

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RKA FILM FINANCING, LLC,	:	
	:	Index No.: _____
Plaintiff,	:	
	:	<u>SUMMONS</u>
-against-	:	
	:	
KATTEN MUCHIN ROSENMAN LLP and	:	
HOWARD SCHICKLER,	:	
	:	
Defendants.	:	
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TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to answer the Complaint in this action and to serve a copy of your answer, or if the Complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff’s attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for relief demanded in the Complaint.

New York County is designated as the place of trial pursuant to New York Civil Law and Practice Rule 503(c).

Dated: New York, New York
November 29, 2016

SMITH VILLAZOR LLP

By: /s/ Andrew J. Rodgers
Patrick J. Smith
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1700 Broadway, Suite 2801
New York, New York 10019

*Attorneys for Plaintiff RKA Film Financing,
LLC*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RKA FILM FINANCING, LLC, :
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Plaintiff, : Index No.: _____
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-against- : **COMPLAINT**
 :
KATTEN MUCHIN ROSENMAN LLP and :
HOWARD SCHICKLER, :
 :
Defendants. :
----- X

Plaintiff RKA Film Financing, LLC (“RKA”), by and through its attorneys, Smith Villazor LLP, for its complaint against Defendants Katten Muchin Rosenman LLP (“Katten”) and Howard Schickler, hereby alleges the following:

NATURE OF THE ACTION

1. This is a legal malpractice action against Katten and one of its partners – Howard Schickler – based on the outright failure of Schickler to follow basic foundational ethical obligations that he owed to RKA, which ultimately compromised RKA’s property interests in connection with film financing provided to affiliates and subsidiaries established and controlled by Relativity Media, LLC (“Relativity”).

2. Relativity is an entertainment company that operates a full-service Hollywood studio. In connection with its film financing operations, Relativity sought investors to provide “Prints and Advertising” (“P&A”) financing, which funds a film’s domestic theatrical release after it is “in the can” (*i.e.*, the production of the film is complete).

3. In April 2014, agents for Relativity approached certain institutional investors (the “RKA Lenders”) with a solicitation to provide P&A financing to Relativity and its affiliates. Relativity marketed P&A financing as having a “senior risk” profile, meaning that it is almost

always repaid, even in extremely low box office performance scenarios.

4. Relativity explained to the RKA Lenders that, because P&A is the last expense funded on a given film before release, it is the first to be repaid “off-the-top” from proceeds of the film’s domestic release. For this same reason, it is also collateralized by a first priority security interest in the domestic distribution proceeds from all media rights in the film.

5. Relativity recommended Katten and Schickler to advise on the P&A financing because they should have had the expertise necessary for the transaction to proceed expeditiously after advising a prior P&A lender to Relativity.

6. Katten is a large, internationally recognized law firm with revenues exceeding half a billion dollars. It markets itself as a full-service law firm with more than 600 attorneys in locations across the United States and in London and Shanghai. Schickler – who charges \$930 an hour for his services – is the co-head of Katten’s structured finance and securitization practice, and holds himself out as having “vast corporate finance experience.”

7. In June 2014, Katten, through Schickler, formed RKA so that it could serve as the entity to finance the pre-release P&A expenses of a slate of Relativity films.

8. After RKA’s formation, Katten, through Schickler, continued to advise RKA with respect to the P&A facility with Relativity.

9. Relying on Katten’s brand and Schickler’s supposed expertise, RKA entrusted to them the responsibility of negotiating, drafting, and reviewing the documents that would memorialize the financing arrangement with Relativity, including the Second Amended and Restated Funding Agreement dated June 30, 2014 (the “Funding Agreement”). This document sets forth the terms on which Relativity could withdraw funds from the facility for specific films and memorialized, among other things, the need for Relativity to execute a security agreement in

connection with each film that would grant RKA a first priority secured lien on the domestic distribution rights and proceeds.

10. Katten, through Schickler, also negotiated, reviewed, and drafted additional film-specific transaction documents that were supposed to safeguard RKA's first priority secured interest in the applicable collateral. Of particular importance was the intercreditor agreement, which established the contractual relationship between and among RKA and other creditors that had provided funding for the development and production of the film.

11. Schickler was well aware of the importance of protecting RKA's first priority secured interest in the domestic distribution rights and proceeds for each film based on specific communications with RKA and his involvement with the prior P&A facility.

12. But, in blatant disregard of his duty to protect RKA's interest, Schickler, on behalf of Katten, negotiated a series of grossly defective intercreditor agreements for two films – *Masterminds* and *The Disappointments Room*, for which Relativity withdrew a total of \$42.3 million – that served to dilute and ultimately destroy RKA's rights to the collateral in these films.

13. Making matters worse, RKA was completely unaware of the woefully deficient intercreditor agreements at the time they were negotiated and approved. This is because Schickler completely failed to inform his client, RKA, of the nature of provisions in the intercreditor agreements that would serve to undercut RKA's first lien position as a result of events entirely beyond RKA's control.

14. Schickler's conduct runs counter to the most basic duties an attorney owes a client, as Schickler had an ethical duty under the New York Rules of Professional Conduct to update RKA about the status of the matter and provide adequate explanations about any changes to important provisions in order to allow RKA to make informed decisions.

15. In total dereliction of his ethical obligations, Schickler signed off on grossly defective agreements without raising (much less providing sufficient information to allow RKA to assess) the potential threat to RKA's interests in the underlying collateral.

16. RKA only learned of Schickler's ethical breaches, including his unauthorized approval of seriously prejudicial contract provisions, when Relativity filed for bankruptcy on July 30, 2015, which triggered an event of default under the Funding Agreement. When it sought to enforce its rights to the collateral, RKA discovered that it did not have the priority first lien position Katten and Schickler were duty-bound to secure.

17. On August 27, 2015, RKA questioned Schickler about the offending provisions. Despite billing RKA premium rates for his review of the two intercreditor agreements that materially altered the terms of the financing, Schickler was unable to explain why he never raised the changes to the agreements with RKA or otherwise failed to seek RKA's consent before signing off on the documents.

18. In the ensuing telephone conversations and email correspondence, Schickler attempted to conceal his shockingly deficient representation by disclaiming knowledge of the provisions that provided for the termination of RKA's priority interest. In a rare moment of candor, he did admit, however, that such provisions should not have been in the intercreditor agreements.

19. Remarkably, Schickler later explained that he failed to secure the very rights to the film collateral that he had a clear duty to protect because he had failed to consider what might happen in a situation where a film was held in limbo by a bankruptcy filing.

20. Schickler's conceded oversight and ethical lapses had catastrophic consequences for RKA. It was unable to seize the collateral through enforcement of its liens, and sell the collateral to recover on its loans. As Relativity's bankruptcy proceedings progressed, junior

lenders used the very provisions that Katten and Schickler had either overlooked or intentionally ignored to subjugate RKA's position in the debt structure and obtain post-bankruptcy replacement liens that are senior to RKA's replacement liens. RKA has also incurred additional and substantial attorneys' fees in order to mitigate Schickler's disastrous representation.

21. Because of Katten and Schickler's incompetence, RKA was forced to wait until the release of *Masterminds* and *The Disappointments Room* to see if either film would generate sufficient domestic box office receipts to satisfy its replacement liens. To date, the films have combined to gross \$19.8 million domestically, all of which has gone to junior lenders and entities providing supplemental funding. Some, if not all, of the domestic receipts would have been paid to RKA had Katten and Schickler acted with a modicum of competence or adhered to ethical norms.

PARTIES

22. RKA is a Delaware limited liability company with its principal place of business in New York, New York.

23. Katten is an international law firm that maintains its second largest office in New York, New York.

24. Schickler is a natural person who, on information and belief, resides in the State of New York.

JURISDICTION

25. Jurisdiction is proper under New York Civil Practice Law and Rule ("CPLR") § 302 because Katten and Schickler transact business within the state of New York. Jurisdiction is also proper under CPLR § 302 because Katten and Schickler committed tortious acts within the state and committed tortious acts without the state causing injury to RKA within the state.

FACTUAL ALLEGATIONS

A. P&A Financing Background

26. Numerous expenses are associated with the theatrical release of a motion picture. One expense, as discussed above, is P&A. P&A funds are needed to cover costs and expenses related to the theatrical release of a film, including digital prints, media advertising, production of creative marketing and sales materials (*i.e.*, trailers, promotional reels, and television and video spots), and promotional publicity support for principal cast member appearance tours.

27. Typically, a movie studio like Relativity will have P&A budgets for the release of each film that are distinct from the film's production budget. Accordingly, studios often seek and secure separate loans to finance the P&A expense.

28. P&A loans are ordinarily the last financing incurred prior to the release of a film, and the P&A lenders usually provide this financing in return for a guarantee that they will be the first lenders repaid through a film's domestic box office receipts. In industry parlance, this is often known as "last in, first out" financing.

29. To further protect P&A investors in the event of default, borrowers like Relativity also grant a perfected first lien security interest in the rights to the domestic distribution of the film.

B. RKA Agrees to Provide P&A Financing to Relativity

30. In or about April 2014, representatives of Relativity approached the RKA Lenders about the possibility of providing P&A financing. According to Relativity's representatives, Relativity was looking to replace its P&A lender, which had recently decided to exit the P&A space.

31. In pitching the P&A facility, Relativity provided the RKA Lenders with a 33-slide

investor presentation titled “Relativity P&A Facility Opportunity,” dated May 14, 2014 (the “May Presentation”). Among other things, the May Presentation set forth the structure of the P&A funding, including the following:

- a. “The facility will provide separate/uncrossed P&A loans for the upcoming films and will be repaid in first position from film receipts”;
- b. “The facility caps draws at 70% of each film’s P&A needs (i.e., risk is limited by a 30% first loss position held by Relativity)”;
- c. “P&A is considered to have a ‘senior risk’ profile as it is the last expense to be funded on a given film before release and the first to be repaid ‘off-the-top’ from proceeds from exploitation in all markets”; and
- d. P&A investors receive a “[p]erfected 1st lien security interest in the proceeds from distribution of [the] film.”

32. Relativity also marketed the “[s]ignificantly enhanced risk/reward profile as the P&A Loan benefits . . . from *the senior positions in the waterfall . . .*” (Emphasis added).

C. RKA Retains Katten and Schickler

33. In late June 2014, after two months of negotiation, the RKA Lenders agreed to provide the P&A financing facility to Relativity.

34. In order complete the financing, Relativity suggested that the RKA Lenders engage Howard Schickler at Katten. In a June 19, 2014 email, Relativity’s representatives encouraged the RKA Lenders to retain Katten and Schickler, who had represented the prior P&A provider. They emphasized that Katten and Schickler’s familiarity with the structure would “save some redundant legal [dollars].”

35. Even though the RKA Lenders did not have prior experience with Katten or Schickler, they were well aware of the law firm’s reputation as top draw law firm with offices across the United States as well as internationally. Katten charges premium rates and touts market

leading expertise and client service, which Katten's Chairman, Roger P. Furey, recently emphasized when he extolled "the tremendous strength and breadth of [Katten's] practices, and *the deep experience and outstanding client service our attorneys provide.*" (Emphasis added).

36. At the time, Schickler served as the head of Katten's structured finance and securitization practice, and held himself out as having "vast corporate finance experience," including expertise with respect to P&A financing and more than 20 years of experience advising clients in structured finance transactions.

37. Based on Katten's status within the legal community and Schickler's supposed expertise and familiarity with the P&A financing previously provided to Relativity, the RKA Lenders retained Katten and Schickler on June 20, 2014, to form the entity to finance the pre-release P&A expenses for a slate of films produced and/or distributed by Relativity and its subsidiaries.

38. Schickler proceeded to establish RKA and advise the entity concerning the P&A facility with Relativity.

39. There is little doubt that Schickler, who purports to have vast corporate finance experience as well as specific expertise with respect to P&A financing, was well aware of his obligation to negotiate and preserve RKA's interests in connection with the P&A financing, including the preservation of RKA's senior secured lender status with respect to the domestic distribution collateral. Among other activities, Schickler participated in conference calls during which there was explicit discussion of the deal structure, including the fact that RKA would have a security interest in the domestic distribution collateral of each movie.

40. Accordingly, Katten and Schickler were tasked with negotiating, reviewing, and drafting the Funding Agreement, which memorialized the structure of RKA's P&A facility that

Relativity could draw upon in order to finance P&A expenses in connection with specific films.

41. Of particular importance is Section 7 of the Funding Agreement, which contemplated that Relativity would execute a “Security Agreement” in favor of RKA that would entitle RKA to a first lien security interest in the domestic distribution rights and domestic gross receipts for each film for which P&A funds were withdrawn under the Funding Agreement.

42. The Funding Agreement also referenced an “Intercreditor Agreement,” which sets forth the rights of the various parties that have provided financing to a film, including the lenders that financed the film’s development and production costs. One of Schickler’s primary responsibilities in representing RKA was to ensure that any intercreditor agreement preserved RKA’s first lien secured position in the domestic distribution rights of the films.

43. Schickler reinforced his understanding of his obligation to negotiate and draft the intercreditor agreements that preserved RKA’s first lien secured status by specifically explaining to RKA and the RKA Lenders in a June 29, 2014 email that the intercreditor agreement “gives priority to the pre-release facility.”

D. Katten’s Negligent Representation

44. The Funding Agreement closed on June 30, 2014, and Relativity immediately withdrew funds in connection with certain pre-approved films.

45. Between June 30, 2014 and March 17, 2015, RKA made P&A funds available for ten films.

46. In connection with each film, Katten and Schickler negotiated, drafted, and reviewed the agreements underlying the P&A financing, including the intercreditor agreements.

47. In March of 2015, Relativity sought financing for two films – *Masterminds* and *The Disappointments Room*.

48. As with the previous films, Katten and Schickler acted as counsel for RKA in drafting, negotiating, and reviewing several of the loan documents and collateral agreements between RKA, Relativity, and certain other parties that had provided financing to the films.

49. Schickler himself spent three hours reviewing the intercreditor agreement for *Masterminds* at a market premium rate of \$930 an hour. Despite his so-called “[r]eview,” Schickler never provided a copy of the intercreditor agreement to RKA, never raised any issues with RKA concerning the agreement, and never sought RKA’s approval before signing off on the document.

50. Instead, Schickler told *Relativity* (not RKA) that he did “not have comments to the Intercreditor Agreement or the Schedules.” He then informed RKA that he was “good on the diligence side” and that he was waiting for the executed documents.

51. Schickler’s review and communications with RKA regarding *The Disappointments Room* were even more circumspect. Schickler spent a grand total of one hour reviewing *The Disappointments Room* intercreditor agreement. He never provided the agreement to RKA, nor sought its sign off before unilaterally approving the intercreditor agreement.

52. Because RKA reasonably assumed that an attorney like Schickler, who is a partner at a distinguished law firm that charges premium rates and touts market-leading client service, would fulfill his duty to RKA and negotiate a secured first-priority lien on the domestic distribution rights of both films, it loaned \$25.8 million and \$16.8 million in P&A financing for *Masterminds* and *The Disappointments Room*, respectively.

53. In reality, however, the intercreditor agreements that Katten and Schickler unilaterally approved absent discussion with or authorization from RKA contained utterly flawed provisions that effectively destroyed RKA’s rights to its collateral for each film.

54. For example, the intercreditor agreement for *Masterminds* included Section 2.14, titled “P&A Loan Obligations,” which provides:

In the event that . . . the Sufficient Release does not occur . . . , then the P&A Loan Agent agrees (on behalf of itself and the P&A Lenders) that any and all P&A Loan Agent Liens and rights of P&A Loan Agent (whether legal or equitable, now owned or hereafter acquired and however arising, including any claims and causes of action) in and to the Domestic Priority Collateral . . . and/or any other Common Collateral *shall be automatically terminated.*” (Emphasis added).

55. The term “Sufficient Release” is defined in an entirely separate interparty agreement to which neither RKA nor its agent are a party. Under that agreement, Relativity had to release the film by August 31, 2015, in order for a “Sufficient Release” to occur. Section 2.14 therefore inexplicably provides for the termination of RKA’s liens in its collateral based on Relativity’s failure to release the film by a specific date.

56. Section 2.2(a), titled “Standstill,” further undermines RKA’s security interest in its collateral. Section 2.2(a) provides:

Unless and until Production Loan Repayment occurs and the Production Loan Termination Notice has been issued . . . none of the P&A Loan Agent nor any of the P&A Lenders shall commence or cause to be commenced or join with any creditor (other than the Production Agent) in commencing any Insolvency Proceeding against any Obligor that now or hereafter is, or whose assets now or hereafter are, liable for all or any portion of the P&A Loan Obligations and also for all or any portion of the Production Loan Obligations (each such Obligor, a “P&A Common Obligor”), or against any Common Collateral, without the prior written consent of the Production Agent in each such case, which consent may be withheld in the Production Agent’s sole and absolute discretion

57. As drafted, Section 2.2(a) undermines RKA’s ability to foreclose upon its collateral until certain junior production loans are repaid. Having to repay junior lenders before foreclosing on its collateral was not what was explained to, or bargained for by, RKA when it provided funding in return for a first-priority lien.

58. Section 2.9(a), titled “Quiet Enjoyment of Distributors and Completion Guarantor”

creates similar issues. It reads:

[N]one of the P&A Loan Agent and the P&A Lenders will exercise its respective rights or Liens as a secured party or otherwise act in any manner which will (i) disturb, infringe upon, interfere with, prevent or impede the full, complete, free and unencumbered exercise by any Distributor of its rights under its respective Distribution Agreement (as such rights are amended by any related Assignment) and/or (ii) adversely affect, prejudice or otherwise interfere with Completion Guarantor's ability to complete and deliver the Film in accordance with the terms, conditions, exclusions and limitations of the Completion Guaranty and the Interparty Agreement.

59. Section 2.9(a) effectively prohibits RKA from realizing on its collateral in any way that would impact the rights of any distributor (including domestic distributors under domestic distribution agreements that were supposed to act as RKA's first priority collateral) or the completion guarantor. Conversely, this same provision in no way limits the rights of other lenders, which in effect permitted production lenders, who were supposed to be subordinate to RKA, to foreclose on their rights while RKA is prohibited from taking similar action.

60. Finally, Section 2.11(a), titled "Common Collateral," provides another obstacle that interferes with the collateral that Katten and Schickler had the responsibility to secure. Section 2.11(a) divests RKA of its rights and powers to control the sale and realization of the collateral for which RKA holds a first-lien security interest. Instead, the production lenders, who are supposed to be subordinate to RKA, can control the sale of the RKA's collateral to the material detriment of RKA.

61. The intercreditor agreement for *The Disappointments Room* contained similar provisions that eviscerated RKA's rights to collateral to which Katten and Schickler should have obtained a first-priority security interest. Given Katten and Schickler's clear obligation to advance and protect RKA's interests, it is difficult to fathom how Schickler could review and then approve contract provisions that, in some instances, permit RKA's security interest to terminate based on

the actions (or inactions) of a third party.

E. RKA Discovers Katten’s Incompetent and Ethically Deficient Representation

62. On July 30, 2015, no less than four months after RKA provided Relativity \$42.6 million in P&A financing for *Masterminds* and *The Disappointments Room*, Relativity declared bankruptcy. Relativity’s bankruptcy prevented the release of the two films and triggered RKA’s right to obtain the collateral it believed Katten had secured.

63. Relativity’s bankruptcy revealed that Schickler had committed serious ethical lapses when he negotiated and approved grossly defective documents without RKA’s consent that placed its security interests in serious jeopardy.

64. As RKA’s bankruptcy counsel would discover, the intercreditor agreements for *Masterminds* and *The Disappointments Room* effectively (a) prohibited RKA from exercising its rights to foreclose or otherwise secure its collateral; (b) prohibited RKA from credit bidding on its own collateral without first repaying *junior* liens; and (c) undermined RKA’s liens altogether after a date-certain, without any justification.

65. Far from providing Katten’s touted “outstanding client service,” Schickler’s representation fell decidedly short of complying with his basic ethical duties. New York’s Rules of Professional Conduct require, among other things, that a lawyer “promptly inform the client of . . . material developments in the matter”; “reasonably consult with the client about the means by which the client’s objectives are to be accomplished”; “keep the client reasonably informed about the status of the matter”; and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions.”

66. Schickler failed in all respects to adhere to these elementary principles of attorney conduct. He failed to inform RKA about material changes in the intercreditor agreements; he

never explained the impact of the changes; and he never consulted with RKA about his authority to detrimentally alter its rights under the intercreditor agreements, and in so doing, thwarted RKA's ability to make an informed decision about providing P&A financing for *Masterminds* and *The Disappointments Room*.

67. On August 27, 2015, RKA's counsel asked Schickler about the disconcerting language reflected in Section 2.14 of the intercreditor agreements for *Masterminds* and *The Disappointments Room* that provides for the automatic termination of RKA's priority interest in the event the films are not released by a certain date.

68. Schickler scrambled to find an excuse and claimed that he could not remember the specific contract provisions. Schickler could not, however, avoid admitting that Section 2.14 should not have been included in the intercreditor agreements. Schickler then said that he would need to investigate and get back to RKA's counsel.

69. After further investigation, Schickler responded to RKA on September 2, 2015, and although he could not "recall the exact reasoning," he speculated that "it seems that the production lender want[ed] assurance that the film actually g[ot] distributed and that its lien [was] not forever subordinated so that [was] why they have . . . the Sufficient Release concept."

70. Notably absent from Schickler's response is any explanation as to why he failed to advise RKA – even though he billed RKA market premium rates for his review of the intercreditor agreements – that Section 2.14 would materially and adversely alter the well-understood terms of the P&A financing.

71. Instead, Schickler admitted that he and Katten failed to "contemplate[]" "a scenario where the film wasn't completed or was held in limbo because of a bankruptcy." But this is precisely what Katten and Schickler were retained to do, as their primary responsibility in advising

and representing RKA was to protect its interests, including the secured first-priority lien in the event of default or bankruptcy by the credit parties under the Funding Agreement.

72. Schickler's wholesale abdication of his responsibility to his client constitutes a clear failure to exercise even a modicum of professional expertise and openly flouts his ethical obligations.

F. RKA Suffers Considerable Damages and Expense Because of Katten's Deficient Representation

73. Because the first lien security interest in the underlying distribution rights and proceeds for each film was an essential element to the P&A financing, RKA would not have provided funding for *Masterminds* and *The Disappointments Room* had it known that it was effectively an unsecured lender. Schickler therefore caused RKA to provide over \$42 million in financing under terms that did not adequately match the risks and returns RKA expected from each transaction.

74. Making matters worse, Katten's negligence prevented RKA from foreclosing on its collateral once Relativity defaulted under the Funding Agreement. If RKA had the rights it expected, it could have foreclosed on the collateral – *i.e.*, the domestic distribution rights and receipts of each film.

75. However, RKA's discovery that it had none of the secured rights to the applicable collateral prevented RKA from foreclosing on the domestic distribution rights, which would have allowed it to recoup some of its loss.

76. RKA was left to participate in Relativity's bankruptcy proceedings where the provisions Schickler unilaterally approved without express authorization neutered RKA's position, and prevented RKA from credit bidding on the underlying collateral. In the bankruptcy proceeding, junior lenders used the language in the intercreditor agreements to subjugate RKA's

position in the debt structure and obtain replacement liens that are senior to RKA's replacement liens.

77. The subjugation of RKA's rights to junior lenders has prevented RKA from recouping any of the funds it provided to Relativity for *Masterminds* and *The Disappointments Room*. *The Disappointments Room* was released domestically on September 9, 2016 and has grossed \$2.4 million in domestic receipts. *Masterminds* was released on September 30, 2016 and has grossed \$17.4 million in domestic receipts.

78. Some, if not all, of the domestic receipts for either film would have been paid to RKA had Katten and Schickler protected RKA's interests in the first place. Instead, under Katten and Schickler's guidance, RKA loaned \$42 million for which it will not recoup a single penny.

79. Katten and Schickler's defective representation also caused RKA to incur substantial and additional attorneys' fees in Relativity's bankruptcy. Among other things, RKA was forced to engage in additional analysis of the intercreditor agreements as well as protracted bankruptcy proceedings that it otherwise would have avoided had it been able to foreclose on the collateral.

FIRST CAUSE OF ACTION
(Malpractice Against Katten and Schickler)

80. RKA repeats and realleges the allegations of paragraphs 1 through 78 as if fully set forth herein.

81. Katten and Schickler were negligent and careless, and failed to exercise the degree of care, skill and diligence commonly possessed by a member of the legal profession, when they failed to properly negotiate, review and draft the intercreditor agreements for two films titled *Masterminds* and *The Disappointments Room* so as to protect RKA's first lien secured position in the applicable collateral.

82. Katten and Schickler were negligent and careless, and failed to exercise the degree of care, skill and diligence commonly possessed by a member of the legal profession, when they failed to advise RKA about the provisions in the intercreditor agreements for *Masterminds* and *The Disappointments Room* that threatened RKA's first lien secured position in the applicable collateral.

83. Katten and Schickler were negligent and careless, and failed to exercise the degree of care, skill and diligence commonly possessed by a member of the legal profession, when they agreed to the intercreditor agreements for *Masterminds* and *The Disappointments Room* without RKA's approval that included provisions that undermined RKA's first lien secured position in the applicable collateral.

84. As a direct and proximate result of Katten and Schickler's malpractice, RKA has incurred substantial damages in an amount to be determined at trial that would have been avoided had Katten and Schickler acted with the degree of care, skill and diligence commonly possessed by a member of the legal profession.

85. Katten and Schickler's malpractice has also caused RKA to incur additional legal fees, costs and expenses in order to mitigate the damage incurred by Schickler's negligence, including the additional cost to defend its position vis-à-vis other creditors in Relativity's bankruptcy, which would have been avoided had Katten and Schickler actually obtained a first lien secured position in the applicable collateral.

PRAYER FOR RELIEF

WHEREFORE, RKA respectfully demands judgment in its favor against Katten and Schickler:

- (a) For all actual damages incurred and accruing in an amount to be determined at

trial;

- (b) Awarding RKA attorney's fees, costs, and disbursements in prosecuting this action to the extent permitted by law; and
- (c) Awarding RKA such further relief as this Court deems just and appropriate.

Dated: New York, New York
November 29, 2016

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