

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
THE WEINSTEIN COMPANY)	Case No.: 18-10601 (MFW)
HOLDINGS LLC, et al., ¹)	(Jointly Administered)
)	
Debtors,)	
_____)	
)	Adversary Case No.:
HOTEL MUMBAI PTY LTD.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	
THE WEINSTEIN COMPANY LLC)	
and ITS RELATED AND)	
AFFILIATED DEBTORS,)	
)	
Defendants)	
)	

COMPLAINT

Hotel Mumbai Partners Limited (“**HMPL**” or “**Plaintiff**”), alleges as follows:

PARTIES

1. Plaintiff, HMPL, is a proprietary limited company incorporated under the laws of the Commonwealth of Australia with offices in Fremantle, Australia.

¹ The last four digits of The Weinstein Company Holdings LLC's federal tax identification number are (3837). The mailing address for The Weinstein Company Holdings LLC is 99 Hudson Street, 4th Floor, New York, New York 10013. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors’ claims and noticing agent at <http://dm.epiq11.com/twc>.

2. Defendant, The Weinstein Company LLC (“**TWC**”), is a Delaware limited liability company with its principal place of business in New York, New York, and is one of the above-captioned chapter 11 debtors and debtors in possession.

3. On March 20, 2018 (the “**Petition Date**”), TWC and fifty-four affiliated entities (collectively, the “**Debtors**”), commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). 11 U.S.C. § 101 *et seq.* The Debtors continue to operate their businesses and manage their financial affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ bankruptcy cases are jointly administered under The Weinstein Company Holdings, LLC, Case No. 18-10601 (MFW), which is the direct or indirect owner of the other Debtors.

REQUIRED PLEADING DISCLOSURE

4. Pursuant to Delaware Local Bankruptcy Rule 7008-1, the Plaintiff consents to the entry of a final order or judgment on this adversary complaint (the “**Complaint**”) and action by the Court.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 because the claims for relief (“**Claims for Relief**”) in this Complaint arise in or are related to the Debtors’ bankruptcy cases pending under the Bankruptcy Code in this Court. This is a core proceeding under 28 U.S.C. § 157(b).

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409 because the Debtors’ bankruptcy cases are pending in this district. Pursuant to 28 U.S.C. § 1391, venue is also appropriate in this district because TWC is a duly licensed and organized limited liability company in accordance with the law of the state of Delaware.

STATEMENT OF FACTS

7. HMPL is the producer of a full-length feature motion picture currently entitled “Hotel Mumbai” (the “**Picture**”). The Picture stars Armie Hammer, Dev Patel, Jason Isaacs and Nazanin Boniadi. The Picture centers on the November 2008 terrorist attacks by Islamic radicals that took place in Mumbai, India, leaving more than 160 people dead. It is based on a screenplay dated February 2016 written by John Collee and Anthony Maras, directed by Anthony Maras and produced by HMPL. The production of the Picture has been completed and based thereon, the final editing, marketing and distribution of the Picture by its domestic distributor should be in process in order to meet a projected release deadline of October 2018.

8. TWC was incorporated in April 2005 by Robert and Harvey Weinstein, the brothers who founded Miramax Films in 1979. Since its creation and up to the Petition Date, TWC was a “mini-major” film and television production studio that created, produced, and distributed feature film and premium television content for the U.S. and international markets. TWC has produced numerous critically acclaimed and commercially successful films, receiving approximately 28 Academy Awards and 113 Academy Award nominations, including but not limited to: “Vicky Cristina Barcelona”, “The Kings Speech”, “The Reader”, “Inglourious Basterds”, “Scream 4”, “Spy Kids”, “The Artist”, “The Master”, “Undefeated”, “Silver Linings Playbook”, and “Django Unchained.” Pre-petition, TWC also had an active television production division which garnered twelve Emmy nominations in 2015 alone, and produced, among other shows: “Project Runway”, “Under the Gunn”, and “Threads.” TWC also developed “Nanny Diaries” and produced “The No. 1 Ladies’ Detective Agency.” TWC had a significant working relationship with Netflix and produced several “scripted series” including John Fusco’s “Marco Polo.”

9. The historical success of TWC is unquestionable, and it was well known that TWC, by and through its Co-CEO's Harvey Weinstein and Robert Weinstein, held extensive power in the film and television industry, a significant distribution network and the financial wherewithal to fully execute a meaningful and effective marketing program superior to those of direct competitors. As a result, TWC was much sought after by independent film producers as a licensee for the distribution and marketing of their films.

10. Based upon TWC's reputation and its success in the marketing and distribution of independently produced films, in or around 2016, HMPL approached TWC to determine whether TWC would consider entering into an agreement for the marketing and distribution of the Picture.

11. During the course of discussions that occurred from at least April 2016 through May 12, 2016 by and between HMPL's representatives, Gary Hamilton (CEO of Arclight) Joe Cohen, among others, and TWC representatives, Harvey Weinstein, David Glasser and Talia Houminer (TWC's in house counsel), among others, TWC orally and in writing represented that it would, among other things:

- a. Distribute and market the Picture throughout the United States, Canada, United Kingdom, Bahamas, Bermuda and Caribbean plus customary islands, territories and possessions (collectively, the "Territory");
- b. Spend a minimum of \$10 million in the marketing of the Picture;
- c. Prepare a marketing and distribution plan to be disseminated to HMPL in advance so HMPL could timely provide the plan to its international distributors (to ensure the coordination of the domestic and international marketing and distribution of the Picture for maximum exploitation of the Picture);

d. Pay all “Distribution Costs and Expenses” including, without limitation, all costs and expenses in connection with delivery materials, advertising, publicity, promotion, exploitation, sale and/or distribution of the Picture (including, without limitation, the cost to create posters, trailers, TV spots, and other costs of creating marketing materials), the costs of research (including test screenings), film festivals, creation of bonus materials, editing, post production reshoots, the costs of print creation and duplication, insurance, shipping, taxes (other than corporate income taxes), checking and collection costs, MPAA, AMPTP and other trade associate fees or dues payable by TWC, conversion costs, etc.;

e. Release the Picture in no less than 800 theaters simultaneously;

f. Invite Dev Patel and Armie Hammer to one United States celebrity premiere of the Picture (and pay their costs and the costs of one guest); and

g. Mutually (with HMPL) determine the final cut of the Picture released in the Territory.

12. Based upon the representations of TWC as to its contemplated marketing and distribution plans for the Picture, including its promise to spend at least \$10 million on marketing, and in justifiable reliance thereon, HMPL, as licensor, and TWC, as licensee, entered into that certain “Exclusive License Agreement” (the “**License Agreement**”) dated May 12, 2016, pursuant to which TWC acquired the licensing and distribution rights for the Picture for the Territory. A true and correct copy of the License Agreement is attached as **Exhibit 1**.

13. HMPL entered into the License Agreement with TWC based upon, among other things, TWC’s known reputation and abilities for successfully executing distribution and marketing plans for independent films, its financial prowess, its known relationships with

distributors of content such as Netflix, etc. and its ability to advocate on behalf of its films for various awards such as the Academy Awards, Golden Globes, etc.

14. At no time during the course of the negotiations for the License Agreement or at any time thereafter did Harvey Weinstein, David Glasser, Talia Houminer or any other representative or agent of TWC disclose to HMPL or to any of its related or affiliated entities the threat of the ongoing Harvey Weinstein sexual scandal – a ticking time bomb that when made public would destroy TWC’s reputation and its ability to operate its business.

15. HMPL is informed and believes and based thereon alleges that Harvey Weinstein’s sexual exploitations were well known to TWC officers and board of directors, including David Glasser, who primarily negotiated the License Agreement on behalf of TWC. HMPL is further informed and believes and based thereon alleges that TWC and its officers and directors, including David Glasser, participated in a cover-up of Harvey Weinstein’s sordid history of sexual abuse (the “**TWC Cover-Up**”), and that TWC’s officers and directors knew the “issue” was effectively a ticking time bomb that would decimate TWC when the full extent of Harvey Weinstein’s illegal actions became known to the general public.

16. Although rumors of Harvey Weinstein’s sexual misconduct had circulated in Hollywood for years prior to 2016, at no time did HMPL have information as to the alleged depth and depravity of Harvey Weinstein’s conduct and the impact it would have on TWC’s brand, goodwill and ability to operate its business when finally revealed. Nor did HMPL know or have information to know that TWC’s officers and directors knew of Harvey Weinstein’s conduct and not only condoned the same, but participated in the cover-up of numerous charges, allegations and settlements of claims arising out of and relating to his alleged crimes against, and sexual exploitation of, women.

17. Had HMPL known, at any time, before or during the negotiations for the License Agreement of the TWC Cover-Up and the extent of Harvey Weinstein's alleged crimes and misconduct, it never would have entered into the License Agreement or allowed the Picture to be distributed by TWC or to be associated in any way with the now discredited TWC brand.

18. In October 2017, *The New York Times* and *The New Yorker* reported that dozens of women accused Harvey Weinstein of sexual assault and abuse over a period of at least 30 years. Shortly thereafter, Harvey Weinstein was dismissed by TWC and expelled from the Academy of Motion Picture Arts and Sciences and other professional associations. As a result thereof and when the full extent of Harvey Weinstein's alleged crimes were revealed, the TWC brand became toxic, with no one in the industry willing to engage in any business transactions with TWC. HMPL is informed and believes that criminal investigations into complaints from various women are ongoing in Los Angeles, New York City, and London.

19. On or about February 11, 2018, the Attorney General for the State of New York filed a Verified Petition against TWC, The Weinstein Company Holdings, LLC, Harvey Weinstein, and Robert Weinstein (the "**NY AG Verified Petition**"), alleging that, among other things, from approximately 2005 through at least October 2017, TWC corporate resources were used for unlawful purposes relating to Harvey Weinstein's sexual misconduct. A copy of the NY AG Verified Petition is attached hereto as **Exhibit 2**. The New York Attorney General alleges that TWC's management and Board of Directors were "repeatedly presented with credible evidence of [Harvey Weinstein's] sexual harassment of TWC employees and interns, and his use of corporate employees and resources to facilitate sexual activity with third parties, amidst allegations that [Harvey Weinstein] had engaged in unlawful sexual conduct." NY AG Verified Petition, ¶ 6.

20. Furthermore, the NY AG Verified Petition alleges that TWC used settlements “that contained strict NDAs to keep law enforcement, the public, and even other TWC employees from discovering the extensive allegations of misconduct against [Harvey Weinstein].” *Id.* ¶ 8. Indeed, **“TWC itself entered into several of these NDA-containing settlements with company employees.”** *Id.* (emphasis added). TWC “enabled [Harvey Weinstein’s] unlawful conduct to continue far beyond the date when, through reasonable diligence, it should have been stopped.” *Id.* The findings of the New York Attorney General are extensive with regard to Harvey Weinstein’s misconduct and TWC’s knowledge, participation, and acquiescence of the same.

21. The NY AG Verified Petition describes various employees making formal reports to Human Resources from 2005 through 2017. The NY AG Verified Petition alleges that the TWC Board of Directors, at a minimum, “had the power to refuse to renew [Harvey Weinstein’s] employment contract in 2015, but failed to act, in part out of [Harvey Weinstein’s] power and influence on the Board and in part due to concern that [Harvey Weinstein’s] departure or a public battle over his contract would inflict financial harm on TWC. [Harvey Weinstein] and Board members loyal to [Harvey Weinstein] defeated any efforts by independent Board members to investigate claims of sexual misconduct, or to remove [Harvey Weinstein] or prevent him from continuing to sexually harass and harm women.” *Id.* ¶ 28.

22. Furthermore, the NY AG Verified Petition alleges that Harvey Weinstein was “only able to engage in repeated and persistent unlawful conduct because of the failure of key members of TWC’s management and Board to ensure that the company complied with relevant nondiscrimination laws and prevent its executives from engaging in unlawful conduct while representing the company.” *Id.* ¶ 85 (emphasis added).

23. At all relevant times herein, David Glasser was the Chief Operating Officer (“COO”) of TWC. Specifically with regard to his knowledge of the extent and gravity of Harvey Weinstein’s misconduct, the NY AG Verified Petition alleges that, “Specifically, by early 2015, certain corporate executives at TWC who had received and handled numerous claims of misconduct from TWC employees, including the COO [David Glasser, with whom HMPL directly negotiated], became so concerned about [Harvey Weinstein’s] misconduct towards women, as well as his expenditure of company resources on improper items, that they decided they needed to notify an independent member of the Board about the misconduct.” *Id.* ¶ 103 (emphasis added).

24. Critically, the NY AG Verified Petition alleges that, “Absent these failings of corporate management and oversight described herein, [Harvey Weinstein] would not have been able to continue to engage in the repeated and persistent unlawful conduct described here for several years with impunity.” *Id.* ¶ 112 (emphasis added).

25. In other words, HMPL is informed and believes, and based thereon alleges, that at all relevant times during the negotiations between HMPL and TWC regarding the Picture and entry into the License Agreement in early 2016, the executives with which HMPL directly communicated—including David Glasser—had actual knowledge of the extent and nature of Harvey Weinstein’s misconduct, and not only ignored it but also actively covered up such misconduct, and failed to disclose the same to HMPL.

26. As a result of the foregoing, on February 14, 2018, HMPL wrote TWC a letter (the “**Rescission Letter**”) that provided, in relevant part, as follows:

This letter will put you on notice that HMPL hereby immediately rescinds the Agreement on the grounds that TWC fraudulently induced HMPL to enter into the Agreement and entrust the distribution of the Picture to TWC, by deceiving HMPL and concealing material facts which, if known to HMPL, unquestionably would

have resulted in a decision by HMPL to reject the Agreement and any contractual relationship with TWC.

A true and correct copy of the Rescission Letter is attached hereto marked **Exhibit 3** and incorporated herein by reference as though fully set forth herein.

27. The only response by TWC at any relevant time herein (including post-petition) to the Rescission Letter was a letter from David Glasser dated February 15, 2018 (the “TWC Response”), in which he writes:

I am in receipt of your February 14 letter, sent on behalf of Hotel Mumbai Pty Ltd. (“HMPL”) and concerning the project *Hotel Mumbai* (the “Picture”). In that letter, you explain that HMPL is rescinding the agreement for the Picture. You ask us to provide a confirmation of the rescission no later than end of business today. Providing a response by the close of the next business day is simply not workable. I need time to consider these issues, including the relative merits of the positions taken in your letter, and discuss them with the company. As I am sure you can imagine, this is not the kind of decision that one in a company of this size can or should make alone and without sufficient forethought. With that being said, I can commit to responding to you shortly, and in any event, no later than Tuesday of next week.

A true and correct copy of the TWC Response is attached as **Exhibit 4**.

28. The TWC Response stated that TWC would provide a further response no later than February 20, 2018 (or the Tuesday following the date of the TWC Response). However, as alleged above, and notwithstanding a legal obligation to respond if TWC was contesting the Rescission Notice, at no time prior to (or even after) the commencement of the Debtors’ bankruptcy cases did TWC contest the notice of rescission or communicate in any way with HMPL any intent to contest HMPL’s rescission of the License Agreement.

29. On March 20, 2018, the Debtors filed their *Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale,*

Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [Bk. D.I. 8] (the “**Sale Motion**”).

30. Despite the prepetition rescission of the License Agreement by HMPL, and the failure of TWC to object or contest the same, the Debtors included the License Agreement as one of the assets to be sold pursuant to the Stalking Horse Agreement (as defined in the Sale Motion), and have designated the Picture as a “Top Title” and a “Top Unreleased Picture” in the Stalking Horse Agreement as set forth in the Sale Motion, Exhibit B, Annex 1 (page 242 of 254).

31. On April 5, 2018, counsel for HMPL emailed (the “**April 5th Email**”) counsel for the Debtors setting forth HMPL’s position that the License Agreement was rescinded prepetition, requesting that any ownership dispute be addressed as soon as possible (since the Debtors included the License Agreement in the Sale Motion as an asset of the estate), and requesting evidence of adequate assurance from the stalking horse bidder. A true and correct copy of the April 5th Email is attached hereto as **Exhibit 5**. The only response received from the Debtors’ counsel was received on April 5, 2018 (the “**TWC April 5th Response**”) and stated as follows: “We will pass the request along to counsel to the Stalking Horse Bidder. My partner Karin DeMasi won’t be at the hearing tomorrow but we can find another time in the near future to meet and confer on this matter.” A true and correct copy of the TWC April 5th Response is attached hereto as **Exhibit 6**.

32. On April 10, 2018, counsel for HMPL emailed a letter dated April 10, 2018 (the “**April 10th Letter**”) to counsel for the Debtors pursuant to which HMPL further reiterated that the License Agreement was rescinded and informed the Debtors’ counsel that, among other things,

it is critical to address any dispute over ownership immediately. A true and correct copy of the April 10th Letter is attached hereto as **Exhibit 7**.

33. At no relevant time herein have the Debtors or their counsel responded substantively to the Rescission Notice or any other correspondence requesting that any ownership dispute over the License Agreement be addressed forthwith. The Debtors acted prepetition and continue to act post-petition as if the License Agreement does not exist. The Debtors stopped performing under the License Agreement in October of 2017 and have not done a single act in furtherance of the marketing and distribution of the Picture that would typically take place during this time period (i.e., from October of 2017 until now).

34. The only evidence or indication that the Debtors assert any interest in the License Agreement is the fact that “Hotel Mumbai” is listed as an asset on an exhibit to the Sale Motion and it is listed on the Debtors’ *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts* [Bk. D.I. 216] (the “**Proposed Assignment List**”), in which the Debtors lists HMPL as a “counterparty to a contract or lease that may be assumed and assigned as part of the sale.” *See* Proposed Assignment List [Bk. D.I. 216], Exhibit 1, item nos. 3567, 3568, and 3569 (referring to the License Agreement). Other than merely listing “Hotel Mumbai” as an asset and the License Agreement as an agreement to be assumed and assigned, neither the Debtors nor their counsel have communicated in any way to HMPL or its counsel that the License Agreement is property of the estate, and the Debtors have failed to perform required duties under the License Agreement since October 2017.

35. Since the date that the Rescission Letter was sent (on February 14, 2018), TWC has not done a single act under the License Agreement to perform under the License Agreement or

otherwise indicate that it is a party to a License Agreement with HMPL. TWC has failed to refute the Rescission Notice prepetition or post-petition.

36. The License Agreement is not “property of the estate” as it was terminated prepetition, and the filing of a bankruptcy petition does not revive an already-terminated contract. *See, e.g., In re Best Film & Video Corp.*, 46 B.R. 861, 870 (Bankr. E.D. N.Y. 1985) (finding a distribution agreement terminated prepetition on account of numerous breaches of the agreement by the licensee, and explaining that filing a chapter 11 petition will neither “resuscitate a contract that has already been terminated” nor will it “extend a contract beyond its original terms,” as the filing of bankruptcy does not enlarge the rights of a debtor under such contract).

37. Because the License Agreement was rescinded prepetition, the Debtors no longer have any rights to the Picture under the License Agreement, and consequently cannot assume or assign the License Agreement. The Picture and License Agreement are not assets of this bankruptcy estate that can be sold, assumed, or assigned.

38. Because the Debtors have erroneously included the License Agreement as an asset of the estate, HMPL is unable to enter into a distribution agreement with a new distributor given the Debtors’ alleged interest represents a cloud on the title to the Picture.

39. The distribution of the Picture domestically is critical to the success of the Picture as the foreign distribution rights to the Picture have been licensed to foreign distributors, who are intending to release the Picture on or before the 10-year “anniversary date” of the Hotel Mumbai attacks which is November 2018.

40. It is well established that if foreign distribution and release of a motion picture film occurs before a domestic release, the value of the motion picture film, among other things, will be significantly and negatively impacted due to, among other things, the potential exposure of the

motion picture film being “pirated.” *See, e.g., In re Relativity Fashion, LLC*, 696 Fed.Appx. 26, 29 (2nd Cir. 2017)(noting that testimony “before the bankruptcy court established that Netflix’s proposed pre-release streaming of films [before the domestic theatrical release of the films] would effectively destroy the revenue streams anticipated by the Plan”).

41. Furthermore, in order to capitalize on the Picture and domestic and international award ceremonies, it is imperative that the domestic distribution of the Picture occurs prior to its international release. Every day that the Debtors continue to represent to the entertainment industry that the License Agreement is an asset of the estate causes irreparable harm to HMPL’s ability to secure a new distributor which can ensure a US theatrical release of the Picture prior to the international release.

IRREPARABLE HARM

42. The License Agreement was rescinded pre-petition. The Debtors have failed to perform a single act under the License Agreement since October of 2017. The Debtors’ inclusion of the License Agreement in the Sale Motion has caused a significant disruption in HMPL’s ability to market and distribute the Picture in the Territory, and could result in the destruction of the revenue stream from the Picture.

43. The Debtors’ inclusion of the License Agreement in the Sale Motion has further damaged HMPL’s actors, directors and producers and their reputations by prohibiting the Picture from being screened and marketed in the manner that is customary in the industry to ensure exposure to the domestic and international film festivals and award ceremonies.

44. Moreover, due to the Debtors’ misconduct, every day that passes increases the chance that the Picture is released internationally (prior to the November 2018 10 year anniversary of the 2008 Mumbai attacks), which will cause irreparable harm to HMPL, its actors, directors and

producers.

45. The harm to HMPL and its actors, directors and producers from the Debtors' conduct described herein outweighs any harm to the Debtors from granting the requested relief.

46. Money damages are not sufficient because absent the required injunctive and declaratory relief requested herein, HMPL's prospects for awards and a successful launch of the Picture will be diminished to the detriment of HMPL's lenders, investors, actors, directors, and producers, and the accompanying harm to their respective reputations and goodwill.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(For Declaratory Relief that the License Agreement is Not Property of the Estate ~ 11

U.S.C. §§ 105(a), 363(b)(1) and 541))

47. HMPL incorporates herein by reference as though set forth in full paragraphs 1 through 46 above.

48. HMPL requests a declaratory judgment under Sections 105(a), 363 and 541 of the Bankruptcy Code, Bankruptcy Rules 7001(1), 7001(7) and 7001(9), 28 U.S.C. § 2201, and applicable provisions of non-bankruptcy law, that the License Agreement is not property of the estate.

49. Pursuant to Section 541 of the Bankruptcy Code, property of a debtor's estate includes all legal or equitable interest of the debtor in property.

50. The License Agreement is not property of the estate because it was terminated pre-petition.

51. An actual controversy exists between the HMPL and TWC as to their respective legal rights and obligations regarding the License Agreement as set forth above.

52. Plaintiff HMPL maintains that the Rescission Letter was valid and enforceable and without contest by TWC and based thereon, the Debtors have no right, title or interest in the License Agreement under section 541 of the Bankruptcy Code, including but not limited to, having no right to license, distribute or market the Picture in any manner whatsoever, or any authority (or the ability) to assume and assign the License Agreement to any third party under sections 363 and 365 of the Bankruptcy Code.

53. Upon information and belief, HMPL believes that the Debtors dispute HMPL's contentions set forth above and that the Debtors assert that the License Agreement is property of the TWC bankruptcy estate and that the Debtors have the right to assume and assign the License Agreement to third parties.

54. As a result of the dispute between the parties as heretofore set forth, an actual and judicable controversy exists between HMPL and the Debtors and accordingly, a judicial determination is necessary and appropriate at this time in order that the respective rights and obligations of HMPL and the Debtors in and to the License Agreement may be ascertained.

SECOND CLAIM FOR RELIEF

(For Declaratory Relief that the License Agreement Was Rescinded on Grounds of Frustration of Purpose)

55. HMPL incorporates herein by reference as though set forth in full paragraphs 1 through 54 above.

56. As noted above, an actual controversy exists between HMPL and TWC as to their respective legal rights and obligations regarding the License Agreement and the Picture. Plaintiff HMPL maintains that the Rescission Letter was valid and enforceable and without contest by TWC. HMPL is informed and believes that the Debtors dispute that contention, and believe the

License Agreement and the Picture are estate assets that can be sold, assumed, and/or assigned to a third party under the Bankruptcy Code.

57. HMPL entered into the License Agreement with TWC primarily based upon TWC and Harvey Weinstein's reputation for marketing and distributing successful independent films and garnering awards during awards season.

58. A basic assumption of HMPL in entering into the License Agreement was that TWC and Harvey Weinstein still had the reputation and ability to market independent films to Academy voters, among other things, and to distribute independent films in the same manner and success as they had previously done.

59. Accordingly, the fundamental purpose of the License Agreement for which HMPL bargained has been frustrated because TWC is no longer able to perform its duties under the License Agreement. Indeed, TWC is seeking to assume and assign its purported rights under the License Agreement in connection with the Sale Motion and scheduled Sale Hearing because its reputation has been made radioactive as a result of the allegations surrounding Harvey Weinstein and the TWC Cover-Up, and can no longer successfully market and distribute films as it once could.

60. HMPL is thus entitled to a judgment declaring that the License Agreement was validly rescinded because the basic purpose of the contract—to use the reputation and prior success of TWC to market and distribute the Picture—has been frustrated.

THIRD CLAIM FOR RELIEF

(For a Judgment that the License Agreement is Void ~ Fraud in the Inducement)

61. HMPL incorporates herein by reference as though set forth in full paragraphs 1 through 60 above.

62. In the event the Debtors dispute that the License Agreement was validly rescinded prepetition, and as an alternative to the First and Second Claims for Relief alleged *supra*, HMPL seeks a judgment rescinding the License Agreement on the grounds of fraud in the inducement.

63. HMPL is informed and believes, and based thereon alleges, that in or around April-May, 2016 and during the negotiations between HMPL and TWC that preceded execution of and entry into the License Agreement, TWC and its representatives had superior knowledge of essential facts that directly impacted the reputation of the TWC brand, *i.e.*, that the company had participated in covering up the extensive sexual scandals and misconduct of Harvey Weinstein.

64. TWC failed to disclose these facts to HMPL at any time, despite having knowledge that HMPL sought a license agreement with TWC specifically because of TWC's (and Harvey Weinstein's) previously stellar reputation for helping independent films, such as the Picture, to gain international success and be seriously considered during awards season.

65. TWC had a duty to disclose these facts to HMPL during negotiations, and these facts were not reasonably discoverable to HMPL through the exercise of ordinary intelligence.

66. The facts regarding Harvey Weinstein's sexual misconduct were material to the negotiations between HMPL and TWC because, among other things, they relate to the reputation and credibility of TWC and Harvey Weinstein, and HMPL's primary reason for entering into the License Agreement in the first place was because of the supposed stellar reputation of TWC for obtaining critical acclaim for independent films such as the Picture.

67. Had HMPL known, at any time, before or during the negotiations for the License Agreement of the TWC Cover-Up and the extent of Harvey Weinstein's alleged crimes and misconduct, it never would have entered into the License Agreement or allowed the Picture to be distributed by TWC or to be associated in any way with the now discredited TWC brand.

68. Prior to filing this Complaint, HMPL did not receive any money or other consideration from TWC that can be returned to TWC.

69. Since the October 2017 disclosure of Harvey Weinstein's sexual scandals and misconduct, TWC has failed to perform under the terms of the License Agreement.

70. Due to TWC's nondisclosure of material facts, HMPL is unable to, among other things, engage with other comparable film distribution companies to ensure the Picture is released timely and that Picture and its actors, directors, and writers, etc. are considered during awards season.

71. Money damages are not sufficient because the reputations and goodwill of HMPL's actors, directors, writers, etc. will be directly affected by the manner in which this film is marketed and distributed.

72. Accordingly, HMPL requests a judgment rescinding the License Agreement.

FOURTH CLAIM FOR RELIEF

(For Permanent Injunction – Fed.R.Bankr.Proc. 7065; 11 U.S.C. § 105(a))

73. HMPL incorporates herein by reference as though set forth in full paragraphs 1 through 72 above.

74. Because the Debtors have erroneously included the License Agreement as an asset of the estate, HMPL is unable to enter into a distribution agreement with a new distributor.

75. The distribution of the Picture domestically is critical to the success of the Picture as the foreign distribution rights to the Picture have been licensed to foreign distributors, who are intending to release the Picture on or before the 10-year "anniversary date" of the Hotel Mumbai attacks which is November 2018.

76. If the foreign distribution and release of a motion picture film occurs before a domestic release, the value of the motion picture film will be significantly and negatively impacted due to the potential exposure of the motion picture film being “pirated”. *See, supra, In re Relativity Fashion, LLC*, 696 Fed.Appx. 26, 29 (2nd Cir. 2017) (noting that testimony “before the bankruptcy court established that Netflix’s proposed pre-release streaming of films [before the domestic theatrical release] would effectively destroy the revenue streams anticipated by the Plan”).

77. In order to capitalize on the Picture and domestic and international award ceremonies, it is imperative that the domestic distribution and release of the Picture occurs prior to any foreign release. Every day that the Debtors continue to represent to the entertainment industry that the License Agreement is an asset of the estate causes irreparable harm to HMPL’s ability to secure a new distributor which can ensure a US theatrical release of the Picture prior to the international release.

78. The License Agreement was rescinded pre-petition. The Debtors’ inclusion of the License Agreement in the Sale Motion has caused a significant disruption in HMPL’s ability to distribute the Picture in the Territory, and could result in the destruction of the revenue stream from the Picture.

79. The Debtors’ inclusion of the License Agreement in the Sale Motion has further damaged HMPL’s actors, directors and producers and their reputations by prohibiting the Picture from being screened and marketed in the manner that is customary in the industry to ensure exposure to the domestic and international award ceremonies.

80. Moreover, due to the Debtors’ misconduct, every day that passes increases the chance that the Picture is released internationally (prior to the November 2018 10 year anniversary of the 2008 Mumbai attacks), which will cause irreparable harm to HMPL, its actors, directors and

producers.

81. The harm to HMPL and its actors, directors and producers from Defendant's conduct described herein outweighs any harm to Defendant from granting the requested relief.

82. Money damages are not sufficient because absent the required injunctive and declaratory relief requested herein, HMPL's prospects for awards and a successful launch of the Picture will be diminished to the detriment of HMPL's lenders, investors, actors, directors, and producers, and the accompanying harm to their respective reputations and goodwill.

83. HMPL requests a permanent injunction requiring and directing TWC, and all representatives, employees or agents of TWC (i) to remove the License Agreement / Picture from its list of assets in the Sale Motion, (ii) to cease interfering with HMPL's ability to enter into an agreement with a third party to distribute the Picture in the Territory, and (iii) to cease any other conduct that intentionally harms or interferes with the distribution and release of the Picture in the Territory and/or with the reputation of HMPL's actors, directors or producers.

PRAYER FOR RELIEF

Based on the foregoing, HMPL respectfully requests that the Court enter judgment in favor of HMPL and against the Debtors as follows:

FIRST CLAIM FOR RELIEF

1. For a judgment declaring that the License Agreement and the Picture are not assets of the bankruptcy estate under section 541 of the Bankruptcy Code, and that the same cannot be assumed or assigned as part of the Sale Agreement, and that HMPL has title to the Picture free and clear of any and all interests of TWC;

SECOND CLAIM FOR RELIEF

2. For a judgment declaring that the License Agreement was validly rescinded on grounds of frustration of purpose.

THIRD CLAIM FOR RELIEF

3. For a judgment rescinding the License Agreement.

FOURTH CLAIM FOR RELIEF

4. For a preliminary and permanent injunction, restraining and enjoining TWC from transferring, assuming or assigning the License Agreement and the Picture during the pendency of this action.

ALL CLAIMS FOR RELIEF

5. For attorney fees and costs;

6. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: April 16, 2018
Wilmington, Delaware

GELLERT SCALI BUSENKELL & BROWN LLC

By: /s/ Michael Busenkell

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Counsel to Hotel Mumbai Pty Ltd., Plaintiff

EXHIBT “1”
(TO BE FILED UNDER SEAL)

EXHIBIT 2

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

THE PEOPLE OF THE STATE OF
NEW YORK, by ERIC T.
SCHNEIDERMAN, Attorney General
of the State of New York,

Petitioner,

v.

THE WEINSTEIN COMPANY LLC,
THE WEINSTEIN COMPANY
HOLDINGS LLC, HARVEY
WEINSTEIN, and ROBERT
WEINSTEIN,

Respondents.

VERIFIED PETITION

Index No.
IAS Part
Assigned to Justice

The People of the State of New York, by their attorney, ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, respectfully allege, upon information and belief:

INTRODUCTION

1. The Attorney General, on behalf of the People of the State of New York, brings this action to remedy a years-long gender-based hostile work environment, a pattern of *quid pro quo* sexual harassment, and routine misuse of corporate resources for unlawful ends that extended from in or about 2005 through at least in or about October 2017. The Attorney General seeks to hold accountable Harvey Weinstein (“HW”), his brother Robert Weinstein (“RW”), and the company for which they served as co-owners, co-Chairmen of the Board, and co-Chief Executive Officers (“co-CEOs”), The Weinstein Company LLC and its parent holding company, The Weinstein Company Holdings LLC (collectively, “TWC” or “The Company”), for repeated, persistent, and egregious violations of law, to vindicate the rights of TWC’s employees, and to prevent future recurrence of such misconduct.

2. TWC is a company headquartered in New York, New York, that produces and distributes films and television shows. At times relevant to this Petition, TWC employed upwards of 250 people in its New York office and satellite offices in Los Angeles, California, and London, England. TWC was at all times required to comply with New York State and New York City laws prohibiting sexual harassment and discrimination on the basis of gender. HW and RW, as the company's owners and co-CEOs, were bound to abide by these laws and ensure that they were enforced at TWC. In addition, HW was prohibited from engaging in unlawful sex offenses, such as sexual misconduct, forcible touching, and coercion, and attempts to commit the same, in violation of various provisions of the New York Penal Law, and from using TWC employees, resources, and business opportunities to facilitate repeated and persistent illegality of this nature. *See* N.Y. Exec. Law § 63(12).

3. The Attorney General initiated this investigation after learning of published reports that HW used his role as TWC's co-CEO and his power within the entertainment industry to sexually harass employees and abuse women. HW and TWC sought to shield these and additional facts from disclosure through routine use of Non-Disclosure Agreements ("NDAs") prohibiting individuals from speaking about their experiences at TWC. The Attorney General has used investigative authorities granted to the Office of the Attorney General ("OAG") under Section 63(12), including the OAG's investigative subpoena power, to begin uncovering these facts. While the OAG's investigation is ongoing, it has obtained documents and interviewed witnesses confirming that Respondents repeatedly and persistently violated the law.

4. The unlawful conduct took two primary forms:

- i. **First**, HW, as co-CEO of TWC, repeatedly and persistently sexually harassed female employees at TWC by personally creating a hostile work environment

that pervaded the workplace and by demanding that women engage in sexual or demeaning conduct as a *quid pro quo* for continued employment or career advancement. Some of HW's sexual harassment involved unlawful sexual contact.

- ii. **Second**, HW repeatedly and persistently used his position at TWC, female employees at TWC, and the resources at his disposal as a co-CEO of TWC, to serve his interests in sexual contact, some of which upon information and belief was unlawful in nature, with women seeking employment or business opportunities with TWC.

5. TWC is responsible for the unlawful conduct described herein. HW committed these unlawful acts in his capacity as TWC's co-owner and co-CEO, making him the most senior person in the company. In that role, HW used TWC's corporate resources and employees to facilitate the unlawful conduct. Thus, as a matter of law, HW's unlawful activities are attributable to TWC.

6. In addition, TWC and RW are liable because they were aware of and acquiesced in repeated and persistent unlawful conduct by failing to investigate or stop it. As described herein, RW, TWC's management, and TWC's Board of Directors (the "Board") were repeatedly presented with credible evidence of HW's sexual harassment of TWC employees and interns, and his use of corporate employees and resources to facilitate sexual activity with third parties, amidst allegations that HW had engaged in unlawful sexual conduct.

7. RW and TWC's Board failed to: further investigate to discover the nature and extent of the misconduct; absolutely prohibit such misconduct; restrict HW's ability to hire or

supervise employees and his use of corporate resources in order to avoid future recurrence of such misconduct; or terminate HW's employment altogether.

8. Instead of investigating and taking prompt corrective action, TWC and RW used settlements that contained strict NDAs to keep law enforcement, the public, and even other TWC employees from discovering the extensive allegations of misconduct against HW. TWC itself entered into several of these NDA-containing settlements with company employees. Many witnesses to HW's unlawful conduct separately were subject to broad NDAs pursuant to their TWC employment agreements, preventing them from revealing their own observations of misconduct to law enforcement as well. In this way, TWC and RW enabled HW's unlawful conduct to continue far beyond the date when, through reasonable diligence, it should have been stopped.

PARTIES

9. Petitioner is the People of the State of New York, by its attorney, Eric T. Schneiderman, the Attorney General of the State of New York.

10. Respondents The Weinstein Company LLC and its parent company The Weinstein Company Holdings, LLC (collectively, "TWC" or the "Company") are companies that were founded in or about 2005, with their principal offices and places of business at 99 Hudson Street, New York, New York, 10013, from which they have transacted business at all times mentioned herein. TWC also maintains office space at 375 Greenwich Street, New York, New York, and satellite offices in Los Angeles, California and London, England.

11. Respondent HW is the co-founder, and was the co-Chairman and co-CEO of TWC from its inception in or about 2005 until his termination in October 2017. HW was terminated from the TWC Board and as co-CEO in October 2017. HW currently owns approximately 21% of the voting shares of TWC. As co-Chairman and co-CEO, HW also drew a

salary from TWC and had expenses covered by TWC. HW regularly transacted TWC business at TWC's headquarters in New York, New York, primarily using office space at TWC's 375 Greenwich Street location.

12. Respondent RW is the co-founder and was co-Chairman and co-CEO of TWC with HW until HW's termination. RW remains on the TWC Board and owns approximately 21% of the voting shares of TWC. RW regularly transacted TWC business at TWC's headquarters in New York, New York.

JURISDICTION AND VENUE

13. The Attorney General brings this action on behalf of the People of the State of New York under the New York State Executive Law.

14. Under the Executive Law, the Attorney General is authorized to bring a special proceeding in this Court seeking injunctive relief, restitution, damages, disgorgement, civil penalties where applicable, and costs on behalf of the People of the State of New York "[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." N.Y. Exec. Law § 63(12).

15. Venue is properly laid in New York County because Respondent TWC has its principal office within the county, and many of the events and omissions giving rise to the claims took place in the county.

16. This Court may exercise personal jurisdiction over Respondents HW and RW because they conducted the business of TWC in New York, New York, and because they participated in events and omissions giving rise to the violations while in New York County.

17. The Court may exercise personal jurisdiction over Respondent TWC because it is a company with its principal office and place of business in New York County.

OVERVIEW OF ATTORNEY GENERAL INVESTIGATION

18. On October 23, 2017, the OAG issued a subpoena to TWC pursuant to Executive Law 63(12), for documents and testimony. The subpoena was issued as part of the OAG's investigation into reports that HW engaged in sexual harassment and sexual misconduct in the workplace, including at TWC's headquarters in New York; that TWC employees were enlisted to further and conceal the sexual harassment; and that all of this misconduct was hidden from law enforcement authorities and the public through aggressive use of NDAs and other efforts to conceal or distort the truth.

19. The OAG has reviewed documentary evidence produced by Respondents and obtained from other sources, including correspondence, business records, financial records, and thousands of pages of documents produced pursuant to third-party subpoenas. It continues to receive documents responsive to its subpoenas and to review those documents. The OAG also has interviewed current and former employees, executives, and Board members of TWC, and it continues to interview additional witnesses. Its investigation remains ongoing.

20. The OAG's ongoing investigation has so far confirmed that Respondents have engaged in multiple, repeated, and persistent violations of law that have harmed TWC employees, as well as individuals seeking business opportunities with TWC. These violations include unlawful gender discrimination and sexual harassment in violation of New York Executive Law § 296 *et seq.*, New York Civil Rights Law § 40-c, New York City Human Rights Law, New York City Administrative Code § 8-107(1)(a), and violations of provisions of the New York Penal Law prohibiting forcible touching (Penal Law § 130.52), sexual abuse (Penal Law

§ 130.55), and coercion (Penal Law § 135.60), and attempts to commit the same, and upon information and belief, other sexual offenses.

21. Even while its investigation continues, the OAG has instituted this proceeding at the present time in light of its factual and legal findings, and the possible imminent sale of TWC and/or its assets to purchasers in a transaction that could leave survivors of Respondents' unlawful conduct without adequate redress, enable perpetrators or enablers of misconduct to obtain unwarranted financial benefits, and fail to protect adequately TWC employees who would be reporting to some of the same managers (including TWC's Chief Operating Officer ("COO")) who failed to investigate HW's ongoing misconduct or adequately protect female employees from HW when HW served as co-CEO of TWC.

FACTUAL ALLEGATIONS

22. From the creation of TWC in 2005 through his forced exit from the company in October 2017, HW held extensive power and influence in the film and television industry. HW's support could open doors and launch award-winning careers, while his disapproval could permanently tarnish reputations and essentially blacklist a person across the industry.

23. As described herein, HW repeatedly and persistently misused his power within TWC and in the film and television industry, and the employees and resources of TWC, to harm and exploit both TWC workers and third parties seeking to do business with TWC. Within TWC, HW wielded this power in a sexually discriminatory manner.

24. HW personally created and perpetuated a work environment permeated with gender-based hostility and inequality. As described in Sections A and B below, HW engaged in *quid pro quo* sexual harassment; subjected female TWC employees and women seeking business or job opportunities with TWC to unwelcome and inappropriate physical contact and touching; subjected employees to a persistent stream of threats and verbal abuse, much of which was

sexual or gendered in nature; and menaced female employees with threats to their careers and of physical harm.

25. HW also required multiple groups of TWC employees to facilitate his sexual encounters with women. In part, HW required executive assistants to schedule and help arrange sexual (or possible sexual) encounters for HW, even directing them to essentially badger women who refused or expressed reluctance into accepting a “meeting” with HW. Additionally, on multiple occasions, HW required junior executives to meet a woman and discuss working in the entertainment industry generally or on specific TWC projects, because he was interested in her sexually and wanted the executives to help put the woman at ease before he made any sexual advances or because she had already submitted to his advances.

26. Through such conduct and other behavior detailed below, HW created what one former employee described as a “toxic environment for women” at TWC that persisted from the early days of TWC in 2005 to at least HW’s termination as TWC co-CEO in 2017.

27. HW’s and TWC’s unlawful activity persisted, at least in part, due to the effective acquiescence of RW and certain other members of TWC’s management and Board. As explained in Sections C and D below, members of TWC’s management and Board were aware of or had access to numerous complaints of HW’s misconduct as well as, to TWC employees and records which could have confirmed the accuracy of the complaints and the scope of misconduct—yet the company failed to adequately investigate any of the claims, take common-sense measures to protect female employees and third parties from HW’s illegal conduct, or terminate HW’s employment. Furthermore, TWC lacked an effective process for reporting and investigating complaints of sexual harassment or other sexual misconduct, as is required by law: it did not train employees on sexual harassment policies or laws; it did not have a meaningful or consistent

process for documenting and preserving claims of sexual harassment or other misconduct; and, when individuals did complain, Human Resources was not empowered to address claims related to HW.

28. TWC's corporate governance was made aware of but chose not to end the abuse being facilitated through its company. TWC's Board had power to supervise HW, to limit his contact with female employees and third parties, and to take concrete steps to stop it. The Board also had the power to refuse to renew HW's employment contract in 2015, but failed to act, in part out of HW's power and influence on the Board and in part due to concern that HW's departure or a public battle over his contract would inflict financial harm on TWC. HW and Board members loyal to HW defeated any efforts by independent Board members to investigate claims of sexual misconduct, or to remove HW or prevent him from continuing to sexually harass and harm women.

A. Hostile Work Environment

Obscenities and Insults

29. To work for Harvey Weinstein was to work under a persistent barrage of gender-based obscenities, vulgar name-calling, sexualized interactions, threats of violence, and a workplace generally hostile to women. This conduct occurred throughout the relevant time period.

30. For instance, HW regularly berated women using gender-based obscenities and stereotypes. He directed these comments to female employees and peppered ordinary conversation with vulgarities and gendered insults.

31. HW regularly called female employees “cunt” or “pussy” when he was angry with them or felt they had done a task poorly or incorrectly, or even just instead of calling them by their first names.

32. When HW wanted to particularly degrade or scold men, he called them cunt or pussy as well, and otherwise denigrated them in sexualized terms. For example, at a meeting attended by several TWC executives, HW criticized a male executive in the room for his alleged weakness. During the course of the criticism, HW turned to another TWC employee and said, “Can you smell [his] pussy?”

33. On another occasion, HW told a male assistant he was fired for—as reflected in an email sent by the assistant to the head of Human Resources about the incident—being “just a fucking faggot boy, a stupid fucking faggot boy.” HW routinely used similar epithets attacking employees’ masculinity.

34. HW regularly used gender stereotypes to insult and belittle female employees. For example, in a fit of rage against one female employee, he yelled that she should leave the company and make babies since that was all she was good for. He belittled other female employees using similar language.

35. On other occasions, he asked female employees if they had their period, including asking an employee if her tampon was “up too far.” He also accused female employees of wanting special treatment because of their gender.

36. HW made these comments in one-on-one conversations, as well as in front of other TWC employees, including the company’s most senior executives.

37. Despite knowledge of HW’s use of sexualized obscenities and gendered insults, TWC executives with responsibility for the matter and the Board failed to take any meaningful

steps to investigate allegations of such conduct or take remedial action to protect TWC employees or stop such behavior.

Intimidation

38. HW, who stands over six feet tall, used his stature and threatening statements on numerous occasions to demean and frighten female employees. Multiple female employees have described HW's regular use of physical intimidation and threats to terrorize female employees generally, deter them from making formal or informal workplace complaints, and prevent them from describing his conduct to anyone outside TWC.

39. Female employees described HW as yelling at them for purported incompetence, cursing in their faces, threatening to end their careers, and describing his intent to harm them, all while walking into them until his face was only inches from theirs.

40. TWC's management was presented with several allegations of such misconduct. According to information contained within HW's personnel file, on one occasion in 2011, HW violently punched the back of a female employee's car seat while berating her. On a separate occasion, he backed the same employee up against a wall, standing intimidatingly close while berating her. This as well as other misconduct prompted the female employee to file a formal complaint with TWC. TWC resolved the complaint via an agreement that contained an NDA. TWC did not adequately investigate the complaint, act to protect employees, or prevent HW from engaging in recurring conduct.

41. On another occasion in 2012, according to a formal complaint made to Human Resources, HW launched into a tirade against a female employee before a media interview in which he berated her viciously and at length in front of other TWC employees and threatened to "cut [her] loins," traumatizing the employee, making her feel "forced out" of her job, and

causing her “severe stress.” TWC resolved the complaint via an agreement that contained an NDA. TWC did not adequately investigate the complaint, act to protect employees, or prevent HW from engaging in recurring conduct.

42. HW cornered another female employee in a hotel lobby in 2014, coming so close to her and screaming at her so loudly about being a failure that a patron and hotel staff member came to ask if she needed assistance after HW left. The female employee was traumatized by the interaction and felt physically unsafe around HW after its conclusion, as reflected in a formal complaint to Human Resources in 2015 that described this incident and other misconduct. TWC resolved the complaint via an agreement that contained an NDA. TWC did not adequately investigate the complaint, protect employees, or prevent HW from engaging in recurring conduct.

43. HW told several employees throughout the relevant time period that, in substance, “I will kill you,” “I will kill your family,” and “You don’t know what I can do,” or words to that effect. HW touted his connection to powerful political figures and asserted that he had contacts within the Secret Service that could take care of problems. Female employees knew from observations of HW and from the experiences of other TWC employees that he was capable of fits of rage, including infliction of physical injury, and that he was sexually aggressive. Thus, they became fearful that they could suffer physical injury or worse if they did not satisfy his demands. With respect to all of these matters, TWC did not adequately investigate repeated credible complaints of misconduct or prevent HW from engaging in recurring conduct.

Forcing Women to Serve in Sexualized and Demeaning Roles

44. HW forced female TWC employees to serve in in humiliating and demeaning roles that required them to facilitate and support his sexual activity with third parties or support

“domestic” activities. TWC employed one group of female employees whose primary job it was to accompany HW to events and to facilitate HW’s sexual conquests. These women were kept on TWC’s payroll in TWC’s New York, Los Angeles, and London offices. While they had different titles, as a practical matter their primary responsibility included taking HW to parties at which he could meet young women, and introducing him to young women seeking opportunities at TWC with whom he could attempt to engage in sexual relations. These women were described by some witnesses as members of HW’s TWC “roster” or his “wing women.” One of the members of this entourage was flown from London to New York to teach HW’s assistants how to dress and smell more attractive to HW, as described further herein.

45. A second group of employees served as his assistants. Predominantly female assistants were compelled to take various steps to further HW’s regular sexual activity, including by contacting “Friends of Harvey” (“FOH”) and other prospective sexual partners via text message or phone at his direction and maintaining space on his calendar for sexual activity. Two TWC employee witnesses described having to procure HW’s erectile dysfunction shots, one of whom received a TWC bonus for obtaining them and was at times directed by HW to administer the injections. Another TWC witness described how she had to ensure HW had an adequate supply of them in his travel bag—referred to within the company as his “go bag”—at all times. One TWC employee was tasked with preparing a room in TWC’s offices for HW’s sexual activity when he wished to have sexual encounters in the office, and with cleaning up when it was over. Articles of women’s clothing were left behind on occasion after these incidents, making clear what transpired during these encounters and requiring TWC employees to make arrangements for their return.

46. The common occurrence of sexual activity in the workplace by TWC's co-CEO, sometimes while or immediately after employees were working in office space adjacent to the room where the activity occurred, contributed to the hostile work environment.

47. Certain of HW's assistants were threatened with termination of employment if they did not serve in gendered roles such as providing childcare to his young children, obtaining prescriptions for medicine, and performing other domestic labor such as assisting HW's wife or one of HW's adult daughters. One employee formally complained of this conduct to Human Resources in 2015, noting that she did "not appreciate being given work that my male counterparts are never asked to complete." Human Resources replied to this complaint as follows: "Please keep me updated on this...." The employee received no follow-up communications from TWC executives and no remedial actions was taken as a result of the complaint, reflecting that TWC conducted no meaningful investigation of the complaint.

48. That same employee followed up the next month with an email entitled "Well, you asked me to keep you updated" in which the employee stated that rather than obtaining a promotion to executive, she was threatened with termination if she did not start taking care of personal tasks for HW such as dealing with HW's doctors—work that "the boys" at TWC were never asked to perform. When the employee refused to assume this domestic role, HW stated, according to the second written complaint to Human Resources, "if that's your attitude fuck you and get out." The employee received no response from TWC executives and no remedial action was taken as a result of the complaint, reflecting TWC conducted no investigation of this complaint either. The employee left the company, having been retaliated against for refusing to accede to HW's demands.

49. A third group of predominantly female TWC employees—a group of female executives—also were forced to facilitate HW’s sexual conquests. These female employees’ job responsibilities should have been confined to using their expertise to help TWC produce films and television projects. Yet despite their skills and stated job responsibilities, HW required them to meet with prospective sexual conquests in order to facilitate HW’s sexual activity, and to follow through on HW’s promise of employment opportunities to women who met with HW’s favor. This compelled service demeaned and humiliated the female executives, contributing to the hostile work environment.

50. The practice of sending female TWC executives to meetings with HW’s prospective sexual conquests was overt within the company. HW’s assistants were aware that HW would want a female executive to be present at the outset of any such meeting with a prospective sexual conquest, and were trained to ask HW which executives HW would want to have present at the meetings.

51. One female executive described her dismay at being compelled to take meetings clearly not for business purposes but for the purpose of facilitating HW’s sex life. Male creative executives were not forced to take these kinds of meetings. As the executive reported to TWC’s Human Resources department: “only female executives are put in these positions with actresses with whom HW has a ‘personal friendship,’ which to my understanding means he has either had or wants to have sexual relations with them. Female TWC employees are essentially used to facilitate his sexual conquests of vulnerable women who hope he will get them work.” TWC took no steps to investigate these allegations or to prevent future recurrence of such conduct.

B. *Quid Pro Quo* Sexual Harassment

52. HW made *quid pro quo* offers or demands of sexual favors in exchange for career advancement at TWC, or to avoid adverse employment consequences at TWC. HW's overt *quid pro quo* sexual harassment further contributed to the hostile work environment within TWC.

53. The *quid pro quo* harassment took several forms, including demands for sex or intimate physical contact in exchange for career advancement, or qualifying career opportunities on flirtatious or otherwise attractive dress and behavior.

54. According to information provided to TWC employees interviewed by the OAG, in one instance in late 2014, HW approached a young female TWC intern, and told her to write her name and phone number on a slip of paper. The intern, who had not had interactions with HW before, was surprised and complied. HW asked her to join him for dinner that night but she declined, citing pre-existing plans. He told her to cancel them and that he would call her that night. When HW called, the employee again refused to meet him, and he ultimately proposed a meeting at 7:30a.m. at the Peninsula Hotel where he was staying. When she arrived at the hotel, HW made clear that he wanted a sexual relationship and proceeded to name famous actresses whose careers he purportedly had advanced after they agreed to his proposition. HW proposed a similar *quid pro quo* relationship to the intern. The intern spent an hour repeatedly saying no to his entreaties and refusing to come up to HW's hotel room. After the incident, the intern left the company. The complaint was reported to Human Resources and to company executives, but TWC took no institutional action to protect interns from HW or prevent future recurrence of such conduct.

55. On another occasion in 2015, HW asked a female TWC employee to go to his hotel room at the end of the day to set up his phone and devices for the next day or some other alleged work reason (work that TWC employees referred to as "turndown service," and that was

generally assigned to female TWC employees). Upon her arrival at his hotel room, HW appeared naked under a bathrobe and asked her for a massage. When the employee said no, HW cajoled, badgered, and insisted until she relented and, against her wishes, submitted to massaging him out of fear of employment-based retaliation by HW. The incident was reported to Human Resources and to TWC executives and Board members in November 2015, but TWC took no action to formally investigate the complaint, to protect employees from HW, or to prevent future recurrence of such conduct.

56. On other occasions in 2014 and 2015, HW exposed himself to a female employee and made her take dictation from him while he leered at her, naked on his bed. That same employee described how HW would insist that she sit next to him in the back seat of his chauffeured vehicle and would place his hand on her upper thigh and buttocks near her genitalia and rub her body without her consent. When she attempted to place bags or other barriers between them to make it harder for him to reach her, he moved the barriers or repositioned himself so that the unwelcome sexual contact could continue. This employee, and other TWC employees, believed that they would face adverse employment consequences unless they acquiesced to such demands.

57. On one occasion, HW asserted that he might have to fire a female employee because his daughter (for whom the employee was providing assistance at HW's direction) was angry with her, and he asked the employee what she was "prepared to do" to keep her job—a proposition that the female employee understood as a demand for *quid pro quo* sexual activity. The employee quit rather than submit to the demand for sex in exchange for continued employment.

58. Another TWC employee did succumb to HW's demands for sex. The former employee informed the OAG that the sexual activity was forced and unwelcome, and was compelled out of fear of career repercussions and HW personally.

59. To avoid unwanted touching, leering, or remarks by HW, some female TWC employees took to wearing pants instead of skirts or dresses, or wearing clothes that provided greater physical coverage.

60. To this HW made comments such as, "why don't you dress cute?," "you walk like a man," or "you can be pretty," making clear that physical attractiveness and femininity were necessary in order for the employee to be successful at TWC. As reported to Human Resources, company executives, and the Board in 2015, and as was known more generally within TWC, HW rewarded some female TWC employees with opportunities for career advancement (including access to meetings and other business opportunities) based on how attractive they appeared to him on that day, as he himself told the women. TWC did not take adequate steps to investigate these allegations or to prevent future recurrence of such conduct.

61. At one point, as recounted by one witness, HW brought in a female member of the "roster" from TWC's London office to teach his female assistants in the New York City office on how to make him "happy." Her tips included wearing skirts or dresses, looking feminine, showing more leg or a shoulder, wearing high heels, smelling "good," and introducing him to women. Female assistants were thus made to understand that career opportunities were connected to the degree to which they were attractive to HW and facilitated HW's sexual contact with women.

C. HW's Use of TWC Employees and Resources in Supporting His Sexual Misconduct

62. HW's assistants were exposed to and required to facilitate HW's sex life as a condition of employment. HW employed a team of up to five assistants at any given time. Over the relevant time period, over a dozen people served in these positions due to frequent turnover and promotions of assistants who met with his favor. HW typically tasked his female assistants with scheduling, arranging, and facilitating his sexual encounters, which were referred to within the company as "personals."

63. HW's assistants learned of two categories of HW's prospective or consummated sexual encounters. Over time, the assistants had compiled one list that was maintained on TWC's electronic shared directory and consisted of names of women, organized by city, whom HW contacted regularly for sexual encounters. This list was known internally as the "Friends of Harvey" or "FOH" list. This list was maintained in the HW Office electronic shared folder, and was accessible to TWC employees. This list categorized women by city, so that upon arriving in a particular city with HW, his assistants could readily find the contact information for the women he demanded that the assistants contact on his behalf.

64. The assistants also utilized a second common method for keeping track of the women in whom HW was interested sexually or with whom HW had had a sexual liaison, noting them in HW's electronic TWC contact list with an asterisk. The asterisk was used by assistants to make it easier to distinguish women with whom HW typically scheduled "personals" and people with whom HW had non-sexual relationships.

65. HW's assistants developed these methods of tracking of the objects of HW's sexual desire because they were keenly aware that an inability to quickly identify and contact the specific woman HW referenced posed a risk to their careers. HW made this clear by regularly threatening assistants and their jobs for any perceived mistakes.

66. In HW's schedule, maintained collectively by his assistants, meetings with "FOHs" or other would-be sexual contacts were explicitly dubbed "HW personal" or were deliberately excluded from his schedule; in the latter case other communications among assistants and HW made clear that a time slot had to remain open for HW's "personal."

67. All HW assistants were required to send emails dictated by HW as part of their job duties. However, in addition to sending emails to business contacts or as part of business operations, HW required his assistants to send emails and text messages, sometimes dictated, to would-be sexual partners and relay their responses to him, using TWC email accounts and phones.

68. At times, assistants were required to write multiple emails or text messages in the course of a single hour—using TWC equipment and email accounts—to an intended sexual interest if she did not respond or if she rebuffed HW's initial advances.

69. HW required his assistants to schedule "personals" for sexual activity both during the workday and after work. Upon arranging a "personal," assistants were required to clear or adjust any and all other scheduled plans that potentially conflicted with the "personal," sometimes at great difficulty. If an assistant failed to do so, HW became enraged and made clear to assistants that compromising a "personal" appointment also compromised their careers.

70. Assistants possessed copies of a document known as the "Bible," an assistant-created guide to working for HW that was passed down through Assistants. The document sat in hard copy on several Assistants' desks, and was accessible to and known to exist by some TWC executives. The Bible included information about HW's likes and dislikes, and a list of his "friends" with directions for assistants on how to arrange HW's extensive and frequent "personals."

71. Knowledge of “personals” was not limited to HW’s assistants or HW’s office suite. As co-Chair and co-CEO of TWC, HW’s unavailability for periods of time during the workday for “personals” was well known to TWC executives. According to one witness who handled calls from TWC executives to HW, executive staff became familiar enough with “personals” to know that they generally lasted anywhere from twenty-five minutes to one hour. Thus, upon learning HW was with a “friend,” some executives who reached his assistants during “personals” often inquired what time his “personal” began in order to estimate when HW’s sexual encounter would conclude and contact him at that time.

72. TWC funds paid for the office space and for the hotel rooms used for many of these personal encounters, which were booked using TWC’s travel agent. In addition, while HW often initially held out job opportunities, invitations or tickets to events, and other access to the entertainment industry to young women in exchange for sexual relations, he also required that assistants help purchase flowers, gifts, robes, lingerie, and other gifts for his “friends.” These purchases frequently were made on TWC corporate credit cards.

73. A female employee who was once responsible for coding HW’s expenses as “business” or “personal” recounted being told by HW to categorize as many of HW’s expenses as “business” as possible. She gave the example that if HW had a sexual encounter with a woman, and that same woman had once auditioned for a TWC project, then she understood that she was expected to categorize expenses related to the sexual encounter as “business.”

74. HW made it clear to his female employees that anyone who protested his demands to orchestrate these encounters would suffer retaliation.

75. Several of TWC’s female creative executives were exposed to and required to facilitate HW’s sex life as a condition of employment. HW demanded that female executives

fulfill tasks for him such as obtaining the contact information of his sexual targets and meeting with these women in order to put them at ease and facilitate them into private meetings with him.

76. Additionally, female executives were frequently forced to meet with women with whom HW had sexual relations or hoped to have sexual relations, in order to discuss their “career trajectory” and opportunities that HW instructed them to address with the women.

77. HW frequently targeted vulnerable, aspiring models, actresses, and entertainers as sexual conquests, using access to TWC and other industry opportunities that purportedly would be made available by his female executives, acting at his direction, as a bargaining chip in return for sexual favors. HW used female executives’ participation in these meetings to make clear that his contact with these women was in his professional capacity as CEO of TWC and to lend an “official” air to the encounters.

78. Female executives quickly came to understand that some of the meetings that they were required to attend were not for legitimate business purposes. For example, on some occasions, female executives were instructed to discuss with HW’s actual or intended sexual conquests career opportunities that the executives knew were not appropriate for the women, *e.g.*, English-speaking roles with women who did not speak fluent English.

79. Other women came onto TWC payroll at HW’s demand, upon information and belief because HW had or sought to have sexual relations with them and promised them a position at TWC. It was not uncommon for young women to appear at TWC’s New York City or Los Angeles office on the understanding that they were to be given a paid position, although they did not appear to have participated in standard interview processes and to fill an unspecific job position with no clear role or responsibilities. These women would then be given a desk and put on payroll, much to the dismay and annoyance of other TWC employees. Upon information and

belief, TWC's management asked for a list of these women at one point, pursuant to a review of company finances. These women, however, were not immediately removed from payroll by TWC upon completion of the review.

80. HW also used TWC's financial resources to fly women with him or to him for engaging in or facilitating sexual encounters.

81. Additionally, HW's drivers in both New York City and Los Angeles were required to keep condoms and erectile dysfunction injections in the car, in order to provide them to HW as needed.

82. Certain of HW's erectile dysfunction injections were charged to HW's corporate credit card, and at least one bonus paid by TWC to an assistant for her assistance in procuring HW's erectile dysfunction drugs for him.

83. It is during these TWC-funded and -facilitated "personal" encounters in his office and hotel rooms that, upon information and belief, HW engaged in unlawful sexual conduct with numerous women.

D. TWC and RW Acquiesced to HW's Misconduct

84. TWC is responsible for the unlawful conduct described herein. When the legal violations described herein were committed, HW was a co-owner, co-CEO, and co-Chairman of TWC. As the most senior member of TWC management, the actions taken by HW in the course of managing TWC and conducting TWC business are attributable to TWC.

85. Moreover, HW was only able to engage in repeated and persistent unlawful conduct because of the failure of key members of TWC's management and Board to ensure that the company complied with relevant nondiscrimination laws and prevent its executives from engaging in unlawful conduct while representing the company. The company's acquiescence

renders it responsible for HW's misconduct on separate grounds. RW also is liable as a co-owner and co-CEO of TWC who was aware of HW's misconduct and who failed to take reasonable steps to investigate and end it.

Failures of Management

86. Key members of TWC management were fully aware of HW's creation of a hostile work environment and his sexual harassment of others, yet they did not take reasonable steps to investigate or stop it, or to protect TWC employees from ongoing victimization. To the contrary, certain members of TWC management deliberately looked the other way or took actions that enabled HW to retaliate against employees who complained of misconduct.

87. The OAG has learned that, while TWC had a policy manual that contained a policy prohibiting sexual harassment and discrimination, the policy was flouted in practice. Employees who might have had reporting responsibilities, such as employees with supervisory responsibilities, did not receive any training or guidance about TWC's sexual harassment and discrimination policies, including what constituted unlawful harassment or discrimination, how to assist or personally report or otherwise handle a harassment or discrimination complaint, how investigations were conducted, or what remedial actions and privacy or anti-retaliation protections existed, were provided to any employees interviewed by the OAG.

88. According to the policy manual, complaints of harassment were to be submitted to the head of Human Resources (the "Human Resources Director"), who had the authority to decide whether a complaint had sufficient merit to warrant investigation. The Human Resources Director's regular practice was to escalate any complaints deemed to be significant to the TWC COO, to whom the Human Resources Director directly reported.

89. For example, in a May 2015 email obtained by the OAG, the Human Resources Director forwarded a complaint to the COO from a woman who worked for TWC, but who was expected primarily to serve as assistant to HW's daughter. In the email, the Human Resources Director stated to the COO: "we need to discuss a settlement and nda." According to material in HW's personnel file, such a settlement agreement was negotiated soon after the email from the Human Resources Director to the COO.

90. On more than one occasion, upon forwarding a complaint or information about a complaint to the COO, the Human Resources Director was not involved in any investigation or resolution process. Based on documents obtained by the OAG to date, such matters were handled by the COO and other members of TWC senior management, as well as counsel retained to contact victims of misconduct.

91. On numerous occasions during the relevant time period, victims of HW's misconduct complained to the Human Resources Director or to other TWC management about various aspects of the conduct described herein. On not a single occasion was HW subject to a formal investigation or to restrictions on his behavior or adverse employment consequences, as a result of any complaint.

92. Evidence gathered during the course of the investigation reflects that the Human Resources Director was not empowered to take any steps to address HW's ongoing sexual harassment of female employees. Victims of HW's misconduct have stated that when they complained to Human Resources about HW's efforts to intimidate them, use sexually demeaning language to refer to them, and issue verbal threats of sexual or physical harm, the Human Resources Director stated, in substance, that he "sympathized" with their plight, that they had a "tough job" working for HW, but that there was nothing he could do to address the misconduct.

93. On another occasion, a complainant who described serious misconduct was informed, in substance, that the Human Resources Director was “going to have to speak to HW” about the complaint. When the complainant expressed concern that she would be subjected to retaliation by HW if he were informed about the complaint, the Human Resources Director said that while “technically” HW could not retaliate in this manner, he could not prevent HW from doing so, stating, in substance “but I mean his name is on the sign.” Individuals who complained to Human Resources were in fact subject to retaliation by HW as a result of their complaints.

94. On certain occasions when individuals did complain to Human Resources, those complaints were not treated confidentially, nor were they investigated. For example, on one occasion, an assistant to HW wrote an email to Human Resources complaining of certain misconduct by HW. Soon thereafter, the assistant, who had access to HW’s email account due to her role at TWC, saw that her complaint had been forwarded directly to HW via HW’s email account.

95. On several occasions when TWC employees complained about serious misconduct by HW, TWC took steps to separate the employee from the company while securing an NDA that would prevent the employee from disclosing the misconduct to others or warning others about the misconduct. These NDAs were contained within settlement agreements entered into by TWC itself. While the source of the funds used to pay for the monetary component of any settlement remains under investigation, TWC’s participation as a party to settlements, and its receipt of complaints concerning misconduct leading to those settlements, reflect that members of TWC’s management were fully aware of numerous settlements involving claims of misconduct by HW brought by TWC employees.

96. Members of company management also understood that HW was using company resources to facilitate his sexual exploits, including his employment on the payroll of the “roster” of women described above and his use of company resources for sexual encounters. On certain occasions, company employees expressed concerns about HW’s improper charges to company accounts, but would be dissuaded from following through by fear of angering HW. At a meeting in 2015, TWC’s management requested that HW take his “roster” of women off of the payroll, and that he desist from using corporate cards and accounts for inappropriate expenses. While HW’s use of corporate cards after this 2015 meeting remains under investigation, certain members of the “roster” remained on staff after that date, and HW suffered no adverse employment consequences as a result of his misuse of corporate resources.

97. RW, as co-owner, co-Chairman, and co-CEO, was responsible for maintaining a safe workplace, free of sexual harassment and other unlawful conduct. Yet instead of doing so, RW acquiesced in allowing HW to create a hostile work environment and engage in sexual misconduct that was known to RW, or which he was responsible for preventing.

98. For example, RW knew that HW used sexually explicit and demeaning slurs to refer to female employees, having participated in meetings in which HW used those terms. Upon information and belief, RW also has admitted to the press that he paid for prior settlements of claims made by women against HW, after those claims were made known to him as a member of management of RW’s and HW’s prior company, Miramax.

99. RW also received by email in late 2014 and 2015, and was otherwise informed of, claims of repeated and persistent sexual harassment and misconduct, but he took no measures to further investigate the claims of misconduct, to terminate HW’s employment, to restrict or prohibit HW from supervising women or having or seeking sexual contact with TWC employees

or women seeking to do business with TWC, or from HW having private meetings with employees or women seeking opportunities in hotel rooms or TWC office space, or any other concrete measure that may have avoided HW's ongoing misconduct.

100. In addition, other members of company management understood that HW acted inappropriately towards women and sexually harassed them. They personally observed numerous occasions on which HW referred to women using sexually demeaning terms in front of others. They had opportunity to observe the presence of the "roster" on TWC's payroll. They also received or otherwise were made aware of information from complainants. Yet no adverse employment action was taken against HW due to his power within the company and his perceived importance to the company's financial results.

Failures of Corporate Oversight

101. TWC's Board also failed to inquire adequately into, or to restrain or prevent, the repeated and persistent unlawful conduct occurring at TWC. In part this was due to HW's and RW's effective control of the Board through their own participation on the Board and their ability to appoint or influence the appointment of others to the Board, leaving a small minority of the Board truly independent of HW and RW. In part these failings were due to concerns that HW's removal, or even exposure of his misconduct, would risk harming the financial interests of company ownership, which included Board members or Board members' employers. Finally, in part the reluctance to restrict or remove HW was due to personal relationships that many Board members had with HW. The Board's decision to avoid investigating credible claims of misconduct, and to shield HW from consequences of that misconduct, enabled HW to continue victimizing employees of TWC until his misconduct was revealed by press reports.

102. Reflecting the failings of the Board, the Board failed to investigate adequately credible claims of HW's misconduct presented to it by members of TWC management and an independent Board member, and to terminate or place meaningful restrictions on HW's continued employment at TWC when presented with the opportunity to do so.

103. Specifically, by early 2015, certain corporate executives at TWC who had received and handled numerous claims of misconduct from TWC employees, including the COO, became so concerned about HW's misconduct towards women, as well as his expenditure of company resources on improper items, that they decided they needed to notify an independent member of the Board about the misconduct.

104. In the private meeting with an independent Board member, certain members of TWC management carried with them and described complaints contained in HW's personnel file, as well as their general concerns about HW's treatment of women and his financial misconduct. They suggested that HW had become harmful to TWC and his conduct presented a risk to the company. This information should have been cause for immediate follow-up interviews and investigation, but no such investigation took place.

105. Instead, that information became relevant to negotiations between the Board and HW concerning extension of HW's employment contract. HW's original employment contract with TWC, entered into in or about 2005, explicitly provided for his termination from the company only in extreme circumstances, including conviction of a felony offense. (It did not explicitly prevent the Board from taking actions that would help prevent future recurrence of misconduct, such as limiting his managerial authority or restricting his ability to supervise employees or interact with women in his hotel room, but the Board did not undertake any of these actions.) That original employment contract expired at the end of 2015. The Board was

under no obligation to renew the contract; thus, HW's continued employment could have been terminated in 2015, or the Board could have insisted that HW take a reduced non-supervisory role with greater oversight that presented lower risk to the company.

106. In response to the information obtained from TWC management, independent Board members sought access to HW's personnel file so that counsel representing it could use the personnel file and other information to evaluate whether the Board would recommend renewal of HW's contract. HW resisted the independent directors' efforts to obtain a copy of his personnel file and otherwise investigate his misconduct, on the purported grounds that the contents of the file would be leaked to the press if disclosed to the Board. There was no basis for this claim; instead, HW sought to prevent access to his personnel file to avoid discovery of the extent of his own misconduct. A majority of the Board refused to back the independent Directors' efforts to obtain HW's personnel file; thus, the Board failed to undertake efforts that may have resulted in discovery of at least a portion of HW's misconduct.

107. Rather than investigate claims of misconduct by HW or take appropriate steps to protect TWC employees from HW's unlawful conduct, the Board in 2015 negotiated a contract extension with HW that placed no effective restrictions on his activity. The Board did require HW to, as of 2016, promise to comply prospectively with a Code of Conduct that was written to address what the Board understood to be HW's prior misconduct, including sexual harassment and financial impropriety. HW's 2015 contract extension, however, only permitted termination of HW's employment due to a Code of Conduct violation if the violation was "willful" and a majority of the Board, as well as RW, determined that the willful violation had "caused serious harm to the company."

108. HW's contract extension also contained an unusual provision that effectively monetized, rather than prohibited, ongoing acts of sexual harassment and misconduct. In particular, it stated that if TWC had to "make a payment to satisfy a claim that you [i.e., HW] have treated someone improperly in violation of the Company's Code of Conduct," he would face escalating financial penalties: \$250,000 for the first such instance, "\$500,000, for the second such instance, \$750,000 for the third such instance, and \$1,000,000 for each such additional instance." This contract contained no provision for any penalties if HW personally covered the costs of any payments necessary to satisfy claims of improper treatment, and it provided for no adverse employment consequences in the event that one, two, three, or even four or more such payments had to be made by TWC and/or HW as a result of HW's sexual harassment or misconduct. Thus, pursuant to HW's employment contract, HW could continue engaging in sexual harassment and misconduct with impunity, provided that he paid the costs of any settlements and that he avoided disclosure of misconduct that might risk causing "serious harm to the company."

109. Board minutes reflect that the Board ratified HW's new employment contract unanimously. No future efforts were undertaken by the Board to investigate HW's misconduct or TWC's practices concerning that conduct until HW's termination in October 2017. Any efforts by independent directors to restrain HW's conduct were overcome by HW, RW, and directors friendly to HW and RW. No penalty payments ever were made by HW pursuant to the employment contract, and HW was not terminated until after his misconduct was revealed to the public in October 2017.

110. In November 2015, after renewal of HW's employment contract, TWC was presented with specific and detailed allegations of sexual harassment and misconduct by a TWC

employee. Those allegations referenced other witnesses and victims within the company who could have been interviewed about the claims. That employee also was available to be interviewed and questioned.

111. Out of fear of retaliation and adverse career consequences, the employee agreed to withdraw the complaint in exchange for a settlement with TWC—not HW personally—that included an NDA. In connection with that settlement, however, the employee specifically informed TWC through its counsel that she was not withdrawing any of the allegations contained in the complaint; TWC’s counsel agreed to confirm this understanding in writing, informing the complainant’s counsel in a November 6, 2015 letter that in connection with the settlement, “your client’s withdrawal of the Complaint she previously made does not imply any retraction of the statements made in that Complaint.” Despite this reaffirmation, no effort was made to investigate any of the allegations contained within the complaint. To the contrary, upon information and belief, TWC’s Human Resources Director was instructed to remove the complaint from HW’s personnel file because it had been withdrawn, and the issues identified by the complaint remained unexamined and unremedied until HW’s expulsion from the company almost two years later.

112. Absent these failings of corporate management and oversight described herein, HW would not have been able to continue to engage in the repeated and persistent unlawful conduct described herein for several years with impunity.

FIRST CAUSE OF ACTION
Pursuant to Exec. Law § 63(12)
Violation of NYSHRL § 296(1)
Against Respondents HW and TWC

113. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

114. New York State Human Rights Law (“NYSHRL”), N.Y. Executive Law § 296(1)(a), provides that it is an unlawful practice for “an employer . . . because of the . . . sex . . . of any individual, to refuse to hire or employ or to bar or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” The NYSHRL is violated when a workplace is permeated by discriminatory intimidation, ridicule, or insult sufficient to alter the conditions or employment (“hostile workplace harassment”).

115. The NYSHRL is also violated when a managerial or supervisory employee trades or attempts to trade favorable employment terms, conditions, or privileges for sexual favors (“quid pro quo harassment”).

116. Through the actions and inactions described above, Respondents HW and TWC repeatedly and persistently violated the NYSHRL by subjecting employees to a sex-based hostile work environment, targeting female employees for *quid pro quo* harassment, and otherwise discriminating against female employees in the terms, conditions, and privileges of employment.

117. Such conduct was willful, wanton, and malicious.

118. By reason of the conduct alleged above, Respondents HW and TWC engaged in repeated and persistent illegal conduct in violation of NYSHRL § 296(1).

SECOND CAUSE OF ACTION
Pursuant to Executive Law § 63(12)
Violations of NYSHRL § 296(6)
Against Respondents RW and TWC

119. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

120. The NYSHRL, N.Y. Executive Law § 296(6), provides that it is “an unlawful discriminatory practice for any person to aid, abet, [or] compel . . . the doing of any of the acts forbidden under this article.”

121. As alleged above, Respondents RW and TWC repeatedly and persistently aided and abetted conduct that violates the NYSHRL, namely, the gender-based hostile work harassment of, *quid pro quo* harassment of, and discrimination against female employees by HW.

122. RW holds an ownership interest in TWC and was a senior executive of the company at all times relevant to the allegations set forth above.

123. TWC, through the actions and inactions of its executives and senior management, condoned and/or acquiesced in HW's sexual harassment of and gender-based discrimination against female employees.

124. Such conduct was willful, wanton, and malicious.

125. Through such unlawful conduct, Respondents RW and TWC engaged in repeated and persistent illegal conduct in violation of NYSHRL § 296(6).

THIRD CAUSE OF ACTION
Pursuant to Executive Law § 63(12)
Violation of NYCHRL § 8-107
Against All Respondents

126. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

127. The New York City Human Rights Law ("NYCHRL"), New York City Administrative Code § 8-107(1)(a), prohibits discrimination on the basis of gender.

128. The NYCHRL is violated when employees are treated "less well" than others, because of their gender.

129. As alleged above, Respondents repeatedly and persistently treated female employees less well than male employees through gender-based hostile workplace harassment, *quid pro quo* harassment, and discrimination.

130. Pursuant to N.Y.C. Admin. Law 8-107(13)(b), TWC is liable for the violations of the NYCHRL because the individual who personally engaged in the harassment and discrimination, Harvey Weinstein, was an executive employee with managerial responsibilities.

131. TWC is also liable because its executives and senior management knew of HW's harassing and discriminatory conduct but through their actions and inactions, acquiesced in such conduct.

132. TWC is also liable because TWC executives and senior management failed to take immediate and appropriate investigative or remedial action despite knowledge of HW's unlawful conduct.

133. Alternatively, TWC is liable for HW's unlawful conduct because it should have known of HW's actions and failed to exercise reasonable diligence to prevent his sexual harassment of and gender-based discrimination against employees.

134. The unlawful discriminatory practices described herein were the result of the Respondents' willful, wanton, and malicious acts.

135. By reason of the conduct alleged above, Respondents engaged in repeated and persistent illegal conduct in violation of NYCHRL § 8-107.

FOURTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12)
Denial of Equal Protection Under the New York Civil Rights Law
Against All Respondents

136. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

137. New York Civil Rights Law § 40-c provides that "No person shall, because of race, creed, color, national origin, sex, marital status or disability . . . be subjected to any

discrimination of his civil rights . . . by any other person or by any firm, corporation or institution

....”

138. Respondents have knowingly, repeatedly, and persistently, deprived women of equal treatment in terms, conditions, and privileges of employment and of the right to be free from severe or pervasive hostile treatment because of their sex.

139. By reason of the conduct alleged above, Respondents discriminated against persons based on sex in violation of New York Civil Rights Law §40-c.

FIFTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12)
Persistent or Repeated Illegal Business Conduct
Against All Respondents

140. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

141. A violation of state, federal or local law constitutes illegality within the meaning of Executive Law § 63(12) and is actionable thereunder when persistent or repeated.

142. HW, operating in his capacity as TWC’s co-owner and co-CEO, and using TWC employees and resources to facilitate his unlawful activities, repeatedly and persistently violated New York Penal Law provisions prohibiting forcible touching (Penal Law § 130.52), sexual abuse (Penal Law § 130.55), and coercion (Penal Law § 135.60), unlawful sexual misconduct (Penal Law § 130.20), criminal sexual acts (Penal Law § 130.40), and attempts to commit the same. TWC is liable for such misconduct.

143. Through the conduct, policies, and/or practices described herein, Respondents engaged in persistent and repeated violations of NYSHRL, NYCHRL, NYCRL, and NY Penal Law in the carrying on, conducting, and transaction of business in violation of New York Executive Law § 63(12).

WHEREFORE, Petitioner requests an order and judgment pursuant to Executive Law § 63(12) and NYSHRL § 296(1) & 296(6), CRL § 40(c), and NYCHRL § 8-107(1)(a):

1. Permanently enjoining Respondents from violating Executive Law §63(12), NYSHRL § 296(1) & 296(6), CRL § 40(c), NYCHRL § 8-107(1)(a), and relevant provisions of the Penal Law, and from engaging in the illegal acts and practices alleged in the Verified Petition;
2. Directing Respondents to pay a civil penalty to the State of New York in the sum of \$100,000 for each violation of NYSHRL § 296(1) and of NYSHRL § 296(6), \$250,000 for each violation of NYCHRL § 8-107(1)(a), and \$500 for each violation of CRL § 40(c);
3. Directing Respondents to pay restitution and damages in the amount of the harm to the victims of Respondents' illegal conduct in connection with its hostile workplace environment and sexual harassment of women;
4. Ordering such remedial equitable relief as is warranted based on the illegal acts and practices described above, including judicial or other supervision of compliance with the prohibitions on continued unlawful conduct; freeing women who signed NDAs negotiated by Respondents from those NDAs; prohibiting any corporate or financial transaction that would enable Respondents to evade the continued jurisdiction of the Attorney General and this Court, undermine compliance with the terms of any judgment, or conceal proceeds of any sale of TWC or any of its assets;
5. Awarding Petitioner the costs of this proceeding pursuant to CPLR § 8303(a)(6); and
6. Granting such other and further relief as the Court deems just and proper.

Dated: February 11, 2018
New York, New York

Respectfully Submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Petitioner
120 Broadway
New York, NY 10271
212-416-8250

By: _____/s_____

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Volunteer Assistant Attorney General
Civil Rights Bureau

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

THE PEOPLE OF THE STATE OF
NEW YORK, by ERIC T.
SCHNEIDERMAN, Attorney General
of the State of New York,

Petitioner,

v.

THE WEINSTEIN COMPANY LLC,
THE WEINSTEIN COMPANY
HOLDINGS LLC, HARVEY
WEINSTEIN, and ROBERT
WEINSTEIN,

Respondents.

ATTORNEY AFFIRMATION
IN SUPPORT OF
VERIFIED PETITION

Index No.
IAS Part
Assigned to Justice

ANJANA SAMANT, an attorney duly admitted to practice before the courts of this State, makes the following affirmation under the penalties of perjury:

1. I am an Assistant Attorney General in the Office of Eric T. Schneiderman, Attorney General of the State of New York (the "State" or "NYAG"), assigned to the Civil Rights Bureau, and am duly authorized to make this verification.
2. I have read the foregoing Petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.
3. The basis for my belief as to all matters stated upon information and belief are the investigatory materials contained in the files of the Civil Rights Bureau of the New York State Office of the Attorney General.
4. The reason this verification is not made by the Petitioner is that the Petitioner is a body politic and the Attorney General is their duly authorized representative.

WHEREFORE, it is respectfully requested that the petition be granted in all respects.

Dated: February 11, 2018
New York, New York

Respectfully Submitted,

By: _____/s_____

ANJANA SAMANT
Assistant Attorney General
Civil Rights Bureau
Anjana.samant@ag.ny.gov

EXHIBIT 3

Frankfurt Kurnit Klein + Selz PC

Maura J. Wogan

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February 14, 2018

VIA EMAIL AND REGULAR MAIL

The Weinstein Company LLC

99 Hudson Street

4th Floor

New York, New York 10013

Attn: Talia Houminer (tal.houminer@weinsteinco.com)

-and-

375 Greenwich Street

3rd Floor

New York, New York 10013

Attn.: David Glasser (david.glasser@weinsteinco.com)

Re: Notice of Rescission of Agreement

Dear Ms. Houminer and Mr. Glasser:

We are attorneys for Hotel Mumbai Pty Ltd. (“HMPL”) and write in connection with the agreement (“Agreement”) between HMPL and The Weinstein Company LLC (“TWC”), dated as of May 12, 2016, regarding the license of certain rights in and to the feature length motion picture currently entitled *Hotel Mumbai* (the “Picture”).

This letter will put you on notice that HMPL hereby immediately rescinds the Agreement on the grounds that TWC fraudulently induced HMPL to enter into the Agreement and entrust the distribution of the Picture to TWC, by deceiving HMPL and concealing material facts which, if known to HMPL, unquestionably would have resulted in a decision by HMPL to reject the Agreement and any contractual relationship with TWC.

Beginning in October of 2017, the public learned, for the first time, of the horrific allegations concerning Harvey Weinstein’s acts of serial sexual assault and harassment and the

The Weinstein Company
February 14, 2018
Page 2

role that TWC played in permitting and even facilitating such conduct. Then, three days ago, the Attorney General of the State of New York filed a Verified Petition in the Supreme Court of the State of New York against TWC and others alleging that TWC *actively concealed* the fact that TWC and Harvey Weinstein had engaged in “a years-long gender based hostile work environment, a pattern of quid pro quo sexual harassment and routine misuse of corporate resources for unlawful ends that extended from in or about 2005 through at least in or about October 2017.” Verified Petition, at p. 1.

Specifically, the Verified Petition alleges that TWC used strict NDAs, intimidation and harassment to keep the public, including HMPL and TWC’s other business partners, from discovering the extent to which Harvey Weinstein “repeatedly and persistently used his position at TWC, female employees at TWC, and the resources at his disposal as co-CEO of TWC, to serve his interests in [unlawful] sexual contact with women seeking employment or business opportunities with TWC.” Verified Petition, at p. 3.

There can be no doubt that, had HMPL known, in May of 2016, the facts that TWC and Harvey Weinstein knew and worked so relentlessly to hide, it never would have entered into the Agreement or allowed the Picture to be distributed by TWC or to be associated in any way with the now discredited TWC brand.

New York’s fraudulent inducement law permits HMPL to rescind the Agreement. “Under the ‘special facts’ doctrine, a duty to disclose arises ‘where one party’s superior knowledge of essential facts renders a transaction without disclosure inherently unfair.’” *Swersky v. Dreyer & Traub*, 219 A.D.2d 321, 327, 643 N.Y.S.2d 33 (1st Dep’t 1996). A seller with superior knowledge has a duty to disclose facts, not available to the purchaser or discoverable through “‘the exercise of ordinary intelligence,’” that would affect the purchaser’s conduct in the transaction. *See id.* at 328 (quoting *Century 21 v. F.W. Woolworth Co.*, 181 A.D.2d 620, 625, 582 N.Y.S.2d 101 (1st Dep’t 1992)). The duty to disclose arises where nondisclosure would “‘le[a]d the person to whom it was or should have been made to forego action that might otherwise have been taken for the protection of that person.’” *Cirillo v. Slomin’s Inc.*, 196 Misc. 2d 922, 928, 768 N.Y.S.2d 759 (Sup. Ct. Nassau Cnty. 2003) (quoting *Strasser v. Prudential Sec.*, 218 A.D.2d 526, 527 (1st Dep’t 1995)).

The remedy for TWC’s fraudulent inducement is, at HMPL’s option, rescission of the Agreement. *See J.P. Morgan Sec. Inc. v. Ader*, 127 A.D.3d 506, 507-08, 9 N.Y.S.3d 181, 184 (1st Dep’t 2015) (“[A] defrauded party to a contract may elect to either disaffirm the contract by prompt rescission or stand on the contract and thereafter maintain an action at law for damages attributable to the fraud.”)

We demand that TWC immediately confirm in writing (1) that the Agreement has been rescinded and that all rights in the Picture have reverted to HMPL and (2) that TWC will take all other acts necessary to make clear to the world that HMPL is the rightful owner of all rights in and to the Picture, and that TWC retains no such rights. In the event that we do not receive such

The Weinstein Company
February 14, 2018
Page 3

written confirmation by end-of-business Thursday, February 15, 2018, our client has directed us to take all actions available to it to protect its rights including, but not limited to, filing an action in the United States District Court for the Southern District of New York seeking a declaratory judgment that the Agreement is rescinded and that all rights in the Picture have reverted to HMPL.

Nothing contained herein should be construed as a waiver of any of our client's rights or remedies in this, or any other, matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maura J. Wogan". The signature is fluid and cursive, with the first name "Maura" being more prominent.

Maura J. Wogan

cc.: Joseph R. Taylor, Esq. (via email at jtaylor@fkks.com)

EXHIBIT 4



February 15, 2018

Via Email

Frankfurt Kurnit Klein & Selz
488 Madison Avenue
New York, NY 10022
Attn: Maura J. Wogan

Re: **Notice of Rescission of Agreement**

Dear Ms. Wogan:

I am in receipt of your February 14 letter, sent on behalf of Hotel Mumbai Pty Ltd. (“HMPL”) and concerning the project *Hotel Mumbai* (the “Picture”). In that letter, you explain that HMPL is rescinding the agreement for the Picture. You ask us to provide a confirmation of the rescission no later than end of business today. Providing a response by the close of the next business day is simply not workable. I need time to consider these issues, including the relative merits of the positions taken in your letter, and discuss them with the company. As I am sure you can imagine, this is not the kind of decision that one in a company of this size can or should make alone and without sufficient forethought. With that being said, I can commit to responding to you shortly, and in any event, no later than Tuesday of next week.

I look forward to speaking with you in short order.

Thank you,



David Glasser

EXHIBIT 5

Susan K. Seflin

From: Susan K. Seflin
Sent: Thursday, April 5, 2018 5:24 PM
To: 'pzumbro@cravath.com'; 'jzobitz@cravath.com'; 'aelken@cravath.com'
Cc: Larry Gabriel; 'Michael Busenkell'; Nikki Fields; Jessica Bagdanov
Subject: The Weinstein Company / Hotel Mumbai

Importance: High

Dear Counsel -

We represent Hotel Mumbai Pty Ltd. ("Hotel Mumbai") in The Weinstein Company Holdings LLC et al ("Debtors") bankruptcy cases.

As presented in Hotel Mumbai's opposition to the bid procedures motion, Hotel Mumbai notified The Weinstein Company ("TWC") pre-petition that it deemed the distribution agreement dated May 12, 2016 (the "Agreement") null and void and of no force and effect and thus rescinded, based upon the cover-up by TWC of the Harvey Weinstein sexual harassment debacle. Notwithstanding the pre-petition rescission, the Debtors included the Agreement on the schedule of assets attached to the stalking horse APA.

The issue as to whether or not the Debtors own the distribution rights to the Hotel Mumbai film (with the power to assume and assign) must be addressed as soon as possible in order to preserve the value of the film, which value diminishes every day that there is a delay in executing the distribution plan established for the film. More specifically, the pre-petition understanding reached between Hotel Mumbai and TWC called for a US/UK general release in or around July 2018 (and no later than October 2018). The reason was to ensure that the film would be released before the foreign distributors contemplated release date of November 2018, which is the 10 - year anniversary of the Mumbai attacks. As you may be aware, once foreign distribution occurs, a film typically finds its way to the internet through piracy, which then craters the value of the film. Accordingly, it is in the best interests of all concerned if the validity of the Agreement is addressed on an expedited basis without the need for additional legal proceedings.

However, and assuming arguendo that the US/UK distribution rights are an asset of the estate, it is imperative for the parties to know whether the company that assumes the obligations of the Agreement has the wherewithal to execute timely the contemplated distribution schedule, and to fund the \$10 mm print and advertising marketing program required by the terms of the Agreement. Accordingly, we request that the Debtors provide the following documents/information from the stalking horse bidder immediately:

1. The experience of the core management team of the buyer in relation to the film and entertainment industry, and their ability to execute the distribution and marketing plan for the Hotel Mumbai film as provided for in the Agreement, including documents evidencing the ability of the buyer to "release the Picture theatrically in the United States on a minimum of Eight Hundred (800) screens simultaneously" as required by Paragraph 6 of the Agreement.
2. The names of any members of an advisory board and/or consultants in the entertainment industry that the stalking horse bidder is engaging.
3. Evidence that \$10 million is immediately available to fund the Agreement (as the \$10 million will be due shortly after delivery per the terms of the Agreement).
4. Audited financial statements for the most recent 3 years.

5. What is the stalking horse bidder's plan for the film Hotel Mumbai and for the other unreleased films? I.e., will all four films be packaged together or will they be handled individually? Has the stalking horse bidder distributed films of this magnitude before?

Given the urgency of this matter, we would appreciate the opportunity to address this matter as soon as practical. My partner, Larry Gabriel, and local counsel, Mike Busenkell, will be attending Friday's hearing and would be happy to meet with you any time Friday, either before or after the hearing. Please let us know your availability. Without a seamless and expedited distribution of the film (which only a few distribution companies can accomplish and which was contemplated prepetition), the value of this asset will be *de minimus*.

Best regards, Susie

EXHIBIT 6

Susan K. Seflin

From: Paul Zumbro <PZumbro@cravath.com>
Sent: Thursday, April 5, 2018 6:26 PM
To: Susan K. Seflin
Cc: Jed Zobitz; Andrew Elken; Larry Gabriel; Michael Busenkell; Nikki Fields; Jessica Bagdanov; Karin DeMasi
Subject: Re: The Weinstein Company / Hotel Mumbai

We will pass the request along to counsel to the Stalking Horse Bidder. My partner Karin DeMasi won't be at the hearing tomorrow but we can find another time in the near future to meet and confer on this matter.

Thanks,

Paul H. Zumbro
Cravath, Swaine & Moore LLP
(Office) 212-474-1036
(Mobile) 646-415-2652

On Apr 5, 2018, at 8:24 PM, Susan K. Seflin <sseflin@bg.law> wrote:

Dear Counsel -

We represent Hotel Mumbai Pty Ltd. ("Hotel Mumbai") in The Weinstein Company Holdings LLC et al ("Debtors") bankruptcy cases.

As presented in Hotel Mumbai's opposition to the bid procedures motion, Hotel Mumbai notified The Weinstein Company ("TWC") pre-petition that it deemed the distribution agreement dated May 12, 2016 (the "Agreement") null and void and of no force and effect and thus rescinded, based upon the cover-up by TWC of the Harvey Weinstein sexual harassment debacle. Notwithstanding the pre-petition rescission, the Debtors included the Agreement on the schedule of assets attached to the stalking horse APA.

The issue as to whether or not the Debtors own the distribution rights to the Hotel Mumbai film (with the power to assume and assign) must be addressed as soon as possible in order to preserve the value of the film, which value diminishes every day that there is a delay in executing the distribution plan established for the film. More specifically, the pre-petition understanding reached between Hotel Mumbai and TWC called for a US/UK general release in or around July 2018 (and no later than October 2018). The reason was to ensure that the film would be released before the foreign distributors contemplated release date of November 2018, which is the 10 - year anniversary of the Mumbai attacks. As you may be aware, once foreign distribution occurs, a film typically finds its way to the internet through piracy, which then craters the value of the film. Accordingly, it is in the best interests of all concerned if the validity of the Agreement is addressed on an expedited basis without the need for additional legal proceedings.

However, and assuming arguendo that the US/UK distribution rights are an asset of the estate, it is imperative for the parties to know whether the company that assumes the obligations of the Agreement has the wherewithal to execute timely the contemplated distribution schedule, and to fund the \$10 mm print and advertising marketing program required by the terms of the Agreement. Accordingly, we request that the Debtors provide the following documents/information from the stalking horse bidder immediately:

1. The experience of the core management team of the buyer in relation to the film and entertainment industry, and their ability to execute the distribution and marketing plan for the Hotel Mumbai film as provided for in the Agreement,

including documents evidencing the ability of the buyer to “release the Picture theatrically in the United States on a minimum of Eight Hundred (800) screens simultaneously” as required by Paragraph 6 of the Agreement.

2. The names of any members of an advisory board and/or consultants in the entertainment industry that the stalking horse bidder is engaging.
3. Evidence that \$10 million is immediately available to fund the Agreement (as the \$10 million will be due shortly after delivery per the terms of the Agreement).
4. Audited financial statements for the most recent 3 years.
5. What is the stalking horse bidder’s plan for the film Hotel Mumbai and for the other unreleased films? I.e., will all four films be packaged together or will they be handled individually? Has the stalking horse bidder distributed films of this magnitude before?

Given the urgency of this matter, we would appreciate the opportunity to address this matter as soon as practical. My partner, Larry Gabriel, and local counsel, Mike Busenkell, will be attending Friday’s hearing and would be happy to meet with you any time Friday, either before or after the hearing. Please let us know your availability. Without a seamless and expedited distribution of the film (which only a few distribution companies can accomplish and which was contemplated prepetition), the value of this asset will be *de minimus*.

Best regards, Susie



Susan K. Seflin, Of Counsel

Brutzkus Gubner Rozansky Seror Weber LLP
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EXHIBIT 7

Susan K. Seflin

From: Nikki Fields
Sent: Tuesday, April 10, 2018 3:30 PM
To: pzumbro@cravath.com
Cc: mbusenkell@gsbblaw.com; jzobitz@cravath.com; aelken@cravath.com; skuhn@akingump.com; mlahaie@akingump.com; jstang@pszjlaw.com; dgrassgreen@pszjlaw.com; rfeinstein@pszjlaw.com; Susan K. Seflin; Larry Gabriel
Subject: In re The Weinstein Companies Holdings/Hotel Mumbai
Attachments: Letter to P. Zumbro.pdf

Mr. Zumbro:

Please see the attached letter from Larry Gabriel.

Thank you,
Nikola A. Fields, Assistant to:
LARRY W. GABRIEL, ESQ.

BRUTZKUS GUBNER

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Larry W. Gabriel
(818) 827-9147 Direct
(818) 827-9038 Direct Fax
lgabriel@bg.law

April 10, 2018

BY E-MAIL - pzumbro@cravath.com

Paul H. Zumbro, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

**Re: In re The Weinstein Companies Holdings, LLC and related entities
("Debtors") /Hotel Mumbai**

Our Client: Hotel Mumbai Pty Ltd.

Dear Paul:

This letter is to further advance our conversation in court on Friday and our email to you of April 6, 2018, wherein we advised you of our client's position that pre-petition, Hotel Mumbai Pty Ltd. ("HM") rescinded the Exclusive Distribution Agreement ("EDA") dated as of May 12, 2016 between HM and The Weinstein Company LLC ("TWC") for the distribution and marketing of the film "Hotel Mumbai". The rescission notice is dated February 14, 2018, a copy of which is enclosed for your reference.

Significantly, TWC did not substantively respond to the Notice despite telling HM that TWC would provide a response by no later than Tuesday, February 20, 2018. Based upon the foregoing, it is HM's position that the EDA is null and void and of no force and effect, and therefore is not an asset of TWC's bankruptcy estate. *See, e.g., In re Best Film & Video Corp.*, 46 B.R. 861, 870 (Bankr. E.D. N.Y. 1985) (A contract terminated pre-petition may not be revived by a bankruptcy court) *See also, In re Advent Corp.*, 24 B.R. 612, 614 (Bankr. 1st Cir. 1982); *Thompson v. Texas Mexican Railway Co.*, 328 U.S. 134, 141, 66 S.Ct. 937, 942, 90 L.Ed. 1132 (1946) ("The general rule is ... if the [non-debtor] party had a right to terminate the arrangement, that right survives adoption of the contract by the trustee").

As we discussed, in order to avoid the devastating financial impact that will result in any delay of the distribution of the film in the US/UK (and to pre-empt the release of the film by foreign distributors prior to the US/UK release), it is imperative that we immediately address the issues presented by the rescission notice, the TWC bankruptcy and the impact of the same as to the ability to distribute and market the film in a timely manner with clear title and with appropriate financial resources.



Paul H. Zumbro, Esq.
April 10, 2018
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Moreover, even assuming *arguendo* that the Debtors continue to assert the EDA is enforceable and is an asset of the estate, it is patently clear the Debtors cannot perform their contractual obligations, including but not limited to distributing the film to a minimum of 800 theaters and providing in excess of \$10 million for the marketing of the film. Given this inability to perform, again, the EDA should be terminated with all rights to the distribution and marketing of the Film return to our clients.

Finally, and without waiving any rights, we are very concerned that the “Stalking Horse Bidder” does not appear to have the *bona fides* necessary to comply fully with the terms and conditions of the EDA, including, without limitation, any ability to demonstrate any historical success in the marketing and distribution of motion picture films; and further, has not demonstrated any current ability to market and distribute the film, in the same or similar fashion HM was expecting would happen with TWC as the distributor. Lacking these critical factors, it is patently obvious that the Stalking Horse Bidder, or indeed any other bidding company without the industry influence of TWC, pre-scandal, would fail to pass the adequate assurance test required for the assumption and assignment of the EDA, assuming any ability of the Debtor to enter into such an arrangement. Furthermore, it does not make sense financially for TWC to assume and assign this agreement to any successful bidder (other than an entity with comparable qualifications to pre-scandal TWC) because to do so will likely result in the financial failure of the film and the inability of the successful bidder to even recoup its expenses required by the EDA.

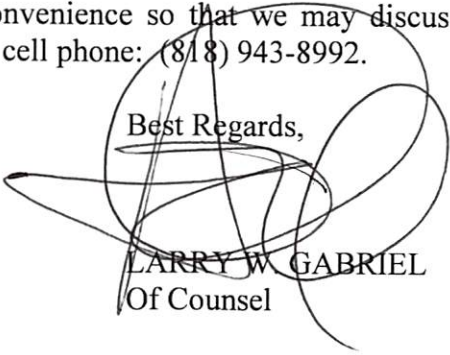
We would like to avoid further delay in addressing the issues presented above, so that the rights of our client(s) will be protected, and avoid unnecessary legal expense, which will only further burden the unsecured creditors of the Estates. Accordingly, we are requesting that the Debtors agree, by stipulation and order thereon, to release any and all title, right or interest in and to the EDA. Failing that, we would request that the Debtor stipulate to a shorten time frame for addressing the title issue presented herein with the bankruptcy court on an expedited basis, so that this issue is decided prior to receiving any further bids on the estate’s assets.

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Paul H. Zumbro, Esq.
April 10, 2018
Page 3

Please call me at your earliest convenience so that we may discuss the foregoing. The most efficient way to reach me is on my cell phone: (818) 943-8992.

Best Regards,



LARRY W. GABRIEL
Of Counsel

LWG:nf

cc: Michael Busenkell, Esq. - mbusenkell@gsbblaw.com
George E. Zobitz, Esq. - jzobitz@cravath.com
Andrew Elken, Esq. - aelken@cravath.com
Stephen B. Kuhn, Esq. - skuhn@akingump.com
Meredith A. Lahaie, Esq. - mlahaie@akingump.com
James I. Stang, Esq. - jstang@pszjlaw.com
Debra Grassgreen, Esq. - dgrassgreen@pszjlaw.com
Robert J. Feinstein, Esq. - rfeinstein@pszjlaw.com
Susan K. Seflin, Esq. - sseflin@bg.law