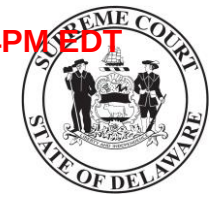
EFiled: Sep 14 2018 03:34PM EDT
Filing ID 62454824
Case Number 320,2018



IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEMINI REAL ESTATE ADVISORS, LLC, and GEMINI EQUITY PARTNERS, LLC, Delaware Limited Liability Companies,	)	No. 320, 2018
Defendants Below, Appellants,	)	CASE BELOW:
v.	)	Court of Chancery of the State of Delaware, C.A. No. 2017-0510-VCL
WILLIAM T. OBEID,	)	
Plaintiff Below, Appellee.	)	

APPELLANTS' REPLY BRIEF ON APPEAL

Of Counsel:

MCGUIREWOODS LLP
Robert A. Muckenfuss
Elizabeth M. Z. Timmermans
201 N. Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2000

PEPPER HAMILTON LLP
Douglas D. Herrmann (Bar No. 4872)
James H.S. Levine (Bar No. 5355)
Hercules Plaza, Suite 5100
1313 Market Street, PO Box 1709
Wilmington, DE 19899-1709
Telephone: (302) 777-6500

Attorneys for Gemini Real Estate Advisors, LLC and Gemini Equity Partners, LLC, Defendants Below, Appellants

Dated: September 14, 2018

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

SUMMARY OF THE ARGUMENTS[1]

Obeid concedes that where a manager has a historical practice of "purposefully damag[ing] the company's interests by engaging in direct competition, attempting to poach the company's employees, and informing the company's banks and credit agencies of its alleged financial instability," the company has established an improper purpose by the manager. *See* Obeid Answering Brief ("OAB") at 18 n.2. These are the very acts Obeid has engaged in *for years* to the detriment of Defendants, even during the pendency of the Federal Action—litigation that Obeid has represented involves "identical" issues to this lawsuit. Because this litigation represents Obeid's efforts to continue his historical interference with Defendants' business and an attempted end around of the Federal Action—where he has already lost on his information access claims—the Final Order should be reversed.

The Final Order also should be reversed because it requires Defendants to provide Obeid access to Defendants' Yardi Database, which goes beyond the access requirements of the DLLCA, even if Obeid had a proper purpose for bringing this lawsuit. Furthermore, because Defendants' other member/managers do not have access to the Yardi Database, Obeid's arguments for "equal access" as

[1] Terms not otherwise defined herein have the same meaning as those ascribed to them in Defendants' opening brief, filed on August 6, 2018 at Docket Number 8 (the "Opening Brief.")

a manager fails. The Final Order's requirement that Defendants provide Obeid with Yardi access until they wind down their affairs also constitutes improper intrusion into the business judgment of the Defendants as to how to maintain their books and records.

The Final Order should also be reversed because it makes compliance impossible—an issue that Obeid seeks to remedy by rewriting the Final Order through reference to his trial testimony. In addition to Yardi access, Obeid also sought spreadsheets "prepared by [William] Stelma on behalf of GREA that calculate the investor returns and Manager promote fees owed as a result of the sales of assets owned by the fund entities." Those spreadsheets were produced in advance of trial. The Final Order, however, requires Defendants to send *any* updates to the spreadsheets made by Stelma (a third-party consultant) within ten days—whether Defendants have knowledge of any change or not. Obeid seeks to minimize the impossibility of compliance by unilaterally clarifying the Final Order to only require sharing after undefined "substantive" updates. Even assuming that Obeid could save the Final Order by rewriting it, such rewrites do nothing to reverse the error and the Final Order should be reversed.

Finally, the Final Order improperly aids Obeid's post-trial efforts to amend his complaint, yet again. After trial, Obeid proposed that Defendants also be required to produce "comparable" documents to the fund spreadsheets, despite the

absence of any such request in his Amended Complaint. The trial court adopted Obeid's proposed language, improperly allowing Obeid to further amend his Amended Complaint and putting Defendants in the untenable position of searching for and predicting what the Court may find to be "comparable" documents.

For these reasons, the Final Order must be reversed.

ARGUMENT

I. THE EVIDENCE PRESENTED AT TRIAL DEMONSTRATES THAT OBEID'S DEMAND WAS MOTIVATED BY AN IMPROPER PURPOSE.

The Defendants' Opening Brief established that Obeid's demand was motivated by at least two improper purposes—an ongoing desire to interfere with Defendants' business and an attempt to undermine the court's rulings in the Federal Action. Obeid does not deny that establishing an improper purpose is sufficient to preclude access under Section 18-305(b), but rather argues that the evidence of improper purpose identified by Defendants was insufficient. Obeid's arguments fail.

First, with regard to Obeid's attempts to interfere with Defendants' business, the evidence presented by Defendants shows a specific and concrete harm that Defendants would suffer should Obeid obtain the records. Obeid's Response essentially argues that the myriad of improper activity conducted by Obeid identified in Defendants' Opening Brief—none of which he denies—should not even be considered because the Court must cabin its consideration to the risk of future harm. The *Bizzari* decision, cited by Obeid, shows this to be false. In *Bizzari*, the Court of Chancery considered the requesting party's history of competing with the company's business, tampering with the company's employees, and interfering with company lenders and deals to determine an

improper purpose existed. 2016 WL 4540292, at *8 (observing that testimony showed requesting party's "conduct during the last year has been entirely inconsistent with [company's] interests"). These are the *exact* sorts of acts in which Obeid has engaged since at least 2014.

Defendants have demonstrated that Obeid breached his fiduciary duties by diverting partner distributions and corporate funds to pursue projects without the knowledge of GREA's majority in interest, and he has used GREA employees to pursue projects on behalf of his own company, Arcade Capital LLC. (A1901-02, Trial Tr. at 127:17-130:22.) Obeid has also interfered with the sale of GREA assets in an effort to purchase them at discounted prices for Arcade. (A2003.) He has also engaged in wiretapping of Defendants' computer systems on multiple occasions in order to spy on Defendants' other member/managers, obtain asset bid information for the benefit of Arcade, and to monitor Defendants' employees. (A1901-02, Trial Tr. at 127:17-130:22.) Obeid has also entered into broker agreements and contracts with purported prospective purchasers of hotels without Defendants' consent. (A1901-02, Trial Tr. at 127:17-130:22); *Obeid v. La Mack*, 2018 WL 2059653, at *4, *8, *32-34 (S.D.N.Y. 2018); *see also La Mack v. Obeid*, Case No. 14-CVS-12010 (N.C. Super. Ct. 2014) (pending North Carolina litigation brought by Defendants against Obeid). These are not isolated, historical actions, but rather a pattern of competitive and harmful behavior over a period of years

(including during the pendency of the Federal Action) that should preclude Obeid from the proposed unfettered access to Defendants' books and records.

The fact that Defendants are winding down their business does not mitigate Obeid's improper purpose, as there is ample potential for future misconduct by Obeid. For example, Defendants are still in the process of selling off their assets—a process that Obeid has a history of attempting to impede. (*See* A2003 (Obeid encumbered four GREA properties in March 2015 with Notices of Pendency, preventing GREA from consummating sales of those properties after the Federal Court denied his TRO seeking to stop the property sales); A2045 at 110:4-111:16 (detailing Obeid's nefarious actions and explaining that that it is in the best interest of GREA to keep all members from accessing Yardi to prevent future harm to Defendants)).[2]

Defendants further demonstrated that Obeid brought his books and records demand for the improper purpose of circumventing the discovery deadline and interfering with the decisions in the Federal Action. Obeid confirmed this improper purpose by filing the notice of the Final Order to attempt to persuade the Federal Court to reverse its ruling on summary judgment. In defending his action

[2] The existence of a confidentiality order does not eliminate the need to deny access to books and records where the purpose for the demand is improper—where the party seeking to acquire the records already has a record of acting improperly, a confidentiality agreement provides little assurance that there will be no future misconduct. Moreover, the confidentiality order would not prevent Obeid from using the information to continue to harm Defendants.

in the Federal Action, Obeid argues that he had a duty to inform the Federal Court of material developments. This misses the point. For the purposes of this Appeal, what matters is not whether filing the notice was itself improper, but rather what the notice confirms about Obeid's motives in pursuing the books and records action—namely, that he is attempting to improperly influence litigation conducted in a separate forum.[3]

Moreover, Obeid's contention that he did not represent to the Federal Court that there were identical "access issues" being litigated in both forums, but rather only identical arguments, is a distinction without meaning. To be clear, Obeid's letter to the Federal Court states:

> The parties advanced identical arguments in Delaware as before this Court…we respectfully submit the Delaware Post-Trial Decision to Your Honor because it is new and relevant to Obeid's pending motion seeking reconsideration of this Court's summary judgment dismissal of Obeid's claim for breach of fiduciary duty of loyalty against La Mack and Masarro for, among other things, wrongfully depriving Obeid of material Gemini financial information.

(*See* A1629.) That he is attempting to leverage the trial court's ruling in this action to influence the Federal Court cannot be questioned.

---

[3] Accordingly, the cases relied on by Obeid to defend his decision to filing the notice are inapposite. *See e.g. Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016) (admonishing defendants for not alerting court of their decision to build structure that might moot plaintiff's claims in same litigation); *Coliniatis v. Dimas*, 848 F. Supp. 462, 469 (S.D.N.Y. 1994) (scolding both parties for not alerting court when case they had relied upon was reversed after motion was submitted).

Because Defendants have established that Obeid's information requests are motivated by improper purposes, Obeid's requests should be denied.

II. OBEID IS NOT ENTITLED TO ACCESS THE YARDI DATABASE.

The Court of Chancery's mandate that Defendants maintain a specific accounting platform and give Obeid access to that platform goes well beyond the requirements of the DLLCA, even if Obeid had a proper purpose for seeking the information. Furthermore, the information that he already obtained in this case and in the Federal Action is sufficient for his stated purposes, and the Federal Court has already determined that Defendants' other member/managers did not violate Obeid's access rights. Obeid now asks this Court to expand the DLLCA's restricted categories of information to encompass any corporate document or database and purports to instruct this Court that it may not question Obeid's business judgment as to why he seeks Yardi access. Obeid's arguments again fail for a number of reasons.

First, Obeid has failed to show that the Yardi database falls within the limited categories of information that DLLCA 18-305(b) allows a manager to access, *for a purpose reasonably related to the position of manager*. In arguing for access, Obeid relies on subsection (1), which allows discovery of "[t]rue and full information regarding the status of the business and financial condition of the limited liability company" and subsection (6), which allows "information regarding the affairs of the limited liability company as is just a reasonable." While DLLCA 18-305(b) affords managers access to all of the records DLLCA

18-305(a) lists as discoverable, none of those categories list general ledgers and their supporting journal entries, let alone require that Defendants maintain or provide direct access to an accounting database. (*See* A1875 at 24:15-25:2) (noting that general ledgers are not typically turned over in books and records actions). It cannot be that DLLCA 18-305 is sufficiently broad to require this unprecedented access where the Yardi Database contains documents that are not typically turned over. Similarly, GREA's operating agreement does not contemplate such broad access.[4]

Obeid's reliance on the *Kalisman* case is unpersuasive. In that case, the Court of Chancery held that corporate directors should have equal access to "board information." *Kalisman v. Friedman*, 2013 WL 1668205, at *3 (Del. Ch. Apr. 17, 2013). As Obeid concedes, none of the other member/managers have access to Yardi—a business decision made by the majority in interest based on the parties' ongoing litigation spanning multiple venues. (*See* A1890 at 84:4-21.) As a result,

[4] The Federal Court already specifically held that Obeid was not entitled to additional information pursuant to GREA's Operating Agreement. *See Obeid*, 2016 WL 5719779, at *6-8 (dismissing Obeid's claim that La Mack and Massaro breached the Operating Agreement by withholding certain company information from him).

Obeid is not seeking equal access but is instead seeking special, real time access to Defendants' accounting platform.[5]

Obeid also has the information that he needs to satisfy his stated purpose in the Amended Complaint: 1) to value his membership interest and 2) to investigate alleged mismanagement. As to the first stated purpose, Obeid has already been given access to over 2,000 pages of information just in this case, including Defendants' general ledgers (which goes beyond what is required by the DLLCA), tax returns, investor reports, investor lists, appraisals, and monthly updates he received outside of the litigation to allow him to value his membership interest in Defendants. (A2005-2010); *see e.g.*, *Sanders v. Ohmite Holdings, LLC*, 17 A.3d 1186, 1194 (Del. Ch. 2011) (holding where requester has already received sufficient information from another source, inspection may be curtailed).[6]

As to his second stated purpose—unsubstantiated claims of mismanagement—Obeid has already pursued this discovery in his parallel lawsuit in federal court. *See Bizzari v. Suburban Waste Serv., Inc.*, 2016 WL 4540292, at

[5] Notably, the Court of Chancery also confirmed that where adversity between the parties has been established, company privileged information may be withheld. *Kalisman*, 2013 WL 1668205, at *5.

[6] Obeid's attempt to distinguish *Sanders* based on its description of a member's right to access information is unpersuasive because the DLLCA categories of information accessible to a manager are identical to those of a member. *See* 6 Del. C. § 18-305(b) ("Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.")

*6 (Del. Ch. Aug. 30, 2016) (holding plaintiff's purpose improper where he filed separate action based on the same alleged conduct).[7] That Obeid has not been able to uncover anything to his satisfaction does not justify his efforts to make the restrictions listed in the DLLCA meaningless. Obeid cites to *Carapico* (noting historical litigation between plaintiff and SEC) and *Compaq* (stockholder seeking stock ledger to recruit other plaintiffs into existing lawsuit) in an effort to support his position that "pending litigation in and of itself does not serve as a bar to Obeid's inspection rights."[8] OAB at 26 (citing *Carapico v. Philadelphia Stock Exch., Inc.*, 791 A.2d 787, 788–89 (Del. Ch. 2000) and *Compaq Computer Corp. v. Horton*, 631 A.2d 1 (Del. 1993)). Of course neither of these cases involved active, competing litigation that the plaintiff described as "identical." Furthermore, Obeid already has the Fund operating agreements, investor reports, investor lists, and the investor and promote calculations performed by Defendants' accountant, Bill

[7] For example, Obeid cites to payment of Bridgeton legal fees as potential "insider or impermissible payments." This very issue was litigated in the Federal Action where Obeid's claims have been dismissed. *See* OAB at 16; *Obeid, v. Mack*, 2016 WL 5719779, at *11 (S.D.N.Y. Sept. 30, 2016) (dismissing Obeid's claim for declaratory judgment, because indemnification agreement with Bridgeton was authorized by GREA operating agreement); *Obeid*, 2018 WL 2059653 at *25 (finding no evidence that Defendants' majority in interest "engaged in or expected to engage in future business with Bridgeton on more favorable terms than would have been achieved through an arm's-length transaction in the absence of Gemini's purported economic concessions.").

[8] Obeid's reliance on *Carapico* is especially curious given its holding that the categories of information requested had to be curtailed to those necessary and essential to the stated purpose, because they were overbroad.

Stelma, that allow Obeid to investigate whether the investors and Defendants are receiving what they are owed. (A1557 ¶ 29; A2005-2010); (OAB at 2) (discussing Obeid's alleged mismanagement concerns).

Obeid's reliance on *Dobler* also does not support his bid for ongoing, real time access to the Yardi Database. In *Dobler*, the Court of Chancery allowed shareholders to obtain the loan agreements, promissory notes, and memoranda relating to the decision of the company to advance $13,291,935. *Dobler v. Montgomery Cellular Holding Co.*, 2001 WL 1334182, at *5–6 (Del. Ch. Oct. 19, 2001). Here, Obeid already has the equivalent information for calculating promote fees and investor returns: operating agreements, investor reports, investor lists, and the calculations themselves prepared by Defendants' accountant. Indeed, the holding in *Dobler* reinforces Defendants' stance that Obeid already has the information needed. *See e.g. Sanders*, 17 A.3d at 1294 (holding that, where requester has already received sufficient information from another source, inspection may be curtailed).

Finally, even if Obeid should be granted access to Yardi, the Final Order improperly requires Defendants to maintain the Yardi Database indefinitely, which is an impermissible attempt to force Defendants to create records for the purpose of providing them. Indeed, the Final Order requires Defendants to provide Obeid access to the Yardi Database every month "until GREA is completely wound

down." (A1642-43.) This ruling therefore requires Plaintiffs to maintain and create specific documents for Obeid through the Defendants' remaining lifespan, which is improper. *See Quantum Tech. Partners IV, L.P. v. Ploom, Inc.*, No. CIV.A. 9054-ML, 2014 WL 2156622, at *14 (Del. Ch. May 14, 2014) (holding that plaintiff was only entitled to inspect financial records "to the extent they exist"); *Dobler*, 2001 WL 1334182, at *9 ("Naturally, if the records to which the Court has found the Plaintiffs are entitled do not exist, the Defendant has no duty to do the impossible."); *Freund v. Lucent Techs., Inc.*, 2003 WL 139766, at *5 (Del. Ch. Jan. 9, 2003) (holding that only documents in existence need be produced). Without citation to any case law, Obeid contends that because Defendants did not provide a date certain as to GREA's wind down, it must therefore continue to maintain the Yardi Database indefinitely. This argument misses the point. The fact that Defendants currently have a Yardi Database does not mean that Delaware law requires them to maintain such a database indefinitely for Obeid's use.

Defendants did not waive the argument that they should not be required to maintain the Yardi Database through wind down because the issue was not apparent before the Court issued the Final Order. The language was not present in any of the filings that Obeid argues demonstrate Defendants' pretrial notice. (*See* A1548, A1561-62, A1564.) Furthermore, after receipt of the Post–Trial Ruling,

Defendants immediately asked the Court of Chancery to clarify whether it intended to require Defendants to maintain the Yardi Database until it wound down or simply to give Obeid access to certain accounting information, but the Court of Chancery declined to clarify its order. (*See* A1588 (requesting clarification); A1640 at ¶ 7 (Final Order in favor of Obeid's right to access); A1643 at ¶1(c) (Final Order granting Obeid access to Yardi Database, and requiring the database to be maintained through GREA's wind down); A1753 (denying the request for clarification).). As a result, Defendants did not waive the argument that they should not be required to maintain Yardi through wind down.[9]

For these reasons, Obeid is not entitled to access the Yardi Database and the Final Order must be reversed.

[9] Even if Defendants had not raised the argument before the trial court, this Court could still review this issue on appeal. *See* Sup. Ct. Rule 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented.").

III. THE TRIAL COURT'S ORDER REQUIRING DEFENDANTS TO PROVIDE OBEID WITH UPDATED VERSIONS OF EXHIBITS 1-6 to JX 115 AFTER ANY UPDATE MAKES COMPLIANCE IMPOSSIBLE.

As stated in Defendants' Opening Brief, the trial court's ruling that Defendants were required to provide Obeid with updated versions of Exhibits 1-6 to JX 115 and "any additional, updated version of such workbooks within 10 days of any such update," (*See* A1645-46), must be reversed or remanded for clarification because it imposes an impossible burden on Defendants to constantly monitor the actions of a third party to ensure they do not violate the Final Order. *See Mason v. State,* 901 A.2d 120 (Del. 2006) (remanding to trial court where trial court's order was ambiguous). Obeid's arguments in favor of affirming this provision of the trial court's order are unpersuasive.

First, Obeid contends that his testimony at trial and his argument in opposition to Defendants' Motion to Stay regarding what kinds of modifications and updates he would expect to be provided should be read into the Final Order to eliminate its vagueness. However, Defendants must adhere their conduct to the text of the Final Order, not whatever representations Obeid made at trial that he believes add clarity to its mandate. Furthermore, at trial, Obeid simply reiterated his demand that "modifications, additions or deletions to Excel workbooks be immediately furnished to him." (A1883.) Similarly, in opposing the Motion to Stay, Obeid simply asserted that he sought "substantive updates to such workbooks

where modifications, additions or deletions are made," (A1760.) Thus, even if Defendants could take their direction from Obeid's representations—and they cannot—Obeid has provided no clarity on what types of updates and modifications he considers himself entitled to receive.

Second, Obeid baldly asserts—without citation to authority or precedent—that it is not unusual for a books and records request to require "oversight and discretion" on the part of the Company. However, as noted in Defendants' Opening Brief, the Final Order does not merely require oversight and discretion—rather, it requires Defendants to monitor the actions of a third-party consultant who is not himself directly subject to the Final Order. This is what renders the burden imposed so extraordinary, and Obeid identifies no precedent for imposing such duties on a company pursuant to a books and records action.

IV. OBEID IS NOT ENTITLED TO WORKBOOKS "COMPARABLE TO JX116 OR JX 117."

Defendants' Opening Brief established that the Final Order's mandate that Defendants produce "comparable" documents to two trial exhibits must be reversed for lack of timely demand and vagueness. Obeid's Response fails to call into question these grounds for reversal.

First, Obeid's Response fails to show that he timely demanded access to any workbooks "comparable" to JX 116 and JX 117. Defendants do not dispute that Obeid's supplemental demand, made in December on the eve of the initial trial date, sought the Excel-based workbooks calculating "investor returns and Manager promote fees." (A2236). Critically, however, Obeid and Defendants agreed in the Pretrial Order that the workbooks provided by Defendants on March 2, 2018 showed the "current and historical investor distributions and the waterfall calculations as calculated by Defendants for any promote fees owed to Defendants for the funds they manage." (A1557). Thus, the assertion in Obeid's response that the Pretrial Order did not expressly prohibit Obeid from seeking additional Excel workbooks misses the point—the Pretrial Order acknowledged that Obeid received the workbooks he sought, thus removing that request from the issues to be tried. [10]

[10] Obeid makes serious allegations that Defendants made misstatements under oath to the trial court, but these allegations are a mere effort at distraction. In Obeid's initial proposed joint pre-trial order in November 2017, he sought a new category of documents never before requested: "Excel-based spreadsheet(s) prepared by on

Obeid's assertion that he indicated he was seeking additional workbooks when testifying at trial does not show timely demand. Courts have routinely held that demands made immediately prior to trial do not allow sufficient notice to the company. *See Fuchs Family Tr. v. Parker Drilling Co., C.A.*, 2015 WL 1036106, at *4 (Del. Ch. Mar. 4, 2015) (striking attempt to expand inspection demand on eve of trial, on grounds that it denied corporation its right "to receive and consider a demand in proper form before litigation is initiated."); *Mack v. Mack*, 2013 WL 1339431, at *1 (Del. Ch. 2013) ("Defendant cannot reasonably be expected to be ready to address Plaintiff's claims in a formal and structured fashion in a matter of days."). It follows that new demands made during the course of the trial are insufficient.

The Response also falls short in arguing that the directive to produce any documents "comparable" to certain trial exhibits is impermissibly vague. Obeid again reverts to the platitude that companies may need to exercise "discretion and oversight" to comply with a court order in a books and records action.

---

behalf of GREA that calculates the investor returns and Manager promote fees owed as a result of the sales of the Greenwich Village Hotel, the Best Western Seaport Hotel, and the Wyndham Flatiron Hotel." (B131.) Accordingly, in their December 1, 2017 pre-trial brief, Defendants objected to Obeid's untimely request and responded that the documents did not exist as described. (B131-133.) Obeid subsequently amended his request to instead seek: "A copy of the Excel-based workbooks prepared by Stelma on behalf of GREA that calculate the investor returns and Manager promote fees owed as a result of the sales of assets owned by the fund entities." (A175.) Those documents did exist and they were produced in advance of newly scheduled trial. (A1557 ¶ 9.)

Determining what document may be "comparable" to another with no other guiding principles is not a mere exercise of "discretion"—it would entail an intensive review of a substantial volume of corporate documents to attempt to determine which could be considered to meet such an imprecise standard. This is not the purpose of a books and records request. *See Chammas v. Navlink, Inc.*, 2016 WL 767714, at *8, n. 98 (Del. Ch. Feb. 1, 2016) (observing need to identify "specific books and records related to the plaintiff's proper purpose" so as not to "burden the corporation to search for the same"). This provision of the Final Order should, therefore, be reversed for vagueness as well.

CONCLUSION

For all the foregoing reasons and those in the Opening Brief, the judgment below should be reversed.

/s/ Douglas D. Herrmann
Douglas D. Herrmann (Bar No. 4872)
James H.S. Levine (Bar No. 5355)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 Market Street, PO Box 1709
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390
herrmannd@pepperlaw.com
levinejh@pepperlaw.com

Attorneys for Gemini Real Estate Advisors, LLC and Gemini Equity Partners, LLC, Defendants Below, Appellants

Of Counsel:

Robert A. Muckenfuss
Elizabeth M. Z. Timmermans
MCGUIREWOODS LLP
201 N. Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
rmuckenfuss@mcguirewoods.com
eztimmermans@mcguirewoods.com

Dated: September 14, 2018