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Case No. 2025-1026-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MW XO DIGITAL FINANCE FUND HOLDCO LTD. and MARSHALL WACE INVESTMENT STRATEGIES - EUREKA FUND, Plaintiffs, v. LUKKA, INC., Defendant	)	C.A. No. 2025-1026-LWW **REDACTED PUBLIC VERSION** **Filed: September 18, 2025**

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs MW XO Digital Finance Fund Holdco Ltd. and Marshall Wace Investment Strategies - Eureka Fund (collectively, the "Plaintiffs") bring this Complaint seeking declaratory judgment, temporary and permanent injunctive relief, and attorneys' fees and expenses against Lukka, Inc., a Delaware corporation ("Defendant" or the "Company"), and allege as follows:

Nature of the Case

1. This is an action for declaratory and injunctive relief to halt the proposed cram-down "pay-to-play" convertible note financing transaction that the Company is currently pursuing (the "Financing") and to compel Defendant to honor the consent rights that the Plaintiffs secured in the Sixth Amended and Restated Certificate of Incorporation of the Company (the "Charter"), which was adopted in

connection with the Plaintiffs' [redacted] investment in the Company's Series E Preferred Stock.

2. The Company is seeking, by an amendment to the Charter and the implementation of related transactions, to (a) change the voting rights unique to the holders of Series E Preferred Stock, (b) reclassify shares of series of its existing outstanding Preferred Stock (the "Existing Series Preferred"), including Existing Series Preferred that have liquidation preferences junior to the Series E Preferred Stock, to give them liquidation preferences senior to those of the Series E Preferred Stock and (c) reduce the number of authorized shares of Series E Preferred Stock, in each case in violation of the terms of the Charter granting express consent rights to the holders of Series E Preferred Stock and the Plaintiffs.

3. Plaintiffs were told about initial discussions around a potential financing transaction in the summer. At first, the Company agreed with the Plaintiffs that the terms proposed by the lead investor were draconian and predatory. The Plaintiffs expressed a willingness to invest further in the Company, on appropriate terms, but could not support the punitive financing terms that discourage investors other than the lead investor from participating (*e.g.*, the lead investor, and only the lead investor, would receive a payment of [redacted] on the original principal amount of its notes upon the consummation of an initial public offering or other change of

control transaction in perpetuity and in priority to all other investors, while other investors could only receive a [redacted] multiple, and given the lead investor's expected participation level, they would receive all or substantial all of such value). Despite numerous follow-ups, the Company stopped communicating with the Plaintiffs for five to six weeks. The Plaintiffs also attempted to communicate with the lead investor in the Financing. But the lead investor's representative was unable to explain the rationale behind, let alone justify the basis for, the extreme terms of the Financing.

4. In mid-August 2025, when the Company resumed communications, the Plaintiffs received an email from the Company announcing its intention to proceed with the Financing, and attaching various documents summarizing the terms of the Financing and the forms of transaction agreements and ancillary documents to implement the Financing. The Plaintiffs' concerns had been rejected without explanation. The dramatic shift in position by the Company is inexplicable in light of the Company's improving business prospects. The Company generated more net new revenue during the summer of 2025 than it did during the first half of the year. Yet the Company was endorsing a proposed Financing on terms that, just weeks before, it had agreed were predatory and favored the interests of a single investor over those of other stockholders.

5. Specifically, the proposed Financing contemplated a capital raise of up to [redacted], with LCV Fund III, L.P. (part of Liberty City Ventures, "LCV"), acting as lead investor, with a commitment to invest up to [redacted] but not less than [redacted] in the secured convertible promissory notes to be issued in the Financing (the "Notes"). These funding levels again favor LCV, as only LCV can contribute at the highest level—and, should it elect to do so, the [redacted] change of control premium it obtains would absorb an outsized portion of the consideration payable in an exit scenario. The term sheet summarized the terms of a so-called "pay-to-play," pursuant to which the Company would conduct a rights offering for the Notes to enable holders of Existing Series Preferred and other accredited investors to purchase their "Pro Rata Share" of [redacted] in Notes, with each "Existing Holder" who invests its "Pro Rata Share" having the right to have its existing shares of a series of Existing Series Preferred exchanged for a new series of Preferred Stock, identical in all respects to such existing series except that such new series would have a liquidation preference senior to any Existing Series Preferred that would remain outstanding, including the Series E Preferred Stock (the "New Series Preferred"). The term sheet further provided that any Existing Holder that commits to invest at least [redacted] but less than [redacted] would have its shares of any series of Existing Series Preferred exchanged for a new series of Preferred

Stock, identical to the series of Existing Series Preferred except that such new series would be senior in liquidation preference to the Existing Series Preferred and the New Series Preferred (the "Senior Series Preferred"). The term sheet then provided that any Existing Holder that commits to invest at least [redacted] would have its shares of any series of Existing Series Preferred exchanged for a series of Preferred Stock identical in all respects to the corresponding series of Existing Series Preferred so exchanged (other than with respect to the terms of its liquidation preference making it senior to the Existing Series Preferred, the New Series Preferred, and the Senior Series Preferred (the "Super Senior Series Preferred")).

6. In the proposed Financing, holders of outstanding shares of Existing Series Preferred that decline to participate in the Financing at the prescribed levels would continue to own their shares of Existing Series Preferred. The liquidation preferences of the Existing Series Preferred, however, would by virtue of the amendment to the Charter required by the Financing and the operation of the transaction agreements related to the Financing, be subordinated to the New Series Preferred, the Senior Series Preferred and the Super Senior Series Preferred.

7. After receiving the Defendants' August 12 Email and the documents attached thereto, the Plaintiffs studied the terms of the Financing to evaluate the

investment opportunity and to assess its effect on their existing investment in the Series E Preferred Stock.

8. Within just two weeks, the Plaintiffs analyzed the complicated financing documents and again outlined to the Company their concerns with the terms of the proposed Financing and asserted that the consent of the Plaintiffs would be required under the Charter for the Financing to proceed. The Plaintiffs then suggested that they would consider providing their consent to, and participating in, the Financing if the terms were revised to include specified improvements.

9. The Company dismissed the Plaintiffs' concerns out of hand and rebuffed any effort to revise the terms of the Financing in a way that would enable the Plaintiffs' to proceed with an investment. The Company also asserted that it was entitled to proceed with the Financing on the terms it had outlined (without regard to the Plaintiffs' concerns or requests for improvements) and without the Plaintiffs' consent.

10. Plaintiffs understand that the Company is now taking action to proceed with the Financing, despite the Plaintiffs' concerns and without securing the Plaintiffs' consent. Despite the Plaintiffs' requests, the Company has not provided information regarding the closing of the Financing but has indicated that it is prepared to move forward on an urgent basis.

11. Section 6(f) of the Charter[1] provides that, without the consent of the holders of a majority of the outstanding shares of Series E Preferred Stock, acting as a separate class (which majority must include the consent of the Plaintiffs), the Defendant may not, among other things, whether by merger, consolidation, amendment or otherwise, increase or decrease the authorized shares of Series E Preferred Stock, reclassify shares of its Preferred Stock to make them junior or pari passu to other classes or series of stock or alter or change the powers, rights, preferences, privileges or restrictions of the Series E Preferred Stock so as to adversely affect the shares of Series E Preferred Stock (the consent required under Section 6(f) is referred to herein as the "Requisite Holder Consent").

12. Despite the clear terms of Section 6(f), the Company, through the Financing, is proposing to proceed with a series of transactions, necessitating and involving an amendment to the Charter, that would, among other things, strip the holders of Series E Preferred Stock of important rights unique to the holders of Series E Preferred Stock, including significant protective provisions, reclassify the shares of certain holders of Existing Series Preferred into "shadow" senior series of New

[1] Each reference to any "section" of the Charter set forth herein is a reference to the relevant section of Article IV, Part B of the Charter.

Series Preferred, Senior Series Preferred and Super Senior Series Preferred and would decrease the authorized shares of Series E Preferred Stock.

13. The draft Seventh Amended and Restated Certificate of Incorporation (the "New Charter"), which provides for the creation of the New Series Preferred, Senior Series Preferred and Super Senior Series Preferred, would rob the Series E Preferred Stock of its unique consent rights in Section 6(f) of the Charter by, among other things, providing that the veto rights therein may be asserted not solely by the holders of Series E Preferred Stock as a separate series, as is currently the case, but by the holders of "Series E Group Preferred Stock," which includes the New Series Preferred, Senior Series Preferred and Super Senior Preferred issued as "shadow" series in connection with the exchange, thus requiring the Company to secure the Requisite Holder Consent.

14. Moreover, the New Charter, together with the transaction agreements and other documents relating to the Financing, would result in Existing Series Preferred whose liquidation preferences are currently junior to the Series E Preferred Stock being reclassified into shares of New Series Preferred, Senior Series Preferred and/or Super Senior Series Preferred whose liquidation preferences would be senior to the Series E Preferred Stock, thus requiring the Company to obtain the Requisite Holder Consent.

15. The Financing, by its terms, would also decrease the authorized shares of Series E Preferred Stock, thus requiring the Company to obtain the Requisite Holder Consent.

16. Section 8 of the Charter provides that if any shares of Existing Series Preferred shall be "reacquired" by the Company, the shares so reacquired shall be cancelled and shall not be issuable by the Company. Section 8 further requires the Company to "take all such actions are necessary to cause the [Charter] to be amended to effect the corresponding reduction in the [Company's] authorized capital stock and the authorized shares of Preferred Stock."

17. Under Section 243(b) of the Delaware General Corporation Law (the "DGCL"), "[i]f the certificate of incorporation prohibits the reissuance" of shares that are issued but not outstanding (i.e., reacquired shares), "a certificate stating that reissuance of the shares (as part of the class or series) is prohibited identifying the shares and citing their retirement shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of [the DGCL]." 8 *Del. C.* § 243(b). Section 243 of the DGCL further provides that, when such a certificate is filed, "it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the

class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock." *Id.*

18. Thus, the exchange of any shares of currently outstanding shares of Series E Preferred Stock pursuant to the Financing would result in a reacquisition of such shares by the Company. Those reacquired shares, by the terms of the Charter, would be automatically retired, requiring the Company to file a "certificate of retirement" under Section 243 of the DGCL. That filing, in turn, would automatically reduce the authorized shares of Series E Preferred Stock—an outcome that is clearly subject to the consent rights on any increase or decrease in the authorized shares of Series E Preferred Stock under Section 6(f) of the Charter.

19. At the time of their [redacted] investment in the Company, the Plaintiffs ensured that they would have veto rights over fundamental matters that would alter or change the terms of their investment, including veto rights over the type of punitive financing transaction the Company is currently proceeding with.

20. Despite the Plaintiffs' desire to use the bargained-for leverage they obtained through Section 6(f) of the Charter to negotiate a financing transaction on less punitive terms, the Company is apparently willing to disregard entirely the contractual promises it made, asserting that "[t]he terms [of the Financing] have

majority shareholder approval"—a threshold insufficient to approve the Financing—and that it "will not be making further changes."

21. The Financing would, in contravention of the Plaintiffs' consent rights under Section 6(f) of the Charter, place the holders of Series E Preferred Stock, including the Plaintiffs, which are currently occupying the most senior position with respect to distributions upon a liquidation or deemed liquidation, behind three new series of senior Preferred Stock, making it extremely unlikely that holders of Series E Preferred Stock will receive any recovery upon a liquidation of the Company or other deemed liquidation event.

22. This is exactly the type of risk and punitive devaluation of their equity interest in the Company that the Plaintiffs' consent rights were designed to prevent, and the Plaintiffs face irreparable harm if the Financing is allowed to close, as it will be impossible to "unscramble the eggs."

23. Accordingly, to prevent the likelihood of harm from the Company's stated intention to proceed with the Financing with only "majority shareholder approval"—but without the Requisite Holder Consent—the Plaintiffs seek a declaratory judgment that the Financing violates Section 6(f) of the Charter, and injunctive relief barring Defendants from effecting the Financing in the absence of the Requisite Holder Consent.

Parties

24. Plaintiffs MW XO Digital Finance Fund Holdco Ltd. and Marshall Wace Investment Strategies – Eureka Fund are investment funds. The investment manager of these two funds (Marshall Wace LLP) has its principal place of business at George House, 131 Sloane Street, London SW1X 9AT, England.

25. Defendant Lukka, Inc. is a Delaware corporation with its principal place of business at 130 Fifth Avenue, 3rd Floor, New York, NY 10011.

Jurisdiction

26. This Court has subject matter jurisdiction over this matter pursuant to 8 *Del. C.* § 111 and 10 *Del. C.* § 341.

Facts

The Series E Investment

27. On January 4, 2022, the Plaintiffs purchased [redacted] of Defendant's Series E Preferred Stock pursuant to the Series E Preferred Stock Purchase Agreement, dated January 4, 2022 (the "Purchase Agreement"), among the Defendant and the purchasers listed on Exhibit A thereto, for a total purchase price of [redacted]. A copy of the Purchase Agreement is attached hereto as Exhibit A.

28. Section 1.1(a) of the Purchase Agreement provides: "The Company shall adopt and file with the Secretary of State of Delaware on or before the Initial

Closing . . . the Sixth Amended and Restated Certificate of Incorporation" in the form attached to the Purchase Agreement.

29. On January 4, 2022, prior to the Initial Closing (as defined in the Purchase Agreement) pursuant to which the Plaintiffs acquired their shares of Series E Preferred Stock, the Company filed the Charter in the form attached to the Purchase Agreement with the Secretary of State of the State of Delaware. A copy of the Charter, which became effective upon its filing and is currently in effect, is attached hereto as Exhibit B.

30. Section 6(f) of the Charter sets forth various acts and transactions that the Company is restricted from taking or effecting without the Requisite Holder Consent.

31. Specifically, Section 6(f) of the Charter provides:

> "The Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then-outstanding shares of Series E Preferred Stock, voting together as a single class on an as-converted basis, which approval shall include [Plaintiffs] for so long as [Plaintiffs] hold[] all of [their] Series E Preferred Stock purchased at the Closing [of the Series E Preferred Stock Purchase Agreement] . . . (ii) increase or decrease (other than by conversion) the total number of authorized shares of Series E Preferred Stock; (iii) reclassify any existing equity security that is junior to the Series E Preferred Stock to make it pari passu or senior to the Series E Preferred Stock [or] alter or

> change the powers, rights, preferences, privileges or restrictions of the Series E Preferred Stock so as to adversely affect the shares of such series . . .

Ex. B at Section 6(f).

The Proposed Financing

32. Over the summer, the Company disclosed that it was negotiating a pay-to-play financing with an existing equity investor, LCV. The Plaintiffs were open to investing further in the Company, and they remain willing to invest on appropriate terms. The Plaintiffs conveyed to the Company, however, that the terms of the Financing disclosed to them were draconian and punitive. The terms were unduly favorable to the lead investor at the expense of even those existing investors who participated pro rata in the Financing, and they would utterly destroy the investment of any non-participating holder.

33. While the Financing nominally allows pro rata participation, the terms discourage it. This structure is disadvantageous for the Company in that it perversely reduces any incentive existing investors would have to participate. As one example, rather than potentially creating one new "senior" layer of equity, the proposed financing creates three new layers, with each new layer senior in priority to the others and with the final layer (which is available, from a practical standpoint, only to the lead investor) having massive liquidation and change of control preferences, making it all but impossible for existing investors, including most participants, to see any

future upside equity value, let alone a recovery on their investment. It is unsurprising that the Company, at the time the terms were first introduced, agreed with the Plaintiffs' concerns and were opposed to the draconian terms.

34. After the Plaintiffs expressed its initial concerns with the draconian terms, the Company, oddly, stopped communicating with the Plaintiffs for five-to-six weeks. This lack of engagement was confusing, not only because the Plaintiffs had made several outreaches and expressed a willingness to provide funding, but also because it was inconsistent with the Company's claim that it needed to raise funds quickly.

35. In a surprising about face, on August 12, 2025, the Plaintiffs received an email from the Company providing access to a secure document folder that included a term sheet summarizing the Financing and the forms of transaction documents relating to the Financing. A copy of such email and its attachments are attached hereto as Exhibit C ("Defendant's August 12 Email").

36. After reviewing the contents of the Defendant's August 12 Email and considering the implications of the proposed Financing, the Plaintiffs contacted representatives of the Company to ask additional questions regarding the terms of the Financing and to obtain additional information regarding the opportunity.

37. On August 26, 2025, after evaluating the terms of the Financing and the impact of the Financing on its existing investment, the Plaintiffs' counsel sent an email to the Company setting forth various concerns with the terms of the Financing and advising that the Plaintiffs' support and approval of the Financing would be required for the transaction to proceed. A copy of such email is attached hereto as Exhibit D ("Plaintiffs' August 26 Email").

38. On August 29, 2025, the Defendant responded to the Plaintiffs' requests for additional information and proposed revisions. A copy of such email is attached hereto as Exhibit E ("Defendant's August 29 Email"). In the Defendant's August 29 Email, the Company observed that it had considered certain of the proposed alternative terms that the Plaintiffs' had suggested but was not willing to accept any proposed changes to the substantive terms of the Financing.

39. On August 30, 3025, in response to the Defendant's August 29 Email, the Plaintiffs sought clarification as to why the Company was unwilling to consider any changes to the terms or structure of the Financing. A copy of such email is attached hereto as Exhibit F ("Plaintiff's August 30 Email").

40. In response to Plaintiff's August 30 Email, the Company sent an email to the Plaintiffs articulating the Company's view regarding the importance of the proposed capital raise and stating that the terms of the Financing "have majority

shareholder approval." A copy of such email is attached hereto as Exhibit G ("Defendant's August 30 Email"). Neither the Defendant's August 30 Email, nor any other written correspondence that the Plaintiffs' received from the Defendant, attempted to address the Plaintiffs' position that the Company cannot proceed with the Financing without securing the Requisite Holder Consent.

41. The Company has claimed to have "opinion level" confidence that the Plaintiffs' consent rights are not implicated by the Financing. Despite the Plaintiffs' request for an explanation, the Company has not provided a legal opinion (or even a reasoned view) on the question, nor has it made its counsel available to discuss the Company's position on the Plaintiffs' consent rights. Moreover, the Company has stated to the Plaintiffs that it has sufficient funds to operate through the end of the year. Indeed, the Company's CEO disclosed in late August 2025 that the Company generated as much net new revenue in the summer as it had in the first half of the year and that momentum for the Company was building. These positive developments would ordinarily be expected to provide the Company a clear opportunity to negotiate and secure better terms. Regardless, the Company cannot close the current Financing without the Plaintiffs' consent.

42. Plaintiffs intend to investigate why, despite its improving financial condition, the Company is refusing to negotiate to improve the terms of the

Financing and is demanding that existing equity holders accept terms that functionally deliver the entire value of the Company to LCV, which is proposing to invest only a fraction of what Plaintiffs and other equity holders previously invested in the Company.

43. While the Plaintiffs have made a good faith effort to avoid litigation, they cannot sit idly by while the Company implements a transaction that will violate the rights that they had secured at the negotiating table to protect their [redacted] investment.

<u>The Terms of the Financing Violate the Charter</u>

44. Despite the Defendant's assertion that it has "majority shareholder approval," the Financing cannot proceed without the Requisite Holder Consent.

45. The Financing requires an amendment to the Charter to create new "shadow" series of Preferred Stock, which will be issued upon the exchange of outstanding shares of Existing Series Preferred, such that those outstanding shares of Existing Series Preferred whose liquidation preferences are currently junior to those of the Series E Preferred Stock will be reclassified as shares of New Series Preferred, Senior Series Preferred or Super Senior Series Preferred, all of which will have liquidation preferences senior to those of the Series E Preferred Stock.

46. But, without securing the Requisite Holder Consent, the Defendant is not permitted, by merger, consolidation, amendment or otherwise, to alter or change the powers, rights, preferences, privileges or restrictions of the Series E Preferred Stock so as to adversely affect the shares of Series E Preferred Stock, to reclassify any series of Existing Series Preferred whose liquidation preferences are junior to the Series E Preferred Stock to make such series pari passu or senior to the Series E Preferred Stock, or to increase or decrease the authorized shares of Series E Preferred Stock.

47. The New Charter adversely affects the rights of the Series E Preferred Stock by, among other things, eliminating the rights of the holders of Series E Preferred Stock, acting as a separate series, to exercise their right to consent to specified corporate acts. The New Charter includes consent rights for the "Series E Group Preferred Stock"—which is defined to include, collectively, the Series E Preferred Stock and the "shadow" New Series Preferred, Senior Series Preferred and Super Senior Preferred issuable upon exchange of shares of the Series E Preferred Stock. The slight variation in the defined term, however, does not mask the fact that the New Charter adversely affects a fundamental right attributable to the Series E Preferred Stock—namely, the right, as a series, to consent to the corporate acts

enumerated in Section 6(f) of the Charter.[2] The elimination of its separate protective provision is by definition an adverse change to the rights of the Series E Preferred Stock. The Company therefore cannot proceed with the New Charter without first securing the Requisite Holder Consent.

48. In addition, the New Charter, along with the transaction agreements implementing the Financing, would reclassify shares of outstanding Existing Series Preferred into shadow series of Preferred Stock having liquidation preferences senior to those of the Series E Preferred Stock. Effecting that reclassification without securing the Requisite Holder Consent would violate Section 6(f) of the Charter.

49. Additionally, the exchange of any outstanding shares of Existing Series Preferred in connection with the Financing would result in the reacquisition by the Company of the shares surrendered for exchange. Under Section 8 of the Charter, any such shares so reacquired may not be reissued and, as required by Section 243 of the DGCL, the Company is required to file a certificate of retirement in respect of such shares, the filing of which automatically reduces the authorized shares of the

[2] In addition, the changes to the Charter contemplated by the New Charter that alter or change the rights of the holders of Series E Preferred Stock so as to affect them adversely, but do not also affect the rights of the holders of the Existing Series Preferred, including the changes that alter the unique protective provisions applicable to the Series E Preferred Stock set forth in Section 6(f) of the Charter, would require a separate approval of the holders of Series E Preferred Stock under Section 242(b)(2) of the DGCL.

class of Preferred Stock as well as the authorized shares of each series of Preferred Stock as to which any shares are so surrendered. Accordingly, the Financing, if implemented, would involve a decrease in the authorized number of shares of Series E Preferred Stock by an amount equal to the number of shares of Series E Preferred Stock surrendered for exchange pursuant to the Financing. Because Section 6(f) of the Charter provides that no increase or decrease to the number of authorized shares of Series E Preferred Stock may be made without the Requisite Holder Consent, the Financing, if implemented, would violate Section 6(f) if such consent is not obtained.

Count I - Declaratory Relief Pursuant to 10 *Del. C.* § 6501

50. The preceding paragraphs are incorporated as if set forth herein.

51. An actual case or controversy exists between the Plaintiffs and the Defendant because the Defendant is purporting to proceed with the Financing without seeking the Required Consent.

52. Based on the Defendant's August 30 Email, the Plaintiffs believe that the Defendant will seek to proceed with the Financing, including the adoption of the New Charter and the entry into the transaction documents contemplated thereby, resulting in the elimination of the separate consent rights of the Series E Preferred Stock, the reclassification of existing outstanding series of Preferred Stock into series of Preferred Stock with preferential rights senior to the Series E Preferred

Stock and a reduction in the authorized shares of Series E Preferred Stock, even though the Defendant has not secured the Requisite Holder Consent as required by Section 6(f) of the Charter.

53. Absent declaratory and injunctive relief, the Plaintiffs will suffer irreparable injury because they will lose the ability to exercise investor-level control over the Company—including the power exercise their separate consent rights in the future—prior to the consummation of the Financing.

54. The Company respectfully requests that the Court enter a declaratory judgment declaring that the Financing fails to comply with the clear language of Section 6(f) of the Charter, and that, if consummated, the Financing would cause irreparable injury to the Plaintiffs.

55. Plaintiffs will suffer irreparable injury if the Financing is consummated.

56. Accordingly, the Plaintiffs require preliminary and permanent injunction relief barring the closing of the Financing unless and until the Financing agreements' terms are amended to require the Plaintiffs' consent for the consummation of the Financing.

Count II – Breach of Contract

57. The Plaintiffs repeat and reallege each and every allegation set forth above.

58. The Charter requires the Company to receive the Requisite Holder Consent before proceeding with the Financing.

59. The Company cannot receive the Requisite Holder Consent without the Plaintiffs affirmative consent.

60. The Plaintiffs do not consent to, and instead oppose, the Financing.

61. If, as the Company has stated it will do, the Company closes the Financing without the Plaintiffs' consent, the Company will breach the Charter and the Plaintiffs' contractual consent rights embodied therein.

62. The Plaintiffs will suffer damages as result of these breaches.

<u>Prayer for Relief</u>

WHEREFORE, Plaintiff prays for the following relief:

(a) A declaratory judgment declaring that, under Section 6(f) of the Charter, the Requisite Holder Consent is required for the Defendant to authorize and consummate the Financing;

(b) A temporary restraining order and preliminary and permanent injunctive relief barring the Defendant from proceeding with the Financing without first receiving the Requisite Holder Consent;

(c) Awarding the Plaintiffs damages to be determined at trial, and their reasonable attorneys' fees; and

(d) Such other and further relief as the Court deems just and equitable.

/s/ Robert L. Burns

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