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17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 AliveCor, Inc.,

21 Plaintiff,

22 v.

23 Apple Inc.,

24 Defendant.

CASE NO. 4:21-CV-03958-JSW-SK

**DEFENDANT APPLE INC.'S MOTION TO
DISMISS FIRST AMENDED COMPLAINT**

Date: December 9, 2022
Time: 9:00 a.m.
Place: Courtroom 5, 2nd Floor

The Honorable Jeffrey S. White

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 9, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the U.S. District Court for the Northern District of California, Courtroom 5, 2nd Floor, Federal Courthouse, Defendant Apple Inc., through its undersigned counsel, will, and hereby does, move to dismiss in part Plaintiff AliveCor, Inc.'s First Amended Complaint (Dkt. 106) for failure to state a claim upon which relief can be granted. This Motion is supported by this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the accompanying Request for Judicial Notice; the Proposed Order filed herewith; the pleadings and papers on file herein; and such other matters that may be presented to the Court at the hearing.

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STATEMENT OF ISSUES

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2 1. Whether AliveCor’s challenge to Apple’s petitions to the U.S. Patent and Trademark Office
3 (“USPTO”) is barred under the *Noerr-Pennington* doctrine.

4 2. Whether AliveCor fails to support its purported claim challenging Apple’s petitions to the
5 USPTO with sufficient allegations of antitrust injury or standing.

6 3. Whether AliveCor can state a separate theory of damages arising out of Apple’s petitions to
7 the USPTO where those petitions do not relate to the other alleged anticompetitive conduct.

8 4. Whether AliveCor’s new allegations related to Apple’s petitions to the USPTO should be
9 stricken pursuant to California’s anti-SLAPP statute, with reasonable fees awarded to Apple.

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27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. BACKGROUND..... 2

III. LEGAL STANDARD..... 5

IV. ARGUMENT..... 5

 A. Apple’s Alleged Litigation Conduct Does Not Violate The Antitrust Laws 5

 1. No Exception To The *Noerr-Pennington* Doctrine Applies Here 5

 2. AliveCor Has Not Stated A Plausible Claim Based On Apple’s
 Litigation Conduct 10

 B. AliveCor Cannot Claim Damages For Apple’s Litigation Conduct 11

 C. The New Allegations Should Be Stricken Pursuant To California’s
 Anti-SLAPP Law 14

V. CONCLUSION 15

1

2

3

4

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6

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8

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11

12

13

14

15

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18

19

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23

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25

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27

28

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<i>Amarel v. Connell</i> , 102 F.3d 1494 (9th Cir. 1996).....	10
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 2012 WL 2571719 (N.D. Cal. June 30, 2012)	12
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5
<i>Assigned Container Ship Claims, Inc. v. Am. President Lines, Ltd.</i> , 784 F.2d 1420 (9th Cir. 1986).....	5
<i>Aventis Pharma S.A. v. Amphastar Pharms., Inc.</i> , 2009 WL 8727693 (C.D. Cal. Feb. 17, 2009).....	7, 12, 13
<i>Avery Dennison Corp. v. Acco Brands, Inc.</i> , 2000 WL 986995 (C.D. Cal. Feb. 22, 2000).....	7
<i>B&G Foods N. Am., Inc. v. Embry</i> , 29 F.4th 527 (9th Cir. 2022)	7, 8, 9
<i>Baral v. Schnitt</i> , 1 Cal. 5th 376 (2016)	14, 15
<i>Boone v. Redev. Agency of City of San Jose</i> , 841 F.2d 886 (9th Cir. 1988).....	6, 9
<i>Bresnick v. U.S. Vitamin Corp.</i> , 139 F. 2d 239 (2d Cir. 1943).....	11
<i>Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.</i> , 429 U.S. 477 (1977).....	10
<i>Cal. Motor Transp. Co. v. Trucking Unlimited</i> , 404 U.S. 508 (1972).....	7, 9
<i>Cardinal Chem. Co. v. Morton Int'l, Inc.</i> , 508 US 83.....	11
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<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016).....	3

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