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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

GORDON VAYO, an individual,

Plaintiff,

v.

RATIONAL ENTERTAINMENT ENTERPRISES LIMITED D/B/A POKERSTARS, an Isle of Man corporation; and DOES 1-10, inclusive,

Defendants.

CASE NO. 2:18-cv-03706-FFM

**DEFENDANT RATIONAL ENTERTAINMENT ENTERPRISES LIMITED'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS**

[Submitted Concurrently with the Stern Declaration, Colquitt Declaration, and the [Proposed] Order]

Hearing: December 18, 2018
Time: 10:00 A.M.
Judge: Hon. Frederick F. Mumm

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

PLEASE TAKE NOTICE that on December 18, 2018 at 10:00 AM, or as soon thereafter as the matter may be heard before the Honorable Magistrate Judge Frederick F. Mumm in Courtroom 580 of the United States District Court of the Central District of California, located at 255 East Temple Street, Los Angeles, California, Defendant Rational Entertainment Enterprises Limited ("REEL") d/b/a PokerStars will, and hereby does, move this Court for an order granting REEL its attorney fees and costs incurred in the above captioned action ("Action").

This motion is made on the grounds that REEL is the "prevailing party" in this lawsuit as a result of Plaintiff Gordon Vayo's voluntary dismissal of the action. (Dkt. 31.) Plaintiff Gordon Vayo's ("Vayo") bad faith conduct in manufacturing and relying on fraudulent, forged evidence in an attempt to deceive the Court and REEL rises to the level of sanctionable misconduct sufficient for this Court to exercise its inherent authority to grant attorneys' fees. In addition, REEL's End User License Agreement ("EULA") (also known as REEL's Terms of Service ("TOS")), which Vayo expressly agreed to and which formed the basis of Vayo's claims, entitles REEL to "costs and expenses, including legal fees" based on Vayo's breach of the EULA and his forgery of evidence to conceal that breach. Finally, under Isle of Man law, which governs the EULA, it is general practice for the prevailing party to be awarded attorney's fees. The amount of REEL's request for fees and costs is reasonable given the rates charged by its attorneys, the amount of time they spent on this case, and other relevant considerations.

Judgment is proper based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Court's file in this matter, and any other evidence and argument as may be presented at the hearing on the motion. REEL made numerous attempts to meet and confer with counsel pursuant to L.R. 7-3. However, REEL's requests went unanswered. Specifically, REEL contacted Vayo's counsel on October 24, October 30, November 1 and November 5, 2018.

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Specifically, on November 5, 2018, REEL made one final attempt to meet and confer, informing Vayo's counsel that, to the extent the request went unanswered, REEL intended to seek all attorneys' fees and costs provided by law.

November 12, 2018 QUINN EMANUEL URQUHART & SULLIVAN, LLP

By ______________________

Claude M. Stern
Attorneys for Defendant Rational Entertainment Enterprises Limited d/b/a PokerStars

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## MEMORANDUM OF POINTS AND AUTHORITIES

## PRELIMINARY STATEMENT

Defendant Real Entertainment Enterprises Limited ("REEL") d/b/a PokerStars seeks to recover the attorneys' fees and costs it expended to defend against the lawsuit that Plaintiff Gordon Vayo ("Vayo") brought against it based on fraudulent, forged evidence. REEL is offers online poker to people *outside* the United States. When REEL withheld Mr. Vayo's winnings from an online poker tournament based on REEL's conclusion that Mr. Vayo was playing from *inside* the United States, Mr. Vayo first sent REEL purported evidence that he had played from Canada, and then sued REEL to recover his winnings (claiming in the process that REEL's user license agreement should be nullified). But Vayo's "evidence" was *forged*, and he had used it to attempt to defraud REEL and this Court.

As soon as REEL discovered the forgery and confronted Vayo about it, Vayo voluntarily and unconditionally dismissed this action, and his counsel withdrew. (Vayo's new counsel has ignored REEL's repeated requests to meet and confer, and has never denied the forgery, necessitating this motion.) REEL is thus the prevailing party in Vayo's frivolous lawsuit, and it is entitled to recover its fees and costs pursuant to (1) the Court's inherent authority to sanction bad-faith conduct; (2) the terms of the contract on which Vayo sued, which require Vayo pay REEL's fees in these circumstances; and (3) Isle of Man law, which governs this dispute and as a general rule awards fees to the prevailing party. REEL's motion should be granted, and it should be awarded $279,347.40 (plus whatever it spends related to this motion), the reasonable amount of its attorneys' fees; as well as $8,641.08, the non-taxable costs REEL has incurred to date (REEL seeks taxable costs in a separate application).

## FACTUAL BACKGROUND

### I. VAYO ATTEMPTS TO DEFRAUD REEL WITH FORGED EVIDENCE

Prior to Vayo filing this action, he sent several demand letters to REEL

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demanding that it "unfreeze" his account that contained approximately $600,000 that he won in REEL's May 2017 SCOOP online poker tournament. Declaration of Claude M. Stern in Support of REEL's Motion for Attorneys'' Fees and Costs ("Stern Decl."), Exs. A, C, E, and H (Letters sent from Vayo's counsel to REEL and REEL's counsel). REEL had frozen Vayo's account because there were indications that Vayo had violated REEL's terms of service by playing in the tournament from the United States.

As early as September 2017, Vayo sent a letter to REEL claiming that REEL was wrongfully withholding his winnings and requested that REEL unfreeze his account. Stern Decl., Ex. A (9/27/18 Letter from Vayo's counsel to REEL). On October 4, 2017, in response to Vayo's request, REEL informed Vayo that his account was frozen because a routine security review conducted by REEL indicated that between March and July 2017 – during the May 2017 SCOOP tournament – Vayo was accessing his account from locations other than Canada and in violation of REEL's End User License Agreement ("EULA") (also known as REEL's Terms of Service ("TOS")). Stern Decl., Ex. B (10/4/18 Letter from REEL to Vayo's counsel). REEL explained that it was continuing to investigate the matter and requested Vayo provide additional documents evidencing Vayo's location in Canada—and not the United States—during the period in question. *Id.*

After further exchanges, Vayo ultimately agreed to provide documentation regarding his whereabouts during the relevant period. Stern Decl., Ex. E (12/4/18 Letter from Vayo's counsel to REEL's counsel) at 3-4. In December 2017, Vayo sent REEL his supposed internet service provider bills (from Bell Canada) and bank account statements (from First Republic Bank) from April and May 2017 to prove his whereabouts during that time. *Id.* at 6-22. As describe below, REEL later learned that these documents were forgeries that Vayo had created to defraud REEL. REEL (not yet knowing that the documents were forgeries) informed Vayo that the documentation was inconclusive as to his whereabouts, and requested additional information and documentation, but Vayo refused. Stern Decl., Ex. F (12/4/17 – 2/3/18 Email chain between REEL's counsel and Vayo's counsel).

Both parties understood that Vayo's physical location during the SCOOP Tournament was the most central, critical issue in this case. As REEL explained, if Vayo was playing from the United States (let alone taking measures to cover up that fact), then he would be in violation of REEL's EULA, not entitled to play on REEL's site, not entitled to any of his winnings from the SCCOP Tournament, and likely facing other civil and criminal liability. *See* Stern Decl., Ex. D (11/14/18 Letter from REEL's counsel to Vayo's counsel). If Vayo were in Canada, though, he could be entitled to recover his winnings of approximately $600,000. This explains, but certainly does not justify, why Vayo would go to the length of creating forged documents to try to convince REEL he was in Canada at the relevant time.

## II. VAYO FILES SUIT, RELYING ON THE FORGED DOCUMENTS

In May 2018, Vayo filed this action, alleging that REEL wrongfully withheld Vayo's winnings in the SCOOP Tournament. Compl. ¶¶ 40-44. Vayo's claims all revolved around REEL's alleged breach of the EULA (or its alleged fraud in breaching the EULA) by not paying Vayo his winnings from the SCOOP Tournament. *Id*. ¶¶ 62-72. Vayo relied on the forged evidence in his Complaint, claiming that he "provided evidence showing that he was in Canada during the entirety of his play in the SCOOP tournament" and, therefore, REEL had no right to freeze his account. *Id.* ¶ 10. Not yet knowing that Vayo's "evidence" was fraudulent, REEL filed a Motion to Dismiss for Lack of Personal Jurisdiction and, in the alternative, Improper Forum. Dkt. 11. Vayo's Opposition to the Motion to Dismiss attached and relied upon his December 4, 2017 letter which had attached the forged records—though (in retrospect, tellingly) the forged records themselves were omitted. Dkt. 19-6 (Ex. F to Fayer Decl. ISO Opp to Motion to Dismiss).

After the Motion to Dismiss was fully briefed, but before it was heard, REEL received a "tip" from a third party that Vayo's bank and internet records were altered

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by a document forger Vayo hired (the "Forger"), specifically in order to create the false impression that Vayo was in Canada during the SCOOP Tournament so he could fraudulently demand payment from REEL. Stern Decl. ¶ 13. As described below, REEL's further investigation confirmed this to be the case, and REEL immediately confronted Vayo about it, on a Friday evening. *Id.* ¶¶ 14-15. Vayo's counsel claimed that he was not aware of any forgery (i.e., he had just passed along the documents Vayo had provided to him), that he would ask Vayo about them, and that he was concerned about speaking further because—if the documents were in fact forgeries—the crime-fraud exception could apply. *Id*. at 15. About 48 hours later, on Sunday evening, Vayo filed a notice of voluntary dismissal of all of his claims (Dkt. 31), and his counsel subsequently withdrew (Dkt. 35). REEL made repeated efforts to meet and confer with Vayo's new counsel to avoid the need for this motion, including by sending a detailed letter explaining Vayo's forgery. Stern Decl. ¶¶ 16-17; *id.*, Ex. I (10/19/18 Letter from REEL's counsel to Vayo's counsel). Vayo ignored these meet and confer requests, and never denied the forgery. *Id.*

## III. <u>CONFIRMATION THAT VAYO'S DOCUMENTS ARE FORGERIES</u>

The third party who informed REEL of Vayo's forgery said that he (the third party) had spoken to the Forger. Stern Decl. ¶ 25. The Forger told the third party that Vayo contacted the Forger for assistance creating a virtual private network ("VPN") for Vayo to use while he was playing on REEL's site in California to create the false appearance that he was in Canada. *Id*. The Forger also provided the third party with the *original* statements from First Republic Bank and Bell Canada that Vayo had sent to the Forger to doctor so that they would demonstrate (falsely) that Vayo was in Canada during the SCOOP tournament. *Id.* Importantly, the third party knew and volunteered that Vayo's forged documents purported to be from Bell Canada and First Republic Bank, information that *was not public* at the time or provided to the third party by REEL. *Id.*

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### A. First Republic Bank Account Statements

Upon close review, and ***even without reference to the original documents REEL received from the third party***, Vayo's First Republic Bank account statements are self-evidently forgeries.

- The sum of the debits and credits individually listed in the statements' transaction logs do not match the totals in the Account Summaries on the first page. Stern Decl. Exs. J-K (Vayo's purported First Republic Bank statements from April and May 2017).
- Vayo's version of the May 2017 bank statement has a negative ending balance and negative minimum balance, even though the beginning balance and credits are far higher than the debits for the month. *Id.*, Ex. K (Vayo's purported First Republic Bank statement from May 2017).

**ATM REBATE CHECKING**

**Statement Period:**
**May 01, 2017 -**
**May 31, 2017**

**Account Number:**
[redacted]

[redacted]
GORDON VAYO
[redacted]

**At Your Service:**
**24-Hour Automated Banking System**
**(800) 392-1407**

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**NEWS FROM FIRST REPUBLIC**

Did you know you can choose to receive paperless statements for your First Republic account(s)? It's a secure way to keep track of your finances and you can access and download the statements 24 hours a day, seven days a week. Make the switch today through Banking Online, or ask your banker how paperless statements could make a difference to you.

**ACCOUNT SUMMARY** [redacted]

| | | | |
|---|---|---|---|
| Beginning Balance | $30,810.36 | Average Daily Balance | $29,995.21 |
| Total Deposits and Credits | $6,003.03 | Minimum Balance | $29,332.74- |
| Total Withdrawals and Debits | $3,583.68- | Service Charges | $0.00 |
| Total Checks Paid | $3,900.00- | Interest Earned This Period | $0.08 |
| **Ending Balance** | $29,329.71- | Interest Year to Date | $1.56 |

- Vayo's version of the May 2017 bank statement has a one time "ATM Rebate" credit on the first page for $2.95 (i.e., the account holder was

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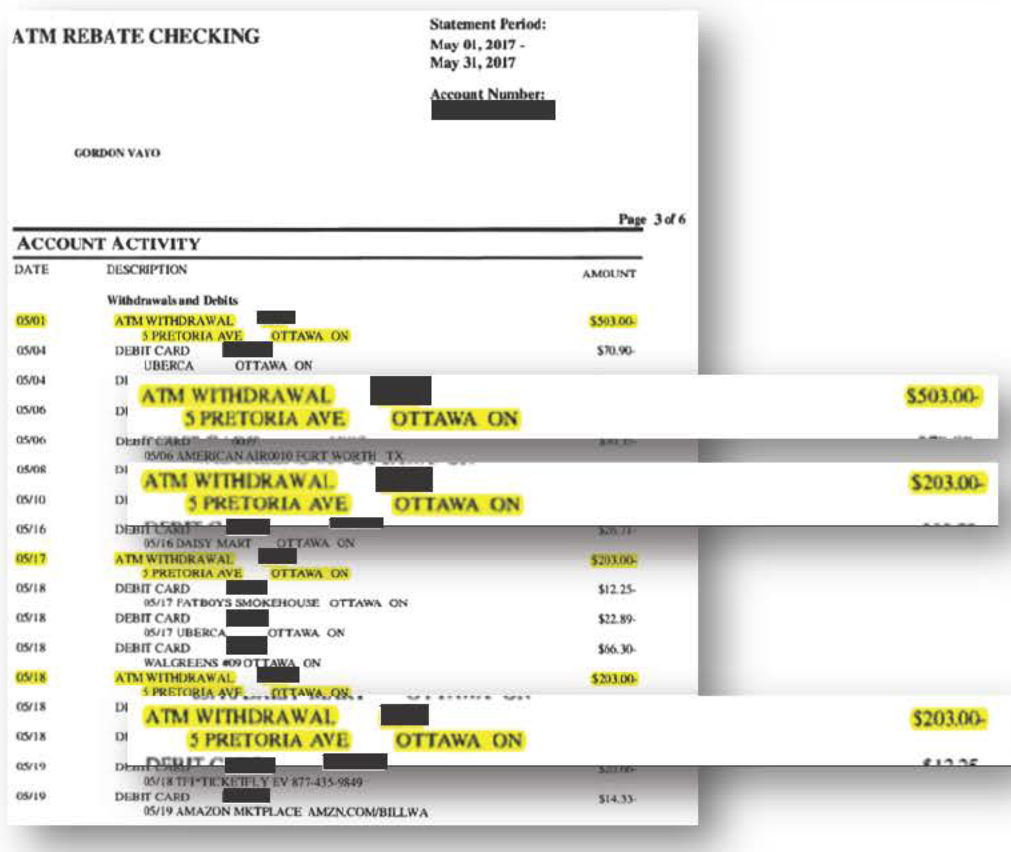
refunded a fee for using an out-of-network ATM). *Id.* at 1. However, that statement has at least five ATM withdrawals, all with an ATM fee reflecting a charge of $3, not $2.95. *Id.* at 3-5. The one-time $2.95 ATM credit is inconsistent with the multiple $3 ATM withdrawals that appear on the statement.

ACCOUNT ACTIVITY

| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| | Deposits and Credits | |
| 05/02 | INTERNET TRANSFER FROM [redacted] ON 05/02 AT 11.38 | $6,000.00 |
| 05/31 | CREDIT - INTEREST | $0.08 |
| 05/31 | CREDIT - ATM REBATE | $2.95 |

CREDIT - ATM REBATE $2.95



ATM REBATE CHECKING

Statement Period: May 01, 2017 - May 31, 2017

Account Number: [redacted]

GORDON VAYO

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ACCOUNT ACTIVITY

| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| | Withdrawals and Debits | |
| 05/01 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $503.00- |
| 05/04 | DEBIT CARD [redacted] UBERCA OTTAWA ON | $70.90- |
| 05/04 | DI | |
| 05/06 | DI | |
| 05/06 | DEBIT CARD 05/06 AMERICAN AIR0010 FORT WORTH TX | |
| 05/08 | DI | |
| 05/10 | DI | |
| 05/16 | DEBIT CARD [redacted] 05/16 DAISY MART OTTAWA ON | |
| 05/17 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |
| 05/18 | DEBIT CARD [redacted] 05/17 FATBOYS SMOKEHOUSE OTTAWA ON | $12.25- |
| 05/18 | DEBIT CARD [redacted] 05/17 UBERCA OTTAWA ON | $22.89- |
| 05/18 | DEBIT CARD [redacted] WALGREENS #09 OTTAWA ON | $66.30- |
| 05/18 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |
| 05/18 | DI | |
| 05/18 | DI | |
| 05/19 | DEBIT CARD [redacted] 05/18 TFI*TICKETFLY EV 877-435-9849 | |
| 05/19 | DEBIT CARD [redacted] 05/19 AMAZON MKTPLACE AMZN.COM/BILLWA | $14.33- |

ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON $503.00-

ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON $203.00-

ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON $203.00-

- Similarly, in Vayo's version of the April 2017 bank statement, there are several out-of-network ATM debits—for $103, $203, and $203—with

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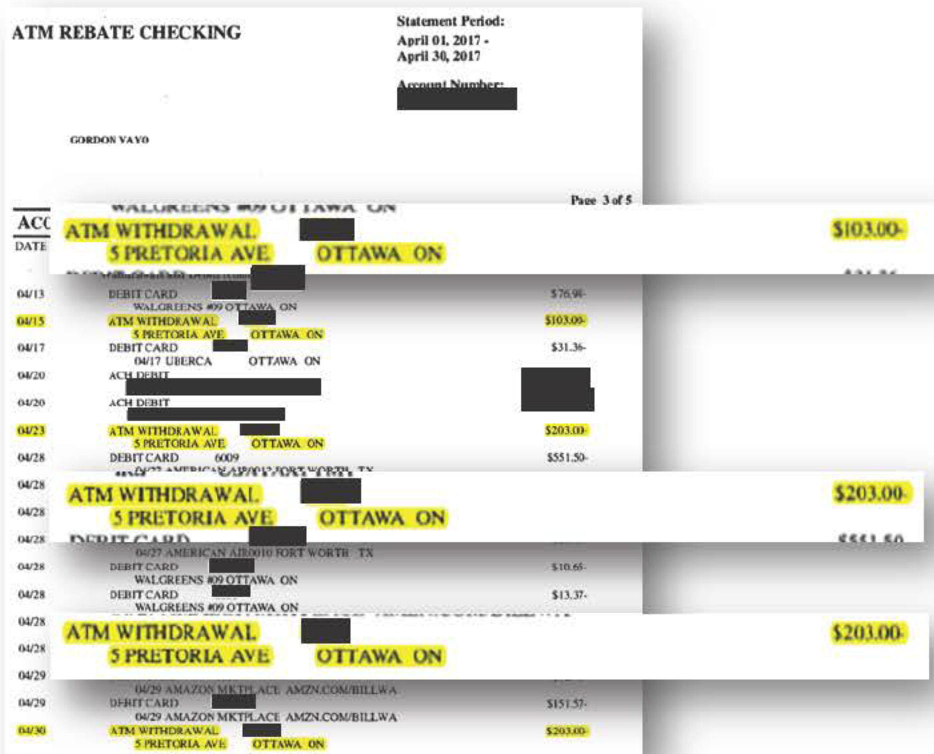
no corresponding rebate. *Id.*, Ex. J (Vayo's purported First Republic Bank statement from April 2017).

ACCOUNT ACTIVITY

| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| | Deposits and Credits | |
| 04/18 | INTERNET TRANSFER FROM [redacted] ON 04/18 AT 16.05 | $530,000.00 |
| 04/29 | CREDIT - INTEREST EFF DATE 04-30-17 | $0.41 |
| | Total Deposits and Credits | $530,000.41 |
| | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $103.00- |
| | 04/03 UBERCA OTTAWA ON | |
| 04/08 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $103.00 |



ATM REBATE CHECKING

Statement Period:
April 01, 2017 -
April 30, 2017

Account Number:
[redacted]

GORDON VAYO

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| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $103.00- |
| 04/13 | DEBIT CARD [redacted] WALGREENS #09 OTTAWA ON | $76.98- |
| 04/15 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $103.00- |
| 04/17 | DEBIT CARD [redacted] 04/17 UBERCA OTTAWA ON | $31.36- |
| 04/20 | ACH DEBIT [redacted] | [redacted] |
| 04/20 | ACH DEBIT [redacted] | |
| 04/23 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |
| 04/28 | DEBIT CARD 6009 | $551.50- |
| | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |
| | 04/27 AMERICAN AIR0010 FORT WORTH TX | |
| 04/28 | DEBIT CARD [redacted] WALGREENS #09 OTTAWA ON | $10.65- |
| 04/28 | DEBIT CARD [redacted] WALGREENS #09 OTTAWA ON | $13.37- |
| | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |
| | 04/29 AMAZON MKTPLACE AMZN.COM/BILLWA | |
| 04/29 | DEBIT CARD [redacted] 04/29 AMAZON MKTPLACE AMZN.COM/BILLWA | $151.57- |
| 04/30 | ATM WITHDRAWAL [redacted] 5 PRETORIA AVE OTTAWA ON | $203.00- |

- These ATM withdrawals also reflect withdrawals in round-number amounts (e.g., $100, $200) plus a $3 ATM surcharge. But because Vayo's account is based in the United States, these purported withdrawals from ATMs in Canada, presumably in Canadian dollars, should be reflected in Vayo's statements as amounts converted to US dollars. After this conversion from round-number Canadian dollar amounts to US dollars, the US dollar amounts on the statement should not be in round-number amounts.

The fact that Vayo's statements are forgeries is even clearer when Vayo's statements are compared to the originals received from the third party. It is clear that the Forger started with Vayo's original statements that show a long list of California-based transactions during the relevant time frame, swapped out those transactions for a list of transactions from a Canada-based bank statement, and then adjusted a few other digits throughout the statements. *Id.*, Exs. L-M (Vayo's authentic First Republic Bank statements from April and May 2017).

- Both versions of the April 2017 bank statements have the same beginning balance, total deposits, and total checks paid, to the penny. *Compare id.*, Ex. J *with* Ex. L. But even though Vayo's version of the April 2017 bank statement has approximately $2000 less in total debits than the version provided by the third party, both versions have the same exact minimum balance and average daily balance, to the penny. *Id.* This cannot be a coincidence, and is mathematically impossible.

*Original April 2017 bank statement provided by third party:*

| ACCOUNT SUMMARY | | [redacted] | |
|---|---|---|---|
| Beginning Balance | $91,091.10 | Average Daily Balance | $102,305.87 |
| Total Deposits and Credits | $530,000.41 | Minimum Balance | $29,152.84 |
| Total Withdrawals and Debits | $588,038.26- | Service Charges | $0.00 |
| Total Checks Paid | $3,900.00- | Interest Earned This Period | $0.41 |
| **Ending Balance** | **$29,153.25** | Interest Year to Date | $1.48 |

*Forged April 2017 bank statement provided by Vayo:*

| ACCOUNT SUMMARY | | [redacted] | |
|---|---|---|---|
| Beginning Balance | $91,091.10 | Average Daily Balance | $102,305.87 |
| Total Deposits and Credits | $530,000.41 | Minimum Balance | $29,152.84 |
| Total Withdrawals and Debits | $586,381.15- | Service Charges | $0.00 |
| Total Checks Paid | $3,900.00- | Interest Earned This Period | $0.41 |
| **Ending Balance** | $30,810.36 | Interest Year to Date | $1.48 |

- As explained above, the total amount of debits and credits in the transaction logs in the statements that Vayo provided do not add up to the total amounts of debits and credits reflected in the Account Summaries in Vayo's statements. *Id.*, Exs. J-K (Vayo's purported First Republic Bank statements from April and May 2017). In the versions received from the third party, though, the amounts add up perfectly. *Id.*, Ex. L-M (Vayo's authentic First Republic Bank Statements from April and May 2017). This indicates that the versions received from the third party are authentic and Vayo's are forgeries, rather than the other way around.
- Both versions of the May 2017 bank statement show an "ATM Rebate" credit on the first page for $2.95 (i.e., the account holder was refunded a fee for using an out-of-network ATM). *Compare id.*, Ex. K *with* Ex. M. As explained above, there is no transaction in Vayo's version of the transaction log that matches this ATM Rebate. *Id.*, Ex. K. In the original version received from the third party, however, there is one ATM debit in the amount of $82.95, which is consistent with an $80 withdrawal plus the $2.95 ATM fee, which was later refunded. *Id.*, Ex. M at 1, 4. Once again, the statement received from the third party is internally consistent; Vayo's is not.
- Perhaps the most telling sign of forgery: The average daily balance in the original May 2017 bank statement received from the third party is $26,995.21. *Id.* Ex. M at 1. In Vayo's version of the statement, however, the average daily balance is $29,995.21 – identical to the penny, except that Vayo's version flips a 6 to a 9. *Id.*, Ex. K at 1. A change like this—especially when paired with the fact that the amounts in Vayo's Account Summary do not sync with the amounts in his transaction log—is a clear sign of forgery.

*Original May 2017 bank statement:*

| ACCOUNT SUMMARY | | [redacted] | |
|---|---|---|---|
| Beginning Balance | $29,153.25 | Average Daily Balance | $26,995.21 |
| Total Deposits and Credits | $6,003.03 | Minimum Balance | $24,595.70 |
| Total Withdrawals and Debits | $6,657.55- | Service Charges | $0.00 |
| Total Checks Paid | $3,900.00- | Interest Earned This Period | $0.08 |
| **Ending Balance** | $24,598.73 | Interest Year to Date | $1.56 |

*May 2017 bank statement provided by Vayo:*

| ACCOUNT SUMMARY | | [redacted] | |
|---|---|---|---|
| Beginning Balance | $30,810.36 | Average Daily Balance | $29,995.21 |
| Total Deposits and Credits | $6,003.03 | Minimum Balance | $29,332.74- |
| Total Withdrawals and Debits | $3,583.68- | Service Charges | $0.00 |
| Total Checks Paid | $3,900.00- | Interest Earned This Period | $0.08 |
| **Ending Balance** | $29,329.71- | Interest Year to Date | $1.56 |

Once again, the only plausible explanation is that the Forger started with Vayo's original First Republic statements (which show transactions in Southern California), replaced the list of transactions with transactions from another Canada-based bill, and then transposed a few digits in the Account Summary section. *Compare id.*, Ex. K *with* Ex. M. Vayo then fraudulently submitted these forgeries to REEL in connection with the December 4, 2017 letter. *Id.*, Ex. E.

## B. <u>Bell Canada Internet Service Provider Bills</u>

As with the bank account statements, Vayo's internet bills are self-evident forgeries, even without reference to the original documents REEL received.

- The "Account Number" on a Bell Canada bill matches the "Customer Number" on that bill, except the Customer Number has a few extra characters. *Id.*, Ex. N ([redacted] authentic Bell statement from April 2017). But for Vayo's forged bills, these numbers do not match—two sets of three digits have been transposed, as reflected in this color-coded comparison:

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| Account Number | Customer Number |
|---|---|
| [redacted] | [redacted] |


In other words, if Vayo's Customer Number is [redacted], his Account Number should be [redacted]. But it is not. *Id.*, Exs. O-P (Vayo's purported Bell statements).

- Even more telling, the Account Number on Vayo's April 2017 bill that appears on the bottom of the bill is [redacted]—i.e., what the Account Number should be given his Customer Number. *Id.*, Ex. O (Vayo's purported Bell statement from April 2017). Indeed, this one instance of the Account Number does not match the Account Number listed elsewhere on Vayo's bills—even elsewhere on that same bill—but it does match his Customer Number. The only explanation is that the Forger forgot to alter this portion of Vayo's bill, and thus accidentally left the original, unaltered Account Number. *Id.*

[Illustration on following page]

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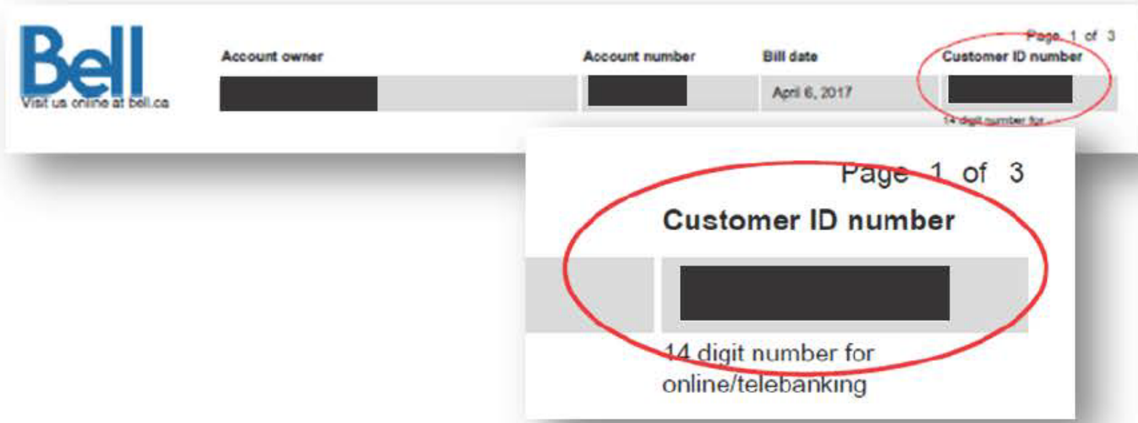
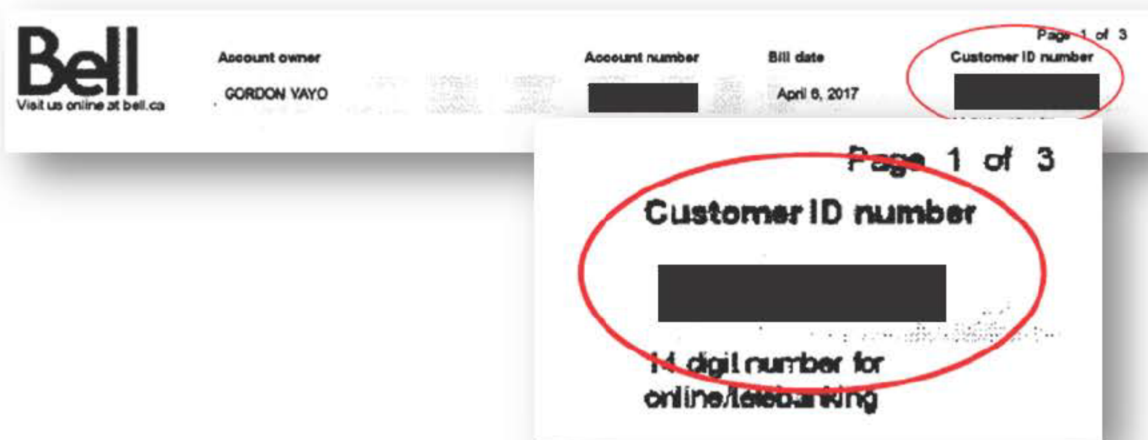
Comparing Vayo's documents to the originals received from the third party removes any doubt that Vayo's versions are forgeries. The original bills, it turns out, appear to be from a person named [redacted]. *Id.*, Ex. N ([redacted] authentic Bell statement). Here is how we know Vayo simply altered [redacted] bills to include his own name and then submit them as his own:

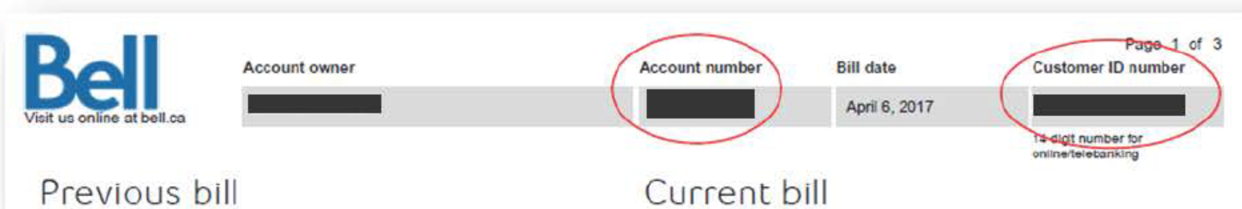
- [redacted] bills and Vayo's bills have exactly the same Customer Number: [redacted]. *Compare id.*, Ex. N *with* Ex. O. Every customer should have a unique Customer Number.

  [Illustrations on following page]




- [redacted] Customer Number matches his own Account Number. *Id.*, Ex. N ([redacted] authentic Bell statement). As noted above, Vayo's does not (except in the one instance where the Forger forgot to change the Account Number on the bottom of Vayo's bill). *Id.*, Exs. O-P (Vayo's purported Bell statements from April and May 2017).




- The serial number at the bottom of [redacted] bill and Vayo's bill are identical. *Compare id.*, Ex. N *with* Ex. O.

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To find out how to contact us, see page 2

[redacted]

Bell

| Account number | Bill date | Please pay by | Amount due | Amount paid |
| --- | --- | --- | --- | --- |
| [redacted] | April 6, 2017 | April 26, 2017 | $215.15 | |

*For Bell Use* 1 1

BELL CANADA
P.O. BOX 9000
STN DON MILLS
NORTH YORK ON
M3C 2X7

[redacted]

[redacted]

To find out how to contact us, see page 2

[redacted]

Bell

| Account number | Bill date | Please pay by | Amount due | Amount paid |
| --- | --- | --- | --- | --- |
| [redacted] | April 6, 2017 | April 26, 2017 | $215.15 | |

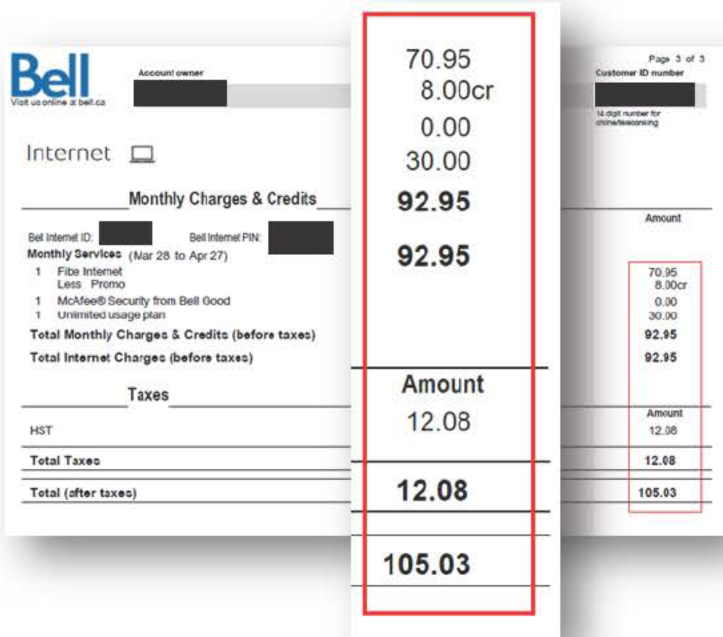
*For Bell Use* 1 1

BELL CANADA
P.O. BOX 9000
STN DON MILLS
NORTH YORK ON
M3C 2X7

GORDON VAYO
[redacted]

[redacted]

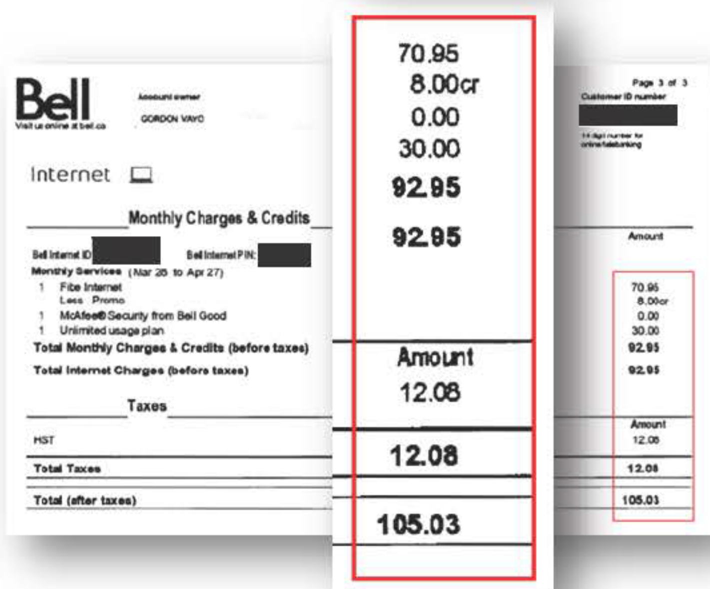
- All of the dollar amounts match on [redacted] and Vayo's bills, to the penny (i.e., for services, credits, amount due, etc.). *Compare id.*, Ex. N *with* Ex. O. [Illustration on following page.]


Bell
Visit us online at bell.ca
Account owner [redacted]
Page 3 of 3
Customer ID number [redacted]
14 digit number for online/telebanking

Internet

| Monthly Charges & Credits | Amount |
| --- | --- |
| Bell Internet ID: [redacted] Bell Internet PIN: [redacted] | |
| Monthly Services (Mar 28 to Apr 27) | |
| 1 Fibe Internet | 70.95 |
| Less Promo | 8.00cr |
| 1 McAfee® Security from Bell Good | 0.00 |
| 1 Unlimited usage plan | 30.00 |
| Total Monthly Charges & Credits (before taxes) | 92.95 |
| Total Internet Charges (before taxes) | 92.95 |

| Taxes | Amount |
| --- | --- |
| HST | 12.08 |
| Total Taxes | 12.08 |
| Total (after taxes) | 105.03 |


Bell
Visit us online at bell.ca
Account owner
GORDON VAYO
Page 3 of 3
Customer ID number [redacted]
14 digit number for online/telebanking

Internet

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| Taxes | Amount |
| --- | --- |
| HST | 12.08 |
| Total Taxes | 12.08 |
| Total (after taxes) | 105.03 |

Once again, the only plausible explanation for these numerous issues is that the Forger started with [redacted] bill, swapped [redacted] personal information for Vayo's, and then transposed digits in [redacted] Account Number (except in the one instance he forgot to do so) to create a new Account Number for Vayo. *Compare id.*, Ex. N *with* Ex. O. Vayo then fraudulently submitted these forgeries to REEL in connection with its December 4, 2017 letter. *Id.*, Ex. E.

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Perhaps the most telling evidence of Vayo's forgery is that he has *never* denied it, and he dismissed his suit suddenly over a weekend and his counsel withdrew immediately after REEL told Vayo it knew the documents were forgeries. This dismissal and withdrawal happened even before REEL provided the evidence of forgery set forth above. Quite plainly, Vayo knew he had been caught.

## ARGUMENT

## I. REEL IS ENTITLED TO RECOVER ATTORNEY'S FEES

### A. The Court Has Authority to Sanction Vayo for Forging Evidence

Courts have the inherent power to sanction parties and attorneys who conduct litigation in bad faith or who perpetrate fraud on the court. *Chambers v. NASCO, Inc.,* 501 U.S. 32, 45-46 (1991) (affirming an award of $996,644.65 in attorneys' fees pursuant to the court's inherent power to impose sanctions for bad-faith conduct); *see also Leon v. IDX Sys. Corp*., 464 F.3d 951, 961 (9th Cir. 2006) ("Under its 'inherent powers,' a district court may also award sanctions in the form of attorneys' fees against a party or counsel who acts in bad faith, vexatiously, wantonly, or for oppressive reasons.") (citations omitted). Indeed, "when a party lies to the court and his adversary intentionally, repeatedly, and about issues that are central to the truth-finding process, it can be fairly said that he has forfeited his right to have his claim decided on the merits." *McMunn v. Memorial Sloan–Kettering Ctr.,* 191 F.Supp.2d 440, 445 (S.D.N.Y. 2002) (finding that dismissal of action with prejudice and monetary sanctions was warranted due to plaintiff's bad faith conduct).

Manufacturing fraudulent evidence in an effort to defraud REEL and the Court easily rises to the level of misconduct warranting sanctions. *See e.g., Patsy's Brand, Inc. v. I.O.B., Inc.,* 317 F.3d 209, 222 (2d Cir. 2003) (affirming a finding of contempt and award of attorneys' fees under the Lanham Act against a party who submitted fraudulent evidence); *Eppes v. H.E. Snowden*, 656 F.Supp. 1267 (E.D. Ky. 1986) (stating "[t]he remedy [for manufacturing evidence] . . . [,] must be sufficient to serve universal notice that this conduct will not be tolerated" and awarding fees and

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costs where defendants submitted manufactured evidence). So too here, Vayo's reliance on evidence he forged to defraud REEL and this Court is a dire offense that can only be remedied by requiring Vayo to compensate REEL for the costs and fees it incurred defending against Vayo's fraudulent claims based on doctored evidence.

### B. The Contract on Which Vayo Sued Entitles REEL to Recover Fees

Like all users of REEL's gaming website, before downloading the software and playing on the website, Vayo explicitly agreed to REEL's EULA. Compl. ¶¶ 9-15; Dkt No. 11 at 14. The EULA provides that that if a user breaches it, the user agrees to "fully indemnify, defend and hold harmless [REEL] from and against all . . . *costs and expenses, including legal fees and any other charges whatsoever, howsoever caused, that may arise as a result of: (a) your breach of this Agreement, in whole or in part*." Dkt. No. 11-1 (Winter Decl ISO Motion to Dismiss), Ex. A at 4, § 8.

Section 5.11 of the EULA "prohibits persons located in . . . certain jurisdictions [(i.e., Prohibited Jurisdictions, including the United States)] . . . from . . . engag[ing] in [real money] Games." Dkt. No. 11-1 (Winter Decl ISO Motion to Dismiss), Ex. A at 3, § 5.11. The EULA also provides that a user breaches by "manipulating the information used by [REEL] to identify your location ***and providing [REEL] with false or misleading information regarding your location or place of residence***." Dkt. No. 11-1 (Winter Decl ISO Motion to Dismiss), ¶¶ 19-21 and Ex. A at 3, § 5.11. By playing the SCOOP Tournament in the United States (as the authentic bank records show), and then by providing REEL with forged records regarding his location (and relying on them to file this suit), Vayo breached the EULA, and REEL is thus entitled to fees.

Having sued REEL for a breach of this very EULA, Vayo cannot avoid its provisions that require him to pay REEL's "costs and expenses, including legal fees" when Vayo seeks to defraud REEL and pursue a bad-faith lawsuit using forged evidence. *See, e.g.*, *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) (a party cannot "claim[] the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes"); *Allied Professionals Ins. Co. v. Harmon*, 2017 WL 5634600, at *4 (C.D. Cal. July 28, 2017) ("There is no more direct exploitation of a contract than attempting to collect money owed under that agreement. Accordingly, in [Harmon's] attempts to collect under the policy, Harmon cannot avoid the same agreement's arbitration provision.").

### C. Isle of Man Law Applies Here and Provides for a Fee Award

REEL's EULA contains a forum-selection clause which unambiguously states that the EULA "and any matters relating [to it] shall be governed by, and construed in accordance with, the laws of the Isle of Man." Dkt. 11-1. at ¶ 25 & Ex. A at 5, § 14.1. If the dispute arises out of a contract with a valid choice of law provision then the court will apply the rule of the jurisdiction chosen by the parties. *Boeing Co. v. KB Yuzhnoye*, 2018 WL 735971, at *3 (C.D. Cal. Feb. 6, 2018) (*citing Flores v. Am. Seafoods Co.*, 335 F.3d 904, 916 (9th Cir. 2003), and *APL Co. Pte. v. UK Aerosols Ltd.*, 582 F.3d 947, 951 (9th Cir. 2009)). For example, the Court in *Boeing* applied the attorneys' fees rule of Sweden because the contract between the parties contained a choice of law provision stating that the "formation, interpretation, and performance of this Agreement shall be governed by and interpreted in accordance with the law of the Kingdom of Sweden." *Id*. at *2 (citation omitted).

Under Isle of Man law, the Isle of Man High Court has discretion as to whether costs in the form of attorneys' fees incurred during the course of a litigation are payable by one litigating party to another, the amount of such costs and the timing of any payment of such costs. Declaration of Robert Colquitt in Support of Defendant REEL's Motion for Attorneys' Fees and Costs ("Colquitt Decl.") at ¶ 2. Generally, the Isle of Man High Court awards costs of attorneys' fees to the successful party. *Id*. Indeed, in a situation like this one where a claimant voluntarily dismisses a lawsuit against a defendant, the defendant is considered the successful party and the court would likely exercise its discretion and award costs of attorneys' fees against the claimant. *Id*. at ¶ 3. Vayo's swift voluntary dismissal here is effectively an admission of defeat. *See, e.g.*, *Frahm v. Walton*, 130 Cal. 396, 399 (1900) (stating that "the voluntary dismissal of the action by the plaintiffs was an admission by them that they were unable to maintain their action"); *United States v. Raymond*, No. CR 14-36-BLG-SPW, 2018 WL 4690796, at *1 (D. Mont. Sept. 28, 2018) (finding the plaintiff's voluntarily dismissal to have "only one tenable interpretation": "He read the writing on the wall. . . . In these circumstances, voluntary dismissal was an admission of defeat.").

The Court should apply the attorneys' fees rule of the Isle of Man and award costs of attorneys' fees to REEL, the successful party, consistent with Isle of Man law.

## II. <u>REEL'S REQUESTED ATTORNEYS' FEES ARE REASONABLE</u>

REEL seeks to recover for 345.80 hours of time spent by Quinn Emanuel on this matter, in the total amount of $279,347.40, plus whatever sums it spends on this motion, the reply brief, and attending the hearing. This includes both the time Quinn Emanuel spent litigating this Action, as well as the time Quinn Emanuel spent negotiating with Vayo and investigating his fraudulent claims prior to the complaint being filed. These fees are reasonable and should be awarded in full.

Courts in the Ninth Circuit assessing reasonableness apply the "lodestar method," *see Morales v. San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), which entails multiplying the number of hours reasonably expended in litigation by a reasonable hourly rate, in order to obtain a ***presumptively reasonable*** fee award. *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), 2015 WL 1746484, at *4 (citing *Intel Corp. v. Terabyte Int'l, Inc.* 6 F.3d 614, 622 (9th Cir. 1993). The Court considers whether to enhance or reduce the lodestar figure based on various factors, but REEL does not seek an enhancement, and none of the factors justify a reduction from the lodestar. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1995); *Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th Cir. 1996).

### A. Quinn Emanuel's Rates Were Reasonable

Whether the rates charged by counsel to a prevailing party were reasonable is determined "according to the prevailing market rates in the relevant community," *Perfect 10*, 2015 WL 1746484, at *5 (quoting *Van Skike v. Dir., Office of Workers' Comp.*, 557 F.3d 1041, 1046 (9th Cir. 2009), which is generally "the forum in which the district court sits," *id.* (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). In particular, "courts consider rates charged by other 'attorneys in the relevant community engaged in equally complex Federal litigation, no matter the subject matter' for 'similar services by lawyers of reasonably comparable skill, experience and reputation. *Id.* at *15 (quoting *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010)). "[T]he rates an attorney actually charges its client is a 'good starting . . . point' because 'the actual rate that [the attorney] can command in the market is itself highly relevant proof of the prevailing community rate.'" *Id.* at *18 (quoting *Elser v. I.A.M. Nat. Pension Fund*, 579 F. Supp. 1375, 1379 (C.D. Cal. 1984)).

The rates charged by Quinn Emanuel professionals reflect a 10% across-the-board discount that Quinn Emanuel gave on this matter. Stern Decl. ¶ 27. The resulting rates, ranging from $1,225 for senior partners to $720 for mid-level associates, were reasonable in a dispute as important as this one, in which Vayo sought to invalidate the EULA that governs REEL's relationship with all of its users. *Id.* Numerous courts have routinely found that Quinn Emanuel's rates are reasonable (even when undiscounted). *See, e.g.*, *TransWeb, LLC v. 3M Innovative Properties Co.*, 16 F. Supp. 3d 385, 411-13 (D. N.J. 2014) (affirming Special Master's determination that Quinn Emanuel rates and time spent were reasonable); *United States v. Real Property Located at 475 Martin Lane*, 2007 WL 9627508, at *2 (C.D. Cal. Feb. 28, 2007) ("With regard to the Quinn Emanuel fees, the Court similarly finds that the work performed, the time spent, and the billing rates for the several attorneys working on the matter are reasonable."); *Perfect 10*, 2015 WL

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1746484, at *15-21, *27-28 (Quinn Emanuel fee award of $5,213,117.06 was reasonable because "[t]he value of Defendants' choice to retain 'pre-eminent' law firms showed in both the quality of defense counsel's lawyering and the decisive results they obtained for Defendants"); Civil Minutes re: Order Granting Motion for Attorneys' Fees, *Riverside Cnty. Dept. of Mental Health v. A.S.*, No. 08-cv-00503-ABC (C.D. Cal. Feb. 22, 2010) (ECF No. 123) (awarding full amount of attorneys' fees sought for work performed by Quinn Emanuel); *Bistro Executive, Inc. v. Rewards Network*, *Inc*., No. 04-cv-4640-CBM (C.D. Cal. Nov. 19, 2007) (ECF No. 357) (finding Quinn Emanuel's attorney rates and hours were reasonable).).

**B. <u>The Hours Expended Were Reasonable</u>**

In determining "'whether attorneys for the prevailing party could have reasonably billed the hours they claim to their private clients, the district court should begin with the billing records the prevailing party has submitted.'" *Perfect 10*, 2015 WL 1746484, at *5 (quoting *Gonzalez v. City of Maywood,* 729 F.3d 1196, 1202 (9th Cir. 2013)).

REEL's request for $279,347.40 in attorney's fees reflects 345.80 hours of work performed by Quinn Emanuel attorneys. Stern Decl. ¶ 26. As described in the accompanying Stern declaration, the number of hours Quinn Emanuel worked on this litigation was reasonable and appropriate given the magnitude of the work that was required to be performed on this case, the degree of success obtained, and the value of the result to REEL. *Id.* ¶¶ 26-29. First, Quinn Emanuel needed to expend significant effort before the litigation was filed to assess Vayo's (false) claim that he had been playing in Canada, and to review the forged records Vayo relied upon. After the case was filed, Quinn Emanuel needed to prepare a complicated Motion to Dismiss (along with several supporting declarations from REEL employees and an expert on Manx law) and a supporting reply brief addressing issues including general jurisdiction, personal jurisdiction, the forum selection clause in the EULA, and forum non-conveniens.

The amount of time Quinn Emanuel spent on these tasks was reasonable, especially given their complexity and the importance of the work to the ongoing validity of REEL's EULA.

## III. REEL IS ENTITLED TO RECOVER ITS "FULL COSTS"

In addition to attorney's fees, REEL is concurrently filing an Application to Tax Costs under Local Rule 54 relating to "taxable" costs such as document reproduction costs for the chamber's copies, in the sum of $362.44. Vayo's voluntary dismissal of this Action entitles REEL to recover these taxable costs as the "prevailing party." *See* L.R. 54-1; *Int'l Marble & Granite of Colo., Inc. v. Cong. Fin. Corp.*, 465 F. Supp. 2d 993, 999-1000 (C.D. Cal. 2006) (defendant was the prevailing party where suit was dismissed without prejudice).

In addition to *taxable* costs, REEL is further entitled to, and hereby requests the Court award it, the *full costs* it incurred for the same reasons the Court should award attorney's fees (*see supra* Section I), detailed as follows:

| Category | Costs |
|---|---|
| Administrative Costs | $196.86 |
| Legal Research | $7,972.30 |
| Copying and Reproduction (Non-Taxable) | $334.92 |
| Service and Courier | $137.00 |
| | $8,641.08 |

These costs were reasonably and necessarily incurred in connection with this litigation and were actually paid by REEL. Stern Decl. ¶ 29. REEL requests that these non-taxable costs be awarded in full.

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## CONCLUSION

For the reasons set forth above, REEL respectfully requests that the Court grant this motion in full and award REEL $279,347.40 in reasonable attorneys' fees and $8,641.08 in non-taxable costs, plus whatever amounts it spends in connection with this motion.

November 12, 2018 QUINN EMANUEL URQUHART & SULLIVAN, LLP

By

Claude M. Stern
Attorneys for Defendant Rational Entertainment Enterprises Limited d/b/a PokerStars