

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BLACKROCK MULTI-SECTOR INCOME :
TRUST, :

Plaintiff, :

- against - :

AVIRON GROUP, LLC, AVIRON CAPITAL, :
LLC, AVIRON PICTURES, LLC, AVIRON 1701, :
LLC, AVIRON 1702, LLC, AVIRON 1705, LLC, :
AVIRON 1706, LLC, AVIRON 1801, LLC, MAA :
RELEASING, LLC, AVIRON RELEASING, LLC, :
and WILLIAM SADLEIR, :

Defendants. :
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COMMERCIAL DIVISION

Index No. 657496/2019

Plaintiff designates New York County as
the place of trial. The basis of venue is
C.P.L.R. § 501.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:


YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve
a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the Plaintiff's attorney within 20 days after service of this summons, exclusive of
the day of service (or within 30 days after service is complete if this summons is not personally
delivered to you within the State of New York); and in case of your failure to appear or answer,
judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
December 17, 2019

Respectfully submitted,

SIDLEY AUSTIN LLP

By:


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TO:

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William Sadleir
9135 Hazen Drive
Beverly Hills, CA 90210

Deadline

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BLACKROCK MULTI-SECTOR INCOME TRUST,	: COMMERCIAL DIVISION
	:
Plaintiff,	: Index No. <u>657496/2019</u>
	:
- against -	:
	: <u>COMPLAINT</u>
AVIRON GROUP, LLC, AVIRON CAPITAL, LLC, AVIRON PICTURES, LLC, AVIRON 1701, LLC, AVIRON 1702, LLC, AVIRON 1705, LLC, AVIRON 1706, LLC, AVIRON 1801, LLC, MAA RELEASING, LLC, AVIRON RELEASING, LLC, and WILLIAM SADLEIR,	:
	:
Defendants.	:
	:
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Plaintiff BlackRock Multi-Sector Income Trust, by its attorneys, Sidley Austin LLP, as and for its Complaint in this action alleges as follows based upon its personal knowledge and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This emergency action for preliminary and permanent injunctive relief and declaratory judgment arises out of Defendants’ fraud and gross mismanagement of the Aviron Entities (as defined below), and the resulting grave threat to the value of Plaintiff’s investment in the Aviron Entities.
2. Plaintiff BlackRock Multi-Sector Income Trust (the “Fund”) is a non-diversified, closed-end mutual fund. The Fund’s goal is to deliver attractive risk-adjusted returns to its investors.
3. Defendants Aviron Group, LLC (“Aviron Group”), Aviron Capital, LLC (“Aviron Capital”), Aviron Pictures, LLC (“Aviron Pictures”), Aviron Releasing, LLC (“Aviron

Releasing”), Aviron 1701, LLC (“Aviron 1701”), Aviron 1702, LLC (“Aviron 1702”), Aviron 1705, LLC (“Aviron 1705”), Aviron 1706, LLC (“Aviron 1706”), Aviron 1801, LLC (“Aviron 1801”), and MAA Releasing, LLC (“MAA”), presumably together with other related “Aviron” subsidiaries and affiliates (collectively, the “Aviron Entities”), acquire, market, and distribute theatrical films in North America.

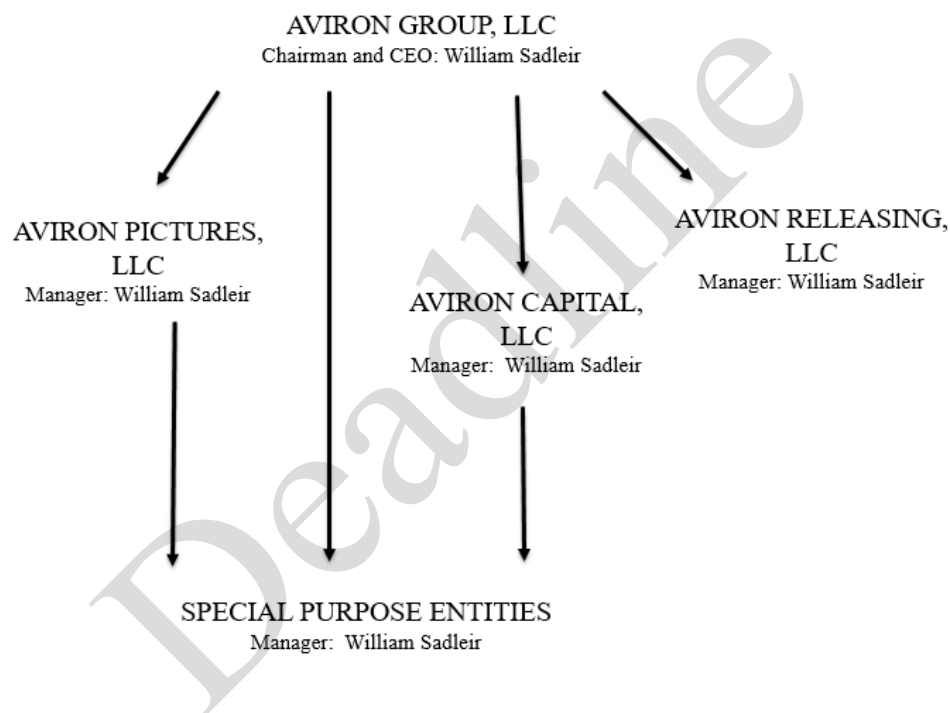
4. Upon information and belief, Aviron Group is (i) the parent company of the Aviron Entities and (ii) the legal and beneficial owner of 100% of the equity of Aviron Capital, Aviron Pictures, and Aviron Releasing (and is thus the “Sole Member” of each). Section 10(b) of the LLC Agreements for each of Aviron Capital and Aviron Pictures provide that the Sole Member of each entity may remove the Manager of each entity “at any time” and “for any reason or no reason.”

5. Upon information and belief, Aviron Group, Aviron Capital, and Aviron Pictures, in turn (whether directly or indirectly) own 100% of the equity of several special purpose entities, which are allegedly created in tandem with each planned or purported film in which the Aviron Entities invest. Plaintiff understands that these include (i) Aviron 1701, (ii) Aviron 1702, (iii) Aviron 1705, (iv) Aviron 1706, (v) Aviron 1801, and (vi) MAA (collectively the “Special Purpose Entities”). Sadleir is the Manager of each of the Special Purpose Entities. Each of the Special Purpose Entities owns the rights and title to licensing fees from motion pictures that are pledged to the Fund. Certain of the Special Purpose Entities are listed as debtors on the Fraudulent Amendments, as defined herein.

6. William Sadleir owns (whether directly or indirectly) and manages the Aviron Entities. Sadleir is the President of Aviron Group, and purportedly Chairman and CEO of

Aviron Pictures.¹ Sadleir and an affiliated entity, Temerity Trust Management, LLC (“Temerity”), own 100% of the equity of the Aviron Entities’ parent, Aviron Group. Upon information and belief, Temerity is Sadleir’s personal, private wealth management vehicle, jointly owned or controlled, directly or indirectly, by Sadleir and/or his wife.

7. Upon information and belief, the following chart illustrates the structure of the Aviron Entities:



8. The Fund’s relationship with the Aviron Entities began in 2015 under a Credit and Security Agreement between the Fund, as lender, and Aviron Capital, as borrower (as amended, the “Credit Agreement”) and an Equity Pledge Agreement (as amended, “the Pledge Agreement”) and various related agreements. In short, under those agreements the Fund agreed to extend Aviron Capital credit for the financing of the distribution of motion pictures. The credit

¹ See <http://avironpictures.com/#team>.

extended was secured by, among other things, Aviron Group's pledge of 100% of the equity in Aviron Capital and Aviron Pictures (which in turn own many of the Special Purpose Entities through ownership of each of their outstanding equity) as collateral, as well as Aviron Group's voting rights in those two entities should an Event of Default occur. As is customary, the collateral pledge was perfected by the filing of UCC-1 financing statements against Aviron Group in the office of the Secretary of State of the State of Delaware.

9. In 2017, the Fund and Aviron Capital entered into a \$75,000,000 Note Purchase and Security Agreement (as amended, the "NPA") to refinance the financing arrangements under the Credit Agreement and provide capacity to finance the distribution of additional motion pictures. Via subsequent letter agreements entered in March 2019 (the "Funding Agreements," as defined below), the Fund also agreed to further finance the distribution of another motion picture.

10. Aviron Group's pledge of its equity in Aviron Capital and Aviron Pictures remained in place to secure the obligations under the NPA and the Funding Agreements. Aviron Capital further agreed in the NPA that the Fund's "Collateral" would "include all of the Issuer's right, title, and interest in and to," among other things, "100% of the equity interests issued by each Qualifying Picture SPV now owned or hereafter acquired by" Aviron Capital. Aviron Capital's obligations under the NPA and the Funding Agreements are also secured by other specific collateral, including Aviron Capital's "right, title, and interest" in specific revenue streams from certain motion pictures. These arrangements were likewise perfected by the filing of UCC-1 financing statements against certain of the Aviron Entities in the office of the Secretary of State of the State of Delaware.

11. The Aviron Entities have since failed to meet their obligations to the Fund. As the Fund notified Aviron Group in July 2019, various identified Events of Default (as defined in the NPA, and including among other things a failure to repay the Fund as agreed) have occurred under the NPA and the Funding Agreements. Those Events of Default have not been waived or corrected and are continuing. As a result, the Fund has the right to, among other things, control Aviron Group's 100% equity stake in each of Aviron Capital and Aviron Pictures pursuant to the Pledge Agreement.

12. The situation has since worsened severely. The Fund recently discovered that the Aviron Entities have purported to sell or otherwise finance several of the motion picture rights or related receivables that were pledged as collateral to the Fund. These actions were facilitated by the Aviron Entities' filing of fourteen UCC-3 amendments that operated to delete the purportedly sold or financed collateral from the Fund's documented, perfected collateral (the "Fraudulent Amendments"). Any such filing, however, would require an authorized release from the Fund, indicating that its lien is released and that UCC-3 amendments could be filed. The Fund has not authorized or consented to these filings, nor authorized or consented to these recent sales of collateral.

13. In investigating this conduct, Plaintiff's counsel contacted Defendants' transaction counsel and requested copies of any such purported releases. Defendants' transaction counsel provided five such alleged releases, all purporting to date from July 2019 (the "Fraudulent Releases"). As outlined in the contemporaneously filed Affidavits of Randy Robertson and Mark Volosov, these documents are forgeries. It appears that Sadleir, the Aviron Entities' officers or employees, and/or their agents copied and pasted signature pages from prior agreements among

the parties onto these documents to create the appearance that the Fund approved the Fraudulent Releases.

14. In a recent phone call with the Fund's advisers, Sadleir confirmed as much, saying that he "f---d up" and had effectuated the Fraudulent Amendments by recycling signature pages from prior transactions with the Fund on the Fraudulent Releases—a remarkable admission of fraud.

15. The Fund's recent investigation suggests that Sadleir resorted to fraud for his own self-serving ends. In connection with a separate litigation alleging fraud against Sadleir, it appears that Sadleir agreed to a \$2.7 million judgment against himself on July 15, 2019, *the same day* that many of the Fraudulent Amendments were filed with the Delaware Secretary of State.

16. As a result of this fraudulent conduct and the multiple Events of Default that have occurred, on December 16, 2019 Plaintiff informed Defendants that it was exercising its rights under the Pledge Agreement to step into the shoes of Aviron Group and install the manager of its choice, Amir Agam, at Aviron Capital and Aviron Pictures (and, in turn, the Special Purpose Entities). But Defendants have not acknowledged the Fund's right to do so.

17. Defendants' ongoing wrongful conduct violates the law and their agreements with the Fund. The Fund has been and will continue to be harmed by Defendants' conduct, and therefore seeks immediate relief from this Court to clarify the Fund's rights and compel Defendants to comply with the terms of the parties' agreements.

18. If injunctive relief is not granted and Sadleir continues to purport to be in control of the Aviron Entities, then the Fund's bargained-for contractual rights to (i) control 100% of the equity of Aviron Capital and Aviron Pictures, (ii) consequently replace Sadleir as Manager at Aviron Capital and Aviron Pictures with Amir Agam (and, in turn, the Special Purpose Entities)

with immediate effect to prevent further fraud and mismanagement, and (iii) collect on the Aviron Entities' outstanding debt through other collateral will be negated. Worse still, the Fund's pledged collateral may well continue to be fraudulently conveyed by the time of final judgment. These losses cannot be adequately measured or compensated by money damages. Immediate injunctive relief is the only remedy available that will ensure the stabilization of the Aviron Entities' financial status, preserve the value of the pledged collateral, and thus protect the investment made on behalf of the Fund's investors.

THE PARTIES AND RELEVANT NON-PARTIES

19. Plaintiff is a Delaware statutory trust which operates as a closed-end mutual fund and which trades on the New York Stock Exchange. Non-party BlackRock Advisors, LLC ("the Advisor") acts as the Trust's investment advisor. The Advisor has its principal place of business in New York, New York and is responsible for, among other things, the management of the Fund's portfolio. The Advisor has retained non-parties BlackRock Financial Management, Inc. and BlackRock Investment Management, LLC to serve as the Trust's sub-advisers (the "Sub-advisers"). The Sub-advisers have their principal places of business in New York, New York, and perform the actual day-to-day investment management of the Fund. This includes negotiating the transactions relevant to this action.

20. Defendant Aviron Group, LLC, is a Delaware limited liability company with its principal place of business in Los Angeles, California.

21. Defendant Aviron Capital, LLC, is a Delaware limited liability company with its principal place of business in Los Angeles, California.

22. Defendant Aviron Pictures, LLC, is a Delaware limited liability company with its principal place of business in Los Angeles, California.

23. Defendant Aviron Releasing, LLC, is a Delaware limited liability company with its principal place of business in Los Angeles, California.

24. Defendant Aviron 1701, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California.

25. Defendant Aviron 1702, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California.

26. Defendant Aviron 1705, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California.

27. Defendant Aviron 1706, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California.

28. Defendant Aviron 1801, LLC is a Delaware limited liability company with its principal place of business in Los Angeles, California.

29. Defendant MAA Releasing, LLC, is a Delaware limited liability company with its principal place of business in Los Angeles, California.

30. Defendant William Sadleir is a domiciliary of Beverly Hills, California.

31. Sadleir also is or purports to be (i) President of Aviron Group; (ii) Manager, Chairman, and Chief Executive Officer of Aviron Capital; (iii) Manager of Aviron Pictures, and (iv) Manager of each of the Special Purpose Entities.

32. Upon information and belief, Sadleir largely operates the Aviron Entities as a single business out of a single office in Beverly Hills, California. Sadleir is the direct or indirect owner of the entities (either individually or through his family trust), and is or was the designated "Manager" of each. Sadleir has thus exercised domination and control over these purportedly separate entities, which he in fact treats as one, and has used to defraud the Fund.

JURISDICTION AND VENUE

33. Jurisdiction is proper in this Court as to the Aviron Entities because (i) Aviron Group, LLC consented to the jurisdiction of this Court pursuant to Section 23(b) of the Pledge Agreement it entered with Plaintiff on October 20, 2015 and (ii) Aviron Capital did the same pursuant to Section 9.08 of the NPA it entered with Plaintiff on July 17, 2017. Each of the Pledge Agreement and the NPA provide that Aviron Group and Aviron Capital, respectively, “irrevocably and unconditionally submits, for itself *and its property*, to the exclusive jurisdiction of . . . the Supreme Court of the State of New York sitting in New York county . . . in any action or proceeding arising out of or relating to this Pledge Agreement or any other Loan Document or the transactions contemplated hereby” (the “New York Forum Provisions”).

34. Jurisdiction is also proper in this Court pursuant to CPLR 302(a)(1) because Sadleir and the Aviron Entities each transact business within New York and this action arises out of such business.

35. Jurisdiction is also proper as to Sadleir and the Aviron Entities pursuant to CPLR 302(a)(3)(i) and 302(a)(3)(ii) because they have committed a tortious act without the state causing injury to Plaintiff within New York, and upon information and belief (i) regularly do or solicit business in New York and derive substantial revenue from services rendered in New York, and (ii) expect or reasonably should have expected the act to have consequences in the state and derive substantial revenue from interstate or international commerce.

36. Venue is proper in this Court pursuant to CPLR 501, because of the New York Forum Provisions.

FACTUAL BACKGROUND

2015: The Fund First Contracts With the Aviron Entities.

37. On October 20, 2015, Aviron Capital and the Fund entered into the Credit Agreement, pursuant to which the Fund made available to Aviron Capital a senior secured credit facility to assist its funding of prints, advertising, marketing and promotion for certain feature-length motion pictures.

38. On October 20, 2015, Aviron Group and the Fund also entered into the Pledge Agreement. Sadleir signed the Pledge Agreement on behalf of Aviron Group.

39. Pursuant to the terms of the Pledge Agreement, Aviron Group pledged its ownership of certain Pledged Collateral to the Fund, including 100% of the “equity interests issued by” each of Aviron Capital and Aviron Pictures.² This pledge was made to “induce [the Fund] to . . . extend credit to” Aviron Group. Section 4(g) of the Pledge Agreement further warranted that “[t]here are no restrictions upon the voting rights associated with, or upon the transfer of, any of the Pledged Collateral” (*i.e.*, the equity of Aviron Capital and Aviron Pictures).

² Section 1 of the Pledge Agreement defines Pledged Collateral as “(i) all Pledged LLC Interests now owned or hereafter acquired by the [Aviron Group], and all options and warrants for the purchase of the Pledged LLC Interests now or hereafter held in the name of the [Aviron Group], (ii) any certificates representing such Pledged LLC Interests, and (iii) all dividends, cash, warrants, rights, options, instruments, investment property and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged LLC Interests.” The Pledged LLC Interests are itemized on Schedule 1 to the Pledge Agreement as follows:

OWNERSHIP OF PLEDGED LLC INTERESTS

Grantor	Pledged Subsidiary	Percentage of Pledged Interests
Aviron Group, LLC	Aviron Capital, LLC	100%
Aviron Group, LLC	Aviron Pictures, LLC	100%

40. The Fund filed a UCC-1 financing statement against the Pledged Collateral that same day.

41. All defined terms in the Pledge Agreement, including “Event of Default,” were agreed to have “the same meaning” as defined in the 2015 Credit Agreement.³

42. Pursuant to Section 6 of the Pledge Agreement, “[a]t such time as an Event of Default shall have occurred and be continuing,” and following “written notice from” the Fund to Aviron Group, the Fund may “*exercise all voting powers pertaining to the Pledged Collateral,*” including the right to “*exercise, or direct [Aviron Group] as to the exercise of all voting, consent, managerial, election, and other membership rights with respect to the applicable Pledged Collateral.*”

43. Thus, upon an Event of Default under the NPA (as defined therein), the Fund is permitted to step into the shoes of Aviron Group as it pertains to the “voting, consent, managerial, election, and other membership rights” associated with the equity of Aviron Capital and Aviron Pictures.

2017: The Fund Invests \$75 Million in the Aviron Entities Via a Note Purchase Agreement

44. On July 17, 2017, Aviron Capital and the Fund entered into the NPA through which the Fund provided a term loan in the amount of \$75,000,000 in return for Aviron Capital simultaneously providing a broadly defined “security interest” in

all of the Issuer’s right, title and interest, whether now existing or hereafter acquired or arising, in and to the following, including, without limitation, relating to each motion picture in which the Issuer or a Qualifying Picture SPV may have rights (including, without limitation, each Qualifying Picture) and each Qualifying Picture SPV: all goods, accounts, Records, instruments, intercompany obligations, contract rights, partnership, joint venture and other equity interests, documents, chattel paper, general intangibles, goodwill, equipment, machinery, inventory,

³ As outlined below, this was later revised via an omnibus amendment to instead reference definitions in the NPA.

investment property, copyrights, trademarks, insurance proceeds, cash, deposit accounts (including the Interest and Guarantee Fee Reserve Account and the Capital Collection Account and any proceeds thereof, products thereof or income therefrom, further including, without limitation, all of the Issuer's right, title and interest in and to all other personal property, tangible and intangible, wherever located or situated and whether now owned, presently existing or hereafter acquired or created (such assets, collectively, the "Collateral").

45. Section 4.01 of the NPA further provided that Collateral included, among other things:

(i) 100% of the equity interests issued by each Qualifying Picture SPV⁴ now owned or hereafter acquired by the Issuer, consisting of all economic rights, including without limitation all rights to share in the profits and losses of each such Qualifying Picture SPV and all rights to receive distributions of the assets of such Qualifying Picture SPV, and all governance rights, including without limitation all rights to vote, consent to action and otherwise participate in the management of such Qualifying Picture SPV ,

(ii) all options and warrants for the purchase of such equity interests now or hereafter held in the name of the Issuer,

(iii) any certificates representing such equity interests, and

(iv) all dividends, cash, warrants, rights, options, instruments, investment property and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such equity interests (the foregoing being the "Pledged Equity Interests")

46. The NPA contained a number of additional requirements regarding "Pledged Collateral," *i.e.*, the Pledged Equity Interests. This included informing the Fund as necessary so that the Fund could "take steps to perfect its security interest" in those equity positions as appropriate (*e.g.*, as new subsidiaries were formed).

47. Consequently, and consistent with the NPA, UCC-1 financing statements were filed for the benefit of the Fund and against Aviron Capital and the other "Credit Parties," to

⁴ Qualifying Picture SPV is defined in the NPA to mean "each Subsidiary of [Aviron Capital] formed for the purpose of entering into a Producer Agreement with respect to a Qualifying Picture."

secure the Fund's Collateral, as appropriate. These documents thus served to perfect the security interests granted by Aviron Capital and its affiliates to secure all loans and advances to, and all debts, liabilities, obligations, covenants, and duties of Aviron Capital arising under the NPA (including the \$75,000,000 investment).

48. In Section 7.03 of the NPA, Aviron Capital also agreed to a number of "negative covenants," which prohibited it or any Credit Party taking certain actions "until the debt repayment date" without the Fund's written consent. The first listed item reflects Aviron Capital's commitment to not:

Sale of Assets; Liens. (i) Sell, assign (by operation of law or otherwise) or otherwise transfer, or grant any option with respect to, or create, incur, assume or suffer to the extent any Lien (other than Permitted Liens) upon or with respect to any of the Collateral, or any interest thereon, whether now owned or hereafter acquired, or (ii) assign any right to receive any income in respect of the Collateral, or sign or file under the Laws of any jurisdiction, a financing statement . . . or other similar document covering any of the foregoing that names [Aviron Capital] as debtor, other than those in favor of the [Fund] under this Agreement and the other Facility Documents, or sign any security agreement authorizing any lenders or other Persons thereunder to file such financing statement or other similar document covering any of the foregoing.

49. Aviron Capital agreed to other negative covenants under Section 7.03 of the NPA that are pertinent here. These include agreements to not:

Amendment, Cancellation or Termination of Documents. (i) Make or permit to be made by any Person any material amendment, modification to or cancellation or termination of any of the Transaction Documents⁵ to which it is a party or by which its assets are bound (or under which it has rights as a third-party beneficiary), or waive any default under or any breach of any term or condition of any of the Transaction Documents to which it is a party or by which its assets are bound (or under which it has rights as a third-party beneficiary), without the prior written consent of the Noteholder; or (ii) upon the occurrence and during the continuance of a Potential Event

⁵ Transaction Documents is defined to include "all other agreements, instruments, and documents . . . now or hereafter made under, pursuant to, or in connection with the foregoing or any other aspect of the transactions contemplated by the foregoing."

of Default or Event of Default, exercise any material remedies available to Issuer or any other Credit Party under the Transaction Documents to which it is a party (or under which it has rights as a third-party beneficiary), without the prior written consent of the Noteholder.

Violation of Laws. Take any action (or omit to take any action) otherwise permitted by this Agreement which would cause the performance of any of the Transaction Documents or Facility Documents, to which it is a party, to violate any Law, rule or regulation or require an order, consent, permit or approval to be obtained from any governmental authority which has not been obtained.

50. On July 17, 2017, the Fund, Aviron Group, and certain of its affiliates also entered into the Omnibus Amendment No.1. As pertinent here, this agreement provided that “[a]ll references to ‘Credit Agreement’ in the Subject Agreements,” including the Pledge Agreement, “shall be replaced with ‘Note Purchase Agreement.’”

51. Thus, under the Pledge Agreement, Events of Default are those as defined in the NPA.

2019: The Fund Invests Additional Amounts

52. On March 22, 2019, the Fund, Aviron Capital, Sadleir, and Temerity entered into a letter agreement whereby the Fund agreed to advance \$6 million to fund the distribution of a motion picture titled *AFTER* (the “March 22 Letter Agreement”).

53. In the event that the outstanding principal amount of the \$6 million loan, along with its accrued unpaid interest, was not paid by its maturity date, the parties agreed that “such failure shall be deemed an Event of Default under the Note Purchase Agreement.”

54. The maturity date for the loan advanced under the March 22 Letter Agreement was June 12, 2019. The outstanding principal of the loan was not paid by that date, and remains unpaid. An Event of Default thus occurred on June 12, 2019 and continues to occur.

55. On March 25, 2019, the same parties entered into a similar letter agreement whereby the Fund agreed to advance an additional \$4 million for the distribution of *AFTER* (the “March 25 Letter Agreement,” and together with the March 22 Letter Agreement, the “Funding Agreements”). The terms of the March 25 Letter Agreement mirror in all respects pertinent here those of the March 22 Letter Agreement.

56. The maturity date for the loan advanced under the March 25 Letter Agreement was also June 12, 2019. The outstanding principal was not paid by that date, and remains unpaid. This failure constitutes a second Event of Default that occurred on June 12, 2019 and continues to occur.

July 2019: The Fund Notifies the Aviron Entities of Multiple Events of Default.

57. On July 9, 2019,⁶ the Fund informed Aviron Capital by letter that multiple Events of Default had occurred (the “July Default Letter”) including, for example:

- the above-outlined failure to repay the amounts owed in connection with the Funding Agreements by their Maturity Date;
- the failure to timely deliver certain required financial information associated with the motion pictures titled *A Private War*, *AFTER* and, *The Informer* as required pursuant to the NPA;
- the failure to obtain the prior written consent of the Fund to establish a Capital Collection Account⁷ other than the account held at East West Bank as provided in the NPA;

⁶ The Default Letter is dated July 1, 2019 but was sent on July 9, 2019.

⁷ Pursuant to the NPA, the Capital Collection Account (the “CCA”) is an identified account where Aviron Capital receives payments from its film distribution activities. Those payments in turn come out of controlled accounts held by a third-party payment agent—referred to as “FCAM”—whose role is to direct film payment streams among the various parties with rights in the film. The CCA is also the account into which the Fund deposited loan proceeds under the NPA and the Funding Agreements. Section 2.02(b) of the NPA

- opening of an account other than the Capital Collection Account and the withdrawal or usage of amounts on deposit without the Fund's prior written consent;
- the failure to make the payments required on each Settlement Date—the 10th of each month—from the Capital Collection Account as provided in the NPA, a failure once attempted to be cured, then breached in the immediately following payment period;
- the failure of the amount on deposit in the Interest and Guarantee Fee Reserve Account to equal the Interest and Guarantee Fee Reserve Required Amount, as defined in the NPA for more than one calendar quarter—in other words, the failure of Aviron Capital to have on deposit in an agreed-upon account the estimated interest for the prescribed time period on the aggregate outstanding principal amount of the loan under the NPA, together with the fees assessed by the financial guarantee provider in support of the obligations thereunder; and
- the failure of Aviron Capital to obtain a Financial Guarantee Replacement by April 15, 2019, as defined in and required by the NPA and amendments 4 and 5 thereto.

58. The July Default Letter expressly confirmed that it did not constitute a consent or waiver to the Events of Default, or otherwise operate to amend or modify any of the parties' agreements.

59. Defendants neither remedied these myriad Events of Default, nor formally responded to the July Default Letter.

requires that the CCA be subject to a deposit control account agreement (“DACA”), which allows the Fund to take control of the account and have full visibility upon an Event of Default. In 2018, Aviron moved almost all of its accounts from East West Bank to First Republic Bank and failed to put a DACA in place over the CCA. That failure was itself an Event of Default under the NPA.

60. Thus, numerous Events of Default have occurred and are continuing to occur, in flagrant breach of the parties' agreements.

Late 2019: The Fund Discovers Apparent Fraud at the Aviron Entities

61. As outlined above, the Fund filed numerous UCC-1 financing statements pertaining to the collateral securing its agreements with the Aviron Entities, including the Credit Agreement, the Pledge Agreement, and the NPA.

62. The Fund has recently become aware of events that suggest fraudulent—and illegal—activity connected to the Aviron Entities and Sadleir which has purportedly removed the Fund's perfected security interest in certain collateral.

63. Various Aviron Entities have recently purported to sell or finance several of the motion picture rights that were collateralized to the Fund. These actions were only made possible by the Aviron Entities' (or their agents') filing of fourteen fraudulent UCC-3 amendments with the Delaware Secretary of State, starting in July 2019, that operated to delete the purportedly sold or financed collateral from the Fund's documented list of collateral. Any such UCC-3 amendment could only be filed with the authorization of the secured party: the Fund. Such consent is typically documented through a signed, executed release.

64. The UCC-3 amendments each identify the Fund as the "Secured Party of Record authorizing" each amendment which purported to delete from the Fund's collateral covered by such underlying UCC-1 financing statements the property described in such UCC-3 amendments. The Fund did not authorize the amendments, rendering them fraudulent.

65. The Fund has likewise never consented to these purported sales or financings of its collateral. Upon information and belief, the Aviron Entities, through Sadleir, filed the Fraudulent Amendments, or caused them to be filed, to effectuate these changes and create the

appearance that the applicable Aviron Entities could sell or finance the collateral it had pledged to the Fund.

66. The Fund's recent investigation suggests that Sadleir, the Aviron Entities, and/or their agents resorted to outright fraud to achieve these objectives.

67. Plaintiff's counsel contacted Defendants' transaction counsel and requested copies of the purported releases that would have been necessary to effectuate filing any of the Fraudulent Amendments.

68. Defendants' transaction counsel provided five such documents—the Fraudulent Releases—which all purport to date from July 2019 and reflect signatures of the Fund's advisers authorizing a release of the Fund's lien on certain perfected collateral.

69. As outlined in the contemporaneously filed Affidavits of Randy Robertson and Mark Volosov, those documents are forgeries. None of the Fraudulent Releases were executed by Mr. Robertson in July 2019.


70. It appears that to create the Fraudulent Releases, Sadleir and/or his agents copied and pasted Mr. Robertson's signature from prior agreements between the Fund and Defendants onto the Fraudulent Releases.


71. To date, the Fund has identified what appear to be three such copied and pasted signatures, as outlined below.

72. For example, Mr. Robertson's purported signature for the Fund's partial release of its security interest in the motion picture *The Strangers: Prey at Night*, purportedly dated July 12, 2019 appears below on the left. That signature appears to have been copied from Mr. Robertson's authentic signature from the February 21, 2019 Amendment Five to the Note Purchase Agreement which appears below on the right.

Forged (Copied) Signature

Source Authentic Signature


By: 
 Name: Randy Robertson
 Title: managing director


By: 
 Name: Randy Robertson
 Title: managing director

73. Similarly, Mr. Robertson’s purported signature for the Fund’s partial release of its security interest in the motion picture *My All American*, purportedly dated July 12, 2019 appears below on the left. That signature appears to have been copied from Mr. Robertson’s authentic signature from the 2015 Credit Agreement, which appears below on the right.

Forged (Copied) Signature

Source Authentic Signature

By: 
 Name: Randy Robertson
 Title: Managing Director

By: 
 Name: Randy Robertson
 Title: Managing Director

74. Finally, Mr. Robertson’s purported signature for the Fund’s partial release of its security interest in the HBO licensing agreement for the motion picture *The Strangers: Prey at Night*, purportedly dated July 17, 2019 appears below on the left. That signature appears to have been copied from Mr. Robertson’s authentic signature from the October 19, 2016 Amendment One to the Credit and Security Agreement, which appears below on the right.

Forged (Copied) Signature

Source Authentic Signature

By: 
 Name: Randy Robertson
 Title: managing director

By: 
 Name: Randy Robertson
 Title: managing director

75. Upon information and belief, Sadleir and/or others working with him provided the Fraudulent Releases to the filers of the Fraudulent Amendments in order to create the appearance that the Fund had authorized the filing of UCC-3 amendments.

76. Upon information and belief, Sadleir was motivated to undertake this fraudulent activity to benefit himself.

77. For example, on July 15, 2019—the same day that many of the Fraudulent Amendments were filed—Sadleir stipulated to a \$2.7 million judgment.

78. In late October 2019, the Fund discovered the Fraudulent Amendments. In response to the Fund's counsel's inquiries, on October 24, 2019, Louis Spoto, Aviron Capital's General Counsel, asserted that he had "not reviewed the individual UCC-3s" but that "for sure Blackrock [sic] knew what it was doing and why." Sadleir responded on October 25, 2019 that he was the "best contact for now to discuss the license sales," and that he would "pull together funds flow you asked for" and that "[w]e'll get this cleaned up."

79. Those statements reflect an effort to prevent the Fund from discovering the Fraudulent Amendments.

80. Sadleir and Spoto then declined to respond to repeated requests for (i) evidence that the Fund consented to the releases, (ii) information as to where the funds flowed from any purported sales of the collateral, and (iii) who they understood had reviewed and consented to the Fraudulent Amendments at the Fund, given that Defendants' filings with the Delaware Secretary of State claim that the Fund approved them.

81. On November 25, 2019, Sadleir finally spoke with a representative from the Fund's Sub-advisers. During their phone call, Sadleir admitted that he "f---d up," conceding that

he engaged in fraudulent activity in connection with the Fraudulent Releases and Fraudulent Amendments.

82. Later that same day, a representative from the Fund's Sub-advisers sent Sadleir an email that asked him to "share as promptly as possible the documents utilized to facilitate the sale of assets . . . and the detailed funds received and the allocation of the same." Sadleir never responded to those requests.

83. On December 2, 2019,⁸ the Fund sent a letter to the Aviron Entities (the "December Default Letter") describing again these fraudulent actions and also noting that the defaults identified in the July Default Letter "continue unwaived," and thus that "Events of Default have occurred and are continuing under the NPA."

84. Specifically, the December Default Letter informed the Aviron Entities of the Fund's understanding that they had "fraudulently filed or instructed, directed or otherwise permitted Paul Hastings LLP [Defendants' transaction counsel] or other agents or representatives of the Credit Parties to file UCC-3 amendments to certain of the NPA Financing Statements . . . to delete the Specific Collateral from the collateral covered by such NPA Financing Statements."

85. That same letter instructed Sadleir and many of the Aviron Entities⁹ to, among other things, "immediately cease making any modifications of any kind to any of the NPA Financing Statements" and again requested any evidence that the Fund released its interest in the collateral.

⁸ The December Default Letter is dated December 3, but was mailed on December 2 and arrived on December 3.

⁹ The December Default Letter was addressed to Aviron Group, Aviron Capital, Aviron Pictures, Aviron Releasing, Aviron 1702, Aviron 1705, and MAA, all at the attention of Sadleir.

86. Neither Sadleir, nor any officer or employee of any of the Aviron Entities responded to the December Default Letter.

87. Instead, Sadleir responded by email, sharing plans to further sell the Fund's pledged collateral to repay certain of Sadleir's attorneys' fees (and thereafter, allegedly, pay the Fund). Sadleir further explained that he planned travel to Doha, Qatar on December 13, 2019, to close "a new credit facility for Aviron Funding, LLC, that will be the vehicle for Aviron's future slate of 35 films and from which we expect to purchase from Aviron Capital certain assets, such as media, to reduce the NPA principal balance." As of the date of this filing, it does not appear that Aviron Funding, LLC exists.¹⁰

88. On December 16, 2019, the Fund sent Aviron Group, Aviron Capital, Aviron Pictures, and Sadleir a letter notifying them, among other things, that the Fund was exercising its right pursuant to the Pledge Agreement to "exercise, or direct Aviron Group as to the exercise of all voting, consent, managerial, election and other membership rights with respect to the applicable Pledged Collateral" (the "December 16 Letter"). Further, the letter made clear that, pursuant to the Pledge Agreement and the LLC Agreements, the Fund was removing Sadleir as Manager of Aviron Pictures, Aviron Capital, and appointing Amir Agam to fill the position at each entity. Mr. Agam is a Senior Managing Director in the Corporate Finance & Restructuring practice at FTI Consulting and has significant experience serving in interim corporate positions overseeing operational or financial turnarounds. The December 16 Letter requested a response by 5 P.M. Pacific Time on December 16, 2019.

¹⁰ This is per a search on the Delaware Division of Corporations webpage (the jurisdiction in which Sadleir has chosen to incorporate the other Aviron entities of which the Fund is aware). See Division of Corporations, Search Page (last searched December 17, 2019), available at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

89. Defendants' transaction counsel responded shortly after the close of business on December 16 merely to confirm receipt. Defendants have not recognized Mr. Agam as the Manager of Aviron Capital and Aviron Pictures. Even should they, their fraud requires that any such conciliatory act should be disregarded.

COUNT I – DECLARATORY JUDGMENT

90. Plaintiff repeats each of the allegations above as if fully set forth herein.

91. On October 20, 2015, Aviron Group, LLC and the Fund entered into the Pledge Agreement whereby the Aviron Group affirmed it was the legal and beneficial owner of 100% of the equity interests issued by each of Aviron Capital and Aviron Pictures. The Pledge Agreement is a valid, binding and enforceable agreement entered into by the Fund and Aviron Group, LLC, as amended by the Omnibus Amendment No. 1, agreed on July 17, 2017.

92. In order to induce the Fund to extend credit, Aviron Group pledged its equity interest in Aviron Capital and Aviron Pictures to the Fund and warranted that “there are no restrictions upon the voting rights associated with, or upon the transfer of, any of the Pledged Collateral.”

93. Section 6 of the Pledge Agreement, as amended, provides that upon an Event of Default, Aviron Group's voting power pertaining to the Pledged Collateral (100% of the equity in Aviron Capital and Aviron Pictures) shall cease, granting the Fund the power to “exercise all voting powers pertaining to the Pledged Collateral, including the right to . . . *direct the Grantor* [Aviron Group] *as to the exercise of all voting, consent, managerial, election, and other membership rights with respect to the applicable Pledged Collateral.*”

94. In the July Default Letter, the Fund notified Aviron Capital that it had permitted multiple Events of Default to occur, as defined in the NPA. The Aviron Entities were

further informed in the December Default Letter that the Events of Default identified in the July Default Letter are continuing and have not been waived. These Events of Default triggered Section 6 of the Pledge Agreement thus allowing the Fund to “*exercise . . . all voting, consent, managerial, election, and other membership rights with respect to the applicable Pledged Collateral*” – i.e., exercise all voting power pertaining to the equity of Aviron Capital and Aviron Pictures as Sole Member under those entities’ LLC Agreements. The Fund exercised this right via proper notice (the December 16 Letter).

95. Further, Section 10(b) of the Aviron Capital and Aviron Pictures LLC Agreements, and Section 10(b) of the LLC Agreements of the Special Purpose Entities, provide that “[t]he Sole Member may remove the Manager [Sadleir] for any reason or no reason at any time in its sole and absolute discretion. Any vacancy occurring for any reason in the position of Manager may be filled by the Sole Member.”

96. In its December 16 Letter, the Fund also validly noticed that it would immediately exercise Aviron Group’s voting rights as to Aviron Capital and Aviron Pictures to remove and place Sadleir as Manager of Aviron Capital and Aviron Pictures.

97. As outlined above, the Fund has the power to control 100% of the equity in Aviron Capital and Aviron Pictures and replace Sadleir as its Manager. The Fund anticipates that Amir Agam (the “Replacement Manager”) will immediately notice the removal of Sadleir as Manager of the Special Purpose Entities, as appropriate pursuant to their respective LLC Agreements.

98. As a result of the foregoing, the Fund is entitled to an order adjudging, declaring, and decreeing that:

- a. Pursuant to the Pledge Agreement, the NPA, the Funding Agreements, and the LLC Agreements of Aviron Capital, Aviron Pictures, and the Special Purpose Entities, effective December 16, 2019:
- i. Aviron Group's right to act as Sole Member of Aviron Capital and Aviron Pictures pursuant to the Pledge Agreement and LLC Agreements immediately ceased and has been supplanted by the Fund's right to exercise "*all voting, consent, managerial, election, and other membership rights with respect*" over the equity of Aviron Capital and Aviron Pictures;
 - ii. The Fund validly noticed and exercised the voting rights of Aviron Group to replace Sadleir as the Manager of Aviron Capital with the Replacement Manager;
 - iii. The Fund validly noticed and exercised the voting rights of Aviron Group to replace Sadleir as the Manager of Aviron Pictures with the Replacement Manager; and
 - iv. The Replacement Manager has the authority to exercise managerial control regarding Special Purpose Entities that are subsidiaries of Aviron Capital or Aviron Pictures.
- b. Defendants and those acting in concert with or on behalf of them have no right to interfere with or frustrate the Fund's exercise of its rights regarding its perfected security interests, granted by the Defendants to secure the Obligations set forth in the Pledge Agreement and the NPA, as applicable.

99. An actual and justiciable controversy exists between the parties concerning control of Aviron Group, Aviron Pictures, and Aviron Capital. Defendants have not acknowledged the Fund's replacement manager. A declaratory judgment issued by a court in the proper forum will settle the rights and obligations of the parties under the Agreements.

COUNT II – PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

100. Pending the declaratory judgement sought herein, and in light of Defendants' failure to acknowledge the Fund's replacement manager, the Fund is entitled to preliminary and permanent injunctive relief.

101. No other remedies at law are adequate to address the harm to the Fund if Sadleir were to continue in his refusal to step down as Manager from Aviron Capital and Aviron Pictures, and/or continue to represent to the Aviron Entities' officers and employees or third parties that he has the right to act for Aviron Capital, Aviron Pictures, and/or the Special Purpose Entities.

102. The Fund and its investors have suffered and will continue to suffer irreparable harm that cannot be adequately compensated through monetary damages as a direct and proximate result of Sadleir's and the Aviron Entities' refusal to relinquish control of Aviron Capital and Aviron Pictures, compounded further by Defendants' apparently fraudulent conduct. Consequently, the balance of equities are in the Fund's favor.

103. The Fund is entitled to injunctive relief as to Defendants (each expressly defined to include their respective employees, managers, officers, directors, parents, subsidiaries, affiliates, agents, attorneys, and any persons acting with or in concert with them), preliminarily enjoining them from the following, unless expressly otherwise authorized in writing by the Replacement Manager:

- a. Sadleir and Aviron Group from acting by member consent, or directing the voting, consent, managerial, election or other membership rights agreements connected to the equity of Aviron Capital or Aviron Pictures;
- b. Sadleir and Aviron Group from contesting the right of the Replacement Manager to control and direct all management and operations of Aviron Capital and Aviron Pictures (or any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities, as that term is defined in the Complaint);
- c. Sadleir and Aviron Group from controlling, or purporting to control, the day-to-day conduct, operation, and management of Aviron Capital and Aviron Pictures (or any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities, as that term is defined in the Complaint);
- d. Sadleir and Aviron Group from acting as or holding themselves out to anyone as the Manager of or otherwise controlling Aviron Capital and Aviron Pictures (or any of any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities);
- e. Sadleir and Aviron Group from withdrawing or transferring any funds from any accounts in the names of Aviron Capital or Aviron Pictures (or any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities);
- f. Sadleir and Aviron Group from refusing to relinquish all property, books, records, or other assets of the Aviron Capital or Aviron Pictures (or any of

their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities);

- g. Sadleir and Aviron Group from filing any litigation (including any bankruptcy proceeding) on behalf of or affecting the rights of Aviron Capital or Aviron Pictures (or any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities);
- h. Sadleir and Aviron Group from issuing new debt, executing any loans, or pledging any assets as collateral on behalf of Aviron Capital and Aviron Pictures (or any of their wholly or majority owned subsidiaries, including as appropriate the Special Purpose Entities); and
- i. Sadleir and Aviron Group from interfering with or frustrating the Fund's exercise of its rights with respect to any collateral Defendants have pledged to the Fund.

COUNT THREE – FRAUDULENT CONCEALMENT

104. Plaintiff repeats each of the allegations above as if fully set forth herein.

105. The Fund learned in October 2019 that Defendants filed fourteen Fraudulent UCC-3 Amendments with the Delaware Department of State that deleted the purportedly sold or financed collateral from the Fund's documented list of collateral, in direct contravention of the NPA. Defendants could have only effectuated this filing by creation of the Fraudulent Releases.

106. Defendants and their employees did not disclose this material information to the Fund at any time, contrary to the mandates of the parties' Agreements, including the covenants listed in Section 7.03 of the NPA (e.g., covenant in subsection (n) to not make or allow

“any material amendment, modification to or cancellation or termination of any of the Transaction Documents . . . without the prior written consent” of the Fund).

107. Defendants otherwise omitted material information in their discussions with the Fund’s attorneys on October 24, 2019 and October 25, 2019, including that “for sure Blackrock [sic] knew what it was doing and why,” that Sadleir would “pull together funds flow you asked for” and that “[w]e’ll get this cleaned up.” Defendants and their employees and agents intended for the Fund to rely on those statements.

108. Defendants continued to omit material information as to its fraudulent conduct by refusing to respond to repeated inquiries from the Fund’s counsel.

109. The Fund justifiably relied on Defendants’ non-disclosures to their substantial detriment.

110. Defendants had a duty to disclose their fraudulent actions related to the Fund’s perfected security interest in the collateral, compounded by their otherwise partial, ambiguous, and/or misleading statements required additional disclosure to avoid misleading the Fund, especially given that Defendants’ fraudulent actions were particularly within the knowledge of the Defendants and given that Defendants took action to delay the Fund’s discovery of the fraud.

111. Sadleir exercises domination and control over the Aviron Entities, which operate as one and which Sadleir has used to defraud Plaintiff.

112. As a direct and proximate result of Defendants’ fraudulent concealment, the Fund has been harmed in an amount to be determined at trial.

COUNT FOUR – FRAUD

113. Plaintiff repeats each of the allegations above as if fully set forth herein.

114. Defendants filed the Fraudulent Amendments as outlined in Exhibit II to Volosov Ex. 51, and created the Fraudulent Releases. Defendants also made false statements to the Fund's attorneys on October 24, 2019 and October 25, 2019 as to its fraudulent UCC-3 amendments and sale of the collateral, including that "for sure Blackrock [sic] knew what it was doing and why," that Sadleir would "pull together funds flow you asked for" and that "[w]e'll get this cleaned up."

115. Defendants knew those statements to be false, and intended for the Fund to rely on those statements so as to perpetuate and further Defendants' fraud.

116. The Fund justifiably relied on Defendants' misrepresentations to its substantial detriment.

117. Sadleir exercises domination and control over the Aviron Entities, which operate as one and which Sadleir has used to defraud Plaintiff.

118. As a direct and proximate result of Defendants' fraud, the Fund has been harmed in an amount to be determined at trial.

PRAYER FOR RELIEF

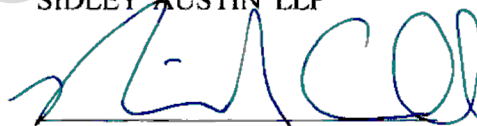
WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendants as follows:

1. An order adjudging, declaring, and decreeing that Plaintiff is entitled to declaratory and injunctive relief as set forth above;
2. An order in favor of Plaintiff as to its fraudulent concealment and fraud claims;
3. Monetary damages in an amount to be determined at trial, but estimated to exceed \$3,000,000;
4. That Plaintiff be awarded all pre-judgment interest allowable by law;
5. That Plaintiff be awarded its costs and attorneys' fees as allowable by law; and
6. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 17, 2019

Respectfully submitted,

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