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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

SCLC, INC.,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:17-cv-193
)	
MARIE KETTERING AND)	
LANNY TYNDALL,)	
)	
Defendants.)	

VERIFIED COMPLAINT

Comes now the Plaintiff, SCLC, Inc. (hereinafter "Plaintiff" or "SCLC"), by counsel, and for its Verified Complaint against the Defendants, Marie Kettering ("Kettering") and Lanny Tyndall ("Tyndall") (hereinafter collectively referred to as "Defendants"), states and alleges as follows:

NATURE OF THIS ACTION

1. This is an action for trade dress infringement, trademark infringement and unfair competition under the laws of the United States (the Lanham Act, codified at 15 U.S.C. § 1051, *et seq.*) and the common law of trademark infringement, misappropriation, and unfair competition.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

3. The Court has personal jurisdiction over Defendants because Defendants engaged in the wrongful acts alleged herein in the state of Indiana, and/or Defendants

purposely directed its wrongful conduct at Plaintiff in the state of Indiana, knowing that the resulting harm likely would be suffered by Plaintiff in the state of Indiana.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c).

PARTIES

5. SCLC is a Delaware corporation with its principal place of business in Evansville, Indiana.

6. SCLC provides retail store services in the field of footwear. SCLC markets, offers, sells, and delivers its products and services through various channels, including through its website, www.shoecarnival.com (the "SCLC Website").

7. Based upon information and belief, Kettering is an individual residing in Trenton, New Jersey.

8. Kettering is the owner of the domain name daretodreamwebdesign.com, and based upon information and belief, offers and sells footwear products and services through various channels, including through her website, www.daretodreamwebdesign.com (the "Kettering Website").

9. Based upon information and belief, Tyndall is an individual residing in Enfield, Gansu, Canada.

10. Tyndall is the owner of the domain name afordrunning.com, and based upon information and belief, offers and sells footwear products and services through various channels, including through his website, www.afordrunning.com (the "Tyndall Website").

11. Based upon information and belief, Kettering and Tyndall are both affiliated with a company that provides various products and services through various channels, including through its website, www.163.com.

DEFENDANTS' MISAPPROPRIATION AND INFRINGEMENT OF SCLC'S TRADE DRESS, COPYRIGHTS AND TRADEMARK

12. Without authorization, Defendants have copied, reproduced, displayed, modified, transformed, adapted, and/or distributed trademark and copyrightable elements owned by SCLC from the SCLC Website, as described in greater detail below.

13. Separate and distinct from the copyrightable elements of the SCLC Website, SCLC owns protectable trade dress comprising the distinct "look and feel" of the SCLC Website as described in greater detail below.

14. SCLC's trade dress serves to identify SCLC as the source of high-quality footwear and other services to the consuming public. SCLC has invested substantial time, effort and financial resources developing and promoting its trade dress in connection with its products and services. SCLC's trade dress has become an asset of substantial value as the public face of SCLC and as a symbol of SCLC's quality products and services and its goodwill. SCLC's trade dress is inherently distinctive as applied to its products and services. In the alternative, SCLC's trade dress has acquired secondary meaning through SCLC's long-term, widespread and continuous use of its trade dress in commerce.

15. Without authorization, Defendants have mimicked and used the distinctive "look and feel" of the SCLC Website on the Kettering Website and the Tyndall Website.

16. Separate and distinct from the copyrightable elements and the trade dress of the SCLC Website, SCLC owns protectable trademark registrations for the mark SHOE CARNIVAL (U.S. Trademark Reg. Nos.: 1,312,732; 2,747,311; and 2,298,159).

17. SCLC's trademark registrations serve to identify SCLC as the source of high-quality footwear products and services to the consuming public. SCLC has invested substantial time, effort and financial resources developing and promoting its trademarks in connection with its products and services. SCLC's trademark registrations have become an asset of substantial value to SCLC and as a symbol of SCLC's quality products and services and its goodwill. SCLC's trademark registrations are inherently distinctive as applied to its products and services. In the alternative, SCLC's trademark registrations have acquired secondary meaning through SCLC's long-term, widespread and continuous use of its trademark registrations in commerce.

18. Without authorization, both Kettering and Tyndall have displayed SCLC's registered mark, SHOE CARNIVAL, on the Kettering Website and the Tyndall Website respectively.

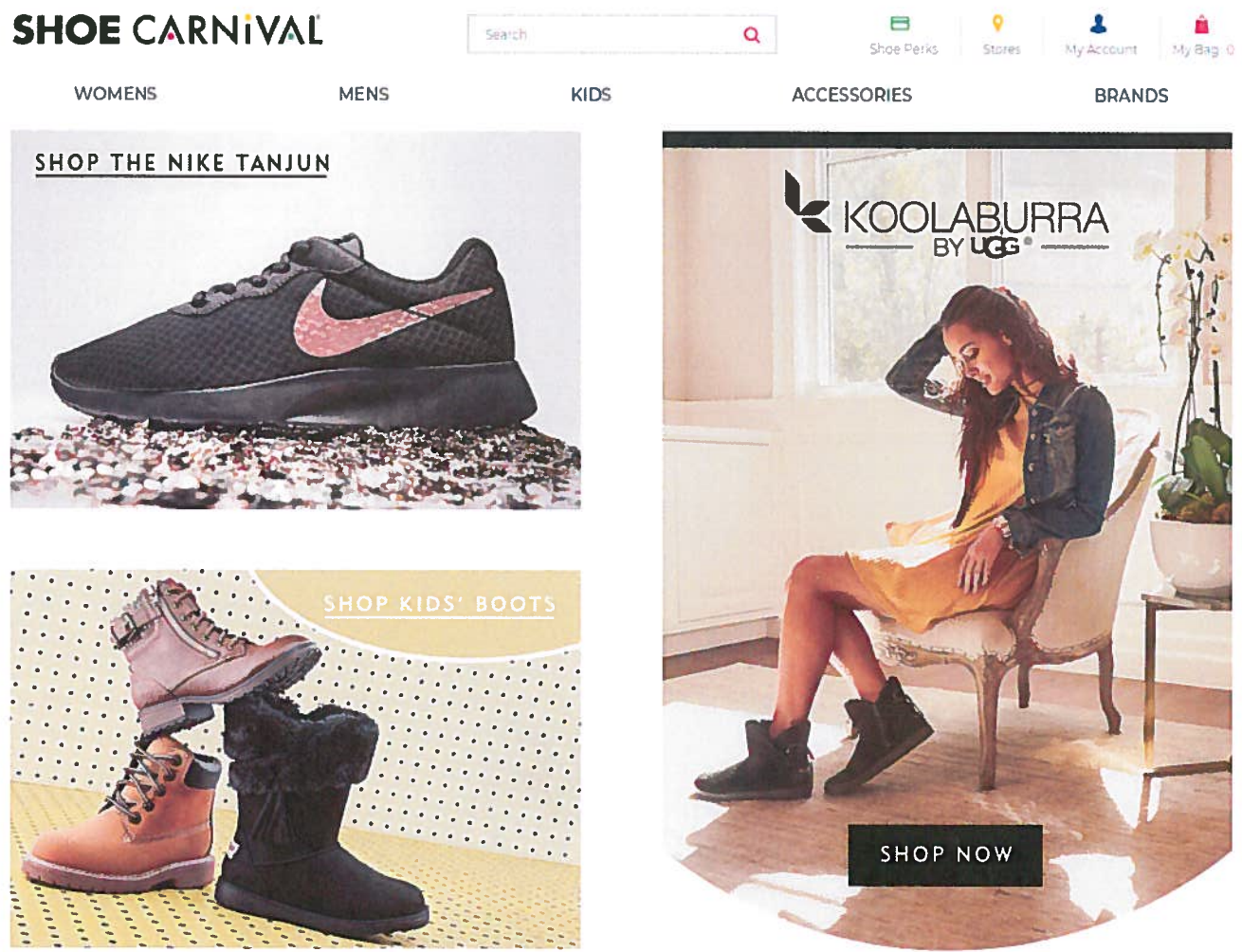
19. Both the Kettering Website and Tyndall Website mimic the "look and feel" of the SCLC Website, utilizing identical layouts and design elements, including the placement of photographs, colors, borders, frames, interactive elements, and overall mood, style, and impression. In addition, both the Kettering Website and Tyndall Website display SCLC's registered trademark SHOE CARNIVAL in strikingly and confusingly identical layouts and design, including the placement of the registered mark, the colors used, interactive elements, overall mood, style, and impression:

20. Both the Kettering Website and Tyndall Website seek to duplicate the SCLC Website in all respects, including, but not limited to, its distinctive palette of colors and images;

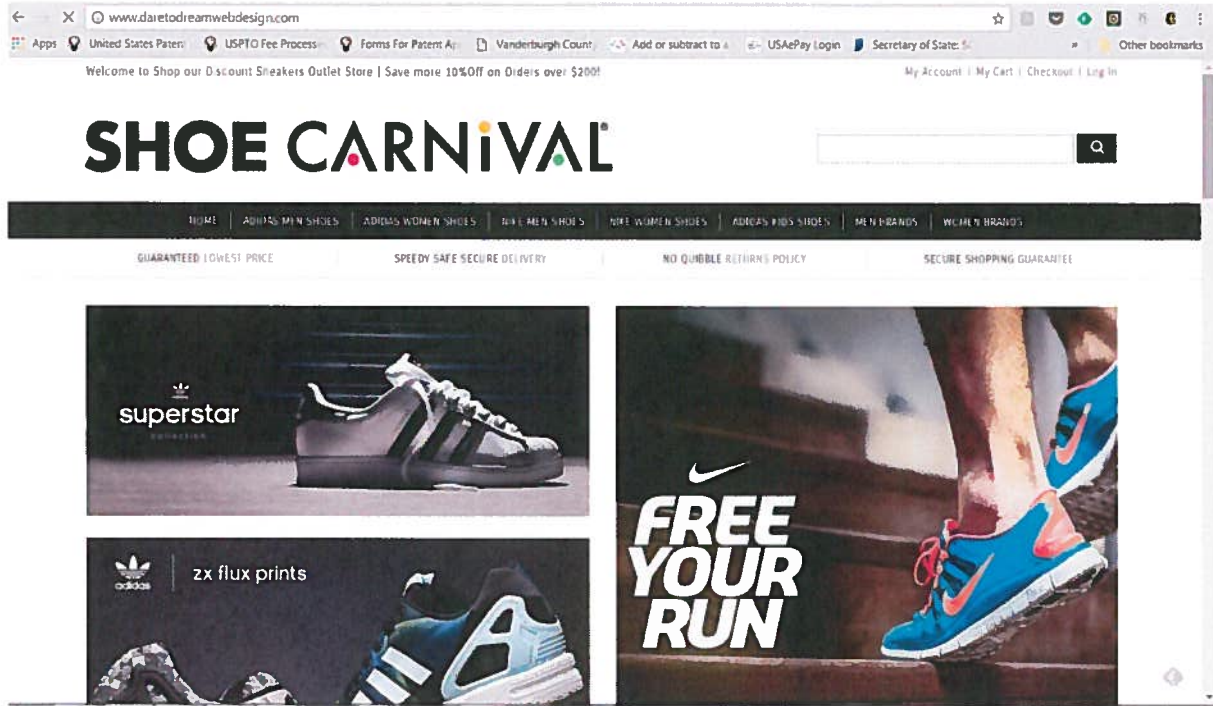
21. Like the SCLC Website, the home page of both the Kettering Website and Tyndall Website feature confusingly similar if not identical photographs of footwear products incorporating similar if not identical color schemes, borders, frames, and interactive elements;

22. Both the Kettering Website and the Tyndall Website use numerous icons that are very similar to the distinctive and original icons created by SCLC.

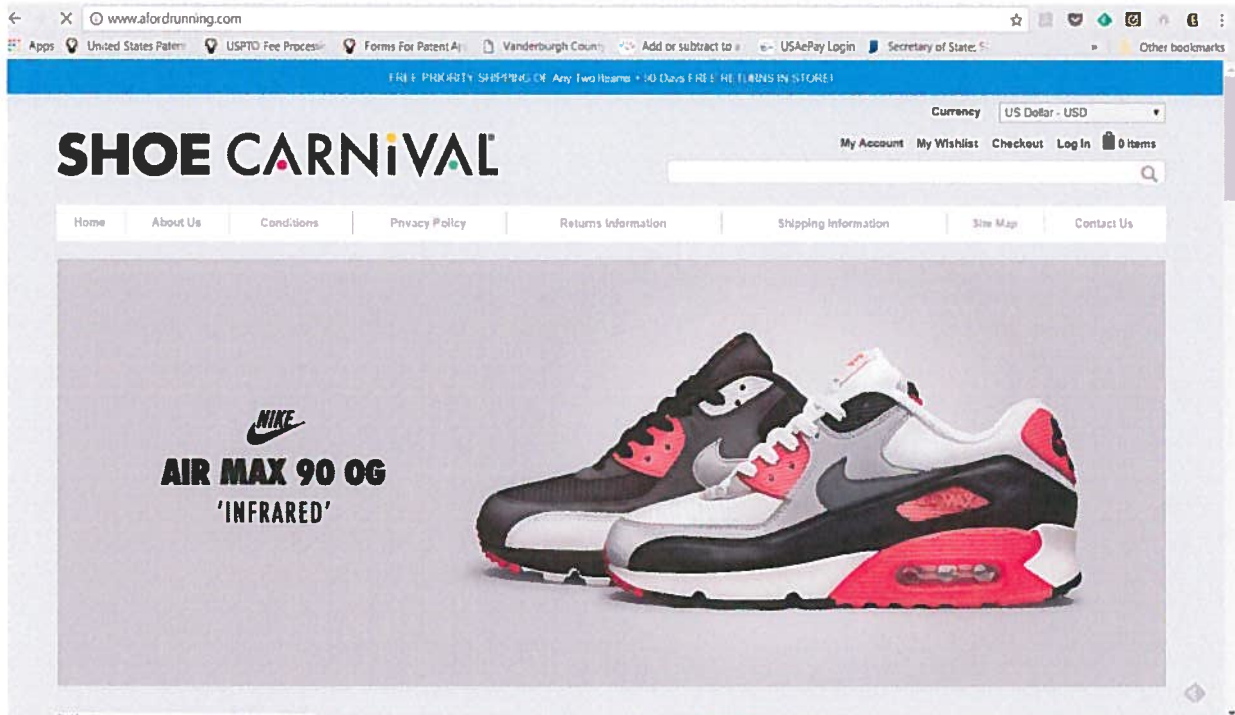
23. Immediately below is a screenshot of SCLC's website and screenshots showing examples of both Kettering and Tyndall's misappropriation and infringement of SCLC's protected and valuable intellectual property.



SCLC's Website



Kettering Website



Tyndall Website

24. As described and shown above, the configuration of and overall impression created by the Kettering Website as well as the Tyndall Website is confusingly similar if not identical to the configuration of and overall impression created by the SCLC Website.

25. Defendants' misappropriation and use of the SCLC trade dress is intended to cause consumers to mistakenly believe that the products and services offered on the Kettering Website and the Tyndall Website are provided by or associated with SCLC.

26. Defendants' misappropriation and use of SCLC's registered trademark is intended to cause consumers to mistakenly believe that the products and services offered on the Kettering Website and Tyndall Website are provided by or associated with SCLC.

27. SCLC has never authorized or otherwise granted any right to Kettering nor to Tyndall to make use of the SCLC trade dress or the SCLC copyrights or the SCLC registered trademark.

PLAINTIFF'S FIRST CLAIM

(Trade Dress Infringement/Unfair Competition, 15 U.S.C. § 1125)

28. Plaintiff incorporates by reference each of the allegations contained in paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. SCLC markets, offers, sells, and delivers its products and services through the SCLC Website.

30. Prior to Defendants' conduct that forms the basis for this Complaint, consumers had come to associate the distinctive "look and feel" of the SCLC Website with SCLC's products and services.

31. Through its promotional efforts, business conduct and continuous use of the SCLC Website and its associated trade dress, SCLC has developed and maintained clients throughout the United States, including in the state of Indiana. Through its

widespread and favorable acceptance and recognition by the consuming public, the “look and feel” of SCLC’s website has become an asset of substantial value as a symbol of SCLC, its high quality products and services, and its goodwill. Accordingly, SCLC has established valid and enforceable rights in the “look and feel” of the SCLC Website, as described above.

32. Notwithstanding SCLC’s preexisting valid and enforceable rights in the “look and feel” of the SCLC Website, Kettering and Tyndall, without the authorization or approval of SCLC, are using SCLC’s trade dress on the Kettering Website and the Tyndall Website to offer and sell their products and services in the United States, including in the state of Indiana.

33. Both Kettering and Tyndall’s unauthorized use of the “look and feel” of the SCLC Website in connection with offering related and competing products and services is likely to cause consumer confusion and mistake, and to deceive consumers as to the source, origin, or affiliation of Kettering and Tyndall’s products and services.

34. SCLC has a discernible interest in the “look and feel” of the SCLC Website, and SCLC has been, and continues to be, injured by both Kettering and Tyndall’s unauthorized and unlawful use of SCLC’s trade dress.

35. Both Kettering and Tyndall’s unauthorized use of the “look and feel” of the SCLC Website in connection with related and competing products and services is causing confusion among purchasers and potential purchasers of SCLC’s products and services.

36. The acts by Kettering and Tyndall described above constitute an infringement and misappropriation of SCLC’s rights in and to the use of the “look and feel” of the SCLC Website, with consequent damages to SCLC and the business and goodwill

associated with and symbolized by SCLC's trade dress, and, specifically, give rise to this claim under 15 U.S.C. § 1125.

37. Both Kettering and Tyndall's acts of unfair competition have caused and are causing great and immediate irreparable harm to SCLC, SCLC's goodwill, and SCLC's rights in and to the "look and feel" of the SCLC Website, in an amount which cannot be adequately determined at this time and, unless restrained, will cause further irreparable injury and damage, leaving SCLC with no adequate remedy at law.

38. On information and belief, both Kettering and Tyndall's acts of infringement and misappropriation have been and are being committed with actual knowledge of SCLC's prior rights in the "look and feel" of the SCLC Website, and are willful and in gross disregard of SCLC's rights.

39. By reason of the foregoing, SCLC is entitled to injunctive relief against Kettering and Tyndall, and anyone associated therewith, to restrain further acts of unfair competition and trade dress infringement, and to recover any damages proven to have been caused by reason of Kettering and Tyndall's aforesaid acts of unfair competition and trade dress infringement, and to recover enhanced damages based upon the willful, intentional, and/or grossly negligent activities of Kettering and Tyndall.

PLAINTIFF'S SECOND CLAIM

(Trademark Infringement)

40. Plaintiff incorporates by reference each of the allegations contained in paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. SCLC holds United States Trademark Registrations for the mark SHOE CARNIVAL (Reg. Nos. 1,312,732; 2,747,311; and 2,298,159), as shown in the attached records of the United States Patent and Trademark Office collectively marked Exhibit A.

42. SCLC markets, offers, sells and delivers its products and services through its registered mark, SHOE CARNIVAL.

43. Through its promotional efforts, business conduct, and continuous use of its registered mark, SCLC has developed and maintained clients throughout the United States, including the state of Indiana. Through its widespread and favorable acceptance and recognition by the consuming public, SCLC's registered mark has become an asset of substantial value as a symbol of SCLC, its high-quality products and services, and its goodwill.

44. Kettering and Tyndall's unauthorized use of SCLC's registered mark in connection with offering related and competing products and services is likely to cause consumer confusion and mistake, and to deceive consumers as to the source, origin, or affiliation of Kettering and Tyndall's products and services.

45. The acts by Kettering and Tyndall as described above constitute infringement and misappropriation of SCLC's rights in and to the use of SCLC's registered mark, with consequent damages to SCLC and the business and goodwill associated with and symbolized by SCLC's registered mark.

46. Kettering and Tyndall's unauthorized use of SCLC's registered mark has caused and is causing great and immediate irreparable harm to SCLC, SCLC's goodwill, and SCLC's rights in and to its registered mark, in an amount which cannot be adequately

determined at this time and, unless restrained, will cause further irreparable injury and damage, leaving SCLC with no adequate remedy at law.

47. On information and belief, both Kettering and Tyndall's acts of infringement and misappropriation have been and are being committed with actual knowledge of SCLC's prior rights to its registered mark, and are willful and in gross disregard of SCLC's rights.

48. By reason of the foregoing, SCLC is entitled to injunctive relief against Kettering and Tyndall, and anyone associated therewith, to restrain further acts of unfair competition and trademark infringement, and to recover any damages proven to have been caused by reason of Kettering and Tyndall's aforesaid acts of unfair competition and trademark infringement, and to recover enhanced damages based upon the willful, intentional, and/or grossly negligent activities of Kettering and Tyndall.

PLAINTIFF'S THIRD CLAIM

(Common Law Trademark Infringement/Unfair Competition)

49. Plaintiff incorporates by reference each of the allegations contained in paragraphs 1 through 48 of this Complaint as if fully set forth herein.

50. On account of SCLC's long and continuous use of the protected trade dress in the SCLC Website, SCLC has established common law trademark rights in the "look and feel" of the SCLC Website.

51. The acts by Kettering and Tyndall described above constitute an infringement and misappropriation of SCLC's common law rights in and to the "look and feel" of the SCLC Website, with consequent damages including great and immediate irreparable harm to SCLC and the business and goodwill associated with and symbolized

by SCLC's trade dress, and, specifically, give rise to this action under the common law of trademarks and unfair competition.

52. On information and belief, Kettering and Tyndall's acts of infringement and misappropriation have been and are being committed with actual knowledge of SCLC's prior rights in the "look and feel" of the SCLC Website, and are willful and in gross disregard of SCLC's rights.

53. By reason of the foregoing, SCLC is entitled to injunctive relief against Kettering and Tyndall, and anyone associated therewith, to restrain further acts of infringement or unfair competition, and to recover any damages proven to have been caused by reason of Kettering and Tyndall's aforesaid acts of infringement and unfair competition, and to recover enhanced damages based upon the willful, intentional, and/or grossly negligent activities of Kettering and Tyndall.

PRAYER FOR RELIEF

WHEREFORE, SCLC prays for the following relief:

A. A permanent nationwide injunction enjoining Kettering, Tyndall, their employees, agents, officers, directors, attorneys, representatives, successors, affiliates, subsidiaries and assigns, and all those in concert or participation with any of them, from:

(1) imitating, copying, using, reproducing, registering, attempting to register, transmitting, and/or displaying a website which colorably imitates or is confusingly similar to the "look and feel" of the SCLC Website; and

(2) using any other false description or representation or any other thing calculated or likely to cause confusion, deception, or mistake in the marketplace

with regard to SCLC's protectable trade dress in the "look and feel" or the SCLC Website.

B. An award to SCLC of damages to compensate for Kettering and Tyndall's infringement and misappropriation in an amount to be proven at trial, including SCLC's actual damages and Kettering and Tyndall's profits attributable to its infringement and misappropriation;

C. An order directing that the Kettering Website be taken down and immediately removed from the internet;

D. An order directing that the Tyndall Website be taken down and immediately removed from the internet;

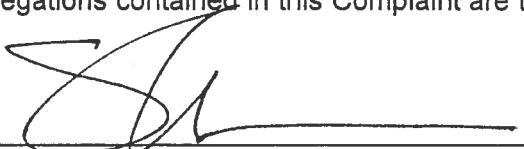
E. An award of SCLC's attorneys' fees, treble actual damages, and treble damages based upon an accounting of Kettering and Tyndall's profits, including all statutory enhancements, other enhancements, and attorneys' fees on account of the willful nature of Kettering and Tyndall's acts as provided in 15 U.S.C. § 1117 and pursuant to 17 U.S.C. § 505;

F. Such other relief, in law or in equity, to which SCLC may be entitled, or which this Court may deem just and proper.

VERIFICATION

I, Sean Georges, the Senior Vice-President and In-House Counsel of SCLC, Inc., verify under the penalty of perjury that the allegations contained in this Complaint are to the best of my knowledge true and correct.

Date: 22 November 2017


Sean Georges, Senior Vice-President and In-House Counsel
SCLC, Inc.

Respectfully submitted,

/s/ Keith E. Rounder

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