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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224580
Party	Defendant Draion M Burch Do, LLC
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Date	03/08/2018
Attachments	Resubmitted Notice of Reliance.pdf(566711 bytes) Notice of Reliance Exhibit M redacted.pdf(191601 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Andre Young,	§	
	§	
Opposer,	§	
	§	Opposition Nos. 91/224,580
v.	§	91/226,572
	§	
Draion M Burch DO, LLC,	§	
	§	
Applicant.	§	

DR. DRAION M. BURCH'S RESUBMITTED NOTICE OF RELIANCE

Pursuant to the Trademark Trial and Appeal Board's March 8, 2018 Order requiring Applicant Draion M. Burch DO, LLC to resubmit its Notice of Reliance with a redacted Exhibit M, Draion M Burch DO, LLC hereby serves notice that it intends to rely on the following documents under Trademark Rule 2.122(d)(2):

Exhibit A. Third-party registration certificates and United States Patent and Trademark Office TESS database pages confirming the marks:

Registration No. 4,862,740 for DRE'S HOMEMADE WATER & ICE CREAM, covering ice cream and water ice;

Registration No. 5,023,799 for DREA for doll accessories and dolls;

Registration No. 4,551,215 for DRA for, among other things, entertainment in the nature of theater productions;

Registration No. 4,182,571 for DRAY for, among other things, apparatus for recording, transmission processing and reproduction of sound, images or data;

Registration No. 4,995,595 for DRA for, among other things, personal stereos, portable media players, headphones.

Exhibit B. Copies of the trademark file histories for Application Nos.

86/590,205 for DR. DRAI (Exhibit B1), and 86/730,410 for



Exhibit C. Copies of Opposer's Responses to Applicant's First Set of Interrogatories Nos. 3, 5, 9, 10, 14, 16, 17, 18, 20, and 27

Interrogatory Response No.3 discusses the reason behind Opposer's choice of the trademark at issue;

Interrogatory Response No 5 discusses Opposer's channels of distribution;

Interrogatory Response No. 9 discusses whether there was a search opinion for Opposer's mark;

Interrogatory Response No. 10 discusses what domain names are owned by Opposer;

Interrogatory Response No. 14 discusses what limitations Opposer has as to his trade name;

Interrogatory Response No. 16 discusses the lack of actual confusion between Opposer and Applicant's marks;

Interrogatory Response No. 17 discusses the differences in services provided by the parties;

Interrogatory Response No. 18 discusses whether Opposer has any other marks based on his given name;

Interrogatory Response No. 20 discusses whether Opposer uses Dr. or Doctor in any other trademarks; and

Interrogatory Response No. 27 clarifies that Opposer is not seeking dilution by tarnishment.

Exhibit D. Copies of Printed Publications and admissible Internet evidence referring to celebrity rapper Dr. Dre, a third party that uses the same stage name as Petitioner under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

Paine, Jake, "Yo MTV Raps Host Doctor Dre Calls Straight Outta Compton 'Straight Outta Fiction' (Audio)", www.ambrosiaforheads.com, dated January 24, 2017;

Hinckley, David, "Brown Leaving WLIB Without Anger; Luciano Exit Likely"; New York Daily News, dated May 27, 1999;

Huff, Richard, "Demme makes jump from MTV to helm of 1st feature"; Daily Variety, dated November 19, 1992;

Schoemer, Karen, "Ed and Dre At the Movies"; The New York Times, dated December 27, 1992;

Hinckley, David, "Heat Wave The History of Rap in the City Part 6 of 6"; New York Daily News, dated December 10, 2004;

Wloszczyna, Chris, "Hip, hot and profitable//Fashion and sports help Starter score"; USA Today, dated June 14, 1993;

Mainelli, John, "Hip-Hop Heave-Ho; Station Boots DJ Doctor Dre"; The New York Post, dated January 30, 2004;

Benarde, Scott, "L.A. Rapper Violent in Life, Lyrics"; Palm Beach Post, dated June 18, 1993;

Jones IV, James T., "Rap hosts no longer just a couple of 'Yo!'-yos"; USA Today, dated August 2, 1991;

Hinckley, David, "The Dr. is Out, In WQHT Shuffle"; New York Daily News, dated August 7, 1998;

Collins, Hattie, "The campaign to bring back Yo! MTV Raps starts here"; The Guardian, dated June 28, 2008;

Benziker, Robert, "What's Up, Doc?"; The Santa Fe New Mexican, dated April 4, 2008;

Johnson, Jr., Billy; "Catching Up 'Yo! MTV Raps'"; www.yahoo.com/music/blogs/hip-hop-media-training/catching-yo-mtv-raps-original-hosts-fab-5-210109308, dated December 4, 2011;

"Doctor Dre"; <https://www.discogs.com/artist/185889-Doctor-Dr%C3%A9>, accessed June 5, 2017;

"Episode 185 Doctor Dre"; <http://theciphershow.com/episode/185/>, dated January 23, 2017;

Lasala, Anthony, "Yo! MTV Raps – One of the Greatest Hip Hop Music Shows of All Time"; <http://life.topgolf.com/article/178/yo-mtv-raps-ndash-one-of-the-greatest-hip-hop-music-shows-of-all-time>, dated September 29, 2016;

"Who's Who"; http://www.beastiemania.com/whois/dr_dre/, accessed June 5, 2017;

Exhibit E. Copies of Printed Publications and admissible Internet evidence referring to Respondent's notoriety and medical experience under 37 CFR Section

2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

“Baby Born Pregnant with her own Twins”; Pakistan Today, dated February 12, 2015;

Richard, Joanne, “Doctors aren’t sold on vaginal detox; holistic, organic cleanse praised by advocates, but health experts warn of harmful effects,” The Vancouver Province, dated January 24, 2016;

Gormly, Kellie B., “Exercise for Two”; Pittsburgh Tribune Review, dated November 26, 2013;

Richard, Joanne, “Fussing with mother nature; casting a jaded eye on Paltrow’s latest – jade eggs”; Calgary Sun, dated February 5, 2017;

“American Osteopathic Association Urges Physicians to Improve the Quality of Care for LGBT Patients, End Fear of Health Care Discrimination”; <https://www.osteopathic.org/inside-aoa/news-and-publications/media-center/2015-news-releases/Pages/5-13-aoa-urges-physicians-to-improve-the-quality-of-care-for-lgbt-patients-end-fear-of-health-care-discrimination.aspx>, dated May 14, 2015;

Fischer, Kristen, “What You Should Know About Taking Birth Control for Extended Periods of Time”; <http://www.sheknows.com/health-and-wellness/articles/1071541/effects-of-birth-control>, dated February 20, 2015;

Capetta, Amy, “Contrary to Popular Belief, Breastfeeding Doesn’t Make Kids Smarter”; <http://www.drozthegoodlife.com/healthy-lifestyle/body/news/a572/breastfeeding-not-associated-with-iq-study/>, dated March 27, 2017;

Townsend, Tyrus, “[Passion to Purpose]: Dr. Draion Burch Talks Medicine, Media & Purpose”; <http://www.blackenterprise.com/bemodernman/2016/11/30/passion-purpose-dr-drai-burch-talks-medicine-media-purpose/>, dated November 30, 2016;

“Dr. Draion M. Burch DO (Dr. Draï) Releases His New Book “From Medicine to Mogul: 7 Steps to 7 Figures””; <http://www.24-7pressrelease.com/press-release/dr-draion-m-burch-do-dr-drai-releases-his-new-book-from-medicine-to-mogul-7-steps-to-7-figures-428912.php>, dated September 30, 2016;

Moore, Dr. Crystal, “Four Doctors to Follow on Twitter to Optimize Your Health”; <http://www.drcrystalmoore.com/four-african-american-doctors-to-follow-on-twitter-to-optimize-your-health/>, dated April 19, 2016;

“Our Interview with America’s OBGYN, Dr. Draï”;
http://madamenoire.com/569979/our-interview-with-americas-obgyn-dr-drai/#disqus_thread, dated January 20, 2016;

Holohan, Meghan, “PMS Cravings are Real. These guilt-free snacks may help you feel better”;
<http://www.today.com/health/pms-cravings-are-real-chocolate-cheese-may-help-you-feel-t11461>, dated March 27, 2015;

Ketchiff, Mirel, “Is it Bad That I Need to Pee All the Time?”;
<http://www.shape.com/lifestyle/mind-and-body/it-bad-i-need-pee-all-time>, dated April 27, 2017;

Abbate, Emily, “4 Symptoms of the Pill That are Never Normal, so You Can Know When You Actually Have to Call Your Doctor”;
<https://www.bustle.com/articles/99608-4-symptoms-of-the-pill-that-are-never-normal-so-you-can-know-when-you-actually>, dated July 24, 2015;

Nierenberg, Cari, “Having a Baby/Stages of Pregnancy”;
<http://www.livescience.com/44899-stages-of-pregnancy.html>, dated March 31, 2015;

Dr. Draion M. Burch, DO background,
http://www.medicinenet.com/doctors/164279/draion-burch/pittsburgh-pa_doctor.htm, accessed on June 5, 2017;

Dr. Draï as Sexual Health and Wellness Advisor for Astroglide,
<http://www.astroglide.com/blog/dr-drai-astroglide-sexual-health-advisor/>, accessed on June 5, 2017;

Meet Dr. Draï, <https://medicalmoguls.com/meet-dr-drai/>, accessed on June 5, 2017;

1,770 results for “Draion Burch” on www.google.com, accessed on June 5, 2017.

Exhibit F. Copies of Printed Publications and admissible Internet evidence referring to the night club Draï, used to show coexistence of third party marks under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

Elfman, Doug, “Chris Brown makes angry social media outburst at Draï’s nightclub”; Las Vegas Review Journal, dated July 12, 2016;

Boehrer, Kat, “Club Tour: Draï’s Beach Club and Nightclub”;
<http://vegasseven.com/2017/01/11/club-tour-drais-beach-club-nightclub/>; dated January 11, 2017;

Feldberg, Sarah, "Drai's Beach Club and Nightclub will be more than a Music Venue for Million-Dollar DJs"; <https://lasvegasweekly.com/nightlife/2014/feb/18/drais-beach-club-and-nightclub-will-be-more-music-/>, dated February 18, 2014;

Stapleton, Susan, "Drai's LGBT Nightclub Liaison Shutters at Bally's"; <https://vegas.eater.com/2015/2/5/7986867/drais-lgbt-nightclub-liaison-shutters-at-ballys>, dated February 5, 2015;

"Weekend Roundup: Jeezy, Taboo and Canelo Alvarez Party in Las Vegas"; <http://hauteliving.com/2017/05/weekend-roundup-jeezy-taboo-canelo-alvarez-party-las-vegas/635055/>, dated May 8, 2017;

"Jeezy Makes and Unforgettable Drai's LIVE Debut at Drai's Nightclub"; Las Vegas Informer, dated May 6, 2017;

"Legendary Rappers Fat Joe and Fabulous Share the Stage at Drai's Nightclub"; Las Vegas Informer, dated September 13, 2016;

Tanil, Zauni, "Meet Aaron Gillam, The Man in the Mirror at Drai's"; <http://vegasseven.com/2016/12/07/meet-aaron-gillam-man-mirror-drais/>, dated December 7, 2016;

"T.I. Brings a Full Concert to Drai's"; <http://hauteliving.com/2017/01/t-brings-full-concert-drais/627268/>, dated January 10, 2017;

Leach, Robin, "Confirmed! Victor Drai to expand nightlife empire in Cabo San Lucas"; Las Vegas Sun, dated March 15, 2016;

Latham, Jason R., "Dave Chappelle Brings the Laughs to Mandalay Bay, 50 Cent Gets in Da Club at Drai's"; <http://vegasseven.com/2017/05/03/dave-chappelle-brings-the-laughs-to-mandalay-bay-50-cent-gets-in-da-club-at-drais/>, dated May 3, 2017;

Frost, Claire, "48 hours in Las Vegas; Sin City is hotter than ever"; The Sun, dated March 27, 2016;

"At 82, Quincy Jones still hasn't got enough"; The Sunday Independent, dated June 21, 2015;

Exhibit G. Copies of Printed Publications and admissible Internet evidence referring to third party use of Dray for an entertainment talent scout, used to show coexistence of third party marks under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

"About Dray"; www.thedrayway.com, accessed June 6, 2017;

“Exclusive Interview: Disney Producer & Creator of THE DRAY WAY, IRENE “The Dray” Dreayer”, <http://hollywoodmomblog.com/exclusive-interview-disney-the-suite-life-on-deck-exec-producer-creator-of-the-dray-way-irene-the-dray-dreayer/>, accessed June 6, 2017;

“Want to be Discovered like Debby Ryan & the Sprouse Twins? Here’s How!”, <http://www.cambio.com/news/want-to-be-discovered-like-debby-ryan-the-sprouse-twins-here-s-how/>, accessed June 6, 2017;

Exhibit H. Copies of Printed Publications and admissible Internet evidence referring to third party use of Dray Day referring to promotional efforts by the Golden State Warriors player Draymond Green, used to show coexistence of third party marks under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

“Dray Day”, www.itunes.com, accessed June 6, 2017;

“Warriors’ Draymond Green filed for Dray Day trademark”, http://www.espn.com/nba/story/_/id/19439844/draymond-green-golden-state-warriors-files-dray-day-trademark, accessed June 6, 2017;

Exhibit I. Copies of Printed Publications and admissible Internet evidence referring to discussions regarding two rappers using Dr. Dre in related fields under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

“Why two guys named Dr. Dre?”, <http://boards.straightdope.com/sdmb/showthread.php?t=296353>, accessed June 6, 2017;

“There is two dr. dre’s?”, <http://goodproblem.blogspot.com/2009/11/there-is-two-dr-dres.html>, dated November 5, 2009;

Johnson, Ru, “Top Five Yo! MTV Raps Videos and Moments”, <http://www.westword.com/music/top-five-yo-mtv-raps-videos-and-moments-5692539>, dated August 5, 2011;

“Doctor Dre”, <http://www.allmusic.com/artist/doctor-dr%C3%A9-mn0000794054/biography>, accessed June 6, 2017;

Exhibit J

File history pertaining to Cancellation Petition No. 92/055,378 filed by Petitioner against Drew Haynes Reyes’ registration for DIAMONDDRE. The file is an official record of the United States Patent and Trademark Office, and was also provided in discovery by Petitioner to Respondent. The Petition to Cancel was withdrawn and dismissed with prejudice by the Trademark Trial and Appeal Board, which shows waiver

by Petitioner, third party use and registration of “dre” formative marks, and common use of “dre” as a shortened version of a given name.

Exhibit K

Nelson, Havelock, “Dre’s Chronic is Unsending Enjoyment; Distrib Family for Uncle?”; Billboard, January 16, 1993. Article confuses Petitioner with third party Doctor Dre while discussing Petitioner.

Exhibit L

Copies of Printed Publications and admissible Internet evidence referring to DJ SUPERDRE, who has “won a legal battle over your name against Dr. Dre” under 37 CFR Section 2.122(e) as follows, true and correct copies of which are appended to this Notice of Reliance.

Harris, Raquelle, “Detroit’s DJ SuperDre saves souls on the dance floor”; Rolling Out, October 13, 2016;

Milo, Jeff, “SuperDre: Methods and madness of the Detroit techno DJ”; Detroit Free Press, August 25, 2015;

Finney, Nancy, “Andrea SuperDre Wallace discusses Grand Rapids, City Lights, electronic music”; The Rapidian, August 22, 2012;

“Local talent DJ SuperDre signs national contract”;
www.rapidgrowthmedia.com/innovationnews, dated November 18, 2010;

Exhibit M

Confidential document provided by Petitioner discussing agreement between Petitioner and SuperDre Music, LLC;

Exhibit N

Document provided by Petitioner, but also accessible through Petitioner’s Wikipedia page at http://en.wikipedia.org/wiki/Dr._Dre, 15/24 showing dissimilar public perceptions about Petitioner and women, to be contrasted against Respondent’s services to women.

Exhibit O

“About Amazon Best Sellers,”
<https://www.amazon.com/gp/help/customer/display.html?nodeId=525376>, accessed June 26, 2017, used to clarify statements made by Applicant and Opposer’s counsel during Applicant’s June 21, 2017 testimony deposition.

Respectfully Submitted,

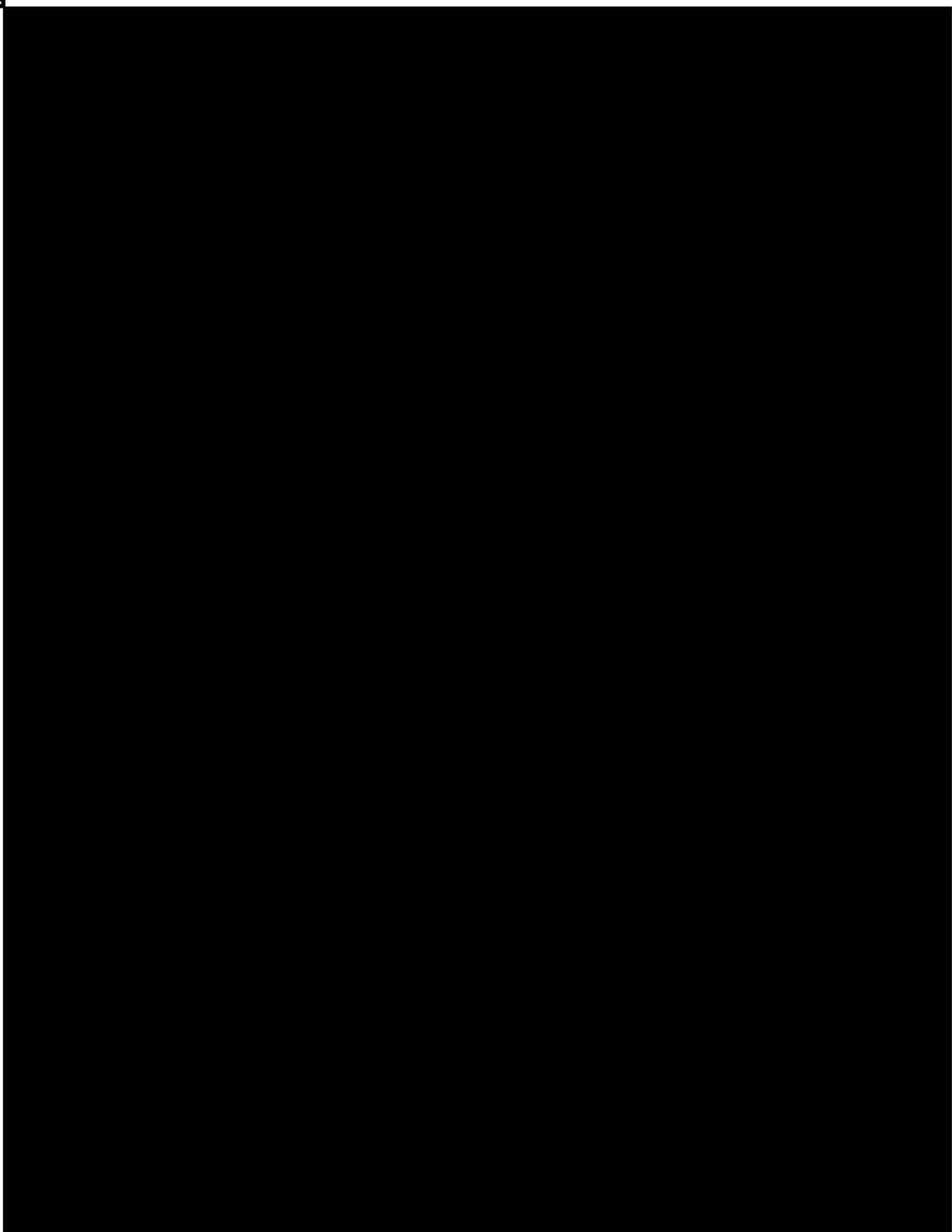
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Jon A. Schiffrin, Esq.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Reliance have been served via electronic mail upon the following counsel of record this 26th day of June, 2017.

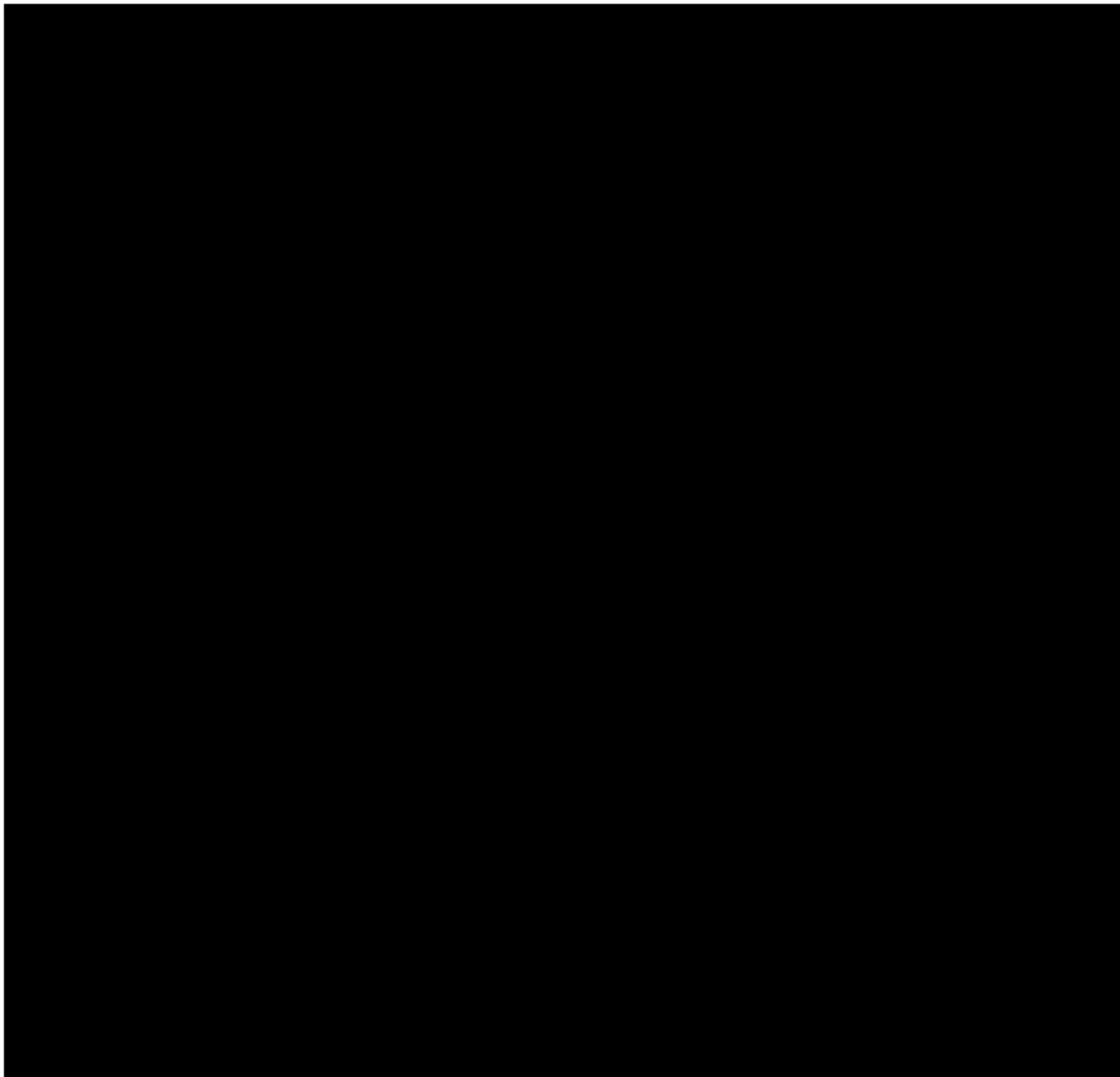
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CONFIDENTIAL

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Exhibit A

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