SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

In the Matter of the Arbitration Between	:	Index No.: 655141/2025
BNP DEVELOPMENT, LLC,	:	
Petitioner,	:	
For an Order and Judgment Pursuant to CPLR Article 75	:	
- against -	:	
JDS PRINCIPAL 9DKB LLC and JDS PRINCIPAL 9DKB PARENT LLC,	:	
Respondents,	:	
JDS PRINCIPAL 9DKB LLC and JDS PRINCIPAL 9DKB PARENT LLC,	:	
Cross-Petitioners,	:	
For an Order and Judgment Pursuant to CPLR Article 75	:	
-against-	:	
BNP DEVELOPMENT, LLC,	:	
Cross-Respondent.	:	

MEMORANDUM OF LAW IN OPPOSITION TO PETITION TO CONFIRM, AND IN SUPPORT OF CROSS-PETITION TO VACATE, ARBITRATION AWARD

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

RELEVANT FACTS 3

ARGUMENT 3

THE AWARD SHOULD BE VACATED OR MODIFIED TO PRECLUDE ANY FURTHER PRODUCTION OF DOCUMENTS. 3

I. The Award Constitutes An Irrational Construction of The Language Of The Ackerman Agreement. 4

II. The Award Explicitly Conflicts With Delaware Law Applicable to Books And Records Actions. 6

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Arbor Place, L.P. v. Encore Opportunity Fund, LLC,
2002 WL 205681 (Del. Ch. Jan. 29, 2002) 4

Bank of New York Mellon v. WMC Mortg., LLC,
2015 WL 4163343 (S.D.N.Y. July 10, 2015) 6

City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc.,
1 A.3d 281 (Del. 2010) 10

Fishman v. Roxanne Management,
24 A.D.3d 365 (1st Dep't 2005) 3

High River Limited P'ship v. Occidental Petroleum Corp.,
2019 WL 6040285 (Del. Ch. Nov. 14, 2019) 10

Highland Select Equity Fund, L.P. v. Motient Corp.,
906 A.2d 156 (Del. Ch. 2006), *aff'd sub nom.* 922 A.2d 415 (Del. 2007)
and 922 A.2d 415 (Del. 2007) 7, 9

In re Bernard L. Madoff Inv. Securities LLC,
2014 WL 1302660 (S.D.N.Y. March 31, 2014) 8

In re Falzone,
15 N.Y.3d 530 (2010) 3

In re Shorenstein Hays-Nederlander Theatres LLC Appeals,
213 A.3d 39 (Del. 2019) 6

Matter of City of Oswego,
21 N.Y.3d 880 (2013) 3

Matter of County of Chemung,
214 A.D.3d 1175 (3rd Dep't 2023) 3

Matter of Fast Care Med. Diagnostics, PLLC/PV,
78 N.Y.S.3d 360 (2nd Dep't 2018) 4

Murfey v. WHC Ventures, LLC,
236 A.3d 337 (Del. 2020) 9

Riker v. Teucrium Trading, LLC,
2020 WL 2393340 (Del. Ch. May 12, 2020) 10

Sanders v. Ohmite Hldgs., LLC,
17 A.3d 1186 (Del. Ch. 2011) 6

Security First Corp. v. U.S. Die Casting and Development Co.,
687 A.2d 563 (Del. 1997) 8

Seinfeld v. Verizon Commc'ns, Inc.,
909 A.2d 117 (Del. 2006) 9

Thompson Street Capital Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC,
340 A.3d 1151 (Del. 2025) 6

Statutes

6 Del. Code § 18-305 ..... 6, 7

CPLR § 7511 3

Respondents/Cross-Petitioners JDS Principal 9DKB Parent LLC ("JDS Parent") and JDS Principal 9DKB LLC ("JDS Principal"; collectively with JDS Parent, "Respondents"), respectfully submit their memorandum of law in opposition to the Petition to Confirm Arbitration Award (the "Petition to Confirm") filed by Petitioner/Cross-Respondent BNP Development LLC ("BNP"), and in support of their Cross-Petition to Vacate Arbitration Award (the "Cross-Petition"), and in support thereof, state as follows:

PRELIMINARY STATEMENT

The Cross-Petition to Vacate should be granted because the Award -- requiring Respondents to produce nearly *every* financial record from numerous non-party affiliates -- resulted from an irrational construction of the relevant contract and expressly contradicted settled Delaware law. As such, the Award exceeded the Arbitrator's authority.[1]

The Award results from an irrational construction of the relevant contract -- the Ackerman Agreement -- because the only reasonable interpretation of of that contract is one that limits the scope of the books and records to which BNP would be entitled with respect to the Subsidiaries. Indeed, Section 9.1 of the Ackerman Agreement provides a detailed and expansive definition of the Ackerman "books and records" to which BNP is entitled, but contains no such expansion of the term "books and records" with respect to the Subsidiaries. As such, the plain and obvious meaning of the provision under well-settled Delaware principles of contract interpretation is that the scope of the Subsidiaries' "books and records" to which BNP is entitled must be narrower than with respect to Ackerman's books and records. Accordingly, requiring Respondents to produce nearly every financial record from all of the non-party Subsidiaries is an

[1] Terms used but not otherwise defined herein shall have the meaning ascribed to them in the Cross-Petition.

entirely irrational interpretation of the Ackerman Agreement, and thereby exceed the Arbitrator's authority.

Moreover, the Award expressly contradicts well-settled Delaware law because Delaware law does not permit a books and records action to be used to obtain the type of expansive access authorized by the Award. Books and records actions are not to be used as fishing expeditions or as a substitute for the type of discovery available when supported by sufficiently pleaded claims. To that end, BNP already has asserted a claim against one of Respondents' affiliates (which it failed to disclose to the Arbitrator and failed to serve until after the Award was entered), and is certain to seek most of the same documents in that lawsuit if it is not dismissed at the pleading stage.

Respondents already have produced approximately 10,000 pages of documents in this action relating to the business and affairs of Respondents and the Subsidiaries. As a result, BNP already has more than sufficient information to evaluate the Project and the circumstances surrounding the Assignment-in-Lieu (about which BNP already is well-aware and has been well-informed). If BNP believes it has more claims that it can assert in good faith (and it clearly does not), then it should assert them.[2] But BNP cannot use a books and records action as a substitute for asserting baseless claims and to harass Respondents, and the Arbitrator exceeded his authority in permitting BNP to do so.

[2] During the Arbitration, BNP inadvertently revealed the extent to which this exercise is -- unfortunately -- an exercise in harassment. When the undersigned counsel informed the Arbitrator and BNP's counsel that Respondents intended to seek vacatur of certain portions of the Award, but would soon be producing all contracts involving the Subsidiaries (one of the major categories of documents sought by BNP in this action), BNP's counsel responded: "They are going to produce the garbage." (Cross-Petition ¶ 37.)

RELEVANT FACTS

Respondents refer to and incorporate herein the factual allegations set forth in their Cross-Petition.

ARGUMENT

THE AWARD SHOULD BE VACATED OR MODIFIED TO PRECLUDE ANY FURTHER PRODUCTION OF DOCUMENTS.

Pursuant to CPLR § 7511, a Court may vacate an arbitration award on the grounds that the rights of a party were prejudiced by corruption, fraud or misconduct in procuring the award, that the arbitrator lacked impartiality, that the arbitrator exceeded his power or failed to make a final or definite award, or that there was a procedural failure that was not waived. CPLR § 7511(b)(1). ("Section 7511"). The New York Court of Appeals has further clarified that "a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *In re Falzone*, 15 N.Y.3d 530, 534 (2010). More specifically, an arbitrator exceeds his authority for the purposes of Section 7511 when he "gives a completely irrational construction to the provisions of the parties' agreement, thereby effectively rewriting it." *Fishman v. Roxanne Management*, 24 A.D.3d 365, 366 (1st Dep't 2005) (vacating arbitration award where arbitrator sought to compel a non-party to reinstatement a wrongfully discharged employee); *see also Matter of County of Chemung*, 214 A.D.3d 1175, 1176 (3rd Dep't 2023) (affirming vacatur of award where arbitrator's interpretation of the governing collective bargaining agreement was "completely irrational").

In addition, a Court may also vacate an arbitration award where it is in "explicit conflict" with other laws. *Matter of City of Oswego*, 21 N.Y.3d 880, 882 (2013) (vacating award where it provided for an award that was no longer available under the law); *Matter of Fast Care Med.*

Diagnostics, PLLC/PV, 78 N.Y.S.3d 360 (2nd Dep't 2018) (affirming order vacating award where the award was irrational and conflicted with established law because the law relied upon by arbitrator to dismiss the arbitration was not applicable).

Here, the Award is irrational and exceeds the Arbitrator's authority because an award requiring Respondents to produce such an excessive amount of financial documents from other non-parties has no basis in the language of the Ackerman Agreement (as incorporated in the JDS Principal Agreement) and explicitly conflicts with Delaware law. Indeed, the Ackerman Agreement plainly limits the scope of the "books and records" to which BNP would be entitled with respect to the Subsidiaries, and Delaware law simply does not permit the type of expansive access authorized by the Award in the absence of sufficiently pleaded claims.

I. The Award Constitutes An Irrational Construction of The Language Of The Ackerman Agreement.

Because BNP is not a member of any of the Subsidiaries from which it seeks documents, the sole basis for its demands -- and the Arbitrator's Award -- is Section 12 of the JDS Principal Agreement. *See* *Arbor Place, L.P. v. Encore Opportunity Fund, LLC*, 2002 WL 205681 at *6 (Del. Ch. Jan. 29, 2002) ("[plaintiff] has no statutory right to inspect the books and records of the [subsidiaries] because they are separate companies from the LLCs"). Section 12 of the JDS Principal Agreement provides BNP with the "same rights and protections" concerning, among other things, the access to books and records provided by Section 9.1 of the Ackerman Agreement; and requires JDS Principal to "use commercially reasonable efforts to ensure that BNP receives the benefits" of, among other things, Section 9.1 of the Ackerman Agreement "as if fully set forth herein (to the extent same are permitted pursuant to the Ackerman [] Agreement)". (Cross-Petition ¶ 15; Ex. C ¶ 67.) Thus, the rights and obligations at issue in the Arbitration are governed entirely by Section 9.1 of the Ackerman Agreement.

But Section 9.1 of the Ackerman Agreement makes a significant distinction between BNP's rights to the books and records of Ackerman and the books and records of the Subsidiaries. (Cross-Petition ¶ 10; Ex. C ¶ 76.) Indeed, as it relates to Ackerman, Section 9.1 of the Ackerman Agreement is extremely detailed. (*Id.*) It requires Ackerman JDS to maintain a "comprehensive" system of "office records, books and accounts" of Ackerman, which were to fully record "each and every financial transaction" of Ackerman (including "bills, receipts and vouchers"), and were to be maintained separately from those records not directly relating to Ackerman. (*Id.*). And it requires Ackerman JDS to provide BNP with full access to all of such documents. (*Id.*)

In contrast to that specific and well-defined right with respect to Ackerman's books and records, Section 9.1 of the Ackerman Agreement is general and vague. (Cross-Petition ¶ 10; Ex. C ¶ 76.) It only requires Ackerman JDS to cause certain defined "Subsidiaries" to grant BNP access to the "books and records of all Subsidiaries and reports concerning the Project." (*Id.*) Unlike the detailed definition for the "records, books and accounts" of Ackerman, Section 9.1 does not in any way define or expand upon the term "books and records" and "reports" of the Subsidiaries. (*Id.*) Given the stark contrast, the reference to each of the Subsidiaries' books and records must be read as more limiting. Obviously, if the parties -- highly sophisticated entities represented by counsel -- had intended to require Ackerman JDS to provide access to "each and every financial transaction" with respect to the Subsidiaries (and they did with respect to Ackerman), they would have said so. But they did not, and the only possible interpretation under Delaware law is that the parties intended the scope of the books and records obligations with respect to the Subsidiaries to be governed by the accepted meaning of "books and records" under Delaware law. *See* *Thompson Street Capital Partners IV, L.P. v. Sonova United States Hearing*

Instruments, LLC, 340 A.3d 1151, 1167 (Del. 2025) ("[c]ontracts will be interpreted to 'give each provision and term effect' and not render any terms 'meaningless or illusory'"); *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019) (We interpret contracts "as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage," and "will not read a contract to render a provision or term meaningless or illusory."); *Bank of New York Mellon v. WMC Mortg., LLC*, 2015 WL 4163343, *5 (S.D.N.Y. July 10, 2015) (rejecting contract interpretation that would require the addition of extra language into the contract provisions in violation of the plain meaning rule).

Thus, the only reading that gives each term of Section 9.1 of the Ackerman Agreement meaning and effect is the one that provides for a more limited scope of "books and records" with respect to the Subsidiaries than with respect to Ackerman. Given that is the only reasonable interpretation of Section 9.1, the scope of the Award -- requiring the production of nearly every financial document from all of the non-party Subsidiaries -- is entirely irrational.

II. The Award Explicitly Conflicts With Delaware Law Applicable to Books And Records Actions.

6 Del. Code § 18-305 ("Section 305") governs the rights of a member to inspect books and records of the limited liability company in which it is a member. Section 305 requires the member to have a purpose reasonably related to its interest as a member. 6 Del. C. § 18-305(a)-(b); *Sanders v. Ohmite Hldgs., LLC*, 17 A.3d 1186, 1193 (Del. Ch. 2011) ("To inspect books and records, a member of a Delaware LLC, like a stockholder of a Delaware corporation, must first establish by a preponderance of the evidence the existence of a proper purpose for inspection."). If a member can demonstrate a reasonable purpose, Section 305 authorizes the following relevant categories that *may* under appropriate circumstances be inspected: (1) "information regarding the

status of the business and financial condition" of the LLC, (2) "a copy of the [LLC's] federal, state and local income tax returns;" (3) "amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member;" and (4) "other information regarding the affairs of the limited liability company as is just and reasonable." 6 Del. C. § 18-305(a).

While BNP arguably did not need to demonstrate a proper purpose for access to the books and records of the Subsidiaries (given the contractual basis for its demand), the scope and extent of the access sought by BNP must be related to, and limited by, BNP's stated purpose.[3] In this regard, "'the burden of proof is always on the party seeking inspection to establish that each category of the books and records requested is essential and sufficient to that party's stated purpose.'" *Sanders*, 17 A.3d at 1194 (quoting *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1035 (Del. 1996)). "The core inquiry in a books and records action is whether the requested documents are 'reasonably required to satisfy the purpose of the demand.'" *Id.* (quoting *Carapico v. Phila. Stock Exch., Inc.*, 791 A.2d 787, 793 (Del. Ch. 2000)). Critically, books and records demands cannot constitute a "fishing expedition," and the documents obtained through such a demand are not as broad as permitted in traditional discovery. *See Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 165 (Del. Ch. 2006), *aff'd sub nom.* 922 A.2d 415 (Del. 2007), *and aff'd sub nom.*, 922 A.2d 415 (Del. 2007) (denying "extraordinarily overbroad" inspection request, and holding that a stockholder's statutory

[3] Obviously, neither party intended the reference to the Subsidiaries' books and records to include every single financial document. Indeed, as discussed *supra* at Section I., it is clear from the language of Section 9.1 of the Ackerman Agreement that the parties did not even intend for the right of access to the Subsidiaries' books and records to be construed as broadly as the right of access to Ackerman's books and records.

inspection rights are "substantially limited in scope," and are not akin to traditional discovery); *Security First Corp. v. U.S. Die Casting and Development Co.*, 687 A.2d 563, 569-70 (Del. 1997) (reversing Chancery Court order granting overbroad access to books and records because "plaintiff has not met its burden of proof on this record to establish that each category of books and records requested is essential and sufficient to its stated purpose"); *In re Bernard L. Madoff Inv. Securities LLC*, 2014 WL 1302660, *7 (S.D.N.Y. March 31, 2014) (affirming bankruptcy court denial of issuance of books and records subpoena where requesting party "lack[ed] a modicum of objective support for their claims").

Here, the additional documents subject of the Award (beyond the 10,000 pages already produced) not only are *not* reasonably related to BNP's stated inspection purposes, they have little, if anything, to do with those purposes. During the Arbitration, BNP stated a number of vague, broadly-defined purposes for its expansive demands: *e.g.*, to evaluate the Project and understand the circumstances surrounding the foreclosure, and investigate "apparent" wrongdoing. With respect to BNP's claim that it needed to evaluate the Project and understand the circumstances surrounding the foreclosure, BNP was well-aware that the Assignment-in-Lieu occurred because the amount of secured debt on the Project (which information BNP was provided), exceeded the Project's asset values, which were far too low for it to be refinanced. And as for "evaluating" the Project, Respondents already have produced close to 10,000 pages of documents, including, among others:

- Statements of Assets and Liabilities for the Company dating from December 2019 through December 2023;
- Capitalization Table through 2024 that includes the Company; Operating Statements for the Project for June through December 2023;
- Monthly Reports for The Project for February 29, 2024 through April 30, 2024;
- the lease between 9 DeKalb Fee Owner LLC and LTF Lease Company LLC;

- Consolidated Financial Statements for 9 DeKalb Holdings 2 LLC and Subsidiaries for 2019, 2020, 2021, and 2022;
- the April 22, 2019 Amended and Restated Construction Management Agreement between 9 DeKalb Fee Owner, LLC and JDS Construction Group LLC;
- several releases between the various affiliated entities;
- a $42,000,000 Note from 340 Flatbush Partners LLC to the Company;
- the April 22, 2019 Development Agreement between 9 DeKalb Fee Owner, LLC and 9 DeKalb Developer LLC;
- the Company's U.S. Partnership Tax Returns for 2022 and 2023;
- the Assignment-In-Lieu;
- New York City Department of Finance Office of Register Recording and Endorsement Cover Page, dated June 24, 2024, recording the transfer from 9 DeKalb Holdings 1 LLC to Silverstein;
- the 9 DeKalb Avenue Organizational Chart; and
- several releases between the certain affiliated entities in response to BNP's request for related-party agreements.

(Cross-Petition ¶ 23.) Thus, the additional documents subject of the Award -- each of the Subsidiaries' general ledgers and all of the bank statements and underlying documents -- are not just inessential to the reasons for the foreclosure, they do not relate to it at all.[4]

Nor can BNP's assertion that it needs to investigate apparent wrongdoing justify the scope and extent of the Award. As the Delaware Supreme Court has held, "to investigate potential wrongdoing, the party requesting the books and records must show a credible basis from which the Court can infer that mismanagement, waste or wrongdoing may have occurred." *Murfey v. WHC Ventures, LLC*, 236 A.3d 337, 341 (Del. 2020) (internal quotation omitted); *see also Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 122 (Del. 2006) ("A mere

[4] Moreover, while BNP secretly filed the Term Sheet Action relating to the third round of its equity investment, it has yet to file any claims related to the Assignment-in-Lieu, despite already being provided with Respondents' significant production relating to the Arbitration, and all documents comprising the Assignment-in-Lieu and related releases. Accordingly, in the absence of any claim relating to the Assignment-in-Lieu, it was expressly contrary to Delaware law to require Respondents to produce *all* documents from other entities relating to *all* communications and negotiations concerning the transaction. *See Highland Select, supra.*

statement of a purpose to investigate possible general mismanagement, without more, will not entitle a shareholder to broad § 220 inspection relief. There must be *some evidence* of possible mismanagement as would warrant further investigation of the matter.") (emphasis in original); *Riker v. Teucrium Trading, LLC*, No. CV 2019-0314-AGB, 2020 WL 2393340, at *4 (Del. Ch. May 12, 2020) ("Delaware courts have interpreted Section 18-305 by looking to cases interpreting similar Delaware statutes concerning corporations and partnerships, such as Section 220 of the Delaware General Corporation Law.") (internal quotation omitted); *id.* at *10 (no credible basis in 18-305 action because plaintiff "failed to identify—as he must—any evidence of record to establish a credible basis that any of those events involved corporate wrongdoing").

Thus, Delaware courts have denied members access to books and records when they articulate nothing more than some vague suspicion. *See High River Limited P'ship v. Occidental Petroleum Corp.*, 2019 WL 6040285, at *5 (Del. Ch. Nov. 14, 2019) (no credible basis of wrongdoing in various transactions because plaintiffs "have not alleged, much less proven, that the [defendant's] board was conflicted, disloyal or in some way interested in the transactions at issue"); *City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc.*, 1 A.3d 281, 289 (Del. 2010) (no credible basis of wrongdoing in defendant's handling of acquisition proposals and director resignations because the record does not provide any inferences that the challenged actions were not good faith business decisions).

Here, BNP did not identify any specific wrongdoing and did not meet its burden to provide evidence to establish a credible basis for any accusation. Instead, BNP merely cited Respondents' refusal to accede to *all* of its excessive document demands. BNP obviously could not satisfy the requirement in a books and records action that it demonstrate a credible basis for wrongdoing by simply relying on Respondents' opposition to its demands. But that is precisely

the bootstrap that the Arbitrator permitted. Nor can the Arbitrator's apparent displeasure at Respondents' termination of the Ackerman certificate or the delay in finalizing the terms of the Assignment-in-Lieu, or the related releases, justify the excessively broad scope of the Award. The Ackerman certificate was terminated pursuant to the terms of the Ackerman Agreement, and there was nothing remotely nefarious or suspicious about the delay in finalizing the Assignment-in-Lieu until after the transfer or the issuance of ordinary course releases. Such transfers often are made prior to finalizing all of the terms, given that time is of the essence in these matters, and affiliate releases often are provided. But more importantly, even if these circumstances could constitute evidence of wrongdoing sufficient to grant access to books and records, that would not justify an award of such draconian scope, especially where all of the documents comprising the Assignment-in-Lieu have been produced.

BNP already has the Assignment-In-Lieu and access to public records, as well as the thousands of pages of documents from all of the non-party Subsidiaries that Respondents have produced. BNP obviously does not need anything more to confirm that BNP's investment, like Respondents' investment, regrettably has become worthless. Nor does BNP need any further documents to confirm why its equity interests became worthless. BNP was not diluted. There was not an internal restructuring or reorganization that advantaged some stakeholders over others. There were no sale proceeds that could have been distributed in one fashion versus another (indeed, the lender was sweeping the Project's cash). Rather, secured debt matured when interest rates and capitalization rates were at multi-decade highs (as a result of the pandemic), and when the loans could not be refinanced, the lender took its collateral. After all the documents and information it has been provided, if BNP believes that it has claims against Respondents or other Subsidiaries, then it should assert them. But it cannot through a books and

records arbitration avoid asserting those claims (which it obviously knows are without merit) and engage in a fishing expedition to harass Respondents and their affiliates, all in the hopes of obtaining some ammunition to use in future litigation concerning this or some other matter. Delaware law expressly prohibits the use of books and records actions for such purposes, and it was irrational and beyond the Arbitrator's authority for him to permit BNP to do so.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Respondents/Cross-Petitioners' Answer and Cross-Petition to Vacate, Respondents/Cross-Petitioners respectfully request that the Court enter an Order, pursuant to CPLR § 7511, vacating the Award or, in the alternative, modifying the Award to eliminate the requirement that Respondents/Cross-Petitioners produce additional documents beyond those already produced to BNP; and granting such further relief as the Court deems just and proper.

Dated: October 6, 2025

MINSKER LAW PLLC

/s/ Jonathan E. Minsker

Jonathan E. Minsker
1100 Biscayne Boulevard
Suite 3701
Miami, Florida 33132
Telephone: (786) 988-1020
jminsker@minskerlaw.com

Attorney for Respondents/Cross-Petitioners JDS Principal 9DKB Parent LLC and JDS Principal 9DKB LLC

CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

Pursuant to Commercial Division Rule 17, I certify that the total number of words in this Memorandum of Law, excluding the portions that are not subject to counting under Rule 17, is 4,258.

Dated: October 6, 2025

/s/ *Jonathan E. Minsker*
Jonathan E. Minsker