. 2007). The determination of whether prejudgment interest should be awarded on a claim arising out of a federal statute is a two-step analysis: (1) “does the federal act creating the cause of action preclude an award of prejudgment interest and, (2) if not, does an award of prejudgment interest further the congressional policies of the federal act.” *Id.* “If prejudgment interest can be awarded under this analysis, whether such interest is awarded in any given case is within the district court’s discretion.” *Id.*

As to the first step, the Copyright Act is silent on prejudgment interest and, therefore, does not expressly preclude it. *See* 17 U.S.C. § 504. As to the second step, a prejudgment interest award will further congressional intent under the Copyright Act. The Fifth Circuit has not directly addressed the availability of prejudgment interest under the Copyright Act, though it has affirmed the award of such interest. *Powell*, 260 F. App’x at 691. *See also* *Goodman v. Lee*, 78 F.3d 1007, 1010, 1014 (5th Cir. 1996) (affirming award of prejudgment interest at the rate set by state statute after the jury found that plaintiff was the co-owner of the song “Let the Good Times Roll” under the Copyright Act). Numerous other Courts of Appeals, however — including the First, Third, Seventh, Ninth and Tenth Circuits — have expressly approved the award of prejudgment interest on copyright claims. *See Powell*, 260 F. App’x at 691.⁶

⁶ *See TMTV Corp. v. Mass Prods., Inc.*, 645 F.3d 464, 474 (1st Cir. 2011) (affirming award of prejudgment interest on a jury award for copyright damages and holding that such award (1) compensated plaintiff “for the time value of monies it should have had — just as if a contract debt had not been paid on time” and (2) avoided unjustly enriching defendants who had the use of additional funds rightfully belonging to plaintiff); *McRoberts Software, Inc. v. Media 100, Inc.*, 329 F.3d 557, 572-73 (7th Cir. 2003) (affirming award of prejudgment interest on a jury award for copyright damages and holding that “prejudgment interest is presumptively available to victims of federal law violations”); *Polar Bear Prods. v. Timex Corp.*, 384 F.3d 700, 716-18 (9th Cir. 2004) (reversing district court’s denial of prejudgment interest on a copyright claim and
(cont’d)

For example, in *Leonard v. Stemtech International Inc.*, 834 F.3d 376, 397 (3rd Cir. 2016), the Third Circuit reversed the trial court’s denial of prejudgment interest on a copyright claim, holding that such denial “of prejudgment interest on the ground that the damages award sufficiently compensated [plaintiff] constitutes legal error.” The Third Circuit explained that the jury’s award of actual damages under the Copyright Act “does not mitigate harm caused by delay in making reparations — a harm the remedy of prejudgment interest is uniquely tailored to address.” *Id.* at 396. Rather, “[p]rejudgment interest makes the claimant whole and prevents unjust enrichment.” *Id.* (omitting internal quotations and brackets.) As such, the “usual rule” holds that “a monetary award does not fully compensate for injury unless it includes an interest component.” *Id.* The Third Circuit concluded that the district court’s denial of prejudgment interest failed to fully compensate plaintiff notwithstanding the “high jury award.” *Id.* at 396-98.

The Third Circuit’s reasoning is instructive here. The Court should likewise award ZeniMax prejudgment interest on its copyright claim. Such an award of prejudgment interest is particularly warranted here given the breadth of Oculus’s infringement. Among the evidence presented at trial, Defendants admitted in their own words that they knew of and endorsed the willful infringements of ZeniMax’s copyrights:

- Iribe sent Oculus’s initial proposal to ZeniMax in which he acknowledged that Carmack had already shared ZeniMax’s source code with Oculus, as that proposal expressly requested that “ZeniMax [] grant Oculus a worldwide exclusive perpetual right and license to source code shared by Carmack regarding Oculus Rift support.” (App’x (Vol. I) Ex. B, at 7.)

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holding that the statutory availability of two remedies under the Copyright Act does not “mitigate harm caused by delay in making reparations — a harm the remedy of prejudgment interest is uniquely tailored to address.”); *Kleier Advert., Inc. v. Premier Pontiac, Inc.*, 921 F.2d 1036, 1040-42 (10th Cir. 1990) (reversing district court’s denial of prejudgment interest on a jury award for copyright damages and holding that “under federal law prejudgment interest is ordinarily awarded, absent some justification for withholding it.”) (internal quotations and citation omitted).

- Peter Giokaris, an Oculus coder, admitted that certain sections of Oculus’s code “could have been a cut and paste from [ZeniMax’s] Rage code into [Oculus’s] code.” (App’x (Vol. I) Ex. C, at 10-11 (ECF No. 928, at 116:25-117:4).)
- Brendan Iribe, the Chief Executive Officer of Oculus at all relevant times, sent ZeniMax’s copyrighted source code to an Oculus coder and asked if Oculus was doing the same. (App’x (Vol. II) Ex. S, at 196 (PX0540).)
- Lee Cooper, yet another Oculus coder, checked in source code obviously derived from ZeniMax’s code, so much so that it included the same erroneous and non-sensical components. Oculus’s VP of Product, Nate Mitchell, then asked Cooper: “[a]nything stopping us from doing it for the next release?” (App’x (Vol. I) Ex. D, at 14-16 (ECF No. 926, at 226:3-228:35).)

The copyright infringement here was knowing and deliberate. ZeniMax’s well qualified and highly respected computer expert, Dr. David Dobkin, testified that, having studied massive amounts of the Oculus and ZeniMax code base over a two year period, he was absolutely certain that Oculus copied and used ZeniMax code. (App’x (Vol. II) Ex. T, at 201 (ECF No. 933, at 146:18-10).)

ZeniMax is entitled to prejudgment interest on its copyright claim. Such an award will further congressional intent under the Copyright Act by reasonably compensating ZeniMax for the misappropriated value of its property and preventing Defendants from being unjustly enriched through their unlawful use of ZeniMax’s property. *See Polar Bear Prods.*, 384 F.3d at 718 (“[T]he purpose of § 504(b) [of the Copyright Act] is to compensate fully a copyright owner for the misappropriated value of its property and to avoid unjust enrichment by defendants, who would otherwise benefit from this component of profit through their unlawful use of another’s work.” (internal quotations and citation omitted)). Here, of course, Defendants’ unjust enrichment from the use of ZeniMax’s code amounts to hundreds of millions of dollars.

Applicable rate. Because ZeniMax’s copyright claim arises from a breach of contract (*i.e.*, the NDA), it is appropriate to apply the Texas’s statutory post-judgment interest rate of five percent. *See* Tex. Fin. Code Ann. § 304.003(c)(2). The Fifth Circuit upheld a similar award in

Goodman v. Lee, where the district court awarded plaintiff prejudgment interest at the Louisiana state interest rate beginning from the date defendants first started receiving royalties on a royalty claim arising out of the Copyright Act. 78 F.3d at 1010, 1014; *see also RBH Energy, LLC v. Partners in Church Consulting, LLC*, No. 15-CV-3988, 2016 WL 6496362, at *1 (N.D. Tex. May 6, 2016) (awarding prejudgment interest at five percent per annum for a copyright claim); *John Perez Graphics & Design, LLC v. Green Tree Inv. Grp., Inc.*, Civ. A. No. 3:12-CV-4194-M, 2013 WL 1828671, at *1 (N.D. Tex. May 1, 2013) (same).⁷

Applicable time frame. Accordingly, ZeniMax is entitled to prejudgment interest from Oculus on the jury award of \$50,000,000 on the copyright claim at the applicable interest rate of five percent from December 11, 2012 — the date that Oculus first issued its draft software developer kit⁸ (App’x (Vol. I) Ex. E, at 18-20) with its infringing content — through the date of entry of judgment.

⁷ Other courts have used the state rate where appropriate. *See TMTV, Corp.*, 645 F.3d at 475 (rejecting defendants’ request to use the lower federal rate “even though it is designed for post-judgment interest” and noting that “[f]ive percent is by historical standards hardly exorbitant”); *Kleier Advers., Inc.*, 921 F.2d at 1042 n.4 (leaving the selection of the applicable rate to the trial judge because there is no federal statutory interest rate on prejudgment interest).

⁸ ZeniMax has identified here the date on which Oculus issued its draft software developer kit as the date of first infringement, notwithstanding the fact that many infringing acts from which that kit derived preceded that date. (*See, e.g.*, App’x Ex. S, at 196-198 (PX0540) (November 17, 2012 email from Iribe sending ZeniMax’s copyrighted source code to an Oculus coder and asking if Oculus was doing the same); *id.* Ex. B, at 5-7 (PX0459) (Iribe’s September 10, 2012 proposal acknowledging that Carmack had shared ZeniMax’s code with Oculus).)

C. Prejudgment Interest Is Due To ZeniMax On The False Designation Of Origin Claim And Should Be Calculated From August 1, 2012 (The Date Of Defendants' First False Designation)

ZeniMax also is entitled to prejudgment interest from Oculus, Luckey and Iribe on the jury's finding in its favor on ZeniMax's false designation of origin claim. (See ECF No. 914, at 65-76.)

Applicable standard. Several courts in this Circuit have concluded that prejudgment interest is available under 15 U.S.C. § 1117(a), even though not explicitly provided for in that section of the Lanham Act. For example, in *Exxon Mobil Corp. v. Exxonmobil For Export, Import & Trade Ltd.*, Civ. A. No. 3:12-CV-01122-P, 2013 WL 12124589, at *5 (N.D. Tex. Aug. 23, 2013), Judge Solis adopted the articulation by the Seventh and Tenth Circuits and held that prejudgment interest should be “*presumptively available*” to victims of federal violations, including Lanham Act violations arising under Section 1117(a), because without it “compensation of the plaintiff is incomplete and the defendant has an incentive to delay.” *Id.* (emphasis added.) Other Texas federal courts are in accord. See also *ErgoBilt, Inc. v. Neutral Posture Ergonomics, Inc.*, Civ. A. No. 3:97-CV-2548-L, 2004 WL 1041586, at *11 (N.D. Tex. May 6, 2004) (awarding prejudgment interest on trademark claim); *ClearChoice Holdings, LLC, v. Clear Choice Dental, PLLC*, No. H-14-03569, 2016 WL 8136622, at *9-10 (S.D. Tex. Dec. 23, 2016) (awarding prejudgment interest on a trademark claim at the average prime rate for the four years prior to the filing of the complaint to the date judgment was entered); *Clearline Techs. Ltd. v. Cooper B-Line, Inc.*, 948 F. Supp. 2d 691, 712-14 (S.D. Tex. 2013) (awarding prejudgment interest on a trademark claim to be compounded annually at the average prime rate from the time of infringement until date judgment is entered).

The same result is appropriate here. Without prejudgment interest, ZeniMax will not be fully compensated for Defendants’ intentionally and knowingly wrongful acts. Evidence adduced at trial revealed the extent of those acts. For example, even though John Carmack expressly warned Palmer Luckey on July 27, 2012 that “[i]t is very important that you NOT use anything that could be construed as ZeniMax property in the promotion of your product,” Oculus flatly ignored that directive, and used ZeniMax’s marks in its Kickstarter video only four days later. (*See* App’x (Vol. I) Ex. F, at 22; *id.* Ex. G, at 24.) Indeed, Oculus’s VP of Product, Nate Mitchell, testified that — despite this warning — Oculus “still used it in the video because it strengthened the video.” (*Id.* Ex. H, at 27 (ECF No. 926, at 206:23-24).) Further, even after Carmack’s directive to “NOT use” ZeniMax’s property was raised with Oculus’s CEO, Brendan Iribe, he ordered instead that Mitchell “[p]lease don’t change anything right now” and thereafter stated that the Kickstarter video should “almost scream [sic], PLAY DOOM 3 BFG IN VR for the first time ever!” (*Id.* Ex. I, at 29; *id.* Ex. J, at 32.) Unsurprisingly, the jury unanimously found that Oculus, Luckey, and Iribe each “intentionally and knowingly engaged in the false designation.”

Applicable rate and time frame. Accordingly, ZeniMax is entitled to prejudgment interest on the false designation damages verdict amount of \$250,000,000 at the applicable compounded average interest rate of 3.32% from August 1, 2012 — the date Oculus launched its Kickstarter campaign, with its infringing content — until entry of judgment.

D. Post-Judgment Interest Is Due To ZeniMax From The Date Of Entry Of Judgment

Federal law provides for the award of post-judgment interest “on any money judgment in a civil case recovered in a district court.” 28 U.S.C. § 1961(a). The Fifth Circuit has held that an award of post-judgment interest is *not* discretionary. *Meaux Surface Prot.*, 607 F.3d at 173.

Post-judgment interest “shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” 28 U.S.C. § 1961(a). As of the date of this filing, the applicable rate for the preceding week is 0.83%. *See* <https://www.federalreserve.gov/releases/h15/>.

Accordingly, ZeniMax respectfully requests that post-judgment interest be awarded at the applicable rate on the date of the entry of the judgment. 28 U.S.C. § 1961(a).

III. ZENIMAX IS ENTITLED TO TREBLE DAMAGES FOR DEFENDANTS’ WILLFUL FALSE DESIGNATION OF ORIGIN

Section 35 of the Lanham Act authorizes courts to award enhanced damages up to three times the amount of actual damages to plaintiffs who succeed on false designation of origin claim “according to the circumstances of the case.” 15 U.S.C. § 1117(a). The Fifth Circuit has repeatedly recognized that district courts have wide latitude in enhancing damages to ensure that Lanham Act plaintiffs receive appropriate compensation for wrongful conduct. *E.g., Taco Cabana Int’l., Inc. v. Two Pesos, Inc.*, 932 F.2d 1113, 1127 (5th Cir. 1991) (courts of appeals “must respect the fact that section 35 endows the district court with considerable discretion in fashioning an appropriate remedy for infringement” and affirming damages enhancement where the district court found defendants’ “conduct was willful and deliberate”), *aff’d on other grounds*, 505 U.S. 763 (1992); *Holiday Inns, Inc. v. Alberding*, 683 F.2d 931, 935 (5th Cir. 1982) (affirming district court’s award of treble damages for trademark infringement because under Lanham Act, trial judges have “wide discretion in determining a just amount of recovery for trademark infringement”).

In particular, enhancement “may be based on a finding of willful infringement.” *Taco Cabana Int’l., Inc.*, 932 F.2d at 1127 (enhancement may be appropriate “where imprecise

damage calculations fail to do justice, particularly where the imprecision results from defendant's conduct"); *Boston Pizza Restaurants, L.P. v. Bay Three Ltd., Inc.*, Civ. A. No. 3:12-CV-00426-O, 2013 WL 12123894, at *9 (N.D. Tex. June 28, 2013) (“[c]ourts frequently award treble damages where the infringer acted willfully” and awarding treble damages to plaintiff where it established that defendant acted knowingly and willingly to take advantage of plaintiff's goodwill, even after being instructed to stop the infringing behavior) (internal quotations and citation omitted).

Treble damages are more than warranted here. The jury made express findings that Defendants not only engaged in false designation of origin, but in a separate finding did so “intentionally and knowingly.” The size of the jury's award notwithstanding, the evidence ZeniMax presented throughout the trial reflects that it was harmed to a much greater degree by Defendants' actions.

Treble damages are appropriate here because deterrence may serve as a basis for a damages calculation under the Lanham Act, including under Section 35(a) for false designation of origin. *See, e.g., Boston Pizza*, 2013 WL 12123894, at *9 (courts considering enhanced damages under the Lanham Act look both to whether defendant's conduct is willful and “whether the court wishes to deter future infringing activity” (internal quotations omitted)); *Reservoir, Inc. v. Truesdell*, 1 F. Supp. 3d 598, 619 (S.D. Tex. 2014) (courts may consider deterrence when calculating a defendant's profits for purposes of Section 1117(a)); *Microsoft Corp. v. Software Wholesale Club, Inc.*, 129 F. Supp. 2d 995, 1011 (S.D. Tex. 2000) (deterrence effects should be considered when determining Lanham Act statutory damages).

In this case, there is no question that enhancing the damages award is critical to ensuring that Defendants are deterred from future conduct that would violate the Lanham Act.

Defendants engaged in willful false designation even after being expressly told by John Carmack that Oculus “NOT use anything that could be construed as ZeniMax property in the promotion of your product.” (*See* App’x (Vol. I) Ex. F, at 22.) Instead, Oculus did just that (and did so repeatedly). (*Id.* Ex. G, at 24 (Kickstarter video); Exs. K, L, M, N, at 33-155 (successive Oculus’s investor slide decks containing ZeniMax’s marks from September 2012 through March 2013).) Enhancement here makes economic sense: even if Defendants pay ZeniMax in full on the false designation claims, each will nevertheless pocket tens or hundreds of millions of dollars as a result of their willful wrongdoing. (*See, e.g., id.* Ex. O, at 158 (ECF No. 928, at 129:6-14) (Luckey); *id.* Ex. P, at 161 (ECF No. 930, at 56:15-25) (Iribe).) This is precisely the instance in which courts should treble damages: to ensure that Defendants are not permitted to come out ahead as a result of their illegal acts of infringement. ZeniMax respectfully requests entry of judgment for treble damages, as is permitted by 15 U.S.C. § 1117(a), to prevent such an unjust result.

IV. ZENIMAX IS ENTITLED TO AN AWARD OF ATTORNEYS’ FEES AND EXPENSES INCURRED IN CONNECTION WITH THIS LITIGATION

Under Federal Rule of Civil Procedure 54(d), a party is entitled to an award of attorneys’ fees and taxable expenses in the event that a “statute, rule, or other ground entitl[es] the party to as much.” Here, ZeniMax is entitled to recover its reasonable attorneys’ fees and expenses under the plain terms of the NDA to which Oculus and ZeniMax entered into or, alternatively, under other statutory bases. As set forth below, ZeniMax submits that Defendants are liable for all of the attorneys’ fees and nontaxable expenses that ZeniMax incurred in connection with this action, which ZeniMax estimates to be approximately \$40,000,000. ZeniMax will file in a subsequent submission detailed invoices documenting the fees and expenses incurred. *See* Fed.

R. Civ. P. 54(d)(2)(C) (“The court may decide issues of liability for fees before receiving submissions on the value of services.”).

A. ZeniMax Is Entitled To Attorneys’ Fees Under The Express Terms Of The Underlying Contract

Under Texas law, parties are free contractually to agree to pay for another party’s attorneys’ fees and expenses in connection with litigation. *Garcia v. Wells Fargo Bank, N.A.*, Civ. A. No. 12-cv-645-P, 2012 WL 12873202, at *6 (N.D. Tex. Oct. 26, 2012). Any such contractual term providing for attorneys’ fees will supersede any governing statute that otherwise would provide for attorneys’ fees in such an instance. *Id.* (finding that party’s contractual entitlement to fees superseded its statutory entitlement); *see also One Call Sys., Inc. v. Houston Lighting & Power*, 936 S.W.2d 673, 676 (Tex. App. 1996) (noting that “the parties were nevertheless free in their contract to adopt a more liberal standard for recovery of attorneys’ fees, and we are bound by their choice”). In such instances, parties are free to draft contractual obligations even if they are “far more liberal” than any governing statute otherwise providing for fees. *Am. Realty Trust, Inc. v. Matisse Capital Partners, L.L.C.*, Civ. A. No. 3-cv-1801-G, 2005 WL 81705, at *2 (N.D. Tex. Jan. 13, 2005).

Here, the NDA entered into between Oculus, Luckey and ZeniMax expressly includes a one-way (in ZeniMax’s favor) provision that *mandates* the award of attorneys’ fees in this exact instance. Specifically, Section 2(f) of that agreement provides:

If litigation arises relating to this Agreement, and a court of competent jurisdiction determines that the Receiving Party [Oculus and/or Luckey], or any of its respective employees, has breached this Agreement, the Receiving Party shall be liable and shall pay to the Disclosing Party [ZeniMax] the reasonable legal fees incurred by the Disclosing Party in connection with such litigation, including any appeals therefrom.

(App’x (Vol. I) Ex. Q, at 164 (PX0001).) ZeniMax is indisputably entitled to attorneys’ fees from Oculus and Luckey under the plain language of the NDA because (i) the current action

“ar[ose] relating to th[at] Agreement”; and (ii) the jury found that Oculus and Luckey breached the NDA (*see* ECF No. 914 at 46 (Jury Verdict, response to Question 22).)⁹ As a result, ZeniMax is entitled to “the reasonable legal fees incurred . . . in connection with such litigation.” (*Id.*)

Courts routinely enforce such contractual fee-shifting provisions. For example, in *One Call System, Inc. v. Houston Lighting & Power*, the Court of Appeals of Texas enforced the parties’ contractual agreement that the prevailing party could recover fees and expenses. 936 S.W.2d at 676. After entry of judgment, defendant argued that it was entitled to attorneys’ fees under that contractual agreement rather than the applicable governing statute. *Id.* The plaintiff acknowledged the contractual provision, but nevertheless argued that that fee-shifting agreement should be interpreted in the same way as the governing statute regarding fees. *Id.* The court, however, expressly disagreed and instead held that “even if the [interpretation] asserted by [plaintiff] is more in conformity with the prevailing statutory approach and sound policy, the parties were nevertheless free in their contract to adopt a more liberal standard for recovery of attorney’s fees, and we are bound by their choice.” *Id.*

⁹ To the extent the Court finds the contractual provision of attorneys’ fees to be in any way inapplicable (which it is not), ZeniMax otherwise would be entitled to attorneys’ fees under Texas Civil Practice & Remedies § 38.001(8). That statute states “when a prevailing party in a breach of contract suit seeks fees, an award of reasonable fees is mandatory, as long as there is proof of reasonable fees . . . and the plaintiff has been awarded damages.” *See* Tex. Civ. Prac. & Rem. § 38.001(8); *but see Hoffman v. L & M Arts*, Civ. A. No. 3:10-CV-0953-D, 2015 WL 1000838, at *8 (N.D. Tex. Mar. 6, 2015) (discussing whether Section 38.001 applies to LLC defendants). An award of attorneys’ fees is “mandatory under Section 38.001 if the plaintiff prevails in his or her breach of contract claim and recovers damages . . .” *See Plains Cotton Coop. Ass’n v. Gray*, No. 16-10806, 2016 WL 7093943, at *4 (5th Cir. Dec. 5, 2016) (affirming award of attorneys’ fees). Here, there is no doubt that ZeniMax is the prevailing party: the jury found in its favor on the majority of claims at issue during trial and awarded it \$500,000,000. (*See* ECF No. 914.)

The same is true here. The parties expressly agreed that ZeniMax would be entitled to recover its attorneys' fees and expenses in any litigation that "arises relating to [the NDA]" and that ZeniMax would be entitled to reasonable attorneys' fees incurred "in connection with such litigation." (App'x (Vol. I) Ex. Q, at 164.) The Court need not (and should not) alter that arrangement here.¹⁰ As a result, ZeniMax is entitled to its "reasonable legal fees incurred by [ZeniMax] in connection with [this] litigation, including any appeals therefrom." *Id.*

B. In The Alternative, ZeniMax Otherwise Is Entitled To Fees On The Other Claims On Which It Prevailed, Including Its False Designation Of Origin Claim

In the event that the Court were to hold that ZeniMax should not receive its reasonable attorneys' fees and nontaxable expenses as the parties expressly agreed in the NDA (and ZeniMax respectfully submits that the Court should not so hold), ZeniMax otherwise is permitted to recover its attorneys' fees and expenses on other grounds. Specifically, ZeniMax would be

¹⁰ To the extent the Court disagrees and holds that ZeniMax is only entitled to its fees that are "intertwined" with its breach of contract claim (although the NDA provides no such limitation), it is clear that each of ZeniMax's claims here would fall under that standard. *See, e.g., Uretek (USA), Inc. v. Ureteknologia de Mexico S.A. de C.V.*, 589 F. App'x 710, 716 (5th Cir. 2014) (affirming district court's finding that the attorneys' legal services advanced both recoverable and unrecoverable claims such that attorneys were permitted to recover all of their fees). As ZeniMax has asserted throughout litigation and during trial, the NDA is at the heart of this case. Tellingly, the first paragraph of ZeniMax's 200-hundred paragraph-plus complaint begins: "*Under a binding Non-Disclosure Agreement, ZeniMax provided Palmer Luckey and Oculus VR, LLC with access to intellectual property developed by ZeniMax after years of research and development. This valuable intellectual property included copyrighted computer code, trade secret information, and technical know-how.*" (ECF No. 512 at ¶ 1 (emphasis added).) Unsurprisingly, ZeniMax's *first* numbered exhibit at trial was the NDA. (PX0001.) The NDA itself is the vehicle by which Defendants received ZeniMax's alleged trade secrets, copyrights and trademarks (which they thereafter, and nearly immediately, infringed). Its importance and centrality to this case cannot be understated.

entitled to fees with respect to its victories in defending against Defendant Carmack's counterclaims¹¹ and on its own false designation of origin claim.

With respect to the latter claim, district courts are expressly permitted "in exceptional cases [to] award reasonable attorney fees to the prevailing party" under the Lanham Act. 15 U.S.C. § 1117(a). In construing an identical fee-shifting provision in the Patent Act, the Supreme Court recently held that "an exceptional case is one where (1) in considering both governing law and the facts of the case, the case stands out from others with respect to the substantive strength of a party's litigating position; or (2) the unsuccessful party has litigated the case in an 'unreasonable manner.'" *Octane Fitness, LLC v. Icon Health and Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014); see *Baker v. DeShong*, 821 F.3d 620, 624-25 (5th Cir. 2016) (adopting *Octane Fitness* as the standard for determining a fee award under the Lanham Act).

This is truly an exceptional case, and an award of fees arising out of all Defendants' false designations is both appropriate and warranted. This is particularly true here where the jury expressly found that all Defendants *willfully* violated the Lanham Act. See, e.g., *U.S. Green Building Council, Inc. v. Wardell*, No. 3:14-CV-01541-M-BH, 2016 WL 3752964, at *6 (N.D. Tex. June 17, 2016) (finding that an award of attorneys' fees was appropriate where defendant

¹¹ As with the NDA, ZeniMax's entitlement to damages on these counterclaims is a matter of contractual right. Both of Carmack's two counterclaims — which arose from ZeniMax's purported breach of Carmack's Employment Agreement — were expressly rejected by the jury. (See ECF No. 914 at 85 (Jury Verdict, response to Question 54).) As with the NDA, Carmack's Employment Agreement contained an express contractual provision by which the parties agreed to an award of attorneys' fees in certain instances. (See App'x Ex. R, at 189.) Specifically, Section 22.3 of that agreement provides "[i]n the event of any legal proceeding between the parties to this Agreement, the parties hereby agree *the prevailing litigant shall be entitled to recover his/its attorneys' fees, expenses, and costs of court* from the losing litigant, in addition to such other relief which may be award by a court of competent jurisdiction." (*Id.* Ex. R at 189 (emphasis added).) The jury returned a verdict for ZeniMax on both of Carmack's counterclaims arising out of his Employment Agreement making ZeniMax indisputably the "prevailing litigant" under that agreement.

knowingly and willfully violated the Lanham Act). The Fifth Circuit’s decision in *Schlotzsky’s, Ltd. v. Sterling Purchasing & Nat. Distrib. Co.*, 520 F.3d 393, 402 (5th Cir. 2008), is particularly instructive on this point. There, defendants engaged in precisely the same kind of misconduct as Defendants do here: the *Schlotzsky* defendants continued to misrepresent to third parties that they were affiliated with plaintiffs even after being explicitly notified by plaintiffs to stop that behavior. *See id.* at 399. The Fifth Circuit affirmed the district court’s finding that the *Schlotzsky* defendants’ actions in this regard were willful, deliberate, and the result of bad faith, such that it was an exceptional case in which plaintiffs were entitled to fees. *Id.* at 402. The very same is true here. Indeed, Defendants could not have reasonably believed that they had *any* legitimate basis to associate their products with ZeniMax’s longstanding goodwill (indeed, they were expressly informed to “NOT use” ZeniMax’s goodwill); instead, the evidence amply demonstrated that Defendants were engaging in clandestine marketing and hiding information from ZeniMax because Defendants were well aware what they were doing was not authorized and improperly exploited ZeniMax’s name, trademarks, and brand.

Moreover, Defendants continued to engage in their unlawful conduct even after ZeniMax told them to stop — a factor that further weighs in favor of an award of attorneys’ fees. *See, e.g., Laerdal Medical Corp. v. Basic Medical Supply, LLC*, Civ. A. No. H-16-35, 2016 WL 6436557, at *4 (S.D. Tex. Oct. 31, 2016) (granting request for attorneys’ fees where defendants continued to violate the Lanham Act in their marketing materials even after receiving cease and desist letters).

Accordingly, ZeniMax respectfully requests that the Court award ZeniMax its reasonable attorneys’ fees and expenses.

CONCLUSION

For the foregoing reasons, a money judgment should be entered in favor of ZeniMax in substantially the form submitted herewith.¹²

Dated: February 23, 2017

Respectfully submitted,

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¹² Rule 54 also provides that costs should be allowed to the prevailing party. Fed. R. Civ. P. 54(d)(1). Consistent with this Court's Local Rules, ZeniMax will file its bill of costs on a form approved by the clerk of Court within 14 days of the Court's entering final judgment in this action. N. D. Tex. Local R. 54.1.

CERTIFICATE OF SERVICE

On February 23, 2017, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated: February 23, 2017

s/ Phillip B. Philbin
Phillip B. Philbin

CALCULATION OF PREJUDGMENT INTEREST BY CLAIM AND DATE

Claim	Breach of Contract		Copyright		False Designation		(Tribe)	
	Award	\$	\$	\$	(Oculus)	(Luckey)		
	\$	200,000,000.00	\$	50,000,000.00	\$	50,000,000.00	\$	150,000,000.00
Date from which Prejudgment Interest Runs		May 21, 2014 (complaint filed)		December 11, 2012 (date SDK shared)		August 1, 2012 (date of first false designation)		August 1, 2012 (date of first false designation)
Rate		5%		5%		3.32%		3.32%
Simple or Compound?		Simple		Simple		Compound		Compound
Date of Entry of Judgment								
Thursday, February 23, 2017	\$	27,616,438.36	\$	10,506,849.32	\$	8,038,079.78	\$	8,038,079.78
Friday, February 24, 2017	\$	27,643,835.62	\$	10,513,698.63	\$	8,043,273.35	\$	8,043,273.35
Monday, February 27, 2017		27,726,027.40		10,534,246.58		8,058,856.85		8,058,856.85
Tuesday, February 28, 2017		27,753,424.66		10,541,095.89		8,064,052.29		8,064,052.29
Wednesday, March 01, 2017		27,780,821.92		10,547,945.21		8,069,248.18		8,069,248.18
Thursday, March 02, 2017		27,808,219.18		10,554,794.52		8,074,444.54		8,074,444.54
Friday, March 03, 2017		27,835,616.44		10,561,643.84		8,079,641.37		8,079,641.37
Monday, March 06, 2017		27,917,808.22		10,582,191.78		8,095,234.64		8,095,234.64
Tuesday, March 07, 2017		27,945,205.48		10,589,041.10		8,100,433.33		8,100,433.33
Wednesday, March 08, 2017		27,972,602.74		10,595,890.41		8,105,632.48		8,105,632.48
Thursday, March 09, 2017		28,000,000.00		10,602,739.73		8,110,832.10		8,110,832.10
Friday, March 10, 2017		28,027,397.26		10,609,589.04		8,116,032.18		8,116,032.18
Monday, March 13, 2017		28,109,589.04		10,630,136.99		8,131,635.22		8,131,635.22
Tuesday, March 14, 2017		28,136,986.30		10,636,986.30		8,136,837.16		8,136,837.16
Wednesday, March 15, 2017		28,164,383.56		10,643,835.62		8,142,039.57		8,142,039.57
Thursday, March 16, 2017		28,191,780.82		10,650,684.93		8,147,242.45		8,147,242.45
Friday, March 17, 2017		28,219,178.08		10,657,534.25		8,152,445.79		8,152,445.79
Monday, March 20, 2017		28,301,369.86		10,678,082.19		8,168,058.61		8,168,058.61
Tuesday, March 21, 2017		28,328,767.12		10,684,931.51		8,173,263.81		8,173,263.81
Wednesday, March 22, 2017		28,356,164.38		10,691,780.82		8,178,469.48		8,178,469.48
Thursday, March 23, 2017		28,383,561.64		10,698,630.14		8,183,675.61		8,183,675.61
Friday, March 24, 2017		28,410,958.90		10,705,479.45		8,188,882.21		8,188,882.21
Monday, March 27, 2017		28,493,150.68		10,726,027.40		8,204,504.81		8,204,504.81
Tuesday, March 28, 2017		28,520,547.95		10,732,876.71		8,209,713.28		8,209,713.28
Wednesday, March 29, 2017		28,547,945.21		10,739,726.03		8,214,922.21		8,214,922.21
Thursday, March 30, 2017		28,575,342.47		10,746,575.34		8,220,131.61		8,220,131.61
Friday, March 31, 2017		28,602,739.73		10,753,424.66		8,225,341.47		8,225,341.47
Monday, April 03, 2017		28,684,931.51		10,773,972.60		8,240,973.86		8,240,973.86
Tuesday, April 04, 2017		28,712,328.77		10,780,821.92		8,246,185.59		8,246,185.59
Wednesday, April 05, 2017		28,739,726.03		10,787,671.23		8,251,397.78		8,251,397.78
Thursday, April 06, 2017		28,767,123.29		10,794,520.55		8,256,610.44		8,256,610.44
Friday, April 07, 2017		28,794,520.55		10,801,369.86		8,261,823.57		8,261,823.57
Monday, April 10, 2017		28,876,712.33		10,821,917.81		8,277,465.75		8,277,465.75
Tuesday, April 11, 2017		28,904,109.59		10,828,767.12		8,282,680.75		8,282,680.75
Wednesday, April 12, 2017		28,931,506.85		10,835,616.44		8,287,896.21		8,287,896.21
Thursday, April 13, 2017		28,958,904.11		10,842,465.75		8,293,112.13		8,293,112.13
Friday, April 14, 2017		28,986,301.37		10,849,315.07		8,298,328.53		8,298,328.53
Monday, April 17, 2017		29,068,493.15		10,869,863.01		8,313,980.51		8,313,980.51
Tuesday, April 18, 2017		29,095,890.41		10,876,712.33		8,319,198.77		8,319,198.77
Wednesday, April 19, 2017		29,123,287.67		10,883,561.64		8,324,417.50		8,324,417.50
Thursday, April 20, 2017		29,150,684.93		10,890,410.96		8,329,636.70		8,329,636.70
Friday, April 21, 2017		29,178,082.19		10,897,260.27		8,334,856.36		8,334,856.36
Monday, April 24, 2017		29,260,273.97		10,917,808.22		8,350,518.15		8,350,518.15
Tuesday, April 25, 2017		29,287,671.23		10,924,657.53		8,355,739.68		8,355,739.68
Wednesday, April 26, 2017		29,315,068.49		10,931,506.85		8,360,961.68		8,360,961.68
Thursday, April 27, 2017		29,342,465.75		10,938,356.16		8,366,184.14		8,366,184.14
Friday, April 28, 2017		29,369,863.01		10,945,205.48		8,371,407.08		8,371,407.08
Monday, May 01, 2017		29,452,054.79		10,965,753.42		8,387,078.68		8,387,078.68
Tuesday, May 02, 2017		29,479,452.05		10,972,602.74		8,392,303.48		8,392,303.48
Wednesday, May 03, 2017		29,506,849.32		10,979,452.05		8,397,528.75		8,397,528.75
Thursday, May 04, 2017		29,534,246.58		10,986,301.37		8,402,754.49		8,402,754.49
Friday, May 05, 2017		29,561,643.84		10,993,150.68		8,407,980.70		8,407,980.70
Monday, May 08, 2017		29,643,835.62		11,013,698.63		8,423,662.12		8,423,662.12
Tuesday, May 09, 2017		29,671,232.88		11,020,547.95		8,428,890.19		8,428,890.19
Wednesday, May 10, 2017		29,698,630.14		11,027,397.26		8,434,118.74		8,434,118.74
Thursday, May 11, 2017		29,726,027.40		11,034,246.58		8,439,347.75		8,439,347.75
Friday, May 12, 2017		29,753,424.66		11,041,095.89		8,444,577.23		8,444,577.23
Monday, May 15, 2017		29,835,616.44		11,061,643.84		8,460,268.48		8,460,268.48
Tuesday, May 16, 2017		29,863,013.70		11,068,493.15		8,465,499.83		8,465,499.83
Wednesday, May 17, 2017		29,890,410.96		11,075,342.47		8,470,731.65		8,470,731.65
Thursday, May 18, 2017		29,917,808.22		11,082,191.78		8,475,963.94		8,475,963.94
Friday, May 19, 2017		29,945,205.48		11,089,041.10		8,481,196.70		8,481,196.70
Monday, May 22, 2017		30,027,397.26		11,109,589.04		8,496,897.78		8,496,897.78
Tuesday, May 23, 2017		30,054,794.52		11,116,438.36		8,502,132.41		8,502,132.41
Wednesday, May 24, 2017		30,082,191.78		11,123,287.67		8,507,367.50		8,507,367.50
Thursday, May 25, 2017		30,109,589.04		11,130,136.99		8,512,603.07		8,512,603.07
Friday, May 26, 2017		30,136,986.30		11,136,986.30		8,517,839.11		8,517,839.11
Monday, May 29, 2017		30,219,178.08		11,157,534.25		8,533,550.02		8,533,550.02
Tuesday, May 30, 2017		30,246,575.34		11,164,383.56		8,538,787.93		8,538,787.93

CALCULATION OF PREJUDGMENT INTEREST BY CLAIM AND DATE

Claim	Breach of Contract		Copyright		False Designation	
	Award \$	200,000,000.00 \$	50,000,000.00 \$	(Oculus) 50,000,000.00 \$	(Luckey) 50,000,000.00 \$	(Tribe) 150,000,000.00
Date from which Prejudgment Interest Runs	May 21, 2014 (complaint filed)		December 11, 2012 (date SDK shared)	August 1, 2012 (date of first false designation)	August 1, 2012 (date of first false designation)	August 1, 2012 (date of first false designation)
Rate	5%		5%	3.32%	3.32%	3.32%
Simple or Compound?	Simple		Simple	Compound	Compound	Compound
Date of Entry of Judgment						
Wednesday, May 31, 2017	30,273,972.60		11,171,232.88	8,544,026.31	8,544,026.31	25,632,078.94
Thursday, June 01, 2017	30,301,369.86		11,178,082.19	8,549,265.16	8,549,265.16	25,647,795.48
Friday, June 02, 2017	30,328,767.12		11,184,931.51	8,554,504.48	8,554,504.48	25,663,513.43
Monday, June 05, 2017	30,410,958.90		11,205,479.45	8,570,225.24	8,570,225.24	25,710,675.71
Tuesday, June 06, 2017	30,438,356.16		11,212,328.77	8,575,466.43	8,575,466.43	25,726,399.29
Wednesday, June 07, 2017	30,465,753.42		11,219,178.08	8,580,708.09	8,580,708.09	25,742,124.27
Thursday, June 08, 2017	30,493,150.68		11,226,027.40	8,585,950.22	8,585,950.22	25,757,850.66
Friday, June 09, 2017	30,520,547.95		11,232,876.71	8,591,192.82	8,591,192.82	25,773,578.45
Monday, June 12, 2017	30,602,739.73		11,253,424.66	8,606,923.43	8,606,923.43	25,820,770.29
Tuesday, June 13, 2017	30,630,136.99		11,260,273.97	8,612,167.91	8,612,167.91	25,836,503.72
Wednesday, June 14, 2017	30,657,534.25		11,267,123.29	8,617,412.85	8,617,412.85	25,852,238.55
Thursday, June 15, 2017	30,684,931.51		11,273,972.60	8,622,658.26	8,622,658.26	25,867,974.79
Friday, June 16, 2017	30,712,328.77		11,280,821.92	8,627,904.15	8,627,904.15	25,883,712.44
Monday, June 19, 2017	30,794,520.55		11,301,369.86	8,643,644.62	8,643,644.62	25,930,933.85
Tuesday, June 20, 2017	30,821,917.81		11,308,219.18	8,648,892.38	8,648,892.38	25,946,677.13
Wednesday, June 21, 2017	30,849,315.07		11,315,068.49	8,654,140.61	8,654,140.61	25,962,421.83
Thursday, June 22, 2017	30,876,712.33		11,321,917.81	8,659,389.31	8,659,389.31	25,978,167.93
Friday, June 23, 2017	30,904,109.59		11,328,767.12	8,664,638.48	8,664,638.48	25,993,915.44
Monday, June 26, 2017	30,986,301.37		11,349,315.07	8,680,388.81	8,680,388.81	26,041,166.43
Tuesday, June 27, 2017	31,013,698.63		11,356,164.38	8,685,639.86	8,685,639.86	26,056,919.58
Wednesday, June 28, 2017	31,041,095.89		11,363,013.70	8,690,891.38	8,690,891.38	26,072,674.14
Thursday, June 29, 2017	31,068,493.15		11,369,863.01	8,696,143.37	8,696,143.37	26,088,430.11
Friday, June 30, 2017	31,095,890.41		11,376,712.33	8,701,395.83	8,701,395.83	26,104,187.49
Monday, July 03, 2017	31,178,082.19		11,397,260.27	8,717,156.03	8,717,156.03	26,151,468.08
Tuesday, July 04, 2017	31,205,479.45		11,404,109.59	8,722,410.37	8,722,410.37	26,167,231.10
Wednesday, July 05, 2017	31,232,876.71		11,410,958.90	8,727,665.18	8,727,665.18	26,182,995.53
Thursday, July 06, 2017	31,260,273.97		11,417,808.22	8,732,920.46	8,732,920.46	26,198,761.37
Friday, July 07, 2017	31,287,671.23		11,424,657.53	8,738,176.21	8,738,176.21	26,214,528.63
Monday, July 10, 2017	31,369,863.01		11,445,205.48	8,753,946.28	8,753,946.28	26,261,838.85
Tuesday, July 11, 2017	31,397,260.27		11,452,054.79	8,759,203.91	8,759,203.91	26,277,611.74
Wednesday, July 12, 2017	31,424,657.53		11,458,904.11	8,764,462.02	8,764,462.02	26,293,386.05
Thursday, July 13, 2017	31,452,054.79		11,465,753.42	8,769,720.59	8,769,720.59	26,309,161.77
Friday, July 14, 2017	31,479,452.05		11,472,602.74	8,774,979.63	8,774,979.63	26,324,938.90
Monday, July 17, 2017	31,561,643.84		11,493,150.68	8,790,759.59	8,790,759.59	26,372,278.77
Tuesday, July 18, 2017	31,589,041.10		11,500,000.00	8,796,020.51	8,796,020.51	26,388,061.54
Wednesday, July 19, 2017	31,616,438.36		11,506,849.32	8,801,281.91	8,801,281.91	26,403,845.74
Thursday, July 20, 2017	31,643,835.62		11,513,698.63	8,806,543.78	8,806,543.78	26,419,631.34
Friday, July 21, 2017	31,671,232.88		11,520,547.95	8,811,806.12	8,811,806.12	26,435,418.36
Monday, July 24, 2017	31,753,424.66		11,541,095.89	8,827,595.96	8,827,595.96	26,482,787.88
Tuesday, July 25, 2017	31,780,821.92		11,547,945.21	8,832,860.18	8,832,860.18	26,498,580.55
Wednesday, July 26, 2017	31,808,219.18		11,554,794.52	8,838,124.88	8,838,124.88	26,514,374.63
Thursday, July 27, 2017	31,835,616.44		11,561,643.84	8,843,390.04	8,843,390.04	26,530,170.13
Friday, July 28, 2017	31,863,013.70		11,568,493.15	8,848,655.68	8,848,655.68	26,545,967.03
Monday, July 31, 2017	31,945,205.48		11,589,041.10	8,864,455.41	8,864,455.41	26,593,366.24
Tuesday, August 01, 2017	31,972,602.74		11,595,890.41	8,869,722.93	8,869,722.93	26,609,168.80
Wednesday, August 02, 2017	32,000,000.00		11,602,739.73	8,874,990.93	8,874,990.93	26,624,972.78
Thursday, August 03, 2017	32,027,397.26		11,609,589.04	8,880,259.39	8,880,259.39	26,640,778.17
Friday, August 04, 2017	32,054,794.52		11,616,438.36	8,885,528.33	8,885,528.33	26,656,584.98
Monday, August 07, 2017	32,136,986.30		11,636,986.30	8,901,337.96	8,901,337.96	26,704,013.88
Tuesday, August 08, 2017	32,164,383.56		11,643,835.62	8,906,608.78	8,906,608.78	26,719,826.35
Wednesday, August 09, 2017	32,191,780.82		11,650,684.93	8,911,880.08	8,911,880.08	26,735,640.23
Thursday, August 10, 2017	32,219,178.08		11,657,534.25	8,917,151.84	8,917,151.84	26,751,455.52
Friday, August 11, 2017	32,246,575.34		11,664,383.56	8,922,424.08	8,922,424.08	26,767,272.23
Monday, August 14, 2017	32,328,767.12		11,684,931.51	8,938,243.62	8,938,243.62	26,814,730.85
Tuesday, August 15, 2017	32,356,164.38		11,691,780.82	8,943,517.74	8,943,517.74	26,830,553.22
Wednesday, August 16, 2017	32,383,561.64		11,698,630.14	8,948,792.34	8,948,792.34	26,846,377.01
Thursday, August 17, 2017	32,410,958.90		11,705,479.45	8,954,067.41	8,954,067.41	26,862,202.22
Friday, August 18, 2017	32,438,356.16		11,712,328.77	8,959,342.95	8,959,342.95	26,878,028.84
Monday, August 21, 2017	32,520,547.95		11,732,876.71	8,975,172.40	8,975,172.40	26,925,517.19
Tuesday, August 22, 2017	32,547,945.21		11,739,726.03	8,980,449.83	8,980,449.83	26,941,349.48
Wednesday, August 23, 2017	32,575,342.47		11,746,575.34	8,985,727.73	8,985,727.73	26,957,183.18
Thursday, August 24, 2017	32,602,739.73		11,753,424.66	8,991,006.10	8,991,006.10	26,973,018.30
Friday, August 25, 2017	32,630,136.99		11,760,273.97	8,996,284.95	8,996,284.95	26,988,854.84
Monday, August 28, 2017	32,712,328.77		11,780,821.92	9,012,124.32	9,012,124.32	27,036,372.95
Tuesday, August 29, 2017	32,739,726.03		11,787,671.23	9,017,405.05	9,017,405.05	27,052,215.16
Wednesday, August 30, 2017	32,767,123.29		11,794,520.55	9,022,686.26	9,022,686.26	27,068,058.78
Thursday, August 31, 2017	32,794,520.55		11,801,369.86	9,027,967.94	9,027,967.94	27,083,903.82
Friday, September 01, 2017	32,821,917.81		11,808,219.18	9,033,250.09	9,033,250.09	27,099,750.28