

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

HUNTER RAINES, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

MAGICJACK VOCALTEC LTD., DON
CARLOS BELL III, IZHAK GROSS, DR.
YUEN WAH SING, TALI YARON-
ELDAR, RICHARD HARRIS, and ALAN
B. HOWE,

Defendants.

Case No. _____

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF SECTIONS 14(a) AND
20(a) OF THE SECURITIES
EXCHANGE ACT OF 1934**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Hunter Raines (“Plaintiff”), on behalf of himself and all others similarly situated, by and through his attorneys, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. This is a class action brought by Plaintiff on behalf of himself and the other ordinary stockholders of magicJack VocalTec Ltd. (“magicJack” or the “Company”), except Defendants (defined below) and their affiliates, against magicJack and the members magicJack’s board of directors (the “Board” or the “Individual Defendants”) for their violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the Proposed Transaction (as defined below) between magicJack and B. Riley Financial, Inc. (“B. Riley”).

2. On November 9, 2017, magicJack and B. Riley jointly announced that they had entered into an Agreement and Plan of Merger (the “Merger Agreement”), by and among the Company, B. Riley, and B. R. Acquisition Ltd., an Israeli corporation and wholly owned subsidiary of B. Riley (“Merger Sub”).

3. Pursuant to the terms of the Merger Agreement, B. Riley will acquire magicJack through the merger of Merger Sub with and into magicJack, with magicJack surviving as a wholly owned subsidiary of B. Riley Principal Investments, LLC, a wholly owned subsidiary of B. Riley (the “Proposed Transaction”).

4. Pursuant to the terms of the Merger Agreement, magicJack stockholders will receive \$8.71 per share in cash in exchange for each share of magicJack common stock that they own (the “Merger Consideration”).

5. The Merger Consideration and the process by which Defendants agreed to consummate the Proposed Transaction are fundamentally unfair to magicJack’s public stockholders. In fact, the financial analyses conducted by the Company’s financial advisor, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“BofA Merrill Lynch”), illustrates that the value of the Company’s shares exceeds the Merger Consideration. For example, BofA Merrill Lynch’s *Selected Precedent Transactions Analysis* indicates an implied per share value range as high as **\$10.40**, which illustrates that each share of magicJack stock has an inherent premium of **approximately 20%** over the \$8.71 Merger Consideration.

6. As discussed below, the Merger Consideration appears inadequate, and the process by which Defendants consummated the Proposed Transaction is fundamentally unfair to Plaintiff and the other magicJack common stockholders. Defendants have now asked magicJack’s stockholders to support the Proposed Transaction based upon the materially incomplete and

misleading representations and information contained in the Proxy Statement, in violation of Sections 14(a) and 20(a) of the Exchange Act.

7. On February 8, 2018, in order to convince magicJack stockholders to vote in favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and misleading Definitive Proxy Statement on a Schedule 14A (the “Proxy Statement”) with the SEC, in violation of Sections 14(a) and 20(a) of the Exchange Act.

8. Specifically, the Proxy Statement contains materially incomplete and misleading information concerning: (i) the Company’s financial projections; (ii) the financial analyses performed by the Company’s financial advisor, BofA Merrill Lynch, in support of its fairness opinion; and (iii) the background process leading up to the Merger Agreement.

9. The special meeting of magicJack stockholders to vote on the Proposed Transaction is scheduled for March 19, 2018 (the “Shareholder Vote”). It is therefore imperative that the material information omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the Shareholder Vote so that they can properly exercise their corporate suffrage rights.

10. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. Plaintiff seeks to enjoin Defendants from holding the shareholder vote on the Proposed Transaction and taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to magicJack’s stockholders in advance of the Shareholder Vote or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

12. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over defendant by this Court permissible under traditional notions of fair play and substantial justice.

13. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) magicJack maintains its principal place of business in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs complained of herein, occurred in this District; (iv) most of the relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

14. Plaintiff is, and has been at all relevant times, the owner of magicJack common stock and has held such stock since prior to the wrongs complained of herein.

15. Defendant magicJack is a Israeli corporation with its principle executive offices located at 560 Village Blvd, Suite 120, West Palm Beach, Florida 33409. magicJack is a cloud

communications company. magicJack's common stock trades on the NASDAQ under the ticker symbol "CALL".

16. Defendant Don Carlos Bell III ("Bell") is, and has been at all relevant times, a director of the Company. He also currently serves as President and Chief Executive Officer of the Company.

17. Defendant Izhak Gross ("Gross") is, and has been at all relevant times, a director of the Company. He also currently serves as Chairman of the Board.

18. Defendant Dr. Yuen Wah Sing ("Sing") is, and has been at all relevant times, a director of the Company.

19. Defendant Tali Yaron-Eldar ("Yaron-Eldar") is, and has been at all relevant times, a director of the Company.

20. Defendant Richard Harris ("Harris") is, and has been at all relevant times, a director of the Company.

21. Defendant Alan B. Howe ("Howe") is, and has been at all relevant times, a director of the Company.

22. The defendants identified in paragraphs 16 through 21 are collectively referred to herein as the "Individual Defendants" and/or the "Board," collectively with magicJack the "Defendants."

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on his own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all holders of magicJack common stock who are being and will be harmed by Defendants' actions described below (the "Class"). Excluded

from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

24. This action is properly maintainable as a class action for the following reasons:

- (a) the Class is so numerous that joinder of all members is impracticable. As of the February 7, 2018, there were 16,189,794 shares of magicJack common stock outstanding;
- (b) the holders of these shares are believed to be geographically dispersed through the United States;
- (c) there are questions of law and fact which are common to the Class and which predominate over questions affecting individual Class members. The common questions include, *inter alia*, the following:
 - i. whether Defendants have violated Section 14(a) of the Exchange act and Rule 14a-9 promulgated thereunder;
 - ii. whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
 - iii. whether Plaintiff and the other members of the Class would suffer irreparable injury were they required to vote on the Proposed Transaction as presently anticipated.
- (d) Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;
- (e) Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

- (f) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class; and
- (g) Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

A. Company Background and the Proposed Transaction

25. magicJack invented Voice over IP (VOIP), having sold over 10 million magicJacks since product launch. In addition, the Company's Telephone App/Softphone is being downloaded millions of times per year on smartphones, computers, tablets, and iOS devices that can be used anywhere in the world to make and receive calls.

26. On November 19, 2017, the Company and B. Riley issued a joint press release announcing the Proposed Transaction in a press release, which states in relevant part:

B. Riley to Acquire magicJack VocalTec Ltd. for \$8.71 Per Share

LOS ANGELES, CA, and WEST PALM BEACH, FL and NETANYA, ISRAEL, November 9, 2017 – B. Riley Financial, Inc. (“B. Riley”)(NASDAQ: RILY), a diversified financial services company, and magicJack VocalTec, Ltd. (“magicJack”)(NASDAQ: CALL), a leading Voice over IP (VOIP) cloud-based communications company, have signed a definitive merger agreement, pursuant to which B. Riley will acquire magicJack for \$8.71 per share, representing a 23% premium over magicJack's 90-day average stock price and approximately \$143 million in aggregate merger consideration. It is anticipated that magicJack will be held by B. Riley's subsidiary B. Riley Principal Investments, LLC, the entity that currently owns United Online, Inc., a complementary telecommunications company. B. Riley expects to finance the transaction using cash on hand and debt financing.

“With magicJack, we look to replicate the success we’ve had with our United Online acquisition by again leveraging our operational expertise to generate significant cash flows. The synergistic potential, combined with magicJack’s subscriber base and brand name, make this an attractive investment opportunity,” said Kenny Young, CEO of B. Riley Principal Investments and a veteran telecom executive.

Bryant Riley, Chairman and CEO of B. Riley said, “Investments such as this one are the key reason we formed our Principal Investments group. We believe that magicJack is representative of the type of proprietary investment with attractive return characteristics that are often overlooked by others, but where we are uniquely qualified to leverage our balance sheet and comprehensive platform in order to maximize the investment potential. Once fully integrated, we expect magicJack to generate a meaningful contribution to B. Riley’s cash flow and, consistent with our policy of returning capital to shareholders, lead to increased dividends for our shareholders in the future.”

"This merger reflects the successful completion of our strategic alternatives process which we believe maximizes shareholder value and will benefit all our loyal customers," said Don Bell, CEO of magicJack. "Jointly, we believe that there are significant synergistic opportunities that will result from this transaction that are complementary to magicJack’s platform.”

Closing Details

The closing of the transaction is subject to the receipt of certain regulatory approvals, the approval of the magicJack shareholders and the satisfaction of other closing conditions. The transaction is expected to close in the first half of 2018. B. Riley FBR, Inc. served as financial advisor to B. Riley. Sullivan & Cromwell LLP, Wilkinson Barker Knauer LLP and Gross Kleinhendler, Hodak, Halevy, Greenberg & Co. served as legal counsel to B. Riley. Bryan Cave LLP, Wiley Rein LLP and Yigal Arnon & Co. served as legal counsel and BofA Merrill Lynch acted as financial advisor for magicJack.¹

27. The Merger Consideration magicJack stockholders stands to receive if the Proposed Transaction is consummated is unfair and inadequate because, among other things, the intrinsic value of the magicJack is materially in excess of the amount offered given the Company’s prospects for future growth and earnings.

¹ magicJack VocalTec Ltd., Current Report (Form 8-K), at Exhibit 99.1 (Press Release dated November 9, 2017) (November 9, 2017).

28. For example, on August 9, 2017, the Company released its second quarter 2017 financial results. The release was highlighted by the fact that magicJack outperformed revenue expectations for the quarter. In addition, the Company also reported GAAP operating income of \$1.1 million for the quarter, \$4.4 million in Adjusted EBITDA for the quarter, and \$3.4 million in non-GAAP net income for the quarter.

29. On November 9, 2017, the same day the Company announced the Proposed Transaction, the Company also released its third quarter 2017 financial results. Notably, the Company's simultaneously outperformed revenue expectations for the fiscal quarter. Furthermore, the Company also improved on its second quarter 2017 financial results in several metrics, including \$4.0 million in GAAP operating income for the quarter, \$5.9 million in Adjusted EBITDA for the quarter, and \$4.2 million in Non-GAAP net income for the quarter.

30. In sum, it appears that magicJack is well-positioned for financial growth, and that the Merger Consideration fails to adequately compensate the Company's stockholders. It is imperative that Defendants disclose the material information they have omitted from the Proxy, discussed in detail below, so that the Company's stockholders can properly exercise their corporate suffrage rights and make a fully informed decision concerning whether to vote in favor of the Proposed Transaction.

B. The Materially Incomplete and Misleading Proxy Statement

31. On February 8, 2018, magicJack filed the Proxy Statement with the SEC in connection with the Proposed Transaction. The Proxy Statement solicits the Company's stockholders to vote in favor of the Proposed Transaction. Defendants were obligated to carefully review the Proxy Statement before it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions.

However, the Proxy Statement misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether to vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange Act.

Material Omissions Concerning magicJack's Projections

32. The Proxy Statement fails to disclose the estimated unlevered free cash flow projections expected to result from the magicJack Spark initiative for the years 2018 through 2022. *See* Proxy Statement 47. These unlevered free cash flows are material to the Company's stockholders. Indeed, BofA Merrill Lynch specifically utilized unlevered free cashflows in their *Discounted Cash Flow Analysis*.

33. Likewise, the Proxy Statement fails to disclose the magicJack TCJA-effected forecasts, including the Company's magicJack TCJA-effected unlevered free cash flows. *See* Proxy Statement 49. Similarly, these unlevered free cash flows are material to the Company's stockholders. In fact, the updated discounted cash flow ("DCF") analysis, which considered the TCJA-effected forecasts, returned the highest implied per share value for the Company between the three different DCF analyses that BofA Merrill Lynch rendered in its fairness opinion.

34. Investors are concerned, perhaps above all else, with the unlevered free cash flows of the companies in which they invest. Under sound corporate finance theory, the value of stock should be premised on the expected unlevered free cash flows of the corporation. Accordingly, the question that the Company's stockholders need to assess in determining whether to vote in favor of the merger is clear – is the Merger Consideration fair compensation given magicJack's expected unlevered free cash flows? Without unlevered free cash flow projections, the Company's stockholders will not be able to answer this question and assess the fairness of the Merger Consideration.

35. Failure to disclose the magicJack Spark initiative expected unlevered free cash flows is particularly troublesome in light of the fact that the Proxy Statement disclosed the Company's unlevered free cash flows *excluding* any expected benefits that would result from the magicJack Spark initiative. As a result, magicJack stockholders have been materially misled as to the true value of the Company.

36. This is further aggravated by the fact the Defendants decided to only disclose the Company's unlevered free cash flows that do not reflect the expected benefits of the magicJack Spark initiative and the effect of the TCJA on the Company, which depict a more pessimistic and reduced value of the Company's expected unlevered free cash flows. As a result, failure to disclose the magicJack Spark initiative and magicJack TCJA-effected unlevered free cash flows renders the Proxy Statement materially incomplete and misleading, as magicJack stockholders have been materially misled as to the true value of the Company and, as a result, are unable to make an informed decision concerning the fairness of the Merger Consideration.

37. If a proxy statement discloses financial projections and valuation information, such projections must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths.

38. Furthermore, complete disclosure of the above-mentioned information omitted from the financial projections is particularly important for magicJack's stockholders in light of the fact that the Company's stockholders are being asked to vote in favor of Proposed Transaction and, if the Proposed Transaction is consummated, magicJack's stockholders will be cashed-out and no longer be able to partake in the Company's future growth.

Material Omissions Concerning BofA Merrill Lynch's Financial Analysis

39. With respect to BofA Merrill Lynch's *Discounted Cash Flow Analysis*, the Proxy Statement fails to disclose the following key components used in their analysis: (i) magicJack's terminal value at the end of 2022; (ii) the inputs and assumptions underlying the calculation of the perpetuity growth rates ranging from (3.0)% to 0.0% used for magicJack; and (iii) the inputs and assumptions underlying the calculation of the discount rate range of 18.0% to 22.0% used for magicJack. *See* Proxy Statement 47.

40. Likewise, with respect to BofA Merrill Lynch's *Discounted Cash Flow Analysis* that also considered the expected benefits of the magicJack Spark initiative, the Proxy Statement fails to disclose the following key components used in their analysis: (i) the unlevered, after-tax free cash flows forecasted for the magicJack Spark initiative for the fiscal years 2018 through 2022; (ii) the terminal value for the magicJack Spark initiative at the end of 2022; (iii) the inputs and assumptions underlying the calculation of the perpetuity growth rates ranging from 2.0% to 5.0% used for the magicJack Spark initiative; and (iv) the inputs and assumptions underlying the calculation of the discount rate range of 18.0% to 22.0% used for the magicJack Spark initiative. *See* Proxy Statement 47.

41. Similarly, with respect to BofA Merrill Lynch's *Discounted Cash Flow Analysis* that considered the TCJA 21% federal corporate tax rate, the Proxy Statement fails to disclose the following key components used in their analysis: (i) the magicJack TCJA-effected unlevered, after-tax free cash flows forecasted for the fiscal years 2018 through 2022; (ii) the magicJack TCJA-effected terminal value at the end of 2022; (iii) the inputs and assumptions underlying the calculation of the perpetuity growth rates ranging from (3.0)% to 0.0%; (iv) the inputs and assumptions underlying the calculation of the discount rate range of 19.0% to 23.0%; and (v) the

inputs and assumptions underlying the selection of the 10% probably of success weighting to the magicJack spark initiative. *See* Proxy Statement 49.

42. These key inputs are material to magicJack's stockholders, and their omission renders the summary of BofA Merrill Lynch's DCF analyses materially incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a DCF analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value..." *Id.* As Professor Davidoff explains:

There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars.... This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion ***unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices.*** The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78.

43. In sum, the omission of the above-referenced information renders statements in the Proxy Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the Shareholder Vote, Plaintiff and the other members of the Class will be unable to make an informed decision regarding whether

to vote in favor of the Proposed Transaction, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

On Behalf of Plaintiff and the Class Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder

44. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

45. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that registration statement communications with shareholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

46. Defendants have issued the Proxy Statement with the intention of soliciting shareholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Proxy Statement and the use of their name in the Proxy Statement, which fails to provide critical information regarding, amongst other things: (i) the Company’s financial projections; (ii) the financial analyses performed by the Company’s financial advisor, BofA Merrill Lynch, in support of its fairness opinion; and (iii) the background process leading up to the Merger Agreement.

47. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from

the Proxy Statement, but nonetheless failed to obtain and disclose such information to magicJack stockholders although they could have done so without extraordinary effort.

48. Defendants knew or were negligent in not knowing that the Proxy Statement is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon most, if not all, of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction. Indeed, the Proxy Statement states that Defendants were privy to and had knowledge of the financial projections for both companies and the details surrounding discussions with other interested parties and BofA Merrill Lynch. Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Proxy Statement, rendering the sections of the Proxy Statement identified above to be materially incomplete and misleading. Indeed, the Individual Defendants were required to review BofA Merrill Lynch's valuation analyses in connection with their receipt of the fairness opinions, question BofA Merrill Lynch as to their derivation of fairness, and be particularly attentive to the procedures followed in preparing the Proxy Statement and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

49. Defendants were, at the very least, negligent in preparing and reviewing the Proxy Statement. The preparation of a registration statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. Defendants were negligent in choosing to omit material information from the Proxy Statement or failing to notice the material omissions in the Proxy Statement upon reviewing it, which they were required to do carefully. Indeed, Defendants were intricately involved in the process leading up to the signing of

the Merger Agreement, the preparation and review of strategic alternatives, and the review of both companies' financial projections.

50. The misrepresentations and omissions in the Proxy Statement are material to Plaintiff and the Class, deprive them of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the shareholder vote on the Proposed Transaction. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

On Behalf of Plaintiff and the Class Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

51. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

52. The Individual Defendants acted as controlling persons of magicJack within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of magicJack's, and participation in and/or awareness of the magicJack's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of magicJack, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

53. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to

and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

54. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of magicJack, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Proxy Statement.

55. In addition, as the Proxy Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

56. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

57. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

58. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands injunctive relief in his favor and in favor of the Class and against Defendants as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as Class representative;

B. Enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Transaction, unless and until the Company adopts and implements a procedure or process to obtain a merger agreement providing the best possible terms for shareholders;

C. Rescinding, to the extent already implemented, the Merger or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Individual Defendants to account to Plaintiff and the Class for all damages suffered as a result of the Individual Defendants wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 8, 2018

Respectfully submitted,

**SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP**

s/ Scott R. Shepherd

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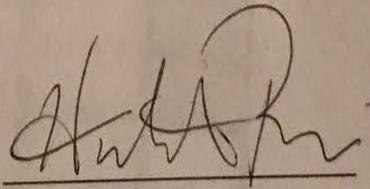
CERTIFICATION OF PROPOSED LEAD PLAINTIFF

I, Hunter RAINES ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft of the complaint and has authorized the filing of a complaint substantially similar to the one reviewed.
2. Plaintiff selects Monteverde & Associates PC and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.
3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
5. Plaintiff sets forth in the attached chart all the transactions in the security that is the subject of the complaint during the class period specified in the complaint.
6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, unless otherwise specified below.
7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 7 day of March, 2017.



Signature

