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 BANK LEUMI. USA

8

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11

12 BANK LEUMI, USA,

13 Plaintiff,

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15 vs.

16 MIRAMAX DISTRIBUTION  
 17 SERVICES, LLC; AND DOES 1-10,  
 18 INCLUSIVE,

19 Defendants.

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Case No. 2:18 cv 7574

**COMPLAINT FOR:**

1. BREACH OF CONTRACT
2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
3. INTENTIONAL INTERFERENCE WITH CONTRACT
4. DECLARATORY RELIEF

**DEMAND FOR JURY TRIAL**

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over this action for state law  
3 claims based on complete diversity of citizenship under 28 U.S.C. §1332(a)(1). There  
4 is complete diversity between the parties, as alleged below, and the amount in  
5 controversy exceeds seventy-five thousand dollars (\$75,000.00).

6 2. This Court has personal jurisdiction over Miramax because it resides  
7 and/or conducts business in the State of California, and because it has consented to  
8 personal jurisdiction in California by virtue of the forum-selection clause contained  
9 in § 10.7 of the Distributor Interparty Agreement (as hereinafter described) governing  
10 the parties’ relationship, which states: “Any matter arising under this Agreement  
11 (subject to the arbitration provisions hereof) and including, without limitation, any  
12 suit to enforce an award under the arbitration provisions hereof, must be finally  
13 adjudged or determined in any court or courts of the State of California or of the  
14 United States of America, in Los Angeles County, California, and the parties hereto  
15 hereby submit generally and unconditionally and exclusively to the jurisdiction of  
16 such courts and of any of them in respect to any such matter and consent to service of  
17 process by any means authorized by California law.”

18 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because  
19 Miramax resides in and maintains its principal place of business in Los Angeles, and  
20 because it has consented to venue in this County by virtue of the forum selection  
21 clause contained in the contract governing the parties’ relationship as alleged in  
22 paragraph 2, above.

23 4. Plaintiff has filed a related case in the Central District of California,  
24 Western Division, entitled *Bank Leumi, USA v. Open Road Films, LLC, et al.* in which  
25 Open Road Films, LLC (“Open Road”), Global Road Entertainment, LLC (“Global  
26 Road”), and Tang Media Partners, LLC (“Tang”), third parties from the perspective  
27 of this case, are defendants. None of the defendants named in that action is  
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1 incorporated in, or has its principal place of business in New York, and their presence  
2 in this action would not defeat diversity jurisdiction.

3  
4 **THE PARTIES**

5 5. Plaintiff Bank Leumi is a corporation organized and existing under the  
6 laws of the State of New York with its principal place of business in New York, New  
7 York.

8 6. Plaintiff is informed and believes, and on that basis alleges, that  
9 Defendant Miramax Distribution Services, LLC (“Miramax”) is a limited liability  
10 company organized and existing under the laws of the State of Delaware with its  
11 principal place of business in Los Angeles, California. Miramax is a motion picture  
12 distributor.

13 7. Plaintiff is presently unaware of the true names and capacities of  
14 defendants Does 1 through 10, inclusive, and accordingly sues said defendants by  
15 such fictitious names. Plaintiff is informed and believes, and on that basis alleges,  
16 that each of the fictitiously named defendants is responsible in some manner for the  
17 occurrences alleged herein. Plaintiff will amend this complaint to state their true  
18 names and capacities when such names have been ascertained.

19 8. Plaintiff is informed and believes, and on that basis alleges, that at all  
20 times mentioned herein, each defendant acted as the actual or ostensible agent,  
21 employee and/or co-conspirator of each other defendant and third parties Open Road,  
22 Global Road and Tang and, in performing the actions alleged herein, acted in the  
23 course and scope of such agency, employment and/or conspiracy. Plaintiff is further  
24 informed and believe, and on that basis alleges, that each defendant succeeded to or  
25 assumed the liabilities, and/or ratified the actions, of each other defendant with respect  
26 to the matters alleged herein.

1 **FACTUAL ALLEGATIONS**

2 9. In 2013, a motion picture production company named Good Films  
3 Enterprises, LLC (“Good Films” or “Borrower”) acquired rights to produce a motion  
4 picture based on Randall Sullivan’s non-fiction novel, *LAabyrinth*, which chronicled  
5 corruption in the Los Angeles Police Department surrounding its investigation into  
6 the murders of rappers Tupac Shakur and Biggie Smalls. Johnny Depp was cast in  
7 the lead role as the detective heading the investigation.

8 10. Good Films brought the project to the attention of Miramax and another  
9 motion picture distributor, Open Road which, Plaintiff is informed and believes, is a  
10 predecessor-in-interest to Global Road. (Miramax, Open Road and Global Road are  
11 collectively referred to as the “Distributors.”) The Distributors agreed to finance the  
12 development and production of a feature-length theatrical motion picture based upon  
13 *LAabyrinth* (the “Picture”) and to distribute the Picture in the United States and other  
14 territories around the world. Accordingly, Good Films entered into a Production  
15 Financing and Distribution Agreement, dated as of November 4, 2016, with Miramax  
16 and Open Road (the “Distribution Agreement”). Pursuant to the Distribution  
17 Agreement, the Distributors agreed to distribute the Picture and to pay minimum  
18 guaranteed sums to Good Films (“Minimum Guarantees”) upon the delivery of the  
19 completed motion picture. The title of the Picture was changed to *City of Lies*.

20 11. In particular, under the Distribution Agreement, Good Films granted  
21 Open Road, *inter alia*, certain exclusive rights to distribute the Picture (i) in domestic  
22 territories, *i.e.*, the United States and related territories (not including free television  
23 rights which, as alleged below, were granted to Miramax) (the “Open Road Domestic  
24 Rights”); (ii) in certain international territories (the “Open Road International  
25 Rights”); and (iii) for airlines (the “Airline Rights”). In consideration for this grant  
26 of distribution rights, Open Road agreed, *inter alia*, (i) to pay a total minimum  
27 guarantee of \$5,400,000 (the “Open Road Minimum Guarantee”), consisting of  
28 \$5,050,000 for the Open Road Domestic Rights and \$350,000 for the Airline Rights);

1 and (ii) to release the Picture theatrically in the domestic territories in no fewer than  
2 1,800 theatres with an expenditure of no less than \$10,000,000 for “P&A” expenses,  
3 *i.e.*, certain marketing and distribution expenses (the “Release Commitment”).

4 12. Furthermore, under the Distribution Agreement, Good Films granted  
5 Miramax, *inter alia*, certain distribution rights for free television in the domestic  
6 territories (the “Miramax Domestic Rights”). In consideration for this grant of rights,  
7 Miramax agreed, *inter alia*, to pay a total minimum guarantee of \$4,250,000 (the  
8 “Miramax Minimum Guarantee”). In a separate transaction, Good Films granted  
9 Miramax distribution rights in certain international territories for a minimum  
10 guarantee of \$1,000,000 (the “Miramax International Guarantee”).

11 13. As part of the complex financing for the production of the Picture, Good  
12 Films obtained a loan from Bank Leumi (the “Production Loan”). As of December  
13 16, 2016, Good Films, as “Borrower,” and Bank Leumi, as “Lender,” entered into a  
14 Loan and Security Agreement (the “Loan Agreement”) to finance part of the cost of  
15 production and delivery of the Picture. Pursuant to the Loan Agreement, Bank Leumi  
16 agreed to lend Good Films up to \$23,189,227. In consideration, Good Films agreed,  
17 *inter alia*, to repay all amounts advanced by Bank Leumi with interest, and granted  
18 Bank Leumi a first-priority security interest in all of Good Films’ rights to and interest  
19 in the Picture, including all distribution rights and contracts and all proceeds thereof.

20 14. Thus, the obligations of Miramax and Open Road under the Distribution  
21 Agreement were part of the security for the Production Loan. To protect Bank  
22 Leumi’s security interest, Miramax and Open Road agreed to pay their Minimum  
23 Guarantees directly to Bank Leumi. Accordingly, Bank Leumi, Good Films,  
24 Miramax and Open Road (and other parties) entered into a Distributor Interparty  
25 Agreement dated as of December 16, 2016 (the “IPA”). A true and correct copy of  
26 the IPA is attached as Exhibit 1.

27 15. Pursuant to the IPA, Open Road agreed, *inter alia*, to pay the Open Road  
28 Minimum Guarantee of \$5,400,000 directly to Bank Leumi. The only condition to

1 payment of the Open Road Minimum Guaranty is the delivery of certain film  
2 materials.

3 16. Also pursuant to the IPA, Miramax agreed, *inter alia*, to pay the  
4 Miramax Minimum Guarantee of \$4,250,000 directly to Bank Leumi. The only  
5 condition to payment of the Miramax Minimum Guaranty is the delivery of certain  
6 film materials to Open Road; delivery to Open Road constitutes delivery to Miramax  
7 as well. Miramax waived all defenses to payment other than such delivery, including  
8 any defense based on a breach by Good Films of the Distribution Agreement.

9 17. Article 3 of the IPA establishes the delivery procedures. On February  
10 13, 2018, Good Films delivered to Open Road the “Mandatory Delivery Materials”  
11 as that term is defined in the IPA, and on March 15, 2018, Good Films delivered to  
12 Open Road the “Complete Delivery Materials,” as that term is defined in the IPA.  
13 Consistent with its obligation under the IPA, Good Films provided a notice to the  
14 Distributors stating that delivery had been effected.

15 18. The delivery procedures under the IPA contain a process for inspection  
16 of the delivery materials, objection if any materials were not delivered or did not  
17 satisfy the delivery requirements, and cure of any deficiencies in delivery. Open Road  
18 objected twice to aspects of delivery, and Good Films effected cures of all alleged  
19 deficiencies. Thereafter, neither Open Road nor Miramax objected further. Under  
20 § 3.2(a) of the IPA, the Distributors’ failure to timely object to delivery after tender  
21 or cure means that “delivery shall then be conclusively deemed to have been  
22 effected.” Consequently, “Mandatory Delivery” was conclusively deemed effected  
23 on June 19, 2018, and “Complete Delivery” was conclusively deemed effected on  
24 July 26, 2018. Thus, the only condition to payment of the Minimum Guarantees has  
25 been satisfied.

26 19. On July 10, 2018, Good Films informed Bank Leumi that Global Road  
27 had confirmed it had accepted delivery and was “readying payment.”  
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1           20.    On July 11, 2018, Bank Leumi received an email from an executive at  
2 Miramax stating: “I’ve been told we are also good to go on payment. I’ll let you  
3 know if it’ll be today or tomorrow later today.” However, the next day, Miramax  
4 informed Bank Leumi: “I hear ... that Global Road has not made their payment yet.  
5 We are waiting to hear from Global Road. I hope to get back to you soon.”

6           21.    However, neither Miramax nor Open Road has paid the balance of its  
7 Minimum Guarantee due upon delivery of the Picture (they did pay deposits of 10%  
8 of their Minimum Guarantees). Furthermore, Open Road has informed Good Films  
9 that it does not intend to release the Picture at all, thereby failing to satisfy its Release  
10 Commitment.

11           22.    On July 17, 2018, Good Films’ representatives had a telephone  
12 conference with Robert Friedman, the Chief Executive Officer of Open Road, Global  
13 Road, and Tang, in which Mr. Friedman said that Global Road “is not going to accept  
14 the movie because of the current environment surrounding it” and that the company  
15 did not intend to honor its payment obligations.

16           23.    On July 30, 2018, Bank Leumi sent a letter to Open Road stating that it  
17 had not received the payment due from Open Road under the IPA, requesting payment  
18 in the amount of \$4,860,000, and writing that if it did not receive a response, it would  
19 assume that Open Road did not intend to comply with its obligation. Open Road did  
20 not respond.

21           24.    On August 6, 2018, Bank Leumi’s counsel sent a letter to Open Road  
22 stating that delivery had been effected, payment of the Open Road Minimum  
23 Guarantee had not been received, and that Bank Leumi had been informed by Good  
24 Films that Open Road did not intend to release the Picture or otherwise take the  
25 actions necessary to satisfy the Release Commitment. Accordingly, Bank Leumi  
26 requested that Open Road confirm that Open Road would pay the Open Road  
27 Minimum Guarantee and take the actions necessary to satisfy the Release  
28 Commitment. Counsel wrote that a failure to respond would be deemed by Bank

1 Leumi to be a repudiation by Open Road of its obligation to pay the Open Road  
2 Minimum Guarantee and confirmation that it would not take the actions necessary to  
3 satisfy the Release Commitment. Open Road did not respond.

4 25. On August 24, 2018, Bank Leumi's counsel sent another letter to Open  
5 Road, stating that Open Road had not responded to counsel's letter of August 6, had  
6 not paid the amounts due under the IPA and, accordingly, pursuant to Paragraph 5.1(i)  
7 of the IPA, Open Road was in default and all of its rights and interests in the Picture  
8 had automatically divested and terminated. Counsel requested that Open Road  
9 confirm the divestiture and termination, promptly return to Good Films all delivery  
10 materials that had been delivered to it, and pay the amounts due under the IPA. To  
11 date, Open Road has not responded.

12 26. On July 25, 2018, Bank Leumi sent a letter to Miramax stating that  
13 delivery of the Picture to Miramax had been completed but that Bank Leumi had not  
14 received the payment due from Miramax under the IPA, and requesting payment in  
15 the amount of \$3,825,000.

16 27. On July 27, 2018, counsel for Miramax responded to Bank Leumi's letter  
17 of July 25. Counsel wrote that it had been informed by Global Road "f/k/a" Open  
18 Road that it is not accepting delivery of the Picture and, "[i]nsofar as Global Road is  
19 not accepting delivery, Miramax is not accepting delivery." Counsel further wrote  
20 that there were "significant problems with the production which have significantly  
21 devalued the Picture, including, without limitation, the highly publicized alleged off-  
22 screen conduct of Johnny Depp, as well as a lawsuit filed against Mr. Depp and the  
23 production because he allegedly physically attacked a crew member on the set of the  
24 Picture." Then, purportedly relying on the terms of the Distribution Agreement,  
25 Miramax's counsel concluded that "no payment is due."

26 28. On August 8, 2018, Bank Leumi's counsel sent a letter to Miramax  
27 stating that delivery had been effected and payment of the Miramax Minimum  
28 Guarantee had not been received. Accordingly, counsel requested that Miramax



1 confirm that Miramax would pay the Miramax Minimum Guarantee or, if Miramax  
2 did not intend to do so, to state the basis upon which Miramax asserts that it is not  
3 obligated to pay.

4 29. On August 10, 2018, and in subsequent correspondence on August 17  
5 and 22, Miramax’s counsel responded to the effect that Miramax would not pay the  
6 Miramax Minimum Guarantee because it was informed by Global Road that Global  
7 Road had refused delivery and there were “unresolved objections/challenges to  
8 delivery,” and because the lack of a “wide domestic theatrical release of the Picture”  
9 diminished the value of Miramax’s rights under the Distribution Agreement. Neither  
10 Miramax nor its counsel ever identified any specific objection to, or deficiency in,  
11 delivery under the IPA, and neither ever identified any provision of the IPA that  
12 required a theatrical release of the Picture or anything other than delivery as a  
13 condition to payment.

14 30. On August 24, 2018, Bank Leumi’s counsel sent another letter to  
15 Miramax, stating that Miramax had not paid the amount due under the IPA and,  
16 accordingly, pursuant to Paragraph 5.1(i) of the IPA, Miramax was in default and all  
17 of its rights and interests in the Picture had automatically divested and terminated.  
18 Counsel requested that Miramax confirm the divestiture and termination, promptly  
19 return to Good Films all delivery materials that had been delivered to it, and pay the  
20 amount due under the IPA, *i.e.*, the balance of the Miramax Minimum Guarantee of  
21 \$3,825,000. To date, Miramax has not responded.

22 31. To date, neither Open Road nor Miramax has paid its Minimum  
23 Guarantee. However, neither has stated any defense to payment under the IPA. And,  
24 as of this filing, Bank Leumi is owed principal of \$19,427,101.87, along with interest  
25 of \$273,533.62, for a total of \$19,700,635.49, under the Loan Agreement.

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**FIRST CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

32. Plaintiff incorporates by reference each and all of the allegations contained in paragraphs 1 through 31 hereof, as if fully set forth herein.

33. The IPA is a valid and enforceable written contract between Bank Leumi and Miramax, among other parties.

34. Bank Leumi has performed all conditions and covenants to be performed by it under the IPA except to the extent its performance was excused. Furthermore, the sole condition to Miramax's performance under the IPA has been satisfied, *i.e.*, delivery has been effected; in fact, delivery has been conclusively deemed to have been effected. Bank Leumi has demanded that Miramax perform its obligations under the IPA, but it has failed and refused without excuse.

35. Miramax has breached the IPA by, *inter alia*, failing and refusing to pay the balance of the Miramax Guaranty in the amount of \$3,825,000.

36. As an actual and proximate result of Miramax's breach of contract, Bank Leumi has been damaged in the amount of \$3,825,000, together with interest thereon.

37. The IPA provides that the prevailing party in any action related to the agreement shall be entitled to recover its reasonable attorneys' fees incurred in connection therewith. Therefore, Bank Leumi is entitled to recover its attorneys' fees and costs incurred herein.

**SECOND CAUSE OF ACTION**  
**(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

38. Plaintiff incorporates by reference each and all of the allegations contained in paragraphs 1 through 37 hereof, as if fully set forth herein.

39. The IPA contains an implied covenant of good faith and fair dealing which requires that the parties deal with each other in good faith to accomplish the

1 purposes of the contract and not engage in conduct to deprive another party of the  
2 benefits of the contract.

3 40. Miramax has breached the implied covenant of good faith and fair  
4 dealing in the IPA by, *inter alia*, (i) refusing to accept delivery despite having no valid  
5 contractual basis for doing so; (ii) asserting that there were “unresolved  
6 objections/challenges to delivery;” (iii) disparaging the Picture, decreasing the value  
7 of the Picture and the Bank’s collateral, by claims about Johnny Depp and the value  
8 of the Picture; (iv) refusing to distribute the Picture; and (vi) substantially delaying  
9 informing Bank Leumi and Good Films that it did not intend to honor its obligations  
10 under the IPA, thereby diminishing the resale value of the Picture and impeding Good  
11 Film’s ability to repay the Production Loan.

12 41. As an actual and proximate result of Miramax’s breaches of the implied  
13 covenant of good faith and fair dealing, Bank Leumi has been damaged in an amount  
14 to be proved at trial, together with interest thereon.

15 42. The IPA provides that the prevailing party in any action related to the  
16 agreement shall be entitled to recover its reasonable attorneys’ fees incurred in  
17 connection therewith. Therefore, Bank Leumi is entitled to recover its attorneys’ fees  
18 and costs incurred herein.

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### **THIRD CAUSE OF ACTION**

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#### **(INTENTIONAL INTERFERENCE WITH CONTRACT)**

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23 43. Plaintiff incorporates by reference each and all of the allegations  
24 contained in paragraphs 1 through 42 hereof, as if fully set forth herein.

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25 44. Miramax was aware that Bank Leumi had a valid, enforceable contract  
26 – *i.e.*, the Loan Agreement – with Good Films.

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27 45. Miramax was obligated to act reasonably and in good faith toward Bank  
28 Leumi. But to protect its reputation or for other improper motives, it falsely  
represented that it was not accepting or releasing the Picture because of objections to

1 delivery and because of issues involving Johnny Depp, both of which are false.  
2 Miramax knew that it would thereby make it impossible for Good Films to repay the  
3 Production Loan and that it would diminishing the value of the Picture and interfere  
4 with re-selling rights in the Picture.

5 46. In particular, Miramax interfered with this contract by, *inter alia*, (i)  
6 refusing to accept delivery, despite having no valid contractual basis for doing so; (ii)  
7 misrepresenting that it had not accepted delivery because of deficiencies in delivery,  
8 asserting that there were “unresolved objections/challenges to delivery” and the value  
9 of the Picture was diminished because of allegations against Johnny Depp; (iii)  
10 disparaging the Picture, decreasing the value of the Picture and the Bank’s collateral,  
11 by claims about Johnny Depp and the value of the Picture; (iv) refusing to distribute  
12 the Picture and misrepresenting the reason therefor; and (v) concealing from Bank  
13 Leumi and Good Films when it determined that it did not intend to honor its  
14 obligations under the IPA, thereby diminishing the resale value of the Picture and  
15 further impeding Good Film’s ability to repay the Production Loan.

16 47. As a result of Miramax’s actions, it has become impossible for Good  
17 Films to repay the Production Loan and, therefore, Good Films is or will be in breach  
18 of the Loan Agreement.

19 48. As an actual and proximate result of Miramax’s interference with  
20 contract, Bank Leumi has been damaged in an amount to be proved at trial, together  
21 with interest thereon.

22 49. In doing the acts alleged herein, Miramax acted despicably, with  
23 oppression, fraud and malice, and with willful and conscious disregard of Bank  
24 Leumi’s rights. Therefore, Bank Leumi is entitled to recover exemplary and punitive  
25 damages in an amount to be proved at trial.

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**FOURTH CAUSE OF ACTION**

**(DECLARATORY RELIEF)**

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3 50. Plaintiff incorporates by reference each and all of the allegations  
4 contained in paragraphs 1 through 49 hereof, as if fully set forth herein.

5 51. An actual controversy has arisen and now exists between Plaintiff, on  
6 the one hand, and Miramax, on the other hand, concerning their respective rights and  
7 interests with respect to the IPA, the Picture, and the distribution rights for the Picture.  
8 Plaintiff contends that all of Miramax's rights and interests under the IPA, including  
9 all rights to distribute the Picture domestically and all rights to film materials for such  
10 distribution of the Picture, have been divested and terminated. Plaintiff is informed  
11 and believes, and on that basis alleges, that Miramax denies Plaintiff's contentions.

12 52. Plaintiff seeks a judicial determination of the parties' rights and interests  
13 in and to the Picture, including that Miramax has no rights or and interests under the  
14 IPA, no rights to distribute the Picture domestically, and no rights to any film  
15 materials for such distribution.

16 53. A judicial declaration is necessary and appropriate under the  
17 circumstances so that Plaintiff and Miramax may ascertain their rights, interests,  
18 obligations, and duties with respect to foregoing and to avoid a multiplicity of actions.

19  
20 WHEREFORE, Plaintiff Bank Leumi, USA prays for a judgment against  
21 Defendant Miramax Distribution Services, LLC as follows:

- 22 1. For damages in an amount to be proved at trial, together with interest  
23 thereon;  
24 2. For punitive damages in an amount to be proved at trial;  
25 3. For an award of reasonable attorneys' fees and costs;  
26 4. For declaratory relief; and  
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5. For any and all other relief the Court deems just and proper.

Dated: August 29, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By:

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**REQUEST FOR JURY TRIAL**

Plaintiff Bank Leumi hereby demands a trial by jury on all issues.

Dated: August 29, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By: /s/ Gary E. Gans

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