UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

STEVES AND SONS, INC., Plaintiff, v. JELD-WEN, INC., Defendant.	)	Civil Action No. 3:16-CV-00545-REP

DEFENDANT JELD-WEN, INC.'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

REDACTED VERSION FILED PUBLICLY

Pursuant to the Court's November 21, 2017 Order (Doc. No. 574), Defendant JELD-WEN, Inc. ("JELD-WEN") respectfully submits this supplemental brief in support of its motion for partial summary judgment regarding Plaintiff Steves and Son's Inc.'s ("Steves") claims for future lost profits damages.[1]

The Court should reject as a matter of law Steves' antitrust claim for "future lost profits" of nearly [redacted] (before trebling) because it is impossibly speculative. The claim is facially

[1] The Court's order requests supplemental briefing "on the issue of whether Steves is entitled to damages for future lost profits attributable to antitrust injury for Steves' Clayton Act claim." Doc. No. 547 at 1. JELD-WEN interprets this question to ask whether Steves has presented evidence from which a reasonable jury can find that Steves has suffered an impact from JELD-WEN's acquisition of CraftMaster Manufacturing, Inc. ("CMI") for which it can obtain future lost profits damages under Section 4 of the Clayton Act, and not whether Steves has presented evidence from which a reasonable jury can find that, in the event that Steves goes out of business, the acquisition will then result in an antitrust injury to the market as a whole.

based on a hypothetical future injury that everyone agrees may never happen.[2] That claim of "injury" itself depends on a lengthy chain of speculation, each link of which indisputably may never come to pass. Steves contends that, when the parties' 2012 Supply Agreement expires pursuant to its terms on [redacted], JELD-WEN and Steves [redacted]. Tucker Rpt. ¶¶ 36; 79, attached as Exhibit 2. Steves contends that it is entitled to recover for that possible future harm now, as if it were already a definite, certain and measurable injury. As a result, Steves necessarily claims the right to keep any awarded "future lost profits," even if it continues to prosper for decades to come, with door skins from JELD-WEN or any of several other possible sources. That cannot be, and in fact is not, the law. When an argument has consequences that do not seem just, it often turns out to violate several different legal doctrines at once. Steves' claim for "lost future profits" is a classic example.

First, Steves' claim for future lost profits must fail because at this point, the damages are simply too speculative—even if some injury could be said to have already occurred.

> [I]t is hornbook law, in antitrust actions as in others, that even if injury and a cause of action have accrued as of a certain date, future damages that might arise from the conduct sued on are unrecoverable if the fact of their accrual is speculative or their amount and nature unprovable.

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 339 (1971). This doctrine imposes no unfairness on Steves because antitrust law also provides that "refusal to award future profits as too speculative is equivalent to holding that no cause of action has yet accrued for any

---

[2] Steves concedes that it brings these damages only under the antitrust claim because JELD-WEN's notice of termination of the 2012 Supply Agreement pursuant to its terms did not breach the contract. Nov. 16, 2017 Hr'g Tr. 134:11-15, attached as Exhibit 1.

but those damages already suffered," and that therefore "the cause of action for future damages, if they ever occur, will accrue only on the date they are suffered" and "the plaintiff may sue to recover them at any time within four years from the date they were inflicted." *Id.*

Second, Steves' claim is also impermissible because, at common law and under the antitrust laws, a cause of action for money damages simply does not accrue until the plaintiff has actually suffered the injury. A plaintiff is permitted to estimate ongoing future damages from an already-suffered injury within limits. But an injury that may or may not happen in the future does not give rise to a cause of action. That is why a smoker who has developed cancer can sue for an estimation of future medical bills and lost wages—but a smoker who does not yet have cancer has no cause of action at all. *See* Mem. in Supp. of JELD-WEN's Mot. for Partial Summ. J. ("Mem.") at 23-24, Doc. No. 379; Reply in Supp. of JELD-WEN's Mot. for Partial Summ. J. ("Reply") at 3-4, Doc. No. 476.

Finally, and as also addressed more fully in JELD-WEN's prior briefing, constitutional ripeness principles preclude Steves from seeking to recover any damages that stem from an injury which has not yet occurred and may never occur; a claim can proceed only when the plaintiff's injury has already happened or is "imminent." *See* Mem. at 21-27; Reply at 16-18. Steves counters that so long as it has *any* present injury, *all* claims for future harm that it might hypothesize, even if from another, unrealized injury, are also ripe for adjudication. Steves' Mem. in Opp'n. to JELD-WEN's Mot. for Partial Summ. J. ("Opp'n") at 26, Doc. No. 452. Steves cites no cases to support that premise, and it is legally incorrect. Reply at 17-18.

All of these doctrines lead to exactly the same legal conclusion: Steves' claim for lost future profits is far too speculative to proceed, because it depends on a possible future injury that Steves may or may not ever suffer. If it later suffers that injury, it may try to pose its claim then,

and the fact that it is too speculative to proceed now will be no bar to it. Of course, the outcome of this case (among other future developments) could affect that hypothetical future claim in a variety of ways. But regardless, it is another case for another day.

ARGUMENT

I. STEVES' FUTURE LOST PROFITS CLAIM CANNOT PROCEED BECAUSE IT REQUIRES THE JURY TO ENGAGE IN IMPERMISSIBLE LEVELS OF SPECULATION AND CONJECTURE

A. Plaintiffs Cannot Recover Speculative Future Damages

First and foremost, Steves cannot present its claim for "future lost profits" because it depends on the future outcome of too many uncertain contingencies and thus is too speculative as a matter of law. Even if Steves' claim were ripe for constitutional purposes, and even if it was traceable to an injury that Steves had already experienced, "it is hornbook law, in antitrust actions as in others, that even if injury and a cause of action have accrued as of a certain date, future damages that might arise from the conduct sued on are unrecoverable *if the fact of their accrual is speculative* or their amount and nature unprovable." *Zenith*, 401 U.S. at 339 (emphasis added). Steves concedes that point. Opp'n at 26. Whether Steves ever accrues damages as the result of [redacted] is, by definition, at best speculative. One fact not in dispute is that as of today, no one knows or can know whether Steves will actually [redacted]

At the hearing, the Court pressed Steves' counsel to name even one case allowing a plaintiff to proceed with a future lost profits damages claim where the case presented "as many ifs between here and now as [Steves] is asserting." Ex. 1, Nov. 16, 2017 Hr'g Tr. 137:11-14. Steves could not, nor can it. The case law clearly rejects claims for hypothetical lost future profits even when they are nowhere close to as speculative as this one.

In *Virginia Vermiculite, Ltd. v. W.R. Grace & Co.-Connecticut*, a court in the Western District of Virginia considered and denied a claim that was less speculative than the one presented by Steves. 108 F. Supp. 2d 549 (W.D.Va. 2000). There, plaintiff mining company alleged that its competitor W.R. Grace conspired with a non-profit to exclude plaintiff from the market for vermiculite by donating property to the non-profit pursuant to a deed that contained a restrictive covenant that prevented the competitor from mining it. *Id*. at 558, 560-61. In addition to other claims for damages, plaintiff also asserted a claim for future lost profits calculated as the amount of profits plaintiff would lose during a future 8-year period because it would not have the ability to mine the disputed properties. *Id*. at 594. The court granted summary judgment as to this claim because it depended on multiple assumptions and speculation regarding the future market for vermiculite, including whether the defendant non-profit might change course and allow mining on the disputed properties, the reserves available to plaintiff in the future, the properties available to plaintiff in the future, and the market conditions for vermiculite, specifically demand and potential new entrants. *Id*. at 596-97; *accord Zenith*, 401 U.S. at 342 (explaining that damages are speculative when the court must "predict market conditions and the performance of one competitor in that market five to 10 years hence"). Steves' future lost profits are even more speculative than those in *Virginia Vermiculite* because Steves faces no legal impediments analogous to a restrictive covenant that would prevent it from obtaining door skins, from JELD-WEN or any other supplier.

Similarly, in *Microbix Biosystems, Inc. v. Biowhittaker, Inc*., the court granted summary judgment on plaintiff's claims for future lost profits allegedly stemming from defendants' exclusive supply agreement denying plaintiff access to the only source of a necessary input for urokinase, a protein enzyme. 172 F. Supp. 2d 680 (D. Md. 2000). The court held that plaintiff

could not recover future lost profits for its anticipated sales of urokinase because plaintiff had not yet completed all of the requisite tasks to bring urokinase to market, and the claim for future lost profits thus merely assumed that plaintiff would do so. *Id*. at 698. This was despite the fact that the FDA had recently banned imports of the necessary input, making the plaintiff's assertion that it would not be able to obtain any alternative source of the input far less speculative than Steves' claims regarding future supply of door skins here. *See id*. at 698 n. 65.

And, in *Transnor (Bermuda) Ltd. v. BP North America Petroleum*, the district court granted summary judgment on damages claims also far less speculative than those asserted by Steves here. 736 F. Supp. 511, 516 (S.D.N.Y. 1990). In that case, plaintiff brought claims against defendants for conspiracy to trade crude at below market prices, and plaintiff asserted as damages any future payments it might make to remedy breaches of contracts stemming from its refusal to buy the underpriced crude it had pledged to buy. *Id*. at 515-16. The court granted summary judgment because, even though Transnor had actually agreed to pay breach damages, it had not yet actually paid and certain "conditions precedent" to the agreement taking effect had not yet occurred. *Id*. at 516 ("While Nissho may believe Transnor owes it money, and Transnor may also believe it, . . . Transnor has suffered no damages at this point . . . ."). The court ruled that Transnor could assert the claims only after Nissho obtained a judgment, or Transnor actually paid, so that damages had accrued. *Id*. Unlike Transnor, whose contractual obligations made the fact of future damages almost inevitable, Steves cannot point to any specific evidence that it [redacted]

B. Steves Does Not, And Cannot, Present Any Evidence Of What The Market For Doorskins Will Look Like In [redacted]

As JELD-WEN predicted it would, Mem. at 27, Steves loaded its opposition to JELD-WEN's motion for summary judgment with one-sided and self-serving "evidence" that it claims

shows that it will not be able to find a supply of doorskins from JELD-WEN, Masonite, foreign suppliers or self-supply in [redacted] Opp'n at 29-30. Even if Steves' characterizations of the present market were credible, the evidence it points to does not—and cannot—speak in the slightest as to what the market for doorskins will look like in [redacted] Steves' evidence just confirms the obvious: what will happen years in the future is not yet settled, and no one can know today what conditions will look like in [redacted] Steves can only speculate as to the potential sources of supply at that time, from JELD-WEN as well as others, and that speculation dooms its claims.

For example, Steves admits that it is currently receiving doorskins from JELD-WEN, and that JELD-WEN has repeatedly stated its willingness to negotiate a new, long-term supply agreement with Steves, or in the alternative to supply Steves on an *ad hoc* basis after their agreement expires. Opp'n at 28-29. Steves' only response to these undisputed facts is that it doesn't believe JELD-WEN, and that (in its view) purchases outside the context of a long term agreement will not be "feasible." *Id*. These unsupported assertions are hardly evidence of "provable" and "predictable" future damage. As in *Virginia Vermiculite*, where the court denied plaintiff lost profits claims in part because the defendant had stated that it *might* allow plaintiff to mine the properties, the fact that JELD-WEN is actually willing to sell to Steves in a variety of manners makes Steves' future lost profits claims irredeemably speculative.

Moreover, Steves' assertions that that it will likely be unable to source doorskins from alternative suppliers, [redacted] is based solely on speculation and conjecture about what the U.S. market for doorskins might look like in [redacted]. Steves admits that [redacted], and that Steves [redacted]. Opp'n at 29-30. Steves seeks to

downplay these record facts by asserting that [redacted]. *Id.* But Steves does not and cannot state with any certainty what [redacted]. Nor does Steves know whether or to what extent [redacted]. H. Heintel Dep. Tr. at 47:21-48:7, 50:8-52:4, attached as Exhibit 3.

Tellingly, Steves' principals have repeatedly admitted under oath that they actually have no idea what the doorskin market will look like in [redacted], and whether JELD-WEN, Masonite, Teverpan or perhaps other doorskin suppliers might sell to Steves at that time.[3] Sam Bell Steves III, Steves' Board member and heir apparent to the company, put this most succinctly at his deposition in the following line of questioning:

[redacted]

[3] For example, Yildiz is a Turkish company that manufactures and sells doorskins in Turkey. [redacted]

Kastamonu is a Romanian company that also manufactures doorskins in Turkey. [redacted]

[redacted]

Sam Steves III Dep. Tr. at 108:20-109:8, attached as Exhibit 9.

His father, Steves President Sam Bell Steves II, also conceded that [redacted] S. Steves II Dep. Tr. at 41:12-16, May 25, 2017, attached as Exhibit 10. He further elaborated that [redacted]. *Id.* at 41:17-42:9. Mr. Steves has repeatedly described [redacted] *Id.* at 21:9-22:20. Greg Wysock, who was hired by Steves specifically to help it assess alternative supplies of doorskins, has also candidly admitted that [redacted] G. Wysock Dep. Tr. at 71:8-11, May 25, 2017, attached as Exhibit 11. And Steves' counsel has repeatedly objected to questions about the possibility of future supply as calling for speculation. *See, e.g.*, *Id.* at 69:21-70:12; S. Steves III Dep. Tr. at 85:13-19, May 16, 2017, attached as Exhibit 12.

Finally, Steves has told [redacted] Mem. at 26-27. Although Steves asserts that it [redacted], Opp'n at 30, those are problems of Steves' own making. Steves neglects to tell the Court that [redacted]. *See, e.g.*, STEVES-000734932 [redacted]

[redacted]), attached as Exhibit 13. Steves further ignores that [redacted]. S. Steves II Dep. Tr. at 282:11-283:20, May 26, 2017, attached as Exhibit 14.

Of course Steves cannot make its future damages claim non-speculative simply by refusing to pursue the alternative supply opportunities that it has available. Having "stubbornly refuse[d] to protect [its] own legal interests by refusing to mitigate, and thereby incur[ring] unnecessary losses, [Steves] has no legal redress and will be barred from recovery." Neil W. Hamilton & Virginia B. Cone, Mitigation of Antitrust Damages, 66 OR. L. REV. 339, 357 (1987) (quoting Restatement (Second) of Torts § 918 cmt. a (Am. Law Inst. 1977); Restatement (Second) of Contracts § 350 cmts. a, b (Am. Law Inst. 1982)); *accord Transnor*, 736 F. Supp. at 522 (denying lost profits claims because plaintiff failed to take steps to stay in business, and in that case "responsibility of the lost profits rests with Transnor").

C. Steves Admits That It Has No Evidence Supporting Its Claim That A Lack Of Full Doorskin Supply In [redacted]

Even if Steves could prove that it will not have a fully sufficient supply of doorskins in [redacted] (it cannot), Steves' claim for lost future profits would still be impossibly speculative, because it depends on the most uncertain premise that a shortfall in doorskin supply would necessarily cause it to [redacted]. Indeed, Steves' damages calculations assume that Steves will have to [redacted]

[redacted]. Mem. Ex. 1; Ex. 2, A. Tucker Rpt. ¶¶ 36, 79; A. Tucker Dep. Tr. at 78:17-79:8, attached as Exhibit 15. That assumption is wildly speculative, and Steves' own CEO, Edward Steves, concedes that it is [redacted]. E. Steves Dep. Tr. at 661:8-663:5, Aug. 16, 2017, attached as Exhibit 16.

Notably, [redacted]. Ex. 15, A. Tucker Dep. Tr. at 61:15-62:17. [redacted] *Id.* at 16:19-17:10 (emphasis added); *see also id.* at 152:22-153:11 ([redacted]). [redacted]

[redacted] *Id.* at 50:1-51:2, 68:6-69:5, 147:4-148:16. Steves cannot support its lost profits claim without any evidence that will go out of business, and based solely on self-serving speculation and assumptions by Steves' principals and its paid expert.

II. STEVES' CLAIM FOR FUTURE DAMAGES FURTHER FAILS BECAUSE IT IS NOT RIPE AND THE INJURY HAS NOT ACCRUED

A. Ripeness Must Be Evaluated Injury-By-Injury

In its opposition to JELD-WEN's motion for partial summary judgment, Steves asserted that, so long as it proved that the merger had impacted it adversely, all of its potential damages claims are ripe and appropriate for adjudication by this Court. Opp'n at 26-27. JELD-WEN's motion and reply brief explain why that is not correct. "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation omitted). Accordingly, a party has standing to press its claim in federal court only when it can demonstrate the existence of an injury-in-fact, that is, "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). Steves' fear that it may be unable to secure a new purchasing contract with JELD-WEN, or another source of door skin supply, after [redacted] is not an "actual or imminent" injury. It is hypothetical and

contingent on a variety of future events, and therefore unripe for reasons similar to those that recently led the court to dismiss *SureShot Golf Ventures, Inc. v. Topgolf, Int'l, Inc.* No. H-17-127, 2017 U.S. Dist. LEXIS 135796 (S.D. Tex. Aug. 24, 2017).[4]

Steves points out that it has *other* injuries that are ripe, and that therefore that there is some Article III controversy before this Court. But Steves does not cite even one case supporting its premise that if a plaintiff has one ripe claim it can press other claims that are otherwise unripe. JELD-WEN cited several cases making clear that a court must assess ripeness injury-by-injury, most notably *Plant Oil Powered Diesel Fuel Systems, Inc. v. ExxonMobil Corp.*, 801 F. Supp. 2d 1163, 1184-85 (D.N.M. 2011), and *Volvo North America Corp. v. Men's International Professional Tennis Council*, 857 F.2d 55 (2d Cir. 1988).

B. An Antitrust Damages Claim Does Not Accrue Until The Specific Injury Giving Rise To Those Damages Has Been Experienced

Steves' claim for lost future profits also cannot be adjudicated because those "damages" would stem from an injury that has not yet happened and may never happen, and that would be impermissibly speculative. As JELD-WEN previously explained, under basic common law principles a plaintiff who has (for example) been wrongfully exposed to dangerous chemicals does not have a cause of action for the cancer he might or might not contract as a result. *See, e.g., Ball v. Joy Techns., Inc.*, 958 F.2d 36, 39 (4th Cir. 1991). Antitrust law incorporates common law injury, accrual, and causation principles. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 532-34 (1983).

---

[4] Steves' attempt to distinguish the court's decision in *Topgolf* is incorrect. The court noted that the plaintiff in that case had not alleged the existence of any present anticompetitive effects, but did not "distinguish" the decision on that basis, or imply in any way that it would have seized jurisdiction for an unripe claim based on the existence of other, ripe injuries. 2017 U.S. Dist. LEXIS 135796, at *10-11.

Steves points to the Supreme Court's statement in *Zenith* that "if a plaintiff feels the adverse impact of an antitrust conspiracy on a particular date, a cause of action immediately accrues to him to recover all damages incurred by that date and all provable damages that will flow in the future from the acts of the conspirators on that date." 401 U.S. at 339. Steves contends that, if it is unable to obtain door skins after [redacted], the ultimate reason will be the merger and "flow from" the merger. But Steves is missing an important point. If new acts by the defendant are necessary to cause some new future harm, then for accrual purposes the future harm *is not* attributable to the defendant's prior acts. This is a critical point that protects plaintiffs as much as defendants. The ordinary black-letter application of the *Zenith* rule is that each sale by a price-fixing cartel gives rise to a distinct new injury, cause of action, and limitations period. Future damages caused by *new* sales are not part of that cause of action, but accrue—and can be sued upon—as they occur. That is why a plaintiff who sues in 2008, for overcharges stemming from an unlawful price-fixing agreement in 2000, is not completely time-barred but can still recover for overcharges on its purchases from 2004 to 2008. *See, e.g., Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189-91 (1997) (explaining how the *Zenith* accrual rule works). If Steves' arguments in this case were right, then a plaintiff's first purchase from a cartel would give rise to a cause of action not merely for all overcharges on that purchase but also from all *projected future purchases*, and set the four year limitations period running on all of it. Fortunately for plaintiffs, that is not the law.

III. IF STEVES IN FACT GOES OUT OF BUSINESS IN [redacted], IT CAN BRING THOSE CLAIMS AT THAT TIME

Finally, and as also discussed in a November 20, 2017 letter to the Court, JELD-WEN understands that the Court is concerned about whether granting summary judgment as to Steves' future lost profits claim now would bar such a claim at a later time, if Steves' fears actually came

to pass. The answer is clearly no. Right after explaining that "future damages that might arise from the conduct sued on are unrecoverable if the fact of their accrual is speculative or their amount and nature unprovable," the Supreme Court in *Zenith* explained that "refusal to award future profits as too speculative is equivalent to holding that no cause of action has yet accrued for any but those damages already suffered" and that "[i]n these instances, the cause of action for future damages, if they ever occur, will accrue only on the date they are suffered; thereafter the plaintiff may sue to recover them at any time within four years from the date they were inflicted." 401 U.S. at 339. And indeed the Supreme Court went on to hold that damages sought by Zenith in that case were not barred by the limitations period because they would have been too speculative, if Zenith had sought them earlier. *Id.* at 341.

If this Court were to hold that Steves' claim for lost future profits is premature and speculative at this time, that holding would be *res judicata* on both JELD-WEN and Steves in future litigation; JELD-WEN would be unable to claim later that Steves' future lost profits claim had already accrued now. In any event, JELD-WEN has previously represented to the Court—and will represent again here—that it will not assert a statute of limitations defense in any future action by Steves premised on any contention that Steves' claim for future lost profits has already accrued now. Of course JELD-WEN reserves its rights to challenge any future claim by Steves on any other appropriate basis, including but not limited to lack of causation, and the *res judicata* consequences of any loss by Steves in this case.

CONCLUSION

For the reasons set forth above, and those stated in JELD-WEN's prior summary judgment briefs, the Court should grant summary judgment on Steves' claims for future lost profits, both because Steves has not suffered any actionable and ripe injury, and because Steves' damages claim is impermissibly speculative.

Dated: November 30, 2017

Respectfully submitted,

JELD-WEN, Inc.

By counsel

/s/Harrison M. Gates

Harrison M. Gates (VSB #80385)
Michael W. Smith (VSB #01125)
Craig T. Merritt (VSB #20281)
R. Braxton Hill, IV (VSB # 41539)

Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
(804) 697-4100 – Tel.
(804) 697-4112 – Fax
hgates@cblaw.com
msmith@cblaw.com
cmerritt@cblaw.com
bhill@cblaw.com

Margaret M. Zwisler *(pro hac vice)*
J. Scott Ballenger *(pro hac vice)*
Allyson M. Maltas (*pro hac vice*)
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C., 20004
(202) 637-2200 – Tel.
(202) 637-2201 – Fax
margaret.zwisler@lw.com
scott.ballenger@lw.com
allyson.maltas@lw.com

Alfred C. Pfeiffer (*pro hac vice*)
Sarah M. Ray (*pro hac vice*)
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600 – Tel.
(415) 395-8095 – Fax
al.pfeiffer@lw.com
sarah.ray@lw.com

Lawrence E. Buterman (*pro hac vice*)
Latham & Watkins LLP

885 Third Avenue
New York, NY 10022
(212) 906-1200 – Tel.
(212) 751-3864 – Fax
lawrence.buterman@lw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2017, I will electronically file a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

Lewis F. Powell III
John S. Martin
Alexandra L. Klein
Maya M. Eckstein
Paul T. Nyffeler
Douglas M. Garron
R. Dennis Fairbanks, Jr.
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
(804) 788-8200 – Tel.
(804) 788-8218 – Fax
lpowell@hunton.com
martinj@hunton.com
aklein@hunton.com
meckstein@hunton.com
pnyffeler@hunton.com
dgarrou@hunton.com
dfairbanks@hunton.com

Ted Dane
Glenn Pomerantz
Gregory Sergi
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
(213) 683-9288 – Tel.
(213) 683-4088 – Fax
ted.dane@mto.com
glenn.pomerantz@mto.com
gregory.sergi@mto.com

Kyle Mach
Joshua Patashnik
Emily C. Curran-Huberty

Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
(415) 512-4000 – Tel.
(415) 512-4077 – Fax
kyle.mach@mto.com
josh.patashnik@mto.com
emily.curran-huberty@mto.com

Attorneys for Plaintiff

Marvin G. Pipkin
Kortney Kloppe-Orton
Pipkin Law
10001 Reunion Place, Suite 6400
San Antonio, TX 78216
(210) 731-6495 – Tel.
(210) 293-2139 - Fax

Of Counsel

/s/Harrison M. Gates
Harrison M. Gates (VSB #80385)
Michael W. Smith (VSB #01125)
Craig T. Merritt (VSB #20281)
R. Braxton Hill, IV (VSB # 41539)
Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
(804) 697-4100 – Tel.
(804) 697-4112 – Fax
hgates@cblaw.com
msmith@cblaw.com
cmerritt@cblaw.com
bhill@cblaw.com

Margaret M. Zwisler *(pro hac vice)*
J. Scott Ballenger *(pro hac vice)*
Allyson M. Maltas (*pro hac vice*)
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C., 20004
(202) 637-2200 – Tel.
(202) 637-2201 – Fax

margaret.zwisler@lw.com
scott.ballenger@lw.com
allyson.maltas@lw.com

Alfred C. Pfeiffer (*pro hac vice*)
Sarah M. Ray (*pro hac vice*)
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600 – Tel.
(415) 395-8095 – Fax
al.pfeiffer@lw.com
sarah.ray@lw.com

Lawrence E. Buterman *(pro hac vice)*
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
(212) 906-1200 – Tel.
(212) 751-3864 – Fax
lawrence.buterman@lw.com

Attorneys for Defendant