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6 Attorneys for Defendant
 7 SUMMIT ENTERTAINMENT, LLC

8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SGT. JEFFREY S. SARVER,
 12 Plaintiff,

13 vs.

14 THE HURT LOCKER, LLC; MARK
 BOAL; KATHRYN BIGELOW;
 15 GREG SHAPIRO; NICOLAS
 CHARTIER; TONY MARK; DONALL
 16 MCCLUSKER; SUMMIT
 ENTERTAINMENT, LLC; VOLTAGE
 17 PICTURES, LLC; GROSVENOR
 PARK MEDIA, LP; FIRST LIGHT
 18 PRODUCTIONS, INC.; KINGSGATE
 FILMS, INC. and PLAYBOY
 19 ENTERPRISES, INC., Jointly and
 Severally,

20 Defendants.
 21

Case No. 2:10-cv-09034-JHN (JCx)

**NOTICE OF JOINDER BY
 DEFENDANT SUMMIT
 ENTERTAINMENT, LLC IN
 MOTION TO STRIKE PLAINTIFF'S
 COMPLAINT PURSUANT TO CAL.
 CODE CIV. PROC. §425.16;
 MEMORANDUM OF POINTS
 AND AUTHORITIES AND
 DECLARATIONS OF SOPHIE
 CASSIDY AND DAVID
 HALBERSTADTER IN SUPPORT
 THEREOF**

Date: March 7, 2011
 Time: 8:30 a.m.
 Courtroom: 790

*Assigned to the Honorable
 Jacqueline H. Nguyen*

22
 23
 24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 PLEASE TAKE NOTICE that Defendant Summit Entertainment, LLC
 26 (“Summit”) hereby joins in the Motion To Strike Plaintiff’s Complaint Pursuant
 27 California Code of Civil Procedure Section 425.16 (the “Anti-SLAPP Motion”) filed
 28 by Defendants The Hurt Locker, LLC, Greg Shapiro, Nicholas Chartier, Voltage

1 Pictures, LLC, Grosvenor Park Media, L.P. and Kingsgate Films, Inc. (the “Moving
2 Defendants”), including, without limitation, the request for an award of attorneys’
3 fees. Summit joins in the Anti-SLAPP Motion for all of the reasons set forth in the
4 Anti-SLAPP Motion, in Moving Defendants’ accompanying Memorandum of Points
5 and Authorities, Request for Judicial Notice and Declarations of Nicolas Chartier and
6 Timothy J. Gorry, and in Summit’s accompanying Memorandum of Points and
7 Authorities and Declarations of Sophie Cassidy and David Halberstadter.

8 PLEASE TAKE FURTHER NOTICE that pursuant to Cal. Civ. Proc. Code
9 §425.16(c)(2), Summit will also seek an award of attorneys’ fees in the amount of
10 \$25,515, which were incurred in the preparation and filing of the Anti-SLAPP Motion
11 and this Notice of Joinder, as well as any additional fees subsequently incurred in
12 connection with this motion.

13 This Motion is made following the conference of counsel pursuant to Local
14 Rule 7-3, which took place on December 13, 2010.

15 DATED: February 1, 2011

16 KATTEN MUCHIN ROSENMAN LLP
17 DAVID HALBERSTADTER
18 SALLY WU

19 By 
20 David Halberstadter
21 Attorneys for Defendant
22 SUMMIT ENTERTAINMENT, LLC
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2 **II. LEGAL ARGUMENTS**

3 **A. Summit Had No Involvement In The Development Or Production Of**
4 **The Film And Has No Contractual Relationship With Boal Or**
5 **Bigelow With Respect To The Film.**

6 In support of the Anti-SLAPP Motion, Summit has submitted to the Court the
7 Declaration of Sophie Cassidy (“Cassidy Declaration”), Summit’s Creative Executive,
8 Acquisitions, who was personally involved in the process by which Summit acquired
9 distribution rights to the Film. Ms. Cassidy testifies that the Film premiered at two
10 international film festivals in September 2008: the Venice Film Festival and the 33rd
11 Annual Toronto International Film Festival. [Cassidy Decl., ¶ 2.] Summit acquired
12 distribution rights to the Film after it was exhibited at the Toronto Film Festival. [Id.]
13 Summit had no involvement with the Film prior to its acquisition of distribution
14 rights, including in the Film's development and production. [Id. at ¶ 3.]

15 Summit acquired the right to distribute the Film from Moving Defendant The
16 Hurt Locker LLC. Summit has no contractual relationship with respect to the Film
17 with screenwriter Boal or director Bigelow. [Id. at ¶ 4.] And in its distribution
18 agreement with The Hurt Locker LLC (the relevant excerpt of which attached to the
19 Cassidy Declaration), The Hurt Locker LLC expressly represented and warranted,
20 among other things, that “the Picture is not and will not be based in whole or in part
21 on the life of any real person.” [Id. at ¶ 5 and Exh. A.]

22 As will be explained in the following sections, these facts provide additional
23 reasons, in connection with certain of Plaintiff’s claims, why Plaintiff cannot prevail
24 as against Summit.

25 **B. Plaintiff Cannot Prevail Against Summit On His Contract Claims.**

26 Even if Plaintiff could demonstrate: (i) that an agreement exists between Boal
27 and the United States Department of Defense, pursuant to which Boal agreed to
28 adhere to certain “Ground Rules” applicable to media members embedded in Iraq

1 during the war; (ii) that in writing the screenplay for the Film, Boal violated those
2 Ground Rules; and (iii) that Plaintiff is an intended third party beneficiary of such an
3 agreement and is entitled to enforce it, he still could not prevail against Summit for the
4 purported breach of that agreement (Count IV). Plaintiff cannot adduce any evidence
5 that Summit was ever in any relationship with Boal (for example, that of employer
6 and employee, principal and agent, assignee or other successor-in-interest) by virtue
7 of which Summit could be held liable for the alleged breach of an agreement to which
8 (even Plaintiff concedes) Summit was not a direct party.

9 Without demonstrating the existence of some factual and legal basis upon
10 which Summit could be considered bound by and subject to Boal's purported
11 agreement with the Defense Department, there is no probability that Plaintiff can
12 prevail against Summit on his breach of contract claim.

13 **C. Plaintiff Cannot Prevail Against Summit On His Claim For**
14 **Intentional Infliction Of Emotional Distress.**

15 As the Anti-SLAPP Motion makes clear, in order for Plaintiff to prevail on his
16 claim for intentional infliction of emotional distress (Count V), he must show, among
17 other things, outrageous conduct by each defendant that was specifically intended to
18 cause Plaintiff emotional distress. Huntingdon Life Sci. v. Stop Huntingdon Animal
19 Cruelty USA, 129 Cal.App. 4th 1228, 1259 (2005). In acquiring distribution rights to
20 the Film and in distributing it in the United States, Summit relied upon the express
21 representation and warranty made by the Film's producer that the Film was not based,
22 even in part, upon the life of any person. Plaintiff therefore will not be able to
23 demonstrate that in distributing the Film, Summit intended to cause Plaintiff to
24 experience emotional distress.

25 For this additional reason, there is no probability that Plaintiff can prevail
26 against Summit on his emotional distress claim.

1 **D. Plaintiff Cannot Prevail Against Summit On His Fraud Claim.**

2 The Anti-SLAPP Motion explains Plaintiff’s burden of proof with respect to his
3 claim of intentional misrepresentation (Count VI). Summit has never had any
4 communications directly with Plaintiff, and Plaintiff cannot claim (or demonstrate)
5 otherwise. To the contrary, the only defendant that Plaintiff claims ever spoke to him
6 is Boal; but Plaintiff has not alleged, and will be unable to demonstrate, any basis
7 upon which Summit could be held legally responsible for, any misrepresentations that
8 Boal may have made to him (assuming he can establish that any misrepresentations
9 were made at all). And, because Summit has no contractual relationship with Boal,
10 there is also no legal or factual basis upon which any misrepresentations allegedly
11 made by Boal could be imputed to Summit.

12 For all of these reasons and the reasons set forth in the Anti-SLAPP Motion,
13 Plaintiff has no probability of prevailing against Summit on his claim of fraud.

14 **E. Plaintiff Cannot Prevail Against Summit On His Constructive**
15 **Fraud/Negligent Misrepresentation Claim.**

16 The additional reasons why Plaintiff cannot prevail against Summit on his
17 intentional misrepresentation claim (Section D. above) also preclude Plaintiff from
18 recovering against Summit for constructive fraud/negligent misrepresentation (Count
19 VII). Plaintiff’s claim also fails as to Summit because Plaintiff cannot plead or prove
20 any basis upon which Summit owed him any duty of care.

21 Summit has had no relationship with Plaintiff whatsoever. It also has had no
22 direct relationship with any other person or entity that, in turn, had some relationship
23 with Plaintiff. For these reasons, as well as the reasons set forth in the Anti-SLAPP
24 Motion, Plaintiff cannot possibly prevail against Summit on his claim of constructive
25 fraud/negligent misrepresentation.

26 **F. Summit Is Entitled To An Award Of Its Attorneys’ Fees.**

27 The Anti-SLAPP Motion explains the policies underlying the mandatory award
28 of attorneys’ fees to the prevailing defendant contained in California’s anti-SLAPP

1 statute, Code of Civil Procedure Section 425.16(c). The motion also demonstrates that
2 this provision of the anti-SLAPP statute is applied by federal courts.

3 Summit's counsel actively collaborated with counsel for the Moving
4 Defendants in the drafting of the Anti-SLAPP Motion, in addition to separately
5 preparing this Notice of Joinder and accompanying court filings. [Declaration of
6 David Halberstadter, ¶ 2.] Summit has incurred to date no less than \$25,515 in
7 connection with the Anti-SLAPP Motion. [Id. at ¶¶ 3, 5.] It anticipates incurring
8 additional fees of no less than \$12,400 in connection with reviewing any opposition
9 filed by Plaintiff, collaborating in the preparation of reply papers, preparing for and
10 attending any hearing on the Anti-SLAPP Motion. [Id. at ¶¶ 4, 5.] Summit therefore
11 respectfully requests that this Court award Summit these statutory attorneys' fees, in
12 addition to any fees awarded to Moving Defendants.

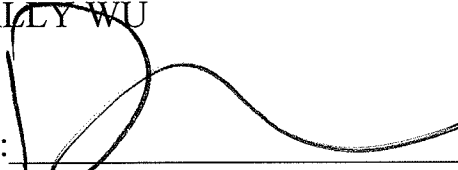
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14 **III. CONCLUSION**

15 For all of the reasons set forth in the Anti-SLAPP Motion and in this Notice of
16 Joinder, Summit respectfully urges this Court to grant the motion in its entirety, to
17 strike Plaintiff's Complaint with prejudice, and to issue an award of attorneys' fees in
18 Summit's favor.

19
20 DATED: February 1, 2011

Respectfully submitted,

21
22 KATTEN MUCHIN ROSENMAN LLP
23 DAVID HALBERSTADTER
24 SALLY WU

25 By: 
26 David Halberstadter
27 Attorneys for Defendant
28 SUMMIT ENTERTAINMENT, LLC

1 **DECLARATION OF SOPHIE CASSIDY**

2 SOPHIE CASSIDY declares as follows:

3 1. I have been employed by Summit Entertainment, LLC (“Summit”) since 2007,
4 and my current title is Creative Executive, Acquisitions. My responsibilities include
5 the acquisition by Summit of distribution rights to feature-length motion pictures
6 produced by third parties. I have personal knowledge of the facts set forth in this
7 Declaration, and I could and would competently testify to those facts under oath if
8 called upon to do so.

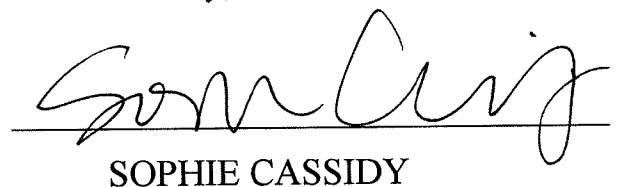
9 2. I was personally involved in the process by which Summit acquired distribution
10 rights to the motion picture *The Hurt Locker* (the “Film”). The Film premiered at the
11 Venice Film Festival in September 2008; thereafter, it was shown at the 33rd Annual
12 Toronto International Film Festival, also in September 2008. Summit acquired
13 distribution rights to the Film after the screening in Toronto.

14 3. Summit had no involvement with the Film prior to its acquisition of distribution
15 rights, including in the Film's development and production.

16 4. Summit acquired its distribution rights to the Film from the Film’s producer,
17 The Hurt Locker LLC. Summit is not a party to any contract relating to the Film with
18 its screenwriter, Mark Boal, or its director, Kathryn Bigelow.

19 5. The Hurt Locker LLC made a number of representations and warranties to
20 Summit in the distribution agreement for the Film, which Summit relied upon in
21 acquiring those rights and in distributing the Film. A true and correct excerpt from
22 this agreement is attached to my Declaration as Exhibit A.

23
24 I declare under penalty of perjury that the foregoing is true and correct, and that this
25 Declaration was executed on January ^{24th}, 2011 at Park City, Utah.

26
27 
28

SOPHIE CASSIDY

EXHIBIT A

Hurt Locker LLC
6360 Deep Dell Place
Los Angeles, CA 90068

As of September 10, 2008

Summit Entertainment, LLC
1630 Stewart Street, Suite 120
Santa Monica, CA 90404

Re: "HURT LOCKER" (the "Picture")

Dear Gentlepersons:

Reference is made to the letter agreement dated as of September 10, 2008 between Hurt Locker LLC ("Licensor") and Summit Entertainment, LLC ("Summit") in connection with the Picture (the "Term Sheet"). The Term Sheet, the Delivery Schedule attached thereto, the Short Form License and Mortgage of Copyright and Security Agreement signed in connection therewith, and this amendment (the "Amendment") shall sometimes collectively be referred to as the "Acquisition Agreement" or the "Agreement." Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Term Sheet.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

4. Without limiting the representations and warranties set forth in Paragraph 4 of the Term Sheet (which are hereby ratified and confirmed), the following provision is hereby added:

Representations/Warranties/Indemnification. Licensor represents and warrants to Summit and its successors and assigns that: (i) Licensor has the sole and exclusive right to enter into and perform the Agreement and grant to Summit all of the rights granted to Summit under the Agreement, and Licensor is the sole and absolute owner of all such rights and the entire copyright in the Picture; (ii) Licensor is free to enter into the Agreement and no rights of any third parties are or will be violated by entering into or performing the Agreement, and Licensor has taken all necessary action to authorize the execution and delivery of the Agreement; (iii) Licensor is not subject to any conflicting obligation or disability which will prevent or interfere with the execution or performance of the Agreement by Licensor, and Licensor has not authorized and will not authorize any other party to exercise any right or take any action which derogates from or competes with the rights granted or purported to be granted to Summit; (iv) the Picture (including any underling material) is entirely original (except for any material that Licensor has informed Summit in writing is in the public domain worldwide) and has not been and will not be exploited in any manner and/or medium in the Summit Territory; (v) the Picture does not and will not infringe upon the copyright or any other right, including but not limited to, the trademark, trade name, copyright, patent, other intellectual property right, literary right, artistic right, dramatic right, musical right, privacy right, or moral right of any person or entity, and is not and will not be based in whole or in part on the life of any real person, and, without limiting the foregoing, the Picture has all music and other clearances necessary for Summit to fully exploit the rights acquired under the Agreement (including, without limitation, advertising and promotional rights as well as distribution rights), which clearances have been done in accordance with customary standards observed by motion picture studios for theatrically released films (and for the avoidance of doubt, Licensor shall be financially responsible for any additional clearances required in the event they are insufficient), (vi) all services rendered by any individual or entity in connection with the Picture were rendered on a work-for-hire basis, and Licensor is the sole owner of all results and proceeds of such services and has complied with all obligations to such individuals and entities in connection therewith; (vii) the chain of title to the Picture is complete and all necessary payments, registrations, and recordings have been made in connection therewith, and without limiting the foregoing, the Picture has been validly registered for copyright in the United States of America and any other relevant territories in the name of Hurt Locker, LLC, and the copyright in the Picture and the literary, dramatic and musical material upon which it is based or which is contained in the Picture will be valid and subsisting during the Term throughout the world; (viii) there are no rights of approval or control held by third parties which in any way limit or restrict Summit's right to exploit the rights granted under the Agreement; (ix) there are no security interests or liens in the Picture (other than those union, guild and bank and other financing entity liens which are expressly described in Schedule 1 attached hereto and incorporated herein by this reference); (x) to the best of Licensor's knowledge after reasonable prudence and due inquiry, there is no litigation or threatened

litigation involving the Picture or any underlying materials; (xi) Licensor is, and has been for more than thirty (30) days prior to the date hereof, a limited liability company duly organized and existing under the laws of Licensor's jurisdiction of formation; and (xii) the Picture was produced in accordance with all applicable guild requirements, and all applicable laws, statutes, ordinances and regulations. Licensor shall defend (with counsel approved by Summit), indemnify and hold Summit and its affiliates, and their respective officers, directors, members, employees, agents, licensees and representatives, harmless from any and all claims, liability, damages, costs and expenses, including reasonable attorneys' fees, in connection with any claim or action arising out of or relating to the breach by Licensor of any term, covenant, condition, representation or warranty herein or under the Agreement. Without in any way limiting the foregoing, Licensor's indemnification obligations shall apply to any claims by third parties who rendered services on the Picture, or whose materials are incorporated into the Picture, except to the extent arising out of the gross negligence or willful misconduct of Summit.

5. Without limiting anything in the Agreement, the following provisions are hereby added:

Entire Agreement: The Agreement (including any exhibits or schedules attached hereto and made a part thereof) contains the full and complete understanding between the parties hereto, supersedes all prior agreements and understandings, whether written or oral, pertaining thereto and cannot be modified except by a written instrument signed by the parties hereto.

8. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one in the same instrument. Executed copies of the signature pages of this Amendment sent by facsimile or transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

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Except as amended herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed.

Sincerely,

HURT LOCKER LLC

By: 
Its: president

ACCEPTED AND AGREED TO:

SUMMIT ENTERTAINMENT, LLC

By: _____
Its: _____

Except as amended herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed.

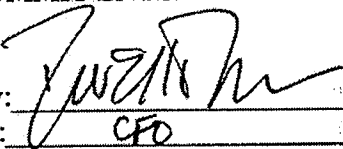
Sincerely,

HURT LOCKER LLC

By: _____
Its: _____

ACCEPTED AND AGREED TO:

SUMMIT ENTERTAINMENT, LLC

By:  _____
Its: CFO _____

1 expended no fewer than 27 hours in connection with the Anti-SLAPP Motion, and I
2 expended no fewer than 33 hours in connection therewith.

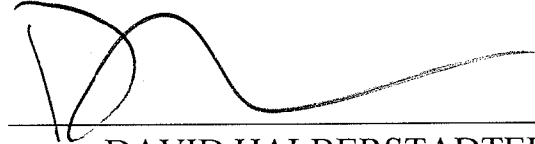
3 4. For purposes of this lawsuit I agreed to bill my time at an hourly rate of \$450
4 (which is lower than the hourly rate I customarily charge), and this is the rate at which
5 my time has been billed to Summit. Because I believe that my customary hourly rate
6 is reasonable for an attorney in the Los Angeles legal community with my seniority
7 and experience, I believe that the rate charged for my time in connection with this
8 lawsuit is more than reasonable, as well. Ms. Wu's time in connection with this
9 action is billed at the rate of \$395 per hour, which I also believe is reasonable for an
10 attorney in the Los Angeles legal community with Ms. Wu's seniority and experience.
11 Accordingly, the total amount of attorneys' fees that Summit has incurred to date in
12 connection with the Anti-SLAPP Motion is no less than \$25,515 (comprising \$10,665
13 on account of Ms. Wu's time and \$14,850 on account of my time).

14 5. I expect that Plaintiff will file written opposition to the Anti-SLAPP Motion
15 and that Ms. Wu and I will be required to review that opposition, collaborate with
16 counsel for the Moving Defendants in the preparation of a reply brief and, if
17 Plaintiff's opposition addresses the supplemental issues set forth in Summit's Notice
18 of Joinder, prepare a separate reply on Summit's behalf. I also anticipate that Ms. Wu
19 and I will expend time preparing for and attending any hearing on the Anti-SLAPP
20 Motion. Although I cannot predict with accuracy at this point how many additional
21 hours Ms. Wu and I will spend in connection with the Anti-SLAPP Motion, my best
22 present estimate is that she will expend an additional 20 hours and that I will expend
23 an additional 10 hours in connection with the anticipated future activities described
24 above. My best present estimate is that Summit will incur no less than \$12,400 in
25 additional attorneys' fees in connection with the Anti-SLAPP Motion (\$7,900 on
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account of Ms. Wu's time and \$4,500 on account of my time), bringing Summit's projected total fees in connection with the motion to no less than \$37,915.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on February 1, 2011 at Los Angeles, California.



DAVID HALBERSTADTER

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, citizen of the United States and employed in Los
5 Angeles County, California. I am over the age of eighteen years and not a party to the within-
6 entitled action. My business address is 2029 Century Park East, Suite 2600, Los Angeles, California
7 90067.

8 On February 1, 2011, I served the foregoing document: **NOTICE OF JOINDER BY**
9 **DEFENDANT SUMMIT ENTERTAINMENT, LLC IN MOTION TO STRIKE**
10 **PLAINTIFF'S COMPLAINT PURSUANT TO CAL. CODE CIV. PROC. §425.16;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS OF SOPHIE**
12 **CASSIDY AND DAVID HALBERSTADTER IN SUPPORT THEREOF** addressed as follows:

10 Linda George, Esq. 11 577 Summit Avenue 12 Hackensak, NJ 07601 13 <i>Attorney for Plaintiff</i>	10 Todd Weglarz, Esq. 11 FIEGER, FIEGER, KENNEY, 12 <i>ET AL.</i> 13 19390 West 10 Mile Road 14 Southfield, MI 48075-2463 15 <i>Attorneys for Plaintiff</i>	10 Stephen M Orlofsky, Esq. 11 BLANK ROME LLP 12 301 Carnegie Center 13 3rd Floor 14 Princeton, NJ 08540 15 <i>Attorneys for Mark Boal & Kathryn Bigelow</i>
16 Jeremiah Reynolds, Esq. 17 KINSELLA WEITZMAN 18 ISER KUMP 19 & ALDISERT LLP 20 808 Wilshire Boulevard Santa Monica, CA 90401 <i>Attorneys for Mark Boal & Kathryn Bigelow</i>	16 Anthony M. Glassman, Esq. 17 Steven Berkowitz, Esq. 18 GLASSMAN, BROWNING, 19 <i>ET AL.</i> 20 360 North Bedford Drive #204 Beverly Hills, CA 90212 <i>Attorneys for Playboy Enterprises, Inc.</i>	

21 (X) **BY MAIL** I am "readily familiar" with the firm's practice of collecting and processing
22 correspondence for mailing. Under that practice, the envelope would be deposited with the U.S.
23 Postal Service on the same day with postage thereon fully prepaid at 2029 Century Park East, Suite
2600, Los Angeles, California 90067, in the ordinary course of business.

24 (X) **FEDERAL** I declare that I am employed in the office of a member of the Bar of this Court at
25 whose direction the service was made. I declare under penalty of perjury under the laws of the
26 United States of America that the above is true and correct.

27 Executed on **February 1, 2011**, at Los Angeles, California.

28 
Ani Seferyan

Katten
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-302
310.788.4400 tel 310.788.4471 fax