

EXHIBIT A

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Attorneys for Plaintiff
Barbaro Technologies, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BARBARO TECHNOLOGIES, LLC,
Plaintiff,

v.

NIANTIC, INC.,
Defendant.

Case No. 3:18-cv-02955-RS

**BARBARO TECHNOLOGIES, LLC'S
AMENDED DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT
CONTENTIONS**

**BARBARO TECHNOLOGIES, LLC'S AMENDED DISCLOSURE OF ASSERTED CLAIMS
AND INFRINGEMENT CONTENTIONS**

Plaintiff Barbaro Technologies, LLC ("Barbaro") provides the following Amended
Disclosure of Asserted Claims and Infringement Contentions pursuant to Patent L.R. 3-1, and in

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1 compliance with Patent L.R. 3-6, based on the information presently available to it at this time.
2 Barbaro reserves the right to further supplement or amend these disclosures and infringement
3 contentions, including the list of accused instrumentalities, pursuant to Patent L.R. 3-6, upon
4 continuing its investigation and based upon further discovery. While Barbaro has not amended
5 the Infringement Contention charts A1-A6 in substance, it has amended the titles and the dates of
6 the charts A1-A6 to correspond to this document; and as such, serves those charts with this
7 document.
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9 **A. Asserted Claims**

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11 Barbaro asserts that Niantic, Inc. (“Niantic”) directly infringed and continues to infringe
12 (1) claims 1-3, 5-8, 10-12, 15-17, 19, 24-25 of U.S. Patent No. 7,373,377 (the ‘377 patent)
13 through the use and manufacture of its Pokémon Go application (Generations 1-3) and specially
14 configured servers (i.e., client-server computer system), (2) claims 1-3, 5-8, 10-12, 15-17, 19, 24-
15 25 of the ‘377 patent through the use and manufacture of its Ingress application and specially
16 configured servers (i.e., client-server computer system), (3) claims 1, 3, and 5-6 of U.S. Patent
17 No. 8,228,325 (the ‘325 patent) through the use and manufacture of its Pokémon Go application
18 (Generations 1-3) and specially configured servers (i.e., client-server computer system), and (4)
19 claims 1-3 and 5-6 of the ‘325 patent through the use and manufacture of its Ingress application
20 and specially configured servers (i.e., client-server computer system) under 35 U.S.C. 271(a).
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23 Based on the information available to it today, Barbaro also asserts that Niantic infringed
24 and continues to infringe (1) claims 1-3, 5-8, 10-12, 15-17, 19, 24-25 of U.S. Patent No.
25 7,373,377 (the ‘377 patent) through the supply of its Pokémon Go application (Generations 1-3)
26 from the United States to foreign countries that is then subsequently combined with client devices
27 and specially configured servers (i.e., client-server computer system) in those foreign countries,
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(2) claims 1-3, 5-8, 10-12, 15-17, 19, and 24-25 of the '377 patent through the supply of its Ingress application from the United States to foreign countries that is then subsequently combined with client devices and specially configured servers (i.e., client-server computer system) in those foreign countries, (3) claims 1, 3, and 5-6 of U.S. Patent No. 8,228,325 (the '325 patent) through the supply of its Pokémon Go application (Generations 1-3) from the United States to foreign countries that is then subsequently combined with client devices and specially configured servers (i.e., client-server computer system) in those foreign countries, and (4) claims 1, 3 and 5-6 of the '325 patent through the supply of its Ingress application from the United States to foreign countries which is then subsequently combined with client devices and specially configured servers (i.e., client-server computer system) in those foreign countries under 35 U.S.C. 271(f)(2). Specifically, end users of Niantic's Pokémon Go and Ingress applications use the applications throughout the world on client devices. Niantic's foreign users have downloaded and continue to download copies of the software application (i.e., a component under 271(f)(2)) made in the U.S. Because the software application is downloaded from the internet it is likely that the software application as downloaded in foreign countries is from a copy made in the U.S., which constitutes an act of infringement under 35 U.S.C. 271(f)(2). Thus, Barbaro believes that additional discovery will support that Niantic has supplied and continues to supply a component (i.e., the Pokémon Go application (Generations 1-3) and/or the Ingress application) from the United States to foreign countries that is then subsequently combined with client devices and specially configured servers (i.e., client-server computer system) and used in the foreign countries in a manner that infringes the patents and claims set forth at the beginning of this paragraph.

Based on the information it currently has available, Barbaro currently contends that Niantic directly meets each and every limitation of the above-identified claims. However, if it is

1 later determined that Niantic has not directly infringed any of the above-identified claims of
2 either the '377 patent or the '325 patent because a user of the Pokémon Go and/or Ingress
3 applications perform and/or provides some or all of the limitations of any of the above-identified
4 claims, then Niantic would still be found to infringe the asserted claims of the '377 patent and the
5 '325 patent because Niantic had manufactured or used and continues to manufacture or use the
6 Ingress and Pokémon Go applications and has instructed and continues to instruct end users of the
7 Ingress and Pokémon Go applications such that Niantic directs or controls end users of its
8 Pokémon Go and/or Ingress applications in their practice of one or more of the limitations of the
9 asserted claims by activating certain features of the Pokémon Go and/or Ingress applications such
10 that the end user is able to perform activities within the applications during gameplay.
11 Specifically Niantic directs, and has directed in the past, end users to request first and/or second
12 real-time information from Niantic's specially configured servers by a user activation such as
13 launching the application or launching certain features within either the Pokémon Go or Ingress
14 applications as a condition to fully enable the applications, and to receive a benefit from the
15 features within the applications by allowing the end user to perform the steps of one or more of
16 the asserted methods, systems and in turn to successfully play Niantic's games. *See e.g., Akamai*
17 *Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022-23 (2015) (joint infringement
18 between software manufacturer and end user). Niantic also directs, or has directed in the past, end
19 users to use their client devices to access the Pokémon Go and Ingress applications.
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23 Barbaro expressly reserves the right to supplement or amend these disclosures and
24 infringement contentions to add any assertions of infringement under 35 U.S.C. 271(b) based
25 upon additional discovery.
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B. Accused Infringing Instrumentalities

Barbaro is aware of at least two client-server computer systems (i.e., instrumentalities) that infringe claims of the ‘377 patent and the ‘325 patent identified in A. Specifically, (1) Niantic’s Pokémon Go application (Generations 1-3), including all versions and updates of the application, in combination with Niantic’s specially configured servers (i.e., client-server computer systems), and (2) Niantic’s Ingress application, including all versions and updates of the application from October 11, 2016 to the present, in combination with Niantic’s specially configured servers (i.e., client-server computer systems) each infringe the claims of the ‘377 and ‘325 patents (as set forth above). For purposes of this analysis, and based on the lack of publicly-available information, Barbaro treats Pokémon Go Generation 2 as nearly identical to Generation 1 and analyzes those products together in the same chart. In fact, according to publicly-available information on the date of the Generation 2 release a “software update” did not occur, and so, Generation 1 and Generation 2 can be properly analyzed together. Additionally, Barbaro believes that once it obtains the pre-October 11, 2016 discovery on other versions and updates to the Ingress application it will be evident that the prior versions of Ingress also infringe the claims of the ‘377 and ‘325 patents. As such, upon receiving discovery relating to Pokémon Go application, Generation 2, and the pre-October 11, 2016 versions of the Ingress application, Barbaro will move the Court to update its contentions to address those instrumentalities.

Thus, the Pokémon Go application, Generations 1 and 2, including all versions and updates of the application, in combination with Niantic’s specially configured servers (i.e., client-server computer systems) infringe at least claims 1-3, 5-8, 10-12, 15-17, 19, 24-25 of the ‘377 patent and at least claims 1, 3 and 5-6 of the ‘325 patent; the Pokémon Go application, Generation 3, including all versions and updates of the software, in combination with Niantic’s specially

configured servers (i.e., client-server computer systems) infringes at least claims 1-3, 5-8, 10-12, 15-17, 19, 24-25 of the '377 patent and at least claims 1, 3, and 5-6 of the '325 patent; and the Ingress application, including all versions and updates of the software, in combination with Niantic's specially configured servers (i.e., client-server computer systems), infringes at least claims 1-3, 5-8, 10-12, 15-17, 19, 24-25 of the '377 patent and at least claims 1, 3 and 5-6 of the '325 patent.

The software updates (versions) of Niantic's Pokémon Go application (Generations 1-3) which have been identified (as of the date of this filing) as infringing when combined with Niantic's specially configured servers (i.e., client-server computer systems) are:

iOS Update	Android Update	Date of Release
1.0.0	0.29	July 6, 2016 (Generation 1)
1.0.1		July 12, 2016
1.0.2	0.29.2	July 13, 2016
1.0.3	0.29.3	July 20, 2016
1.1.0	0.31.0	July 30, 2016
1.1.1		August 1, 2016
1.3.0	0.33.0	August 8, 2016
1.3.1		August 10, 2016
1.5.0	0.35.0	August 22, 2016
1.7.0	0.37.0	September 10, 2016
1.7.1		September 16, 2016
1.9.0	0.39.0	September 24, 2016
1.11.2	0.41.2	October 12, 2016
1.11.4	0.41.4	October 14, 2016
1.13.3	0.43.3	October 23, 2016
1.13.4	0.43.4	October 26, 2016

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1	1.15.0	0.45.0	November 6, 2016
2	1.17.0	0.47.1	November 18, 2016
3	1.19.1	0.49.1	December 6, 2016
4	1.21.0	0.51.0	December 19, 2016
5	1.23.1	0.53.1	January 17, 2017
6	1.25.0	0.55.0	January 28, 2017
7	1.27.2	0.57.2	February 16, 2017
8	1.27.3	0.57.3	February 27, 2017
9	1.29.1	0.59.1	March 21, 2017
10	1.31.0	0.61.0	April 6, 2017
11	1.33.1	0.63.1	May 9, 2017
12	1.33.4	0.63.4	June 5, 2017
13	1.37.1	0.67.1	June 20, 2017
14	1.37.2	0.67.2	June 29, 2017
15	1.39.0	0.69.0	July 18, 2017
16	1.39.1	0.69.1	July 28, 2017
17	1.43.1	0.73.1	August 31, 2017
18	1.45.0	0.75.0	September 12, 2017
19	1.47.1	0.77.1	October 7, 2017
20	1.49.2	0.79.2	October 14, 2017
21	1.49.4	0.79.4	November 8, 2017
22	1.53.2	0.83.1	November 21, 2017
23	1.55.1	0.85.2	December 8, 2017
24	1.57.5	0.87.5	December 21, 2017
25	1.59.1	0.89.1	January 17, 2018
26	1.61.1	0.91.1	February 5, 2018
27	1.61.2	0.91.2	February 13, 2018
28	1.63.2	0.93.2	March 6, 2018
	1.65.3	0.95.3	March 16, 2018

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1	1.67.2	0.97.2	March 27, 2018
2	1.69.2	0.99.2	April 14, 2018
3	1.71.1	0.101.1	April 25, 2018
4	1.73.3	0.103.3	May 16, 2018
5	1.73.5	0.103.5	May 23, 2018
6	1.75.0	0.105.0	May 25, 2018
7	1.75.1	0.105.1	June 7, 2018
8	1.77.1	0.107.1	June 19, 2018
9	1.79.1	0.109.1	July 4, 2018
10	1.79.2	0.109.2	July 11, 2018
11	1.81.2	0.111.2	July 21, 2018
12	1.81.3	0.111.3	July 22, 2018
13	1.81.4	0.111.4	August 8, 2018
14	1.85.2	0.115.2	August 16, 2018
15	1.85.4	0.115.3	August 24, 2018

The software updates (versions) of Niantic's Ingress application which have been identified (as of the date of this filing) as infringing when combined with Niantic's specially configured servers (i.e. client-server computer systems) are:

iOS Update	Android Update	Date of Release
1.107.0	1.107.0	October 11, 2016
1.108.1	1.108.1	November 2, 2016
1.109.0	1.109.0	November 15, 2016
1.110.0	1.110.0	November 29, 2016
1.111.0	1.111.0	January 10, 2017
1.112.0	1.112.0	January 24, 2017
1.113.0	1.113.0	February 7, 2017

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1	1.114.0	1.114.0	February 23, 2017
2	1.115.1	1.115.0	March 22, 2017
3	1.116.0	1.116.0	April 4, 2017
4	1.117.0	1.117.0	April 19, 2017
5	1.118.0	1.118.0	May 2, 2017
6	1.119.0	1.119.0	May 18, 2017
7	1.120.2	1.120.2	July 6, 2017
8	1.121.0	1.121.0	July 28, 2017
9	1.122.0	1.122.0	August 22, 2017
10	1.123.0	1.123.0	September 19, 2017
11	1.124.0	1.124.0	October 3, 2017
12	1.125.0	1.125.0	October 17, 2017
13	1.126.0	1.126.0	November 8, 2017
14	1.127.0	1.127.0	November 21, 2017
15	1.128.0	1.128.0	November 28, 2017
16	1.129.2	1.129.2	December 15, 2017
17	1.130.1	1.130.0	January 17, 2018
18	1.131.0	1.131.0	March 23, 2018
19		1.131.2	June 25, 2018

C. Infringement Chart

Barbaro directs Niantic to Exhibits A1-A6 which are charts identifying specifically where and how each limitation of each asserted claim is found in Pokémon Go (Generation 1 and Generations 2 and 3) and Ingress. Barbaro does not contend that any of the claims identified in the claims charts are governed by 35 U.S.C. § 112(6).

The first column of each chart recites the limitations of the asserted claim. The second column identifies where a corresponding element is found with representative proof for each of

1 the Accused Instrumentalities. These identifications are based on Barbaro's understanding of the
2 current publicly available information, which does not yet include any discovery from Niantic.

3
4 **D. Inducement and/or Joint Infringement**

5 Based on the information it currently has available, Barbaro contends that Niantic
6 manufactured and continues to manufacture its Pokémon Go and Ingress applications (in
7 combination with its specially configured servers) to directly meet all of the limitations of the
8 asserted claims (set forth above). In the alternative, if Niantic is found not to have manufactured
9 or used one or more limitations of any of the asserted claims with respect to either or both of the
10 Pokémon Go and/or Ingress applications, Barbaro asserts that Niantic had manufactured or used
11 and continues to manufacture or use the Ingress and Pokémon Go applications and has instructed
12 and continues to instruct end users of the Ingress and Pokémon Go applications such that Niantic
13 directs or controls end users of its Pokémon Go and/or Ingress applications to practice one or
14 more of the limitations of the asserted claims by activating certain features of the Pokémon Go
15 and/or Ingress applications such that the end user is able to perform activities (use elements)
16 within the applications during gameplay. Specifically Niantic directs, and has directed in the past,
17 end users to request real-time information from Niantic's specially configured servers by a user
18 activation such as launching the application or launching certain features within either the
19 Pokémon Go or Ingress applications as a condition to fully enable the applications, and to receive
20 a benefit from the features within the applications by allowing the end user to perform the steps of
21 one or more of the asserted methods, and to in turn successfully play Niantic's games. *See e.g.,*
22 *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022-23 (2015) (joint
23 infringement between software manufacturer and end user). Niantic also directs, or has directed in
24 the past, end users to use their client devices to access the Pokémon Go and Ingress applications.
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1 As such, Barbaro has identified in the contention charts each and every feature that may require
2 end user activation or acts of infringement by the end user which are attributable to Niantic.

3
4 Barbaro expressly reserves the right to supplement or amend these disclosures and
5 infringement contentions, in the case of inducement or contributory infringement, to specifically
6 identify the direct infringement and Niantic's acts which induced or contributed to the direct
7 infringement, and in the case of joint infringement, to more specifically identify the role of each
8 party in the joint direct infringement.

9
10 **E. Identification of Whether Each Limitation in Each Claim is Literally Present or
Present under the Doctrine of Equivalents in the Accused Instrumentalities**

11 Barbaro presently contends that each Accused Instrumentality literally infringes each
12 limitation of each of the asserted claims of the '377 and '325 patents. Specifically, Barbaro
13 directs Niantic to Exhibits A1-A6, which identifies for each limitation how the limitation is
14 literally present in the accused instrumentalities.

15
16 Barbaro has not yet received any discovery from Niantic. Consequently, Barbaro reserves the
17 right to re-evaluate the application of each and every element of each and every asserted claim
18 against each of the Accused Instrumentalities. Based on the information presently in Barbaro's
19 possession, if it turns out that any claim limitation is not literally embodied within one or more of
20 the Accused Instrumentalities, given the publicly observable operation of the Pokémon Go and
21 Ingress applications, Barbaro asserts that the Accused Instrumentality is more likely than not to
22 embody any such literally absent claim limitation(s) under the doctrine of equivalents because
23 any difference between a claim limitation and the Accused Instrumentalities would have to be
24 insubstantial because the Pokémon Go and Ingress applications each provide the same function in
25 the same way to provide the same result as the inventions set forth in the asserted claims.
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F. Claims of Priority

Barbaro contends that the asserted claims of the ‘377 patent are entitled to the priority date of its underlying U.S. non-provisional Application No. 10/805,415, filed on March 22, 2004. Barbaro expressly reserves its right to prove an earlier date of invention for the asserted claims of the ‘377 patent, which the documents produced under Patent L.R. 3.2 (b) already reflect is prior to December 6, 2003, and may be as early as June 3, 2003.

Barbaro contends that the asserted claims of the ‘325 patent are also entitled to the priority dates of U.S. non-provisional Application No. 10/805,415, filed on March 22, 2004. Barbaro expressly reserves its right to prove an earlier date of invention for the asserted claims of the ‘377 patent, which the documents produced under Patent L.R. 3.2 (b) already reflect is prior to December 6, 2003, and may be as early as June 3, 2003.

G. No Preservation of Rights to Rely on the Assertion that any Barbaro Instrumentality Practices Claimed Invention

Barbaro does not preserve its right to rely for any purpose, on the assertion that a Barbaro apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention.

H. Identification of Timing of First Infringement, First Claimed Damages, and End of Claimed Damages

Niantic’s first act of infringement of both the ‘377 and ‘325 patents and first claimed damages relating to the Ingress application and specially configured servers (i.e., client-server computer system) was on or before November 15, 2012. The damages associated with the infringement relating to the Ingress application and specially configured servers (i.e., client-server computer system) is ongoing.

Niantic’s first act of infringement of both the ‘377 and ‘325 patents and first claimed damages relating to the Pokémon Go, Generation 1 application and specially configured servers

(i.e., client-server computer system) was on or before July 6, 2016. The damages associated with the infringement relating to the Pokémon Go, Generation 1 application and specially configured servers (i.e., client-server computer system) ended on or around February 16, 2017.

Niantic's first act of infringement of both the '377 and '325 patents and first claimed damages relating to the Pokémon Go, Generation 2 application and specially configured servers (i.e., client-server computer system) was on or before February 16, 2017. The damages associated with the infringement relating to the Pokémon Go, Generation 2 application and specially configured servers (i.e., client-server computer system) ended on or around October 20, 2017.

Niantic's first act of infringement of both the '377 and '325 patents and first claimed damages relating to the Pokémon Go, Generation 3 application and specially configured servers (i.e., client-server computer system) was on or before October 20, 2017. The damages associated with the infringement relating to the Pokémon Go, Generation 3 application and specially configured servers (i.e., client-server computer system) are still ongoing.

I. Willful Infringement

Barbaro's predecessor, Terrazones International, Inc., sent notice and a copy of the patent publication of the '377 patent (U.S. Publication No. 2004/0193441) that led to the issuance of the '377 patent to Google, Inc.'s Deputy General Counsel, Ms. Miriam Rivera, on October 26, 2006. Google's Patent Counsel, Mr. Benjamin Lee, responded to that notice on November 29, 2006, with an acknowledgement of Plaintiff's letter but a refusal to discuss the matter before the patent issued. The disclosure of the '325 patent was contained in U.S. Publication No. 2004/0193441. Thus, Google was aware of the '377 and '325 patents from at least their dates of grant after being put on notice of the patent publication that led to the issuance of the patents.

In 2010 Niantic was formed as part of Google, Inc. under the name Niantic Labs. In October 2015, Niantic was spun out of Google as a stand-alone company. Niantic's formation within Google, Inc. came shortly after the foregoing notices were sent, and as such, Niantic very likely had constructive as well as actual knowledge that its acts would constitute infringement of the Barbaro '377 and '325 patents, and yet, chose to manufacture and use its Pokémon Go and Ingress applications and specially configured servers (i.e., client-server computer system) in direct violation of Barbaro's patent rights. Such actions constitute willful infringement. See e.g., *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, 579 U.S. ___, 136 S.Ct. 1923, 1933 (2016).

J. Patent L.R. 3-2 Document Production Accompanying Disclosure

Barbaro has produced documents responsive to

- (a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit.

Bates-numbered: BT00003436 - BT00006113; BT00010140 - BT00012189

Barbaro's production of these documents as required under this rule shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102.

- (b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3-1(f), whichever is earlier.

Bates-numbered: BT00006113 - BT00007464; BT00012190 - BT00017472

- (c) A copy of the file history for each patent in suit.

Bates-numbered: BT00000001 - BT00003371; BT00010132 - BT00010139

- (d) All documents evidencing ownership of the patent rights by the party asserting patent infringement.

Bates-numbered: BT00003372 - BT00003435

- (f) All agreements, including licenses, transferring an interest in any patent-in-suit.

Bates-numbered: BT00007465 - BT00007468

Barbaro has no documents in its possession, custody or control responsive to (g) [a]ll agreements that the party asserting infringement contends are comparable to a license that would result from a hypothetical reasonable royalty negotiation, and (h) [a]ll agreements that otherwise may be used to support the party asserting infringement's damages case. Barbaro reserves the right to supplement its production if it uncovers documents responsive to these categories. Barbaro also has no documents responsive to (e) and (i) because it has not identified instrumentalities pursuant to Patent L.R. 3-1(g). Barbaro has no documents responsive to (j) [a]ll documents comprising or reflecting a F/RAND commitment or agreement with respect to the asserted patent(s).

In addition to the documents required under Patent L.R. 3-2, Barbaro has also produced documents that it has previously identified and which may be relevant in this litigation. Those documents have been Bates-numbered BT00007465 - BT00007468 and BT00017473 - BT00017837. Barbaro reserves its right to produce any additional document in uncovers during its investigation that has been yet to be uncovered and reviewed and is responsive to any of the document categories set forth in Local P.R. 3-2.

DATED: September 6, 2018 **DUNLAP CODDING, PC**

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Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I certify that all counsel of record is being served on September 6, 2018, with a copy of
this document via electronic mail.

/s/ Jordan A. Sigale
JORDAN A. SIGALE

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