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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

Plaintiff,

v.

NANAL, INC., a Nevada corporation, d/b/a
LEATHERUP.COM

Defendant.

NO. C09-0789 JLR

DECLARATION OF HEATHER M.
MORADO IN SUPPORT OF RESPONSE
TO MOTION TO SET ASIDE DEFAULT;
AND REQUEST FOR AWARD OF
ATTORNEYS FEES AND COSTS

My name is Heather Morado. I am over the age of 21, have personal knowledge of the facts stated herein, and am otherwise competent to make this declaration. I declare as follows:

1. I am an attorney at Invicta Law Group, PLLC, counsel to Plaintiff in this matter.
2. Plaintiff's original Complaint was filed on June 9, 2009. The original Complaint was incorrectly served on "Bill Me Inc.," a New York corporation. This error

1 was caused by a false representation on the Leatherup.com website that listed the owner
2 of the website as “Bill Me Inc. d/b/a/ Leatherup.com.” A true and correct copy of a
3 printout from the Leatherup.com website is attached hereto as Exhibit A.

4 3. On or about July 8, 2009, I spoke with counsel for Bill Me, Inc., who
5 claimed that his client had no affiliation or connection with Leatherup.com, but did not
6 provide a credible explanation for the misrepresentation.

7 4. After reviewing an online map search as well as making contacts located in
8 Los Angeles, I determined that the physical address provided on the Leatherup.com
9 website, 955 Venice Boulevard, is merely a warehouse, where service of process could
10 not be effectuated.

11 5. The identity of the owners of Leatherup.com was not immediately apparent,
12 and I spent a significant amount of time with my colleagues researching this question. On
13 or about July 22, 2009, a search on the Public Access to Court Electronic Records System
14 revealed that Leatherup.com had filed a corporate disclosure statement as “Nanal, Inc.,” in
15 *Goods Sports v. Leatherup.com*, Case No. 3:07-CV-00807-JCH. A true and correct copy
16 of Nanal, Inc.’s corporate disclosure statement in that case it attached hereto as Exhibit B.

17 6. Soaring Helmet’s Amended Complaint was filed on July 27, 2009.
18 Defendant Nanal, Inc. (“Defendant”) was served a copy of the Amended Complaint and
19 Summons on August 6, 2009.

20 7. I did not receive any correspondence on behalf of Defendant until August
21 24, 2009, two days before the answer was due. On that day, I spoke with Shahrokh
22 Mokhtarzadeh, of the Law Offices of Shahrokh Mokhtarzadeh (“Mr. Mokhtarzadeh”),
23

1 regarding this case. I agreed to allow Mr. Mokhtarzadeh a two-week extension to file a
2 response, until September 9, 2009.

3 8. In order to attempt to reach a settlement of the case with Defendant, on or
4 about August 24, 2009, I requested that Defendant Google, Inc. ("Google") re-note its
5 Motion to Dismiss Counts II, III, and IV of the Complaint. Google agreed, and re-noted
6 its motion on September 3, 2009. Pursuant to the Stipulation, we agreed not to begin
7 working on a response to the motion until September 21, 2009.

8 9. During the two-week extension, I attempted to engage Defendant in good
9 faith settlement negotiations. On August 26, 2009, I sent a settlement demand letter to
10 Defendant, and requested a response by September 2, 2009. In this letter, I stated that any
11 settlement of the case needed to occur before we incurred additional costs in connection
12 with drafting a response to Google's Motion to Dismiss. We did not receive a response to
13 our settlement demand.

14 10. The two-week extension of time for Defendant to answer expired on
15 September 9, 2009, but I did not receive a response. On September 10, 2009, I received
16 an email from Mr. Mokhtarzadeh, stating that he had received my previous
17 correspondence. Mr. Mokhtarzadeh stated that he would respond by the following day,
18 September 11, 2009. I did not receive a response.

19 11. On September 14, 2009, we sent a final settlement demand letter, and stated
20 that if we did not receive a response by September 15, 2009, we intended to file a motion
21 for entry of default against Defendant. We received no response.
22
23

1 12. On September 23, 2009, I sent Mr. Mokhtarzadeh courtesy copies of
2 Soaring Helmet's Motion for Entry of Default and informed him that we intended to file
3 the motion in five days pursuant to Federal Rule of Civil Procedure 55(a).

4 10. I never discussed nor agreed to allow Defendant an extension of time to file
5 a response until October 1, 2009.

6 11. I have been licensed to practice law in Washington since 2004. My hourly
7 rate is \$225.00, which is reasonable for an attorney of my experience.

8 12. I was assisted in this litigation by my associates, Mark V. Jordan, Stacie
9 Foster and Steven W. Edmiston. Mr. Jordan has been licensed to practice law in the state
10 of Washington since 1989 and his hourly rate is \$295; Ms. Foster has been licensed to
11 practice law in the State of Washington since 1993 and her hourly rate is \$270.00; and
12 Mr. Edmiston has been licensed to practice law in the State of Washington since 1987 and
13 his hourly rate is \$270.00. These are reasonable rates for attorneys of their experience.
14 We endeavored throughout this litigation to avoid duplication of effort.
15

16 13. RPC 1.5(a) provides the parameters for reasonable attorney fees in
17 Washington:

18 (a) A lawyer shall not make an agreement for, charge, or collect
19 an unreasonable fee or an unreasonable amount for expenses. The factors
20 to be considered in determining the reasonableness of a fee include the
21 following:

22 (1) The time and labor required, the novelty and
23 difficulty of the questions involved, the skill requisite to
perform the legal service properly;

 (2) The likelihood, if apparent to the client, that
the acceptance of the particular employment will preclude
other employment by the lawyer;

1 (3) The fee customarily charged in the locality for
similar legal services;

2 (4) The amount involved in the matter on which
3 legal services are rendered and the results obtained;

4 (5) The time limitations imposed by the client or
by the circumstances;

5 (6) The nature and length of the professional
relationship with the client;

6 (7) The experience, reputation, and ability of the
7 lawyer or lawyers performing the services;

8 (8) Whether the fee is fixed or contingent; and

9 (9) the terms of the fee agreement between the
10 lawyer and the client, including whether the fee agreement or
confirming writing demonstrates that the client had received
a reasonable and fair disclosure of material elements of the
fee agreement and of the lawyer's billing practices.

11 RPC 1.5(a).

12 14. The lodestar method of calculating a reasonable attorney award is the
13 default principle in Washington for calculating attorney fees. *Mahler v. Szucs*, 135 Wn.2d
14 398, 433-34, 957 P.2d 632 (1998). In essence, the Court must multiply a reasonable
15 number of hours by a reasonable hourly rate.

16 15. In this case, had the case progressed without the delay of Defendant Nanal,
17 Inc., ("Defendant") I would estimate that the case would be currently in the discovery
18 period. Based upon the lodestar methodology, total reasonable attorney's fees incurred
19 from the beginning of Defendant's delay on July 8, 2009, through the present date,
20 October 19, 2009, are \$8,456.00. The invoices to Plaintiff for fees and costs incurred by
21 the Invicta Law Group are attached as Exhibit C.

1 **CERTIFICATE OF SERVICE**

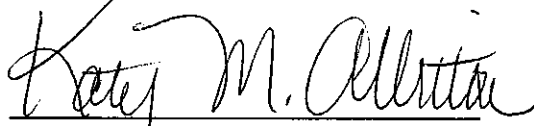
2 I hereby certify that I electronically filed the foregoing with the Clerk of the Court
3 using the CM/ECF system which will send notification of such filing to the following
4 persons/attorneys of record:
5

6 Ms. Karin B. Swope
7 Keller Rohrback, LLC
8 kswope@kellerrohrback.com

9 Ms. Margret M. Caruso
10 Quinn Emanuel Urquhart Oliver & Hedges, LLP
11 margretcaruso@quinnemanuel.com

12 Ms. Katherine Hendricks
13 Hendricks & Lewis, PLLC
14 901 Fifth Avenue, Suite 4100
15 Seattle, WA 98164
16 kh@hllaw.com

17 Dated this 19th day of October 2009, at Seattle, Washington.

18 

19 Katy M. Albritton
20 Legal Assistant
21
22
23

Exhibit A

LeatherUp.com
THE MOST POPULAR ONLINE LEATHER STORE

Contact Us - Wholesale - About Us - Bargain Alerts - Returns - Help - RSS - Site Map

SALE!

UP TO 50% OFF ORIGINAL PRICES!

Low Price Guarantee

HOME

Search LeatherUp.com



My Account (Sign In)

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IF YOU ARE UNDER THE AGE OF 18, YOU MAY NOT USE THE PRODUCTS OR SERVICES PROVIDED BY THE SITE.

IF YOU DO NOT AGREE TO COMPLY WITH THIS AGREEMENT, PLEASE DO NOT USE THIS SITE.

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DO NOT POST YOUR PERSONALLY IDENTIFIABLE CONTACT INFORMATION IN ANY MESSAGE BOARDS OR OTHER PART OF THE SITE ACCESSIBLE TO USERS, INCLUDING YOUR TELEPHONE NUMBER, HOME, BUSINESS OR EMAIL ADDRESS. ANY POSTING OF SUCH PERSONAL INFORMATION IS EXPRESSLY AT YOUR OWN RISK.

3. Trademarks. The trademarks, logos, and service marks, including but not limited to LeatherUp.com, (collectively, the "Trademarks"), displayed on the Site are the trademarks of LeatherUp.com and other parties. All rights reserved. Nothing contained in the Site should be construed as granting by implication, estoppel or otherwise, any license or right to use any Trademark displayed on the Site without the written permission of LeatherUp.com or the third party that owns the Trademarks displayed on the Site. Your use of the Trademarks displayed on the Site, or any other content on the Site, except as provided in this Agreement, is strictly prohibited. Any other trademarks appearing on LeatherUp.com which are not the property of the Site are the property of the respective owners.

4. User Responsibilities. You agree that you will conduct yourself in a mature manner that lends itself to civil discourse, and that you shall use LeatherUp.com for lawful purposes only. Further, you agree not to use any facilities or resources available on or through LeatherUp.com to perpetrate prohibited conduct, whether against LeatherUp.com or any other third party. Examples of prohibited conduct include, but are not limited to chain letters, unauthorized copying of Submitted Materials, Site Materials or Intellectual Property, pornography, unsolicited advertising, postings which are deemed excessive in number or deemed to be intended to harm the business of LeatherUp.com, or other communication that creates a nuisance or is otherwise offensive to the recipient or the LeatherUp.com audience. You represent and warrant that Submitted Materials do not infringe any third-party intellectual property rights. You agree not to transmit any unlawful, threatening, harassing, libelous, defamatory, obscene, pornographic, or profane material, any material submitted without permission under another person's name, or other material that could constitute or encourage conduct that could be considered a criminal offense or violate any law. You shall not, without the express written approval of LeatherUp.com submit any materials which contain advertising or any solicitation with respect to products or services, including any on-line information services competitive with LeatherUp.com. Site shall have the right, in its sole discretion to edit or remove any material portion of Submitted Materials, which in its sole discretion, it finds to be in violation of the provisions of this agreement or otherwise objectionable.

5. Privacy. By accepting this Agreement, you expressly consent to our use of your personal information as explained in our Privacy Policy, which is incorporated herein by reference. Our current Privacy Policy is available [here](#).

6. Limits on Liability. You agree that at no time during or after the term of this Agreement shall LeatherUp.com be liable for:

- The contents of any communication, message, or other information sent by you or third parties to LeatherUp.com, or posted by you or other third parties on any part of the Site;
- The contents of any website not controlled, owned, or operated by LeatherUp.com that is accessed from or linked to any part of the Site;
- Any damages or injury caused by, including but not limited to, any failure of performance, error, omission, interruption, defect, delay in operation of transmission, computer virus, or line failure; and
- The results of any interpersonal interactions to which you are exposed or in which you become involved through the Site or other LeatherUp.com services, and
- Any direct, indirect, incidental, special, or consequential damages arising out of or relating to use of or inability to use any of the Site or related services, or

Exhibit B

FILED

2007 SEP 26 A 11:06

U.S. DISTRICT COURT
**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

GOODS SPORTS, INC.

Plaintiff

Case No.:3:07-CV-00807-JCH

LEATHERUP.COM

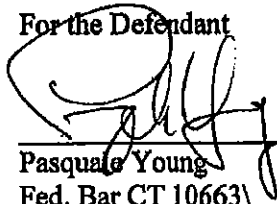
Defendant

SEPTEMBER 25, 2007

STATEMENT IDENTIFYING CORPORATE STRUCTURE

The defendant, Leatherupus.com is a trade name for a California corporation known as Grand Saz Global, Inc. and Leatherup.com is a trade name for a Nevada corporation known as NANAL, Inc. No publicly owned company holds 10% or more of the stock of said corporations.

For the Defendant



Pasquale Young

Fed. Bar CT 106631

Berdon, Young & Margolis, PC

132 Temple St.

New Haven, CT 06510

Tel. 203-772-3740

Fax:203-492-4444

Email: Pat@bymlaw.com

Exhibit C

**Soaring Helmet vs. Nanal, Inc.
Itemization of Fees**

Date	Attorney	Description	Time	Amount
7/8/2009	HMM	Telephone conference with counsel for Bill Me, Inc.; research re effectiveness of service of process.	0.7	\$ 157.50
7/14/2009	SF	Meeting w/ HMM re service and jurisdiction issues.	0.5	\$ 135.00
	MVJ	Review email from client re service of process of defendant issues; conference with HMM re same; draft email to client re service of process.	0.7	\$ 206.50
7/15/2009	MVJ	Emails to and from client re investigation of Nevada address.	0.3	\$ 88.50
7/17/2009	HMM	Telephone conference w/ Transwest Investigations re Leatherup.com; draft email correspondence to MVJ.	0.7	\$ 157.50
	MVJ	Review emails from client re service of process research; conference with HMM re same.	0.3	\$ 88.50
7/20/2009	MVJ	Conference with HMM re status of service of process	0.2	\$ 59.00
7/21/2009	HMM	Research re corporate identity of Leatherup.com.	1.4	\$ 315.00
7/22/2009	SF	Research company and corporate names for Leatherup.com.	0.5	\$ 135.00
	MVJ	Conference w/ HMM and SJZ re correct party and address for service of process; conference with HMM re other lawsuit against Leatherup.com.	0.3	\$ 88.50
7/23/2009	MVJ	Review email from client approving amended complaint and service of process.	0.2	\$ 59.00
7/24/2009	HMM	Review and file amended complaint; telephone conference with registered agent for Bill Me, Inc. re amended complaint.	0.6	\$ 135.00
8/24/2009	SF	Meeting w/ HMM; telephone conference with client re settlement opportunity w/Leatherup.com; telephone conference w/opposing counsel re same.	0.7	\$ 189.00
	HMM	Conference with SF, M. Caruso and client re status of case and Motion to Dismiss; Telephone conference with counsel for Nanal, Inc. re potential settlement.	0.8	\$ 180.00
8/25/2009	HMM	Draft letter to counsel for Nanal, Inc. re settlement demand; conference with SF re letter.	1.2	\$ 270.00

8/26/2009	SF	Review and revise settlement demand letter and send to client for approval.	0.5	\$	135.00
	HMM	Draft email to SF and client re settlement demand; finalize letter to counsel for Nanal, Inc.	0.5	\$	112.50
9/4/2009	HMM	Telephone conference and draft email correspondence to S. Mokhtarzadeh re settlement status.	0.3	\$	67.50
9/14/2009	HMM	Draft letter to S. Mokhtarzadeh re status of settlement negotiations.	0.7	\$	157.50
9/15/2009	HMM	Telephone correspondence with S. Mokhtarzadeh re settlement.	0.2	\$	45.00
9/17/2009	HMM	Telephone and email correspondence with S. Mokhtarzadeh and client re settlement; conference with MVJ and SF re settlement strategy.	1.1	\$	247.50
9/21/2009	HMM	Conference with SWE re settlement with Nanal, Inc.	0.2	\$	45.00
	SWE	Conference with HMM re default issues; telephone call to opposing counsel demanding response and providing notice of intent to seek default judgment.	0.6	\$	162.00
		Work on issues relating to obtaining order of default and default judgment; conference with HMM re same.	0.6	\$	162.00
9/22/2009	HMM	Perform legal research re what constitutes a notice of appearance for purposes of default; draft Motion for Entry of Default Judgment and Declaration of HMM and SWE in Support Thereof.	1.8	\$	405.00
	SWE	Work on Notice of Default; legal research; conference with HMM; review and revise pleadings.	1	\$	270.00
9/23/2009	HMM	Prepare final drafts of Motion for Entry of Default, Declarations of HMM and SWE in Support Thereof, and Proposed Order For Default Judgment; conference with SWE and SF re motion.	3.1	\$	697.50
10/6/2009	HMM	Review Google's response to Motion for Default; conference with SWE and SF re Motion for Final Judgment	0.5	\$	112.50
10/7/2009	SF	Review filings on default.	0.2	\$	54.00
	HMM	Perform legal research re good cause for settling aside entry of default; review Nanal, Inc.'s Motion to Set Aside Default and Declarations in Support Thereof.	3.8	\$	855.00
	SWE	Review filings re appearance and Motion to Set Aside Default; conference with HMM re same.	0.5	\$	135.00

10/8/2009	SF	Review and edit settlement demand.	0.4	\$	108.00
	HMM	Perform legal research and draft letter to K. Hendricks re settlement.	3.5	\$	787.50
10/9/2009	HMM	Telephone and email correspondence with K. Hendricks re settlement.	0.2	\$	45.00
10/15/2009	HMM	Draft Declaration in Support of Response to Motion to Set Aside Default.	0.4	\$	90.00
10/19/2009	SF	Meeting w/ HMM to discuss default judgment pleadings; review and edit brief.	1.3	\$	351.00
	HMM	Prepare final drafts of Response to Motion to Set Aside Default and Declaration of HMM in Support Thereof; Check citations; conference with SF re Response.	5.1	\$	1,147.50
Total					\$8,456.00