ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

October 1, 2025

Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
c/o Rules Committee Staff
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-300
Washington, D.C. 20544

Re: Third-Party Litigation Finance

The International Legal Finance Association ("ILFA")[1] respectfully submits this Rules Suggestion to the Advisory Committee on Civil Rules and its Third-Party Litigation Funding Subcommittee ("the Committee").

I. EXECUTIVE SUMMARY

ILFA and its members have participated actively in this Committee's deliberations for more than a decade, submitting extensive written materials to rebut unfounded criticisms of litigation finance and to demonstrate its benefits to the civil justice system. Those prior submissions explained at length that litigation funding (i) enhances access to justice, (ii) does not interfere with the attorney-client relationship or professional independence, and (iii) preserves core evidentiary protections such as attorney-client privilege and the work-product doctrine. We will not focus on those arguments here.[2] Nor will we rehash in detail the volumes of precedent holding that agreements and communications with funders are not discoverable because they (1) are irrelevant to the parties' claims and defenses, (2) constitute protected work product or are otherwise privileged, and/or (3) would provide an unfair advantage to opposing parties in litigation.

This submission instead focuses on a narrower but equally important point: current proposals to regulate "third-party litigation funding" are both underinclusive and discriminatory. As we detail below, the American legal system is replete with forms of third-party finance—including law firm contingency fees, bank loans, equity issuances, insurance

[1] Founded in September 2020, ILFA is the only global association of commercial legal finance companies, comprised of 30 members. ILFA is a non-profit trade association that promotes the highest standards of operation and service for the commercial legal finance sector, including respecting duties to the courts, avoiding conflicts of interest, and preserving confidentiality and legal privilege.

[2] *See, e.g.*, Rules Suggestion 22-CV-O (Oct. 3, 2022); Rules Suggestion 21-CV-H (April 6, 2021); Rules Suggestion 19-CV-E (Feb. 20, 2019); Rules Suggestion 19-CV-F (Feb. 20, 2019); Rules Suggestion 17-CV-YYYYY (Sept.6, 2017); Rules Suggestion 17-CV-XXXXX (Sept. 1, 2017); Rules Suggestion 14-CV-B-1 (Oct. 21, 2014), *available at* https://www.uscourts.gov/forms-rules/records-rules-committees/rules-suggestions.

defense, family support, pro bono financing by nonprofits, and advocacy litigation funded by trade associations. All of these are longstanding and socially accepted ways of financing litigation. Yet the proposed federal disclosure regimes single out only one narrow slice of this landscape: non-recourse commercial funding made in exchange for a share of monetary recovery. That narrow targeting is not explained by any principled distinction.[3] Instead, it is designed to create a system that burdens small businesses and individual claimants—those least able to access traditional capital markets to finance legal claims—while leaving untouched the financing practices of wealthy companies and institutional actors that have far greater resources and strategic influence over litigation.

Put simply, the proposals before the Committee would impose disclosure rules not on all forms of litigation finance, but on the one form most likely to level the playing field for less well-resourced litigants. That asymmetry reveals the true dynamic at work: selective regulation risks suppressing the only type of finance that empowers smaller parties, while exempting the far more entrenched forms of third-party influence that pervade American litigation.

The push for selective regulation lacks justification on public policy grounds alone. Yet it also belies the growing body of case law and judicial experience related to litigation funding. In connection with this submission, ILFA conducted extensive research into dockets and other public domain materials. We reviewed thousands of filings to arrive at our conclusion that courts are effectively exercising their inherent authority to order disclosure of litigation funding when they deem appropriate. Our findings are summarized in the penultimate section hereof.

Accordingly, ILFA does not believe rulemaking at the Advisory Committee level to be necessary. It would be a solution in search of a problem—a problem that, despite over a decade of submissions from interested parties—remains to be identified.

Finally, to the extent the rulemaking process proceeds, we explain that the best approach comes not from sweeping federal mandates, but from the considered approach set forth by the Delaware Supreme Court in its 2023 Report and Recommendations. After extensive study, a committee established by the Delaware Supreme Court concluded that no systemic problems warranted broad disclosure, and that the only legitimate judicial interest was ensuring that funders do not control the conduct of litigation. Delaware's proposed narrowly tailored solution—limited *in camera* review for control issues only—preserves judicial integrity without chilling legitimate finance or creating opportunities for adversarial abuse.

ILFA respectfully urges the Committee to adopt the same guiding principle: resist overbroad, underinclusive disclosure mandates, and if any action is to be taken, follow Delaware's modest, proportionate guide.

[3] Rather, it is explained by the defense-minded motivations of the large corporate interests that perennially lobby for disclosure requirements. *See infra* n.20.

II. THIRD-PARTY FINANCE IN OUR LEGAL SYSTEM

In April 2025, the Committee recognized an important threshold question for its project: what conduct (if any) should be targeted for regulation? The first of the Committee's nine questions asked:

> How does one describe in a rule the arrangements that trigger a disclosure obligation? In an era when lawyers and law firms often rely on bank lines of credit to pay the rent, pay salaries, hire expert witnesses, etc., all seem to agree that TPLF disclosure requirements should not apply to such commonplace arrangements.

April 2025 Agenda Book at 271, excerpted in Appendix A hereto.

If the Committee elects to regulate third-party funding, it will need to create a rule that defines what forms of third-party funding it wishes to regulate (and which it does not). The Committee's question quoted above recognizes that at least one form of third-party finance—law firm bank loans—are a salutary feature of the civil justice system and should not be regulated.

In this Part I, we explain that (A) the practice of litigants and law firms using third-party finance to access the courts is a well-accepted feature of the civil justice system; (B) the type of "third-party finance" targeted for regulation is one of many such forms of third-party finance; and (C) the targeted form of finance is one especially likely to facilitate access to justice for small businesses and ordinary Americans. One important conclusion of this Part is that if the Committee elects to regulate only commercial third-party financing, it will create a regulatory system that discriminates among various forms of third-party financing, and that does so in a way that is especially likely to disproportionately harm small businesses and less well-resourced individuals.

A. Third-Party Finance Is a Mainstay of the Civil Justice System.

Legal services, like just about everything else, cost money (and often *a lot* of money).[4] Companies and people pay for what they need by either (a) using their retained earnings or savings or (b) using third-party capital.[5] For example, when businesses need money to hire workers or develop new technologies, they can rely on their own capital (retained earnings) or they can enter the capital markets to raise third-party finance (typically equity or debt financing). And when people need money to buy a home, purchase a car, or attend college,

[4] *See* Emery G. Lee III, *Law Without Lawyers: Access to Civil Justice and the Cost of Legal Services*, 69 U. MIAMI L. REV. 499, 503-11 (2015) (detailing how the rising cost of legal services impedes access to justice).

[5] William R. White, *The Tobin Tax: A Solution to Today's International Monetary Instability?*, 1999 COLUM. BUS. L. REV. 365, 385 (1999) (identifying "the different methods employed by firms in financing their investment programs" as fitting within "three main types: equity financing, debt financing, and internally-generated funds derived from retained earnings.").

they can use their savings, or they can borrow money from third parties including banks, the government, or family members.

Businesses and individuals often rely on third-party capital to support their legal needs too. Third-party support of litigation is a long-permitted and widely-celebrated aspect of our legal system. Indeed, the legal ethics rules explicitly contemplate and permit third-party financing of litigation: Model Rule 1.8(f) expressly allows lawyers to "accept compensation for representing a client from one other than the client," so long as the lawyer otherwise complies with the ethics rules.[6]

Imagine a company or individual wants to prosecute or defend against a legal claim. Assume the company, like 99.9% of all American companies, is a small business.[7] Or assume the individual, like over 90% of Americans, does not have a multi-million-dollar net worth.[8] That company or individual probably cannot write the six-, seven-, or even eight-figure check it takes to bring or defend against litigation.

So that company or individual will likely rely on third party capital to protect their legal rights. How will they do so?

The contingent fee is one common form of third-party finance. Lawyers—third parties to the litigation—routinely finance the fees and expenses of litigation on behalf of their clients. In a story that echoes contemporary opposition to litigation finance by large, moneyed interests, the contingent fee was initially opposed by companies that did not want impecunious litigants to have greater access to the courts.[9] Today, of course, the legal ethics rules permit lawyers to finance their clients' litigation through the contingent fee.[10] In fact, the contingent fee is a celebrated aspect of our legal system that has helped improve access to justice.[11]

Bank loans and equity investments for claimholders are another common form of third-party finance. The Committee has already acknowledged that "lawyers and law firms often rely on bank lines of credit" and that "all seem to agree that TPLF disclosure requirements should not apply to such commonplace arrangements." Companies and individuals, no less than law firms, raise third-party capital to pursue business activities including litigation. Large companies, in particular, have access to the country's highly-liquid

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[6] Model Rules of Prof'l Conduct R. 1.8(f) (Am. Bar Ass'n 2020).

[7] U.S. Small Bus. Admin., *Frequently Asked Questions About Small Business* (July 2024), http://bit.ly/41Ffa3p.

[8] Briana Sullivan & Shomik Ghosh, *Wealth of Households: 2022, Current Population Reports*, P70BR-202, U.S. Census Bureau (Nov. 2024), https://bit.ly/4gaHpgs.

[9] Peter Karsten, *Enabling the Poor to Have Their Day in Court: The Sanctioning of Contingency Fee Contracts, a History to 1940,* 47 DEPAUL L. REV. 231, 254 (1998).

[10] Model Rules of Prof'l Conduct R. 1.5(c) (Am. Bar Ass'n 2020).

[11] Eric Helland & Daniel Klerman, *Contingent Fees and Access to Justice*, 102 WASH. U. L. REV. ONLINE 1, 1 (2024) (concluding based on a unique dataset from New York City that "contingent fees seem to have, at least partly, solved the access-to-justice problem in tort litigation").

equity and debt capital markets, where they can raise third-party capital to support their business efforts, including litigation efforts.

Companies that raise third-party debt or equity financing, and that use that money to support or defend against litigation, are using third-party funding to support litigation. But larger companies that have millions or billions of dollars of revenue, and substantial assets, typically prefer to pledge most or all of their assets as collateral for that third-party capital, because this enables them to obtain cheaper third-party investment. Consider just two examples:

- When **Bayer AG** needed to raise capital earlier this year to finance its litigation needs, it did not call a specialist litigation funder. Rather, as a publicly-traded multinational corporation, it simply went to Wall Street to raise equity capital to finance those needs.[12] By selling equity in its company, Bayer likely obtained lower financing costs than if it had approached a third-party litigation funder. Notably, Bayer's third-party capital raise would not be captured by proposed disclosure requirements for "third party funding," allowing Bayer to escape the proposed regulations thanks to its status as a large, publicly-traded company.

- **ParkerVision**, another publicly-traded company, illustrates the various ways larger companies can raise third-party capital to support litigation too. A recent SEC filing by the company identified three ways it raised financing to support plaintiff-side litigation: it raised capital from a specialist financier that was secured not just by the litigation but also by "the majority of [the company's] assets," and it separately financed the litigation through "contingent arrangements with legal counsel, and various debt and equity financings."[13] If ParkerVision were a small company whose only asset was a valuable legal claim, it likely would have had to raise third-party capital subject to the proposed disclosure regulations. As a larger company with the luxury of raising general-recourse equity and debt rather than limited-recourse litigation finance, ParkerVision can escape the proposed regulations.

Of course, most companies—the 99.9% of companies that are small businesses—are generally cut off from these liquid capital markets. Those smaller businesses are more likely to use alternative financial providers like the forms of third-party funding targeted for regulation. They may also resort to recourse debt, pledging assets to obtain the capital necessary to pursue their claims.

Pro bono litigation by 501(c)(3) charitable organizations presents another classic example of third-party finance. Groups like the NAACP or the Beckett Fund frequently finance the legal fees and case expenses of another's litigation, or they receive third-party

[12] Ludwig Burger, *Bayer seeks investor approval for 35% cash call to gird for litigation*, REUTERS (March 7, 2025), https://bit.ly/4mPE6h2.

[13] ParkerVision, Inc., Annual Report on Form 10-K (Dec. 31, 2022), https://bit.ly/3Vy6Pej.

funding from donors to pursue litigation that furthers the goals and interests of the non-profit organization. The Supreme Court has even recognized a constitutional dimension to third-party finance in the context of 501(c)(3) pro bono litigation, in cases where the NAACP's opponents tried to use onerous third-party funding disclosure rules to effectively shut down the NAACP's support of indigent plaintiffs.[14]

Advocacy litigation by 501(c)(6) business leagues present another form of third-party litigation finance. This method of financing litigation claims is especially likely to be used by *large companies* that seek *injunctive relief* rather than money damages. Consider the United States Chamber of Commerce, which is (a) the primary critic of one form of third-party litigation funding but (b) a prolific user of another form of third-party litigation funding. Since January 2020 alone, the Chamber has filed 30 plaintiff-side cases in federal district courts (in addition to appearing as a third-party in an additional 123 cases). The Chamber finances its litigation activities through contributions from undisclosed third-party litigation financiers. The Chamber typically seeks only injunctive relief against state or federal laws, which is incredibly valuable relief for the undisclosed companies backing the Chamber's suits. Yet every single one of the Chamber's proposed regulations of third-party finance includes a carve-out for third-party funding that seeks injunctive relief rather than money damages. The end result is a proposed policy that would (a) allow large corporates that *can* afford to finance litigation to anonymously pursue injunctive relief against duly enacted laws while (b) imposing a regulatory burden on small businesses and individuals that *cannot* afford litigation to pursue private law disputes.

Liability insurance presents another entrenched example of third-party finance.[15] Liability insurers routinely finance defense-side litigation through the mechanism of insurance coverage. When an individual or business is sued—for example, after a slip-and-fall accident or a products liability claim—the insurer assumes responsibility for hiring and paying defense counsel, managing litigation strategy, and ultimately bearing the cost of any settlement or judgment up to policy limits. Insurers may also affirmatively finance litigation, particularly in the patent context.[16] In these cases, the insurer, a third party to the underlying dispute, both funds and often exercises substantial control over the litigation. Far from being regarded with suspicion, this arrangement is seen as a best business practice for responsible risk management: defendants are expected to purchase liability insurance precisely so that a third-party insurer, rather than the insured personally, will shoulder the financial and strategic burdens of litigation and act in good faith as an indemnitor. In this way, insurance defense stands as one of the most accepted and institutionalized forms of third-party finance in the American legal system.

Family support presents still another form of third-party litigation finance. This form of third-party funding occurs when family members provide financial support for a relative's

[14] *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *NAACP v. Button*, 371 U.S. 415 (1963).

[15] *See infra* at 20.

[16] *See. e.g.*, *MHL Custom, Inc. v. Waydoo USA, Inc. et al.*, No. 1:21-cv-00091-RGA, ECF 120 (Dec. 1, 2022).

litigation. Parents may lend or gift money to children pursuing divorce or custody proceedings; adult children may provide resources to elderly parents in consumer or probate disputes; siblings may pool funds to support a relative's employment or personal injury lawsuit. In all of these examples, the family member is financing litigation with the expectation—sometimes contractual, sometimes informal—that they may be repaid out of the proceeds. These arrangements are not disclosed to courts and adversaries, yet they are both widespread and socially accepted.

And these are just some of the many examples that could be provided.

In short, "third-party finance" is a pervasive feature of litigation in America, used by companies large and small, individuals rich and poor, to prosecute and defend against litigations, and to seek monetary damages and injunctive relief.

B. The "Third-Party Litigation Funding" Targeted for Regulation.

Yet the calls to regulate third-party funding are not calls to regulate *all* forms of third-party funding. Rather, the efforts to regulate third-party funding are targeted at only a small subset of third-party funding sources. Ironically, these sources—passive, non-recourse, for-profit funders—are the least likely to present issues related to conflicts of interest, witness credibility, or other potential risks flagged by disclosure proponents.

Consider the proposed federal Litigation Transparency Act of 2025, cited by the Committee in its April 2025 Agenda Book (at 270). The legislation would require disclosure of "any person (other than counsel of record) that has a right to receive any payment or thing of value that is contingent on the outcome of the civil action or a group of actions of which the civil action is a part." The legislation identifies a set of "exceptions" to the rule, namely that the disclosure requirement would not apply if "the right to receive payment is solely [] the repayment of the principal of a loan," "the repayment of the principal of a loan plus interest" below a certain amount, or "the reimbursement of attorney's fees."[17]

Although this proposal is purportedly a disclosure rule that would apply to third-party funding, it in fact excludes ***every form of third-party funding identified above***:

1. **Contingent fee lawyers** would be excluded by the bill's carve-out for financiers who are "counsel of record."

2. **Bank loans and equity investments for claimholders** would be excluded by the bill's exclusions for financing that is "contingent on the outcome of the civil action" or that constitute repayment of a loan plus interest.

[17] Litigation Transparency Act of 2025, H.R. 1109, 119th Cong. (2025).

3. **Litigation funding received by 501(c)(3) organizations** would be excluded because the bill would apply only to cases seeking monetary relief—financing in exchange for a "payment or thing of value"—rather than injunctive relief.

4. **Litigation funding received by 501(c)(6) organizations like the Chamber of Commerce** likewise would be excluded because the bill would apply to cases seeking monetary relief and not injunctive relief.

5. **Litigation insurance** would be excluded because the bill would apply only to plaintiff- rather than defense-side litigation, by virtue of the language applying only to funders who have a "right to receive any payment or thing of value" rather than *avoid* having to make a payment.

6. **Family support** would be excluded to the extent the third-party funder did not seek a financial return from the litigation.

The only forms of third-party finance actually captured by the bill and similar proposed regulations are third-party funding offered on a non-recourse basis in exchange for a monetary recovery, *i.e.*, commercial legal finance provided by ILFA's members.

C. Commercial Third-Party Funders Facilitate Access to Justice, Particularly for Smaller Businesses and Impecunious Individuals.

This raises a question: which types of litigants are most likely to seek non-recourse funding made in exchange for a monetary recovery?

In general, the companies most likely to use the targeted form of third-party funding are small businesses and impecunious individuals, because wealthier companies and individuals have retained earnings or can raise general recourse debt and equity, like Bayer and ParkerVision did. And they are small businesses and impecunious litigants that seek money damages in private law disputes, rather than injunctive relief in public law disputes. For instance, Atlas Data Privacy Corporation ("Atlas"), a small business, utilized litigation funding to pursue claims under New Jersey's "Daniel's Law" against data brokers on behalf of protected individuals (such as the judiciary and law enforcement).[18]

In this context, it is unsurprising that the calls for mandatory forced disclosure before the Committee are made by the same powerful business interest groups that are elsewhere engaged in a highly politicized effort to simply kill litigation finance. Earlier this year, for example, lobbyists pushed an effort to impose a punitive tax on litigation finance.[19] The U.S.

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[18] Atlas publicly disclosed details regarding its passive litigation funding arrangement in numerous similar cases pursuant to D.N.J. Local Civil Rule 7.1.1. *See also* Nate Raymond, *Litigation funder backs cases over NJ law shielding info on judges, officials*, REUTERS (Oct. 11, 2024), http://bit.ly/4o5yhfX.

[19] Emily R. Siegel, *Litigation Funders' Tax Bill Escape Spurs Industry Reckoning*, BLOOMBERG LAW (July 11, 2025), https://bit.ly/4lZHyo8.

Chamber of Commerce, insurance, pharmaceutical, and big tech industry groups, as well as several major companies, were behind these attacks on litigation finance.[20] These are precisely the sorts of companies that (a) are typically beneficiaries of litigation resource asymmetry, (b) do not depend on outside capital for access to courts, and (c) are more likely to pursue plaintiff-side litigation seeking injunctive relief rather than monetary damages.

Litigation finance is fundamentally a tool of corporate finance and individual finance. Companies and individuals turn to third-party litigation funding largely for reasons entirely unrelated to the underlying merits of their legal claims. Funding is a tool of corporate finance, not merely litigation strategy. Firms—particularly small and medium-sized enterprises—may seek funding from ILFA's members because they lack ready access to traditional equity and debt markets; because they wish to preserve cash for research, development, or hiring; or because they want to avoid diluting existing shareholders. In this way, the decision to use litigation finance is typically a balance-sheet decision, driven by the same capital-allocation considerations that determine whether to issue stock or borrow from a bank. The quality of the legal claim remains the same regardless; what changes is the firm's ability to pursue that claim without sacrificing its market competitiveness.[21]

Notably, small and medium-sized enterprises frequently rely on litigation funding as a source of working capital. By securing financing against the value of a strong legal claim, these businesses can hire employees, invest in growth, or simply maintain operations while litigation is pending. For individuals, similar financing can cover urgent needs such as medical expenses or living costs. In this way, litigation finance operates as a distinct corner of the capital markets: an asset-based form of financing where the asset is a legal claim. Restricting access to this tool would not only diminish access to justice but would also deprive small and medium-sized enterprises of one of the few capital market mechanisms available to them.

Third-party litigation funders like ILFA's members help litigants with meritorious claims by financing the fees and costs of their litigation. In this way, they provide the same service for their clients as do contingent fee lawyers, equity or debt investors, family members, and financial contributors to the Chamber of Commerce: they help parties with meritorious claims access the courts. The only difference is that ILFA's members (like contingent fee lawyers) typically finance on a non-recourse basis, with their return backed only by case proceeds. Other equity and debt investors may look to collateral other than case proceeds.

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[20] *Id. See also* U.S. Chamber of Commerce, Letter to the House of Representatives Supporting the Protecting Our Courts from Foreign Manipulation Act of 2025 (Sep. 29, 2025), http://bit.ly/42h9Tzt (signed by, *e.g.*, pharmaceutical and medical device companies and trade groups (Abbott, AdvaMed, Eli Lilly, Genentech), insurance and reinsurance companies and related trade groups (Alfa Mutual, Allied World, Allstate, APCIA, Chubb, CNA, Hudson, Liberty Mutual, NAMIC, Nationwide, Odyssey, RIMS, State Farm, The Hartford, Travelers, Zurich), defendants in mass tort actions (Altria, Johnson & Johnson), defendants in patent litigation (AT&T, Comcast, Verizon), defendants in antitrust litigation and related trade groups (Meat Institute, National Cattlemen's Beef Association, National Pork Producers Council), and a defendant in climate litigation (Shell)).

[21] For an expanded version of this argument, see Suneal Bedi & William C. Marra, *Litigation Finance in the Market Square* (manuscript at 39–43), S. CAL. L. REV. (forthcoming 2025), https://bit.ly/4nmqQ3z.

The Chamber's backers seek the Chamber's help to obtain injunctive relief rather than money damages. And so on.

III. THE "TPLF" INDUSTRY

The Committee also posed several questions about the size, scope, and functions of what opponents simply refer to as "TPLF." Questions 2, 3, and 5 from the Committee were especially focused on this issue:

> (2) Is this problem limited to certain kinds of litigation? For example, some see MDL proceedings or "mass tort" litigation as a particular locus. Others regard patent litigation as a source of concern; in the District of Delaware there have been disputes about disclosure of funding in patent infringement litigation. Yet others (including a number of state attorneys general) fear that litigation funding may be a vehicle for malign foreign interests to harm this country, or at least hobble American companies when they compete for business abroad.
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> (3) Should the focus be on "big dollar" funding? One sort of funding is what is called "consumer" funding, often dealing with car crashes and involving relatively modest amounts of money. "Commercial" funding, on the other hand, is said in some instances to run to millions of dollars.
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> (5) The above is largely keyed to funding of individual lawsuits. A new version, it seems, is "inventory funding," which permits the funder to acquire an interest in multiple lawsuits. One might say this verges on a line of credit; in a real sense if a firm's inventory of cases don't pay off the firm can't pay the bank. How such inventory funding actually works remains somewhat uncertain.

Part A of this section describes the various forms of "modern" third-party litigation funding and Part B explains why the argument that funders support frivolous claims is without merit.

A. The Many Forms of Third-Party Litigation Funding.

The Committee's questions correctly recognize that there are many different types of third-party litigation funding. One taxonomy of litigation finance divides the industry into three segments:

1. **Commercial legal finance** involves investments in business disputes, often between corporations, where funders provide capital to cover legal fees or working capital in exchange for a share of recoveries. Funders may also provide capital for bankruptcy and liquidating trustees to assert claims on behalf of creditors.

2. **Mass tort funding** arises in large-scale product liability or pharmaceutical cases, where funders may finance claim inventories or provide portfolio funding to law firms that represent clients on contingency.

3. **Consumer litigation funding** operates on a smaller scale, offering individual plaintiffs—most often in personal injury cases—relatively modest cash advances (often under $10,000) to cover living expenses while their cases are pending.

ILFA represents commercial legal finance providers, and thus the organization is best suited to comment on the Committee's questions addressed to the commercial market. The commercial legal finance market is quite small, with less than 1% of filed cases likely backed by commercial litigation funders. According to data from Westfleet Advisors, a litigation finance advisory service cited by the U.S. Government Accountability Office ("GAO") in its reports on litigation funding, litigation funders made 287 new investments in 2024.[22] To put that number into context, there were 347,991 civil cases filed in U.S. District Courts last year,[23] plus millions more in state courts.

ILFA further offers the following comments on the Committee's questions:

First, the Committee inquired whether the "problem" is limited to certain kinds of litigation. Part III of this submission addresses what potential "problems" may be raised by third-party funding, including its application to patent cases and "big dollar" funding, which are more often the subjects of commercial litigation finance.

Second, to the extent the Committee's concerns are with "mass tort" litigation finance, ILFA suggests that the proper venue to address those concerns would be through the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation. Issues specific to mass tort cases, which are almost always consolidated into an MDL, should be addressed through the MDL rules, not the more general federal civil rules.

Third, the argument that litigation finance impacts national security concerns is both frivolous and, in any event, an issue more appropriate for legislative rather than judicial consideration. There is simply no evidence that foreign companies are using third-party litigation funders to subvert national security concerns.[24] (And if they were, it is unlikely they would do so in exchange for financial consideration.) To the contrary, litigation funders are

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[22] Westfleet Advisors, *The Westfleet Insider: 2024 Litigation Finance Market Report* (Mar. 26, 2025), http://bit.ly/4nwwgt2.

[23] Administrative Office of the United States Courts, Federal Judicial Caseload Statistics 2024, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024 (data for the 12-month period ending March 31, 2024).

[24] Instead, as one advocate of disclosure cited in testimony to Congress, the actual evidence of Chinese litigation funding consists of "Civil Litigation to Harass Dissidents in the U.S." and "Lawfare to Suppress Historical Memories," citing "[c]ivil litigation targeting Chinese nationals subject to allegations of bribery or corruption within China" in order "to harass these individuals and coerce their repatriation to Chinese jurisdictions" and "analogous legal actions … deployed against Chinese political dissidents residing in the United States." Julian G. Ku, *Written Statement to the House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet*: *Why the U.S. Should Harden Its Defenses Against China's Asymmetric Lawfare* (July 22, 2025), http://bit.ly/488kz7g, at 2-5.

much more likely to support cases *against* foreign adversaries like Chinese companies that infringe American patents. In any event, ILFA does not recommend that the Committee take upon itself the burden of addressing national security concerns through the Federal Rules of Civil Procedure.

Fourth, the Committee referred to "inventory funding," which might also be termed "portfolio finance." Portfolio funding may occur across different case types. As the Committee noted, "this verges on a line of credit," and the Committee separately noted that such transactions are not likely a proper candidate for disclosure. While the mechanics of portfolio finance will vary across transactions, in general, a litigation finance company will provide nonrecourse funding to a law firm to support a basket of the firm's contingent fee cases. The funder is ordinarily *not* in privity with the lawyer's clients. This funding enables the law firm to offer full contingent fee agreements to clients who demand such agreements, with the law firm receiving working capital through its facility with a funder. The distinction between recourse and non-recourse often boils down to the funder's rate of return, with non-recourse funding justifying a higher yield due to the riskier nature of non-recourse investment.

B. Commercial Funders Do Not Support Frivolous Claims.

The Committee also expressed interest in understanding how funders evaluate their cases:

> Does funding prompt the filing of unsupported claims? Funders insist that they carefully scrutinize the grounds for the claims before deciding whether to grant funding, and that they reject most requests for funding. They also say that they offer expert assistance to lawyers that get the funding to help them win their cases. Since the usual non-recourse nature of funding means that the funder gets nothing unless there is a favorable outcome, it seems that funding groundless claims would not make sense.

Commercial legal finance providers apply rigorous diligence before committing capital. Leading commercial funders publicly report that they decline the overwhelming majority of opportunities presented to them—often funding fewer than 5% of cases reviewed. Underwriting typically involves multiple rounds of legal and financial analysis: funders assess the strength of liability theories, evaluate damages models, stress-test likely defense strategies, and consider collection risk. Many funders engage outside experts, including former judges, specialized consultants, and highly-regarded and experienced lawyers, to validate their conclusions. Only once a case has cleared this extensive vetting process will capital be committed. In this way, commercial litigation finance functions as a market-based screen, channeling resources to strong claims and ensuring that weak or frivolous cases are left unfunded. Indeed, opposing parties in litigation often seek disclosure of documents related to the underwriting process given the extensive discussion of the funded party's claims.

Funders are exceedingly discerning due to the high risk and passive nature of their investments. Investments are non-recourse, which means that if a case loses, the funder loses

its entire investment. Funders that support frivolous litigation will very quickly find themselves out of business.

Scholarly research confirms that litigation finance does not encourage frivolous suits. In *Financing the Litigation Arms Race*, Professors Antill and Grenadier examine whether the "marginal cases" that are only brought with the assistance of litigation finance are weaker than other cases.[25] Their findings are to the contrary: financed cases are no more likely to be meritless, and in fact those marginal cases often display stronger expected outcomes than unfunded litigation. The reason is straightforward. A rational funder earns a return only when a case succeeds. If funders routinely backed unmeritorious claims, their capital would quickly be depleted, and their businesses would fail. Far from fueling a flood of weak cases, the existence of litigation finance ensures that only claims with substantial merit attract capital.

Indeed, commercial litigation finance is uniquely situated to select the most meritorious claims, particularly when compared to other forms of litigation funding. When companies finance litigation through retained earnings, they bypass external review altogether; managers can commit resources to litigation without any independent vetting of the claim's strength. Similarly, when a company raises general-recourse equity or debt capital, with the intended purpose of financing litigation, those third-party investors are not typically scrutinizing the strength of the legal claim. Instead, they may be happy to provide capital to fund weak cases, knowing that if the case loses, they can still get a return from the company's other substantial assets.[26]

And for those meritorious cases, commercial litigation finance levels the playing field. This is indisputable for the prototypical recipients of commercial funding: litigants in David v. Goliath bet-the-company litigation.

IV. IDENTIFYING THE "PROBLEMS" IN NEED OF A SOLUTION

The Committee also posed several questions about the types of "problems" that may justify a disclosure rule, the problems that such a disclosure rule itself might create, and what a disclosure rule might ultimately look like:

> (2) Is this problem limited to certain kinds of litigation? For example, some see MDL proceedings or "mass tort" litigation as a particular locus. Others regard patent litigation as a source of concern; in the District of Delaware there have been disputes about disclosure of funding in patent infringement litigation. Yet others (including a number of state attorneys general) fear that litigation funding may be a vehicle for malign foreign interests to harm this country, or at least hobble American companies when they compete for business abroad.

[25] Samuel Antill and Steven R. Grenadier, *Financing the Litigation Arms Race*, 149 J. FIN. ECON. 218 (2023).

[26] *See* Bedi & Marra, *supra* n.21 (manuscript at 41–42, 57).

(6) If some disclosure is required, what should be disclosed, and to whom should it be disclosed? The original proposal called for disclosure of the underlying agreement and all underlying documentation. But if funders insist on candid and complete disclosure regarding the strengths and weaknesses of the cases on which lawyers seek funding, core work product protections would often seem to be involved.

(7) Will requiring some disclosure lead to time-consuming discovery forays that distract from the merits of the underlying cases?

(8) What is the court to do with the information disclosed if disclosure is required? One concern is that lawyers seeking funding are handing over control of their cases in contravention of their professional responsibilities. Though judges surely have a proper role in ensuring that the lawyers appearing before them behave in an ethical manner, they would not usually undertake a deep dive into the lawyer-client relationship to make certain the lawyers are behaving in a proper manner.

(9) If judges don't normally have a responsibility to monitor the lawyers' compliance with their professional obligations, does that change when settlement is possible? Should judges then be concerned that settlement decisions are controlled by funders whose involvement is not known to the court?

A. What are the "Problems" With Litigation Funding?

Any disclosure regime concerning litigation finance should begin with a basic principle: disclosure rules must be guided by their purpose. The mere fact that disclosure is *possible* does not make it *desirable*. A sound rule must be tailored to a clearly identified objective. Without such tailoring, disclosure risks serving no legitimate end while creating distortive side-effects such as chilling legitimate funding, imposing unnecessary burdens, and supplying strategic tools to adversaries.

This section reviews the principal justifications that have been advanced for disclosure—some plausible, others far more tenuous—and explains why a purpose-driven approach should guide the rulemaking process. Before adopting any new requirement, the Committee should ask: what is the problem we are trying to solve, and is disclosure a tailored means to solve that problem?

1. Conflicts of Interest.

One oft-invoked rationale is the potential for conflicts of interest, akin to those addressed in Federal Rule of Civil Procedure 7.1. Rule 7.1 requires parties to disclose corporate parents and publicly-traded companies owning 10% or more of the company's stock, so judges can identify financial conflicts. At first glance, litigation funding might appear analogous: if a judge holds stock in a funding company, perhaps disclosure is necessary to preserve impartiality.

But this justification quickly collapses under scrutiny. First, it is *highly unlikely* that federal judges will invest in the very few litigation finance companies that are publicly traded.

Second, if the Committee is indeed concerned about conflicts of interest, then a proposed regulation of a narrow subset of third-party funding is wildly underinclusive relative to the stated goal. A judge is much more likely to own stock in a publicly-traded company that owns *less than 10%* of the stock in a litigant before the judge. But Rule 7.1 does not require such disclosure. Or a judge's family member might work at an undisclosed company that is funding litigation on behalf of the U.S. Chamber of Commerce.

When the Committee enacted Rule 7.1 in 2002, it explained why such overbroad disclosure would be unnecessary even in light of the stated goal of uncovering judicial conflicts of interest:

> Although the disclosures required by Rule 7.1(a) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a).

Committee Notes on Rules – 2002, Fed. R. Civ. P. 7.1(a).[27]

If the Committee is concerned with third-party economic interests that could create bias or the appearance thereof, the logical step would be to radically expand the Rule 7.1 disclosure requirement, not to single out a narrow form of finance.

[27] A notice and comment period is currently open regarding proposed amendments to Rule 7.1. The amendments would not mandate disclosure of third-party litigation financing. *See* Committee on Rules of Practice and Procedure Judicial Conference of the United States, *Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence* (Aug. 15, 2025), https://bit.ly/42iEVad ("Responding to concerns that the current disclosure requirements do not adequately alert judges to possible grounds for recusal, the Advisory Committee recommends publication of an amendment intended to provide judges with additional needed information. Two main changes are proposed. One substitutes the term 'business organization' for the word 'corporation' in the current rule. This change reflects the reality that business entities often have non-corporate forms. The other is to require disclosure of any business organization that directly or indirectly owns 10% or more of the party. These changes are intended to reflect Advisory Opinion No. 57 from the Judicial Conference Committee on the Codes of Conduct.")

2. Promoting Settlement.

The Committee's ninth question asked if judges should be concerned that funders are controlling settlement decisions. As an initial matter, litigation funders are *passive* and do not control settlement.

Moreover, as the Committee acknowledged, judges generally do not monitor compliance with professional obligations. That baseline does not change simply because settlement is on the table. Courts routinely accept that litigants may decline to settle for a wide range of reasons: reputational concerns, precedent value, internal business strategy, or simple risk preferences. None of these influences are disclosed to or policed by the judiciary. To single out litigation funders as uniquely suspect is to assume that settlement decisions require special judicial oversight, when in reality courts do not probe the myriad other considerations that may equally affect a party's willingness to compromise.

And again, if the stated goal is to promote settlement, then targeting disclosure only for a subset of third-party funders is wildly underinclusive relative to its stated goal. Scholars have previously recognized the significant tensions that may arise when a 501(c) organization seeks to change the law through injunctive relief, potentially clashing with an individual litigant's desire for a positive resolution of her own individual claim.[28] Or consider scenarios where a company takes on third-party debt or equity, such as where Bayer and ParkerVision raised third-party capital to pursue defense- and plaintiff-side litigation, respectively. If judges need to know the funders behind "TPLF-funded" litigants, what principled distinction is there to exclude the equity and debt investors who support other litigants? And what about lenders, financiers, or commercial considerations that impact a defendant's willingness to settle?

3. Third-Party Control.

A third possible justification is the need to identify situations in which a third party is controlling the litigation. Courts understandably want to know who is making critical strategic and settlement decisions. Yet here too, the argument does not withstand close analysis.

The concern about funder "control" of litigation is largely overstated and does not justify across-the-board disclosure. Litigation funders do not control litigation, and the fact that they might have certain rights to terminate funding does not mean they exercise "control."

In any event, if the Committee is concerned about scenarios involving anyone other than the litigant on the caption potentially controlling litigation, then it must also confront the vast array of third-party funding scenarios already discussed above. Creditors that have general recourse rights, rather than limited-recourse to litigation proceeds, can exert extraordinary pressure on companies, including by threatening to put them into bankruptcy, if the company's leaders do not do as the creditors say. Third-party funders of 501(c) organizations like those

[28] *See generally* Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1111-28 (1992).

who support the Chamber's many lawsuits seeking to enjoin duly-enacted laws may threaten to pull their funding if the Chamber does not pursue their preferred litigation strategy. Family members may decide to withdraw support of a child's divorce proceeding if the child does not follow the family member's preferred route. Contingency lawyers with recourse debt may be pressured to settle at depressed levels for fear of losing personal assets in the event of default.

Finally, there is the issue of "first-party" funding. To the extent a third party wishes to influence litigation, it could purchase equity in the litigant, obtain a board seat, and/or obtain a claim assignment. Indeed, to the extent an external actor has a motive to control litigation, it could circumvent a third-party disclosure requirement by inserting itself into the first party itself.

Singling out litigation funders under the banner of "control" would therefore be under-inclusive, targeting one form of influence while ignoring others that are more common and more powerful. We see no principled reason to impose disclosure rules uniquely on litigation finance.

B. The Risks of Over-Disclosure

If the Committee is to consider any regime of disclosure for litigation finance, it must weigh not only the claimed benefits but also the serious drawbacks. Our court system has long recognized that disclosure is not an unqualified good. The rules of civil procedure, as well as longstanding doctrines of privilege and immunity, reflect a deep appreciation of the costs of over-disclosure. Discovery is limited by proportionality; work product and attorney-client communications are shielded from adversarial probing; and even corporate disclosure rules are cabined to avoid undue burdens. Against this backdrop, a requirement to disclose funding arrangements raises multiple doctrinal and policy problems.

1. Privilege and Work Product Concerns.

The most fundamental risk is that disclosure of funding arrangements could abrogate core protections of attorney-client privilege and the work product doctrine. Litigation funding agreements often contain detailed discussions of case strategy, assessments of strengths and weaknesses, and projections about damages. Requiring production of such materials—or even summaries of their existence—threatens to pierce the protective zone that has been carefully built over decades to ensure candid communication between client and counsel.

Courts have repeatedly held that litigation strategy and mental impressions are entitled to the highest level of work product protection. To compel disclosure of funding documents would chill the very kind of forthright assessment that lawyers must provide. Worse, it could create a perverse incentive: parties and counsel might sanitize their communications with funders to guard against the possibility of disclosure, undermining the funder's due diligence and impairing the quality of case evaluation. In this way, over-disclosure corrodes both the litigation system and the funding market.

2. Disproportionate Discovery.

A second problem is that disclosure rules risk expanding discovery beyond appropriate limits. The Federal Rules have long emphasized that discovery must be "proportional to the needs of the case." Rule 26 was amended in 2015 to make proportionality an explicit requirement, precisely to guard against runaway discovery that imposes excessive burdens relative to the issues at stake.

A broad funding disclosure rule would sit uneasily with this principle. It would invite parties to demand ever more detailed information about funding arrangements, ancillary communications, and financial relationships. The risk is not hypothetical: in jurisdictions where courts have permitted discovery into funding, parties routinely seek sweeping production requests.[29] This is in direct tension with the Rules' effort to curb overbroad discovery.

Indeed, when the Rules Committee adopted corporate disclosure requirements—such as FRCP 7.1 or FRAP 26.1—it took pains to limit their scope to what was truly necessary for conflict-of-interest screening. The Committee declined to allow those rules to become vehicles for open-ended discovery. It noted that Rule 7.1 "does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification."[30] A disclosure mandate for funding that is not equally constrained would be inconsistent with this history and with the Committee's own proportionality jurisprudence.

3. Strategic Advantage for Defendants.

Third, disclosure risks transforming into a tool of strategic advantage for defendants. Defendants facing meritorious suits have every incentive to obtain as much information as possible about a plaintiff's financial resources. Knowledge of funding arrangements allows defendants to tailor their strategy: to drag out proceedings, raise costs, and exploit perceived vulnerabilities. The very existence of disclosure can encourage delay tactics, motions practice, and fishing expeditions designed to increase expense.[31]

Even more troubling, disclosure is equally valuable when a party *does not* have funding. If defendants know that a plaintiff lacks external capital, they can calibrate their strategy to pressure the weaker side into early settlement or abandonment. Thus, whether a plaintiff is funded or unfunded, disclosure of that status provides a strategic benefit to the defense. The

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[29] *See* Appendix C.

[30] Fed. R. Civ. P. 7.1(a), Committee Notes on Rules – 2002.

[31] Defendants may also attempt to interfere with the funding arrangement, either to circumvent counsel or disrupt the provision of capital. *See* The Slarskey Brief, *Litigation Finance by the Numbers*, at 26:10-28 (Sep. 29, 2025) (ILFA member discussing "pitfalls to disclosure," including defendants "contacting us directly to try to settle"), http://bit.ly/42nWfup.

rules should not be repurposed into instruments of gamesmanship. Proportionality is meant to limit excessive advantage-seeking, not facilitate it.

4. First Amendment Issues.

Disclosure requirements may also implicate the First Amendment. The Chamber of Commerce and others have argued in the amicus context that compelled disclosure of funding arrangements burdens associational rights. Just as parties cannot be forced to reveal the identities of those who fund expressive activity absent a compelling justification, so too plaintiffs and funders may assert Constitutional objections to forced transparency. In certain contexts, funding litigation is a form of expressive or petitioning activity protected by the First Amendment. Courts have recognized that anonymity and confidentiality are sometimes essential to preserve robust participation in litigation as a form of political or associational expression. A disclosure mandate that sweeps too broadly risks trampling on these Constitutional protections.[32]

5. The Inapposite Insurance Analogy.

Finally, disclosure proponents often aver that the initial disclosure of insurance agreements under Federal Rule of Civil Procedure 26(a)(1)(A)(iv) justifies disclosure of litigation funding agreements.[33] This argument fails to withstand scrutiny for multiple reasons.

First, the potential for prejudice. A defendant's insurance policy is almost always procured "before-the-event," whereas a funding agreement is always "after-the-event." This means that insurance policies do not contain information specific to the insured dispute at hand that could be used by the plaintiff for strategic advantage. Instead, insurance policies are of limited utility on their own, only somewhat helping plaintiffs avoid pyrrhic victories against uncollectible defendants. The opposite is true for funding agreements. Litigation funding terms are customized for each investment and can vary widely. Accordingly, they contain sensitive work product—such as case budgets, attorney risk-sharing terms, economic returns, and representations and warranties—that could be strategically exploited by deep-pocketed defendants. As a result, the information contained in funding agreements bears more similarity to details of the insurer/insured relationship after the claim has been filed. Importantly, this information is typically protected from disclosure. Insurers would not be comfortable

[32] Another difficulty is the possible conflict with the Rules Enabling Act. The Act authorizes the Supreme Court to prescribe rules of procedure, but expressly prohibits those rules from abridging, enlarging, or modifying substantive rights. To the extent disclosure rules would interfere with private contractual relationships between funders, clients, and attorneys—or chill access to funding by making such contracts less secure—they may cross the line from procedure into substance. For example, defendants often seek materials that courts have held are protected by the work product doctrine. A rule that has the practical effect of discouraging funding could be said to abridge substantive rights of access to courts and to free contract. The Committee must therefore tread carefully to ensure any disclosure obligation is genuinely procedural and not an indirect regulation of substantive economics.

[33] *See, e.g.*, Rules Suggestion 25-CV-L, Sep. 3, 2025, at 5-6 (the "LCJ Submission").

revealing their defense budget, case strategy, or insured's actual ability to satisfy a judgment. Yet that is the effective equivalent of funding agreement disclosure.

Second, control. It is a given that insurers have control rights, including with respect to settlement. Funders do not for various legal and ethical reasons. Funders also do not expect to be included in settlement negotiations given their passive role. Indeed, it is paradoxical for disclosure proponents to assert a desire for funders to be included in settlement discussions, while also claiming disclosure is needed to ensure funders do not control settlement.

Third, policy. The goals of disclosure are different. The production of insurance policies is intended to help avoid unnecessary litigation. The same cannot be said for the production of funding agreements. If anything, it would enable defendants to prolong litigation until the plaintiff exhausts its funding budget. This would waste rather than conserve judicial and party resources.

Fourth, parity. Unlike consumer legal funding, which predominantly relates to insured personal injury and negligence claims, insurance is rarely present for funded commercial claims.[34] Funding is most common for cost-intensive commercial claims. Such claims—which are concentrated in areas such as patent and antitrust—are typically uninsured. Funding agreements would therefore be produced in circumstances where the defendant does not have an insurance policy.

V. INHERENT JUDICIAL AUTHORITY THROUGH THE LENS OF CASE DATA

A. Data Sources

It is well established that courts have the inherent authority to manage issues related to litigation funding as they deem fit pursuant to Federal Rule of Civil Procedure 83. ILFA's research reveals that courts exercise such authority with regularity. Judicial involvement and consideration arises in multiple settings, including: (1) local and individual rules requiring disclosure of information concerning funding, such as District of New Jersey Local Civil Rule 7.1.1; (2) case-specific disclosure orders issued in aggregate litigation, such as those in the *Opioids*[35] and *Zantac*[36] MDLs, and the *National Association of Realtors* class action;[37] and (3) motion practice, typically regarding disclosure or admissibility.[38]

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[34] ILFA Opponent Testimony to Ohio House Bill 105 (Mar. 18, 2025), http://bit.ly/3KLxLFe, at 3.

[35] *In re: Nat'l Prescription Opiate Litig* ., No. 1:17-MD-2804, 2018 U.S. Dist. LEXIS 84819 (N.D. Ohio May 7, 2018).

[36] *In re: Zantac Ranitidine Prods. Liab. Litig.*, No. 2924, 2020 U.S. Dist. LEXIS 62805, at *39-42 (S.D. Fla. Apr. 3, 2020).

[37] *Gibson et al v. National Association of Realtors et al.*, 4:23-cv-00788-SRB, ECF 787 (W.D. Mo. Aug. 18, 2025).

[38] Courts have also handled other funding-related issues, such as: fee-shifting, where a prevailing party seeks reimbursement of financing costs; standing, where an opposing party challenges a funded party's ability to assert claims as a result of its financing; champerty and maintenance, where an opposing party challenges

B. Data Insights

The foregoing sources demonstrate that federal courts have capably handled various aspects of litigation funding arising in numerous contexts, despite the lack of a uniform nationwide disclosure rule. That experience is both useful and capable of study by the Committee. Through ILFA's research, we have identified the following statistics and trends.

1. *Venue Distribution*

Certain courts encounter litigation funding with more regularity than others. This is typically due to local disclosure rules or popularity of a venue for certain types of funded litigation, such as patent cases in Texas district courts. ILFA has identified over 300 federal cases where the dockets reveal the presence of funding. The most common venues consist of the District of Delaware (48),[39] the District of New Jersey (40),[40] the Central District of California (24), the Eastern District of Texas (23), the Northern District of California (21), the Southern District of New York (20), the Northern District of Illinois (16), and the Southern District of California (10).

2. Types of Funded Litigation Involving Judicial Intervention

Federal courts have presided over hundreds of cases involving litigation funding in one manner or another. With the exception of personal injury and mass tort cases—which implicate non-commercial concerns such as the collateral source rule and consumer protection concerns, respectively—the breakdown across litigation type is consistent with the cost-intensive nature of funded commercial litigation. Specifically, ILFA has identified 103 courts orders issued in commercial cases (such as contract, antitrust, and trade secret disputes), 97 in patent cases, 15 in soft intellectual property cases, 11 in bankruptcy cases, 8 in whistleblower cases, 5 in civil rights cases, and 4 in data breach cases.[41]

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funding under state law doctrines; insolvency, in the context of bankruptcy and litigation trust funding; contractual disputes between funders and funded parties; and class action leadership, to evaluate counsel's ability to prosecute the litigation effectively on behalf of the class.

[39] This count excludes cases involving patent assertion entities asserting claims as plaintiffs, which have been extensively investigated by Chief Judge Connolly in the District of Delaware. Significantly, such "patent trolls" were disclosed pursuant to Chief Judge Connolly's more extensive individual version of Federal Rule of Civil Procedure 7.1, and *not* his individual litigation funding disclosure order.

[40] This count does not include the dozens of duplicate disclosure statements filed in Atlas's related Daniel's Law actions pending in the District of New Jersey.

[41] ILFA also identified 73 court orders in personal injury cases and 17 in mass tort cases.

3. Results of Judicial Intervention

ILFA has examined judicial decisions regarding the two most relevant issues to the Committee's mandate: disclosure and admissibility.[42] Case citations are compiled in Appendix B hereto.

Regarding disclosure, we identified over 100 relevant court orders resolving motions to compel, quash, or strike. Approximately 60% denied disclosure in its entirety and approximately 40% provided some form of disclosure based on a case-specific analysis. Of the cases ordering disclosure, over 60% were patent litigations, an area where courts have found that special factors can warrant disclosure.[43]

Disclosure caselaw also provides a window into the scope of litigation funding discovery sought. The LCJ Submission argues that "[t]he transparency provided by a rule requiring disclosure of TPLF contracts would lift a veil rather than impose a burden[.]"[44] However, subpoenas subject to motions to compel or quash demonstrate that the opposite is true. Rather than seeking simple transparency to address conflicts of interest or control, parties seeking disclosure often demand numerous categories of documents and communications, encapsulating all materials related to litigation funding and the underlying litigation, including contracts, correspondence, and diligence files. It is also standard for parties to issue both subpoenas *duces tecum* and *ad testificandum*, the latter of which typically identify numerous categories for testimony. Examples of subpoenas are annexed hereto in Appendix C.

With respect to admissibility, we identified 22 relevant orders. 19 orders grant motions *in limine* or to strike, while three (3) allow some form of use at trial. We also identified nine (9) agreed motions *in limine* where both parties agreed to the non-admissibility of information concerning litigation funding.

4. Funding Agreement Terms.

Federal courts also have experience reviewing litigation funding agreements. Our research identified approximately 30 cases where courts ordered *in camera* review of funding materials. In the majority of these cases—as well as others where opposing parties receive some level of funding-related disclosure—there was no subsequent motion practice regarding funding at all, let alone any impropriety or negative impact of funding on the course of the

[42] The counts in this section exclude personal injury litigation due to its distinguishable, non-commercial nature.

[43] *See*, *e.g.*, *Taction Tech., Inc. v. Apple Inc.*, No. 21-cv-00812-TWR-JLB, 2022 U.S. Dist. LEXIS 238902, at *13 (S.D. Cal. Mar. 16, 2022) ("This Court agrees with other courts in this district that have found litigation funding agreements and related documents can be 'directly relevant" to "the valuations placed on the . . . patents prior to the present litigation.' Here, the Court finds Defendant's RFP Nos. 48, 50, and 51 relevant, but only to the extent that they seek litigation funding agreements and related documents that contain or reflect valuations of the Asserted Patents.") (internal citations omitted)).

[44] LCJ Submission at 20.

litigation. In other words, the hypothetical risks cited in the LCJ Submission did not come to fruition.

We note that the LCJ Submission revolves heavily on a sample of nine (9) litigation funding agreements. The Lawyers for Civil Justice argue that such contracts "provide clear insights about the funding agreements that are common in federal courts today because they include contracts written and agreed to by the largest funders who are investing billions of dollars in federal court litigation as well as funders with fewer litigation investments."[45] Curiously, of these supposedly "common" nine agreements: two relate to non-US disputes (an Australian class action and an investor-state arbitration against Panama), another relates to the highly-publicized *Burford v. Sysco* dispute where the parties amended their agreement to resolve a material breach by the plaintiff,[46] one concerns a non-commercial American With Disabilities Act case, and five are dated in the year 2020 or earlier. It is telling that the LCJ chose these agreements, as opposed to the numerous others easily found in the public domain.[47]

Were these agreements indeed common and problematic, one would expect a raft of judicial decisions validating the LCJ's concerns. After all, courts have encountered litigation funding in hundreds of cases and reviewed dozens of agreements and related materials *in camera*. The GAO also recently studied litigation funding twice without identifying systemic contractual or practical issues.[48]

VI. A SOLUTION AN SEARCH OF A PROBLEM

Proposals to regulate "TPLF" through broad disclosure are a solution in search of a problem. The Committee's own record reflects no demonstrated dysfunction or "parade of horribles"[49] warranting sweeping, front-loaded transparency mandates. Accordingly, ILFA does not believe that rulemaking would be appropriate.

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[45] *Id.* at 2.

[46] *See* Dai Wai Chin Feman, *Breaching a Litigation Funding Agreement—the Sysco/Burford Story*, BLOOMBERG LAW (Mar. 29, 2023), http://bit.ly/3KzN4Rk.

[47] *See, e.g.*, *In re Hoactzin Partners, L.P.*, 3:19-bk-33545, ECF 419 (Bankr. N.D. Tex. Jun. 28, 2022); *Pelletier Mgmt. and Consulting, LLC v. InterBank et al.*, 3:20-cv-03296, ECF 33-18 (Mar. 27, 2021); *In re: Motors Liquidation Co.*, 1:09-bk-50026, ECF 14413-3 (Bankr. S.D.N.Y. Feb. 4, 2019); *Arigna Tech. Ltd. v. Longford Capital Fund, III, LP*, 1:23-cv-01441-GBW, ECF 4-1 (Dec. 18, 2023); Form 8-K of PDL BioPharma, Inc., Ex. 99.1 (Dec. 14, 2020), http://bit.ly/3WfyEbI; Form 10-Q of Netlist Inc., Ex. 10.2 (July 1, 2017), http://bit.ly/4ok8Pn5; Form 8-K of Prism Techs. Group, Inc., Ex. 10.10 (Aug. 1, 2017), http://bit.ly/46NBt8W.

[48] U.S. Government Accountability Office, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends*, https://www.gao.gov/products/gao-23-105210 (Dec. 20, 2022); U.S. Government Accountability Office, *Intellectual Property: Information on Third-Party Funding of Patent Litigation*, https://www.gao.gov/products/gao-25-107214 (Dec. 5, 2024).

[49] *In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prods. Liab. Litig.*, 405 F. Supp. 3d 612, 615-16 (D.N.J. 2019) ("Although defendants raise a parade of horribles that could or may arise from litigation funding

To the extent the Committee proceeds with the rulemaking process, the most instructive guidance comes from the Delaware Supreme Court's Committee on Litigation Funding and Transparency, which undertook a year-long study of third-party litigation finance in 2022–2023.[50] That committee solicited input from the bar, surveyed other jurisdictions, and reviewed actual experience in Delaware's state courts. Its report is the most thorough judicial evaluation of the subject to date, and it is especially relevant because Delaware—home to a large volume of complex commercial disputes—has every incentive to safeguard the integrity of its courts while ensuring that litigants have access to capital. The Delaware report is annexed hereto as Appendix D.

The Delaware committee reached a straightforward conclusion: there was no evidence of systemic problems with litigation funding in the state courts. The report expressly stated that "there do not appear to be any issues with the current use of third-party litigation funding in the Delaware state courts." On that basis, the committee rejected broad proposals for front-loaded disclosure of funding arrangements. At the same time, it acknowledged that courts should retain a narrow tool to police the only concern it deemed legitimate—whether anyone other than the litigant controls the case. To address that possibility, the report recommended a modest rule (if any), modeled on the insurance-discovery provisions of Rule 26, that would authorize limited inquiry into whether a third party holds control rights over litigation or settlement. Importantly, the committee emphasized that broader discovery into the details of funding agreements (which are often unsuccessfully sought by adverse parties in discovery, leading to unnecessary satellite litigation) was unnecessary and inappropriate, and that attorney work product contained in funding-related analyses should remain protected.[51]

The Delaware report also underscored that any rule should be tailored to the institutional needs of the courts, not to partisan calls for broader regulation. It suggested that if courts wished to screen for conflicts, they might require disclosure of a funder's name to the judge—but not wholesale disclosure of agreements to opposing parties. And it cautioned

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agreements, none has occurred here. Nor is there any reason to believe that anything untoward will occur in the future. The fact that defendants have raised no nonspeculative basis for their discovery request results in its denial.").

[50] Delaware Committee to Study Transparency in Third-Party Litigation Funding, *Report to the President Judge on Recommended Rule for Disclosure of Third-Party Litigation Funding* (June 30, 2023).

[51] *See* Todd Henderson, *The Justice Case for Litigation Finance*, ABA LITIGATION JOURNAL (Oct. 18, 2022), http://bit.ly/4mKsPxN ("This resistance is being offered today in demands for transparency, which is both unnecessary and a Trojan horse to make litigation yet more expensive for claimants who have already suffered harm. Disclosure is not an unalloyed good. It has costs and benefits, just like everything else. In the case of current disclosure demands, the costs overwhelm any purported benefits. Industry practice is for litigation financiers to play no role in funded cases, merely to pool those investments with others to diversify risk and lower costs. In that environment, disclosure is the start of a fishing expedition, meant to burden the party choosing to finance a claim and the funder with burdensome discovery. In the absence of any evidence funders are meddling or driving litigation outcomes, calls for transparency are simply strategies to tilt the field back in favor of those who want to close the courthouse door to claimants who have in litigation finance a newfound ability to protect their rights").

against conflating Delaware's narrow recommendation with efforts to regulate other forms of third-party finance, from contingent fees to insurance, which are already well entrenched and accepted.

This approach is consistent with how courts have used their inherent authority to address litigation funding. For example, District of New Jersey Local Civil Rule 7.1.1 requires the disclosure of limited information, with protection against further disclosure absent "good cause." In addition, individual form disclosure orders employed by Judges Henderson and Calabrese both provide for *ex parte* disclosure to the court. Judges Polster and Rosenberg also utilized *ex parte* approaches in the *Opioids* and *Zantac* MDLs, respectively. These orders are annexed hereto as Appendix E. Furthermore, as discussed above, courts have ordered *in camera* review on numerous occasions.

A balanced approach is also consistent with a recent legislative compromise between polarized advocacy groups. In Kansas, ILFA and the U.S. Chamber of Commerce agreed to an automatic disclosure rule that provides (1) limited information to address non-frivolous ends of funding discovery, such as conflicts of interest, control, and capital sourced from hostile foreign interests, and (2) full submission of the funding agreement to the court for *in camera* review so that it may review the arrangement as it deems fit.[52]

In short, the Delaware committee found no existing problem in need of a sweeping solution. Instead, it recommended a narrowly tailored mechanism to confirm that control of litigation remains where it belongs—with the named parties and their counsel. That carefully balanced approach—protecting judicial integrity without prejudicially intruding on privilege, work product, or party autonomy—provides the only sensible model for any federal rulemaking to the extent the Committee proceeds with drafting.

Respectfully submitted,

Signed by:
Paul Kong
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Paul Kong
Executive Director
International Legal Finance Association

[52] Act of Apr. 7, 2025, ch. 60, 2025 Kan. Laws 442 [Kansas S.B. 54], https://www.sos.ks.gov/publications/sessionlaws/2025/Chapter-60-SB-54.html; *see also* Dai Wai Chin Feman, *Breaking Down the First Legislative Compromise on Commercial Litigation Funding*, THE NATIONAL LAW REVIEW (May 5, 2025), http://bit.ly/4gN8TZE.

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APPENDIX A

Excerpt from the April 2025 Agenda Book (pp. 271–72)

From a rulemaking standpoint, beyond deciding whether to regard litigation funding as basically good or bad, there are a number of questions needing answers. Here are some of them:

(1) How does one describe in a rule the arrangements that trigger a disclosure obligation? In an era when lawyers and law firms often rely on bank lines of credit to pay the rent, pay salaries, hire expert witnesses, etc., all seem to agree that TPLF disclosure requirements should not apply to such commonplace arrangements.

(2) Is this problem limited to certain kinds of litigation? For example, some see MDL proceedings or "mass tort" litigation as a particular locus. Others regard patent litigation as a source of concern; in the District of Delaware there have been disputes about disclosure of funding in patent infringement litigation. Yet others (including a number of state attorneys general) fear that litigation funding may be a vehicle for malign foreign interests to harm this country, or at least hobble American companies when they compete for business abroad.

(3) Should the focus be on "big dollar" funding? One sort of funding is what is called "consumer" funding, often dealing with car crashes and involving relatively modest amounts of money. "Commercial" funding, on the other hand, is said in some instances to run to millions of dollars.

(4) Does funding prompt the filing of unsupported claims? Funders insist that they carefully scrutinize the grounds for the claims before deciding whether to grant funding, and that they reject most requests for funding. They also say that they offer expert assistance to lawyers that get the funding to help them win their cases. Since the usual non-recourse nature of funding means that the funder gets nothing unless there is a favorable outcome, it seems that funding groundless claims would not make sense.

(5) The above is largely keyed to funding of individual lawsuits. A new version, it seems, is "inventory funding," which permits the funder to acquire an interest in multiple lawsuits. One might say this verges on a line of credit; in a real sense if a firm's inventory of cases don't pay off the firm can't pay the bank. How such inventory funding actually works remains somewhat uncertain.

(6) If some disclosure is required, what should be disclosed, and to whom should it be disclosed? The original proposal called for disclosure of the underlying agreement and all underlying documentation. But if funders insist on candid and complete disclosure regarding the strengths and weaknesses of the cases on which lawyers seek funding, core work product protections would often seem to be involved.

(7) Will requiring some disclosure lead to time-consuming discovery forays that distract from the merits of the underlying cases?

(8) What is the court to do with the information disclosed if disclosure is required? One concern is that lawyers seeking funding are handing over control of their cases in contravention of their professional responsibilities. Though judges surely have a proper role in ensuring that the lawyers appearing before them behave in an ethical manner, they would not usually undertake a deep dive into the lawyer-client relationship to make certain the lawyers are behaving in a proper manner.

(9) If judges don't normally have a responsibility to monitor the lawyers' compliance with their professional obligations, does that change when settlement is possible? Should judges then be concerned that settlement decisions are controlled by funders whose involvement is not known to the court?

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APPENDIX B

Disclosure Citations

Case Name	Court	Filing Date	Citation	ECF No.
Smallwood v. SASD Dev. Grp. LLC	E.D. Cal.	9/30/2025	2025 U.S. Dist. LEXIS 193689	
Network System Techs., LLC v. Qualcomm Inc.	W.D. Tex.	8/29/2025	1:25-cv-01367-ADA	9
In re Uber Techs., Inc.	N.D. Cal.	8/1/2025	2025 U.S. Dist. LEXIS 148743	
In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs., & Prods. Liab. Litig.	D.N.J.	7/28/2025	3:16-md-02738-MAS-RLS	40778
In re Diocese of Rochester	Bankr. W.D.N.Y.	7/22/2025	2025 Bankr. LEXIS 1749	
Marble Voip Partners LLC v. Zoom Video Commc'ns, Inc.	N.D. Cal.	7/3/2025	2025 U.S. Dist. LEXIS 127342	
Gonzalez v. Jones (In re Fresh Acquisitions, LLC)	Bankr. N.D. Tex.	6/18/2025	2025 Bankr. LEXIS 1467	
Haptic Inc. v. Apple Inc.	N.D. Cal.	6/3/2025	2025 U.S. Dist. LEXIS 105445	
Kashef v. BNP Paribas	S.D.N.Y.	5/16/2025	1:16-cv-03228-AKH-JW	697
Correct Transmission, LLC v. Juniper Networks, Inc.	N.D. Cal.	4/29/2025	3:21-cv-09284-RFL	257
Gracie Baked LLC v. GiftRocket, Inc.	E.D.N.Y.	3/21/2025	2025 U.S. Dist. LEXIS 52811	
Rizzi v. Netflix, Inc.	D. Del.	2/6/2025	2025 U.S. Dist. LEXIS 27267	
Harish v. Arbit	D.N.J.	1/31/2025	2025 U.S. Dist. LEXIS 17538	
Linet Americas Inc., v. Hill Rom Holdings Inc.	N.D. Ill.	1/22/2025	1:21-cv-06890	359
OpenAI Inc. v. Open Artificial Intelligence Inc.	N.D. Cal.	1/8/2025	4:23-cv-03918-YGR	177
Samesurf, Inc., v. Intuit, Inc.	S.D. Cal.	12/12/2024	2024 U.S. Dist. LEXIS 225411	
Team Schierl Co. v. Aspirus, Inc.	W.D. Wis.	12/11/2024	2024 U.S. Dist. LEXIS 225168	
In re: Allergan Biocell Textured Breast Implant Products Liab. Litig.	D.N.J.	12/6/2024	2:19-md-02921-BRM-LDW	543
Samesurf, Inc., v. Intuit, Inc.	S.D. Cal.	12/4/2024	2024 U.S. Dist. LEXIS 220614	
In re Pandora Media, LLC Copyright Litig.	C.D. Cal.	10/29/2024	2024 U.S. Dist. LEXIS 242523	
Satius Holding, LLC v. Samsung Elec. Co.	D. Del.	9/10/2024	1:18-cv-00850-CJB	213

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Case Name	Court	Filing Date	Citation	ECF No.
Slyde Analytics LLC. v. Samsung Elec. Co.	E.D. Tex.	8/17/2024	2024 U.S. Dist. LEXIS 231904	
Robocast, Inc. v. Netflix, Inc.	D. Del.	8/7/2024	1:22-cv-00305-JLH	319
In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs., & Prods. Liab. Litig.	D.N.J.	7/9/2024	2024 U.S. Dist. LEXIS 240798	
SitNet LLC v. Meta Platforms, Inc.	S.D.N.Y.	5/17/2024	1:23-cv-06389-AS	61
Vital Distribs., LLC v. Pepperidge Farm, Inc.	E.D. Cal.	4/6/2024	2024 U.S. Dist. LEXIS 63468	
Network System Techs., LLC v. Texas Instruments	E.D. Tex.	11/22/2023	2:22-cv-00482-RWS	142-1
Lower48 IP LLC v. Shopify, Inc.	W.D. Tex.	11/2/2023	2023 U.S. Dist. LEXIS 240862	
United States v. Healthcare Assocs. of Tex. LLC	N.D. Tex.	10/31/2023	3:19-cv-02486-N	320
Entropic Commc'ns, LLC v. DIRECTV, LLC	C.D. Cal.	8/23/2023	688 F. Supp. 3d 978	
Electrolysis Prevention Sols. LLC v. Daimler Truck N. Am. LLC	W.D.N.C.	7/24/2023	2023 U.S. Dist. LEXIS 127218	
BCBSM, Inc. v. Walgreen Co.	N.D. Ill.	5/31/2023	2023 U.S. Dist. LEXIS 94912	
GoTV Streaming, LLC v. Netflix, Inc.	C.D. Cal.	5/24/2023	2023 U.S. Dist. LEXIS 91168	
In re Diocese of Rochester	Bankr. W.D.N.Y.	5/23/2023	2:19-bk-20905	2142
SiteLock LLC v. GoDaddy.com LLC	D. Ariz.	5/10/2023	2023 U.S. Dist. LEXIS 82377	
Multiple Energy Techs., LLC v. Casden	C.D. Cal.	1/25/2023	2023 U.S. Dist. LEXIS 151653	
WSOU Investments LLC v. Salesforce.com, Inc.	W.D. Tex.	1/18/2023	6:20-cv-01165-ADA	152
Trs. of Purdue Univ. v. STMicroelectronics, Inc.	W.D. Tex.	1/18/2023	2023 U.S. Dist. LEXIS 241765	
Woodall v. The Walt Disney Co.	C.D. Cal.	1/11/2023	20-cv-3772	255
MHL Custom, Inc. v. Waydoo USA, Inc.	D. Del.	12/1/2022	1:21-cv-00091-RGA	120
Mullen Indus. LLC v. Apple Inc.	W.D. Tex.	10/19/2022	6:22-cv-00145-ADA	64
Thimes Sols., Inc. v. TP-Link USA Corp.	C.D. Cal.	10/6/2022	2022 U.S. Dist. LEXIS 236347	
Jawbone Innovations, LLC v. Samsung Elecs. Co.	E.D. Tex.	8/30/2022	21-cv-186 (E.D. Tex.)	156

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Case Name	Court	Filing Date	Citation	ECF No.
United States v. McKesson Corp.	E.D.N.Y.	8/15/2022	1:12-cv-06440-NG-ST	222
Fleet Connect Sols. LLC v. Waste Connections US, Inc.	E.D. Tex.	6/29/2022	2022 U.S. Dist. LEXIS 129216	
Full Circle United, LLC v. Bay Tek Ent'mt, Inc.	E.D.N.Y.	6/27/2022	20-cv-3395	127-2
Torchlight Techs. LLC v. Daimler AG	D. Del.	6/7/2022	1:22-cv-00751-GBW	154
Nantworks, LLC v. Niantic, Inc.	N.D. Cal.	5/12/2022	2022 U.S. Dist. LEXIS 87320	
In re Bayerische Motoren Werke Ag	N.D. Ill.	5/5/2022	2022 U.S. Dist. LEXIS 81660	
Taction Tech., Inc. v. Apple Inc.	S.D. Cal.	3/16/2022	2022 U.S. Dist. LEXIS 238902	
Riseandshine Corporation d/b/a Rise Brewing v. PepsiCo, Inc.	S.D.N.Y.	3/3/2022	1:21-cv-06324-LGS-SLC	197
3rd Eye Surveillance, LLC v. United States	Fed. Cl.	2/18/2022	158 Fed. Cl. 216	
Advanced Aerodynamics, LLC v. Spin Master, Ltd.	W.D. Tex.	2/4/2022	6:21-cv-00002-ADA	77
Kove IO, Inc. v. Amazon Web Svcs., Inc.	N.D. Ill.	1/26/2022	1:18-cv-08175	497
Kove IO, Inc. v. Amazon Web Svcs., Inc.	N.D. Ill.	1/26/2022	1:18-cv-08175	816-2
Neural Magic Inc. v. Facebook Inc.	D. Mass.	12/21/2021	1:20-cv-10444-DJC	224
Cirba Inc. v. Vmware, Inc.	D. Del.	12/14/2021	2021 U.S. Dist. LEXIS 238484	
Nunes v. Lizza	N.D. Iowa	10/26/2021	2021 U.S. Dist. LEXIS 254428	
Allele Biotechnology & Pharm. v. Pfizer, Inc.	S.D. Cal.	9/13/2021	2021 U.S. Dist. LEXIS 174654	
Hardin v. Samsung Elecs. Co.	E.D. Tex.	7/30/2021	2022 LEXIS 194602	
In re Outlaw Labs., LP Litig.	S.D. Cal.	6/29/2021	2021 WL 5768123	
United States v. McKesson Corp.	E.D.N.Y.	4/28/2021	1:12-cv-06440-NG-ST	135
Walker Digital LLC v. Google Inc.	D. Del.	4/11/2021	2013 U.S. Dist. LEXIS 188666	
Colibri Heart Valve LLC v. Medtronic CoreValve LLC	C.D. Cal.	3/26/2021	2021 U.S. Dist. LEXIS 264361	
Speyside Medical, LLC v. Medtronic CoreValve, LLC	D. Del.	3/26/2021	1:20-cv-00361-LPS	88
Elm 3DS Innovations LLC v. Samsung Elecs. Co.	D. Del.	11/19/2020	2020 U.S. Dist. LEXIS 216796	

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Case Name	Court	Filing Date	Citation	ECF No.
Art Akiane LLC v. Art & SoulWorks LLC	N.D. Ill.	9/18/2020	2020 U.S. Dist. LEXIS 171682	
Midwest Ath. & Sports All. LLC v. Ricoh USA, Inc.	E.D. Pa.	9/16/2020	2020 U.S. Dist. LEXIS 169770	
Impact Engine, Inc. v. Google LLC	S.D. Cal.	8/12/2020	2020 U.S. Dist. LEXIS 145636	
United Access Techs., LLC v. AT&T Corp.	D. Del.	6/12/2020	2020 U.S. Dist. LEXIS 103532	
In re Dealer Mgmt. Sys. Antitrust Litig.	N.D. Ill.	6/8/2020	2020 U.S. Dist. LEXIS 99767	
V5 Techs. v. Switch, Ltd.	D. Nev.	12/20/2019	334 F.R.D. 306	
In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prods. Liab. Litig.	D.N.J.	9/18/2019	405 F. Supp. 3d 612	
Hybrid Ath., LLC v. Hylete	D. Conn.	8/30/2019	2019 LEXIS 148245	
Impact Engine, Inc. v. Google LLC	S.D. Cal.	7/15/2019	2020 LEXIS 194517	
SecurityPoint Holdings, Inc. v. United States	Fed. Cl.	4/16/2019	2019 U.S. Claims LEXIS 341	
MLC Intellectual Prop., LLC v. Micron Tech., Inc.	N.D. Cal.	1/7/2019	2019 WL 118595	
Space Data Corp. v. Google, LLC	N.D. Cal.	6/11/2018	2018 WL 3054797	
TQ Delta LLC v. Adtran, Inc.	D. Del.	6/6/2018	1:14-cv-00954-RGA	419
In re: Nat'l Prescription Opiate Litig.	N.D. Ohio	5/7/2018	2018 U.S. Dist. LEXIS 84819	
Acceleration Bay LLC v. Activision Blizzard, Inc.	D. Del.	2/9/2018	2018 U.S. Dist. LEXIS 21506	
Alabama Aircraft Indus. v. Boeing Co.	N.D. Ala.	2/9/2018	2:11-cv-03577-RDP	420
Lambeth Magnetic Structures, LLC v. Seagate Tech. (US) Holdings, Inc.	W.D. Pa.	1/18/2018	2017 U.S. Dist. LEXIS 215773	
Viamedia, Inc. v. Comcast Corp.	N.D. Ill.	6/30/2017	2017 U.S. Dist. LEXIS 101852	
Mackenzie Architects, P.C. v. VLG Real Estate Developers, LLC	N.D.N.Y.	3/3/2017	2017 U.S. Dist. LEXIS 227410	
Telesocial Inc. v. Orange S.A.	N.D. Cal.	9/30/2016	3:14-cv-03985-JD	165
Odyssey Wireless, Inc. v. Samsung Elecs. Co.	S.D. Cal.	9/20/2016	2016 U.S. Dist. LEXIS 188611	
VHT, Inc. v. Zillow Grp., Inc.	W.D Wash.	9/8/2016	2016 U.S. Dist. LEXIS 172373	
Gbarabe v. Chevron Corp.	N.D. Cal.	8/5/2016	2016 U.S. Dist. LEXIS 103594	

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Case Name	Court	Filing Date	Citation	ECF No.
Harper v. Everson	W.D. Ky.	6/27/2016	2016 U.S. Dist. LEXIS 197894	
Cont'l Circuits LLC v. Intel Corp.	D. Ariz.	6/22/2016	435 F. Supp. 3d 1014	
Ashghari-Kamrani v. United Svcs. Automobile Assn.	E.D. Va.	5/31/2016	2016 U.S. Dist. LEXIS 197601	
United States ex rel. Fisher v. Homeward Residential, Inc.	E.D. Tex.	3/15/2016	2016 U.S. Dist. LEXIS 32910	
United States v. Ocwen Loan Servicing, LLC	E.D. Tex.	3/15/2016	2016 U.S. Dist. LEXIS 32967	
Morley v. Square, Inc.	E.D. Mo.	11/18/2015	2015 WL 7273318	
Mobile Telecomms. Techs. LLC v. Blackberry Corp.	N.D. Tex.	11/2/2015	3:12-cv-01652-M	351
Kaplan v. S.A.C. Capital Advisors, L.P.	S.D.N.Y.	9/10/2015	2015 U.S. Dist. LEXIS 135031, aff'd, 141 F. Supp. 3d 246	
Queens University v. Samsung Elecs.	E.D. Tex.	4/10/2015	2:14-cv-00053-JRG-RSP	103
Ritchie v. Sempra Energy	S.D. Cal.	4/6/2015	2015 U.S. Dist. LEXIS 186606	
IOENGINE LLC v. Interactive Media Corp.	D. Del.	12/31/2014	1:14-cv-01571-GMS	110
Miller UK Ltd. v. Caterpillar, Inc	N.D. Ill.	1/6/2014	17 F. Supp. 3d 711	
Cobra Int'l, Inc. v. BCNY Int'l, Inc.,	S.D. Fla.	11/4/2013	2013 U.S. Dist. LEXIS 190268	
Intel Corp. v. Prot. Capital LLC	S.D. Cal.	10/2/2013	2013 U.S. Dist. LEXIS 201883	
Mondis Tech., Ltd. v. LG Elecs., Inc.	E.D. Tex.	5/4/2011	2011 U.S. Dist. LEXIS 47807	
Wickens v. Shell Oil Co.	7th Cir.	8/31/2010	620 F.3d 747	
Leader Tech., Inc. v. Facebook, Inc.	D. Del.	6/24/2010	719 F. Supp. 2d 373	
Devon It, Inc. v. IBM Corp.,	E.D. Pa.	6/16/2010	2012 U.S. Dist. LEXIS 166749	
Bray & Gillespie Mgmt., LLC v. Lexington Ins. Co.	M.D. Fla.	11/17/2008	2008 U.S. Dist. LEXIS 112380	
Medtronic Sofamor Danek, Inc. v. Michelson	W.D. Tenn.	11/6/2003	2003 U.S. Dist. LEXIS 25198	

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Admissibility Citations

Case Name	Court	Filing Date	Citation	ECF No.
Valtrus Innovations Ltd. v. SAP Am., Inc.	E.D. Tex.	8/25/2025	2:24-cv-00021-JRG-RSP	296
N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.	E.D.N.Y.	5/6/2025	2025 U.S. Dist. LEXIS 86428	
Entangled Media, LLC v. Dropbox Inc.	N.D. Cal.	4/8/2025	716 F. Supp. 3d 819	
Geomatrix Sys. LLC, v. Eljen Corp.	D. Conn.	4/1/2025	3:20-cv-01900-SVN	294
Video Solutions Pte. Ltd. v. Cisco Sys., Inc.	E.D. Tex.	1/15/2025	2:23-cv-00222-RWS-RSP	219
Utherverse Gaming LLC, v. Epic Games Inc.	W.D. Wash.	8/30/2024	2:21-cv-00799-RSM	431
Correct Transmission, LLC v. Nokia of Am. Corp.	E.D. Tex.	3/26/2024	2024 U.S. Dist. LEXIS 54520	
Mgi Digit. Tech. S.A. v. Duplo U.S.A. Corp.	C.D. Cal.	1/26/2024	2024 U.S. Dist. LEXIS 28112	
Dexon Comput., Inc. v. Cisco Sys.	E.D. Tex.	1/8/2024	2024 U.S. Dist. LEXIS 102097	
Nanometrics, Inc. v. Optical Sols., Inc.	N.D. Cal.	10/30/2023	2023 U.S. Dist. LEXIS 194626	
Alacritech Inc. v. CenturyLink, Inc.	E.D. Tex.	8/18/2023	2:16-cv-00693-RWS-RSP	796
Bancor Grp. Inc. v. Rodriguez	S.D. Fla.	6/13/2023	2023 U.S. Dist. LEXIS 181095	
In re Virtru Corp.	W.D. Tex.	4/26/2023	2023 U.S. Dist. LEXIS 241077	
Hafeman v. LG Elecs., Inc.	W.D. Tex.	4/17/2023	2023 U.S. Dist. LEXIS 66459	
Stitch Editing Ltd. v. TikTok, Inc.	C.D. Cal.	1/20/2023	21-cv-6636	362
Egenera, Inc. v. Cisco Systems, Inc.	D. Mass.	12/15/2022	16-cv-11613	412
Hardin v. Samsung Electronics Co., Ltd.	E.D. Tex.	11/29/2022	2:21-cv-00290-JRG	149
Hy-Ko Products Company LLC v. The Hillman Group, Inc.	E.D. Tex.	9/30/2022	2:21-cv-00197-JRG	282
SunStone Information Def., Inc. v. Int'l Bus. Machines Corp.	W.D. Tex.	8/1/2022	6:20-cv-01033-ADA-DTG	134
AGIS Software Dev. LLC v. Samsung Elecs. Co.	E.D. Tex.	4/11/2022	2:19-cv-00362-JRG	121
Viking Techs., LLC v. Assurant, Inc.	E.D. Tex.	2/3/2022	2:20-cv-00357-JRG	206
RFCyber Corp. v. Google LLC	E.D. Tex.	1/25/2022	2:20-cv-00274-JRG-RSP	245

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Case Name	Court	Filing Date	Citation	ECF No.
Pinn, Inc. v. Apple Inc.	C.D. Cal.	7/14/2021	2021 U.S. Dist. LEXIS 201501	
Ultravision Techs., LLC v. GoVision, LLC	E.D. Tex.	5/18/2021	2:18-cv-00100-JRG-RSP	646
Acorn Semi, LLC v. Samsung Elecs. Co.	E.D. Tex.	4/29/2021	2:19-cv-00347-JRG	331
Eastern Profit Corp. v. Strategic Vision US, LLC	S.D.N.Y.	12/18/2020	2020 U.S. Dist. LEXIS 239663	
Optimum Imaging Techs. LLC v. Canon Inc.	E.D. Tex.	11/23/2020	2:19-cv-00246-JRG	201
CXT Sys., Inc. v. Academy, Ltd.	E.D. Tex.	1/27/2020	18-cv-00171-RWS-RSP	424
Vir2us, Inc. v. Sophos Inc.	E.D. Va.	11/26/2019	2:19-cv-00018-AWA-RJK	282
Eidos Display, LLC v. Chi Mei Innolux Corp.	E.D. Tex.	5/26/2017	2017 WL 2773944	787
AVM Techs., LLC v. Intel Corp.	D. Del.	4/29/2017	2017 U.S. Dist. LEXIS 65698	

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In Camera Citations

Case Name	Court	Filing Date	Citation	ECF No.
Marble Voip Partners LLC v. Zoom Video Commc'ns, Inc.	N.D. Cal.	7/3/2025	2025 U.S. Dist. LEXIS 127342	
Gonzalez v. Jones (In re Fresh Acquisitions, LLC)	Bankr. N.D. Tex.	6/18/2025	2025 Bankr. LEXIS 1467	
Entangled Media, LLC v. Dropbox Inc.	N.D. Cal.	4/8/2025	716 F. Supp. 3d 819	
Samesurf, Inc., v. Intuit, Inc.	S.D. Cal.	12/12/2024	2024 U.S. Dist. LEXIS 225411	
Slyde Analytics LLC. v. Samsung Elecs. Co.	E.D. Tex.	8/17/2024	2024 U.S. Dist. LEXIS 231904	
Robocast, Inc. v. Netflix, Inc.	D. Del.	8/7/2024	1:22-cv-00305-JLH	319
Lower48 IP LLC v. Shopify, Inc.	W.D. Tex.	11/2/2023	2023 U.S. Dist. LEXIS 240862	
GoTV Streaming, LLC v. Netflix, Inc.	C.D. Cal.	5/24/2023	2023 U.S. Dist. LEXIS 91168	
Trs. of Purdue Univ. v. STMicroelectronics, Inc.	W.D. Tex.	1/18/2023	2023 U.S. Dist. LEXIS 241765	
Torchlight Techs. LLC v. Daimler AG	D. Del.	6/7/2022	1:22-cv-00751-GBW	154
Gamon Plus, Inc. v. Campbell Soup Co.	N.D. Ill.	5/26/2022	2022 U.S. Dist. LEXIS 236014	
Taction Tech., Inc. v. Apple Inc.	S.D. Cal.	3/16/2022	2022 U.S. Dist. LEXIS 238902	
3rd Eye Surveillance, LLC v. United States	Fed. Cl.	2/18/2022	158 Fed. Cl. 216	
Nunes v. Lizza	N.D. Iowa	10/26/2021	2021 U.S. Dist. LEXIS 254428	
Hardin v. Samsung Elecs. Co.	E.D. Tex.	7/30/2021	2022 U.S. Dist. LEXIS 194602	
United States v. McKesson Corp.	E.D.N.Y.	4/28/2021	1:12-cv-06440-NG-ST	135
Walker Digital LLC v. Google Inc.	D. Del.	4/11/2021	2013 U.S. Dist. LEXIS 188666	
Elm 3DS Innovations LLC v. Samsung Elecs. Co.	D. Del.	11/19/2020	2020 U.S. Dist. LEXIS 216796	
United Access Techs., LLC v. AT&T Corp.	D. Del.	6/12/2020	2020 U.S. Dist. LEXIS 103532	
In re Dealer Mgmt. Sys. Antitrust Litig.	N.D. Ill.	6/8/2020	2020 U.S. Dist. LEXIS 99767	
Impact Engine, Inc. v. Google LLC	S.D. Cal.	7/15/2019	2020 U.S. Dist. LEXIS 194517	
SecurityPoint Holdings, Inc. v. United States	Fed. Cl.	4/16/2019	2019 U.S. Claims LEXIS 341	
In re: Nat'l Prescription Opiate Litig.	N.D. Ohio	5/7/2018	2018 U.S. Dist. LEXIS 84819	

ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

Case Name	Court	Filing Date	Citation	ECF No.
Viamedia, Inc. v. Comcast Corp.	N.D. Ill.	6/30/2017	2017 U.S. Dist. LEXIS 101852	
Cont'l Circuits LLC v. Intel Corp.	D. Ariz.	6/22/2016	435 F. Supp. 3d 1014	
In re Superior Nat'l Ins. Gr.	C.D. Cal.	1/7/2014	2014 Bankr. LEXIS 64	
Miller UK Ltd. v. Caterpillar, Inc	N.D. Ill.	1/6/2014	17 F. Supp. 3d 711	
Mondis Tech., Ltd. v. LG Elecs., Inc.	E.D. Tex.	5/4/2011	2011 U.S. Dist. LEXIS 47807	

ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

APPENDIX C

Subpoena Exemplars

Rules Suggestion 25-CV-O

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

DESIGN WITH FRIENDS, INC., et al.

Plaintiff

v.

TARGET CORPORATION

Defendant

Civil Action No. 21-cv-01376-SB

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Validity Finance, LLC
c/o Maples Fiduciary Services (Delaware) Inc., Registered Agent
4001 Kennett Pike, Suite 302
Wilmington, DE 19807

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Please see Schedule A

Place:	Date and Time:
Fish & Richardson P.C. 222 Delaware Avenue, 17th Floor Or by e-mail as agreed to by the parties Wilmington, DE 19801	August 11, 2023 at 9:00am Eastern

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: July 24, 2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Martina Tyreus Hufnal

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Target Corporation, who issues or requests this subpoena, are:

Martina Hufnal, Fish & Richardson P.C., 222 Delaware Ave., Fl 17, Wilmington DE 19801; hufnal@fr.com; 302-778-8471

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 21-cv-01376-SB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DESIGN WITH FRIENDS, INC. and DESIGN WITH FRIENDS LTD.,

Plaintiffs,

v.

TARGET CORPORATION,

Defendant.

C.A. 1:21-cv-01376-SB

SCHEDULE A – PRODUCTION OF DOCUMENTS

DEFINITIONS AND INSTRUCTIONS

1. "Defendant" or "Target" means Defendant Target Corporation.

2. "Plaintiff," "Plaintiffs," or "DWF" mean and refer both individually and collectively to Plaintiffs Design With Friends, Inc. and Design With Friends Ltd. and all past and present officers, directors, employees, agents, consultants, predecessors, subsidiaries, or entities under common control.

3. "You" means Validity Finance, LLC and all past and present officers, directors, employees, agents, consultants, predecessors, subsidiaries, or entities under common control.

4. "Litigation" means *Design with Friends Inc. v. Target Corporation*, Case No. 1:21-cv-01376-SB (D. Del.).

5. "DWF Application" means any and all web-based applications or services provided by DWF for the purpose of room design, including all source and object code both for the backend (or server-side) elements of any such applications or services as well as for the frontend (or client-side) elements of any such applications or services.

6. "Target's Home Planner" means Target's home planner tools including for home, nursery, outdoor, and college presently available at https://www.target.com/room-planner, including the web-based applications or services provided by Target in connection with the same and all source and object code both for the backend (or server-side) elements of any such applications or services as well as for the frontend (or client-side) elements of any such applications or services.

7. "Document(s)" is used in the broadest sense to include everything contemplated by Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure and by Rule 1001 of the Federal Rules of Evidence. If a draft Document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to subsequent notation, each non-identical Document is a separate Document. "Document(s)" includes all forms of electronic data and other information stored on electronically stored media ("ESI"). "Document(s)" also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

8. "Thing(s)" is used in the broadest sense to include everything contemplated by Rule 34(a)(1)(B) of the Federal Rules of Civil Procedure.

9. "Communication(s)" means any transmission of information, including drafts, whether oral or written.

10. "Identity" or "Identify" means:

a. In the context of a natural Person, to provide the Person's (i) full name; (ii) present or last known residential address and telephone number; (iii) present or last known business address and telephone number; and (iv) present or last known place of employment and job description. If the natural Person was employed by You, as defined above, "Identify" also means to provide (v) the title(s) of the Person as defined above, and the Person's dates of

employment. Once a Person has been identified in accordance with this paragraph, only the name of that Person need be listed in response to subsequent Requests requiring identification of that Person.

b. In the case of a business, legal, or governmental Entity or association, to provide the Entity or association's (i) full name; (ii) legal form (e.g., corporation, partnership, etc.) and state of incorporation or legal formation; (iii) address and principal place of business; (iv) officers and other Persons having knowledge of the matter with respect to which the Entity or association is named; and (v) the basis for its inclusion in Your response.

c. In the case of a Document, to provide: (i) the identity of the Person(s) originating and preparing it; (ii) the sender, if not the Person who originated it; (iii) its general type (e.g., letter, memorandum, etc.), title, and identifying number; (iv) the general nature of its subject matter; (v) its date of preparation; (vi) the date and manner of any transmission, distribution or publication; (vii) the location of each copy (including title, index number, and location of the file in which it is kept or from which it was removed) and the identity of the present custodian or Persons responsible for its filing or other disposition; and (viii) the identity of Persons who can authenticate or identify it.

d. In the case of a Thing, to provide: (i) any model or catalogue number; (ii) any article or model name; (iii) any technical or promotional materials describing the article or its use; and (iv) the dates and locations of its production.

e. In the case of an oral Communication or meeting, to provide: (i) the date of the conversation or meeting; (ii) the location where it occurred or, in the case of an electronic Communication, the location of each party; (iii) all individuals who participated or were present; (iv) the substance of what was discussed; and (v) all actions taken as a result of the Communication or meeting.

11. "Person" or "Entity" and their plural forms include, without limitation, natural persons, law firms, partnerships, corporations, associations, and any other legal entities and divisions, departments, or other units thereof, and include all of the Person's or Entity's principals, employees, agents, attorneys, consultants, and other representatives.

12. The terms and phrases "relating," "regarding," "concerning," "referring or relating to," "reflecting," and any variant thereof are used in their broadest sense to include any connection, relation, or relevance.

13. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the Request most inclusive.

14. "Including" means "including without limitation."

15. The use of the singular form of any word includes the plural and vice versa.

16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. Unless otherwise specified in a Production Request below, the following Production Requests apply from 2020 to the present.

2. Electronic records and computerized information must be produced in an intelligible format or together with a description of the system from which it was derived, sufficient to permit rendering the materials intelligible.

3. If there are no Documents, Things, or Communications responsive to any particular Request, You should so state in writing rather than leave the Request unanswered.

4. You may produce Documents, Things, and Communications pursuant to the terms of the parties' Stipulated Confidentiality Agreement and Protective Order in this action (Dkt. No. 53), attached here, with the appropriate designation set forth therein.

5. If You withhold from production any Document, Thing, or Communication requested herein on grounds of attorney-client privilege, work-product immunity, or otherwise, You shall provide a list identifying the specific grounds upon which the objection is based and the particular Request(s) objected to, and identifying any withheld Document, Thing, or Communication, or portions thereof as follows:

a. Its date of creation;

b. The identity of all Persons who prepared and/or signed the Document, Thing, or Communication;

c. The general nature of the Document, Thing, or Communication (i.e., whether it is a letter, chart, pamphlet, memorandum, etc.);

d. A summary of its content, or the general subject matter of the Document, Thing, or Communication;

e. A listing of all Persons, including, but not limited to, the addressees, to whom copies of the Document, Thing, or Communication have been disclosed; and

f. The nature of the privilege or other rule of law relied upon to withhold the Document, Thing, or Communication.

6. Different versions of the same Documents, Things, or Communications, handwritten notes or notation in any form, draft Document, Thing, or Communication, and Documents, Things, or Communications with handwritten notations or marks not found in the original or on other copies are considered to be different Documents, Things, or Communications for the purpose of production in compliance with these Requests, and each form should be produced separately.

7. Each Document, Thing, and Communication produced in response to these Requests shall be produced along with any and/or all attachments and/or enclosures as have ever been attached to and/or enclosed with the Document, Thing, or Communication at any time. Documents, Things, and Communications attached to each other must not be separated.

PRODUCTION REQUESTS

1. Documents, communications, and things concerning this Litigation.

2. Communications between You and any Person or Entity other than DWF concerning this Litigation and all Documents relating to the same.

3. Documents, communications, and things relating to the funding or financing of this Litigation.

4. Documents, communications, and things relating or referring to Target's Home Planner.

5. Documents, communications, and things concerning any intellectual property relating to the DWF Application.

6. Documents, communications, and things concerning any efforts to sell, license, or otherwise convey intellectual property relating to the DWF Application.

7. Documents concerning any valuation of DWF, the DWF Application, or any intellectual property relating to the DWF Application.

8. Documents concerning the infringement or validity of any intellectual property relating to the DWF Application.

9. All engagement letters and agreements with DWF and all appendices/attachments to the same.

* * * * *

Rules Suggestion 25-CV-O

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

DESIGN WITH FRIENDS, INC., et al.

Plaintiff

v.

TARGET CORPORATION

Defendant

Civil Action No. 21-cv-01376-SB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Validity Finance, LLC
c/o Maples Fiduciary Services (Delaware) Inc., Registered Agent
4001 Kennett Pike, Suite 302
Wilmington, DE 19807

(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters: Please see Schedule A

Place:	Date and Time:
Fish & Richardson, P.C. 222 Delaware Avenue, 17th Floor Wilmington, DE 19801	August 15, 2023 at 9:00 Eastern

The deposition will be recorded by this method: Stenographic and audiovisual

❒ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: July 24, 2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Martina Tyreus Hufnal

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Target Corporation, who issues or requests this subpoena, are:

Martina Hufnal, Fish & Richardson P.C., 222 Delaware Ave., Fl 17, Wilmington DE 19801; hufnal@fr.com; 302-778-8471

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 21-cv-01376-SB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DESIGN WITH FRIENDS, INC. and DESIGN WITH FRIENDS LTD., Plaintiffs, v. TARGET CORPORATION, Defendant.	C.A. 1:21-cv-01376-SB

SCHEDULE A – 30(b)(6) DEPOSITION TOPICS

DEFINITIONS

1. "Defendant" or "Target" means Defendant Target Corporation.

2. "Plaintiff," "Plaintiffs," or "DWF" mean and refer both individually and collectively to Plaintiffs Design With Friends, Inc. and Design With Friends Ltd. and all past and present officers, directors, employees, agents, consultants, predecessors, subsidiaries, or entities under common control.

3. "You" means Validity Finance, LLC and all past and present officers, directors, employees, agents, consultants, predecessors, subsidiaries, or entities under common control.

4. "Litigation" means *Design with Friends Inc. v. Target Corporation*, Case No. 1:21-cv-01376-SB (D. Del.).

5. "DWF Application" means any and all web-based applications or services provided by DWF for the purpose of room design, including all source and object code both for the backend (or server-side) elements of any such applications or services as well as for the frontend (or client-side) elements of any such applications or services.

6. "Target's Home Planner" means Target's home planner tools including for home, nursery, outdoor, and college presently available at https://www.target.com/room-planner, including the web-based applications or services provided by Target in connection with the same and all source and object code both for the backend (or server-side) elements of any such applications or services as well as for the frontend (or client-side) elements of any such applications or services.

7. "Document(s)" is used in the broadest sense to include everything contemplated by Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure and by Rule 1001 of the Federal Rules of Evidence. If a draft Document has been prepared in several copies that are not identical, or if the original identical copies are no longer identical due to subsequent notation, each non-identical Document is a separate Document. "Document(s)" includes all forms of electronic data and other information stored on electronically stored media ("ESI"). "Document(s)" also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

8. "Thing(s)" is used in the broadest sense to include everything contemplated by Rule 34(a)(1)(B) of the Federal Rules of Civil Procedure.

9. "Communication(s)" means any transmission of information, including drafts, whether oral or written.

10. "Identity" or "Identify" means:

a. In the context of a natural Person, to provide the Person's (i) full name; (ii) present or last known residential address and telephone number; (iii) present or last known business address and telephone number; and (iv) present or last known place of employment and job description. If the natural Person was employed by You, as defined above, "Identify" also means to provide (v) the title(s) of the Person as defined above, and the Person's dates of

employment. Once a Person has been identified in accordance with this paragraph, only the name of that Person need be listed in response to subsequent Requests requiring identification of that Person.

b. In the case of a business, legal, or governmental Entity or association, to provide the Entity or association's (i) full name; (ii) legal form (e.g., corporation, partnership, etc.) and state of incorporation or legal formation; (iii) address and principal place of business; (iv) officers and other Persons having knowledge of the matter with respect to which the Entity or association is named; and (v) the basis for its inclusion in Your response.

c. In the case of a Document, to provide: (i) the identity of the Person(s) originating and preparing it; (ii) the sender, if not the Person who originated it; (iii) its general type (e.g., letter, memorandum, etc.), title, and identifying number; (iv) the general nature of its subject matter; (v) its date of preparation; (vi) the date and manner of any transmission, distribution or publication; (vii) the location of each copy (including title, index number, and location of the file in which it is kept or from which it was removed) and the identity of the present custodian or Persons responsible for its filing or other disposition; and (viii) the identity of Persons who can authenticate or identify it.

d. In the case of a Thing, to provide: (i) any model or catalogue number; (ii) any article or model name; (iii) any technical or promotional materials describing the article or its use; and (iv) the dates and locations of its production.

e. In the case of an oral Communication or meeting, to provide: (i) the date of the conversation or meeting; (ii) the location where it occurred or, in the case of an electronic Communication, the location of each party; (iii) all individuals who participated or were present; (iv) the substance of what was discussed; and (v) all actions taken as a result of the Communication or meeting.

11. "Person" or "Entity" and their plural forms include, without limitation, natural persons, law firms, partnerships, corporations, associations, and any other legal entities and divisions, departments, or other units thereof, and include all of the Person's or Entity's principals, employees, agents, attorneys, consultants, and other representatives.

12. The terms and phrases "relating," "regarding," "concerning," "referring or relating to," "reflecting," and any variant thereof are used in their broadest sense to include any connection, relation, or relevance.

13. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the Request most inclusive.

14. "Including" means "including without limitation."

15. The use of the singular form of any word includes the plural and vice versa.

16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

TOPICS

1. Communications between You and DWF concerning this Litigation.

2. Communications between You and any Person or Entity other than DWF concerning this Litigation.

3. The funding or financing of this Litigation.

4. Any efforts to sell, license, or otherwise convey rights in intellectual property relating to the DWF Application.

5. Any valuation of DWF, the DWF Application, or any intellectual property relating to the DWF Application.

6. Any assessments relating to the infringement or validity of any intellectual property relating to the DWF Application.

7. All engagement letters and agreements with DWF and all appendices/attachments to the same.

* * * * *

Rules Suggestion 25-CV-O

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Texas

Correct Transmission, LLC

Plaintiff

v.

Nokia Corporation, Nokia Solutions and Networks Oy, and Nokia of America Corporation

Defendant

Civil Action No. 2:22-cv-00343

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: VF Asset Holdings, LLC
Maples Fiduciary Services (Delaware) Inc., 4001 Kennett Pike, Suite 302, Wilmington, DE 19807

(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters: See Exhibit B

Place:	Date and Time:
Alston & Bird LLP 950 F Street NW Washington, D.C. 20004	July 18, 2023

The deposition will be recorded by this method: stenographic and/or videographic means

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/27/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Thomas Davison

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Nokia of America Corporation, who issues or requests this subpoena, are:
Thomas Davison, Alston & Bird LLP, 950 F Street, NW Washington, D.C. 20004, tom.davison@alston.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:22-cv-00343

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CORRECT TRANSMISSION, LLC Plaintiff, v. NOKIA CORPORATION, NOKIA SOLUTIONS AND NETWORKS OY, AND NOKIA OF AMERICA CORPORATION, Defendants.	§ § § § § § § § § § §	Case No. 2:22-cv-00343 **Exhibits A & B to Nokia's Subpoena to Validity**

Exhibit A

DEFINITIONS

1. The terms "Validity," "you," "your," and "yours" refers to VF Asset Holdings, LLC, and any past or present officers, directors, principals, agents, employees, attorneys, representatives, partners, predecessors, subsidiaries, affiliates, divisions, departments, or any other Persons that Validity directly or indirectly controls or that act on its behalf.

2. The terms "Correct Transmission" or "Plaintiff" refer to Correct Transmission, LLC and all predecessors, successors, predecessors-in-interest to Correct Transmission and/or the Patents-in-Suit, successors-in-interest, subsidiaries, divisions, parents, and/or affiliates, past or present, any companies that have a controlling interest in Correct Transmission, and any current or former employee, officer, director, principal, agent, consultant, representative, or attorney thereof, or anyone acting on their behalf.

3. The terms "Nokia" or "Defendants" refer to Nokia Corporation, Nokia Solutions and Networks Oy, and Nokia of America Corporation and any past or present

officers, directors, principals, agents, employees, attorneys, representatives, partners, predecessors, subsidiaries, affiliates, divisions, departments, or any other Person that Nokia directly or indirectly controls or that acts on its behalf.

4. The term "Orckit IP," refers to Orckit IP, LLC and any past or present officers, directors, principals, agents, employees, attorneys, representatives, partners, predecessors, subsidiaries, affiliates, divisions, departments, or any other Persons that Orckit directly or indirectly controls or that act on its behalf, including, at least, Orckit Communications Ltd., Orckit-Corrigent Ltd., and Orckit Corp.

5. The term "'669 Patent" means United States Patent No. 6,876,669 including all related patents (e.g., all patents, foreign counterparts, provisionals, divisionals, continuations, and continuations-in-part) and all related applications.

6. The term "'523 Patent" means United States Patent No. 7,127,523 including all related patents (e.g., all patents, foreign counterparts, provisionals, divisionals, continuations, and continuations-in-part) and all related applications.

7. The term "'465 Patent" means United States Patent No. 7,283,465 including all related patents (e.g., all patents, foreign counterparts, provisionals, divisionals, continuations, and continuations-in-part) and all related applications.

8. The term "'928 Patent" means United States Patent No. 7,768,928 including all related patents (e.g., all patents, foreign counterparts, provisionals, divisionals, continuations, and continuations-in-part) and all related applications.

9. The term "'150 Patent" means United States Patent No. 7,983,150 including all related patents (e.g., all patents, foreign counterparts, provisionals, divisionals, continuations, and continuations-in-part) and all related applications.

10. The term "Patents-in-Suit" refers to the '669 Patent, the '523 Patent, the '465 Patent, '928 Patent, and the '150 Patent collectively.

11. "Application" means any patent application or similar document anywhere in the world, including but not limited to any provisional application, continuing application, continuation-in-part application, divisional application, file-wrapper continuation, reexamination proceeding, reissue application, and abandoned application.

12. "Related Patents" and/or "Related Applications" means any patent or Application filed anywhere in the world that is related to any Patents-in-Suit, including but not limited to any patent or Application that (i) claims priority in whole or in part to or from any Patents-in-Suit, (ii) is the basis for a claim of priority in whole or in part for any Patents-in-Suit, or (iii) discloses the same subject matter as any Patents-in-Suit or shares any part of its written description with the written description of any Patents-in-Suit.

13. "Inventors" means, individually and collectively, the named inventors of the "Patents-in-Suit," including Rafi Shalom, Yoav Kotser, Rafi Harel, Ron Sdayoor, Moran Roth, David Zelig, Leon Bruckman, and Ronen Solomon.

14. The term "any" shall be understood to include and encompass "all."

15. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of any request all documents or things that might otherwise be construed to be outside its scope.

16. The terms "concern," "concerning," "refer," "referring," "regarding," "relate," "relating," or any variants thereof mean, directly or indirectly and in whole or in part, pertaining to, relevant to, alluding to, mentioning, commenting on, connected with, describing, analyzing, explaining, showing, reflecting, identifying, setting forth, dealing with, embodying, comprising, consisting of, containing, constituting, resulting from,

recording, discussing, assessing, stating, evidencing, supporting, rebutting, or in any way relevant to the particular subject matter identified.

17. The term "Document" shall have the broadest meaning ascribed to it by Federal Rule of Civil Procedure 35 and Federal Rule of Evidence 1001, which includes every writing, or record of any kind, or other tangible thing from which data or information can be obtained (translated if necessary through detection devices into reasonably usable form), and which is known to you, or that is in your possession, custody, or control and that is kept by electronic photographic, mechanical, or other means concerning, pertaining to, describing, referring, or relating to, directly or indirectly, in whole or in part, the subject matter of each request.

18. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise, in any form. Communication or Communications specifically include, without limitation, written, e-mail, facsimile, telex, SMS or other cellular telephone text messages, as well as chat logs from Microsoft Teams, Slack, Google Hangouts Chat, or any other instant-messaging or chat platform, whether web-based or otherwise.

19. The phrase "all documents" in a request means responsive documents that are presently known or available to you, as well as responsive documents located through a search of all locations and an inquiry of all persons reasonably likely to contain or possess responsive documents.

20. The terms "Person" and/or "Persons" mean both natural persons and legal entities, including, without limitation corporations, companies, firms, partnerships, joint ventures, proprietorships, associations, and governmental bodies or agencies. Unless noted otherwise, references to any person, entity or party herein shall include its, his or her, agents,

attorneys, employees, employers, officers, directors, or others acting on behalf of said person, entity, or party.

21. The term "This Litigation" means Correct Transmission's lawsuit against Nokia alleging infringement of the Patents-in-Suit, pending in the United States District Court for the Eastern District of Texas, Case No. 2:22-cv-00296-JRG.

22. To "identify" a natural person means to state the person's name, current (or last known) occupation and job title, business address, email address, and telephone number.

23. To "identify" a document means (a) to describe the document with sufficient particularity to permit Nokia to request its production from whoever possesses it; (b) to describe its location or the person(s) who possess(es) it; and (c) where applicable, to identify the litigation production number(s) associated with the document.

24. To "identify" a product, process or component means to state the trade name, applicable specification or catalogue number, and any other identifying word or phrase (including code words or phrases) used to refer to or market the product.

INSTRUCTIONS

1. You are requested to produce all Documents and Things in the following categories that are in your possession, custody or control, or within the possession, custody or control of your agents, servants, employees and your attorneys, in their entirety and without redaction or expurgation. "Possession, custody or control" shall be construed to the fullest extent provided under Federal Rules of Civil Procedure 34 and 45 and shall include, without limitation, those Documents and Things in the hands of any other Person that you have the ability to demand or to gain access to in the ordinary course of business. This includes documents placed in storage facilities or warehouses.

2. For each request, please search all locations (including computers and

networks) and inquire of all persons either known or reasonably likely to contain or possess documents or things called for by the request.

3. You shall produce Documents for inspection as they are kept in the normal course of business or shall organize and label them to correspond with the specifications of these requests, as required by Rule 45 of the Federal Rules of Civil Procedure. You shall supplement your responses to these document requests as required by Rule 26 of the Federal Rules of Civil Procedure. In either case, and unless otherwise requested or agreed: (a) you may produce photocopies of the responsive documents, as well as photocopies of all associated file labels, file headings, and file folders together with the responsive documents from each file; (b) if any documents cannot be legibly copied or scanned, so state in your responses and provide a date, time, and location for its inspection in original form; (c) staple or clip all photocopies in the same manner as the originals; and (d) give each page a discrete production number.

4. If multiple copies of a document exist, produce every copy on which there are any notations or markings of any sort that do not appear on any other copy.

5. Documents produced are to be clearly designated so as to reflect their owner and custodian and the location from where they were produced, including any file, diskette, or other particular container or repository from which each Document was produced and the location of such container or repository.

6. If any Document is withheld based upon a claim of privilege or other protection, provide for each such Document: (i) the date of the Document, (ii) the names of all authors, (iii) the names of all recipients, (iv) the names of all persons who, to your knowledge, have seen the Document, (v) the names of all cc and/or bcc recipients, (vi) the type of Document, (vii) a description of the Document, (viii) an identification of the

privilege or protection claimed, and (ix) a brief explanation of the basis of your claim of privilege or other protection.

7. If you or your attorneys, agents, or employees know of the existence, past or present, of any document described in any request, but the document is not presently in your possession, custody, or control, or in the possession, custody, or control of your agents, representatives, or attorneys, identify the document and the individual in whose possession, custody, or control the document was last known to reside. If the document no longer exists, state when, how, and why the document ceased to exist.

8. Electronically stored information is generally to be produced, at your option, in either (a) its native file format or (b) in Tagged Image File Format ("TIFF") with optical character recognition ("OCR"). However, Microsoft Excel Spreadsheets and Power Point files are to be produced in their native format with all metadata intact.

9. The singular form of a word shall be interpreted as plural, the plural form of a word shall be interpreted as singular, and the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of these requests any document that might otherwise be outside its scope.

10. The term "including" (and the like) will not be interpreted as limiting and will mean "including without limitation."

11. Defined terms may or may not be capitalized. No waiver of a defined term is implied by the use of a defined term in a non-capitalized form.

12. More than one paragraph of these requests may ask for the same Documents. The presence of such duplication is not to be interpreted to narrow or limit the normal interpretation placed upon each individual request. Where a Document is requested in more than one request, only one copy of it need be produced.

13. Unless otherwise indicated, these requests are not time or date limited.

14. If you find any instruction, definition, or request ambiguous in any way, identify in your response the language you consider ambiguous and state the interpretation you are using in responding.

15. If you object to any instruction, definition, or request in whole or part, state your objection in your response and produce all documents to which your objection does not apply.

DOCUMENT REQUESTS

1. All agreements and communications between Validity and Orckit IP and/or Correct Transmission regarding the subject matter of any of the Patents-in-Suit, Related Patents, and/or Related Applications, including without limitation relating to the funding of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

2. All documents and communications reflecting the negotiation history between Validity and Orckit IP and/or Correct Transmission relating to the potential funding of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

3. All documents relating to any assessment or evaluation of the value of any of the Patents-in-Suit, Related Patents, and/or Related Applications, whether alone or as part of a larger portfolio.

4. All Documents and Communications relating to any investigation, opinion, report, or observation as to the patentability, validity, enforceability, inventorship, scope, inequitable conduct, infringement, strength, or weakness of any claim of the Patents-in-Suit, Related Patents, and/or Related Applications, or any U.S. or foreign patent or pending or abandoned patent application that claims priority from the Patents-in-Suit.

5. All documents and things relating to any search for or investigation of any prior art or other information, regarding the patentability, validity, or scope of the subject matter of any claim of the Patents-in-Suit, Related Patents, and/or Related Applications.

6. All documents relating to This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

7. All documents and things sufficient to identify all persons and/or entities that currently hold, or have previously held, an interest, including but not limited to a financial interest, any ownership interest, beneficial ownership interest, or any license or other power

to enforce any interest, in any of the Patents-in-Suit, Related Patents, and/or Related Applications, including for each person or entity the nature of such interest and the date that any such interest was acquired.

8. All documents related to the actual or potential licensing of the Patents-in-Suit, Related Patents, and/or Related Applications, including any negotiations, offers to license, licensing policies and/or strategy, and terms under which Orckit IP and/or Correct Transmission and/or Validity or any other party was willing to license any of the Patents-in-Suit, Related Patents, and/or Related Applications.

9. Documents sufficient to identify any licensees or potential licensees of the Patents-in-Suit (or the technology claimed or described in those patents), including any Person that Validity, Orckit IP, and/or Correct Transmission investigated relating to potential infringement of the Patents-in-Suit.

10. Documents sufficient to identify any product that may practice or has practiced any claim of any of the Patents-in-Suit.

11. All license agreements related to the any of the Patents-in-Suit, Related Patents, and/or Related Applications.

12. All documents and Communications relating to any enforcement or alleged infringement of any of the Patents-in-Suit, Related Patents, and/or Related Applications.

13. All documents related to any agreements between Validity, Orckit IP, and/or Correct Transmission, including, but not limited to term sheets, license agreements, assignments, and/or settlement agreements.

14. All documents reflecting any ownership right Validity has, whether financial or other interest, direct and indirect, to Orckit IP and/or Correct Transmission, to any of the

Patents-in-Suit, or to any revenues obtained from the license or use of any of the Patents-in-Suit and/or any Related Patents to any Person, including but not limited to Nokia.

15. Documents sufficient to show whether Validity has any financial or other interest in the outcome of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

16. Any financial reports or financial projections received from Orckit IP or Correct Transmission.

17. All communications between Validity and any third party concerning Defendant, this action, or any of the Patents-in-Suit (or the technology claimed or described in those patents).

18. All communications between You and Correct Transmission and/or Orckit IP concerning Nokia and/or This Litigation.

19. All communications and documents concerning Your investment in Correct Transmission and/or Orckit IP.

20. All communications and documents concerning any compensation You have received or compensation You may receive in connection with the Patents-in-Suit, Related Patents, and/or Related Applications.

21. All documents concerning any analysis of the market or industry for routing and switching hardware and software, line cards, chassis or other networking equipment designed to move or facilitate the moving of data packets throughout data networks.

22. All documents showing the identities of all Validity employees or agents with any knowledge of any and all licenses and licensing negotiations related to the ’669, ’523, ’465, ’928, and/or ’150 Patents.

23. All documents showing the identities of all Validity employees or agents with any knowledge of any and all ownership or sale negotiations related to the ’669, ’523, ’465, ’928, and/or ’150 Patents.

24. All documents concerning the ’669, ’523, ’465, ’928, and/or ’150 Patents, and the technology claimed or described in those patents.

Exhibit B

DEFINITIONS

The definitions set forth in Exhibit A are incorporated by reference herein.

INSTRUCTIONS

The instructions set forth in Exhibit A are incorporated by reference herein.

DEPOSITION TOPICS

1. All agreements and communications between Validity and Orckit IP and/or Correct Transmission regarding the subject matter of any of the Patents-in-Suit, Related Patents, and/or Related Applications, including without limitation relating to the funding of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

2. The negotiation history between Validity and Orckit IP and/or Correct Transmission relating to the potential funding of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

3. Any assessment or evaluation of the value of any of the Patents-in-Suit, Related Patents, and/or Related Applications, whether alone or as part of a larger portfolio.

4. Any investigation, opinion, report, or observation as to the patentability, validity, enforceability, inventorship, scope, inequitable conduct, infringement, strength, or weakness of any claim of the Patents-in-Suit, Related Patents, and/or Related Applications, or any U.S. or foreign patent or pending or abandoned patent application that claims priority from the Patents-in-Suit.

5. Any search for or investigation of any prior art or other information, regarding the patentability, validity, or scope of the subject matter of any claim of the Patents-in-Suit, Related Patents, and/or Related Applications.

6. This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

7. All persons and/or entities that currently hold, or have previously held, an interest, including but not limited to a financial interest, any ownership interest, beneficial ownership interest, or any license or other power to enforce any interest, in any of the Patents-in-Suit, Related Patents, and/or Related Applications, including for each person or entity the nature of such interest and the date that any such interest was acquired.

8. The actual or potential licensing of the Patents-in-Suit, Related Patents, and/or Related Applications, including any negotiations, offers to license, licensing policies and/or strategy, and terms under which Orckit IP and/or Correct Transmission and/or Validity or any other party was willing to license any of the Patents-in-Suit, Related Patents, and/or Related Applications.

9. Any licensees or potential licensees of the Patents-in-Suit (or the technology claimed or described in those patents), including any Person that Validity, Orckit IP, and/or Correct Transmission investigated relating to potential infringement of the Patents-in-Suit.

10. Any product that may practice or has practiced any claim of any of the Patents-in-Suit.

11. All license agreements related to the any of the Patents-in-Suit, Related Patents, and/or Related Applications.

12. Any enforcement or alleged infringement of any of the Patents-in-Suit, Related Patents, and/or Related Applications.

13. Any agreements between Validity, Orckit IP, and/or Correct Transmission, including, but not limited to term sheets, license agreements, assignments, and/or settlement agreements.

14. Any ownership right Validity has, whether financial or other interest, direct and indirect, to Orckit IP and/or Correct Transmission, to any of the Patents-in-Suit, or to any revenues obtained from the license or use of any of the Patents-in-Suit and/or any Related Patents to any Person, including but not limited to Nokia.

15. Whether Validity has any financial or other interest in the outcome of This Litigation or any other litigation or potential litigation asserting the Patents-in-Suit.

16. Any financial reports or financial projections received from Orckit IP or Correct Transmission.

17. All communications between Validity and any third party concerning Defendant, this action, or any of the Patents-in-Suit (or the technology claimed or described in those patents).

18. All communications between You and Correct Transmission and/or Orckit IP concerning Nokia and/or This Litigation.

19. Your investment in Correct Transmission and/or Orckit IP.

20. Any compensation You have received or compensation You may receive in connection with the Patents-in-Suit, Related Patents, and/or Related Applications.

21. Any analysis of the market or industry for routing and switching hardware and software, line cards, chassis or other networking equipment designed to move or facilitate the moving of data packets throughout data networks

22. The identities of all Validity employees or agents with any knowledge of any and all licenses and licensing negotiations related to the ’669, ’523, ’465, ’928, and/or ’150 Patents.

23. The identities of all Validity employees or agents with any knowledge of any and all ownership or sale negotiations related to the ’669, ’523, ’465, ’928, and/or ’150 Patents.

24. The ’669, ’523, ’465, ’928, and/or ’150 Patents, and the technology claimed or described in those patents.

25. The collection, review, and production of documents in response to this subpoena, and Validity’s search and collection of said documents.

26. Any document requested by or produced in response to this subpoena.

/s/ John D. Haynes

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Counsel for Defendant Nokia of America Corporation

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

PARKERVISION, INC.,

Plaintiff

v.

MEDIATEK INC. and MEDIATEK USA INC.,

Defendant

Civil Action No. 6:22-CV-01163-ADA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Brickell Key Investments LP
c/o CSC Little Falls Drive, Wilmington, DE 19808

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place:	Date and Time:
Regus Business Centre, Charleston - Faber Center 4000 S. Faber Place Drive, Suite 300 Charleston, SC 29405, or as otherwise agreed	06/06/2024 10:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/16/2024

CLERK OF COURT

OR /s/ Abigail A. Gardner

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Mediatek Inc. and Mediatek USA Inc., who issues or requests this subpoena, are:
Abigail Gardner, 11452 El Camino Real, Suite 300, San Diego, CA 92130; 858-750-5700; AGardner@perkinscoie.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 6:22-CV-01163-ADA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

You are required to documents at the place, date, and time specified in the attached subpoena, or at such other time as may be agreed to, in accordance with the Federal Rules of Civil Procedure and the following Definitions and Instructions.

DEFINITIONS

Please use the following definitions for the purpose of responding to the subpoena. Notwithstanding any definition set forth below, each word, term, or phrase used in this subpoena is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

1. "Brickell," "You," and "Your," as used herein, shall mean Brickell Key Investments LP and any of Your agents, representatives, consultants, employees, attorneys or anyone subject to your direction and control, or acting on your behalf, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies or proprietorships.

2. The term "MediaTek," as used herein, shall mean Defendants MediaTek Inc. and MediaTek USA Inc.

3. The terms "Plaintiff" and "ParkerVision," as used herein, shall mean ParkerVision, Inc., and any parent, successor, predecessor, sister, affiliate, subsidiary, division or related company or other business or legal entity, and their officers, directors, agents, representatives, consultants, employees, attorneys or anyone subject to the direction and control of, or acting on behalf of, any of the foregoing, both past and present.

4. The terms "Document" and "Documents" are used in their broadest possible sense and refer, without limitation, to all written, electronically stored, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic,

photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, notes, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, emails, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information, or communications can be obtained. The terms "Document" and "Documents" shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a document shall be produced to the extent that the copies differ from the document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any kind. Further, the terms "Document" and "Documents" shall include, without limitation, those categories as set forth in Rule 34(a) of the Federal Rules of Civil Procedure, specifically, writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form. Any document bearing marks, including without limitation, initials, stamped initials, comments, or notations not a part of the original text or photographic reproduction thereof, is a separate document.

5. The terms "Thing" and "Things" shall be given the broadest possible construction under the Federal Rules of Civil Procedure, including but not limited to any intangible item(s).

6. The term "Person," as used herein, means any natural person, corporation, and any other form of business entity including without limitation, partnerships, joint ventures, and associations and includes directors, officers, owners, members, employees, agents, attorneys or anyone else acting on the person's behalf. The acts of a person shall include the acts of directors, officers, owners, members, employees, agents, attorneys or other representatives acting on the person's behalf.

7. The terms "Communication" and "Communications," as used herein, mean and include any contact, oral or written, including electronic, whereby information of any nature is transmitted or transferred, including without limitation, a person(s) seeing or hearing any information by any means and any document memorializing or referring to the contact.

8. The term "Entity" shall mean corporation, company, firm, partnership, joint venture, association, governmental body or agency, or persons other than a natural person.

9. The terms "date" or "dates" shall mean the exact date(s), if known, or the closest approximation to the exact date(s) as can be specified, including without limitation the year, month, week in a month, or part of a month. Identify each instance in which the given date is an approximate date, and state your bases for making such an approximation.

10. The terms "include," "includes," and "including" are used in their broadest sense and encompass "including but not limited to" and "including without limitation."

11. The terms "embody," "embodies," or "embodied," when referring to a product, service, or act refers to any product, service, or act that practices all claim elements of a claim of an issued United States patent.

12. The terms "concerning," "relate to," "related to," and "relating to" shall mean in whole or in part concerning, reflecting, alluding to, mentioning, regarding, discussing, bearing

upon, commenting on, constituting, pertaining to, demonstrating, describing, depicting, directly or indirectly relating to, summarizing, containing, embodying, showing, comprising, evidencing, refuting, contradicting, analyzing, identifying, stating, dealing with, and/or supporting.

13. The terms "and" and "or," as used herein, are to be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

14. "Any" and "all" shall be construed to mean both any and all.

15. The terms "Asserted Patents" and "Patents-in-suit," as used herein, shall refer to U.S. Patent Nos. 6,049,706, 6,266,518, 7,292,835, and 8,660,513.

16. The term "Asserted Claims" refers to each and every claim of the Asserted Patents that ParkerVision contends MediaTek infringes.

17. The term "Related Patents" means any domestic or foreign patent or application (a) that claims priority, in whole or in part, to one or more of the Asserted Patents; (b) to which one or more of the Asserted Patents claims priority, in whole or in part; (c) that claims priority, in whole or in part, to a patent or application to which one or more of the Asserted Patents also claims priority; or (d) that otherwise claims to be related to one or more of the Asserted Patents.

18. The term "Action," as used herein, shall mean the above-captioned litigation.

19. The term "Patent Families," as used herein, shall refer to (a) the Asserted Patents and all underlying patents and patent applications, including published and unpublished applications, abandoned applications and patents, parents, continuations, continuations-in-part, divisionals, reissues, and foreign counterparts; (b) any other patents or patent applications claiming priority to any of the Asserted Patents or to which any of the Asserted Patents claims priority, whether directly or indirectly; and (c) any other patents or patent applications related to the Asserted Patents.

20. The term "Prior Art," as used herein, refers to anything that may be applied under 35 U.S.C. §§ 102 AIA/pre-AIA and/or 103 AIA/pre-AIA, or that anyone at any time has claimed or alleged may be applied under 35 U.S.C. §§ 102 and/or 103, and includes any patent, printed publication, knowledge, use, sale, offer for sale, prior invention, device, product, system, apparatus, or other instrumentality, or other act or event covered in 35 U.S.C. § 102, taken singly or in combination. This includes information that was available to the public in any form on or before January 28, 2000, that might be relevant to the claims of the Asserted Patents, whether or not known or considered by You or ParkerVision to be potentially invalidating.

21. The term "Allegedly Embodying Product," as used herein, means either any ParkerVision product, service, or act that You or ParkerVision, at any time, contended, believed, stated, or claimed practices all claim elements of a claim of any of the Asserted Patents, or ParkerVision's D2D or D2P technologies and/or products.

22. Where an instruction or request below names a corporation or other legal entity, the instruction or request includes within its scope any parent, predecessors-in-interest, subsidiaries, affiliates, directors, officers, employees, agents, and representatives thereof, including attorneys, consultants, accountants, and investment bankers.

INSTRUCTIONS

1. This subpoena calls for You to produce all Documents and Things described by each category below that are within Your possession, custody, or control, or are otherwise available to You.

2. All Documents and Things that respond, in whole or in part, to any portion of this subpoena are to be produced in their entirety, without abbreviation or expurgation, including all attachments or other matters affixed thereto.

3. Electronic records and computerized information that is produced must be readable with standard commercial software or must be accompanied by a description of the system from which it was derived sufficient to render such materials readable.

4. All Documents and Things shall be produced either in the order and manner that they are kept in the usual course of business, or shall be organized and labeled to correspond with the categories of this subpoena. Whenever a Document or group of Documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label or other means of identification of such cover or container shall be attached to the Document. Documents attached to each other must not be separated.

5. All responsive Documents and Things must be produced, regardless of whether such Documents and Things are possessed directly by You or are possessed by any of Your agents, representatives, or attorneys.

6. If any requested Document or Thing has existed, but has been lost, destroyed, or is no longer within Your possession, custody, or control, then identify the Document or Thing, its author(s), the recipient(s) or addressee(s), the subject matter, and the content. Further, if the Document or Thing has been destroyed, state with particularity the date and circumstances surrounding the destruction, and identify the last known custodian of the Document or Thing and each person who has knowledge of the destruction of any such Document or Thing.

7. As to any Documents or Things otherwise responsive to this subpoena that are withheld or not divulged based upon a claim of any privilege or work product: (a) state in a privilege log the nature of the claim of privilege and the holder of the privilege; (b) state in a privilege log all facts relied upon in support of the privilege; (c) in a privilege log, furnish a description of all Documents and Things withheld pursuant to the claim of privilege (to include,

as to each withheld Document or Thing, at least its title and general subject matter, date, author(s), person(s) for whom it was prepared, and person(s) to whom it was sent); and (d) identify in a privilege log all persons having knowledge of any facts relating to the claim of privilege. If the claim of privilege applies to only a portion of the Document or Thing, produce the Document or Thing with that portion clearly redacted (*i.e.*, stamp the Document with the word "REDACTED") and describe the redacted portion in a privilege log. In this log and as to each such Document or Thing, provide the following: (a) the nature of the Document or Thing; (b) the sender; (c) the author(s); (d) the recipient of each copy the Document or Thing; (e) the date of the Document or Thing; (f) a summary statement of the subject matter of the Document or Thing in sufficient detail to permit a court to reach a determination as to the alleged privilege in the event of a motion to compel; and (g) an indication of the basis for assertion of the alleged privilege.

8. If, subsequent to the date that You produce Documents or Things responsive to this subpoena, You discover or receive Documents or Things that are responsive to the requests herein, promptly produce all such additional Documents or Things to the full extent required by the Federal Rules of Civil Procedure and the Local Rules of the District Court.

9. If, after exercising due diligence to secure the information requested, You cannot fully comply with a specific Request, or any part thereof, state the reason(s) for Your inability to reply and respond to the fullest extent possible.

DOCUMENTS TO PRODUCE

You are directed to produce the following Documents and Things at the time and place described in this subpoena:

1. Documents and Communications relating to any Asserted Patent, any Related Patent, this Action, and/or any litigation involving ParkerVision and/or MediaTek.

2. Documents and Communications relating to any agreement in which any person obtained any rights or interests in the Asserted Patents and/or any Related Patent, including assignment agreements, license agreements, settlement agreements, sales agreements, covenants not to sue, or other enforcement efforts, including any patent purchase agreements involving You and/or ParkerVision.

3. Documents and Communications regarding contracts between You and ParkerVision related to the Asserted Patents, any Related Patent, and/or this Action, including, but not limited to:

i. Documents and Communications related to contingent fee arrangements between You and ParkerVision, including, but not limited to, the contingent fee arrangements referenced in ParkerVision's Form 10-K (*see, e.g.*, ParkerVision's SEC Form 10-K for the fiscal year ended December 31, 2023);

ii. Documents and Communications related to letter agreements between You and ParkerVision, including, but not limited to, all letter agreements referenced in ParkerVision's Quarterly Reports (*see, e.g.*, ParkerVision's May 15, 2023 first quarter 2023 summary report);

iii. All attachments and/or amendments to any contingent fee arrangement;

iv. All attachments and/or amendments to any letter agreement;

v. Documents and Communications relating to the negotiations for any of (i)-(iv);

vi. A copy of any report provided to You pursuant to any of (i)-(iv), whether required under the contract or not;

vii. Documents and Communications related to the performance of the contract(s) and any rights and obligations set forth therein, including documents regarding whether any party to any contract has exercised any right set forth in the contract subsequent to its execution; and

vii. Documents and Communications regarding the decision to exercise any rights set forth in any contract(s).

4. Documents relating to any agreements or other arrangements regarding distribution of any proceeds or other benefits generated through licensing, litigating, or otherwise enforcing the Asserted Patents and/or Related Patents, including any compensation with respect to this Action.

5. Documents and Communications relating to any formal or informal valuations of ParkerVision and/or involving the subject matter of the Asserted Patents and/or Related Patents, including, but not limited to:

i. All analyses (*e.g.*, financial models, valuation analyses, and/or comparative analyses) relating to the value of the Asserted Patents and/or any Related Patent; and

ii. All analyses (*e.g.*, financial models, valuation analyses, and/or comparative analyses) relating to the value of ParkerVision, including all analyses conducted before entering any contract with ParkerVision, amending any contract with ParkerVision, and/or making any investment in ParkerVision and/or any ParkerVision patent.

6. All analyses (*e.g.*, financial models, valuation analyses, and/or comparative analyses) relating to the value of this Action.

7. For each agreement involving You and ParkerVision, documents sufficient to show the timing (*e.g.*, date(s)) of each and every payment required to be made by ParkerVision.

8. Documents sufficient to show all payments made by ParkerVision to You under any agreement involving You and ParkerVision, including without limitation documents sufficient to show the calendar date each payment was made and the date as to which you recorded payment as occurring (if different from the date the payment was made).

9. Documents and Communications related to your decision to fund any ParkerVision litigation related to the Asserted Patents and/or Related Patents, including this Action.

10. Documents sufficient to show the relationship between You and ParkerVision.

11. Documents and Communications provided to or received from any assignee and/or successor-in-interest to any Asserted Patents and/or Related Patents.

12. Documents and Communications relating to any other persons or entities that have or had any interest in one or more of the Asserted Patents, any Related Patent, and/or this Action.

13. Documents and Communications relating to the current or prior financial, ownership, economic, or other interest in the Asserted Patents, any Related Patent, and/or this Action.

14. Documents sufficient to identify any person or entity having a financial or pecuniary interest in the outcome of this Action.

15. Documents relating to communications with third parties, including Your investors or potential investors, relating to Your patent portfolio, ParkerVision's patent portfolio, or any assertions of patent infringement or litigation involving Your patent portfolio or ParkerVision's patent portfolio.

16. Documents relating to any Correspondence and/or any agreements between You and any litigation funding entity or investor with respect to this Action.

17. Confidentiality or common interest agreements related to any patent licenses, assignments, or licensing activity involving the Asserted Patents and/or any Related Patent.

18. Documents, communications, and things evidencing all investments into ParkerVision, including at least documents sufficient to determine the date and amount of each investment, as well as the identity of the person or entity making the investment.

19. Documents, communications, and things evidencing expectations, beliefs, or projections by You and/or ParkerVision regarding additional investments into, or funding of, ParkerVision through the end of the year 2024.

20. Documents and Communications related to any security interest You have in the Asserted Patents and/or any Related Patent.

21. All Documents showing any royalties received by ParkerVision and/or You as a result of licensing the Asserted Patents and/or any Related Patent.

22. All Documents produced by You to any other party in response to a subpoena or other request for Documents in connection with this Action.

23. All Documents and Communications sent or received by You relating to, referring to, or mentioning MediaTek.

24. All Documents and Communications relating to Your understanding of the relationship between the Asserted Patents and the Allegedly Embodying Products.

25. All Documents and Communications in Your possession referring to any Allegedly Embodying Product, including, but not limited to, criticism, reviews, or analysis.

TOPICS FOR TESTIMONY

1. The subject matter of all requests for production of Documents and Things listed above.

2. The authenticity of any Document or Thing produced in response to the requests listed above.

Rules Suggestion 25-CV-O

.ev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

HAPTIC, INC.
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 3:24-cv-02296-JSC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Siltstone Capital LLC
1401 Mckinney St., #900, Houston, TX 77010
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place:	Date and Time:
Fish & Richardson P.C. - 909 Fannin Street, Suite 2100 Houston, TX 77010	2/19/2025 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 2/5/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Claire Chang
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant Apple Inc., who issues or requests this subpoena, are:

Claire Chang, Fish & Richardson P.C., 500 Arguello Street, Suite 400, Redwood City, CA 94063; cchang@fr.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

Civil Action No. 3:24-cv-02296-JSC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

ATTACHMENT A

ATTACHMENT A

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Documents sufficient to show the relationship between Siltstone Capital LLC and Haptic, Inc, including relating to any investments in Haptic, Inc. and/or any funding of this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 2:

All documents related to any evaluation, valuation, or opinions related to Haptic Inc., including its intellectual property or Knocki products.

REQUEST FOR PRODUCTION NO. 3:

All documents related to U.S. Patent No. 9,996,738 or any related patent, including any related evaluation, valuations, or opinions.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to any actual or potential litigation involving U.S. Patent No. 9,996,738 or any related patent, including all communications with any individual or entity that invested in, funded, or considered investing in or funding LF Haptic LLC, Haptic, Inc. or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 5:

All documents or agreements setting forth the actual or potential financial or ownership interests in Haptic, Inc., U.S. Patent No. 9,996,738, related patents, or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 6:

All documents related to negotiations, evaluations, valuations, or opinions relating to the

actual or potential financial or ownership interest in Haptic, Inc., U.S. Patent No. 9,996,738, related patents or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 7:

All executed and finalized agreements or contracts between (a) Haptic, Inc., Yaniv (Jake) Boshernitzan, Ohad Nezer and/or related entities or persons, and (b) any entity or individual that has invested in or funded Haptic, Inc. or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 8:

All documents relating to any funding that Haptic, Inc., Yaniv (Jake) Boshernitzan, Ohad Nezer and/or related entities or persons has sought or received with respect to this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC) or other patent enforcement efforts.

REQUEST FOR PRODUCTION NO. 9:

All documents showing all persons or entities with an actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Haptic, Inc., U.S. Patent No. 9,996,738, related patents or any litigation asserting such patents including this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

REQUEST FOR PRODUCTION NO. 10:

All documents describing the actual or potential financial and/or ownership interest of each person or entity identified in response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 11:

All documents describing any financial benefits or payments made or to be made to each person or entity identified in response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 12:

All documents describing the relationship between (a) Yaniv (Jake) Boshernitzan or Ohad Nezer and (b) any of the persons or entities identified in response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 13:

Any documents (including agreements) relating to actual or potential patent licenses or patent licensing strategy among the persons or entities identified in response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 14:

All communications between Siltstone Capital LLC and Haptic, Inc., Apple Inc., Yaniv (Jake) Boshernitzan, or Ohad Nezer.

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

HAPTIC, INC.	)	
Plaintiff	)	
v.	)	Civil Action No. 3:24-cv-02296-JSC
APPLE INC.	)	
	)	
Defendant	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Siltstone Capital LLC
1401 Mckinney St., #900, Houston, TX 77010
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:
See Attachment B

Place:	Date and Time:
Fish & Richardson P.C. - 909 Fannin Street, Suite 2100 Houston, TX 77010	3/3/2025 9:00 am

The deposition will be recorded by this method: stenographic, audio, and video

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 2/5/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Claire Chang
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant Apple Inc., who issues or requests this subpoena, are:
Claire Chang, Fish & Richardson P.C., 500 Arguello Street, Suite 400, Redwood City, CA 94063; cchang@fr.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 3:24-cv-02296-JSC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT B

ATTACHMENT B

DEPOSITION TOPICS

Please designate one or more persons to appear and give oral deposition testimony on your behalf regarding the topics below. Such persons designated must testify about information known or reasonably available to you.

TOPIC NO. 1:

All documents produced in response to the accompanying subpoena *duces tecum*.

TOPIC NO. 2:

Your relationship with Haptic, Inc., including relating to any investments in Haptic, Inc. and/or any funding of this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

TOPIC NO. 3:

Any evaluation, valuation, or opinions related Haptic Inc., including its intellectual property or Knocki products.

TOPIC NO. 4:

U.S. Patent No. 9,996,738 or any related patent, including any related evaluation, valuations, or opinions.

TOPIC NO. 5:

The actual or potential financial or ownership interests in U.S. Patent No. 9,996,738, related patents or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC), including:

- identification of the persons or entities with such interests and their relationships with Yaniv (Jake) Boshernitzan or Ohad Nezer;
- related communications, negotiations, and agreements;

- evaluations, valuations, and opinions of such interests; and
- any financial benefits made or to be made to persons with such interests.

TOPIC NO. 6:

Patent licensing strategy and/or policy among the persons or entities with any actual or potential financial or ownership interest in U.S. Patent No. 9,996,738, related patents or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

TOPIC NO. 7:

All executed and finalized agreements or contracts between (a) Haptic, Inc., Yaniv (Jake) Boshernitzan, Ohad Nezer and/or related entities or persons, and (b) any entity or individual that has invested in or funded Haptic, Inc. or this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC).

TOPIC NO. 8:

Any funding that Haptic, Inc., Yaniv (Jake) Boshernitzan, Ohad Nezer and/or related entities or persons has sought or received with respect to this litigation (*Haptic, Inc. v. Apple Inc.*, Case No. 3:24-cv-02296-JSC) or other patent enforcement efforts.

TOPIC NO. 9:

Communications between You and Haptic, Inc., Apple Inc., Yaniv (Jake) Boshernitzan, or Ohad Nezer.

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

MYW SEMITECH, LLC
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 25-504-RGA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Davidson Kempner Capital Management LP
c/o COGENCY GLOBAL INC., 850 NEW BURTON ROAD SUITE 201, DOVER, DE 19904
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Attachment B

Place:	Date and Time:
Electronically to bstevens@wscllp.com or another mutually agreeable location within NY, NY	09/30/2025 5:00 pm

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/16/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bethany Stevens
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* defendant Apple Inc., who issues or requests this subpoena, are:

Bethany Stevens, WSC LLP, 500 Molino St. #118, Los Angeles, CA 90013, bstevens@wscllp.com, 213.712.9145

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 25-504-RGA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT B

DEFINITIONS AND INSTRUCTIONS

1. "You," "Your," and "Davidson Kempner" mean Davidson Kempner Capital Management LP and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

2. The term "Piccadilly" means Piccadilly Patent Funding LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

3. The terms "Semitech" and "Plaintiff" mean MYW Semitech LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, shareholders, members, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

4. The phrase "this Litigation" means *MYW Semitech LLC v. Apple Inc.*, C.A. No. 25-504-RGA (D. Del.).

5. "Patents-in-Suit" means U.S. Patent No. 11,107,768 ("the '768 Patent"), U.S. Patent No. 11,538,763 ("the '763 Patent"), and U.S. Patent No. 11,894,306 ("the '306 Patent") current asserted by Semitech in this Litigation.

6. The term "Semitech Patents" means any U.S. or foreign patent assigned to MYW Semitech LLC, now or in the future (including the Patents-in-Suit), the applications that led to those patents, and prior publications of those applications.

7. "Person" means any natural person or legal entity, Including any business or governmental entity, organization, or association.

8. The terms "related to" or "relating to" mean consisting of, referring to, reflecting, concerning, or being any way logically or factually connected with the matter discussed.

9. The terms "and" and "or" shall be construed conjunctively or disjunctively to make the request inclusive rather than exclusive.

10. The terms "all," "any," or "each" encompass any and all of the matter discussed.

11. "Document" is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which states "any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary after translation by the responding party into a reasonably usable form." The term "Document" refers to any document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Document if the Person has any ownership, possession, or custody of the Document, or the right to secure the Document or a copy thereof from any Person or public or private entity having physical possession thereof.

12. "Thing(s)" is synonymous in meaning and equal in scope to its usage in Fed. R. Civ. P. 34(a)(1)(B), which states "any designated tangible things." The term "Thing" refers to any Document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Thing if the Person has any ownership, possession, or custody of the Thing, or the right to secure the Thing or a copy thereof from any Person or public or private entity having physical possession thereof.

13. "Communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise, whether by correspondence Including in letters, e-mails, or faxes, or in Person Including discussions, meetings, telephone calls, or videoconferences.

14. The use of the singular form of any word includes the plural, and the use of the plural form of any word includes the singular.

15. The terms "and" and "or" when used herein, shall be construed conjunctively or disjunctively as necessary to bring within the scope of the subject interrogatory all responses that might otherwise be construed to be outside of its scope.

16. The terms "include(s)" or "including" are used in their broadest sense and encompass "Including but not limited to" and "Including without limitation."

17. This subpoena requires You to produce all Documents and Things called for in each category below that were created or originated by You, or that came into Your possession, custody, or control from all files or other sources that contain responsive Documents and Things, wherever located and whether active, in storage, or otherwise.

18. Where only a portion of a Document concerns the subject indicated, the entire Document is to be produced, along with all attachments, appendices, and exhibits.

19. All Documents and Things shall be produced as they are kept in the ordinary course of business, with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond with the categories identified in the list of Documents to be produced.

20. If there are no Documents or Things responsive to a category specified below, please state so in a writing produced at the time and place that Documents are demanded to be produced by this subpoena.

21. Electronic records and computerized information should be produced in an intelligible format or together with a description of the system from which it is derived sufficient to permit rendering the material intelligible.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Documents and Things sufficient to show all Persons having an actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, and/or any actual or potential litigation, including this Litigation, involving one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 2:

Documents and Things sufficient to show the relationship between You and Piccadilly relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 3:

Documents and Things sufficient to show the relationship between You and Semitech relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 4:

Documents and Things sufficient to show the relationship between You and any Person identified in response to Request for Production No. 1 relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 5:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of Semitech, including its intellectual property.

REQUEST FOR PRODUCTION NO. 6:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 7:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of any actual or potential litigation, including this Litigation, against any Person involving one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Things (including Communications) concerning the scope of the claims, potential infringement or non-infringement by any Person, and/or validity or invalidity of one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 9:

All Documents and Things relating to any actual or potential litigation involving one or more of the Semitech Patents, including all Communications with any Person that invested in, funded, or considered investing in or funding any such actual or potential litigation and/or Semitech.

REQUEST FOR PRODUCTION NO. 10:

All Documents and Things (including Communications) concerning Your actual or potential financial interest, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation.

REQUEST FOR PRODUCTION NO. 11:

All Documents and Things (including Communications) concerning the actual or potential financial interest, direct or indirect, including ownership or litigation funding, in

Semitech, the Semitech Patents, or this Litigation of any Person identified in response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12:

All documents and Things related to negotiations, evaluations, valuations, or opinions relating to Your, or any other Person's, actual or potential financial or ownership interest in Semitech, the Semitech Patents, or this Litigation.

REQUEST FOR PRODUCTION NO. 13:

All Documents and Things describing any financial benefit or payment made or to be made to You and/or any other Person identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

REQUEST FOR PRODUCTION NO. 14:

Your Communications (including emails) related to this Litigation or to or any other actual or potential litigation involving Semitech or the Semitech Patents.

REQUEST FOR PRODUCTION NO. 15:

Your agreements with Piccadilly, Semitech, and/or any Person identified in response to Request for Production No. 1 related to this Litigation or to any other actual or potential litigation involving Semitech or the Semitech Patents.

REQUEST FOR PRODUCTION NO. 16:

All Communications between You and Semitech, Picadilly, Ping-Jung Yang (the named inventor of the Patents-in-Suit), and/or any Person identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

REQUEST FOR PRODUCTION NO. 17:

Any Documents and Things (including agreements) relating to actual or potential licenses or patent licensing strategy among any Person(s) identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation .

EXHIBIT 2

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

MYW SEMITECH, LLC
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 25-504-RGA

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Davidson Kempner Capital Management LP
c/o COGENCY GLOBAL INC., 850 NEW BURTON ROAD SUITE 201, DOVER, DE 19904
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Please see Attachment A

Place:	Date and Time:
Remotely by Zoom or at another mutually agreeable location within NY, NY	10/07/2025 9:00 am

The deposition will be recorded by this method: stenographic and/or videographic means

❒ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/16/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bethany Stevens
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* defendant Apple Inc., who issues or requests this subpoena, are:

Bethany Stevens, WSC LLP, 500 Molino St. #118, Los Angeles, CA 90013, bstevens@wscllp.com, 213.712.9145

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 25-504-RGA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

DEFINITIONS

1. "You," "Your," and "Davidson Kempner" mean Davidson Kempner Capital Management LP and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

2. The term "Piccadilly" means Piccadilly Patent Funding LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

3. The terms "Semitech" and "Plaintiff" mean MYW Semitech LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, shareholders, members, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

4. The phrase "this Litigation" means *MYW Semitech LLC v. Apple Inc.*, C.A. No. 25-504-RGA (D. Del.).

5. "Patents-in-Suit" means U.S. Patent No. 11,107,768 ("the '768 Patent"), U.S. Patent No. 11,538,763 ("the '763 Patent"), and U.S. Patent No. 11,894,306 ("the '306 Patent") current asserted by Semitech in this Litigation.

6. The term "Semitech Patents" means any U.S. or foreign patent assigned to MYW Semitech LLC, now or in the future (including the Patents-in-Suit), the applications that led to those patents, and prior publications of those applications.

7. Person" means any natural person or legal entity, Including any business or governmental entity, organization, or association.

8. The terms "related to" or "relating to" mean consisting of, referring to, reflecting, concerning, or being any way logically or factually connected with the matter discussed.

9. The terms "and" and "or" shall be construed conjunctively or disjunctively to make the request inclusive rather than exclusive.

10. The terms "all," "any," or "each" encompass any and all of the matter discussed.

11. "Document" is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which states "any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary after translation by the responding party into a reasonably usable form." The term "Document" refers to any document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Document if the Person has any ownership, possession, or custody of the Document, or the right to secure the Document or a copy thereof from any Person or public or private entity having physical possession thereof.

12. "Thing(s)" is synonymous in meaning and equal in scope to its usage in Fed. R. Civ. P. 34(a)(1)(B), which states "any designated tangible things." The term "Thing" refers to any Document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Thing if the Person has any ownership, possession, or custody of the Thing, or the right to secure the Thing or a copy thereof from any Person or public or private entity having physical possession thereof.

13. "Communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise, whether by correspondence Including in letters, e-mails, or faxes, or in Person Including discussions, meetings, telephone calls, or videoconferences.

14. The use of the singular form of any word includes the plural, and the use of the plural form of any word includes the singular.

15. The terms "and" and "or" when used herein, shall be construed conjunctively or disjunctively as necessary to bring within the scope of the subject interrogatory all responses that might otherwise be construed to be outside of its scope.

16. The terms "include(s)" or "including" are used in their broadest sense and encompass "Including but not limited to" and "Including without limitation."

DEPOSITION TOPICS

1. The identities of all Persons having an actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, and/or any actual or potential litigation, including this Litigation, involving one or more of the Semitech Patents.

2. The relationship between You and Piccadilly relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

3. The relationship between You and Semitech relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

4. The relationship between You and any Person identified in response to Topic No. 1 relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

5. Any evaluations, valuations, assessments, opinions, or audits of Semitech, including its intellectual property.

6. Any evaluations, valuations, assessments, opinions, or audits of one or more of the Semitech Patents.

7. Any evaluations, valuations, assessments, opinions, or audits of any actual or potential litigation, including this Litigation, against any Person involving one or more of the Semitech Patents.

8. The scope of the claims, potential infringement or non-infringement by any Person, and/or validity or invalidity of one or more of the Semitech Patents.

9. Any actual or potential litigation involving one or more of the Semitech Patents, including all Communications with any Person that invested in, funded, or considered investing in or funding any such actual or potential litigation and/or Semitech.

10. Your actual or potential financial interest, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation.

11. The actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation, of any Person identified in response to Topic No. 1.

12. Any negotiations, evaluations, valuations, or opinions relating to Your, or any other Person's, actual or potential financial or ownership interest in Semitech, the Semitech Patents, or this Litigation.

13. Any financial benefit or payment made or to be made to You and/or any other Person identified in response to Topic No. 1 related to Semitech, the Semitech Patents, or this Litigation.

14. Your Communications related to this Litigation or to or any other actual or potential litigation involving Semitech or the Semitech Patents.

15. Your agreements with Piccadilly, Semitech, and/or any Person identified in response to Topic No. 1 related to this Litigation or to any other actual or potential litigation involving Semitech or the Semitech Patents.

16. Communications between You and Semitech, Piccadilly, Ping-Jung Yang (the named inventor of the Patents-in-Suit), and/or any Person identified in response to Topic No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

17. Any actual or potential licenses or patent licensing strategy among any Person(s) identified in response to Topic No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

18. The authenticity and/or admissibility of all Documents, Things, or Communications produced in response to the document subpoena served by Apple contemporaneously with this deposition subpoena.

EXHIBIT 3

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

MYW SEMITECH, LLC
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 25-504-RGA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Davidson Kempner Capital Management LP
c/o COGENCY GLOBAL INC., 850 NEW BURTON ROAD SUITE 201, DOVER, DE 19904
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Attachment B

Place:	Date and Time:
Electronically to bstevens@wscllp.com or another mutually agreeable location within NY, NY	09/30/2025 5:00 pm

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/16/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bethany Stevens
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* defendant Apple Inc., who issues or requests this subpoena, are:

Bethany Stevens, WSC LLP, 500 Molino St. #118, Los Angeles, CA 90013, bstevens@wscllp.com, 213.712.9145

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 25-504-RGA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT B

DEFINITIONS AND INSTRUCTIONS

1. "You," "Your," and "Piccadilly" mean Piccadilly Patent Funding LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

2. The term "Davidson Kempner" means Davidson Kempner Capital Management LP and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

3. The terms "Semitech" and "Plaintiff" mean MYW Semitech LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, shareholders, members, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

4. The phrase "this Litigation" means *MYW Semitech LLC v. Apple Inc.*, C.A. No. 25-504-RGA (D. Del.).

5. "Patents-in-Suit" means U.S. Patent No. 11,107,768 ("the '768 Patent"), U.S. Patent No. 11,538,763 ("the '763 Patent"), and U.S. Patent No. 11,894,306 ("the '306 Patent") current asserted by Semitech in this Litigation.

6. The term "Semitech Patents" means any U.S. or foreign patent assigned to MYW Semitech LLC, now or in the future (including the Patents-in-Suit), the applications that led to those patents, and prior publications of those applications.

7. "Person" means any natural person or legal entity, Including any business or governmental entity, organization, or association.

8. The terms "related to" or "relating to" mean consisting of, referring to, reflecting, concerning, or being any way logically or factually connected with the matter discussed.

9. The terms "and" and "or" shall be construed conjunctively or disjunctively to make the request inclusive rather than exclusive.

10. The terms "all," "any," or "each" encompass any and all of the matter discussed.

11. "Document" is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which states "any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary after translation by the responding party into a reasonably usable form." The term "Document" refers to any document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Document if the Person has any ownership, possession, or custody of the Document, or the right to secure the Document or a copy thereof from any Person or public or private entity having physical possession thereof.

12. "Thing(s)" is synonymous in meaning and equal in scope to its usage in Fed. R. Civ. P. 34(a)(1)(B), which states "any designated tangible things." The term "Thing" refers to any Document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Thing if the Person has any ownership, possession, or custody of the Thing, or the right to secure the Thing or a copy thereof from any Person or public or private entity having physical possession thereof.

13. "Communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise, whether by correspondence Including in letters, e-mails, or faxes, or in Person Including discussions, meetings, telephone calls, or videoconferences.

14. The use of the singular form of any word includes the plural, and the use of the plural form of any word includes the singular.

15. The terms "and" and "or" when used herein, shall be construed conjunctively or disjunctively as necessary to bring within the scope of the subject interrogatory all responses that might otherwise be construed to be outside of its scope.

16. The terms "include(s)" or "including" are used in their broadest sense and encompass "Including but not limited to" and "Including without limitation."

17. This subpoena requires You to produce all Documents and Things called for in each category below that were created or originated by You, or that came into Your possession, custody, or control from all files or other sources that contain responsive Documents and Things, wherever located and whether active, in storage, or otherwise.

18. Where only a portion of a Document concerns the subject indicated, the entire Document is to be produced, along with all attachments, appendices, and exhibits.

19. All Documents and Things shall be produced as they are kept in the ordinary course of business, with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond with the categories identified in the list of Documents to be produced.

20. If there are no Documents or Things responsive to a category specified below, please state so in a writing produced at the time and place that Documents are demanded to be produced by this subpoena.

21. Electronic records and computerized information should be produced in an intelligible format or together with a description of the system from which it is derived sufficient to permit rendering the material intelligible.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Documents and Things sufficient to show all Persons having an actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, and/or any actual or potential litigation, including this Litigation, involving one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 2:

Documents and Things sufficient to show the relationship between You and Davidson Kempner relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 3:

Documents and Things sufficient to show the relationship between You and Semitech relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 4:

Documents and Things sufficient to show the relationship between You and any Person identified in response to Request for Production No. 1 relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

REQUEST FOR PRODUCTION NO. 5:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of Semitech, including its intellectual property.

REQUEST FOR PRODUCTION NO. 6:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 7:

All Documents and Things (including Communications) related to any evaluations, valuations, assessments, opinions, or audits of any actual or potential litigation, including this Litigation, against any Person involving one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Things (including Communications) concerning the scope of the claims, potential infringement or non-infringement by any Person, and/or validity or invalidity of one or more of the Semitech Patents.

REQUEST FOR PRODUCTION NO. 9:

All Documents and Things relating to any actual or potential litigation involving one or more of the Semitech Patents, including all Communications with any Person that invested in, funded, or considered investing in or funding any such actual or potential litigation and/or Semitech.

REQUEST FOR PRODUCTION NO. 10:

All Documents and Things (including Communications) concerning Your actual or potential financial interest, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation.

REQUEST FOR PRODUCTION NO. 11:

All Documents and Things (including Communications) concerning the actual or potential financial interest, direct or indirect, including ownership or litigation funding, in

Semitech, the Semitech Patents, or this Litigation of any Person identified in response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12:

All documents and Things related to negotiations, evaluations, valuations, or opinions relating to Your, or any other Person's, actual or potential financial or ownership interest in Semitech, the Semitech Patents, or this Litigation.

REQUEST FOR PRODUCTION NO. 13:

All Documents and Things describing any financial benefit or payment made or to be made to You and/or any other Person identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation .

REQUEST FOR PRODUCTION NO. 14:

Your Communications (including emails) related to this Litigation or to or any other actual or potential litigation involving Semitech or the Semitech Patents.

REQUEST FOR PRODUCTION NO. 15:

Your agreements with Davidson Kempner, Semitech, and/or any Person identified in response to Request for Production No. 1 related to this Litigation or to any other actual or potential litigation involving Semitech or the Semitech Patents.

REQUEST FOR PRODUCTION NO. 16:

All Communications between You and Semitech, Davidson Kempner, Ping-Jung Yang (the named inventor of the Patents-in-Suit), and/or any Person identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

REQUEST FOR PRODUCTION NO. 17:

Any Documents and Things (including agreements) relating to actual or potential licenses or patent licensing strategy among any Person(s) identified in response to Request for Production No. 1 related to Semitech, the Semitech Patents and/or this Litigation .

EXHIBIT 4

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

MYW SEMITECH, LLC
Plaintiff
v.
APPLE INC.
Defendant

Civil Action No. 25-504-RGA

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Davidson Kempner Capital Management LP
c/o COGENCY GLOBAL INC., 850 NEW BURTON ROAD SUITE 201, DOVER, DE 19904
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Please see Attachment A

Place:	Date and Time:
Remotely by Zoom or at another mutually agreeable location within NY, NY	10/08/2025 9:00 am

The deposition will be recorded by this method: stenographic and/or videographic means

❒ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/16/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bethany Stevens
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* defendant Apple Inc., who issues or requests this subpoena, are:

Bethany Stevens, WSC LLP, 500 Molino St. #118, Los Angeles, CA 90013, bstevens@wscllp.com, 213.712.9145

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 25-504-RGA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

DEFINITIONS

1. "You," "Your," and "Piccadilly" mean Piccadilly Patent Funding LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

2. The term "Davidson Kempner" means Davidson Kempner Capital Management LP and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

3. The terms "Semitech" and "Plaintiff" mean MYW Semitech LLC and any and all of its present or former subsidiaries, affiliates, divisions, successors, predecessors, agents, shareholders, members, employees, representatives, directors, officers, trustees, and attorneys, or any other Person or entity acting in whole or in part in concert with any of the foregoing.

4. The phrase "this Litigation" means *MYW Semitech LLC v. Apple Inc.*, C.A. No. 25-504-RGA (D. Del.).

5. "Patents-in-Suit" means U.S. Patent No. 11,107,768 ("the '768 Patent"), U.S. Patent No. 11,538,763 ("the '763 Patent"), and U.S. Patent No. 11,894,306 ("the '306 Patent") current asserted by Semitech in this Litigation.

6. The term "Semitech Patents" means any U.S. or foreign patent assigned to MYW Semitech LLC, now or in the future (including the Patents-in-Suit), the applications that led to those patents, and prior publications of those applications.

7. Person" means any natural person or legal entity, Including any business or governmental entity, organization, or association.

8. The terms "related to" or "relating to" mean consisting of, referring to, reflecting, concerning, or being any way logically or factually connected with the matter discussed.

9. The terms "and" and "or" shall be construed conjunctively or disjunctively to make the request inclusive rather than exclusive.

10. The terms "all," "any," or "each" encompass any and all of the matter discussed.

11. "Document" is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which states "any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary after translation by the responding party into a reasonably usable form." The term "Document" refers to any document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Document if the Person has any ownership, possession, or custody of the Document, or the right to secure the Document or a copy thereof from any Person or public or private entity having physical possession thereof.

12. "Thing(s)" is synonymous in meaning and equal in scope to its usage in Fed. R. Civ. P. 34(a)(1)(B), which states "any designated tangible things." The term "Thing" refers to any Document now or at any time in Plaintiff's possession, custody, or control. A Person is deemed in control of a Thing if the Person has any ownership, possession, or custody of the Thing, or the right to secure the Thing or a copy thereof from any Person or public or private entity having physical possession thereof.

13. "Communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise, whether by correspondence Including in letters, e-mails, or faxes, or in Person Including discussions, meetings, telephone calls, or videoconferences.

14. The use of the singular form of any word includes the plural, and the use of the plural form of any word includes the singular.

15. The terms "and" and "or" when used herein, shall be construed conjunctively or disjunctively as necessary to bring within the scope of the subject interrogatory all responses that might otherwise be construed to be outside of its scope.

16. The terms "include(s)" or "including" are used in their broadest sense and encompass "Including but not limited to" and "Including without limitation."

DEPOSITION TOPICS

1. The identities of all Persons having an actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, and/or any actual or potential litigation, including this Litigation, involving one or more of the Semitech Patents.

2. The relationship between You and Davidson Kempner relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

3. The relationship between You and Semitech relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

4. The relationship between You and any Person identified in response to Topic No. 1 relating to any investment in Semitech, any interest in the Semitech Patents, and/or any funding of this Litigation.

5. Any evaluations, valuations, assessments, opinions, or audits of Semitech, including its intellectual property.

6. Any evaluations, valuations, assessments, opinions, or audits of one or more of the Semitech Patents.

7. Any evaluations, valuations, assessments, opinions, or audits of any actual or potential litigation, including this Litigation, against any Person involving one or more of the Semitech Patents.

8. The scope of the claims, potential infringement or non-infringement by any Person, and/or validity or invalidity of one or more of the Semitech Patents.

9. Any actual or potential litigation involving one or more of the Semitech Patents, including all Communications with any Person that invested in, funded, or considered investing in or funding any such actual or potential litigation and/or Semitech.

10. Your actual or potential financial interest, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation.

11. The actual or potential financial interest, direct or indirect, including ownership or litigation funding, in Semitech, the Semitech Patents, or this Litigation, of any Person identified in response to Topic No. 1.

12. Any negotiations, evaluations, valuations, or opinions relating to Your, or any other Person's, actual or potential financial or ownership interest in Semitech, the Semitech Patents, or this Litigation.

13. Any financial benefit or payment made or to be made to You and/or any other Person identified in response to Topic No. 1 related to Semitech, the Semitech Patents, or this Litigation.

14. Your Communications related to this Litigation or to or any other actual or potential litigation involving Semitech or the Semitech Patents.

15. Your agreements with Davidson Kempner, Semitech, and/or any Person identified in response to Topic No. 1 related to this Litigation or to any other actual or potential litigation involving Semitech or the Semitech Patents.

16. Communications between You and Semitech, Davidson Kempner, Ping-Jung Yang (the named inventor of the Patents-in-Suit), and/or any Person identified in response to Topic No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

17. Any actual or potential licenses or patent licensing strategy among any Person(s) identified in response to Topic No. 1 related to Semitech, the Semitech Patents and/or this Litigation.

18. The authenticity and/or admissibility of all Documents, Things, or Communications produced in response to the document subpoena served by Apple contemporaneously with this deposition subpoena.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Devon, IT, Inc. et al.
Plaintiff
v.
International Business Machines Corp., et al.
Defendant

Civil Action No. 2:10-cv-02899

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Burford Group, LLC, c/o Corporation Service Company, 2711 Centerville Road Suite 400, Wilmington, DE 19808

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Schedule A, attached.

Place:	Date and Time:
Conrad O'Brien Gellman & Rohn, PC 1500 Market St. Centre Square W. Tower, Suite 3900 Philadelphia, PA 19102-2100	01/27/2012 10:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/17/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* IBM Corp., Bernard Meyerson, Rodney Adkins, and James Gargan, who issues or requests this subpoena, are:

Louis K. Fisher
51 Louisiana Ave. NW
Washington, DC 20001
(202) 879-3939
lkfisher@jonesday.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEVON IT, INC., DEVON AD TECH, INC., and DEVON IT (EUROPE), LTD., Plaintiffs, v. IBM CORP., THOMAS BRADICICH, BERNARD MEYERSON, JAMES GARGAN, and RODNEY ADKINS, Defendants.	Civil Action No. 2:10-cv-02899-JHS

NOTICE OF AMENDED SUBPOENA DUCES TECUM TO BURFORD GROUP, LLC

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Defendants IBM Corporation, Rodney Adkins, James Gargan, and Bernard Meyerson, by and through their attorneys, Jones Day, intend to serve a Subpoena, in the form attached hereto, on Burford Group, LLC on January 17, 2012, or as soon thereafter as service may be effectuated. The Subpoena calls for the production of documents and electronically stored information by 10:00 a.m. on Friday, January 27, 2012.

Dated: January 17, 2012

/s/ Louis K. Fisher
Glen D. Nager (admitted *pro hac vice*)
Michael R. Shumaker (admitted *pro hac vice*)
Louis K. Fisher (admitted *pro hac vice*)
C. Kevin Marshall (admitted *pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington D.C. 20001
Phone: (202) 879-3939
Fax: (202) 626-1700

Counsel for IBM Corporation, Rodney Adkins, James Gargan and Bernard Meyerson

SCHEDULE A TO THE SUBPOENA ISSUED TO BURFORD GROUP, LLC

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, IBM Corporation, Rodney Adkins, James Gargan, and Bernard Meyerson propound this Subpoena for the production of documents on Burford Group, LLC ("Burford"), and request that Burford respond by Friday, January 27, 2012.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in this Schedule is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in this Schedule, the following terms are to be interpreted in accordance with these definitions:

1. "Burford Group, LLC" or "Burford" or "you" shall mean Burford, all predecessors, successors in interest, assignees; and all directors, offices, employees, agents, representatives, and/or partners of the aforementioned entity.

2. "All" and "any" means "any and all," as necessary to make a request inclusive rather than exclusive.

3. The terms "and" and "or" are both used in the inclusive sense, and both require all documents that meet the description of one or more of the disjunctive words or phrases.

4. The terms "include" or "including" denote a portion of a larger whole and are used without limitation.

5. The terms "relate," "refer," "reflect," "relating," "referring," or "reflecting" mean constituting or having some bearing on an indicated subject or mentioning the subject, even if only in passing, including, but not limited to, any document or communication that constitutes, evidences, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, involves or is in any way pertinent to that subject.

6. "Devon" and "Plaintiffs" mean Devon IT, Inc., Devon Ad Tech, Inc., Devon IT (Europe), Ltd., Devon International Group, Inc., and any other entity that, to your knowledge, is a part of the Devon International Group of businesses, or is otherwise owned by John Bennett, and also include John Bennett, Joseph Makoid, and all other individuals who, to your knowledge, are each entity's officers, employees, agents, representatives, attorneys, or anyone else acting or who has acted on its behalf.

7. "IBM" means IBM Corporation and includes individuals who, to your knowledge, are IBM Corporation's officers, employees, agents, representatives, attorneys, or anyone else acting or who has acted on its behalf.

8. "Projection" refers to forecasts, estimates, or any prediction of future sales, market potential, royalties, or the like.

9. "Communication" or "communicate" includes every manner of transmitting or receiving facts, information, opinions, thoughts, or images from one person to another person, whether orally, including by voice recording (such as in a telephone voicemail system), or in writing.

10. "Concern" or "concerning" mean directly or indirectly supporting, mentioning, relating to, referring to, describing, evidencing, contradicting, comprising, or constituting.

11. "Document" and "documents" are defined to be synonymous in meaning and equal in scope to the usage of the phrase "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of the term "document."

12. "Person" is defined as any natural person or any business, legal or governmental entity, or association.

INSTRUCTIONS

1. Furnish all responsive documents in your possession, custody, or control or in the possession, custody or control of your employees, representatives, or agents, including all former and current counsel.

2. If you at any time had possession, custody, or control of a document responsive to these requests and if such document, or portion of such document, has been lost, destroyed, purged or otherwise is not presently in your possession, custody, or control, then: (a) identify the document; (b) state the date of its loss, destruction, purge or separation from your possession or control; (c) state the circumstances surrounding its loss, destruction, purge or separation from your possession or control; and (d) state its present or last known location, including the name, address and telephone number of each person believed to have possession of such document.

3. If, in responding to this Subpoena, the responding party encounters any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

4. Whenever in this Subpoena you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying:

   (a) if you are withholding the document under claim of privilege (including, but not limited to, the work product doctrine), please provide the information set forth in Fed. R. Civ. P. 26(b)(5), including the type of document, the general subject

matter of the document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed by you;

(b) if you are withholding the document on the ground that production is unduly burdensome, describe the burden or expense of the proposed discovery.

(c) if you are withholding the document for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify as to each document and, in addition to the information requested in ¶ 4(a) and ¶ 4(b), please state the reason for withholding the document.

5. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction notation must be clearly visible on the redacted document.

6. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. Words in the masculine, feminine or neuter form shall include each of the other genders.

7. If the requested documents are maintained in a file, the file folder label is included in the request for production of those documents. If maintained in electronic format, the file name, folder and any other path names or categorizing information is included in the request for production of those documents.

8. All documents that are required to be produced in response to any discovery request, including this Subpoena, should be produced in TIFF image format.

9. Unless otherwise specified, the relevant time period is January 1, 2005 to the present.

REQUESTS FOR PRODUCTION

1. All communications between Burford and Devon, including, without limitation, all communications between Burford and a) John Bennett, b) Joseph Makoid, and/or c) any attorney that is representing or has represented Devon, including all in-house and outside counsel.

2. All documents relating to or concerning Devon's actual or anticipated activities, business plans, business opportunities, value, financial condition, assets, liabilities, income,

revenue, costs, expenses, contracts, creditors, investors, customers, partners, or other business relationships.

3. All documents relating to or concerning any actual or potential investment or other business or financial arrangement between Burford and Devon, including, but not limited to, any agreement under which Burford funds Devon's litigation costs related to the lawsuit captioned Devon IT Inc., et al. v. International Business Machines Corp, et al., 2:10-cv-02899, E.D. Pa., 2010.

4. All documents relating to or concerning the lawsuit captioned Devon IT Inc., et al. v. International Business Machines Corp, et al., 2:10-cv-02899, E.D. Pa., 2010.

5. All documents relating to or concerning Devon's contracts, communications, interactions, or relationship with IBM.

Dated: January 17, 2012

Respectfully submitted,

/s/ Louis K. Fisher
Glen D. Nager (admitted pro hac vice)
Michael R. Shumaker (admitted pro hac vice)
Louis K. Fisher (admitted pro hac vice)
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Counsel for IBM Corporation, Rodney Adkins, James Gargan and Bernard Meyerson

ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

APPENDIX D

Delaware Supreme Court Report and Recommendations

SUPERIOR COURT
OF THE
STATE OF DELAWARE

ERIC M. DAVIS
JUDGE

LEONARD L. WILLIAMS JUSTICE CENTER
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
TELEPHONE (302) 255-0960

June 30, 2023

Chief Justice Collin J. Seitz, Jr.
Supreme Court of the State of Delaware
The Renaissance Center
405 N. King Street, Suite 505
Wilmington, Delaware 19801

Re: Third Party Litigation Funding Committee—Report and Recommendations

Dear Chief Justice:

On November 18, 2022, Your Honor entered the Order Establishing A Committee To Study Transparency In Third Party Litigation Funding (the "Order"). The Order set June 30 2023 as the date by which the Committee would submit its report and recommendations (the "Report") to Your Honor and the Presiding Judges. As the Co-Chairs of the Committee, Vice Chancellor Laster and I submit the Report.

If there are any questions as to the Report, we are available at Your Honor's convenience. We would be pleased to meet with Your Honor or any of the Presiding Judges to discuss the Report.

Respectfully,

Eric M. Davis, Judge

Respectfully,

J. Travis Laster, Vice Chancellor

EMD/li

cc: Presiding Judges (w/encl.)
Committee Members (w/o encl.)

REPORT TO THE CHIEF JUSTICE AND THE PRESIDING JUDGES OF THE STATE OF DELAWARE FROM THE COMMITTEE TO STUDY TRANSPARENCY IN THIRD-PARTY LITIGATION FUNDING

I. Executive Summary

The Supreme Court of Delaware established a committee to study transparency in third-party litigation funding in the Delaware state courts (the "Committee").

The Committee has completed its work and presents the Delaware Supreme Court and the Presiding Judges with its recommendations for addressing transparency issues in third party litigation funding in the Delaware state courts.

On the subject of transparency, the Committee finds as follows:

- There do not appear to be any issues with the current use of third-party litigation funding in the Delaware state courts.

- There could be value in considering a court rule that would authorize limited discovery into third-party litigation funding and limit broader discovery on that subject. A rule could provide helpful guidance to litigants and judges in this area. For purposes of discoverability, the Committee would recommend a rule, comparable to Superior Court Rule 26(b)(2) on insurance agreements, but which would only authorize discovery regarding whether there is any arrangement that gives a third party control over the litigation. The Committee would recommend that the rule not permit broader discovery into third party litigation funding absent some additional showing of need. The Committee would recommend that the rule make clear that some third-party litigation funding material, such as case analysis, is work product.

- The task of considering a court rule could be for the Committee or a future committee. There may be value in having each court prepare its own rule, because different courts may have different needs.

Because the Committee was only charged with examining issues relating to transparency, the Committee has not made recommendations regarding the substantive regulation of litigation funding.

II. The Committee

On June 28, 2022, the Delaware State Senate adopted a resolution titled, "ENCOURAGING THE DELAWARE JUDICIARY TO STUDY TRANSPARENCY IN THIRD-PARTY LITIGATION FUNDING."

On November 18, 2022, Chief Justice Collins J. Seitz, Jr. signed an administrative order on behalf of the Delaware Supreme Court that formed a "Committee to Study Transparency in Third Party Litigation Funding." The Committee was asked to consider transparency issues in litigation funding in the Delaware courts and make recommendations to the Chief Justice and the Presiding Judges regarding adoption of statutes or court rules to require public disclosure of third-party litigation funding.

The Committee is composed of the following members:

The Honorable J. Travis Laster, Co-Chair
The Honorable Eric M. Davis, Co-Chair
The Honorable N. Christopher Griffiths
The Honorable Craig A. Karsnitz
The Honorable Reneta Green-Streett
Christine Azar, Esquire
Megan Ward Cascio, Esquire
Anne C. Foster, Esquire
Kurt M. Heyman, Esquire
Kelley M. Huff, Esquire
Carla M. Jones, Esquire
Blake Rohrbacher, Esquire
David Soldo, Esquire

The Committee met via Zoom on January 11, 2023, February 14, 2023, March 27, 2023, and June 21, 2023. Two subcommittees were formed: a subcommittee to conduct a survey of attorneys and others in Delaware to determine the nature and extent of the use of third-party funding in Delaware courts and a subcommittee to survey how other jurisdictions have approached third-party funding.

A survey was sent out to select sections of the Delaware State Bar Association on March 13, 2023. The survey was also sent to the Delaware chapter of the Federal Bar Association. The results of the survey and information gathered from other jurisdictions are compiled and analyzed in this Report along with the Committee's recommendations.

The co-Chairs of the Committee met with Chief Judge Colm Connolly to understand his concerns about litigation funding in the District of Delaware. The co-Chairs met with State Senator Kyle Gay to understand any concerns that the General Assembly might have about litigation funding. The co-Chairs met with Stuart Grant, a co-founder of Bench Walk Advisors, a leading provider of third-party litigation funding.

III. Overview of Litigation Funding

Third-party litigation funding is an arrangement where a third-party funder provides funding to a litigant or law firm in exchange for an interest in the potential recovery. *See generally*, Am. Bar. Ass'n, ABA Best Practices for Third-Party Litigation Funding (Aug. 2020) (the "ABA Report").

a. Types of Third-Party Litigation Funding

Third-party litigation funding is a broad term that can refer to a range of different things. When someone refers to third-party litigation funding, they often have a particular scenario in mind, rather than the general concept.

Third-party litigation funding is just one of many ways that parties obtain the funds to conduct litigation. An individual or business may draw on a line of credit and use the proceeds to pay for a lawsuit. Technically, that is a form of litigation funding, although one in which the lender can seek repayment from the borrower and its assets generally, rather than only from the proceeds of litigation. Insurance for defense costs is another form of litigation funding, albeit one in which the insured pays for the funding up front through a premium that covers both the litigation funding and other policy benefits. A full or partial contingency fee arrangement is yet another form of litigation funding. In a contingency fee arrangement, the law firm accepting the contingent fee arrangement acts as both counsel and lender by advancing the expenses necessary to pursue the case and not charging a fee unless there is a recovery. A contingency fee arrangement most closely resembles third-party litigation funding as discussed in this report, because the law firm can only recover from the proceeds of the case. For purposes of this report, third-party litigation funding refers to a lender advancing money to a party on a non-recourse basis, secured by an interest in a claim that the party holds.

There are two common models for litigation funding:

- The Traditional Model: The funder pays all litigation expenses and some or all of the attorneys' fees in exchange for a share of the

recovery. No funds go directly to the borrower. Under this model, outside counsel often operates under a discounted-fee arrangement and receives a share of the recovery.

- The Monetization Model: The funder makes one or more lump-sum payments to the borrower in exchange for a share of the recovery.

Under either model, the return to the funder can be calculated as a percentage of the recovery or based on a return of the principal advanced plus a rate of interest.

Consumers, businesses, and law firms use litigation funding. The different models raise different issues.

In consumer funding, a funder loans money to an individual plaintiff, often for a personal injury claim. The consumer is often represented on a contingent basis. If the funder uses the Traditional Model, then the funds are typically used to pay for litigation expenses, such as an expert. If the funder uses the Monetization Model, then the claimant receives the funds as a way of accelerating the receipt of proceeds. The borrower often uses the funds to pay for medical or living expenses while the case is ongoing. Consumer litigation funding can involve disparities in sophistication and bargaining power, and it raises issues typically associated with consumer lending, and particularly with high-interest consumer loan products.

In commercial funding, a funder loans money to a business, often for breach of contract, antitrust, or patent claims. Businesses that have retained counsel on a traditional hourly basis may use the Monetization Model to pay legal fees or to cover litigation expenses, such as expert fees. Businesses also may use the Traditional Model to create a constructive contingent fee relationship in which the funder pays counsel in return for a contingent share of the recovery. From the law firm's side, the arrangement looks like an hourly fee arrangement. From the business's standpoint, the arrangement looks like a contingency fee arrangement. Another use of the Monetization Model is as a form of insurance against an adverse result, such as reversal on appeal. A business that has prevailed in the trial court may borrow a sum of money secured only by the judgment, such that if the judgment is reversed, there is no collateral on which the funder can recover. A business may secure funding based on an individual case or on a portfolio basis. Commercial funding typically involves sophisticated parties bargaining at arm's length.

In law firm funding, a law firm that pursues cases on contingency may secure funding secured by its share of a recovery. Under the Traditional Model, a firm may secure funding to reduce its risk. Under the Monetization Model, a firm may use

funding to cover other firm expenses, such as fixed costs. A law firm may secure funding based on an individual case or a portfolio of cases.

b. Concerns about Third-Party Litigation Funding

From the standpoint of a court and other litigants in a case, litigation funding creates two types of concerns.

One concern is that litigation funding may result in the filing of additional cases that otherwise would not be brought. If the additional claims lack merit, then litigation funding creates a drag on the system. If, however, the funding is enabling individuals or businesses to pursue legitimate claims, then the funding is providing access to justice for those who otherwise could not obtain it. Because funders underwrite cases with the intent of obtaining a return, it is unlikely that litigation funding would result in meritless cases on average. It is nevertheless possible that in some areas of the law, litigation funding could be used to generate strike suits. One area where that concern may have some basis is for patent lawsuits. It does not appear to present a risk for the Delaware state courts.

A second concern is that litigation funding may result in a third party having control over decisions involving the litigation, including settlement, such that the litigation is not being controlled by the party before the court. The same issue exists for insurance coverage and is a valid theoretical concern. In practice, litigation funders do not obtain rights concerning control over a lawsuit or over settlement. This issue does not appear to be of present concern in the Delaware courts, but it is an area addressed by the Committee's recommendation.

c. Best Practices for Litigation Funding

Litigation funding raises a variety of substantive issues. The Committee was tasked with addressing litigation funding from the standpoint of transparency in the Delaware state courts, placing the substantive aspects of regulating litigation funding outside of the Committee's remit.

The ABA Report addresses a series of substantive issues and provides best practices. The ABA Report specifies that its recommended best practices are not meant to represent standards of professional conduct.

One area that the ABA Report addresses is the terms of a litigation funding arrangement. Key recommendations include:

- Any litigation funding arrangement should be spelled out in writing and written in clear, understandable terms.
- The arrangement must specify who is responsible for repaying the funder, from what source, and when.
- The arrangement should clearly address the termination or withdrawal of funding.
- The claimant must retain control over the litigation.
- The funder cannot direct the claimant's counsel or override the lawyer's professional judgment.

The ABA Report also raises issues that may arise in discovery and contains recommendations to head off privilege disputes. They include the following:

- The borrower's lawyers should exercise caution in making case-related reports or predictions to litigation funders.
- The borrower's lawyers should only supply the funder with public documents.
- The borrower should obtain written acknowledgements from funders that no privileged materials have been supplied.
- The borrower should not offer any opinion about the underlying litigation.
- The funder should use its own counsel to assess the underlying litigation.

IV. How Other Jurisdictions Have Treated Litigation Funding

Many states have begun regulating litigation funding agreements. Four approaches have emerged: (1) banning all forms of litigation funding, (2) regulating

the agreements by statute,[1] (3) permitting but regulating the funding agreements via common law and ethics opinions,[2] and (4) remaining silent on the issue.[3]

a. Banning Litigation Funding

Only two states—Kentucky and Montana—have banned litigation funding agreements, both by statute. *See* Ky. Rev. Stat. § 372.060; Mont. Code. Ann. § 37-61-408 (2021). The Kentucky statute addresses the funding while the Montana statute forbids attorneys from participating in such arrangements. The Alabama courts have declared litigation funding agreements void as contrary to public policy or under usury statutes. *See e.g.*, *Wilson v. Harris*, 688 So. 2d 265 (Ala. Civ. App. 1996) (holding that funding agreements were invalid on public policy grounds because they amounted to illegal gambling contracts). Notably, the Alabama legislature has remained silent; thus, agreements are not *per se* prohibited but may be unenforceable. In contrast, Georgia has a statute that seemingly prevents litigation funding, but its courts have not enforced the statute since 1933. *See, e.g.*, Ga. Code Ann. § 13-8-2 (West); *Sapp v. Davids*, 168 S.E. 62 (Ga. 1933).

b. Regulating Agreements By Statute

A growing number of states have passed statutes aimed at regulating, but not preventing, litigation funding agreements. These statutes are generally aimed at disclosure and/or consumer safety. Wisconsin, for example, requires litigation funding agreements be disclosed to the courts even if no discovery has been made. *See* Wisconsin Act § 235. Almost every statute passed is aimed at protecting

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[1] The following states regulate litigation funding agreements expressly by statute: Arkansas, Illinois, Indiana, Louisiana, Maine, Nebraska, Nevada, Ohio, Oklahoma, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

[2] A minority of states regulate litigation funding agreements via their ethics rules. Alaska, Arkansas, California, Florida, New Jersey, Texas, and Washington are all examples. Judges across the country have, likewise, permitted and in some instances endorsed the use of litigation funding agreements. Arizona and Hawaii, for example, both permit the use of such agreements. *See Cont'l Circuits LLC v. Intel Corp.*, 435 F. Supp. 3d 1014, 1021 (D. Ariz. 2020); *TMJ Hawaii, Inc. v. Nippon Tr. Bank*, 153 P.3d 444, 450 (Haw. 2007). A majority of those jurisdictions have permitted but regulated litigation funding. California, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, New York, North Carolina, Rhode Island, South Carolina, and Texas courts have all commented on litigation funding agreements, permitting them in some form.

[3] Kansas, North Dakota, South Dakota, Virginia, and Wyoming have not provided any guidance regarding litigation funding agreements.

consumers and serving public policy interests. New regulation in Indiana requires a claimant to provide written notice that the claimant entered into a funding agreement. *See* Ind. Code § 24-12-4-2 (2023); Ind. H.B. 1124. Arkansas adopted a rate for consumer lending transactions. *See* AR Code § 4-57-109. Maine, Nebraska, Nevada, Oklahoma, Tennessee, Vermont, and West Virginia all require certain disclosure statements be present in the agreements. *See* Me. Rev. Stat. Ann. tit. 9-A, § 12-101; Neb. Rev. Stat. §§ 25-3301-25-3309 (2010), Nev. Rev. Stat. ch. 604C (2021); Ohio Rev. Code §. 1349.55(B); Okla. Stat. Ann. tit. 14A §§ 3-801-817; Okla. Admin. Code §§ 160:75-1-1-160:75-9-1; Okla. Admin. Code § 160:75 App. A; Tenn. Code Ann. § 47-16-101; Vermont Code Ann. §§ 08-74-2251-2260; West Virginia Code Ann. § 46A-6N-3. New York regulates the agreements via champerty statutes, N.Y. JUD § 489, but the statute is construed narrowly and does not apply when the primary purpose was not to acquire assets but instead to bring a claim. *Id.*

Missouri and Texas currently have legislation pending that would regulate litigation funding agreements. *See* H.B. 2771 (Missouri); H.B. 2096 (Texas) and S.B. 1567 (Texas).

c. Court Regulation of Litigation Funding Agreements

Some states have regulated the enforceability of litigation funding agreements via judge-made common law and/or ethics opinions. For example, a Colorado court held that litigation funding agreements created debt to be governed by the Uniform Consumer Credit Code. *See, e.g., Oasis Legal Fin. Grp., LLC*, 2015 Colo. 63, 361 P.3d 400 (Colo. 2015). Maryland and Michigan took a similar approach. *See In re Plaintiff Funding Holding, Inc.*, 2015 WL 5637481 (MD. Comm. Fin. Reg. Aug. 18, 2015) (finding that "Respondents' business activities constitute usurious and unlicensed lending to Maryland consumers in violation of Maryland law, and that it is in the public interest that Respondents immediately Cease and Desist from making litigation funding advances or other types of loans to, or otherwise engaging in lending activities with, Maryland consumers"); *see also Lawsuit Fin., L.L.C. v. Curry*, 683 N.W.2d 233, 239-40 (Mich. Ct. App. 2004) (voiding a litigation financing agreement on a finding that plaintiff held an absolute right to repayment on the "advances" and thus constituted a usurious loan for exceeding the legal interest rate).

Other jurisdictions have looked at funding agreements through the scope of public policy and fairness. *See Osprey, Inc. v. Cabana Ltd. P'ship*, 532 S.E.2d 269, 278 (S.C. 2000) (The court may examine "(1) whether the respective bargaining position of the parties at the time the agreement was made was relatively equal; (2) whether both parties were aware of the terms and consequences of the agreement;

(3) whether the borrowing party may have been unable to pursue the lawsuit at all without the financier's help; (4) whether the financier would retain a disproportionate share of the recovery; and (5) whether the financier engaged in officious intermeddling."); *see also Anglo-Dutch Petroleum Int'l, Inc v. Smith*, 243 S.W.3d 776, 782 (Tex. App. 2007) (finding that litigation funding agreements were permissible as long as "they did not vest control over the litigation in uninterested third parties.").

Opponents of litigation funding regularly assert that it violates the ancient doctrines of champerty and maintenance. Like Delaware, many jurisdictions have rejected that argument. *See Charge Injection Techs., Inc. v. E.I. duPont de Nemours & Co.,* 2016 WL 937400 at *3-6 (Del. Super. Mar. 9, 2016); *Schomp v. Schenck*, 40 N.J.L. 195, 206 (N.J. 1878) (rejecting common law prohibitions on champerty and maintenance); *Maslowski v. Prospect Funding P'rs LLC*, 944 N.W.2d 235, 241 (Minn. 2020) (abolishing champerty doctrine and holding that litigation funding agreements are enforceable); *TMJ Hawaii,* 153 P.3d 444, 450 ("[T]he common law doctrines of champerty and maintenance are not impediments to the assignability of the claims" for professional malpractice, breach of fiduciary duty, and fraud."); *Saladini v. Righellis*, 687 N.E.2d 1224 (Mass. 1997) (enforcing third-party litigation funding agreement and nullifying the doctrines of champerty and maintenance; further holding that it would evaluate such agreements by determining whether the agreement was fair and reasonable when made); *Landi v. Arkules*, 835 P.2d 458, 464 (Ct. App. 1992); *Abbott Ford, Inc. v. Superior Court*, 741 P.2d 124, 141 n.26 (Cal. 1987) ("California, however, has never adopted the common law doctrines of champerty and maintenance.") (citations omitted)); *Weller v. Jersey City H&P St. Ry. Co.*, 57 A. 730, 732 (N.J. Ch. 1904) (explaining that the law of champerty and maintenance has never prevailed in New Jersey).

An increasing number of states' ethics opinions have addressed issues associated with litigation funding. An advisory ethics opinion from State of Washington Bar explicitly stated that, "[a] lawyer cannot disclose client secrets or confidence to a third party. . . providing funding." Wash. Committee on Professional Ethics Op. 208 (2005). Florida has also issued an ethics opinion regulating attorney conduct regarding litigation funding. *See* Florida Bar Ethics Op. 00-3 (2002) (allowing an attorney to provide a client with information and resources regarding litigation funding but noting that such an agreement must comply with applicable statutes).

Some courts have addressed the issue through standing orders. For example, the Northern District of California issued a standing order for all judges that requires party disclosure to the Court of any entity or individual with a financial interest in

the litigation. *See* N.D. Cal. Standing Order for All Judges (2023). Chief Judge Connolly's standing order is another example.

d. States That have Not Yet Spoken on the Issues

A few states have not yet addressed litigation funding. *See Supra*, n.3.

V. The Use of Litigation Funding in the Delaware Courts

The Committee was charged with evaluating measures to address transparency in litigation funding in Delaware state courts. At present, the most prominent use of litigation funding in Delaware appears to be taking place in the United States District Court for the District of Delaware, where Chief Judge Connolly has placed a spotlight on the issue. The Committee also conducted a survey to understand the prevalence of litigation funding in the Delaware state courts.

a. Chief Judge Connolly's Standing Order and Subsequent Developments

On April 18, 2022, Chief Judge Colm F. Connolly of the United States District Court for the District of Delaware issued an order entitled "Standing Order Regarding Third-Party Litigation Funding Arrangements" (the "Standing Order"). The Standing Order applies to "all cases assigned to Chief Judge Connolly." The Standing Order garnered local and national attention.

The Standing Order applies where "a party has made arrangements to receive from a person or entity that is not a party (a 'Third-Party Funder') funding for some or all of the party's attorney fees and/or expenses to litigate this action on a non-recourse basis in exchange for (1) a financial interest that is contingent upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal loan, bank loan, or insurance[.]"

The Standing Order requires the party receiving such funding to disclose:

- the identity and address of the funder;
- the place of formation for any funder that is a legal entity;
- the nature of the financial interest of the funder in the litigation; and
- whether approval by the funder is necessary for litigation or settlement decisions and, if the answer is yes, disclosure of the nature of the terms and conditions relating to that approval.

The Standing Order also provides that parties may seek additional discovery of the terms of any funding arrangement "upon a showing that the Third-Party Funder has authority to make material litigation decisions or settlement decisions, the interests of any funded parties or the class (if applicable) are not being promoted or protected by the arrangement, conflicts of interest exist as a result of the arrangement, or other such good cause exists."

After issuing the Standing Order, Chief Judge Connolly observed that several cases before him appeared to be related notwithstanding having been brought by facially different plaintiffs and *sua sponte* ordered a hearing, on November 4, 2022, in *Nimitz Tech. LLC v. CNET Media, Inc.* Civ. No. 21-1247-CFC (D. Del.). Chief Judge Connolly concluded that the plaintiffs were shell companies and had little involvement in the conduct of the litigation and ordered plaintiffs to disclose information related to third-party interests, including engagement letters, assets and bank account information, and correspondence between plaintiffs' attorneys and the third-party funder.[4] Plaintiffs filed a petition for a writ of mandamus with the Federal Circuit asking for reversal of Chief Judge Connolly's order. Chief Judge Connolly filed a memorandum in the appeals court defending his authority to issue the order. The Federal Circuit denied plaintiffs' writ of mandamus.

The co-Chairs met with Chief Judge Connolly to understand his concerns. As his rulings imply, Chief Judge Connolly is concerned that litigation funders are forming entities and using them to bring strike suits based on patent claims. The Standing Order is designed to generate information on this subject so that Chief Judge Connolly can determine whether action needs to be taken.

The Committee considered Chief Judge Connolly's rulings and concluded that the issues Chief Judge Connolly is exploring are disproportionately associated with patent cases. The Committee does not believe that they affect practice before the Delaware state courts.

b. The Survey About Litigation Funding in the Delaware State Courts

The Committee members sought to determine whether (1) there is an issue in Delaware regarding transparency in litigation funding, and (2) the issue is one that needs to be addressed. While the Committee is composed of judges and lawyers from a variety of courts and substantive expertise, the Committee wanted to solicit and obtain a broader range of feedback on the issue. As a result, the decision was made to seek input from members of the Delaware bar.

[4] *Nimitz Tech. LLC. V. CNET Media, Inc.*, 2022 WL 17338396 (D. Del Nov. 30, 2022).

A subcommittee was formed to develop a questionnaire to be sent out to members of the bar most likely to have had relevant experience. In drafting the questionnaire, the subcommittee balanced the goal of trying to receive relevant information against the likelihood that sending a relatively short questionnaire would increase the response rate.

Ultimately, the subcommittee drafted a 12-question survey. For the purposes of the survey, the term "litigation funder" was defined as "a third-party litigation financing firm that agrees to provide funding to a litigant or law firm in exchange for an interest in the potential recovery in a lawsuit. Litigants and law firms do not have to repay the funding if the lawsuit is not successful." The definition is similar to that used in Chief Judge Connolly's Standing Order. The same definition is used in this report.

An explanatory cover note and the survey link were sent to the following Delaware State Bar Association sections: (1) the Litigation Section; (2) the Corporation Law Section; (3) the Small Firms and Solo Practitioners Section and (4) the Intellectual Property Section. The same communication was also sent to the Delaware chapter of the Federal Bar Association.

As of the date of this report, 184 responses to the survey have been received. Three quarters of the responses received were from law firm partners or counsel. Another 17% were submitted by law firm associates, while 4% were from solo practitioners and 3% came from in-house counsel. The remaining responses came from government and public service attorneys, retired lawyers and judges and an outside consultant. In terms of law firm size, 39% of the responses were from firms with 1-25 lawyers, 20% came from firms of 101-250 lawyers, 18% came from firms of 51-100 lawyers, 16% were from firms of more than 250 lawyers[5] and 7% came from firms of 26-50 lawyers.

Of the 184 responses received by the Committee, 80 indicated that they had been involved in a matter in which a party had received funding provided by a litigation funder. In those situations, approximately half of the parties in question had been entities, with another third involving individuals who had received litigation funding, while the remaining situations involved clients who were a combination of individuals and entities. In all but a handful of the matters, the party obtaining litigation funding was a plaintiff/petitioner, a counterclaimant, or a third-

[5] The Committee notes that those respondents must have been lawyers at a firm with offices located in multiple jurisdictions, since no law firm with an office in Delaware has more than 250 lawyers in its Delaware office.

party plaintiff. In eight matters, the funding was obtained by either a defendant or a law firm itself. In two instances, the survey respondent was retained by either the litigation funder itself or by someone who had invested in a litigation funder.

The survey responses indicated that the use of litigation funding in matters is relatively evenly distributed across the Delaware courts. A plurality of responses cited the United States District Court for the District of Delaware (35 matters), but there were similar levels of use in the Superior Court of the State of Delaware (25 matters), and the Court of Chancery of the State of Delaware (24 matters). There were few reports of litigation funding in the Supreme Court of the State of Delaware (4 matters). The remaining 13 matters took place in a combination of other federal and state courts and international courts and arbitrations.

The subject matter of the proceedings varied. A plurality (21 situations) involved business or corporate litigation. The next two significant categories were personal injury litigation (12 matters) and patent litigation (10 matters). The remainder involved consumer class actions, mass torts or employment discrimination.

Out of the 184 responders, 35 had firsthand experience working with a litigation funder. About half of those had done so once or twice, with most of the remainder having done so between three and six times. A handful of those responding had worked with litigation funders more than six times.

In 16 instances, the fact of the litigation funding became known to the lawyer's litigation adversaries. In most of those situations, the fact of the funding was disclosed or revealed during discovery or trial. Twice, disclosure was ordered by a judicial officer, while in one instance, the fact was disclosed as part of a motion for approval in a bankruptcy court proceeding. One respondent noted that "funding might have to be disclosed in order to settle the claim as the interest on the funding is very high."

Although the Committee recognized that most survey respondents would be unwilling or unable to provide names of litigation funders, the following question was included in the survey:

> "Q: If you have ever been involved in a matter or matters (a) in which any party received funding provided by a litigation funder, (b) the fact and identity of the litigation funder became known in the litigation and (c) the information is not subject to a confidentiality designation in the litigation, please insert the name or names of the litigation funders."

A variety of names were provided in 13 responses.[6] None appeared more than twice.

c. Specific Feedback

In a reminder message about the Committee's survey, members of the DSBA sections previously contacted were told that if any of them wanted to be in touch with any of the members of the Committee to discuss their views on the topic of transparency in litigation funding, they should do so.

To date, Committee members have received direct feedback from two members of the Delaware bar.

One member of the bar expressed concern about whether the survey would generate reliable results from the solicited groups. That member felt that firms that "accept third party funding but do not favor transparency are less likely to respond, skewing the results."

Another member of the bar expressed the view that litigation funding is beneficial in many circumstances, particularly (a) for plaintiffs who cannot bear the costs of litigation themselves, and (b) for sophisticated companies in their capacities both as plaintiffs and defendants. That member of the bar would support a rule requiring disclosure of the existence of litigation funding and whether a funder has the right to control settlement, but did not believe any other disclosure or regulation is warranted.

d. Overall Assessment of the Survey Results

The information learned by the Committee through its survey and request for information from practitioners did not suggest a pressing need for additional guidance in the Delaware state court rules or procedures on the subject of disclosures of third-party funding arrangements. It appears as if the existing procedures and frameworks have provided a path to disclosure.

VI. The Alternatives Available in Delaware

To assist the Delaware Supreme Court and the Presiding Judges, the Committee sought to identify a range of alternatives that could be considered for addressing litigation funding in Delaware.

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[6] *See* Appendix A.

a. The Range of Alternatives

Possible alternatives range from substantive regulation to disclosure to leaving the developments in this area to the common law.

i. Substantive Regulation

At the most intrusive, options for substantive regulation might include limits on the returns received by funders (like to usury laws), restrictions on fee sharing with non-lawyers, licensing requirements for a finance provider to operate in the state, or restrictions on the role a funder can play in the litigation.

Consideration of any proposed regulation should first account for any relevant safeguards already in place such as lawyers' duties of professional responsibility (including the duties to maintain client confidentiality and independent judgment), rules of civil procedure addressing disclosure and discovery, and even common law contract defenses.

Any regulation should also consider existing incentives. For example, funders are naturally incentivized to avoid weak claims because funders can lose their entire investment if the suit is unsuccessful. Rulemaking that aims to police funders' selection of cases thus would be unnecessary and risk limiting the value funding provides to meritorious claimants.

Consideration should also be given to the difference between consumer funding and commercial funding. The latter involves sophisticated parties, often with counsel well versed in litigation funding, and thus without the need for heavy-handed policing.

ii. Disclosure Requirements

Most discussion of the regulation of litigation funding involves disclosure requirements. Disclosure is necessary, according to some, to prevent finance providers from "hiding" their influence over litigation and settlement. Others argue that disclosure is a red herring designed to give defendants insight into plaintiffs' cases.

What disclosure means in practice will vary depending on how far the disclosures go. The more detail required, the more insight the defense may have into the plaintiff's case. Access to information about funding could reveal the resources available to plaintiffs, giving defendants leverage in settlement when they know the money is running low.

Disclosure can be accomplished by requiring disclosure or by providing that the matter is an appropriate topic for discovery. An analogous rule appears in Rule 26 and permits the discovery of the existence and contents of an insurance agreement.

Options for disclosure or discovery include:

The Existence of a Funding Relationship. The least intrusive disclosure would be for the parties to reveal simply that a funding arrangement exists without disclosing any details. With that knowledge, the court and the parties can be alert during the litigation for any indication that the funding arrangement is adversely affecting the case. Disclosing the existence of litigation funding should not be burdensome.

Control Over the Litigation. A second level of disclosure would require a party to disclose whether the litigation funder has any control over the litigation. Disclosure on this topic would address the chief concern about litigation funding. The Committee understands that most litigation funders do not have any right to control litigation, so typically the response would be reassuring. If a funder did have a control right or if there was ambiguity about the issue, a redacted form of the funding agreement could be produced, or the agreement could be reviewed in camera by the court.

The Name of the Litigation Funder. A third level of disclosure would require that a party reveal the name of the finance provider. This would enable the court to determine if it has any conflict of interest such as investments in the fund at issue. It also allows the court to determine if the particular funder has had prior issues with inappropriate interference in the litigation. Disclosing the name of a funder should not be burdensome.

The Funding Agreement. An intrusive level of disclosure would require production of the funding agreement. Such a requirement could reveal information that would give an unfair advantage to the opposing party. For example, the financial return structure set out in the agreement could indicate how risky (or not) the funder believes the case to be. Opposing parties could make tactical decisions based on that information. It could also reveal how long the funder expects the case to go before resolution.

Case Analysis. The most intrusive level of disclosure would require production of case analysis. Courts have almost universally held that this material is shielded by the work product doctrine. Requiring disclosure of this material would

be highly disruptive and may lead to significant curtailing of funding available for meritorious claims.

iii. Do Nothing

A final option is to do nothing. That would not mean that litigation funding arrangements would not be subject to regulation. Instead, it would mean that the rules would be developed by the common law.

b. The Available Means

There are several means available to implement regulation over litigation financing if that is viewed as desirable.

A readily available route is the adoption of court rules. A rule-based approach is also flexible and can be revised based on future developments. Because rules are not designed to establish substantive law, they are not an apt method for substantive regulation. They would be effective for promoting disclosure. Rules could be adopted by individual courts or by the courts as a whole.

Standing orders are an alternative to court rules. Standing orders are easier to implement than rules, but they can be less effective, because it is more difficult for litigants to learn about them and comply. Standing orders can be implemented by individual judges, as Chief Judge Connolly's Standing Order shows. If there is a desire to gather information before adopting court rules, then standing orders could be a viable approach.

A statute is likely necessary for substantive regulation. That path would require coordinating with the political branches.

c. Recommendation

- The Committee has not identified any issues with the current use of third-party litigation funding in the Delaware state courts.
- The Committee does not believe that substantive regulation of litigation financing is necessary.
- The Committee believes there could be value in considering a court rule that would authorize limited discovery into third-party litigation funding and limit broader discovery on that subject. A rule could provide helpful guidance to litigants and judges in this area. For

purposes of discoverability, the Committee would recommend a rule, comparable to Superior Court Rule 26(b)(2) on insurance agreements, but which would only authorize discovery regarding whether there is any arrangement that gives a third party control over the litigation. The Committee would recommend that the rule not permit broader discovery into third-party litigation funding absent some additional showing of need. The Committee would recommend that the rule make clear that some third-party litigation funding material, such as case analysis, is work product.

- The task of considering a court rule could be for the Committee or a future committee. There may be value in having each court prepare its own rule, because different courts may have different needs.

VII. Appendices

a. Appendix A: The Bar Survey and Results

b. Appendix B: Table of Other Jurisdictions

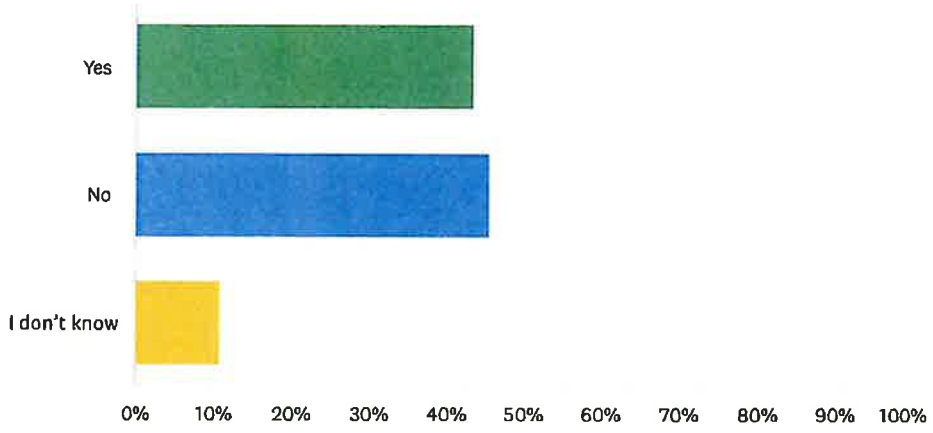
June 30, 2023

APPENDIX A

Litigation Funding Survey

Q1 Have you ever been involved in a matter in which you knew that either your client or the client of another party received funding provided by a litigation funder?

Answered: 184 Skipped: 0

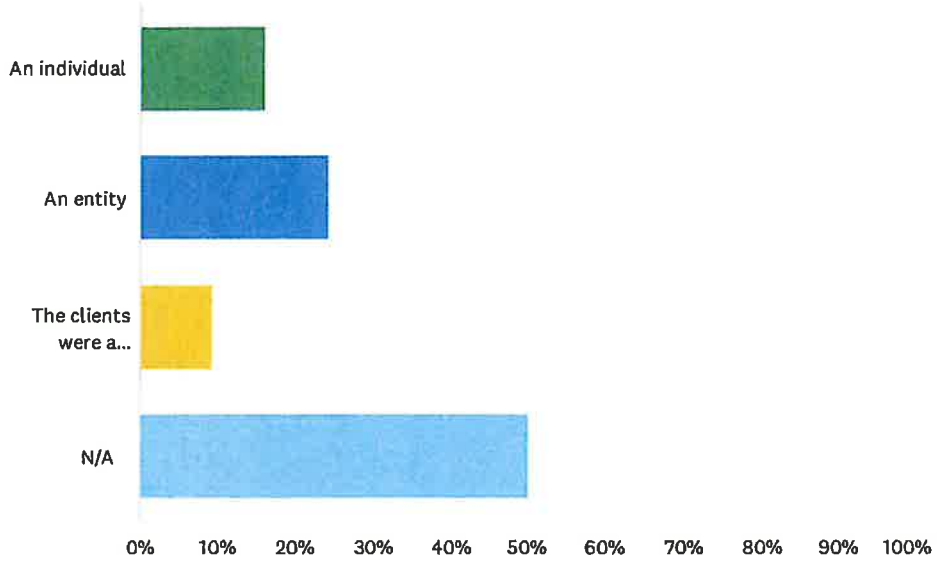


ANSWER CHOICES	RESPONSES	
Yes	43.48%	80
No	45.65%	84
I don't know	10.87%	20
TOTAL		184

Litigation Funding Survey

Q2 If the answer to question 1 is yes, was the client in question an individual or an entity?

Answered: 161 Skipped: 23

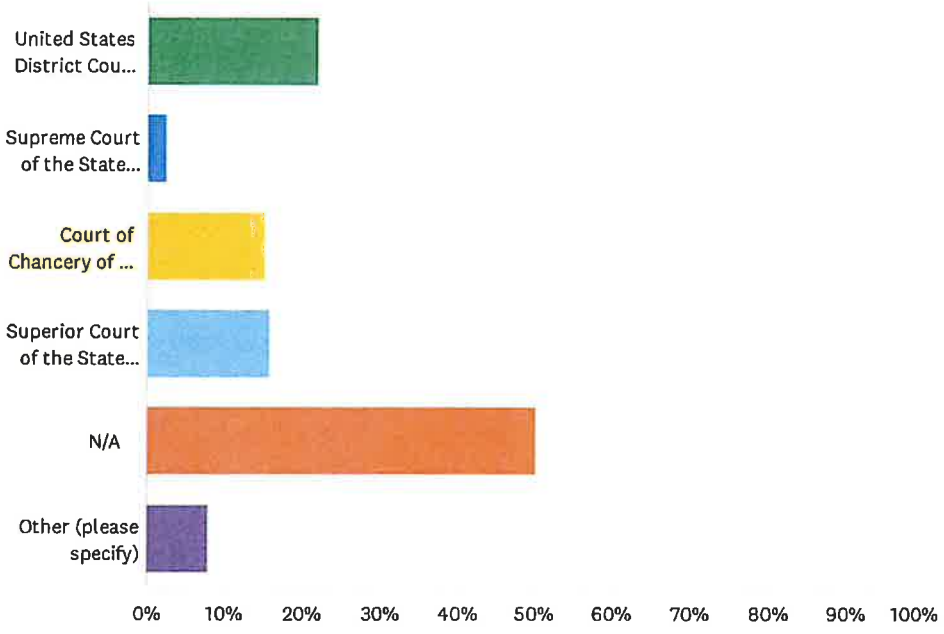


ANSWER CHOICES	RESPONSES	
An individual	16.15%	26
An entity	24.22%	39
The clients were a combination of individuals and entities.	9.32%	15
N/A	50.31%	81
TOTAL		161

Litigation Funding Survey

Q3 If the answer to question 1 is yes, in what courts were those matters? Please choose all that apply.

Answered: 159 Skipped: 25



ANSWER CHOICES	RESPONSES	
United States District Court for the District of Delaware	22.01%	35
Supreme Court of the State of Delaware	2.52%	4
Court of Chancery of the State of Delaware	15.09%	24
Superior Court of the State of Delaware	15.72%	25
N/A	50.31%	80
Other (please specify)	8.18%	13

Total Respondents: 159

#	OTHER (PLEASE SPECIFY)	DATE
1	I have long suspected that some of my clients' adversaries have had litigation funding, but do not know for sure.	5/1/2023 11:25 AM
2	US Bankruptcy Court for District of Delaware	4/27/2023 9:09 AM
3	U.S. District Court, M.D. FL; and 11th Cir. Court of Appeals	3/15/2023 3:21 PM
4	New York State Court	3/14/2023 1:51 PM
5	Cecil County Circuit Court in Elkton, MD (I was pro hac'd in for the trial)	3/14/2023 12:20 PM
6	International Arbitration	3/14/2023 11:48 AM

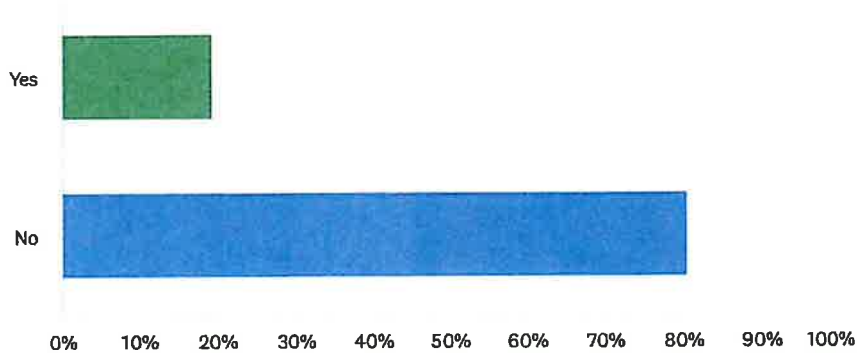
Litigation Funding Survey

7	Cayman Islands; C.D. Cal.	3/14/2023 11:36 AM
8	Other federal courts, including E.D. Va	3/14/2023 11:35 AM
9	Cayman Courts	3/14/2023 11:30 AM
10	United States Bankruptcy Court for the District of Delaware	3/14/2023 11:24 AM
11	Netherlands court	3/14/2023 11:24 AM
12	United States Bankruptcy Court for the Southern District of New York	3/14/2023 11:23 AM
13	Federal Court	3/14/2023 11:20 AM

Litigation Funding Survey

Q4 Do you have firsthand experience working with a litigation funder?

Answered: 181 Skipped: 3

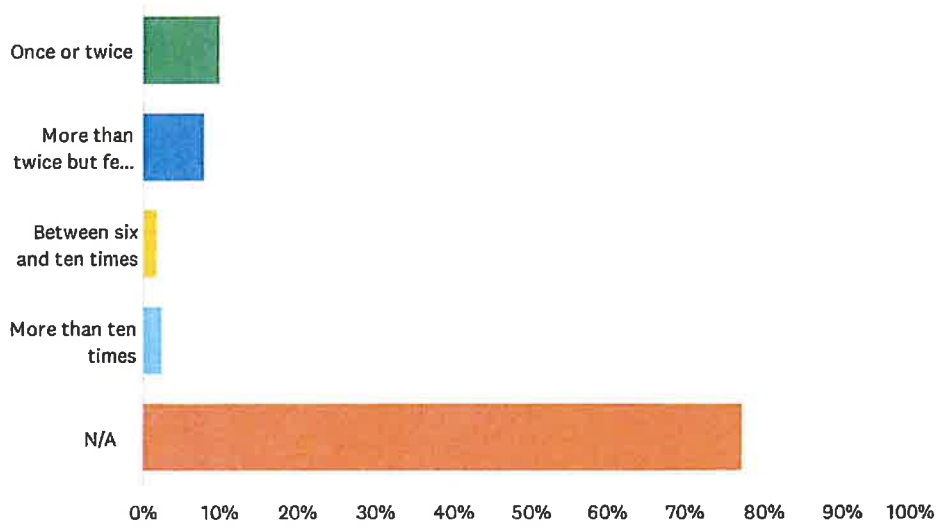


ANSWER CHOICES	RESPONSES	
Yes	19.34%	35
No	80.66%	146
TOTAL		181

Litigation Funding Survey

Q5 If the answer to question 4 is yes, how many times have you done so?

Answered: 160 Skipped: 24

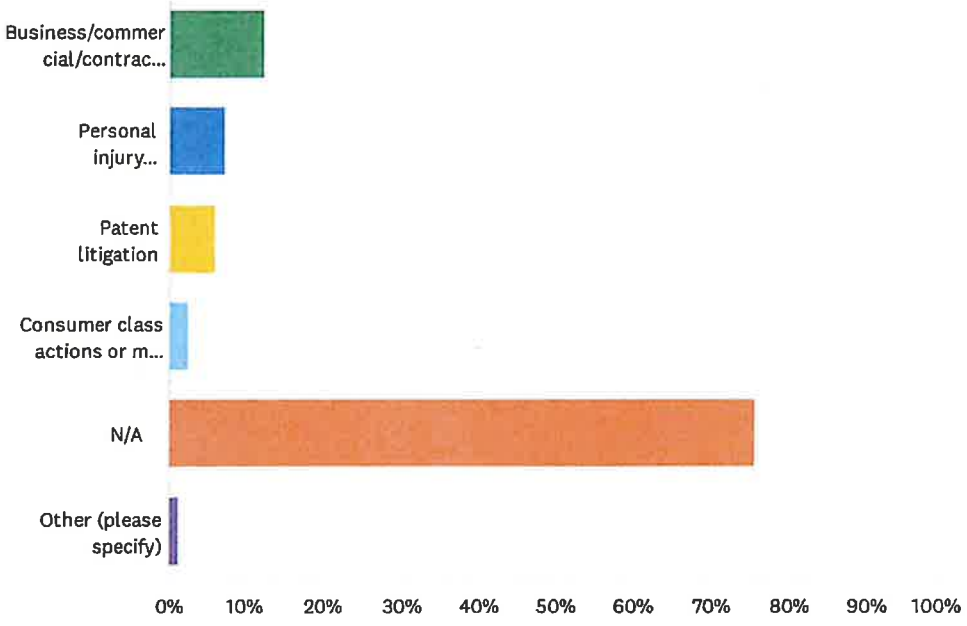


ANSWER CHOICES	RESPONSES	
Once or twice	10.00%	16
More than twice but fewer than six times	8.13%	13
Between six and ten times	1.88%	3
More than ten times	2.50%	4
N/A	77.50%	124
TOTAL		160

Litigation Funding Survey

Q6 If the answer to question 4 is yes, what was the type of matter(s)? Please choose all that apply.

Answered: 160 Skipped: 24



ANSWER CHOICES	RESPONSES	
Business/commercial/contract/corporate litigation	12.50%	20
Personal injury litigation	7.50%	12
Patent litigation	6.25%	10
Consumer class actions or mass tort litigation	2.50%	4
N/A	75.63%	121
Other (please specify)	1.25%	2

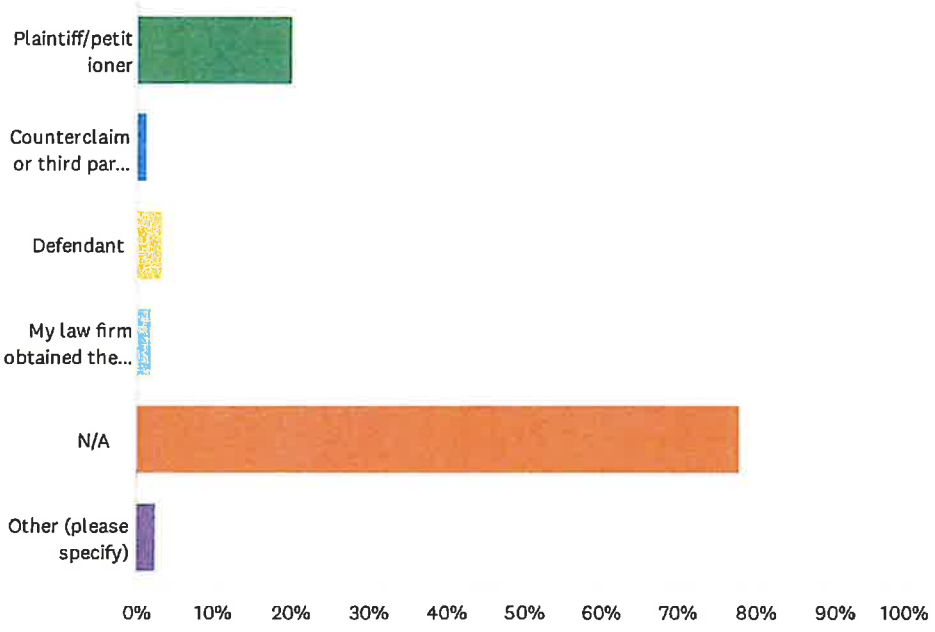
Total Respondents: 160

#	OTHER (PLEASE SPECIFY)	DATE
1	employment discrimination	3/15/2023 11:10 AM
2	Cayman appraisal	3/14/2023 11:36 AM

Litigation Funding Survey

Q7 If the answer to question 4 is yes, what was the position type of your client? Please choose all that apply.

Answered: 160 Skipped: 24



ANSWER CHOICES	RESPONSES	
Plaintiff/petitioner	20.00%	32
Counterclaim or third party plaintiff	1.25%	2
Defendant	3.13%	5
My law firm obtained the funding	1.88%	3
N/A	78.13%	125
Other (please specify)	2.50%	4

Total Respondents: 160

#	OTHER (PLEASE SPECIFY)	DATE
1	Most personal injury defense cases are funded by third-party insurance carriers. The material difference insurance company funding and other third party finders is the process for the latter requires the funded party to complete a case evaluation. For reasons not clear to me, that questionnaire is subject to discovery or disclosure.	4/27/2023 11:24 AM
2	Situations involved client investing with a litigation funder. In one, my client sued the litigation funder contending the PPM omitted material information. In others, I advised the client in connection with his investment decision.	3/22/2023 9:08 AM
3	Engaged by a litigation funder to assist in an evaluation of whether or not to finance pending litigation.	3/14/2023 10:54 PM

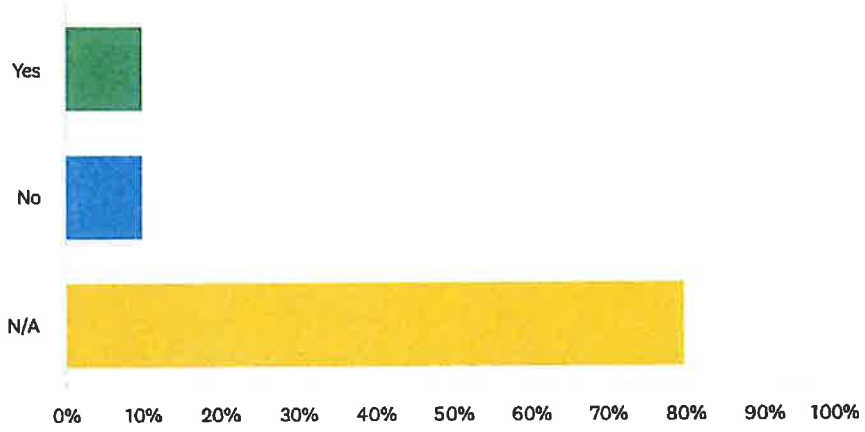
Litigation Funding Survey

4	Note that I have investigated funding for specific risks in contingent litigation on behalf of stockholder classes but never actually secured it because the economics were not sufficiently favorable	3/14/2023 11:32 AM

Litigation Funding Survey

Q8 If the answer to question 4 is yes, did the funding ever become known to your client's litigation adversaries?

Answered: 160 Skipped: 24

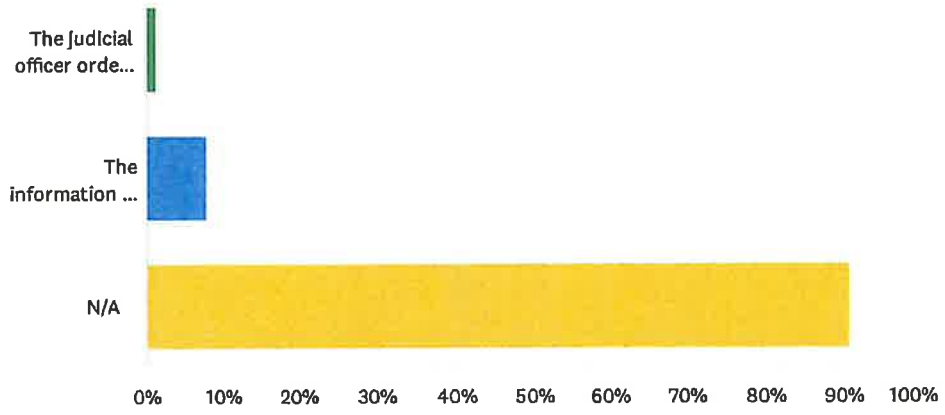


ANSWER CHOICES	RESPONSES	
Yes	10.00%	16
No	10.00%	16
N/A	80.00%	128
TOTAL		160

Litigation Funding Survey

Q9 If the answer to question 8 is yes, how did that information become known? Please choose all that apply.

Answered: 154 Skipped: 30



ANSWER CHOICES	RESPONSES	
The judicial officer ordered disclosure of the information.	1.30%	2
The information was disclosed or revealed during discovery or trial.	7.79%	12
N/A	90.91%	140
TOTAL		154

#	OTHER (PLEASE SPECIFY)	DATE
1	Funding was in bankruptcy court and needed court approval, so our client voluntarily disclosed it in a motion for approval.	4/27/2023 8:55 AM
2	In one matter, we had preliminary discussions with a funder that did not result in any funding. In another matter, advice was provided to a law firm involved with litigation funding.	3/15/2023 11:10 AM
3	Some defense attorneys seek this information during discovery. I object.	3/14/2023 12:58 PM
4	Funding might have to be disclosed in order to settle the claim as the interest on the funding is very high	3/14/2023 12:47 PM

Q10 If you have ever been involved in a matter or matters (a) in which any party received funding provided by a litigation funder, (b) the fact and identity of the litigation funder became known in the litigation and (c) the information is not subject to a confidentiality designation in the litigation, please insert the name or names of the litigation funders.

Answered: 32 Skipped: 152

#	RESPONSES	DATE
1	Baker Street Funding	4/27/2023 11:24 AM
2	Our role was to provide Delaware legal opinions for a Delaware entity entering into a loan arrangement which I recall was to be used to fund litigation costs. I don't recall the identities of the parties and I was not involved in the litigation.	4/27/2023 8:57 AM
3	n/a	3/22/2023 3:00 PM
4	N/A	3/22/2023 1:57 PM
5	N/A	3/21/2023 12:00 PM
6	NA	3/20/2023 3:44 PM
7	I have not	3/19/2023 12:01 PM
8	Burford Capital	3/15/2023 6:45 PM
9	Ruckh v. CMC II, LLC et al, No. 8:2011cv01303 (M.D. Fla. 2018), and on appeal to the 11th Circuit. The funder's name is disclosed in the 11th Circuit decision as ARUS 1705-556 LLC.	3/15/2023 3:21 PM
10	Fortress / Fortress Investments Woodsford Curiam Capital	3/15/2023 3:14 PM
11	Mavexar	3/15/2023 11:10 AM
12	NA	3/14/2023 8:18 PM
13	N/A NOTE -- we were involved in a case where the nominal plaintiffs/challengers to an administrative decision had they attorneys' fees paid by a third party that wanted the challenge to go forward, but did not want their identity disclosed; this was not for a "piece of the action" (i.e., a portion of any monetary award) but was a group opposed to the administrative decision whose involvement, if known, would have weakened the legal challenge; we were defending the decision and prevailed	3/14/2023 3:17 PM
14	NA	3/14/2023 1:10 PM
15	No	3/14/2023 12:55 PM
16	No, I thought purchasing an interest in the outcome of a lawsuit was prohibited as champerty.	3/14/2023 12:50 PM
17	Oasis Legal Funding	3/14/2023 12:47 PM
18	My client entered into the contract without my knowledge or consultation.	3/14/2023 12:20 PM
19	Can't recall.	3/14/2023 12:17 PM
20	N/A	3/14/2023 12:13 PM
21	Delaware Collateral and Security, LLC	3/14/2023 12:08 PM
22	N/A	3/14/2023 11:59 AM
23	Advocate Capital, and Oasis	3/14/2023 11:47 AM
24	Benchwalk	3/14/2023 11:36 AM

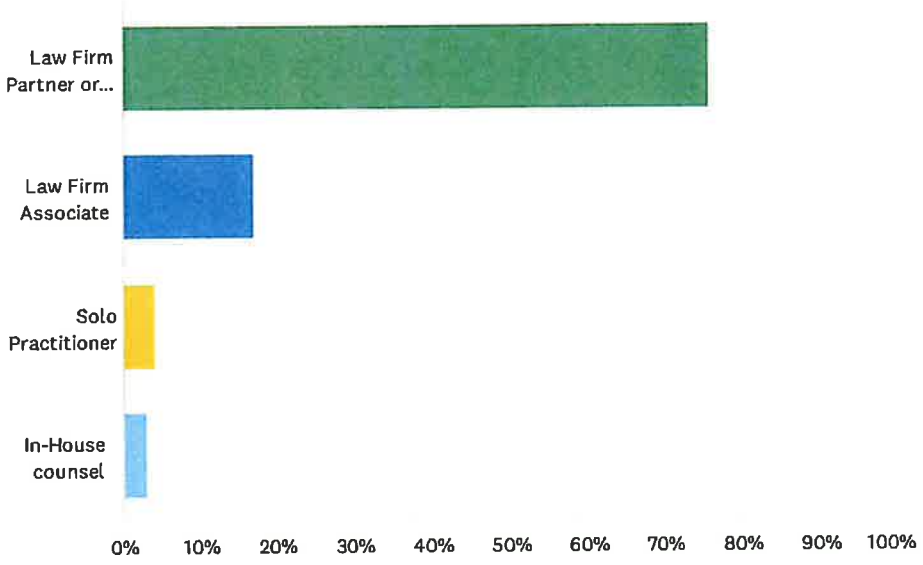
Litigation Funding Survey

25	Burford Capital	3/14/2023 11:31 AM
26	N/A	3/14/2023 11:31 AM
27	Omnibridge Burford	3/14/2023 11:30 AM
28	None	3/14/2023 11:26 AM
29	Attestor Limited	3/14/2023 11:24 AM
30	N/A	3/14/2023 11:23 AM
31	Unfortunately, I do not recall.	3/14/2023 11:23 AM
32	Bentham	3/14/2023 11:21 AM

Litigation Funding Survey

Q11 What is your position at your law firm?

Answered: 170 Skipped: 14



ANSWER CHOICES	RESPONSES	
Law Firm Partner or Counsel	75.88%	129
Law Firm Associate	17.06%	29
Solo Practitioner	4.12%	7
In-House counsel	2.94%	5
TOTAL		170

#	OTHER (PLEASE SPECIFY)	DATE
1	director	5/1/2023 9:00 AM
2	retired judge	4/1/2023 2:42 PM
3	Government	3/15/2023 5:26 PM
4	retired partner	3/15/2023 12:16 PM
5	In-House counsel (formerly Law Firm Counsel)	3/14/2023 2:20 PM
6	Retired	3/14/2023 12:55 PM
7	Delaware DAG	3/14/2023 12:50 PM
8	Government	3/14/2023 11:46 AM
9	outside consultant	3/14/2023 11:24 AM
10	Deputy Attorney General, my experience was back when I was a partner at a law firm.	3/14/2023 11:23 AM
11	retired from private practice	3/14/2023 11:22 AM

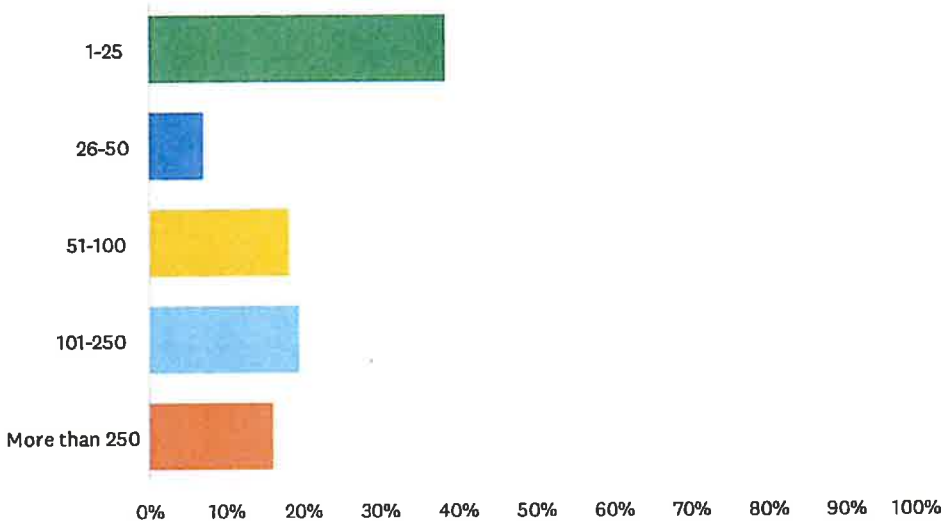
Litigation Funding Survey

12	Public Service	3/14/2023 11:22 AM

Litigation Funding Survey

Q12 What is the size of your law firm (no. of attorneys)?

Answered: 179 Skipped: 5



ANSWER CHOICES	RESPONSES	
1-25	38.55%	69
26-50	7.26%	13
51-100	18.44%	33
101-250	19.55%	35
More than 250	16.20%	29
TOTAL		179

APPENDIX B

State	Statutes/Case law
Alabama (AL)	Not regulated *Wilson v. Harris*, 688 So 2d 265 (Ala. Civ. App. 1996) (holding that a funding agreement was void on public policy grounds because the agreement was a 'gambling contract . . . and its speculative characteristics make it closely akin to champerty'.) Despite the *Wilson* decision, Alabama has failed to adopt any rules regulating consumer legal funding. See generally Student Commentary: Consumer Legal Funding in Alabama, 36 J. Legal Prof. 529 (Spring, 2012) Several Bills considered, none passed.
Alaska (AK)	Not regulated Alaska R. Prof. Conduct 1.8, Conflict of Interest (prohibiting lawyers from acquiring a proprietary interest in litigation, arising out of the common law rules on champerty and maintenance.)
Arizona (AZ)	Not regulated Champerty is not recognized in the state of Arizona, and thus the doctrine does not bar litigation funding agreements. *See Landi v. Arkules*, 835 P2d 458, 464 (Ct. App. 1992). Litigation funding agreements are privileged. The District of Arizona has held that litigation funding agreements fit within the Ninth Circuit's standard of materials 'created because of litigation'. This protection was held to extend to situations where a plaintiff is receiving financing from a third-party funder to support both litigation and operating expenses, where litigation is the scope of operation for that business. *See Cont'l Circuits LLC v. Intel Corp.*, 435 F. Supp. 3d 1014, 1021 (D. Ariz. 2020). However, disclosure of the identity of the litigation funder itself was not protectable information under the work product doctrine. *Id.*
Arkansas (AR)	Regulated Arkansas adopted a rate cap for consumer lawsuit lending transitions. *See* AR Code § 4-57-109. Ark. R. Prof. Conduct 1.8, Conflict of Interest (prohibiting lawyers from acquiring a proprietary interest in litigation, arising out of the common law rules on champerty and maintenance.)
California (CA)	Not regulated

	LA County Bar Assn. Ethics Op. No. 500 (1999) (discussing the permissibility of funding arrangement under California law and legal ethics regime) Pursuant to the Standing Order for all Judges in the Northern District of California, the parties must include in the Joint Case Management Statement the following information: "Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the 'Certification of Interested Entities or Persons' required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim." N.D. Cal. Standing Order for All Judges (2023). Communications with a litigation funder have been shielded from disclosure and, where subject to a properly executed non-disclosure agreement, should not result in a waiver. *See Odyssey Wireless, Inc. v. Samsung Elecs. Co.*, No. 3:15-cv-01738-H (RBB), 2016 U.S. Dist. LEXIS 188611 (S.D. Cal. Sep. 19, 2016); *see also Space Data Corporation v Google LLC*, No. 16–CV–03260, 2018 WL 3054797, at *1 (N.D. Cal. 11 June 2018) (communications with potential funders are not relevant).) The California State Bar established a Task Force on Access Through Innovation of Legal Services, which published several alternate proposed revisions to the ethical rules that would, if adopted, either allow limited non-attorney ownership in law practices or largely do away with the traditional restrictions on fee-sharing. Instead of adopting widespread revisions to the ethical rules, however, the California Supreme Court approved a narrowly revised rule with respect to non-lawyer fee sharing.
Colorado (CO)	*Oasis Legal Fin. Grp., LLC v. Coffman*, 2015 Colo. 63, 361 P.3d. 400 (Colo. 2015) (litigation financing transactions created debt to be governed by the Uniform Consumer Credit Code where the agreements provided the litigation finance companies only with the rights that any creditor would have) "A lender who engages in such transactions, variously called 'litigation,' lawsuit,' or 'legal' 'funding', 'financing', or 'advances', with Colorado consumers must comply fully with Colorado's Uniform Consumer Credit

	Code, §§5-1-101, et seq., C.R.S. 2009 (Code), including licensure." *See* Atty. Gen. Ltr. RE: Pre-Settlement Lender Licensing.
Connecticut (CT)	*Ankerman v. Mancuso*, 271 Conn. 772 (Conn. 2004) (finding that attorney did not violate Rules of Professional Conduct 1.8 where a client to a title action executed a promissory note for legal fees owed secured by the property in the title action and the attorney sought enforcement of the note only and did not foreclose on the mortgage). Bills considered, none passed. Principle of Champerty recognized in state: "Champerty is simply a specialized form of maintenance in which the person assisting another's litigation becomes an interested investor because of a promise by the assisted person to repay the investor with a share of any recovery." C. Wolfram, Modern Legal Ethics (1986) § 8.13, p. 490; see also *Richardson v. Rowland*, 40 Conn. 565, 570 (1873).
Florida (FL)	Florida Bar Ethics Op. 00-3 (March 15, 2002) (addressing attorney conduct regarding litigation finance) *Kraft v. Mason*, 668 So. 2d 679 (Fla. Dist. Ct. App. 1996) (concluding that where the financier did not intermeddle, instigate litigation, or exert control of the lawsuit after making the loan, the litigation contract was not void as champertous.) "Maintenance is an officious intermeddling in a suit which in no way belongs to the intermeddler, by maintaining or assisting either party to the action, with money or otherwise, to prosecute or defend it." 9 Fla. Jur. 2d Champerty and Maintenance § 1 (1979). Champerty is a form of maintenance wherein one will carry on a suit in which he has no subject-matter interest at his own expense or will aid in doing so in consideration of receiving, if successful, some part of the benefits recovered. 14 C.J.S. Champerty and Maintenance § 1a (1991).

Georgia (GA)	Pursuant to Georgia legislation, "[a] contract that is against the policy of the law cannot be enforced." Ga. Code Ann. § 13-8-2 (West). The statute illustrates the following contracts as contrary to public policy: "(1) Contracts tending to corrupt legislation or the judiciary; (2) Contracts in general restraint of trade, as distinguished from contracts which restrict certain competitive activities, as provided in Article 4 of this chapter; (3) Contracts to evade or oppose the revenue laws of another country; (4) Wagering contracts; or (5) Contracts of maintenance or champerty. . . . " *Sapp v. Davids*, 168 S.E. 62 (Ga. 1933) (invalidated champertous contract under common law). It does not appear that any Georgia court has invalidated any contract as violative of the statutory prohibition against champaerty since 1933.
Hawaii (HI)	There is little case law addressing litigation financing issues in Hawaii. At least one court in Hawaii has held that "the common law doctrines of champerty and maintenance are not impediments to the assignability of the claims" for professional malpractice, breach of fiduciary duty, and fraud. *TMJ Hawaii, Inc. v. Nippon Tr. Bank*, 153 P.3d 444, 450 (Haw. 2007)
Idaho (ID)	There is little case law addressing litigation financing issues in Idaho. However, Idaho precedent holds that while "Idaho law does not recognize champerty and maintenance, Idaho law is in accord with the many states which continue to recognize that the goals of champerty and maintenance provisions are still around and well, both defensively and offensively, in the form of actions or defenses based on abuse of process or malicious prosecution of civil actions." *Wolford v. Tankersley*, 695 P.2d 1201, 1222 (Idaho 1984).
Illinois (IL)	Regulated by statute Recently adopted the Consumer Legal Funding Act (815 Ill. Comp. Stat. Ann. 121 (West 2022) et. seq.). The Consumer Legal Funding Act implements licensing and contractual requirements on financers, imposes limits on fees, and prohibits funder control of litigation and settlement decisions.
Indiana (IN)	Regulated by statute New regulation in Indiana requires a claimant to provide written notice of a funding agreement. *See* Ind. Code § 24-12-4-2 (2023); Ind. H.B 1124.

Iowa (IA)	There is little case law addressing litigation financing issues in Iowa. To the extent Iowa case law has addressed issues relating to litigation financing, Iowa courts have held that the "law now generally favors the assignability of choses in action . . . ." *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 236 (Iowa 2001). The Supreme Court of Iowa has held that the law generally "prohibit[s] the involuntary assignment of a claim for legal malpractice and prohibit[s] the assignment of a claim for legal malpractice to the adverse party in the underlying litigation." *Gray v. Oliver*, 943 N.W.2d 617, 628 (Iowa 2020).
Kansas (KS)	There is little case law addressing litigation financing issues in Kansas.
Kentucky (KY)	Litigation funding is prohibited by statute under Kentucky law. *See* Ky. Rev. Stat. Ann. § 372.060 (West) ("Any contract, agreement or conveyance made in consideration of services to be rendered in the prosecution or defense, or aiding in the prosecution or defense, in or out of court, of any suit, by any person not a party on record in the suit, whereby the thing sued for or in controversy or any part thereof, is to be taken, paid or received for such services or assistance, is void.")
Louisiana (LA)	Pursuant to Louisiana statute, the assignment and sale of litigious rights is permitted. *See* La. Civ. Code Ann. art. 2652 ("When a litigious right is assigned, the debtor may extinguish his obligation by paying to the assignee the price the assignee paid for the assignment, with interest from the time of the assignment.") Comment (g) to the statute notes that "a contingency fee agreement between an attorney and his client is not a prohibited sale of a litigious right. See R.S. 37:218."
Maine (ME)	Regulated by statute The Maine Consumer Credit Code Legal Funding Practices (Me. Rev. Stat. Ann. tit. 9-A, § 12-101, et. seq). Maine's legislation requires litigation funders to register with the state authorities and mandates specific provisions that must be included in financing contracts, including a disclosure form setting forth the fees and interest rate charged and a representation that the company has no right to make, and will not make, any decisions regarding the course of the litigation.
Maryland (MD)	Maryland law does not prohibit litigation funding, but litigation financers must comply with lending laws which restrict the kind of interest rates that can be charged. *See e.g.*, *In the Matter of: American Legal Funding, LLC A/k/a American Legal Funding, L.l.c., A/k/a American Legal Funding, LLC, D/b/a American Legal Funding Llc/alfund Az1, LLC, D/b/a American Legal Funding Llc/alfund Az1, Llc/al*, 2011 WL 1540473 (Feb. 4, 2011) (state investigation by the Maryland Department of Labor, Licensing and

	Regulation, Office of the Commissioner of Financial Regulation found that litigation funder "activities constitute usurious and unlicensed lending to Maryland consumers in violation of Maryland law"); *In the Matter of: Plaintiff Funding Holding, Inc. D/b/a Lawcash, Plaintiff Holding V LLC, Dennis Shields, Harvey R. Hirschfeld, and Jason Younger, Respondents*, 2015 WL 5637481 (Aug. 18, 2015) (finding that "Respondents' business activities constitute usurious and unlicensed lending to Maryland consumers in violation of Maryland law, and that it is in the public interest that Respondents immediately Cease and Desist from making litigation funding advances or other types of loans to, or otherwise engaging in lending activities with, Maryland consumers").
Massachusetts (MA)	*Saladini v. Righellis*, 687 N.E.2d 1224 (Mass. 1997) (enforcing third-party litigation funding agreement and nullifying the doctrines of champerty and maintenance; the court further held that it would evaluate such agreements by determining whether the agreement was fair and reasonable when made); *id.* at 1226 ("We have long abandoned the view that litigation is suspect, and have recognized that agreements to purchase an interest in an action may actually foster resolution for a dispute."); *id.* at 1227 ("[R]relevant factors might have included the respective bargaining position of the parties at the time the agreement was made, whether both parties were aware of the terms and consequences of the agreement, whether [fundee] may have been unable to pursue the lawsuit at all without [fundor]'s funds, and whether the [fees] is unreasonable in the circumstances.").
Michigan (MI)	*Smith v. Childs*, 497 N.W.2d 538, 540 (Mich. Ct. App. 1993) (holding that champerty is not a defense to the enforcement of a contract) *Lawsuit Fin., L.L.C. v. Curry*, 683 N.W.2d 233, 239-40 (Mich. Ct. App. 2004) (voiding a litigation financing agreement on a finding that plaintiff held an absolute right to repayment on the "advances" and thus constituted a usurious loan for exceeding the legal interest rate) *usury laws and interest restrictions are another way that states/courts regulate third party litigation finance agreements. *See*, *e.g.* Mich. Comp. Laws §§ 438.31-438.32.*
Minnesota (MN)	*Maslowski v. Prospect Funding P'rs LLC*, 944 N.W.2d 235, 241 (Minn. 2020) (abolishing champerty doctrine and holding that litigation funding agreements are enforceable); *id.* at 241 ("[c]ourts and attorneys should likewise be careful to ensure that litigation financiers do not attempt to control the course of the underlying litigation....") (citing *Huber v. Johnson*, 70 N.W. 806, 808 (1897) (stating that 'it is difficult to conceive of any stipulation more against public policy' than a contract term requiring the litigation financier's permission to settle the underlying litigation)); *id.* ("There is also the possibility of further regulation by the Legislature...").

	On remand, the trial court ultimately held the litigation financing agreement was usurious under Minn. Stat. § 334.01 and thus unenforceable *see Maslowski v. Prospect Funding P'rs LLC*, 978 N.W.2d 447 (Minn. Ct. App. 2022).
Mississippi (MS)	No guidance.
Missouri (MO)	Pending Legislation: H.B. 2771, *Consumer Legal Funding Model Act and the Civil Litigation Funding Act*, 101st Gen. Ass., 2d Reg. Sess. (Mo. 2022) (Passed by special committee, currently in rules & legislative oversight committee). Would require disclosure of all participants in litigation financing arrangements in personal injury suits during the discovery process: § 436.575(1): "[A] consumer or the consumer's legal representative shall, without awaiting a discovery request, provide to all parties to the litigation, including the consumer's insurer if prior to litigation, any litigation financing contract or agreement under which anyone, other than a legal representative permitted to charge a contingent fee representating a party, has a right to receive compensation or proceeds from the consumer that are contingent on and sourced from any proceeds of the civil action by settlement, judgment, or otherwise."
Montana (MT)	Mont. Code Ann. § 37-61-408 (2021) (statute prohibiting attorneys from involvement in litigation funding) *Lussy v. Bennett*, 692 P.2d 1232, 1235-36 (Mont. 1984) (explaining that Mont. Code Ann. § 37-61-408 also applies to a party prosecuting in person an action instead of acting through an attorney, and dismissing plaintiff's claim for "smack[ing] of champerty" and being against public policy).
Nebraska (NE)	Regulated by statute Neb. Rev. Stat. §§ 25-3301-25-3309 (2010) (statute imposing restrictions on third-party litigation funding and requiring mandatory disclosure statements)
Nevada (NV)	Regulated by statute Nev. Rev. Stat. ch. 604C (2021), Consumer Litigation Funding (statute imposing restrictions on third-party litigation funding and requiring litigation funders to be licensed).

New Hampshire (NH)	*Markarian v. Bartis*, 199 A. 573, 577 (N.H. 1938) (concluding that champerty and maintenance doctrines are not in force in New Hampshire). *Adkin Plumbing & Heating Supply Co., Inc. v. Harwell*, 606 A.2d 802, 804-05 (N.H. 1992) (allowing attorney to recover on a contingent fee agreement when he was discharged without cause prior to the disposition of the case, even though the contingency never occurred).
New Jersey (NJ)	New Jersey Advisory Committee on Professional Ethics, Opinion 691 (2001) (concluding that a lawyer may ethically refer a client to a factor concerning an advance against an anticipated personal injury judgment or settlement, provided that the lawyer follows the standards and limitations laid out by the Committee). *Schomp v. Schenck*, 40 N.J.L. 195, 206 (N.J. 1878) (rejecting common law prohibitions on champerty and maintenance). *Weller v. Jersey City H&P St. Ry. Co.*, 57 A. 730, 732 (N.J. Ch. 1904) (explaining that the law of champerty and maintenance has never prevailed in New Jersey). *Cohen as Tr. of Robert B. Cohen Living Tr. v. Perelman*, 2018 WL 6034978, at *19 (N.J. Super. Ct. App. Div. Nov. 19, 2018) (observing that third-party litigation funding is fine so long as it does not run contrary to the public interest).
New Mexico (NM)	New Mexico has not extensively dealt with modern litigation finance. To the extent it has addressed issues relating to litigation finance, New Mexico courts have stated that personal injury claims cannot be assigned and the proceeds from those claims cannot be assigned. However, commercial claims are assignable. *Quality Chiropractic, PC v. Farmers Ins. Co. of Am.*, 51 P.3d 1172, 1183 (N.M. Ct. App. 2002) ("We decline to abrogate the common law rule prohibiting the assignment of personal injury claims, and we reject any distinction between an assignment of the proceeds of a claim and an assignment of the claim itself"); *Wilson v. Berger Briggs Real Estate & Ins. Inc.*, 497 P.3d 654, 660 (N.M. Ct. App. 2021) ("Because we agree with the district court that none of the causes of action brought by Wilson against Berger Briggs state injuries or claims of a personal nature, but are instead commercial in nature, and our jurisprudence suggests and common law establishes that such commercial claims are assignable, we conclude there to be no error in the district court ruling in this regard and hold that commercial claims of the nature at issue in this case are assignable")

New York (NY)	New York has a champerty statute. The statute contains a safe harbor and will not apply when the purchase price is at least $500,000. Furthermore, the champerty statute is construed narrowly and will not apply when the purpose of an assignment is the collection of a legitimate claim. The statute will also not apply when the primary purpose in acquiring the assets was not to bring a claim. The Southern District of New York has also stated that under New York law that personal injury claims cannot be assigned but that plaintiffs can enter into agreements to conditionally assign settlement proceeds. Furthermore, one New York decision, as part of its reasoning, stated that a party could not get discovery into litigation funding because it could not show how it would be relevant into any claim or defense. The Southern District and Eastern Districts for New York have ruled similarly. New York courts have also dismissed cases regarding litigation financing agreements that are under New York law that include New York forum provisions when almost all of the aspects of the transaction took place in another state. Lastly, in 2005, the attorney general for New York and several litigation funding companies settled and entered into an agreement. As part of this agreement, the litigation funding companies would have to comply with various requirements including disclosing the amount to be advanced, an itemization of one-time fees, and the total amount to be repaid. N.Y. JUD § 489; *Tr. for the Certificate Holders of Merrill Lynch Mortg. Investors, Inc. v. Love Funding Corp.*, 918 N.E.2d 889 (N.Y. 2009) ("the champerty statute does not apply when the purpose of an assignment is the collection of a legitimate claim"); *Fairchild Hiller Corp. v. McDonnel Douglas Corp.*, 270 N.E.2d 691 (N.Y. 1971); *Evans v. City of N.Y.*, 2021 WL 3617269 (S.D.N.Y. July 15, 2021); *Worldview Entm't Holdings, Inc. v. Woodrow*, 204 A.D.3d 629, 630 (N.Y. Sup. Ct. 2022) ("defendant has not explained how discovery about litigation financing and witness payments would support or undermine any particular claim or defense"); *Kaplan v. S.A.C. Capital Advisors, L.P.*, 2015 WL 5730101 (S.D.N.Y. Sep. 10, 2015); *Benitez v. Lopez*, 2019 WL 1578167 (E.D.N.Y. Mar. 14, 2009) ("Defendants do not explain how any litigation funding impacts Plaintiff's credibility or how it could be used to impeach his trial testimony"); *Prospect Funding Holdings L.L.C. v. Maslowski*, 146 A.D.3d 535 (N.Y. Sup. Ct. 2017); *Application of Whitehaven S.F., LLC v. Spangler*, 45 F.Supp.3d 333 (S.D.N.Y. 2014).
North Carolina (NC)	North Carolina has not extensively dealt with modern litigation finance. To the extent is had addressed this issue, North Carolina courts have stated that the assignment of litigation proceeds are not *per se* champertous but can constitute champerty if some other aspect grants control over the litigation. A federal bankruptcy court in North Carolina also held that an agreement did constitute champerty under North Carolina

	law because the agreement allowed the funder to revaluate the litigation and discontinue funding and give the funder other controls over the litigation. *Odell v. Legal Buck, LLC*, 665 S.E.2d 767, 774 (N.C. Ct. App. 2008); *In re DesignLine Corp.*, 565 B.R. 341, 348-49 (Bankr. W.D.N.C. 2017)
North Dakota (ND)	North Dakota has not extensively dealt with modern litigation financing.
Ohio (OH)	Regulated by statute. *See* Ohio Rev. Code §. 1349.55. Ohio's Supreme Court initially held that litigation financing constituted champerty. In response to this decision, Ohio's legislature passed a statute allowing for litigation financing in the state and outlining the rules regarding litigation financing. This statute requires the contract to disclose the total dollar amount advanced, an itemization of one-time fees, the total dollar amount to be repaid in six-month intervals for thirty-six months including fees, and the annual percentage rate of return. The contract must also provide that the consumer can cancel within five days of receipt of the funds without penalty. The contract must also include language that the company will not have a right in making decisions relating to the litigation. The contract must also include a written acknowledgement by the attorney representing the consumer giving several assurances. *Rancman v. Interim Settlement Funding Corp.*, 789 N.E.2d 217, 221 (Ohio 2003) ("Except as otherwise permitted by legislative enactment or the Code of Professional Responsibility, a contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as champerty and maintenance. Such an advance constitutes champerty and maintenance"), *superseded by statute*, Ohio Rev. Code Ann. § 1349.55; Ohio Rev. Code Ann. § 1349.55.
Oklahoma (OK)	Regulated by statute Part of an article of Oklahoma's code is dedicated to litigation finance. These sections include provisions that allow a consumer to cancel the contract within 5 days of the funding date without penalty. The agreement must also contain certain disclosures including the amount to be paid to the consumer, an itemization of one-time charges, the total amount to be assigned by the consumer to funder, and a payment schedule. The agreement must also disclose that the funder will not participate in determining settlement of the claim or interfere with the attorney's professional judgment. It must also state that charges will only be paid from the proceeds of the claim. In addition to this, Oklahoma requires all litigation funders to become licensed in order to do business in the state. The license must be renewed every two years. Lastly, Oklahoma provides a

	model form for a funding agreement. Using this form creates a presumption that the funder has complied with the required disclosures of the statute. Okla. St. Ann. 14A §§ 3-801-817; Okla. Admin. Code §§ 160:75-1-1-160:75-9-1; Okla. Admin. Code § 160:75 App. A
Oregon (OR)	Oregon has not extensively dealt with modern litigation financing.
Pennsylvania (PA)	Champerty is still in effect in Pennsylvania. To establish a *prima facie* case for champerty the party involved must have no interest in the suit, the party must spend its own money in prosecuting the suit, and the party must be entitled by bargain to share in the proceeds of the suit. Under this standard, some litigation funding agreements have been held to be invalid. The Eastern District of Pennsylvania granted a protective order for documents that were sent to a litigation funding company because they were work product and were protected by the common interest doctrine. The Western District of Pennsylvania held similarly and found that communications with litigation funders were protected by the work product doctrine. Lastly, the third circuit reversed in part a decision by the Eastern District of Pennsylvania, which voided litigation funding agreements in connection with a class action and instead held that only true assignments that allowed the lender to seek funds directly from the claim administrator were void but that other litigation funding companies could pursue their claims outside of the claim administration process. *Clark v. Cambria Cty. Bd. of Assessment Appeals*, 747 A.2d 1242, 1246 (Pa. Commw. Ct. 2000) ("The common law doctrine against champerty and maintenance continues to be a viable doctrine in Pennsylvania and can be raised as a defense"); *WFIC, LLC v. LaBarre*, 148 A.3d 812, 818 (Pa. Super. Ct. 2016) ("In order to establish a prima facie case of champerty, the following three elements must exist: (1) the party involved must be one who has no legitimate interest in the suit; (2) the party must expend its own money in prosecuting the suit; and (3) the party must be entitled by the bargain to share in the proceeds of the suit"); *Devon It, Inc. v. IBM Corp.*, 2012 WL 4748160 (E.D. Pa. Sep. 27, 2012); *Lambeth Magnetic Structures, LLC v. Seagate Tech. (US) Holdings, Inc.*, 2018 WL 466045 (W.D. Pa. Jan. 18, 2018); *Nat'l Football League Players' Concussion Injury Litig.*, 923 F.3d 96 (3d. Cir. 2019).
Rhode Island (RI)	Rhode Island has not extensively dealt with modern litigation financing. However, the District Court of Rhode Island has held that under Rhode Island law that an agreement to provide information in return for a percentage of any money that was recovered did not constitute champerty. *Progressive Gaming Intern., Inc. v. Venturi*, 563 F.Supp.2d 321 (D.R.I. 2008).

South Carolina (SC)	South Carolina has not extensively dealt with modern litigation financing. To the extent it has, South Carolina has held that champerty is no longer recognized as a defense to a loan. Instead, when examining an agreement "The court may examine (1) whether the respective bargaining position of the parties at the time the agreement was made was relatively equal, (2) whether both parties were aware of the terms and consequences of the agreement, (3) whether the borrowing party may have been unable to pursue the lawsuit at all without the financier's help, (4) whether the financier would retain a disproportionate share of the recovery, and (5) whether the financier engaged in officious intermeddling." *Osprey, Inc. v. Cabana Ltd. P'ship*, 532 S.E.2d 269, 278 (S.C. 2000).
South Dakota (SD)	No guidance
Tennessee (TN)	Regulated by statute (Tenn. Code Ann. § 47-16-101) A litigation financier shall fulfill each of the following requirements when engaged in litigation financing: (1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled-in with no incomplete sections when the contract is offered or presented to the consumer; (2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five (5) business days following the consumer's receipt of the funds or goods, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money or goods already provided to the consumer by the litigation financier; (3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute; (4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following: (A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer; (B) Whether the attorney is being paid on a contingency basis pursuant to a written fee agreement; (C) That all proceeds of the legal claim shall be disbursed by either the trust account of the attorney representing the consumer in the dispute or a settlement fund established to receive the proceeds of the dispute from the defendant on behalf of the consumer; (D) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract; and

	(E) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney in the future; and (5) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract. Tenn. Code Ann. § 47-16-104 Non-members of the Tennessee bar are not able to access informal ethics opinions from the Tennessee Supreme Court. There did not appear to any formal opinions from the Tennessee Supreme Court on the topic; however, in *Shoughrue v. St. Mary's Medical Center, Inc.*, 152, S.W.3d 577, 587 (Tenn. Ct. App. 2004) the Court found an attorney acted improperly by entering into a litigation funding agreement without the fully informed consent of this client. *Id.*
Texas (TX)	Permitted but regulated. The Texas Court of Appeals explicitly upheld the use of litigation funding agreements in *Anglo-Dutch Petroleum Int'l Inc. v. Haskell*, 193 S.W.3d 87, 100-04 (Tex. App. 2006), There, the Court found that an alternative litigation funding agreement was enforceable as long as the rules of professional responsibility are observed by the lawyers. *Id.* at 104. A lawyer can even assist a client in finding third party funding. *Id.* The Texas Court noted, "that, "[litigation funding agreements] did not violate public policy because they did not vest control over the litigation in uninterested third parties." *Anglo-Dutch Petroleum Intern., Inc v. Smith*, 243 S.W.3d 776, 782 (Tex. App. 2007). However, the Texas Committee on Professional Ethics regulates how a third-party funder can receive his investment. *Compare* Tex. Comm. On Professional Ethics, Op. 5558 (2005) (finding a loan agreement that allows a finance company to recover a portion of an attorney's contingency fee constitutes fee-splitting and violates Rule 5.05(a)) *with* Tex. Comm. On Professional Ethics, Op. 481 (1994) (finding a client paying for legal services by borrowing money from a third-party is permissible). Thus, in Texas, litigation funding agreements cannot allow the investor to recover funding from contingency fees. Tex. Comm. On Professional Ethics, Op. 576 (2006). Additionally, a lawyer may not share a client's confidential information with third parties "unless the client provides effective consent after consultation or another exception to the lawyer's duty of confidentiality applies." Tex. Comm. On Professional Ethics, Op. 695 (2022).

	Currently, bills that would require mandatory disclosure of third-party litigation are pending in the Texas legislature but are stuck pending committee review. *See* H.B. 2096 and S.B. 1567.
Utah (UT)	Permitted with mandatory disclosures and governed by statute The Supreme Court of Utah ruled that there is a strong presumption that the voluntary assignment of a legal malpractice claim does not violate public policy. *Eagle Mountain City v. Parsons Kinghorn & Harris, P.C.*, 408 P.3d 322 (Utah 2017) (holding legal malpractice claims are assignable) (*sic.*). The Utah court reasoned that Fed. R. Civ. Pro. 11 adequately deters frivolous litigation; thus, fears that third-party funded litigation would result in bad-faith filings are speculative. *Id.* at 328-329. The Utah Supreme Court doubled down in 2021 and emphasized, "there are strong public policy interest[s] in allowing access to our courts." *Matter of Estate of Osguthorpe*, 491 P.3d 894, 923 (Utah 2021). Utah did pass a statute, effective as of May 5, 2020, requiring mandatory disclosures. *See* Utah Code Ann. §13-57. Section 201 requires business entities who fund litigation to register with the state. *Id.* §13-57-201. Further, funders may not solicit attorneys, health care provides, or employees. *Id.* §13-57-202. The agreements must be in writing, contain a right of recission and contain proper disclosures as well as meet other requirements specified by statute. *Id.* §13-57-301–302.
Vermont (VT)	Permitted and governed by statute Vermont has passed a statute that governs consumer litigation funding companies. *See* Vermont Code Ann. §§ 08-74-2251-2260. The companies must register with the Commissioner and submit a registration fee. *Id.* § 2252. Disclosures are required to appear on the front page of the contract. The required disclosures include: (a) A contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the contract without having to obtain the assistance of a professional. (b) Each contract shall include consumer disclosures on the front page. The consumer disclosures shall be in a form prescribed by the Commissioner and shall include: (1) a description of possible alternatives to a litigation funding contract, including secured or unsecured personal loans, and life insurance policies; (2) notification that some or all of the funded amount may be taxable; (3) a description of the consumer's right of rescission; (4) the total funded amount provided to the consumer under the contract;

	(5) an itemization of charges; (6) the annual percentage rate of return; (7) the total amount due from the consumer, including charges, if repayment is made any time after the funding contract is executed; (8) a statement that there are no fees or charges to be paid by the consumer other than what is disclosed on the disclosure form; (9) in the event the consumer seeks more than one litigation funding contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed; (10) a statement that the company has no right to make any decisions regarding the conduct of the legal claim or any settlement or resolution thereof and that the right to make such decisions remains solely with the consumer and his or her attorney; (11) a statement that, if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the company and that, if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the company, then the consumer shall owe the company no money in excess of the net proceeds; and (12) any other statements or disclosures deemed necessary or appropriate by the Commissioner. (c) Each contract shall include the following provisions: (1) Definitions of the terms "consumer," "consumer litigation funding," and "consumer litigation funding company." (2) A right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within five business days following the execution of the contract or the consumer's receipt of any portion of the funded amount, the consumer gives notice of the rescission to the company and returns any funds provided to the consumer by the company. (3) A provision specifying that, in the event of litigation involving the contract and at the election of the consumer, venue shall lie in the Vermont Superior Court for the county where the consumer resides. (4) An acknowledgment that the consumer is represented by an attorney in the legal claim and has had an opportunity to discuss the contract with his or her attorney. (Added 2015, No. 128 (Adj. Sess.), § A.1.) *Id.* § 2253. The Vermont statute specifically defines the impact of litigation funding on attorney-client privilege. *Id.* § 2255. The statute states, "A communication between a consumer's attorney and the company shall not be discoverable or limit, waive, or abrogate the scope or nature of any . . . common-law privilege." *Id.*
Virginia (VA)	No guidance but appears to be permitted.

Washington (WA)	Permitted with regulations via advisory ethics opinions Washington does not appear to have a statute that governs litigation funding agreements but the Washington Court of Appeals endorsed the use of such agreements. See *Giambattista v. Nat'l Bank of Commerce of Seattle*, 586 P.2d 1180 (Wash. Ct. App. 1978) (finding that litigation agreements were not champertous). Washington State's Ethics Opinions also provide guidance. The Ethics Committee, via advisory opinions have held that confidential information, including client-identifying information, may not be provided to third parties funding the litigation unless the client has given informed consent. Wash. Committee on Professional Ethics Op. 183 (1990); *see also* Wash. Committee on Professional Ethics Op. 1319 (1989). In 2005, the Ethics Committee found, "[a] lawyer cannot disclose client secrets or confidence to a third party which provides funding." Wash. Committee on Professional Ethics Op. 2081 (2005).
West Virginia (WV)	Permitted and governed by statute West Virginia permits litigation funding agreements as long as the agreements comply with applicable statute. *See* West Virginia Code Ann. § 46A-6N-3. The statute requires a litigation financier to: (1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer; (2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer's receipt of the funds, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money already provided to the consumer by the litigation financier; (3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute; (4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following: (A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;

	(B) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract; (C) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney receive or pay such a fee in the future; and (D) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract. Imposes cap on the interest rates consumer litigation funders may charge. West Virginia Code Ann. § 46A-6N-3.
Wisconsin (WI)	Permitted and governed by statute Permitted but governed by statute. The Wisconsin statute was the first statute passed that required litigation funding agreements to contain mandatory disclosures. *See* Wisconsin Act § 235. The Act requires all agreements to be disclosed to the courts even if no discovery request has been made. *Id.*
Wyoming (WY)	No guidance

ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

APPENDIX E

Ex Parte Disclosure Orders

NOTICE OF LITIGATION FUNDING

Litigants must disclose any interest that might give rise to an actual conflict or the appearance of a conflict for any party, counsel, or the Court. Therefore, in addition to the disclosures under Local Rule 3.13 and Section 2 of the Court's Civil Standing Order, each party must submit a complete list of any persons, associations, firms, partnerships, corporations (including parent corporations, direct or indirect affiliates, joint venture partners, or others), guarantors, insurers, or other entities (other than counsel of record) which:

(a) have a financial interest (direct, indirect, or as a cross-holder) in the subject matter in controversy or in a party to the proceeding or in the stock of a party (or affiliate) to the proceeding;

(b) fund (directly or indirectly) the prosecution of any claim, defense, or counterclaims; or

(c) have any other interest that could be substantially affected by the outcome of the proceeding, including but not limited to actual or functional decision-making authority with respect to litigation strategy, settlement, or other decisions normally reserved to parties or counsel.

Prior to the Case Management Conference each party shall submit this disclosure *ex parte* by email to Henderson_chambers@ohnd.uscourts.gov.

Each party and counsel must sign this disclosure. If this information changes during the course of the litigation, counsel and parties are under a continuing obligation to update this disclosure.

_____ _____

Party Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PLAINTIFF,	)	Case No.
	)	
Plaintiff(s),	)	Judge J. Philip Calabrese
	)	
v.	)	Magistrate Judge _____
	)	
DEFENDANT,	)	
	)	
Defendant(s).	)	
	)	

RULE 26(F) REPORT OF THE PARTIES
(updated January 2, 2024)

When preparing this Report, please note that the Court will refer back to this document throughout the pretrial management of the case.

1. Attendance at 26(f) Conference.

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule 16.3, a conference was held on _____, 2024, in person/over the phone/by Zoom, and attended by:

_____, counsel for Plaintiff(s) _____;

_____, counsel for Plaintiff(s) _____;

_____, counsel for Plaintiff(s) _____;

and

_____, counsel for Defendant(s) _____;

_____, counsel for Defendant(s) _____;

_____, counsel for Defendant(s) _____.

2. Initial Disclosures.

The Court ***strongly*** prefers that the parties exchange *robust* initial disclosures at least 7 days *before* the Rule 26(f) conference to facilitate discussions.

SCHEDULING THE CASE MANAGEMENT CONFERENCE:

At the request of the parties, the Court will reschedule the case management conference to allow the parties to exchange initial disclosures before the Rule 26(f) conference.

IMPORTANT NOTICE FOR PARTIES:

Before counsel commit to dates and a discovery plan, the Court expects that they have consulted with their respective clients and that clients have provided counsel with sufficient and accurate information to conduct a meaningful conference with opposing counsel and the Court, including on matters regarding discovery of electronically stored information and the key issues on which the parties require early and limited discovery or rulings to facilitate prompt resolution, if one is possible.

Once the Court sets dates at the case management conference or at any subsequent conference, the Court will *not* change those deadlines without a showing of good cause. Good cause does not include a failure to conduct a reasonable investigation or to have an adequate conference about the issues before the deadline was set.

The parties:

___ have exchanged the initial disclosures required by Rule 26(a)(1);

___ will exchange such disclosures by _____;

If selecting this option, please explain why counsel decided to hold the Rule 26(f) conference without the benefit of initial disclosures:

___ have not been required to make initial disclosures.

If selecting this option, please identify the provision of Rule 26 authorizing an exemption:

3. Track.

The parties recommend the following track for this matter:

___ Standard ___ Expedited ___ Complex

___ Administrative ___ Mass Tort

4. Consent to Magistrate Judge.

The parties ___ **DO** / ___ **DO NOT** consent to the jurisdiction of a United States Magistrate Judge under 28 U.S.C. § 636(c).

Short of the case as a whole, are there any specific issues or limited proceedings, such as motions for preliminary injunction, hearings, or discovery geared toward a dispositive issue, for which partial consent to the jurisdiction of a United States Magistrate Judge under 28 U.S.C. § 636(c) might be appropriate?

If so, please identify those issues or proceedings to which the parties are willing to consent:

5. Preservation.

Did the parties discuss issues relating to the preservation of documents?

___ Yes ___ No

Did the parties discuss issues relating to the preservation of electronically stored information, including emails, social media, or other information?

___ Yes ___ No

6. Electronically Stored Information.

Have counsel conferred with their respective clients about the types, sources, and volume of potentially discoverable electronically stored information?

Counsel for Plaintiff: _____

Counsel for Defendant: _____

The parties:

___ agree that there will be no discovery of electronically stored information;

___ have agreed to a method for conducting discovery of electronically stored information, which they will submit to the Court for entry by _____; or

___ have agreed to follow the default standard for discovery of electronically stored information found in Appendix K to the Local Rules.

If using Appendix K to the Local Rules, by initialing below counsel certify that they exchanged the information required by Paragraphs 3(a) and 3(d) of Appendix K and designated an e-discovery coordinator pursuant to Paragraph 4.

Counsel for Plaintiff _____

Counsel for Defendant _____

Please identify the designated e-discovery coordinator:

Plaintiff: _____

Defendant: _____

7. Claims of Privilege or Protection.

The parties have discussed issues regarding information protected by attorney-client privilege and the work-product doctrine:

___ Yes ___ No

The parties have agreed to a procedure, or any other agreement, to assert these claims under Rule 502 of the Federal Rules of Evidence:

___ Yes ___ No

The parties have agreed on a procedure to assert claims of privilege or protection *after* production:

___ Yes ___ No

The parties have agreed on the timing, contents, and format for privilege logs.

___ Yes ___ No

The parties agree that the Court should enter an order pursuant to Rule 502(d) that attorney-client privilege or work-product protection is not waived by disclosure connected to this matter pending before the Court, and further that any such disclosure does not operate as a waiver in any other federal or State proceeding:

___ Yes ___ No

If the parties do not believe the Court should enter an order pursuant to Rule 502(d), please explain:

8. Protective Order.

The parties have discussed whether the Court should enter a protective order to facilitate discovery:

___ Yes ___ No

The parties believe the Court should enter a protective order in this case:

___ Yes

___ No

___ Not at this time, but possibly later

___ The parties disagree

If yes, the parties agree to follow the form protective order found in Appendix L to the Local Rules:

___ Yes ___ No

If the parties believe that the case warrants use of the two-tier version of the Appendix L protective order, please say so here and briefly indicate why:

If not, please explain what variations to the form protective order found in Appendix L are needed:

9. Recommended Plan for Case Management and Discovery.

IMPORTANT NOTICE FOR PARTIES:

At the request of the parties, the Court will reschedule the case management conference to allow counsel to provide as complete, specific, and meaningful information as possible in this section.

The Court understands that the information provided here will change during the course of litigation, but expects parties to exercise reasonable diligence and act in good faith to provide this information at the outset of the case.

What are the *specific* disputes of fact or law at the heart of the case that will drive dispositive motions, trial on the merits, or another resolution?

Bearing in mind the proportionality requirement of Rule 26(b)(1), please provide the following information:

What discovery, if any, is necessary to frame the disputes of law or fact identified above or other key issues? If that discovery includes depositions, please identify the deponent by name (if known), with a brief description of the witness's role in the case and what information the party taking the deposition seeks to discover.

Again, mindful of the proportionality requirement of Rule 26(b)(1), please provide the following information:

Not including discovery regarding authenticity, ministerial matters, or the like:

How many requests for production of documents do counsel anticipate serving?

Plaintiff: _____

Defendant: _____

How many requests for admission do counsel anticipate serving?

Plaintiff: _____

Defendant: _____

What motions, if any, do the parties anticipate filing?

Do the parties anticipate serving any third-party subpoenas? If so, please identify the recipients and information sought:

Mindful of the proportionality requirement of Rule 26(b)(1), please provide the following information:

Please identify the subjects, if any, on which the parties anticipate expert testimony:

Please describe, in detail, the additional subjects, if any, on which discovery is likely to be sought, as well as the nature and extent of that anticipated discovery:

What changes, if any, should be made to the limitations on discovery under the Rules? Should discovery proceed in stages or phases or be sequenced in any particular fashion?

What other limitations on discovery, if any, do the parties believe should be imposed?

What other issues do the parties anticipate arising in discovery or in the life of the case?

10. Alternative Dispute Resolution.

The parties agree that this matter:

___ is *presently suitable* for alternative dispute resolution ("ADR") and recommend the following method:

___ Early Neutral Evaluation ___ Mediation

___ Arbitration ___ Summary Jury Trial

___ Summary Bench Trial

___ is *not presently suitable* for ADR, but may be after some discovery.

If the parties believe this matter is not presently suitable for ADR but might be later, please identify with particularity what discovery would be necessary before ADR might be appropriate:

___ is *not suitable* for ADR at any time.

If the parties believe this matter is not and will not be suitable for ADR at any time, please explain:

11. Proposed Dates.

IMPORTANT NOTICE:

If the Court enters a Case Management Order with dates the parties propose, those deadlines will not be adjusted except on a showing of good cause made sufficiently in advance of the deadline.

Subject to that admonition, the parties propose the following dates for this matter:

Cut-off Date to Amend the Pleadings: _____

Cut-off Date to Add Parties: _____

Deadline for Motions Directed at the Pleadings: _____

Fact Discovery Cut-Off: _____

Initial Expert Report(s) Due: _____

Rebuttal Expert Report(s) Due: _____

Expert Discovery Cut-Off: _____

Dispositive Motion Deadline: _____

Status Conference: _____

The next status conference should be held: by phone/using Zoom/in person

12. Other Matters.

If there are other matters the parties would like to bring to the Court's attention, please do so here:

Signatures, Representations, and Commitments:

The Court requires counsel and parties to sign this Report, and they may do so in counterparts. Parties must physically (not electronically) sign; counsel may sign electronically.

In the case of an entity, the person signing this Report must identify his or her title and must have authority to bind the entity to the positions represented in this Report.

By signing this report, the parties certify that they have provided their counsel with sufficient and accurate information to conduct a meaningful conference after exercising reasonable diligence. Further, the parties certify that they have reviewed the information provided in Section 9 above.

By signing this report, the parties and their counsel certify that they have conferred in good faith, the answers and information provided in this Report are complete and accurate to the best of their knowledge after reasonable inquiry, and no position taken or stated in this Report is asserted for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

Plaintiff	Defendant
Attorney for Plaintiff	Attorney for Defendant

13. Litigation Funding

Litigants must disclose any interest that might give rise to an actual conflict or the appearance of a conflict for any party, counsel, or the Court. Therefore, in addition to the disclosures under Local Rule 3.13 and Section 2 of the Court's Civil Standing Order, each party must submit a complete list of any persons, associations, firms, partnerships, corporations (including parent corporations, direct or indirect affiliates, joint venture partners, or others), guarantors, insurers, or other entities (other than counsel of record) which:

(a) have a financial interest (direct, indirect, or as a cross-holder) in the subject matter in controversy or in a party to the proceeding or in the stock of a party (or affiliate) to the proceeding;

(b) fund (directly or indirectly) the prosecution of any claim, defense, or counterclaims; or

(c) have any other interest that could be substantially affected by the outcome of the proceeding, including but not limited to actual or functional decision-making authority with respect to litigation strategy, settlement, or other decisions normally reserved to parties or counsel.

Each party may submit this disclosure *ex parte* by email to calabrese_chambers@ohnd.uscourts.gov.

Each party must physically (not electronically) sign this disclosure; counsel may sign electronically. If this information changes during the course of the litigation, counsel and parties are under a continuing obligation to update this disclosure.

_____ _____

Party Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	
	)	**JUDGE POLSTER**
	)	
	)	**ORDER REGARDING**
	)	**THIRD-PARTY CONTINGENT**
	)	**LITIGATION FINANCING**

It has come to the Court's attention that there may be attorneys who represent parties in cases transferred to this MDL Court ("MDL Cases") who have obtained (or are contemplating) third-party contingent litigation financing in connection with those MDL Cases. By "third-party contingent litigation financing" ("3PCL financing"), the Court refers to any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of an MDL Case, by settlement, judgment, or otherwise.[1]

The Court now **ORDERS** that any attorney in any MDL Case that has obtained 3PCL financing shall:

- share a copy of this Order with any lender or potential lender.
- submit to the Court *ex parte*, for in camera review, the following: (A) a letter identifying and briefly describing the 3PCL financing; and (B) two sworn affirmations – one from counsel and one from the lender – that the 3PCL financing does not: (1) create any conflict of

[1] "Third-party litigation financing" does not include subrogation interests, such as the rights of medical insurers to recover from a successful personal-injury plaintiff.

interest for counsel, (2) undermine counsel's obligation of vigorous advocacy, (3) affect counsel's independent professional judgment, (4) give to the lender any control over litigation strategy or settlement decisions, or (5) affect party control of settlement.

The Court further **ORDERS** that attorneys in MDL Cases have a continuing duty to inform the Court if they obtain new or additional 3PCL financing during the pendency of MDL proceedings, and have a continuing duty to update their disclosures and affirmations if circumstances change during the pendency of the MDL proceedings. The Court will deem unenforceable any 3PCL financing agreements that are not compliant with this Order. Further, any attorney or lender whose affirmations prove to be untrue will be subject to sanction by the Court.

Absent extraordinary circumstances, the Court will not allow discovery into 3PCL financing. *See Lambeth Magnetic Structures, LLC v. Seagate Tech. (US) Holdings, Inc*., 2018 WL 466045 at *5 (W.D. Pa. Jan. 18, 2018) (holding the work-product doctrine shields discovery of 3PCL financing).

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: May 7, 2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: ZANTAC (RANITIDINE) PRODUCTS LIABILITY LITIGATION

MDL NO. 2924
20-MD-2924

JUDGE ROBIN L. ROSENBERG
MAGISTRATE JUDGE BRUCE E. REINHART

_____/

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #16
Order Rescheduling Initial Conference, Establishing April Deliverables Team, and Scheduling Interviews for Leadership Applicants

The Court, like the parties, continues to monitor the constantly evolving situation with COVID-19. The Court extends its wishes to everyone for good health and safety. Recognizing but notwithstanding the limitations imposed by the current pandemic, there is much highly productive work already that has been accomplished and that must continue in this litigation. The Court has reviewed the joint letter of the parties, dated March 18, 2020, with respect to the next steps that they believe are necessary and possible to accomplish over the coming weeks until the Court convenes its rescheduled Initial Conference and selects leadership. In light of the latest guidance received from health officials, coupled with the large number of interested parties and non-parties in this litigation, the Court has determined that it will not schedule an in-person proceeding to conduct its Initial Conference or its interviews of the leadership applicants. However, recognizing the need for permanent leadership in this case as well as the importance of conducting an initial conference, the Court issues the following Order to provide clarity to all parties and counsel.

Initial Conference & Agenda

1. The Initial Conference originally was scheduled for March 20, 2020 by Pretrial Order (PTO) #1 but was cancelled due to COVID-19 by PTO #9. The Initial Conference is hereby rescheduled to 9am ET on May 12, 2020. This conference will be held by videoconference; no persons, including the parties and counsel, will be permitted to attend in person. There will be a court reporter in attendance at the conference and a transcript will be made of the conference. The Court is continuing to work through the best manner in which to facilitate video and telephonic attendance and will provide connection information in a subsequent notification.
2. As this case proceeds into its next phase, it remains increasingly important that counsel continue to work cooperatively and in good faith to resolve issues through virtual meetings and conferrals. The Court envisions that this immediate next phase of the litigation can and should be used most importantly to begin that process of conferring to identify this common ground and work through areas of disagreement. Secondarily, this time will permit counsel to begin drafting pleadings and discovery requests that will, after permanent leadership is appointed, be used as strong work products allowing the parties to move forward most efficiently in filing their complaints and serving discovery. Paramount to these discussions materially advancing the litigation process is a willingness on the part of the plaintiffs to, as clearly as possible and based on the available information received and known this far, articulate their claims and/or theories of liability against the different defendants. Similarly, the defendants should inform plaintiffs of all known and anticipated defenses. The Court takes this opportunity to emphasize that it operates on the presumption that disputes will be raised with the Court

only after counsel have exhausted their own best efforts to resolve and/or narrow the issues for the Court.

3. Agenda. The Court directs the interim defense leadership and the April Deliverables Team, appointed in this Order, (collectively "Appointed Counsel"), to work together with each other and the Special Master to prepare a recommended joint agenda for this conference. The joint agenda should be filed by Robert Gilbert, pursuant to PTO #8, as a "Joint Proposed Agenda for Initial Conference" by 5pm ET on April 30, 2020,[1] and shall be emailed in WORD format to zantac_mdl@flsd.uscourts.gov. The Court encourages the parties to consider presenting jointly on foundational topics to introduce the Court to the key concepts in this case, such as case management, attorney presentations of science, or other areas in which common ground can be reached. The Court also encourages the parties to identify key areas of disagreement; as to these, the parties should be prepared to explain what predicate areas of agreement exist, before explaining the scope of disagreement.

4. Preliminary Orders. The Court appreciates the work of the parties in the submission of a number of jointly-stipulated proposed orders as to procedural matters. Given the pendency of leadership selection, the Court anticipates that most remaining orders will be filed after leadership is selected. However, to the extent that particular orders would be helpful to the efficient filing of cases or to unfiled claimants' decisions to register their cases in the Census Registry, or would otherwise be helpful to have on file prior to the

[1] Only the agenda items and approximate duration of each presentation is required by this deadline; no designation of speakers is required in this submission. The parties shall provide to the court an updated list, including designated speakers, at least 24 hours in advance of the Initial Conference.

Initial Conference, this Court authorizes Appointed Counsel to continue work on any proposed orders and to email in WORD format such proposed orders or proposed stipulations on an as-needed, rolling basis, to zantac_mdl@flsd.uscourts.gov. The Court will continue to determine whether, in its judgment, any such proposed orders should be entered at this time, or should be held pending its leadership appointment order.

5. Motion Practice/Case Management Issues. Appointed Counsel are directed to confer on a joint presentation regarding the motions the parties anticipate filing this calendar year and the proposed timing of those motions, together with any discovery that may be necessary prior to the filing of those motions. This presentation may include both areas of agreement and areas of disagreement between the parties. As the presentation will occur after permanent leadership is appointed, the Court also directs that the presentation begin with a summary of the theories of liability plaintiffs' leadership will advance and the defenses the defendants (or categories of defendants) currently contemplate advancing.

6. Discovery. Appointed Counsel shall meet and confer (via videoconference) regarding the timing and scope of discovery. Consistent with the Court's direction that the Initial Conference shall be directed to educating the Court as to areas of common agreement and areas in which disagreement exits, the Court instructs the parties to begin earnest discussions about the scope and timing of discovery to help elucidate these areas of agreement and disagreement.

    a. The Court expects Appointed Counsel to meet and confer concerning which categories of relevant documents defendants could reasonably produce in the near term, taking into account the limitations currently in effect due to COVID-19

restrictions, and a timeline for production of documents that it is agreed should be produced but which are not readily obtainable.

b. Such a meet and confer process should occur before the parties serve any of the written discovery requests, so that such requests might be informed and targeted by the parties' discussions.

c. The Special Master is directed to attend these discussions to assist the Court, although she will have no part in ruling on any discovery disputes, which remain the sole responsibility of the Court.

d. The Court encourages Appointed Counsel, as well as any additional parties that may participate in these discussions, to undertake these discussions with a spirit of cooperation and reasonability.

e. At the May 12, 2020 Initial Conference, a summary of the parties' vision for discovery shall be presented to help inform the broader case management discussions occurring at the Conference. The Court also orders that the parties shall appear by videoconference on May 13, 2020, for a preliminary discovery conference. This conference is intended to permit the Court (including the magistrate judge) to listen to more fulsome presentations from counsel on their visions for discovery, including more informal questions from the Court about the parties' expectations for the discovery process. This will also be the time at which the Court will take up any specific discovery matters, if warranted.

Defense Leadership

7. This Court previously noted that in light of the anticipated number of defendants in this litigation, it was necessary to appoint interim leadership for defendants, in addition to the plaintiffs. In PTO #10, this Court appointed a team of four attorneys to serve as interim

defense leadership. In the same Order, the Court appointed two attorneys to serve as interim liaison counsel for the generic manufacturers.

8. The Court now finds it prudent to appoint interim liaison counsel for the retailer defendants. The Court desires that the retailer defendants will be able to confer and seek consensus on the selection of an interim liaison counsel. If the retailer defendants reach consensus on or before April 9, 2020, a "Notice of Agreed Upon Interim Retailer Liaison Counsel" including the identity and contact information for the counsel shall be filed. If no consensus is reached, each candidate interested in applying for the position shall file a two-page application letter by April 9, 2020, in the form of "Notice of Filing Application Letter for Interim Retailer Liaison Counsel".
9. The interim defense leadership appointed in PTO #10, together with liaison counsel, are authorized to continue all work they deem necessary to prepare for the Initial Conference, as well as any work they deem beneficial to the litigation. They are further directed to confer with the interim generic and forthcoming retailer liaison counsel, including with respect to whether there are certain discovery issues specific to generics and/or retailers as to which the liaison counsel should work directly with plaintiffs' Appointed Counsel and the Special Master to create a structure that facilitates efficient and productive discussions prior to the Initial Conference.

Additional Appointments Prior to Leadership Interviews

10. The Court appreciates the work performed by the Initial Census and Practices and Procedures Teams (collectively, the "Teams"), appointed in PTO #4.
11. The Court, having entered PTO #15 establishing the census, understands that the focus of the census work has now shifted from drafting to implementation. Similarly, the Court

understands that many of the joint orders that were the focus of the Practices and Procedures Team have now been issued by this Court (in PTO #11, #12, and #13).

12. Given the breadth of the additional work to be completed before the Initial Conference, the Court considers it helpful to the litigation to make additional appointments at this time to facilitate the fulfillment of the April deliverables. The additional appointments will comprise the April Deliverables Team and will work in conjunction with the previously appointed Teams to prepare for the Initial Conference and to undertake the work set forth in this Order. These counsel shall work together as a singular team, hereinafter referred to as the "April Deliverables Team".

13. Having reviewed all of the applications submitted for the Plaintiffs' Steering Committee, the Court appoints to the April Deliverables Team the following five attorneys: Mark Dearman, Marlene Goldenberg, Fred Longer, Jennifer Moore, and Conlee Whitely.

14. While the Court leaves to the April Deliverables Team the ability to self-organize to make their work most productive and to utilize the strengths of each of its team members, the Court also finds it prudent to select certain counsel to be responsible for the ultimate effectuation of particular tasks.

    a. Robert Gilbert and Mike McGlamry shall be responsible for all filings or submissions on behalf of the plaintiffs (including any additional orders that the parties may deem appropriate to prepare or submit) and coordination between any sub-teams the April Deliverables Team may create.

    b. Fred Longer and Jennifer Moore shall be responsible for preparation of the master complaint for individual (non-class) cases and the short form complaint.

    c. Robert Gilbert shall be responsible for the preparation of materials related to class actions.

d. Mike McGlamry and Mikal Watts shall be responsible for directing the work related to discovery.

e. Tracy Finken and Dan Nigh shall be responsible for directing work relating to the science underlying the MDL claims.

f. Adam Pulaski shall remain responsible for implementation issues related to the census, together with Mike McGlamry, Dan Nigh, and Tracy Finken.

These allocations of responsibility are not intended to preclude these team members from working on other tasks within the MDL, nor other team members from assisting with these; rather, they are intended simply to designate individuals responsible for directing and efficiently managing these areas to ensure a consistent strategy and efficient allocation of work. Indeed, the Court recognizes that the work on each of these tasks is part of an interrelated whole. Therefore, the Court expects those working on each of these tasks to discuss and coordinate their work with the others as part of the group's overall efforts.

15. The Court authorizes and directs the April Deliverables Team to perform that work it deems necessary or helpful in preparing for the Initial Conference, and the other items requested by this Order. In addition, the April Deliverables Team is specifically directed to draft and email a proposed common benefit order governing plaintiffs' common benefit time and expense no later than April 16, 2020, in WORD format to zantac_mdl@flsd.uscourts.gov.

Plaintiffs' Leadership Interviews

16. The Court seeks to provide additional transparency to its thought process, given the impact of the pandemic on the start of this MDL. Specifically, the Court takes this opportunity to clearly state that it has made no permanent leadership decisions. COVID-

19 has delayed the Court's ability to interview the applicants, but the Court has in this time extensively reviewed the applications and consulted with other judges listed as familiar with the applicants' work. The Court has a very high regard for the talent, experience, and diversity of the applicant pool, and is affirmatively looking forward to the opportunity to interview the candidates. The Court has many candidates identified for potential leadership positions, who have not yet served in an appointed position. Indeed, the appointments to-date have been for particular roles, not reflective of the full set of skills and talents this MDL will ultimately need to bring to bear. The Court assures counsel that it is taking this decision with all due deliberation and has not made any final leadership determinations at this point, but instead looks forward to the results of the initial census and the interview process to help inform its thinking.

17. Leadership presentations/interviews will be conducted in four sessions, on May 6-7, 2020. In light of the necessity of travel restrictions and social distancing protocols at this time and consistent with the way the Court is handling the scheduling of the Initial Conference, as set forth in paragraph 1, the Court will not permit any person to appear in person for the leadership presentations. These presentations will be held by videoconference; no persons, including the parties and counsel, will be permitted to attend in person. There will be a court reporter in attendance at the interview presentations and a transcript will be made of the presentations. The Court is continuing to work through the best manner in which to facilitate video and telephonic attendance and will provide connection information in a subsequent notification. It is the Court's desire that technology will permit all interested parties to view the proceedings.

18. In order to facilitate the videoconferencing, the leadership applicants have been assigned to one of four sessions. See Appendix A. The Court has assigned these times based upon

review of the applications. If an applicant has a conflict with the scheduled time provided, this may be communicated to the Special Master by email along with the reason for the conflict, and the Court will try to accommodate any unavoidable conflicts.

19. The Court seeks to maximize transparency and permit all interested persons to view these proceedings. However, there are limits to the number of individuals who can connect to the Court's secured videoconferencing system, and it is possible that interest will exceed its capacity. Connections will be allocated first to the leadership applicants and defense counsel; if additional capacity exists, the Court may be able to provide credentials to additional interested parties.

    a. The defense liaison counsel is directed to contact defendants and determine the number of connections needed for in-house and outside counsel who are interested in viewing the interviews, and also maintain a list of the email addresses for these individuals to facilitate provision of log-in credentials to the interviews.

    b. Any plaintiff or plaintiffs' counsel requesting credentials should contact the plaintiffs' liaison counsel. Applicants being interviewed need not request credentials, but any other attorney from the same law firm that desires to join from a different computer must request separate credentials in order to ensure an accurate headcount of expected connections.

    c. Any individual requesting credentials to view the interviews who is not affiliated with any party in this MDL may email zantac_mdl@flsd.uscourts.gov on or before April 23, 2020.

These requests will be reviewed to ascertain technology capabilities to accommodate the number of requested attendees. Recognizing that some interested individuals may not be

able to join the videoconference, there will be a court reporter in attendance at the proceeding and a transcript will be made.

Plaintiffs' Leadership Disclosures

20. The Court takes very seriously the obligation of selecting leadership counsel and the impact that has upon the work of retained counsel. The unique nature of an MDL, and particularly one of this potential size, warrants transparency, the highest regard for professional conduct, and confidence in the leadership and in the manner in which the case is handled by all parties. Because leadership often will be called upon to speak on behalf of all other counsel and their respective clients, they must comport their actions at all times to fulfill their leadership duties in a manner that is dignified and trusted.

21. To that end, the Court directs each applicant for plaintiffs' leadership/PSC, to provide the Court with written responses to the following questions:

    a. Do you represent any present parties or claimants in this litigation who you have represented in any other capacity or in any other court (either currently or within the past 3 years)? If so, please describe.

    b. Do you have any financial interest or financial relationship, including but not limited to as an investor, Officer, Director, employee, or contractor, in or with any party or client/claimant involved in this MDL (other than a written retainer or engagement agreement for a client identified as a client of your firm in the initial census)? If so, please describe.

    c. Do you have any financial interest (direct or indirect) in any Zantac/ranitidine claims or lawsuits filed or registered by any other counsel in this MDL, other than the co-counsel relationships disclosed in the initial census? If so, please describe.

d. Do you have any personal relationship (including but not limited to familial, romantic, or financial/business) with any party, client, claimant, counsel, or vendor involved in this MDL? If so, please describe.

e. Do you or your firm have any financing that is contingent upon this litigation? If yes, the following questions shall be answered:

   i. Does the litigation funder have any control (direct or indirect, actual or apparent or implied) over the decision to file or the content of any motions or briefs, or any input into the decision to accept a settlement offer?

   ii. Does the financing (1) create any conflict of interest for counsel, (2) undermine counsel's obligation of vigorous advocacy, (3) affect counsel's independent judgment, (4) give to the lender any control over litigation strategy or settlement decisions (as to either the common benefit work done by counsel or work for individual retained clients), or (5) affect party control of settlement?

   iii. Briefly explain the nature of the financing, the amount of the financing, and submit a copy of the documentation to the Special Master.

f. Finally, the leadership applicant shall disclose any other relationship or fact that he or she believes, if known, would be material to the Court with respect to either an actual conflict of interest or the appearance of a conflict of interest that the applicant has not already disclosed to the Court.

22. These disclosure statements shall be provided to zanac_mdl@flsd.uscourts.gov no later than 4pm on April 16, 2020, in the form of an affidavit under oath from counsel; however, notarization is not required in light of the current COVID-19 restrictions. The disclosure statements will be reviewed by the Court in conjunction with the Special

Master. The Special Master will be directed to investigate as she deems necessary to satisfy her as to whether any potential conflict could be created. With respect to litigation funding, this shall include but not be limited to obtaining an explanation of the nature of the financing, the amount of the financing, and a review of the contract/documentation.

23. The Court requires that these disclosures be immediately updated if any change to this disclosure statement arises, by any appointed leadership counsel and any attorneys who seek to be eligible for common benefit fund compensation. Any attorney appointed to leadership has an affirmative duty to disclose any subsequent financing taken and amount within 24 hours to the Special Master. The Court expressly reserves the right to revisit any individual's leadership position in light of these disclosures.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 3rd day of April, 2020.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Appendix A - Leadership Schedule

Session 1 (May 6, 9am-noon)

1. Albert, Lee
2. Berman, Steve
3. Dearman, Mark
4. Fegan, Elizabeth
5. Gilbert, Robert
6. Honik, Ruben
7. Hyman, Kelly
8. Krause, Adam
9. Lear, Brad
10. Longer, Fred
11. Martinez-Cir, Ricardo
12. Mestre, Jorge
13. Westcot, Sarah
14. Whitely, Conlee
15. Wolfson, Tina

Session 2 (May 6, 1pm-5pm)

1. Bogdan, Rosemarie
2. Finken, Tracy
3. Goldenberg, Marlene
4. Kraft, Kristine
5. Larmond-Harvey, Nicola
6. Luhana, Roopal
7. Muhlstock, Melanie
8. Nigh, Daniel
9. Osborne, Joe
10. Parekh, Behram
11. Rasmussen, Kristian
12. Restaino, John
13. Richards, Jason
14. Rodal, Yechezkel
15. Rotman, Steve
16. Scott, Carmen
17. Williamson, George
18. Wisner, Brent
19. Woodson, Frank

Session 3 (May 7, 9am-noon)

1. Babin, Steven
2. Boldt, Paige
3. Copeland, Erin
4. Crump, Martin
5. Hilliard, Robert
6. Jung, Je Yon
7. Keller, Ashley
8. Leopold, Ted
9. Love, Scott
10. Maher, Steve
11. McGlamry, Michael
12. Moore, Jennifer
13. Nicholas, Steve
14. Pulaski, Adam
15. Roark, Emily
16. Schlessinger, Scott
17. Tracey, Sean
18. Watts, Mikal
19. Yuhl, Christopher

Session 4 (May 7, 1pm-4pm)

1. Assaad, Gabriel
2. Bachus, J. Kyle
3. Barfield, William
4. Dellacio, Doug
5. Elliott, J. Christopher
6. Ferraro, James
7. Fraser, Scott
8. Miller, Lauren
9. Murphy, John Martin
10. Parafinczuk, Justin
11. Philip, Meagan
12. Schanker, Darin
13. Susen, Marcus
14. Worley, Donald