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Case No. 2020-0311-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REALOGY HOLDINGS CORP., Plaintiff, v. SIRVA WORLDWIDE, INC., NORTH AMERICAN VAN LINES, INC., MADISON DEARBORN CAPITAL PARTNERS VII-A, L.P., MADISON DEARBORN CAPITAL PARTNERS VII-C, L.P., and MADISON DEARBORN CAPITAL PARTNERS VII EXECUTIVE-A, L.P. Defendants.	)	C.A. No. 2020-0311-MTZ **PUBLIC VERSION** **EFILED ON JUNE 15, 2020**

DEFENDANTS' ANSWER TO PLAINTIFF'S VERIFIED AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, AND VERIFIED COUNTERCLAIM

SIRVA Worldwide, Inc., North American Van Lines, Inc., Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P. ("Defendants") hereby answer Realogy Holding Corp.'s ("Realogy") Verified Amended Complaint dated May 17, 2020, as follows:

NATURE OF DISPUTE[1]

1. This dispute arises from the sale of a Delaware company for $400 million and involves the highest corporate stakes: whether the seller, Realogy, is entitled to the remedy of specific performance to force the buyer, SIRVA, to take all steps leading up to closing the Transaction, and to consummate the Closing.

ANSWER: Defendants admit that the lawsuit concerns the potential sale of a Delaware company and that Realogy seeks specific performance to consummate the closing, but deny all other allegations in paragraph 1.

2. As the allegations in this Amended Complaint demonstrate, SIRVA - just four days before the closing was scheduled to occur - executed on a scheme intended to help SIRVA (and indirectly, Madison Dearborn Partners, LLC, its private equity owner) thwart the Transaction and back out of a deal it had come to believe offered Realogy too rich a price.

ANSWER: Defendants deny the allegations in paragraph 2.

3. This scheme involved numerous breaches and problematic actions taken by SIRVA. For example, SIRVA falsely claimed that the Material Adverse Effect condition in the Purchase Agreement was not satisfied, and failed

[1] Any allegation not specifically admitted is hereby denied.

to comply with its reasonable best efforts relating to financing and closing the deal. SIRVA also intentionally and willfully repudiated the Purchase Agreement in two separate communications on April 25, 2020.

ANSWER: Defendants deny the allegations in paragraph 3, except admit that the Material Adverse Effect condition in the Purchase Agreement was not and is not satisfied.

4. In addition, SIRVA intentionally failed to use its reasonable best efforts to solve alleged problems and consummate the Transaction by waiting to raise for the first time its concerns about a supposed Material Adverse Effect until four days before the scheduled Closing Date. Indeed, the record clearly shows that SIRVA made no reasonable efforts to engage with Realogy or to take other appropriate actions to attempt to keep the deal on track, and utterly failed to make any meaningful attempt to solve, let alone confer with Realogy about, SIRVA's purported concerns. This conduct also breaches the implied covenant of good faith and fair dealing inherent in every Delaware contract.

ANSWER: Defendants deny the allegations in the first two sentences in paragraph 4. The allegations in the last sentence in paragraph 4 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the last sentence in paragraph 4.

5. Of course, the true motivation for SIRVA's improper conduct is its remorse over the purchase price and its concerns that the deal no longer satisfied its targeted internal rate of return. The Delaware courts have made clear that this type of misconduct is not permitted under Delaware law. Courts have not hesitated to use the equitable remedy of specific performance to force a buyer like SIRVA to honor the bargain it struck, regardless of how the buyer feels about the price at the time of closing.

ANSWER: Defendants deny the allegations in the first sentence in paragraph 5. The allegations in the last two sentences in paragraph 5 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the last two sentences in paragraph 5.

6. There can be no dispute that SIRVA's conduct has caused Realogy irreparable harm sufficient to support an order of specific performance. The Purchase Agreement expressly provides that:

> [I]mmediate, extensive and irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate the Transaction) in accordance with its specified terms or otherwise breach such provisions.

(PA § 13.8).

ANSWER: Defendants deny the allegations in the first sentence in paragraph 6. The allegations in the second sentence in paragraph 6 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the second sentence in paragraph 6 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

7. It further provides that "the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity." *Id.* Thus, Realogy is entitled to specific performance pursuant to the terms of the Purchase Agreement.

ANSWER: The allegations in the first sentence in paragraph 7 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the first sentence in paragraph 7 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents. Defendants deny the allegations in the second sentence in paragraph 7.

8. SIRVA's attempts to avoid Closing and terminate the Purchase Agreement are without merit. Equally baseless is the claim that specific performance is unavailable for the purposes of requiring SIRVA to take the steps it was required to take under the Purchase Agreement, or to consummate the Transaction, on the basis that certain conditions have not been satisfied. As explained further herein, SIRVA cannot breach the Purchase Agreement, act in bad faith in the context of its contractual obligations and then lawfully (under the contract or Delaware law) claim that it is somehow entitled to refuse to close or terminate the deal. Nor can SIRVA claim that conditions to Realogy's use of specific performance to consummate the deal have not been satisfied when SIRVA itself caused them to fail.

ANSWER: Defendants deny the allegations in paragraph 8.

9. In short, under the Purchase Agreement, SIRVA is obligated to purchase all of the issued and outstanding shares of common stock of Cartus Corporation ("Cartus"), an indirect, wholly-owned subsidiary of Realogy, after giving effect to certain restructuring steps to separate from Cartus the affinity and broker-to-broker referral businesses that Realogy would retain (the "Transaction"). SIRVA is required to pay to Realogy an aggregate purchase price of $400 million, consisting of $375 million in cash payable at the closing of the Transaction (the

"Closing"), subject to certain closing adjustments (the "Closing Date Payment"), and a $25 million deferred payment payable after the Closing.

ANSWER: Defendants deny the allegations in paragraph 9.

10. Realogy has fully performed all of its obligations under the Purchase Agreement. All of the Purchase Agreement's conditions to Closing have been fully satisfied (other than those conditions that by their terms or nature are to be satisfied at Closing, each of which is capable of being satisfied at the Closing). Realogy has been and remains ready, willing and able to close the Transaction.

ANSWER: Defendants deny the allegations in paragraph 10.

11. For the reasons set forth below, Realogy respectfully requests, among other relief, an order requiring SIRVA to specifically perform its obligations under the Purchase Agreement to take all actions necessary to consummate the Transaction contemplated by the Purchase Agreement and pay the amounts required to be paid thereunder. In the alternative, if specific performance were to prove unavailable for any reason and the Purchase Agreement is deemed terminated, Realogy seeks to require payment of the termination fee contemplated under the Purchase Agreement from SIRVA and, if SIRVA fails to pay, to enforce the Limited Guaranty, dated November 6, 2019, made by Madison Dearborn in favor of Realogy (the "Limited Guaranty").

ANSWER: The allegations in paragraph 11 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in paragraph 11 and respectfully refer the Court to Realogy's Verified Amended Complaint for its complete and accurate contents.

THE PARTIES

12. Plaintiff Realogy is a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware. Realogy is headquartered in Madison, New Jersey. Realogy is a full-service residential real estate services company, including brokerage, franchising, relocation, mortgage, and title and settlement services. As of November 7, 2019, Realogy's affiliated brokerages operated around the world with approximately 190,000 independent sales agents in the United States, and approximately 110,400 independent sales agents in 112 other countries and territories. Realogy's common stock trades on the NYSE under the ticker symbol "RLGY." As of the date of this Amended Complaint, Realogy had approximately 115.3 million shares outstanding.

ANSWER: Defendants admit the allegations in the first two sentences and fifth sentence in paragraph 12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the third, fourth, and last sentences in paragraph 12, and so deny these allegations.

13. Non-party Cartus Corporation is an indirect, wholly-owned subsidiary of Realogy. It provides relocation counseling to newly-hired or transferring employees of large corporations, logistical relocation support, international assignment compensation services, intercultural and language training, and consulting solutions. Cartus has approximately 2,000 employees and operates in more than 180 countries.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence in paragraph 13, and so deny these allegations.

14. Relevant Non-Party Madison Dearborn Partners, LLC is a Chicago-based private equity firm specializing in leveraged buyouts of privately held or publicly traded companies, or divisions of larger companies; recapitalizations of family-owned or closely held companies; balance sheet restructurings; acquisition financings; and growth capital investments in mature companies. It operates using an industry-focused investment approach and focuses on the following five sectors: basic industries, business & government software and services, financial & transaction services, health care, and telecom, media and technology services. Since 1992, Madison Dearborn Partners, LLC has raised seven funds with aggregate capital of approximately $23 billion, and has

completed investments in more than 130 companies. As of December 31, 2019, Madison Dearborn Partners, LLC managed a total of [redacted] of client assets, all of which is managed on a discretionary basis.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC is a private equity investment firm based in Chicago, Illinois that was formed in 1992. Defendants admit that Madison Dearborn Partners, LLC has teams operating in five sectors, including Basic Industries, Business & Government Software and Services, Financial & Transaction Services, Health Care, and Telecom, Media & Technology. Defendants admit that as of December 31, 2019, Madison Dearborn Partners, LLC managed a total of [redacted] of client assets, all of which is managed on a discretionary basis. Defendants deny the remaining allegations in paragraph 14.

15. Madison Dearborn Partners, LLC conducts its business through a variety of entities, intermediate holding companies and subsidiaries, including named defendants SIRVA Worldwide, Inc., Madison Dearborn Capital Partners VII- A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC is the registered investment advisor to Madison Dearborn Capital Partners VII- A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital

Partners VII Executive-A, L.P. Defendants admit that Madison Dearborn Capital Partners VII- A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P. hold an indirect equity investment in SIRVA Worldwide, Inc. Defendants deny the remaining allegations in paragraph 15.

16. Madison Dearborn Partners, LLC provides advisory services, for a fee, to its funds. The advisory services consist of, among other things: (a) identifying and evaluating investment opportunities; (b) structuring, negotiating and consummating investments on behalf of the funds; and (c) managing, monitoring and disposing of such investments. Madison Dearborn Partners, LLC and its active partners also provide additional services, for a fee, to its portfolio companies and other investment vehicles of its various funds. These services include consulting services, transaction-related services, financial advisory services, monitoring services, capital markets services, corporate development services, and operational support and other services.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC manages the investments held by its investment funds and provides certain advisory services to the investment funds, including identifying and evaluating investment opportunities, structuring, negotiating and consummating investments on behalf of the funds, and managing, monitoring, and disposing of such investments.

Defendants deny that Madison Dearborn Partners, LLC receives a fee for providing services to the portfolio companies and other investment vehicles of its various funds. Defendants admit that in certain circumstances, an affiliate of Madison Dearborn Partners, LLC provides services to portfolio companies for a fee and active partners of Madison Dearborn Partners, LLC who sit on the board of directors of a portfolio company might receive board of director fees. Defendants admit these services might include consulting services, transaction-related services, financial advisory services, monitoring services, capital markets services, corporate development services, and operational support and other services. Defendants deny the remaining allegations in paragraph 16.

17. Madison Dearborn Partners, LLC's advisory services to its funds are provided through a limited partnership agreement, other similar organizational document, or a contractual side letter or advisory agreement.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC provides advisory services to the investment funds through an advisory agreement.

18. Madison Dearborn Partners, LLC personnel often serve on a portfolio company's board of directors or otherwise act to influence, control or manage portfolio companies held by the funds. Madison Dearborn Partners, LLC and its active partners, on behalf of Madison Dearborn Partners, LLC, often receive stock of a portfolio company as a transaction fee in connection with their

service on the board of such portfolio company. Inferably, Madison Dearborn Partners, LLC controls, and causes the actions and inactions of, Madison Dearborn.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC personnel often serve on a portfolio company's board of directors or otherwise act to influence or help oversee portfolio companies held by the funds. Defendants admit that Madison Dearborn Partners, LLC personnel who serve on a public portfolio company board of directors might receive compensation as set forth in that company's director compensation programs, but any such compensation is shared with the partners of the applicable investment funds. Defendants deny all remaining allegations in paragraph 18.

19. Madison Dearborn Partners, LLC focuses on investments in North America with a focus on the Midwest. In management buyouts, it seeks to invest between [redacted] and [redacted]. Madison Dearborn Partners, LLC prefers to invest between [redacted] and [redacted] in structured transactions and growth equity investments. It seeks to take a majority stake and a board seat in its portfolio companies. Madison Dearborn Partners, LLC generally seeks to exit its investments within a period of five to seven years.

ANSWER: Defendants admit that Madison Dearborn Partners, LLC focuses on investments in North America although its investment funds also invest outside of North America from time to time. Defendants admit Madison Dearborn seeks to

take a majority stake and a board seat in its portfolio companies. Defendants deny the remaining allegations in paragraph 19.

20. Relevant non-party Thomas Souleles is a Managing Director and Co-Head of Madison Dearborn Partners, LLC's basic industries team. In those roles he oversees and controls investments in the basic industries sector. That sector currently includes investments in defendant SIRVA and in U.S. Lumber and Packaging Corporation of America, a leading distributor of specialty building materials.

ANSWER: Defendants admit that Thomas Souleles is a Managing Director and Co-Head of Madison Dearborn Partners, LLC's Basic Industries team. Defendants admit that the Basic Industries team's current portfolio includes SIRVA and U.S. Lumber. Defendants deny the remaining allegations in paragraph 20.

21. In order to exercise control over the day-to-day business decisions of Madison Dearborn Partners, LLC's investments within the basic industries sector, Mr. Souleles frequently sits on the board of directors of Madison Dearborn Partners, LLC portfolio companies. He is, or has recently been, a director of both SIRVA and U.S. Lumber and Packaging Corporation of America, a former Madison Dearborn Partners, LLC portfolio company. He has formerly been a director of numerous other former Madison Dearborn Partners, LLC portfolio companies, including Boise Cascade Company, BWAY Holding

Company, Great Lakes Dredge & Dock Corporation, Multi Packaging Solutions, Nordic Packaging and Container International, Packaging Corporation of America, Schrader International and Smurfit Kappa.

ANSWER: Defendants admit that Thomas Souleles is currently a director of both SIRVA and U.S. Lumber and has formerly been a director of portfolio companies Packaging Corporation of America, Boise Cascade Company, BWAY Holding Company, Great Lakes Dredge & Dock Corporation, Multi Packaging Solutions, Nordic Packaging and Container International, Packaging Corporation of America, Schrader International and Smurfit Kappa. Defendants deny the remaining allegations in paragraph 21.

22. Defendant SIRVA is a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware. SIRVA is headquartered in Oakbrook Terrace, Illinois. SIRVA is a global relocation and moving service provider, providing integrated business-to-business mobility solutions for corporations, government institutions and consumers. SIRVA provides moving services through its portfolio of owned brands, including well-known names, such as Allied, Allied Pickfords, northAmerican, northAmerican International, Global Van Lines and SMARTBOX. SIRVA operates 75 locations, in addition to over 1,000 franchised and agent

locations in 177 countries. SIRVA is the largest player in the moving and relocation industry.

ANSWER: Defendants admit the allegations in the first four sentences in paragraph 22. Defendants admit that SIRVA operates approximately 75 locations in addition to over 1,000 franchised and agent locations in 177 countries. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence in paragraph 22, and so deny that allegation.

23. SIRVA boasts [redacted] relocations a year; outsourced moves, delivered under contract with corporate employers, and government and military customers to transfer personnel, account for the majority of SIRVA's sales. It operates in four segments: Moving Services ([redacted] of net sales), Relocation Services ([redacted]), Growth Markets ([redacted]) and Australia ([redacted]). SIRVA aims to grow by selling more relocation and moving service packages to multinational companies and government agencies. Its soup-to-nuts relocation services, delivered through several business units, include help with home sales, purchases, and mortgages, in addition to arranging the transportation of employees' household goods. SIRVA claims to have held a [redacted] volume share globally in relocation services in 2018.

ANSWER: Defendants admit that in 2019 SIRVA executed approximately 350,000 relocations and moves delivered under contract with corporate employers, and government and military customers to transfer personnel. Defendants admit that SIRVA operates in Moving Services, Relocation Services, Growth Markets and Australia, but denies the Net Sales in that sentence are correct. Defendants admit that SIRVA aims to grow by selling more services to its customers. Defendants admit that SIRVA's relocation services include home sales, purchases, and mortgages, in addition to arranging the transportation of employees' household goods. Defendants admit that according to Workforce.com Hot List, SIRVA held a [redacted] volume share globally in relocation services in 2018.

24. Today, SIRVA is a Madison Dearborn Partners, LLC portfolio company. Madison Dearborn Partners, LLC acquired SIRVA in 2018. If Madison Dearborn pursues its typical five- to seven-year investment life cycle, it can be expected to seek to exit SIRVA in three to five years. Inferably, therefore, Madison Dearborn's inorganic growth strategy for SIRVA likely prioritizes profitability of SIRVA's acquisition targets in that near-term window, to the exclusion of other concerns.

ANSWER: Defendants admit that SIRVA is a portfolio company of private funds managed by Madison Dearborn Partners, LLC and that MDP-affiliated funds

acquired SIRVA in 2018. Defendants deny the allegations in the last two sentences in paragraph 24.

25. In connection with the Transaction, Madison Dearborn Partners, LLC touted SIRVA as "a leader in a dynamic and highly fragmented industry," and noted that "SIRVA has a bright future." Madison Dearborn Partners, LLC further stated, "[w]ith a strong brand, global footprint and impressive track record, SIRVA is well positioned to enter a new phase of growth and continued success." A representative of Madison Dearborn Partners, LLC also said, "[w]e look forward to bringing to bear our expertise and deep network of resources and contacts to help [the CEO of SIRVA] and his leadership team build on SIRVA's strong momentum and grow the business by continuing to provide the very best corporate relocation services available in the market."

ANSWER: The allegations in paragraph 25 characterize a press release issued by SIRVA, a document that speaks for itself. Defendants deny the allegations in paragraph 25 to the extent they paraphrase or characterize the press release in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the press release for its complete and accurate contents.

26. Defendant North American Van Lines, Inc. is a corporation organized and existing under the laws and by virtue of the General Corporation

Law of the State of Delaware and is an affiliate of SIRVA. North American Van Lines, Inc. provides moving services under the "northAmerican" brand.

ANSWER: Defendants admit the allegations in paragraph 26.

27. On December 2, 2019, SIRVA and its affiliate, North American Van Lines, Inc., entered into an Assignment and Assumption of Agreement, pursuant to which SIRVA assigned its rights under the Purchase Agreement to North American Van Lines, Inc.

ANSWER: Defendants admit that SIRVA and its affiliate, North American Van Lines, Inc., entered into an Assignment and Assumption of Agreement, pursuant to which SIRVA assigned its rights under the Purchase Agreement to North American Van Lines, Inc. and clarify that such Assignment and Assumption of Agreement was executed on November 6, 2019.

JURISDICTION, VENUE AND GOVERNING LAW

28. Each Party to the Purchase Agreement (SIRVA and Realogy):

> (ii) ***irrevocably submits itself and its properties and assets to the exclusive jurisdiction of the Court of Chancery of the State of Delaware*** (or, if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any Action or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement of this Agreement and the Transaction; (iii) ***consents to submit itself to the personal jurisdiction of the Court of Chancery of the State of***

> ***Delaware*** (or, if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any Action or counterclaim... (vi) agrees that it will not bring any Action or counterclaim relating to this Agreement or the Transaction in any court other than the aforesaid courts. Each of the Parties agrees that a final judgment in any action or proceeding in such courts as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law. The Parties hereby further agree that New York state or U.S. Federal courts sitting in New York County, State of New York shall have exclusive jurisdiction over any action (whether at law, in equity, in contract, in tort or otherwise) brought against any Debt Financing Source in connection with the Transaction, including to the extent arising out of or relating in any way to the Debt Commitment Letter.

(PA § 13.10) (emphasis added).

ANSWER: The allegations in paragraph 28 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 28 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

29. Each Party to the Limited Guaranty (Madison Dearborn and Realogy):

> (b) ***irrevocably submits itself and its properties and assets to the exclusive jurisdiction of the Court of Chancery of the State of Delaware*** (or, if the Court of Chancery of the State of Delaware

> declines to accept or does not have jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any Action or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Limited Guaranty or the actions of the parties hereto in the negotiation, administration, performance and enforcement of this Limited Guaranty and the transaction contemplated hereby; (c) ***consents to submit itself to the personal jurisdiction of the Court of Chancery of the State of Delaware*** (or, if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, the Superior Court of the State of Delaware or any federal court sitting in the State of Delaware) for the purpose of any Action or counterclaim; ... (f) agrees that it will not bring any Action or counterclaim relating to this Limited Guaranty or the transactions contemplated hereby in any court other than the aforesaid courts . . . .

(LG § 15) (emphasis added).

ANSWER: The allegations in paragraph 29 characterize the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 29 to the extent they paraphrase or characterize the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

30. In addition, the Court has jurisdiction over this civil action:

> Pursuant to 8 *Del. C.* § 111(a), which grants to the Court of Chancery jurisdiction over, among other things, "[a]ny civil action to interpret, apply, enforce or determine the validity of ... [a]ny instrument, document or agreement (i) by which a corporation creates or sells, or offers to create or sell, any of its stock, or any rights or options respecting its stock, or (ii) to which a corporation and 1 or more

> holders of its stock are parties, and pursuant to which any such holder or holders sell or offer to sell any of such stock, or (iii) by which a corporation agrees to sell, lease or exchange any of its property or assets, and which by its terms provides that 1 or more holders of its stock approve of or consent to such sale, lease or exchange . . . ."
>
> Pursuant to 10 *Del. C.* § 341, which grants to the Court of Chancery jurisdiction "to hear and determine all matters and causes in equity."

ANSWER: The allegations in paragraph 30 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in paragraph 30.

31. This civil action is governed by Delaware law. Subject to specified exceptions not applicable here, Section 13.9 of the Purchase Agreement provides that the Purchase Agreement and any action arising out of or relating to the Purchase Agreement, and any of the transactions contemplated by the Purchase Agreement or the Limited Guaranty, among other things, shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under any applicable principles of choice or conflicts of laws of the State of Delaware.

ANSWER: The allegations in the first sentence in paragraph 31 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the first sentence in paragraph 31. The remaining allegations in paragraph 31 characterize the Purchase Agreement, a

document that speaks for itself. Defendants deny the allegations in paragraph 31 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

32. Similarly, Section 14 of the Limited Guaranty provides that the Limited Guaranty and all actions arising out of or relating thereto, or to the actions of SIRVA or Madison Dearborn in the performance thereof, are governed by the laws of the State of Delaware.

ANSWER: The allegations in paragraph 32 characterize the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 32 to the extent they paraphrase or characterize the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

FACTUAL ALLEGATIONS

33. Cartus and SIRVA are industry competitors in the worldwide moving and relocation industry. A large portion of both the Cartus and SIRVA businesses are corporate-paid relocations. Volumes in that segment of the moving and relocation industry have been flat to declining over the past several years. This

general industry trend is caused by, among other things, reduction by large corporations of the number of executives that qualify for such relocation services and pricing pressures across the businesses.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 33, but deny that Cartus and SIRVA rely on corporate-paid relocations to the same extent. Defendants admit that volumes in corporate-paid relocation services have been flat or declining. Defendants admit that a reduction in spending by corporations on the number of executives that qualify for relocation services and pricing pressures have reduced volumes in the moving and relocation industry.

34. As a result, Madison Dearborn and SIRVA recognized that one key way to increase the profitability of the SIRVA business and gain market share was to consolidate with another company within the moving and relocation industry and take advantage of the resulting synergies from the combination. Indeed, SIRVA had a stated [redacted] In recent years, other large industry players have exercised the same consolidation strategy.

ANSWER: Defendants admit that Madison Dearborn and SIRVA recognized that an acquisition could increase profitability and that SIRVA considered but did not proceed with a different acquisition in 2019. Defendants are without knowledge or

information sufficient to form a belief as to the truth of the allegations in the last sentence in paragraph 34, and so deny these allegations.

35. In early to mid-2019, the environment was particularly favorable for consolidation in the moving and relocation industry. For example, during this period the Department of Defense (the "DOD") put out a Request for Proposal ("RFP") for a single third-party provider of relocation services for active service members. According to U.S. Army General Stephen Lyons, commander of the United States Transportation Command, the DOD is the largest consumer of household goods services, such as moving and relocation services. The DOD wanted to improve the relocation process for service members. It was expected that the DOD would choose a single, third-party provider in late 2019-early 2020, with implementation in late 2020. [redacted]

ANSWER: Defendants admit that the Department of Defense (the "DOD") put out a Request for Proposal ("RFP") for a single third-party provider of relocation services for active service members in 2019, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 35, and so deny these allegations.

36. The potential size of this single contract had many companies scrambling to position themselves for a successful bid. To illustrate, SIRVA completes approximately [redacted] relocations a year. [redacted]. The economic potential from this contract for Madison Dearborn Partners, LLC's portfolio companies (and, thus, Madison Dearborn) was extraordinary because of the importance of household goods shipments in the Madison Dearborn Partners, LLC's portfolio.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence in paragraph 36, and so deny these allegations. Defendants admit that in 2019 SIRVA executed approximately [redacted] relocations and moves delivered under contract with corporate employers, and government and military customers to transfer personnel. Defendants deny the remaining allegations in paragraph 36.

37. During 2019, the strategic rationale for combining the SIRVA business with the Cartus business suggested that Madison Dearborn would reap a host of benefits from a SIRVA/Cartus combination. To start, [redacted]. Next, Realogy (unlike Madison Dearborn Partners, LLC) did not own any van lines or

trucking company assets of its own. Instead, Cartus sub-contracted with moving companies to provide those services. Less than [redacted] of the Cartus global moving volume was sub-contracted to SIRVA in 2019. If combined with SIRVA, Madison Dearborn expected to capture a much higher share of that Cartus sub-contracting work for its own van line and trucking portfolio companies.

ANSWER: Defendants deny the allegations in the first sentence in paragraph 37. Defendants admit that [redacted]. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the third, fourth, fifth, and sixth sentences in paragraph 37, and so deny these allegations. Defendants admit that Madison Dearborn expected to increase its share of Cartus sub-contracting work for SIRVA's van line and trucking portfolio companies.

38. Moreover, Cartus had more advanced and sophisticated technology integrated into an Oracle platform that would be valuable to Madison Dearborn and SIRVA, completing the Transaction would relieve them of the difficulty and expense of building a similar platform from scratch.

ANSWER: Defendants admit that Cartus had technology integrated into an Oracle platform and that technology could be helpful to Madison Dearborn and SIRVA, but deny the remaining allegations in paragraph 38.

39. Additionally, the meaningful synergies derived from combining SIRVA and Cartus would quickly increase profits for Madison Dearborn. Indeed, the combined company was expected to yield [redacted] a combination of approximately [redacted] and [redacted]. Finally, combining the two businesses would create sufficient scale to go after larger customer contracts. The combination of two of the largest players in the industry made great sense from SIRVA and Madison Dearborn's perspective.

ANSWER: Defendants admit that combining SIRVA and Cartus was expected to increase SIRVA's profits. Defendants admit that the combined company was expected to yield [redacted], a combination of approximately [redacted]. Defendants admit that SIRVA anticipated the increased scale would allow SIRVA to win additional business. Defendants admit the SIRVA and Cartus combination made sense to Madison Dearborn Partners prior to the Material Adverse Effect under the terms of the Purchase Agreement.

40. In an investor presentation from April of this year, SIRVA, in fact, touted that it expected [redacted] and quoted an

anonymous customer as predicting that the combined company would be [redacted]

ANSWER: The allegations in paragraph 40 characterize a SIRVA investor presentation, a document that speaks for itself. Defendants deny the allegations in paragraph 40 to the extent they paraphrase or characterize the investor presentation in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the investor presentation for its complete and accurate contents.

41. Realogy also recognized that 2019 was an appropriate time to explore selling the Cartus business.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, and so deny these allegations.

(a) Negotiation And Signing Of The Agreement

42. Realogy and SIRVA entered into the Purchase Agreement on November 6, 2019, following extensive negotiations and due diligence. In the Purchase Agreement, SIRVA agreed to acquire Cartus for an aggregate purchase price of $400 million, consisting of $375 million in cash payable at the Closing of the Transaction, subject to certain Closing adjustments, and a $25 million deferred payment payable after the Closing.

ANSWER: Defendants admit the allegations in the first sentence in paragraph 42. The allegations in the second sentence in paragraph 42 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the second sentence in paragraph 42 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

43. Before the markets opened in the United States on November 7, 2019, Realogy and SIRVA each issued a press release announcing the entry into the Purchase Agreement.

ANSWER: Defendants admit the allegations in paragraph 43.

44. In its press release, SIRVA touted the benefits of the proposed Transaction:

> The addition of Cartus's Relocation business will expand SIRVA's service and support capability, consistent with the company's strategy to be everywhere their clients want them to be.
>
> "The winners in this transaction are undoubtedly our clients and their employees," said Tom Oberdorf, Chief Executive Officer at SIRVA. "We're excited by the tremendous potential of this highly complementary combination to enhance our capabilities and service for clients. Together, we will have the opportunity to provide our customers with the best that each company has to offer, including best-in-class technology, a well-established Real Estate Broker network, an integrated household goods capacity and a superior experience for our clients' relocating corporate employees. Cartus'

> talented relocation professionals are steeped in mobility expertise, and we look forward to welcoming them to the SIRVA family."
>
> Cartus brings to SIRVA a highly talented and experienced employee group and a strong supply chain that promises to enhance SIRVA's exceptional transferee experience. Cartus clients will benefit from having access to SIRVA's integrated household goods capacity and a larger, combined supply chain, whose increased scale should help drive down clients' costs over time.

ANSWER: The allegations in paragraph 44 characterize a press release issued by SIRVA, a document that speaks for itself. Defendants deny the allegations in paragraph 44 to the extent they paraphrase or characterize the press release in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the press release for its complete and accurate contents.

45. SIRVA's preliminary offering memorandum, dated April 13, 2020, issued in connection with the offering of debt securities to finance the Transaction similarly touted the benefits of the Transaction, stating that it [redacted]

ANSWER: The allegations in paragraph 45 characterize SIRVA's preliminary offering memorandum, a document that speaks for itself. Defendants deny the

allegations in paragraph 45 to the extent they paraphrase or characterize the preliminary offering memorandum in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the preliminary offering memorandum for its complete and accurate contents.

46. In a draft April 2020 Investor Presentation ("IP"), SIRVA further detailed the rationale behind the Transaction. SIRVA noted that Cartus is a [redacted] SIRVA believed that the Transaction would create a combined business that [redacted]

ANSWER: The allegations in paragraph 46 characterize SIRVA's investor presentation, a document that speaks for itself. Defendants deny the allegations in paragraph 46 to the extent they paraphrase or characterize the investor presentation in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the investor presentation for its complete and accurate contents.

47. The combination would allow [redacted] As recently as mid-April, SIRVA estimated that the total opportunity synergies to be borne from the Transaction would be approximately

[redacted], with approximately [redacted] coming from [redacted] Furthermore, SIRVA indicated that [redacted].

ANSWER: The allegations in paragraph 47 characterize SIRVA's investor presentation, a document that speaks for itself. Defendants deny the allegations in paragraph 47 to the extent they paraphrase or characterize the investor presentation in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the investor presentation for its complete and accurate contents.

(b) Terms Of The Agreement And Other Related Documents

48. A series of agreements were entered into on November 6, 2019, some of which Realogy was a party to and some of which it was not. Similarly, Madison Dearborn was a party to some of those agreements and not to others. Finally, SIRVA was a party to each of the related agreements executed on November 6, 2019, other than the Limited Guaranty.

ANSWER: Defendants admit the allegations in paragraph 48.

(i) The Purchase Agreement

49. The Parties to the Purchase Agreement are Realogy and SIRVA. The Purchase Agreement was negotiated by sophisticated parties with

experienced counsel. As is the case for all Delaware contracts, the Parties to the Purchase Agreement are bound by the implied covenant of good faith and fair dealing. Some of the more relevant provisions of the Purchase Agreement are set forth below and the entire Purchase Agreement is attached hereto as Exhibit A.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 49. The allegations in the third sentence in paragraph 49 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the third sentence in paragraph 49. The remaining allegations in paragraph 49 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the remaining allegations in paragraph 49 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(1) Financing And Reasonable Best Efforts Obligations

50. Pursuant to the Purchase Agreement, SIRVA has numerous reasonable best efforts obligations with respect to any financing obtained in connection with the Transaction.

ANSWER: The allegations in paragraph 50 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 50

to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(A) The Equity Commitment Letter

51. To assist with funding the Transaction, SIRVA obtained an equity commitment letter (the "ECL") from Madison Dearborn.

ANSWER: Defendants admit the allegations in paragraph 51.

52. The parties to the ECL are Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., Madison Dearborn Capital Partners VII Executive-A, L.P., and SIRVA Worldwide, Inc. Realogy is not a party to the ECL. The ECL was negotiated by sophisticated parties with experienced counsel. The ECL is governed by the laws of the state of Delaware, including the implied covenant of good faith and fair dealing. Some of the provisions of the ECL are set forth below, and the entire ECL is attached hereto as Exhibit C.

ANSWER: Defendants admit the allegations in the first three sentences in paragraph 52. The allegations in the fourth sentence in paragraph 52 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the fourth sentence in paragraph 52.

The remaining allegations in paragraph 52 characterize the Equity Commitment Letter, a document that speaks for itself. Defendants deny the remaining allegations in paragraph 52 to the extent they paraphrase or characterize the Equity Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Equity Commitment Letter for its complete and accurate contents.

53. Pursuant to the ECL, Madison Dearborn agrees to purchase up to [redacted] of SIRVA equity to fund the Transaction. The ECL further provides that Madison Dearborn's commitment is reduced to the extent that SIRVA is able to fund that portion of the purchase price in the Transaction with other sources, including debt financing.

ANSWER: The allegations in paragraph 53 characterize the Equity Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 53 to the extent they paraphrase or characterize the Equity Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Equity Commitment Letter for its complete and accurate contents.

54. Madison Dearborn's obligations under the ECL are subject to certain enumerated conditions. Specifically, Section 2 states:

> Each Investor's obligations under this letter agreement, including the obligation of each Investor to fund the Commitment, are, in each case, subject to (a) the execution and delivery of the Purchase Agreement by Buyer and Seller, (b) the satisfaction or (to the extent permitted by applicable Law) waiver by Buyer of each of the conditions to Buyer's obligations to consummate the transactions contemplated by the Purchase Agreement other than any conditions that by their nature are to be satisfied at the Closing, but subject to the prior or substantially concurrent satisfaction (or waiver by Buyer) of such conditions, (c) the substantially concurrent consummation of the Acquisition in accordance with the terms of the Purchase Agreement (including to the extent that Seller obtains, in accordance with the terms and subject to the satisfaction of the conditions set forth in Section 13.8 of the Purchase Agreement, an order requiring Buyer to specifically perform its obligations pursuant to the terms of the Purchase Agreement to cause the Commitment to be funded in connection with the consummation of the Transactions) and the contemporaneous issuance of equity securities of Global Relocation and Moving Services, LP to the Investors, directly or indirectly, and (d) the consummation and funding of the Debt Financing on the terms set forth in the Debt Financing Commitments (or, if Alternative Financing is being used in accordance with Section 7.3 of the Purchase Agreement, such Alternative Financing on the terms set forth in the debt commitment letter with respect thereto) prior to or substantially contemporaneously with such funding by the Investors; provided that Investors shall not be permitted to assert a failure of conditions (b) and (c) above if the Investors' failure to fund the Commitment when required hereunder shall have been the sole cause of the failure of any such condition.

(ECL § 2).

ANSWER: The allegations in paragraph 54 characterize the Equity Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 54 to the extent they paraphrase or characterize the Equity Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole,

in the proper context, and respectfully refer the Court to the Equity Commitment Letter for its complete and accurate contents.

55. Madison Dearborn's obligations under the ECL terminate under certain enumerated conditions. Specifically, Section 3 states:

> The obligation of the Investors to fund the Commitment shall, in each case, automatically and immediately terminate upon the earliest to occur of (a) ***the Closing;*** provided that the Investors shall prior thereto have fully funded and paid the Commitment (as such amount may be reduced as expressly provided herein) to Buyer, directly or indirectly, (b) ***the valid termination of the Purchase Agreement*** in accordance with its terms, (c) Seller or any of its Representatives ***asserting,*** filing or otherwise commencing any Action against, any Investor Affiliate (as defined below) relating to this letter agreement, the Limited Guaranty (as hereinafter defined), the Purchase Agreement, the Debt Financing Commitments or any transaction contemplated hereby or thereby ***other than Retained Claims*** (as defined in, and to the extent permitted under, the Limited Guaranty), in each case, subject to all of the terms, conditions and limitations herein and therein or (d) the occurrence of any event (subject to clause (a) of this paragraph in the event of the Closing) which, by the terms of the Limited Guaranty, is an event which terminates or satisfies in full all Guarantors' obligations and liabilities under the Limited Guaranty.

(*Id.* at § 3) (emphasis added).

ANSWER: The allegations in paragraph 55 characterize the Equity Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 55 to the extent they paraphrase or characterize the Equity Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole,

in the proper context, and respectfully refer the Court to the Equity Commitment Letter for its complete and accurate contents.

(B) The Debt Commitment Letter

56. To further fund the Transaction, SIRVA also obtained a debt commitment letter (the "DCL") from a group of lenders including Barclays Bank PLC ("Barclays"), Deutsche Bank AG New York Branch, Deutsche Bank Securities Inc., Bank of America, N.A., BofA Securities, Inc. (or any of its designated affiliates), Canadian Imperial Bank of Commerce, New York Branch, CIBC Bank USA, Sumitomo Mitsui Banking Corporation and CBAM Partners, LLC (the "Lenders").

ANSWER: The allegations in paragraph 56 characterize the Debt Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 56 to the extent they paraphrase or characterize the Debt Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Debt Commitment Letter for its complete and accurate contents.

57. The parties to the DCL are SIRVA, Inc., SIRVA Worldwide, Inc., North American Van Lines, Inc., Allied Van Lines, Inc., Allied International N.A., Inc. and the Lenders. Realogy is not a party to the DCL. The DCL was negotiated by sophisticated parties with experienced counsel. The DCL is

governed by the laws of the state of New York, except to the extent that it relies on certain terms or conditions of the Purchase Agreement, enumerated in Section 10 of the DCL, to which Delaware law applies. Some of the provisions of the DCL are set forth below and the entire DCL is attached hereto as Exhibit D.

ANSWER: Defendants admit the allegations in the first three sentences in paragraph 57. The remaining allegations in paragraph 57 characterize the Debt Commitment Letter, a document that speaks for itself. Defendants deny the remaining allegations in paragraph 57 to the extent they paraphrase or characterize the Debt Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Debt Commitment Letter for its complete and accurate contents.

58. Pursuant to the DCL, the Lenders agree to fund Incremental Credit Facilities, consisting of a [redacted] Incremental Term Facility and a [redacted] Incremental Revolving Facility. Section 3 of the DCL further contemplates that certain of the Lenders will have the opportunity to syndicate the Incremental Credit Facilities to a group of banks, financial institutions and other lenders. In effect, the Lenders commit to fund the Incremental Credit Facilities up to [redacted], to the extent that they are not able to syndicate the Incremental Credit Facilities. Syndication of the Incremental Credit Facilities is not, therefore, a condition to financing the Transaction.

ANSWER: The allegations in paragraph 58 characterize the Debt Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 58 to the extent they paraphrase or characterize the Debt Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Debt Commitment Letter for its complete and accurate contents.

59. The Lenders' obligations to fund the Incremental Credit Facilities are subject to certain enumerated conditions, described in detail in Section 6 and at Exhibit C to the DCL, including, *inter alia,* that SIRVA raise at least [redacted] in equity and that Cartus not have experienced a Material Adverse Effect. The DCL contemplated that SIRVA would raise the [redacted] in equity pursuant to Madison Dearborn's obligations under the ECL.

ANSWER: The allegations in paragraph 59 characterize the Debt Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 59 to the extent they paraphrase or characterize the Debt Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Debt Commitment Letter for its complete and accurate contents.

60. With respect to termination, the DCL provides, in Section 10, that it

> shall automatically terminate in the event that (a) in respect of the Incremental Credit Facilities, if the initial borrowing thereunder does not occur on or before 11:59 p.m., New York City time, on the date that is five business days after the Outside Date (as defined in the Purchase Agreement as in effect on the Original Commitment Letter Date, including any extension of the Outside Date pursuant to the provisio [sic] of Section 11.1(a)) thereof (as in effect on the Original Commitment Letter Date), (b) the Acquisition closes with or without the use of the Incremental Credit Facilities, or (c) after execution of the Purchase Agreement and prior to the consummation of the Acquisition, the termination of the Purchase Agreement by you (or your affiliates) or with your (or your affiliates') written consent or otherwise in accordance with its terms (other than with respect to provisions therein that expressly survive termination)....

(DCL § 10).

ANSWER: The allegations in paragraph 60 characterize the Debt Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 60 to the extent they paraphrase or characterize the Debt Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Debt Commitment Letter for its complete and accurate contents.

(C) The Securitization Facility Amendment Commitment Letter

61. SIRVA additionally obtained a Securitization Facility Amendment Commitment Letter (the "SFCL") in connection with the Transaction, amending SIRVA's existing receivables purchase facility with Wells Fargo Bank, National Association ("Wells Fargo Bank") and Wells Fargo Bank, N.A., London

Branch ("Wells Fargo UK"). The SFCL contemplated the amendment of the receivables purchase facility to change its termination date, increase the commitment of Wells Fargo Bank and Wells Fargo UK by [redacted], and join Cartus to the underlying Receivables Sale Agreement and Purchase and Sale Agreement. Similar to the DCL, the SFCL conditioned these amendments on SIRVA raising at least [redacted] in equity and the non-occurrence of a Material Adverse Effect. Implicit in the SFCL was that SIRVA would raise the [redacted] in equity pursuant to Madison Dearborn's obligations under the ECL.

ANSWER: The allegations in paragraph 61 characterize the Securitization Facility Amendment Commitment Letter, a document that speaks for itself. Defendants deny the allegations in paragraph 61 to the extent they paraphrase or characterize the Securitization Facility Amendment Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Securitization Facility Amendment Commitment Letter for its complete and accurate contents.

(2) No Financing Out

62. Although SIRVA obtained financing to assist it with funding the Transaction, the Purchase Agreement makes crystal clear that SIRVA's obligations under the Purchase Agreement - including its obligations to use reasonable best efforts to satisfy the conditions to closing as soon as practicable

and its obligations to consummate the Transaction - are not conditioned on its ability to obtain financing to fund the Transaction. Specifically, Section 7.3(f) states:

> Notwithstanding anything in this Agreement to the contrary, but without limiting or amending the provisions of Article XI or Section 13.8, ***Buyer acknowledges and agrees that its obligations set forth in this Agreement are not contingent or conditioned upon any Person's ability to obtain financing for or in connection with the Transaction.***

(PA § 7.3(f)) (emphasis added).

ANSWER: The allegations in paragraph 62 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 62 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

63. Likewise, Section 6.6 provides:

> ***Buyer acknowledges that***, subject in all respects to Article XI and Section 13.8(b), ***its obligations set forth in this Agreement are not contingent or conditioned upon Buyer's, its Affiliate's or any other Person's ability to obtain financing*** (including the Financing or any Alternative Financing) ***for or in connection with the Transaction***.

(*Id.* at § 6.6) (emphasis added).

ANSWER: The allegations in paragraph 63 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 63 to

the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(3) Reasonable Best Efforts To Obtain And Maintain Financing

64. While SIRVA's obligations under the Purchase Agreement are not *conditioned* on its ability to obtain financing, Section 7.3 of the Purchase Agreement sets forth SIRVA's various obligations with respect to any financing it obtained or obtains to assist with funding the Transaction.

ANSWER: The allegations in paragraph 64 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 64 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

65. Section 7.3(a) of the Purchase Agreement requires SIRVA to use its "reasonable best efforts" to take all actions and do all things necessary and proper to "consummate and obtain the Debt Financing." Section 7.3(a) further obligates SIRVA to use its reasonable best efforts to "comply with" and "maintain in effect" the Debt Financing Commitments until "the Transaction is

consummated" or the Purchase Agreement "is terminated in accordance with its terms." Section 7.3(a) also obligates SIRVA to "satisfy or obtain a waiver of all conditions applicable to [SIRVA] and its Affiliates in the Debt Financing Commitments that are within its or its Affiliates' control."

ANSWER: The allegations in paragraph 65 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 65 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

66. Specifically, Section 7.3(a) states:

> (a) Buyer shall, and shall cause its Subsidiaries to, use its reasonable best efforts to cause its Representatives to, use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and obtain the Debt Financing on the terms and subject only to the conditions (including the market flex provisions) expressly set forth in the Debt Financing Commitment, including using their respective reasonable best efforts to (i) comply with and maintain in effect the Debt Financing Commitments in accordance with the terms and subject to the conditions thereof until the Transaction is consummated or this Agreement is terminated in accordance with its terms, (ii) satisfy or obtain a waiver of all conditions applicable to Buyer and its Affiliates in the Debt Financing Commitments that are within its or its Affiliates' control, (iii) negotiate and enter into definitive agreements with respect to the Debt Financing on the terms and subject only to the conditions (including the market flex provisions) set forth in the Debt Financing Commitments, (iv)

> consummate the Debt Financing on or prior to the Closing Date; and (v) enforce its rights under the Debt Financing Commitments; provided that the foregoing shall not require Buyer or any of its Subsidiaries to institute an Action or other legal proceeding ....

(PA § 7.3(a)).

ANSWER: The allegations in paragraph 66 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 66 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

67. Thus, under Section 7.3(a), SIRVA is required to use its reasonable best efforts to, among other things, ***maintain in effect*** the Debt Financing Commitments until the Transaction is consummated or the Purchase Agreement is validly terminated, including, if necessary, by ***satisfying or obtaining a waiver of any condition applicable to SIRVA*** in the Debt Financing Commitments if within its control.

ANSWER: The allegations in paragraph 67 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 67 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper

context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

68. Under Section 7.3(c), if SIRVA becomes aware of any termination of any Debt Financing Commitments, any actual or threatened breach, default, termination, or repudiation of any provisions in the Debt Financing Commitments, or the occurrence of any event or development that would reasonably be expected to "adversely impact the ability of [SIRVA] to obtain all or any portion of the Debt Financing contemplated in the Debt Financing Commitments," then SIRVA is required to provide Realogy with prompt written notice within two business days after becoming aware of such event.

ANSWER: The allegations in paragraph 68 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 68 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

69. Specifically, Section 7.3(c) provides:

> Buyer shall give Seller prompt written notice (and, in any event, within two (2) Business Days after becoming aware) of: (i) any termination of any Debt Financing Commitments; (ii) any actual or threatened breach, default, termination or repudiation of any provisions of the Debt Financing Commitments, in each case, by any

> party thereto, of which Buyer becomes aware; and (iii) the occurrence of any event or development that would reasonably be expected to adversely impact the ability of Buyer to obtain all or any portion of the Debt Financing contemplated by the Debt Financing Commitments on the terms and conditions, in the manner or from the sources contemplated by any of the Debt Financing Commitments.

(PA § 7.3(c)).

ANSWER: The allegations in paragraph 69 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 69 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

70. Section 7.3(c) further provides that if "any portion of the Debt Financing becomes ***unavailable on the terms and conditions ... thereof*** or from the Debt Financing Sources contemplated in the Debt Financing Commitments" ***or if any of the Debt Financing Commitments "expire, or [are] withdrawn, terminated, repudiated or rescinded, in whole or in part, for any reason"*** then SIRVA is required to use its reasonable best efforts to arrange and obtain Alternative Financing. Specifically, Section 7.3(c) provides,

> If any portion of the Debt Financing becomes unavailable on the terms and conditions (including any market flex provisions) thereof or from the Debt Financing Sources contemplated in the Debt Financing Commitments or any of the Debt Financing or Debt Financing Commitments (or any definitive financing agreement relating thereto) shall expire or be withdrawn, terminated, repudiated or rescinded, in

> whole or in part, for any reason (but without limiting the obligations of Buyer in this Section 7.3(a)) (unless such portion of the Debt Financing is not reasonably required to consummate the Transaction), Buyer shall use its reasonable best efforts to (x) arrange and obtain, as promptly as practicable following the occurrence of such event, alternative financing from the same or alternative sources (the "Alternative Financing") in an amount sufficient to consummate the Transaction with terms and conditions not materially less favorable in the aggregate to Buyer than those set forth in the Debt Financing Commitments (or replace any unavailable portion of the Financing) and (y) obtain a debt financing commitment letter (including any associated fee letter) with respect to such Alternative Financing, true, accurate and complete copies of which shall be promptly provided to Seller upon execution thereof (which fee letters may be redacted with respect to any interest rates, fee amounts, pricing caps and other similar economic terms (including flex terms) set forth therein).

(PA § 7.3(c)).

ANSWER: The allegations in paragraph 70 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 70 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

71. Although the Debt Financing was available throughout the period leading up to the scheduled Closing Date and thereafter, if either the Debt Financing in the DCL becomes unavailable or the Debt Financing ***expires or is terminated for any reason***, ***including by its terms***, then SIRVA is required to use

its reasonable best efforts to arrange and obtain, ***as promptly as practicable***, Alternative Financing and a debt financing commitment letter with respect to such Alternative Financing.

ANSWER: The allegations in paragraph 71 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 71 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

72. Similar to its obligations with respect to Debt Financing, Section 7.3(d) requires SIRVA to use its "reasonable best efforts" to take all actions and do all things necessary to obtain the Equity Financing and maintain in effect the Equity Financing Commitments. This includes taking all actions to "consummate the Equity Financing at or prior to Closing" and "enforc[ing] its rights (***including through litigation***) under the Equity Financing Commitments, ***including seeking any specific performance of the parties' obligations thereunder***" and causing the Equity Financing Sources to fund the Equity Financing no later than the Closing.

ANSWER: The allegations in paragraph 72 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 72

to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

73. Furthermore, while Section 7.4(a) provides that Realogy must reasonably cooperate in connection with the arrangement of Debt Financing, the Purchase Agreement provides that Realogy's obligation in this regard is deemed satisfied ***unless*** Debt Financing has not been obtained as a result of Realogy's breach of its obligations under Section 7.4(a) and such breach remains uncured ten days after Realogy has received written notice of such breach by SIRVA.

ANSWER: The allegations in paragraph 73 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 73 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

74. The provisions set forth above show that, although SIRVA's obligations under the Purchase Agreement are in no way contingent or conditioned on its ability to obtain financing, SIRVA must nonetheless use its reasonable best efforts to consummate and maintain any financing obtained in connection with the

Transaction, and, if any such financing is lost, to obtain, ***as promptly as practicable,*** Alternative Financing.

ANSWER: The allegations in paragraph 74 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 74 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(4) Reasonable Best Efforts To Satisfy Closing Conditions And Cause The Closing To Occur

75. The Purchase Agreement also includes an overall reasonable best efforts obligation. Specifically, under Section 7.6(a) of the Purchase Agreement, the parties agreed to use "reasonable best efforts" to cause the conditions to Closing to be satisfied "and to cause the Closing to occur":

> In accordance with the terms and subject to the conditions of this Agreement, each Party ***shall use their respective reasonable best efforts to cause the conditions set forth in Article X to be satisfied as soon as practicable following*** the date of this Agreement (giving effect, among other things, to the remaining provisions of this Section 7.6 (including the last sentence of this Section 7.6(a) and Section 7.6(b)) and in any event on or prior to the Outside Date (as the same may be extended in accordance with this Agreement) ***and to cause the Closing to occur*** on the terms and (unless otherwise validly waived by a Party) subject to the conditions specified in this Agreement as soon as practicable after the Required Financial Information has been

> delivered (giving effect to the provisions of the Marketing Period and Section 2.3))....

(PA § 7.6(a)) (emphasis added).

ANSWER: The allegations in paragraph 75 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 75 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(ii) Material Adverse Effect

76. Article X of the Purchase Agreement sets forth the conditions to Closing. Those conditions include, as provided at Section 10.2(c), that "[s]ince the date of this Agreement, no events or circumstances shall have occurred that, individually or in the aggregate, have had a Material Adverse Effect."

ANSWER: The allegations in paragraph 76 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 76 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

77. A "**Material Adverse Effect**," as defined in the Purchase Agreement in Section 1.1, generally:

> means (a) any change, event, occurrence, circumstance or effect that, individually or in the aggregate with all other changes, events, occurrences, circumstances or effects, has, or would reasonably be expected to have, a material adverse effect on the results of operations or financial condition of [Cartus], or (b) any change, event, occurrence, circumstance or effect that would or would reasonably be expected to prevent or materially impair or materially delay the ability of [Realogy] to consummate the Transaction....

(PA § 1.1).

ANSWER: The allegations in paragraph 77 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 77 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

78. However, excepted from the definition of Material Adverse Effect for purposes of clause (a) are, among other things, "any change, event, occurrence, circumstance or effect to the extent resulting from, relating to or arising out of":

- "(i) general economic, legal, tax, political or regulatory conditions that, in each case, generally affect any of the geographic regions or industries in which such Person or any of its Affiliates, as applicable, conducts its business;"

- "(ii) any change in the financial, banking, credit, currency or capital markets in general (whether in the U.S. or any other country or in any international market), including changes in interest rates, commodity prices or raw material prices;"

- "(iii) conditions generally affecting any industry in which the Acquired Companies operate;"

- "(iv) acts of God, natural disasters, national or international political or social conditions, including the engagement in hostilities by any country in which an Acquired Company is located or operates, whether commenced before or after the date of this Agreement, and whether or not pursuant to the declaration of a national emergency or war (including any escalation or worsening of war), or the occurrence of any military or terrorist attack; ..."

- "(ix) any failure by Seller or its Affiliates (including the Acquired Companies) to meet internal or other earnings estimates or financial projections (but the underlying causes thereof are not excluded);"

- "or (x) changes in credit ratings or the stock price or trading volume of Seller...."

(PA § 1.1).

ANSWER: The allegations in paragraph 78 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 78 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

79. Exclusions "(i)-(iv) and (vii) shall not apply to the extent that Cartus is disproportionately adversely affected by any change, event, occurrence, circumstance or effect in such clauses relative to other similarly situated participants in industries in which the Business operates." (PA § 1.1).

ANSWER: The allegations in paragraph 79 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 79 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

80. The definition of Material Adverse Effect reads in full as follows:

> "Material Adverse Effect" means (a) any change, event, occurrence, circumstance or effect that, individually or in the aggregate with all other changes, events, occurrences, circumstances or effects, has, or would reasonably be expected to have, a material adverse effect on the results of operations or financial condition of the Business, or (b) any change, event, occurrence, circumstance or effect that would or would reasonably be expected to prevent or materially impair or materially delay the ability of Seller to consummate the Transaction; provided that Material Adverse Effect shall not include, solely in the case of clause (a), any change, event, occurrence, circumstance or effect to the extent resulting from, relating to or arising out of (i) general economic, legal, tax, political or regulatory conditions that, in each case, generally affect any of the geographic regions or industries in which such Person or any of its Affiliates, as applicable, conducts its business; (ii) any change in the financial, banking, credit, currency or capital markets in general (whether in the U.S. or any other country or in any international market), including changes in interest rates,

commodity prices or raw material prices; (iii) conditions generally affecting any industry in which the Acquired Companies operate; (iv) acts of God, natural disasters, national or international political or social conditions, including the engagement in hostilities by any country in which an Acquired Company is located or operates, whether commenced before or after the date of this Agreement, and whether or not pursuant to the declaration of a national emergency or war (including any escalation or worsening of war), or the occurrence of any military or terrorist attack; (v) any action taken by Buyer or any of its Affiliates in violation of this Agreement; (vi) other than with respect to representations and warranties set forth in Section 4.3 and Section 5.3(b), the negotiation, announcement, pendency, execution, delivery or performance of this Agreement or the consummation of the Transaction, the disclosure of the fact that Buyer is the prospective acquirer of the Business; or any communication by Buyer or any of its Affiliates regarding plans or intentions of Buyer with respect to the Acquired Companies or the Business (including the impact of any of the foregoing on relationships with customers, suppliers, employees or regulators, and any suit, action or proceeding arising therefrom or in connection therewith); (vii) any changes or proposed changes in GAAP (or other applicable accounting regulations) or any change (or proposed change) in applicable Laws or the interpretation thereof; (viii) compliance with the terms of, or the taking of any action required or expressly contemplated by, this Agreement or any of the other Transaction Documents or any action taken, or failure to take action, to which Buyer has given its prior written consent; (ix) any failure by Seller or its Affiliates (including the Acquired Companies) to meet internal or other earnings estimates or financial projections (but the underlying causes thereof are not excluded); or (x) changes in credit ratings or the stock price or trading volume of Seller; provided, however, that the exclusions in clauses (i)- (iv) and (vii) shall not apply to the extent the Business is disproportionately adversely affected by any change, event, occurrence, circumstance or effect in such clauses relative to other similarly situated participants in industries in which the Business operates.

ANSWER: The allegations in paragraph 80 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 80 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(iii) Closing Mechanics

81. Article X of the Purchase Agreement sets forth the conditions of the parties' obligations to close the Transaction. Section 10.1 provides, in relevant part:

> The respective obligations of [SIRVA] and [Realogy] to consummate, or cause to be consummated, the Transaction pursuant to this Agreement shall be subject to the satisfaction or, to the extent not prohibited by law, waiver by [SIRVA] and [Realogy], at or prior to the Closing, of the conditions set forth in this Section 10.1.
>
> (a) Government and Regulatory Approvals. (i) all waiting periods ... under the HSR Act and any agreement between the Parties and a Governmental Entity not to consummate the Transaction agreed to in accordance with the last sentence of Section 7.6(a) shall have expired or been terminated, and (ii) all Consents of the Governmental Entities set forth in Section 10.1(a) of the Seller Disclosure Letter shall have been obtained.
>
> (b) No Injunctions. At the Closing Date, there shall not be in effect any preliminary or permanent injunction or other order issued by any Governmental Entity of competent jurisdiction which restrains, prohibits or otherwise makes illegal the consummation of the Transaction, and no Law shall have been enacted, issued, enforced, entered, or promulgated and remains in effect that prohibits or makes illegal the consummation of the Transaction.

(PA § 10.1).

ANSWER: The allegations in paragraph 81 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 81 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

82. Section 10.2 of the Purchase Agreement sets forth the conditions to SIRVA's obligations to close the Transaction. Section 10.2 provides:

> The obligations of Buyer to effect the Closing and consummate the Transaction pursuant to this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the conditions set forth in this Section 10.2, any of which may be, to the extent not prohibited by Law, waived, in writing, exclusively by Buyer in its sole and absolute discretion:
>
> (a) Representations and Warranties of Seller. (i) The representations and warranties of Seller set forth in this Agreement (other than Seller Fundamental Representations) shall be true and correct as of the Closing Date as though made on and as of such date (unless any such representation or warranty is made only as of a specific date, in which event such representation or warranty shall be true and correct only as of such specific date), except where the failure of any such representation or warranty to be so true and correct ... would not, individually or in the aggregate, have a Material Adverse Effect on the Business, taken as a whole, and (ii) Seller Fundamental Representations shall be true and correct in all material respects ... as of the Closing Date as though made on and as of such date (unless any such representation or warranty is made only as of a

specific date, in which event such representation or warranty shall be so true and correct only as of such specific date).

(b) Performance. Seller shall have performed and complied with, in all material respects, each covenant and obligation required by this Agreement to be so performed or complied with by Seller on or before the Closing.

(c) No Material Adverse Effect. Since the date of this Agreement, no events or circumstances shall have occurred that, individually or in the aggregate, have had a Material Adverse Effect.

(d) Officer's Certificate. Buyer shall have received a certificate of a duly authorized executive officer of Seller, dated as of the Closing Date, certifying that the conditions set forth in Section 10.2(a), Section 10.2(b), Section 10.2(c) and Section 10.2(e) have been satisfied.

(e) Restructuring. The Restructuring shall have been completed in all material respects in accordance with Section 2.2(a) of the Seller Disclosure Letter.

(PA § 10.2).

ANSWER: The allegations in paragraph 82 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 82 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(iv) Enforcement Provisions

83. Section 13.8(a) of the Purchase Agreement expressly entitles Realogy to an order of specific performance to enforce SIRVA's numerous

obligations under the Purchase Agreement, including its obligations to use its reasonable best efforts to cause the conditions to Closing to be satisfied "as soon as practicable" and its obligations to use its reasonable best efforts to consummate and maintain any financing obtained in connection with the Transaction, and, if any such financing is lost, to obtain, ***as promptly as practicable***, Alternative Financing.

ANSWER: The allegations in paragraph 83 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 83 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

84. Section 13.8(a) provides:

> The Parties hereby expressly recognize and acknowledge that immediate, extensive and irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate the Transaction) in accordance with its specified terms or otherwise breach such provisions. Accordingly, subject to the terms and conditions in this Section 13.8, the Parties acknowledge and agree that the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties agrees that it will not

> oppose the granting of an injunction, specific performance and other equitable relief to any Party that is expressly entitled to bring an action therefor pursuant to the terms of this Agreement on the basis that any other Party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any Party expressly entitled hereunder to seek an injunction or injunctions or any other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to show proof of actual damages or provide any bond or other security in connection with any such order or injunction.

(PA § 13.8(a)).

ANSWER: The allegations in paragraph 84 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 84 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

85. Only two narrow limits exist to Realogy's ability to seek specific performance. Those are set forth in Section 13.8(b) of the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 85.

86. The first is contained in Section 13.8(b)(i), which states that "in no event shall Seller ... be entitled to, or permitted to seek, specific performance, against the Debt Financing Sources, except in each case indirectly through the enforcement of Buyer's obligations hereunder." In other words, although Realogy

cannot *directly* force the Debt Financing Sources to perform, it can force SIRVA to comply with its many obligations related to those Debt Financing Sources, including, but not limited to, its obligations under Section 7.3(a) of the Purchase Agreement to procure, maintain, and substitute Debt Financing as necessary to enable SIRVA to close the Transaction, as described *supra.* Thus, Realogy can "indirectly" compel such performance.

ANSWER: The allegations in the first sentence in paragraph 86 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the first sentence in paragraph 86 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents. Defendants deny remaining allegations in paragraph 86.

87. The second is contained in Section 13.8(b)(ii), which states that Realogy "***shall be entitled to bring an Action to specifically enforce Buyer's obligation to consummate the Closing*** and Buyer's rights under the Equity Financing Commitments to cause the Equity Financing to be funded" if four conditions are satisfied: (A) the conditions to Closing must be satisfied; (B) the proceeds of the Debt Financing have been funded or irrevocably committed; (C) Realogy has not terminated and has irrevocably confirmed that all conditions to

Closing are satisfied (or waived, except those that by their nature are to be satisfied by actions to be taken at the Closing, each of which shall then be capable of being satisfied at the Closing), and, once the funding occurs, commits to Closing; and (D) Buyer fails to consummate the Closing.

ANSWER: The allegations in paragraph 87 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 87 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

88. ***These conditions do not apply to any other order of specific performance - they only apply to an order of specific performance to force consummation.*** In other words, Realogy does not have to satisfy these conditions in order to seek or receive specific performance of any other obligation in the Purchase Agreement, such as SIRVA's obligations to procure and maintain the Debt Financing, as described above, and (under Section 7.6 of the Purchase Agreement) "use [its] reasonable best efforts to cause the conditions set forth in Article X to be satisfied" and to "use [its] reasonable best efforts to ... cause the Closing to occur on the terms and ... subject to the conditions specified in this

agreement as soon as practicable after the Required Financial Information has been delivered," among numerous other obligations.

ANSWER: The allegations in paragraph 88 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 88 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

89. Section 13.8(b)(ii) reads in full:

> (ii) Seller shall be entitled to bring an Action to specifically enforce Buyer's obligation to consummate the Closing and Buyer's rights under the Equity Financing Commitments to cause the Equity Financing to be funded if (and only if and for so long as) (A) all of the conditions set forth in Section 10.1 and Section 10.2 have been and continue to be satisfied or (to the extent permitted by applicable Law) waived (other than those conditions that by their terms or nature are to be satisfied at the Closing, each of which shall then be capable of being satisfied at the Closing and the date of termination) and Buyer fails to consummate the Closing on the date required pursuant to the terms of Section 2.3, (B) the proceeds of the Debt Financing (or any alternative debt financing) have been funded to Buyer or the agent for the Debt Financing Sources under the Debt Financing Commitments (or any definitive agreements executed pursuant thereto) has irrevocably confirmed in writing to Buyer that the Debt Financing will be funded subject only to the funding of the Equity Financing, (C) Seller has not terminated this Agreement in accordance with Article XI and has irrevocably confirmed to Buyer in writing that all of the conditions set forth in Section 10.1 and Section 10.2 have been and continue to be satisfied or (to the extent permitted by applicable Law) waived (other than those conditions that by their terms or nature are to

> be satisfied by actions to be taken at the Closing, each of which shall then be capable of being satisfied at the Closing) and that if the Debt Financing and Equity Financing are funded, then Seller will consummate the Closing in accordance with the terms of this Agreement, and (D) Buyer has failed to consummate the Closing within three (3) Business Days after receipt of such irrevocable confirmation. For the avoidance of doubt, (a) in no event shall Seller be entitled to specifically enforce (or to bring any Action in equity seeking to specifically enforce) Buyer's rights under the Equity Financing Commitments to cause the Equity Financing to be funded other than as expressly provided in the immediately preceding sentence, and (b) in no event shall Seller be entitled to seek to specifically enforce any provision of this Agreement or to obtain an injunction or injunctions, or to bring any other Action in equity in connection with the transactions contemplated by this Agreement, against Buyer other than against Buyer and, in such case, only under the circumstances expressly set forth in this Section 13.8.

(PA § 13.8(b)(ii)).

ANSWER: The allegations in paragraph 89 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 89 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(v) Termination

90. Article XI sets forth the circumstances under which the Purchase Agreement may be terminated and the effects of such a termination, and the fees owed for terminating under such circumstances. Section 11.1 details the

circumstances under which the Purchase Agreement may be terminated, two of which are relevant here.

ANSWER: The allegations in paragraph 90 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 90 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

91. Pursuant to Section 11.1(a), either Seller (Realogy) or Buyer (SIRVA) could terminate at or after the "Outside Date" if the Closing has not yet occurred, ***except*** Buyer is not entitled to terminate under Section 11.1(a) if its own failure "to take any action required under or breach of this Agreement shall have been the primary cause of, or shall have resulted in, the failure of the Closing to occur by the Outside Date."

ANSWER: The allegations in paragraph 91 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 91 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

92. Pursuant to Section 11.1(c), Buyer (SIRVA) could terminate if Seller's (Realogy's) "representations and warranties ... fail to be true and correct such that the condition set forth in Section 10.2(a) would not be satisfied at the Closing," or if Seller (Realogy) has breached the Agreement in a manner that is not curable or, if curable, has not been cured within "twenty (20) Business Days following receipt by Seller of written notice of such breach or failure from Buyer" or before the Outside Date, ***except*** that Buyer is not entitled to terminate under Section 11.1(c) if Buyer is itself in material breach of the Purchase Agreement.

ANSWER: The allegations in paragraph 92 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 92 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

93. Pursuant to Section 11.2, in order to effect a termination, a Party must give written notice of such termination to the other Party, "specifying the provisions of this Agreement pursuant to which such termination is made...."

ANSWER: The allegations in paragraph 93 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 93 to the extent they paraphrase or characterize the Purchase Agreement in a manner

inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

94. Section 11.3 of the Purchase Agreement sets forth the circumstances under which the Termination Fee is owed to Realogy. Summarized, it provides that SIRVA must pay the Termination Fee within two business days if (i) either party terminates the Purchase Agreement because (a) the Outside Date has passed or (b) the Transaction has been prohibited or enjoined (other than under antitrust law), or (ii) if Realogy terminates the Purchase Agreement because of (a) SIRVA's failure to close the Transaction within three business days of being required to do so or (b) SIRVA's breach of the Purchase Agreement or the failure of SIRVA's representations and warranties. It states in full:

> (a) If this Agreement is terminated (i) by either Seller or Buyer pursuant to Section 11.1(a) and all conditions to Closing set forth in Section 10.1 (other than Section 10.1(a)(i) and other than Section 10.1(b) (to the extent arising under Antitrust Laws)) and Section 10.2 are satisfied or capable of being satisfied or are waived (other than those conditions that by their nature are to be satisfied at the Closing, each of which shall be capable of being satisfied at the Closing and the date of termination), (ii) by either Seller or Buyer pursuant to Section 11.1(b) and the applicable injunction or other order giving rise to such termination right arises under Antitrust Laws, or (iii) by Seller pursuant to (x) Section 11.1(d) or (y) Section 11.1(e), then, in each such case, Buyer shall, no later than two (2) Business Days after the date of such termination, pay, or cause to be paid, to Seller or its designee an amount equal to thirty million dollars ($30,000,000) (the "Termination Fee") without deduction or offset of any kind.

> Notwithstanding anything to the contrary contained in this Agreement, in no event shall Buyer be required to pay the Termination Fee on more than one occasion.

(PA § 11.3(a)).

ANSWER: The allegations in paragraph 94 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 94 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

95. Section 11.3(c) contains an exclusive remedy provision. It provides that the Termination Fee "shall constitute the sole and exclusive remedy of Seller ... for all losses and damages suffered as a result of the failure of the Transaction to be consummated or for a breach or failure to perform hereunder." This exclusive remedy has a critical exception: it expressly allows Realogy to avoid the exclusive remedy of the Termination Fee and seek an order of specific performance "***prior to termination***" of the Purchase Agreement.

ANSWER: The allegations in paragraph 95 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 95 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper

context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(1) The Transaction Documents

96. The Purchase Agreement provides in Section 13.13:

> Entire Agreement: The Transaction Documents, the Limited Guaranty and the Confidentiality Agreement constitute the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersede all prior discussions, understandings, agreements and representations and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any Party in connection with the negotiation of the terms of this Agreement.

(PA § 13.13).

ANSWER: The allegations in paragraph 96 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 96 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

97. The Purchase Agreement defines "Transaction Documents" in Article I, Section 1.1:

> "Transaction Documents" means this Agreement (including the Seller Disclosure Letter and the Exhibits to this Agreement), the Transition Services Agreement, the Sublease Agreement and the Deferred Payment Amount Agreement.

(PA § 1.1).

ANSWER: The allegations in paragraph 97 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 97 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

(A) The Transition Services Agreement

98. The Parties to the Transition Services Agreement (the "TSA") are Realogy and SIRVA. The TSA was negotiated by sophisticated parties with experienced counsel. As is the case in any Delaware contract, the Parties to the TSA are bound by the implied covenant of good faith and fair dealing. Under the TSA, the Parties agree to provide certain services to each other, either mutually or on a fee-for-service basis, in connection with the separation of Cartus's operations from Realogy. Relevant to certain allegations made by SIRVA in communications with Realogy, described elsewhere in this Amended Complaint, Schedule 2.01-1 to the TSA enumerates "Seller Provided Services" that Realogy agrees to provide to SIRVA. The Seller Provided Services are broadly related to the management of Cartus's human resources, information technology, and finances post-Closing, and are limited to terms of service ranging from three to eighteen months after Closing.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 98. The allegations in the third sentence in paragraph 98 state legal

conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the third sentence in paragraph 98. The remaining allegations in paragraph 98 characterize the Transition Services Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 98 to the extent they paraphrase or characterize the Transition Services Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Transition Services Agreement for its complete and accurate contents.

(B) The Limited Guaranty

99. The Limited Guaranty, dated as of November 6, 2019, by Madison Dearborn (that is, by Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P., referred to in the Limited Guaranty as the "Guarantors"), was made in favor of Realogy. The Limited Guaranty was negotiated by sophisticated parties with experienced counsel. Like all Delaware contracts, the parties to the Limited Guaranty are bound by the implied covenant of good faith and fair dealing. Some of the provisions of the Limited Guaranty are set forth below and the entire Limited Guaranty is attached hereto as Exhibit B.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 99. The allegations in the third sentence in paragraph 99 state legal

conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the third sentence in paragraph 99. The remaining allegations in paragraph 99 characterize the Limited Guaranty, a document that speaks for itself. Defendants deny the remaining allegations in paragraph 99 to the extent they paraphrase or characterize the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

100. Under Section 1 of the Limited Guaranty, Madison Dearborn "irrevocably and unconditionally guarantee[s] to Seller, the due, punctual and complete payment of the Termination Fee, if and when due pursuant to the terms and conditions of Section 11.3 of the Purchase Agreement...."

ANSWER: The allegations in paragraph 100 quote the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 100 to the extent they quote the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

101. Section 2 of the Limited Guaranty further expressly provides that "[t]his Limited Guaranty is one of payment, not collection, and a separate Action or Actions may be brought and prosecuted against any or all of the

Guarantors to enforce this Limited Guaranty, irrespective of whether any Action is brought against Buyer or whether Buyer is joined in any such Action or actions."

ANSWER: The allegations in paragraph 101 quote the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 101 to the extent they quote the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

102. Under Section 4(c) of the Limited Guaranty, Realogy's legal recourse against Madison Dearborn in connection with the Transaction is limited to enumerated Retained Claims. The Retained Claims include:

> (i) claims by Seller against any Guarantor ... under, in accordance with and subject to all limitations of [the] Limited Guaranty
>
> . . .
>
> (ii) claims by Seller against Buyer under and in accordance with and subject to all limitations set forth in the Purchase Agreement
>
> . . .
>
> (iii) with respect to the Confidentiality Agreement, dated September 15, 2019, between Buyer and Seller (the "NDA"), claims by Seller against Buyer under and in accordance with the NDA (the "Retained NDA Claims")
>
> [and]
>
> (iv) to the extent (but only to the extent) Seller is expressly entitled to enforce the Equity Commitment Letter in accordance with Section 7 of the Equity Commitment Letter and Section 13.8(b) of the Purchase Agreement, and subject to all of the terms, conditions and

> limitations herein and therein, claims by Seller against Buyer seeking to cause Buyer to enforce the Equity Commitment Letter in accordance with its terms . . . .

(LG § 4(c)).

ANSWER: The allegations in paragraph 102 characterize the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 102 to the extent they paraphrase or characterize the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

103. Section 6(b) of the Limited Guaranty provides that, if SIRVA believes that Realogy has brought an action against Madison Dearborn other than a Retained Claim, SIRVA may make a written demand on Realogy to have Realogy dismiss such action. If Realogy does not then dismiss the "unauthorized action" within ten business days, Madison Dearborn's obligations under the Limited Guaranty terminate *ab initio* and are null and void.

ANSWER: The allegations in paragraph 103 characterize the Limited Guaranty, a document that speaks for itself. Defendants deny the allegations in paragraph 103 to the extent they paraphrase or characterize the Limited Guaranty in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper

context, and respectfully refer the Court to the Limited Guaranty for its complete and accurate contents.

104. Realogy has never received a written demand from SIRVA that Realogy dismiss this or any other action under Section 6(b) of the Limited Guaranty. Furthermore, and for the avoidance of doubt, Realogy does not assert any claims in this action against Madison Dearborn other than Retained Claims as defined in Section 4(c) of the Limited Guaranty.

ANSWER: Defendants admit the allegations in the first sentence in paragraph 104. Defendants deny the remaining allegations in paragraph 104.

(c) From Signing To Closing

(i) COVID-19 Impact And Steps To Mitigate

105. Approximately eight weeks after the Purchase Agreement was executed, on or about December 31, 2019, The People's Republic of China alerted the World Health Organization (WHO) of several flu-like illnesses in Wuhan, the capital of Central China's Hubei province.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105, and so deny these allegations.

106. On January 7, 2020, Chinese authorities identified the virus causing flu-like symptoms in Wuhan as a novel "coronavirus." Coronaviruses are

a family of viruses including the viruses that cause the common cold, SARS and MERS. The disease caused by this novel coronavirus, subsequently named "COVID-19," rapidly spread across the world.

ANSWER: Defendants admit that COVID-19 has impacted various parts of the world, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 106, and so deny these allegations.

107. On March 11, 2020, the Director-General of the WHO described the spread of COVID-19 as a "pandemic," which is the first time that the WHO has referred to an outbreak as a "pandemic" since 2009.

ANSWER: Defendants admit that COVID-19 is now referred to as a pandemic, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 107, and so deny these allegations.

108. As of the date of this filing, there have been approximately 4.5 million confirmed cases of COVID-19 around the world, resulting in over 300,000 deaths. Presently, confirmed cases of COVID-19 have been reported in 188 countries or regions.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 108, and so deny these allegations.

109. The coronavirus pandemic has broadly impacted many industries throughout the world. For example, on March 6, 2020, Bloomberg reported:

> The coronavirus is going global, and it could bring the world economy to a standstill. An epidemic that began in the depths of China's Hubei province is spreading rapidly.... The economic fallout could include recessions in the U.S., euro-area and Japan, the slowest growth on record in China, and a total of $2.7 trillion in lost output—equivalent to the entire GDP of the U.K.

ANSWER: Defendants admit that COVID-19 has impacted various parts of the world, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence in paragraph 109, and so deny these allegations. The allegations in the second sentence in paragraph 109 characterize a Bloomberg article, a document that speaks for itself. Defendants deny the allegations in paragraph 109 to the extent they paraphrase or characterize the Bloomberg article in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Bloomberg article for its complete and accurate contents.

110. The industries in which Realogy, Cartus and SIRVA operate have not been spared from this universal impact. To combat COVID-19, governments around the world implemented stay-at-home orders and global restrictions on travel. On March 25, the Director-General of the World Health

Organization reported that "many countries have introduced unprecedented measures, at significant social and economic cost ... ***asking people to stay home and stay safe***." On March 31, the Department of State issued a Global Level 4 - *Do Not Travel* alert, advising United States citizens to "***avoid all international travel due to the global impact of COVID-19.***" The alert continued: "[m]any countries are experiencing COVID-19 outbreaks and implementing travel restrictions and mandatory quarantines, closing borders, and prohibiting non-citizens from entry with little advance notice." Given the significant restrictions placed on movement around the globe, it is not surprising that companies who specialize in moving and relocation would feel the impact of the COVID-19 pandemic.

ANSWER: Defendants admit that the industries in which SIRVA, Cartus, and Realogy operate have been impacted by COVID-19, but deny those impacts have been uniform across industry participants and deny the remaining allegations in the first and last sentences in paragraph 110. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third, and fourth sentences in paragraph 110, and so deny these allegations.

111. In response to the spread of the COVID-19 pandemic, Realogy implemented a series of prudent cost-savings actions, including, among other measures, temporary salary and work-week reductions for a majority of Realogy's

employees, and reductions in its marketing expenses. In addition, Realogy's CEO and each of the executive officers who report directly to him agreed to a temporary reduction in base salary, [redacted]

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph 11, and so deny these allegations.

112. In late March and throughout April, Cartus sought and received SIRVA's consent to take cost mitigation actions in response to COVID-19 in the United States and United Kingdom, where its largest employee bases were located.

ANSWER: Defendants admit that Cartus sought and received SIRVA's consent to take certain actions in response to COVID-19. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 112, and so deny these allegations.

113. On March 24, 2020, Cartus scheduled a call with SIRVA, during which Cartus provided advance notice to Mr. Souleles that Realogy planned to file a Form 8-K with the SEC the next day, disclosing the mitigation measures it intended to take in response to COVID-19.

ANSWER: Defendants admit that Cartus scheduled a call on March 24, 2020 during which Realogy informed Mr. Souleles that it planned to file a Form 8-K

with the SEC, disclosing mitigation measures it intended to take in response to COVID-19.

114. The following day, March 25, 2020, Cartus sent a letter to Jeff Margolis, Executive VP and General Counsel of SIRVA, stating:

> As discussed in a call yesterday with Tom Souleles, Rich Copans, and Tom Oberdorf, Realogy is implementing cost savings mitigation actions given recent developments arising out of the COVID-19 situation. These actions include temporary salary reductions for U.S. based exempt employees and work-week reductions for some U.S. based non-exempt employees. Below the level of CEO and Executive Committee at Realogy, [redacted] the measures will be assessed on an ongoing basis and may be extended or widened to include, for example, temporary employment furloughs...
>
> ***We believe these actions are necessary and commercially reasonable measures to support the ongoing operation in light of recent developments affecting all of us***, including the mandatory work from home requirements imposed by a number of states where our employees are located. ***I also appreciated the information provided yesterday about the cost savings initiatives SIRVA is implementing for April through December 2020 in light of the COVID-19 situation***.
>
> ***While we do not believe that consent of SIRVA is required for these actions pursuant to the Purchase and Sale Agreement, we wanted to confirm for the avoidance of doubt that SIRVA consents to our taking these actions***. Please let us know if you would like to discuss further or confirm by responding to this email that SIRVA consents to our taking the foregoing actions for the Cartus Relocation business.

(emphasis added).

ANSWER: Defendants admit that SIRVA received a letter from Cartus on March 25, 2020, but deny the allegations in paragraph 114 to the extent they paraphrase or characterize the March 25 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

115. On March 26, SIRVA replied. SIRVA claimed that Realogy's proposed actions [redacted] In light of this, SIRVA requested further information from Realogy in order to "consider [Realogy's] request for consent."

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on March 26, 2020, but deny the allegations in paragraph 115 to the extent they paraphrase or characterize the March 26 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

116. Cartus promptly replied on March 27, noting, "[w]e disagree with your characterization of our Proposed Actions" and "have operated Cartus and continue to operate Cartus in the best interest of the Business, its employees,

clients and customers." Cartus then reiterated that its actions are "in response to the unprecedented Covid-19 pandemic" and that Realogy "strongly believe[s] that the Proposed Actions are commercially reasonable steps to preserve the Business, including its goodwill." Cartus also reminded SIRVA of its obligation under the Purchase Agreement not to unreasonably withhold or delay its consent.

ANSWER: Defendants admit that SIRVA received a letter from Cartus on March 27, 2020, but deny the allegations in paragraph 116 to the extent they paraphrase or characterize the March 27 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

117. On March 30, Margolis consented to Cartus's actions as requested, stating, in relevant part:

> [W]e consent [redacted] As discussed, we understand that you have acknowledged that SIRVA may take similar actions in the post-Closing period . . . .

ANSWER: Defendants admit that SIRVA sent an e-mail to Cartus on March 30, 2020, but deny the allegations in paragraph 117 to the extent they paraphrase or characterize the March 30 e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That e-mail speaks for itself and Defendants respectfully refer the Court to its full contents.

118. On April 5, Cartus requested SIRVA's consent to take additional mitigation actions with respect to its United States employee base. SIRVA replied on April 7, providing its consent and stating, in relevant part:

> [W]e consen [redacted] As discussed, we understand that you have acknowledged that SIRVA may take similar actions in the post-Closing period.

ANSWER: Defendants admit that Cartus sent an e-mail to SIRVA on April 5, 2020 and SIRVA sent an e-mail to Cartus on April 7, 2020, but deny the allegations in paragraph 118 to the extent they paraphrase or characterize the April 5 and April 7 e-mails in a manner inconsistent with their actual terms or substance, taken as a whole, in the proper context. Those e-mails speak for themselves and Defendants respectfully refer the Court to their full contents.

119. Having received SIRVA's consent to its mitigation actions in the United States, Cartus promptly began to take comparable mitigation actions in the United Kingdom, where its next largest employee base is located. The next morning, April 8, Cartus informed SIRVA of its plan to make salary and hour reductions, as well as a few furloughs in the United Kingdom. Along with its request, Cartus provided a spreadsheet containing information concerning its mitigation actions.

ANSWER: Defendants admit that SIRVA consented to certain mitigation efforts by Cartus in the United States after expressing stated concerns about such mitigation efforts, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the first sentence in paragraph 119. Defendants admit that Cartus informed SIRVA that it intended to make salary and hour reductions and furloughs in the United Kingdom. Defendants admit that Cartus provided a spreadsheet with information related to these mitigation actions.

120. On April 9, SIRVA again provided consent.

ANSWER: Defendants admit that SIRVA consented to further mitigation efforts after expressing stated concerns about such mitigation efforts.

121. Despite the precipitous dip in the world's economies during this time, Cartus [redacted] Even in the current environment, Cartus continues to provide its core services to clients over the telephone and through electronic communications (*e.g.,* counseling clients regarding relocation policies, monitoring and managing supply chains, and performing on-the-ground services and expense processing). In the month of March 2020, when Cartus, like most other companies, was working to transition its employees to work-from-home environments, the Cartus client services teams earned higher satisfaction scores

from clients relocating employees (measured through surveys) than in March 2019. Moreover, in April 2020, Cartus [redacted]

ANSWER: Defendants deny that Cartus is well-positioned for the future and are otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 121, and so deny these allegations.

122. SIRVA has also suffered the thus far short-term impact of COVID-19. SIRVA has provided multiple public updates on how COVID-19 has impacted its business and the industry. According to SIRVA, "the rapid spread of the recent coronavirus (COVID-19) is having a significant impact on the global economy and the way in which organizations are adjusting business options in response. ***Mobility is no exception.***" Other major relocation and moving services companies have issued similar statements regarding the severe impact of COVID-19.

ANSWER: Defendants admit that SIRVA has been impacted by COVID-19, but deny that SIRVA has been impacted in a proportionate way to Cartus and deny the remaining allegations in paragraph 122. Defendants admit that SIRVA has provided more than one update on how COVID-19 has impacted the industry and its own business. The allegations in the third and fourth sentences in paragraph 122 refer to SIRVA's white paper on mobility program considerations and

SIRVA's update on COVID-19, documents that speaks for themselves. Defendants deny the allegations in the third and fourth sentences in paragraph 122 to the extent they paraphrase or characterize the white paper and SIRVA update in a manner inconsistent with their actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the white paper and SIRVA update for complete and accurate contents. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence in paragraph 122, and so deny these allegations.

123. Furthermore, Moody's Investor Services ("Moody's") has indicated that "[c]orporate spending levels on employee relocation are expected to decline near term amid the heightened coronavirus risk ...." (Moody's Rating Action at 1).

ANSWER: The allegations in paragraph 123 refer to a Moody's Rating Action, a document that speaks for itself. Defendants deny the allegations in paragraph 123 to the extent they paraphrase or characterize the Moody's Rating Action in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Moody's Rating Action for complete and accurate contents.

124. On March 11, 2020, Moody's downgraded SIRVA's corporate family rating, probability of default rating and instrument ratings on SIRVA's

senior secured first lien from B3 to Caal, B3-PD to Caa1-PD, and B1 to B3, respectively. The rating downgrades reflect Moody's "expectation of deterioration in [SIRVA's] earnings and credit metrics over the next 12 months because of near-term demand disruptions due to COVID-19, investment needs for the Cartus Integration and increased debt service costs." Specifically, Moody's "expects SIRVA's free cash flow to be weak in 2020, which given the high debt levels could increase default risk."

ANSWER: The allegations in paragraph 124 refer to a Moody's debt rating update, a document that speaks for itself. Defendants deny the allegations in paragraph 124 to the extent they paraphrase or characterize the debt rating update in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the debt rating update for complete and accurate contents.

(ii) Realogy Diligently Moves Toward Closing

125. In the months following execution of the Purchase Agreement, Realogy worked industriously with SIRVA, Madison Dearborn, and each party's respective advisors to move toward closing the Transaction.

ANSWER: Defendants deny the allegations in paragraph 125.

126. The ECL, the Securitization Commitment Letter, the Debt Financing Commitments Letter were all executed. On February 28, 2020, in

accordance with the requirements of the Purchase Agreement, Cartus provided to SIRVA its audited financial statements for 2018 and unaudited financial statements for the 9-month period ended September 30, 2019. On March 31, 2020, also in accordance with the requirements of the Purchase Agreement, Cartus delivered its audited 2019 financial statements, for the full year, to SIRVA and the Debt Financing Sources. Additionally, from March 16, 2020 onward, Cartus provided "Daily Flash" reports to SIRVA and Madison Dearborn. The flash reports detailed Cartus's [redacted]

ANSWER: Defendants admit the allegations in the first sentence in paragraph 126. Defendants admit that on February 28, 2020, Cartus provided to SIRVA its audited financial statements for 2018 and unaudited financial statements for the 9-month period ended September 30, 2019. Defendants admit that on March 31, 2020, Cartus delivered its audited 2019 financial statements, for the full year, to SIRVA. Defendants are without knowledge or information sufficient to form a belief as to the truth of whether the Cartus audited 2019 financial statements were delivered to the Debt Financing Sources on March 31, 2020, and so deny these allegations. The allegations in sentences two and three that state delivery of such

financial statements was in accordance with the requirements of the Purchase Agreement state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny such allegations. Defendants admit that the Daily Flash reports [redacted], but those documents speak for themselves. Defendants deny the remaining allegations in paragraph 126.

127. On a March 15 call between Thomas Oberdorf, CEO of SIRVA, and Katrina Helmkamp, CEO of Cartus, Mr. Oberdorf informed Ms. Helmkamp that the financing had shifted from term loan financing to a bond deal. Mr. Oberdorf offered reassurance that the deal was still on track to a closing date of April 20th to end of April, and described the financing as [redacted] He added that [redacted]

ANSWER: Defendants admit that Thomas Oberdorf and Katrina Helmkamp spoke by phone on March 15 about how the financing had shifted from term loan financing to a bond deal. Defendants admit that Mr. Oberdorf mentioned that [redacted]

[redacted] Defendants admit that Mr. Oberdorf mentioned that [redacted] Defendants deny the remaining allegations in paragraph 127.

128. By April 2020, pre-Closing actions and events were well under way. Realogy's and SIRVA's respective legal advisors had drafted and were finalizing side letters and other required documents for Closing and were having regular calls to review the closing checklist in preparation for a Closing expected to occur later that month. An estimated closing statement had been prepared and delivered, and follow-up questions regarding the closing statement were being addressed. A funds flow memorandum was being prepared and termination and formation of various programs and agreements were completed or were near completion. Both SIRVA's and Realogy's closing certificates were drafted and in final form and Realogy provided SIRVA's counsel with its stock certificates for the entities to be sold to hold in escrow.

ANSWER: Defendants admit the allegations in paragraph 128.

(iii) SIRVA And Madison Dearborn Execute On A Scheme To Thwart The Transaction

(1) April 14th

129. On April 14, 2020, Cartus and SIRVA each had due diligence calls with the various banks involved in financing for the Transaction. Earlier that day, the Chief Financial Officer of Cartus, Eric Barnes, emailed the Chief

Financial Officer of SIRVA, Stephen Cassell, asking to "sync up" before the due diligence calls that evening. Specifically, Mr. Barnes discussed with Mr. Cassell, among other things, (a) [redacted]

ANSWER: Defendants admit the allegations in the first sentence in paragraph 129. The allegations in the second and third sentences in paragraph 129 characterize an e-mail from Eric Barnes to Stephen Cassell, a document that speaks for itself. Defendants deny the allegations in the second and third sentences in paragraph 129 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the e-mail for its complete and accurate contents.

130. Mr. Cassell also forwarded to Mr. Barnes an internal SIRVA email containing a SIRVA "Flash Report" for the day. The SIRVA "Flash Report" presented similar information about SIRVA's month-to-date performance as the information about Cartus's performance generally contained in the Daily Flash reports that Cartus had been providing to SIRVA. Mr. Cassell commented that [redacted] He also observed that, [redacted]

[redacted] (emphasis added).

ANSWER: The allegations in paragraph 130 characterize an e-mail from Stephen Cassell to Eric Barnes, a document that speaks for itself. Defendants deny the allegations in paragraph 130 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the e-mail for its complete and accurate contents.

131. On April 14, 2020, in connection with a due diligence call with the banks, Realogy provided high level scenarios or ranges of outcomes by quarter for the balance of 2020 (the "High-Level Sensitivity Analysis"). A representative of Realogy promptly forwarded to representatives of SIRVA and Madison Dearborn the High-Level Sensitivity Analysis and offered a time to discuss in more detail. The representative of Realogy also made clear to SIRVA and Madison Dearborn that [redacted]

ANSWER: Defendants admit that Cartus participated in a due diligence call with the banks on April 14, 2020. Defendants admit that a Realogy representative forwarded a high level forecast to representatives of SIRVA and Madison Dearborn on April 14, 2020 that Realogy stated it had shared with the banks on April 14, 2020. That e-mail and analysis speak for themselves. Defendants deny the allegations in paragraph 131 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the e-mail for its complete and accurate contents. Defendants deny all remaining allegations in this paragraph.

(2) April 16th And April 17th

132. On Thursday evening, April 16, 2020, and on Friday morning, April 17, 2020, representatives of Realogy and representatives of SIRVA (including Mr. Souleles) held telephone calls to discuss the High-Level Sensitivity Analysis. A representative of Madison Dearborn expressed appreciation for the information that Realogy presented to the banks on the April 14, 2020 due diligence call. Representatives of Madison Dearborn and SIRVA asked representatives of Realogy follow-up questions regarding the High-Level Sensitivity Analysis. A representative of Madison Dearborn also stated that they were moving forward to an April 29, 2020 closing and reminded Realogy

representatives that the estimated Closing Statement would be due between April 21 and April 24 to support a closing on April 29 or April 30.

ANSWER: Defendants admit that on April 16, 2020 and April 17, 2020, representatives of Realogy and representatives of SIRVA (including Mr. Souleles) had telephone calls to discuss the forecast sent on April 14, among other things. Defendants admit Representatives of Madison Dearborn and SIRVA asked representatives of Realogy follow-up questions regarding the forecast, as further detailed in the Verified Counterclaim. Defendants admit a representative from Madison Dearborn stated the estimated Closing Statement would be due between April 21 and April 24 if closing were to occur on April 29 or April 30, though deny that SIRVA or Madison Dearborn said the transaction would close on either of those days. Defendants deny the remaining allegations in paragraph 132.

133. Specifically, representatives of Madison Dearborn and SIRVA asked [redacted] They requested [redacted]. Realogy promptly provided the [redacted] by April 18, 2020.

ANSWER: Defendants admit the allegations in the first two sentences in paragraph 133. Defendants admit that [redacted]

on April 18, 2020, but this was not what SIRVA had requested, as further detailed in the Verified Counterclaim. Defendants deny the remaining allegations in the third sentence in paragraph 133.

134. With regard to SIRVA and Madison Dearborn's other questions from April 16 and 17, Realogy made clear that it was working diligently to address the follow-up questions and focusing on a revised detailed "base case" and a built-from-scratch, detailed "downside case" (the "Base Case and Downside Case"). Realogy further informed SIRVA and Madison Dearborn that it expected to provide the Base Case and Downside Case by late afternoon on April 22, 2020, and offered to discuss them on April 22nd or April 23rd.

ANSWER: Defendants admit that Realogy said it was working on its forecast throughout March and April but deny Realogy was working diligently. Defendants admit that Realogy eventually said it intended to provide a full forecast on April 22 and offered to discuss that forecast on April 22 or 23. Defendants deny all remaining allegations in paragraph 134.

135. In response to a follow-up question from Madison Dearborn, a representative of Realogy reiterated that the High-Level Sensitivity Analysis that Realogy sent to the banks in connection with the April 14, 2020 due diligence call was a high level, top-down range built around a single "base case." Now - ***per Madison Dearborn and SIRVA's request*** - Realogy was updating that base case

with information learned in the ensuing period and building a detailed downside case using a bottom-up approach versus a top-down approach.

ANSWER: Defendants admit that a representative of Realogy said that the April 14 forecast that Realogy sent to the banks in connection with the April 14, 2020 due diligence call was a high level, top-down range. Defendants admit that a representative from Madison Dearborn requested a full forecast. Defendants admit that a representative from Realogy said Realogy would be sharing more granularity but Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence in paragraph 135, and so deny these allegations. Defendants deny any remaining allegations in paragraph 135.

136. The representative of Realogy further explained that Realogy would be sharing more granularity on each of the cases designed to get SIRVA and Madison Dearborn comfortable with the output. Finally, Realogy's representative noted that the company was developing a detailed "downside case" because that was the focal point in conversations during the previous week. Given the time constraints and the emphasis in conversations on the "downside case," Realogy did not build a detailed "upside case" by April 24 and pointed out that it would take additional time to build a detailed "upside case." During the meetings and communications of April 16 and 17, 2020, neither Madison Dearborn nor SIRVA

raised any concerns that Cartus had been impacted by COVID-19 adversely as compared to the moving and relocation industry generally. Nor did either SIRVA or Madison Dearborn suggest that the Closing might not occur or might be delayed as a result of anything, including a Material Adverse Effect.

ANSWER: Defendants admit that an employee from Realogy said Realogy would be sharing more granularity of cases presented to the banks on April 14, 2020 and Realogy said this was to get a representative from Madison Dearborn more comfortable with the output, which Realogy admitted did not make sense as discussed further in the Verified Counterclaim. Defendants admit that a representative from Realogy said the downside case was more of the focal point in conversations during the previous week and that Cartus was more comfortable with the downside case because the base case was too optimistic. Defendants admit that a representative from Realogy said an upside case would not be available. Defendants admit that they did not state closing might not occur or might be delayed on April 16 or April 17 because Realogy still had not provided the forecast SIRVA had been requesting for a month. Defendants admit that they did not reference the impact on Cartus relative to the industry during the calls on April 16 or April 17, but deny Defendants did not raise COVID-19's material impact on Cartus, which Defendants repeatedly raised with Realogy and Cartus.

137. Neither SIRVA nor Madison Dearborn ever asked Realogy to provide a more detailed "upside case." They were not interested. Rather, by this point (as discovery will show), SIRVA and Madison Dearborn had concocted a scheme to cut and run from this Transaction. The apparent plan was to blind themselves to the true state of the Cartus business. And instead, without any discussion with Realogy, point to Cartus's allegedly poor future results as supposedly indicated in the prior-in-time High-Level Sensitivity Analysis to argue that the Cartus business had suffered a Material Adverse Effect.

ANSWER: Defendants deny the allegations in paragraph 137.

138. That is because, as discovery will show, Madison Dearborn had already concluded that it did not want to go through with the Transaction. Indeed, because of this new desire not to go through with the Transaction, by mid-March, Madison Dearborn had injected itself into the day-to-day steps leading toward the Closing, with Mr. Souleles taking an increasingly active and aggressive role culminating in the repudiation of the Purchase Agreement. Prior to this time, Mr. Souleles was not an active participant in the day-to-day steps leading toward the Closing.

ANSWER: Defendants deny the allegations in paragraph 138.

139. Madison Dearborn's and SIRVA's real motivations to avoid the Transactions were far different than a supposed Material Adverse Effect. Volumes

in the corporate-paid relocations segment of the moving and relocation industry - which comprise a large portion of both SIRVA and Cartus's businesses - have been flat to declining over the past several years. As a result, growth is primarily accomplished by consolidations, like the Transaction at issue here. Because of the short-term stress placed on these industries due to COVID-19, inferably, Madison Dearborn's investment thesis - to consolidate two large industry players and exit its investment in SIRVA within the next three to five years with favorable returns - was looking increasingly less certain.

ANSWER: Defendants deny the allegations in paragraph 139.

140. With the COVID-19 health crisis came lower volume with the SIRVA business and consequently lower revenue, and lower anticipated synergies as a result of the Transaction. Adding on the higher cost of borrowing also due to the COVID-19 health crisis, SIRVA and Madison Dearborn were facing the prospect of layering potentially [redacted] of debt onto an already highly levered company. These factors created the very real possibility of a ***second*** SIRVA bankruptcy and further risked Madison Dearborn's [redacted] incremental equity investment. Inferably, these changing deal metrics no longer satisfied Madison Dearborn's internal criteria for equity commitments.

ANSWER: Defendants admit that they anticipated funding the transaction with approximately [redacted] of debt and that the material adverse change in the

Cartus business presented risks to the SIRVA business post-acquisition. Defendants deny the remaining allegations in paragraph 140.

141. In order to concoct a supposed Material Adverse Effect for the purpose of trying to avoid closing the Transaction for the above reasons, Madison Dearborn began demanding more detailed ***downside*** projections from Cartus under the guise of purported "clarification" of Cartus's assumptions and modeling (without any mention of a supposed Material Adverse Effect concern or threat to Closing). Indeed, on April 22, 2020, a representative of Madison Dearborn emailed a representative of Cartus asking [redacted]

ANSWER: Defendants admit that they requested projections from Cartus starting on March 20, 2020, but deny the remaining allegations in the first sentence in paragraph 141. Defendants admit that a representative of Madison Dearborn sent an e-mail to a representative of Cartus on April 22, 2020 [redacted] but deny the allegations in the second sentence in paragraph 141 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That e-mail

speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants further admit that after requesting the Cartus forecast for Q2-Q4 for over a month, Realogy finally agreed to provide it on the afternoon of April 22, 2020. Defendants deny the remaining allegations in paragraph 141.

(3) April 22nd

142. Realogy, for its part, continued to act in good faith in order to move the deal toward Closing. Thus, as promised, at 4:05 p.m. on April 22, 2020, a representative of Realogy sent the detailed Base Case and Downside Case to the representatives of SIRVA and Madison Dearborn, and scheduled a call at 5:00 p.m. to review and discuss.

ANSWER: Defendants admit that Realogy sent Cartus forecasts to SIRVA and Madison Dearborn on April 22, 2020 and a call took place on that day, but deny all the remaining allegations in paragraph 142.

143. The parties discussed the Base Case and Downside Case at 5:00 p.m. that day. As discovery will show, SIRVA and Madison Dearborn were not pleased with the bottom-up Base Case and Downside Case. The models made clear that Cartus had not suffered a Material Adverse Effect. Indeed, both the Base Case and Downside Case [redacted] As previously described in the bank due diligence call and in the

discussions on April 16 and 17 with SIRVA and Madison Dearborn representatives, Cartus also [redacted]

ANSWER: Defendants admit that the parties discussed the April 22 forecasts on April 22, 2020. Defendants admit that they raised numerous questions about certain of the assumptions in those forecasts, as described in more detail in the Verified Counterclaim. Defendants deny the allegations in the third sentence in paragraph 143. The allegations in the fourth sentence in paragraph 143 characterize the April 22 forecasts, documents that speak for themselves. Defendants deny the allegations in the fourth sentence in paragraph 143 to the extent they paraphrase or characterize the April 22 forecast in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the April 22 forecasts. Defendants deny the allegations in the last sentence in paragraph 143.

144. The SIRVA and Madison Dearborn representatives ignored the Realogy representatives' detailed and thoughtful explanations. Instead, they complained about wanting a "simple" model for a complex business based on assumptions with which Realogy representatives did not agree. Under the guise of "seeking clarification," SIRVA and Madison Dearborn again poked and prodded at

the Base Case and Downside Case trying to set up a story of disproportionate adverse impact. During the meetings and communications of April 22, 2020, neither Madison Dearborn nor SIRVA raised any concerns that Cartus had been impacted by COVID-19 adversely as compared to the larger moving and relocation industry. Nor did either Madison Dearborn or SIRVA suggest that the Closing might not occur or might be delayed as a result of anything, including a Material Adverse Effect.

ANSWER: Defendants deny the allegations in the first three sentences in paragraph 144. Defendants admit that they did not raise the issue of a Material Adverse Effect on April 22 because they had just received the forecast an hour before the call and had requested information and asked numerous questions to understand the forecast as described more fully in the Verified Counterclaim. Defendants deny the remaining allegations in paragraph 144.

145. Realogy continued to diligently respond to SIRVA and Madison Dearborn's requests, in an effort to move the parties to the Closing.

ANSWER: Defendants deny the allegations in paragraph 145.

146. Also on April 22, 2020, Barclays [redacted]

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 146, and so deny these allegations.

(4) April 23rd

147. On April 23, 2020, Eric Barnes sent an email to representatives of SIRVA and Madison Dearborn to follow up on the parties' discussion the prior evening regarding the Base Case and Downside Case. Specifically, Mr. Barnes noted that the parties had discussed SIRVA and Madison Dearborn's questions about [redacted] Mr. Barnes addressed each question in an email. With respect to question one, he explained [redacted] With respect to questions two and three, he explained that [redacted] Mr. Barnes suggested that the parties use already scheduled time the following day to discuss, and offered to adjust his

schedule if the representatives of SIRVA or Madison Dearborn wanted to discuss further.

ANSWER: Defendants admit that Eric Barnes sent an e-mail to representatives of SIRVA and Madison Dearborn on April 23, 2020, but deny the allegations in paragraph 147 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That e-mail speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants further deny that Mr. Barnes' April 23 e-mail answered the questions Defendants had about the April 22 forecasts or provided the follow-up information Defendants requested.

(5) April 24th

148. On April 24, 2020, representatives of SIRVA, Madison Dearborn and Realogy had a call to discuss Realogy's responses to SIRVA and Madison Dearborn's questions. During this call, a Madison Dearborn representative informed Realogy that Madison Dearborn had built a purported "simple model" showing results if "revenues one-to-one fell with initiations" from Q2 to Q3. The representative of Madison Dearborn asked Realogy to build such a model as well. A representative of Realogy replied that Realogy would not send Madison Dearborn and SIRVA something that did not reflect how the Cartus business worked. The representative of Realogy further noted that Madison

Dearborn and SIRVA had specifically "asked for [Cartus's] stake in the ground" and that Realogy had provided it. Following that call, a representative of Realogy sent an email to the group:

(emphasis added)

ANSWER: Defendants admit that the parties had a call on April 24 regarding the April 22 forecasts and that during the call Defendants asked Realogy to explain the correlation between initiations and revenue and further requested an initiation roll-forward summary. Realogy never provided that information despite admitting that

[redacted] Defendants admit that a Madison Dearborn representative informed Realogy that Madison Dearborn had built a model that showed the impact on EBITDA if revenues fell with initiations. Defendants admit that they asked Realogy to explain the impact on EBITDA if revenue fell with initiations. Defendants admit that Realogy refused to change the assumptions in the April 22 forecasts and refused to create another forecast. Defendants admit Realogy responded to Defendants' questions by [redacted], but refusing to actually answer Defendants' questions. Defendants admit that SIRVA and Madison Dearborn received an e-mail from a representative of Realogy on April 24, 2020, but deny the allegations in the last sentence in paragraph 148 to the extent they paraphrase or characterize the e-mail in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That e-mail speaks for itself and Defendants respectfully refer the Court to its full contents.

149. After Realogy sent its detailed and thoughtful follow-up email, Madison Dearborn's Mr. Souleles responded with a curt "[a]llow us to review." But instead of following up with Realogy after such "review," Madison Dearborn and SIRVA never responded. Specifically:

- neither SIRVA nor Madison Dearborn responded to or even acknowledged Realogy's suggestion that one designee of SIRVA

or Madison Dearborn [redacted] a representative of Cartus;

- neither SIRVA nor Madison Dearborn responded to or even acknowledged Realogy's [redacted]

- neither SIRVA nor Madison Dearborn indicated in any way to Realogy that it believed Cartus had suffered a Material Adverse Effect;

- neither SIRVA nor Madison Dearborn discussed or suggested a discussion regarding ways to address its supposed concerns in order to move the Transaction to Closing;

- neither SIRVA nor Madison Dearborn asked Realogy or even opened discussions to extend the Outside Date given its supposed concerns regarding Cartus's modeling; and

- neither SIRVA nor Madison Dearborn expressed to Realogy that its financing may be in jeopardy of expiring given SIRVA and Madison Dearborn's own supposed belief that Cartus had suffered a Material Adverse Effect.

ANSWER: Defendants admit that Madison Dearborn sent an e-mail to representatives of Realogy on April 24, 2020, but deny all other allegations in the first sentence in paragraph 149. Defendants deny the allegations in the second and third sentences in paragraph 149 and further state that within hours after the April 24 call during which SIRVA raised numerous questions and asked Realogy for follow-up information (including an initiation roll-forward summary), Realogy sent a letter claiming that all conditions to closing were satisfied. The morning of the next business day, Realogy filed suit, precluding any opportunity for SIRVA to

follow-up on the questions it had raised or information it had requested that Realogy never provided.

150. Put simply, after April 24, 2020, Madison Dearborn and SIRVA made no effort whatsoever to engage with Realogy regarding any of its purported concerns stemming from the Base Case and Downside Case. That failure violated SIRVA's obligations, and is demonstrative of SIRVA's bad faith refusal to disclose or attempt to solve its purported concerns about a Material Adverse Effect impacting closing.

ANSWER: Defendants deny the allegations in paragraph 150 and further incorporate their response to paragraph 149.

151. As discovery will show, SIRVA and Madison Dearborn "went dark" and refused to discuss with Realogy the Base Case and Downside Case in any meaningful detail. That is because Cartus's detailed bottom-up analysis wholly contradicted SIRVA and Madison Dearborn's manufactured scheme to get out of the Transaction. Instead, Madison Dearborn and SIRVA decided that it was better for their plan to scuttle the Transaction by clinging to the broader ranges in the rough High-Level Sensitivity Analysis and rejecting Realogy's careful analysis in the Base Case and Downside Case in conclusory fashion as "not credible" and "inaccurate."

ANSWER: Defendants deny the allegations in paragraph 151 and further incorporate their response to paragraph 149.

152. Indeed, that evening, Mr. Souleles called Ryan Schneider, Realogy's Chief Executive Officer, likely to communicate SIRVA's intent to renege on the deal. Mr. Schneider was unavailable to speak. Mr. Souleles then sent Mr. Schneider a text message, which said "Ryan, please call me at your convenience." Mr. Schneider told Mr. Souleles that he had a commitment and would be unable to speak that evening, but that he could have a telephone call with Mr. Souleles the following morning. Mr. Souleles replied, "Thanks Ryan. Earlier better. 8AM CT/9AM ET?" Mr. Schneider agreed to call at that time.

ANSWER: Defendants admit that Mr. Souleles called Ryan Schneider on April 24, 2020. Defendants further admit that Mr. Souleles sent two text messages to Ryan Schneider on April 24, 2020 requesting a call, and that Mr. Schneider said he was unavailable to speak. Defendants further admit that Mr. Schneider agreed to call Mr. Souleles at 8AM CT/9AM ET on April 25. Defendants deny the allegations in paragraph 147 to the extent they paraphrase or characterize the text messages in a manner inconsistent with their actual terms or substance, taken as a whole, in the proper context. The text messages speak for themselves and

Defendants respectfully refer the Court to their full contents. Defendants deny all remaining allegations in paragraph 147.

153. By the end of the day on Friday, April 24, 2020, all conditions to Closing had been satisfied (other than those conditions that by their terms or nature are to be satisfied at the Closing, each of which is capable of being satisfied at the Closing). At 6:52 p.m. on Friday April 24th, Realogy's counsel sent a letter to SIRVA's counsel confirming the satisfaction of conditions and committing to consummate the Transaction on April 29, 2020 (the "Closing Letter"). It stated, in language that tracked the requirements of the Purchase Agreement:

> In accordance with Section 11.1(e) of the Purchase Agreement, Seller irrevocably confirms to Buyer that all of the conditions set forth in Section 10.1 and Section 10.2 of the Purchase Agreement have been and continue to be satisfied (other than those conditions that by their terms or nature are to be satisfied at the Closing, each of which is capable of being satisfied at the Closing), and that assuming the Debt Financing and Equity Financing are funded, ***Seller will consummate the Closing on April 29, 2020***, the third Business Day following the expiration of the Marketing Period, in accordance with the terms of the Purchase Agreement.

(Closing Letter at 1) (emphasis added).

ANSWER: Defendants deny the allegations in the first sentence in paragraph 153. Defendants admit Realogy's counsel sent a letter to SIRVA's counsel on April 24, 2020, but deny the remaining allegations in the paragraph 153 to the extent they paraphrase or characterize the letter in a manner inconsistent with its actual terms

or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

(6) April 25th

154. At approximately 9 a.m. the following morning, Saturday, April 25th, Mr. Schneider called Mr. Souleles as promised. In that call, Mr. Souleles stated that Madison Dearborn had received Realogy's April 24th Closing Letter. He stated that Madison Dearborn disagreed that Realogy had satisfied all conditions to Closing for the Cartus relocation business sale, and that Madison Dearborn would be sending a letter to Realogy via their law firm asserting as much. Mr. Souleles stated that that there had been a material impact to the Cartus financials and that conditions to Closing were not satisfied. He added that the "forecasts" for the Cartus relocation business were unsupported, neither accurate nor credible, and intuitively did not make sense. He stated that SIRVA would invoke the Material Adverse Effect clause of the Purchase Agreement, on the grounds that there had been a disproportionate impact on business results due to COVID-19 and that Realogy would not be able to provide transition services to SIRVA for 18 months under the TSA. Mr. Souleles claimed that SIRVA could have financed the deal in February but that Realogy denied consent to do so, which was not true. Mr. Souleles then stated unequivocally: "We will not close the transaction."

ANSWER: Defendants admit that Thomas Souleles spoke with Ryan Schneider by phone on the morning of April 25. Defendants admit that Mr. Souleles stated that Defendants received Realogy's April 24 Closing Letter. Defendants admit that Mr. Souleles stated that Defendants had worked tirelessly for six months, including on the debt financing to get the deal done, but Defendants thought that Realogy had not satisfied all conditions to closing and a letter would be sent to Realogy explaining such failure to meet the closing conditions. Mr. Souleles stated that SIRVA would invoke the Material Adverse Effect Clause because (1) there had been a disproportionate impact on the Cartus business results due to COVID-19 and (2) Realogy would not be able to provide transition services to SIRVA under the TSA given its decline in solvency. Mr. Souleles stated that the forecasts for the Cartus relocation business were neither credible nor accurate and as such violated the cooperation obligations under the Purchase Agreement. Mr. Souleles stated that SIRVA could have sought to finance the deal in February but that Realogy denied consent to do so. Defendants deny the remaining allegations in paragraph 154.

155. Mr. Schneider responded that he disagreed with Mr. Souleles that the scenarios were not supported and commented that [redacted] He added that he understood that the

Material Adverse Effect clause did not apply to general business worsening, especially if temporal, and that he found Mr. Souleles' claim to be wrong. He added that he disagreed that Realogy lacked the ability to provide services, and that Realogy's earnings call in 10 days would make clear that Realogy is a going concern. Finally, he told Mr. Souleles that Realogy would be filing a lawsuit. This Saturday morning, April 25, 2020, phone call ***was the first time anyone from Madison Dearborn or SIRVA raised the notion that a Material Adverse Effect could occur, had occurred or was expected to occur with Cartus***. In seven short minutes, Mr. Souleles raised the possibility of a Material Adverse Effect ***for the first time***, declared one, and then purported to unilaterally end the entire Transaction. That violated SIRVA's "reasonable best efforts" obligations under the Purchase Agreement and all notions of good faith, fair dealing and honest business practices.

ANSWER: Defendants admit that Mr. Schneider stated that he disagreed that the scenarios were not supported and stated [redacted] Defendants admit that Mr. Schneider stated the Material Adverse Effect clause did not apply to general business worsening. Defendants admit that Mr. Schneider stated that he disagreed that Realogy had any going concern issues and that Realogy's earnings

call in ten days would show Realogy is a going concern. Defendants admit that Mr. Schneider stated that SIRVA was free to close by the Outside Date, and if not, Realogy would sue to try to collect the break fee. Defendants admit that the April 25, 2020 phone call was the first time Defendants informed Realogy that there had been a "Material Adverse Effect" to Realogy, but deny Defendants hadn't raised the material impact COVID-19 had on Cartus' business earlier, and further incorporate their response to paragraph 149 and the allegations in their Verified Counterclaim. The allegations in the last sentence in paragraph 155 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the last sentence in paragraph 155. Defendants deny the remaining allegations in paragraph 155.

156. Later that day, at 4:20 p.m., SIRVA sent a letter to Realogy detailing SIRVA's supposed justifications for refusing to consummate the Closing. (the "April 25th Letter"). In it, plainly drafted for litigation, and the opposite of its reasonable best efforts, SIRVA asserted that Cartus has been disproportionately impacted by COVID-19, triggering clause (a) of the definition of Material Adverse Effect. SIRVA's letter stated:

> [W]e believe that the COVID-19 health crisis and other economic and company-specific conditions have had, in the aggregate, a disproportionate adverse effect on the results of operations and financial condition of the Business. Given that Cartus is a relatively low margin business, with a relatively flat cost structure, the health

> crisis has caused Cartus to experience - and will cause Cartus to continue to experience - devastating financial results that are disproportionate to SIRVA and others in the industry.

(April 25th Letter at 2-3).

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 25, 2020, but deny the allegations in paragraph 156 to the extent they paraphrase or characterize the April 25 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

157. SIRVA also asserted that Realogy will have solvency issues ***in the future***, and thus not be able to perform the post-Closing obligations contemplated by the Purchase Agreement and certain ancillary agreements, such as the TSA, triggering clause (b) of the definition of Material Adverse Effect. SIRVA's letter stated: "we believe that the decline in the solvency of Seller's business would or would reasonably be expected to prevent or materially impair or materially delay the ability of Seller to consummate the Transaction, which includes all transactions contemplated by, among other things, the Transaction Services Agreement, the Sublease Agreements and post-Closing obligations under the Purchase Agreement." (April 25th Letter at 3) This was the first time SIRVA ever raised such supposed (and unfounded) solvency concerns.

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 25, 2020, but deny the allegations in paragraph 157 to the extent they paraphrase or characterize the April 25 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants deny the allegations in the last sentence in paragraph 157.

158. SIRVA also alleged in the April 25th Letter - in one conclusory sentence - that Cartus's purported "changing and unsupported forecasts" breached Realogy's financing cooperation obligations under Section 7.4 of the Purchase Agreement. That was complete nonsense, and strong evidence of the pretextual nature of the supposed declaration of a Material Adverse Effect. Section 7.4(e) provides that Realogy's obligation to cooperate "shall be deemed satisfied" unless the Debt Financing has not been obtained as a result of Realogy's breach and such breach remains uncured ten days after Realogy receives written notice of such breach from SIRVA. Realogy had in no way caused any obstacle to the Debt Financing, and [redacted], but for SIRVA's intentional, bad faith acts to avoid consummating the Closing.

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 25, 2020, but deny the allegations in the first sentence in paragraph 158 to the extent they paraphrase or characterize the April 25 letter in a manner inconsistent with its

actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants deny the allegations in the second and fourth sentences in paragraph 158. The allegations in the third sentence in paragraph 158 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the third sentence in paragraph 158 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

159. SIRVA further stated that all of the issues outlined in its letter "now incurably prevent[] the deal from closing." (*Id.*).

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 25, 2020, but deny the allegations in paragraph 159 to the extent they paraphrase or characterize the April 25 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

160. It thus became clear on Saturday, April 25th - a mere four business days before the Outside Date - that Mr. Souleles, Madison Dearborn and SIRVA had planned this cut-and-run, bad faith strategy in secret and well in advance. Inferably, Mr. Souleles and others held numerous meetings with the

basic industries team at Madison Dearborn Partners, LLC at which the topic of refusing to close the Transaction was discussed. Inferably, Mr. Souleles and others held numerous meetings with senior leadership at Madison Dearborn during which he discussed the topic of refusing to close the Transaction, sought and received permission and/or consent from senior leadership at Madison Dearborn to refuse to close the Transaction, and planned a strategy to refuse to close the Transaction in a manner and at a time designed to deny Realogy the practical ability to specifically enforce SIRVA's obligations under the Purchase Agreement, including SIRVA's obligations that would lead to Closing and its obligation to consummate the Closing. Inferably, this process took several weeks and involved numerous individuals at Madison Dearborn.

ANSWER: Defendants deny the allegations in paragraph 160.

161. Inferably, Mr. Souleles and others took these same steps at SIRVA. Inferably, Mr. Souleles and others held numerous meetings with senior SIRVA management during which he discussed the topic of refusing to close the Transaction, sought and received permission and/or consent from the SIRVA board of directors to refuse to close the Transaction, and planned a strategy to refuse to close the Transaction in a manner and at a time designed to deny Realogy the practical ability to specifically enforce SIRVA's obligations under the Purchase Agreement, including SIRVA's obligations that would lead to Closing and its

obligation to consummate the Closing. Inferably, this process took several weeks and involved numerous individuals at SIRVA.

ANSWER: Defendants deny the allegations in paragraph 161.

162. Neither Mr. Souleles nor any other individual at Madison Dearborn or SIRVA made any attempt to express to anyone at Realogy that they had developed concerns about a potential Material Adverse Effect or Realogy's solvency, despite near daily conversations for the past approximately six months - indeed sometimes many calls each day - between representatives of Realogy, on the one hand, and representatives of Madison Dearborn and SIRVA, on the other hand. Inferably, Mr. Souleles, individuals at Madison Dearborn and individuals at SIRVA agreed to keep their planning secret from Realogy, instructed others to do so as well, and kept other individuals at Madison Dearborn and at SIRVA in the dark about their plans so as not to alert Realogy. In the meantime, SIRVA continued to schedule and hold detailed meetings with Cartus for "integration purposes," gaining knowledge of Cartus technology and operations in an ever-increasing level of detail.

ANSWER: Defendants deny the allegations in paragraph 162.

(iv) Realogy Commences This Action

(1) April 27th

163. On Monday morning at 11:08 a.m. Realogy filed a verified complaint seeking specific performance of SIRVA's obligations to take all steps necessary for closing the Transaction and to consummate the Closing in the Delaware Court of Chancery. The verified complaint alleged generally that SIRVA breached its obligations under the Purchase Agreement by improperly declaring that a Material Adverse Effect had occurred and repudiating its obligations thereunder by refusing to consummate the transactions contemplated in the Purchase Agreement. The Complaint contained three counts: (1) for breach of contract against SIRVA seeking specific performance of SIRVA's obligations under the Purchase Agreement; (2) for breach of contract against all Defendants seeking, ***as an alternative*** if the Court were to determine Realogy was not entitled to specific performance of SIRVA's obligation to consummate the Transaction and the Purchase Agreement were deemed terminated, specific performance of SIRVA's and Madison Dearborn's obligations to pay to Realogy a $30 million termination fee; and (3) for declaratory judgment seeking, among other things, a declaration related to the alleged breaches of the Purchase Agreement, including that nothing has had or would reasonably be expected to have a Material Adverse

Effect and that no purported terminations of the Purchase Agreement by SIRVA were valid.

ANSWER: Defendants admit that Realogy filed a verified complaint on April 27, 2020, but deny the allegations in paragraph 163 to the extent they paraphrase or characterize Realogy's verified complaint in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to Realogy's verified complaint for its complete and accurate contents.

164. The verified complaint clearly asserted claims related to the Purchase Agreement against only SIRVA and sought specific performance of SIRVA's obligations under the Purchase Agreement only against SIRVA. (*See, e.g.*, ¶¶ 4-5, 7-10, 15, 20-21, 23, 34, 37, 43, 49, 51, 66, 68-70, 83, 86-88, 90-91, 93-97, 100, 104, 109-110, 112(v)). By contrast, the verified complaint clearly asserted claims against Madison Dearborn only in the alternative and only with respect to the Limited Guaranty. (*See, e.g.*, ¶¶ 55, 101, 103, 105). Due to what at most could constitute a scrivener's error, the defined term "Defendants," which defined term included both SIRVA and Madison Dearborn, was used in subparts (i) and (vi) in paragraph 112 and in Prayer for Relief (a). Notably, the Limited Guaranty and the Purchase Agreement are defined together to constitute a single agreement.

ANSWER: Defendants deny the allegations in the first two sentences in paragraph 164. Defendants admit the defined term "Defendants" was used in paragraph 112 and Prayer for Relief (a), but deny the remaining allegations in the third sentence in paragraph 164. The allegations in the last sentence in paragraph 164 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in the last sentence in paragraph 164.

165. Also on April 27, 2020, at 3:00 p.m., a representative of Realogy spoke with a representative of Barclays. Barclays informed Realogy that financing was ***not*** the issue from Barclays's perspective. Barclays was committed to funding the Transaction.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 165, and so deny these allegations.

(2) April 28th

166. On Tuesday, SIRVA sent a purported "Notice of Termination" to Realogy (the "April 28th Letter"). It stated that termination was "[p]ursuant to Section 11.2(c) of the Purchase Agreement." (April 28th Letter at 2). That provision does not provide for termination of the Purchase Agreement and the purported termination was invalid, for that reason, among others. The termination

was also invalid because SIRVA was in material breach of its obligations under the Purchase Agreement.

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 28, 2020, but deny the allegations in the first two sentences in paragraph 166 to the extent they paraphrase or characterize the April 28 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants deny the allegations in the last two sentences in paragraph 166. Defendants further note that on April 30, Realogy sent SIRVA a letter noting that "Seller is in receipt of Buyer's letter, dated April 28, 2020, purportedly terminating the Purchase Agreement pursuant to Section 11.1(c) of the Purchase Agreement," thus proving that Realogy understood that SIRVA had terminated the Purchase Agreement pursuant to 11.1(c), not 11.2(c).

167. SIRVA's letter claimed that Realogy's complaint "falsely allege[d]" that the conditions to proceed with Closing had been satisfied and that Realogy is entitled to specific performance of SIRVA's obligation to close the Transaction. The letter claimed further that "[n]one of the ... conditions to [Realogy's] right to bring the Complaint" allegedly set forth in Section 13.8 of the Purchase Agreement had been met. (April 28th Letter at 1). The letter reiterated that SIRVA "[did] not believe that all conditions to Closing [had] been satisfied,"

ignored Mr. Souleles' and SIRVA's statements on April 25th that there would be no Closing, and complained that Realogy "did not allow for three Business Days to pass before [Realogy] filed [the] Complaint." (*Id.* at 2). Finally, in furtherance of the bad faith attempts to scuttle the deal, the letter claimed that the filing of Realogy's complaint itself "constitute[d] a breach (moreover, a Willful Breach) of the Purchase Agreement," on which basis SIRVA purported to "terminate[] the Purchase Agreement effective immediately." (*Id.*).

ANSWER: Defendants admit that SIRVA sent a letter to Realogy on April 28, 2020, but deny the allegations in paragraph 167 to the extent they paraphrase or characterize the April 28 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

(3) April 30th

168. On Thursday, Realogy responded by letter to SIRVA's April 28, 2020 letter, categorically rejecting the basis and validity of SIRVA's purported termination (the "April 30th Letter"). In it, Realogy stated that it "categorically reject[ed] the asserted basis for the purported termination" set forth in Buyer's April 28 letter, and further disputed the validity of the purported termination. (April 30, 2020 Letter, at 1). The April 30th letter further noted that "Section 11.2(c)" of the Purchase Agreement, pursuant to which Buyer purported to

terminate, did not provide for termination of the Purchase Agreement. The April 30th letter also made clear that:

> the Complaint was filed to enforce Buyer's obligations ***after Tom Souleles of Madison Dearborn Partners informed Realogy's Chief Executive Officer that Buyer would not close the transactions contemplated by the Purchase Agreement*** and Realogy had received a letter from you asserting that the conditions to closing had not been and would not be satisfied by the Outside Date and that the issues raised in your letter incurably prevented the deal from Closing.

(*Id.*) (emphasis added).

ANSWER: Defendants admit that Realogy sent a letter to SIRVA on April 30, 2020, but deny the allegations in paragraph 168 to the extent they paraphrase or characterize the April 30 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

(4) May 1st

169. On May 1, 2020, just after midnight and "out of an abundance of caution," SIRVA sent Realogy a second termination letter, this time pointing to Section 11.1(a) of the Purchase Agreement due to the passage of the Outside Date (the "May 1st SIRVA Letter"). This purported termination was also invalid, as the right to terminate under Section 11.1(a) of the Purchase Agreement is not available to a party whose failure to take action required under or in breach of the Purchase Agreement primarily caused, or resulted in, the failure of the Closing to occur by

the Outside Date. In this letter, SIRVA also "categorically den[ied]" that it had breached the Purchase Agreement, and reiterated its claims that Realogy's filing of the complaint breached Section 13.8(b). (May 1st SIRVA Letter at 1). In addition, according to SIRVA, Realogy had also breached Section 13.16 of the Purchase Agreement (a non-recourse provision) and Section 11.3 of the Purchase Agreement (a termination fee provision). (*Id.*) In furtherance of its bad faith tactics, SIRVA further claimed that, by filing its claims - which SIRVA asserts are not Retained Claims (as defined in the Limited Guaranty) - Realogy breached the Limited Guaranty and Equity Financing Commitments, and Section 7.4 of the Purchase Agreement (a financing cooperation provision). (*Id.*)

ANSWER: Defendants admit that SIRVA sent Realogy a letter on May 1, 2020, but deny the allegations in paragraph 169 to the extent they paraphrase or characterize the May 1 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants deny that SIRVA's termination on May 1, 2020 was invalid. The remaining allegations in the second sentence in paragraph 169 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the remaining allegations in the second sentence in paragraph 169 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance,

taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

170. SIRVA latched onto this frivolous "Retained Claims" argument for obvious bad faith reasons. Pursuant to the terms of the ECL, Madison Dearborn's equity commitment obligations only terminate in the event of: (a) the Closing, (b) the ***valid*** termination of the Purchase Agreement, or (c) the assertion of non-Retained Claims. There has been no Closing, and no valid termination. But SIRVA needed to manufacture a way out of the Purchase Agreement, and Madison Dearborn needed a way out of its equity commitment. Desperate to cut off Realogy's ability to specifically enforce the Purchase Agreement, SIRVA went all-in on the silly argument that Realogy has asserted non-Retained Claims.

ANSWER: Defendants deny the allegations in the first, third, fourth, and fifth sentences in paragraph 170, except admit that there has been no closing. The allegations in the second sentence in paragraph 170 characterize the Equity Commitment Letter, a document that speaks for itself. Defendants deny the allegations in the second sentence in paragraph 170 to the extent they paraphrase or characterize the Equity Commitment Letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Equity Commitment Letter for its complete and accurate contents.

171. In the May 1st SIRVA Letter, SIRVA also stated, in direct contrast to SIRVA's actual April 25 communications, that "in our letter of April 25, 2020 and in the brief conversation between Tom Souleles and Ryan Schneider on the same day ... we merely stated our belief that certain closing conditions had not been and could not be satisfied, and that in no way constitutes a repudiation of any obligation." (*Id.* at 1). Nonsense.

ANSWER: Defendants admit that SIRVA sent Realogy a letter on May 1, 2020, but deny the allegations in paragraph 171 to the extent they paraphrase or characterize the May 1 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents. Defendants deny all remaining allegations in paragraph 171.

172. Realogy responded promptly to the May 1st SIRVA Letter later that day (the "May 1st Realogy Letter"), rejecting SIRVA's purported termination as invalid.

ANSWER: Defendants admit that Realogy sent SIRVA a letter on May 1, 2020, but deny the allegations in paragraph 172 to the extent they paraphrase or characterize the May 1 letter in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. That letter speaks for itself and Defendants respectfully refer the Court to its full contents.

(5) May 7th

173. On May 7, 2020, Realogy publicly announced its results for the first quarter of 2020 by holding an earnings call and filing its quarterly report on Form 10-Q. Consistent with its public guidance and its numerous assurances to SIRVA in the course of negotiations, Realogy's Q1 2020 results demonstrated that Realogy is a stable, going concern, despite headwinds in the market as a whole. Realogy's CEO reported that Realogy had "delivered" on "momentum" he had noted in Realogy's Q4 2019 earnings call, "with a very strong Q1, 8% volume growth and a $35 million increase in operating EBITDA." Acknowledging the ongoing COVID-19 pandemic, Mr. Schneider added that "our Q1 results delivery gives me confidence that we can emerge strong from this crisis and resume that momentum." Mr. Schneider also described Realogy's response to COVID-19 and potential opportunities for Realogy under changing market conditions. Realogy's quarterly report noted that the pandemic "has created considerable risks and uncertainties for almost all sectors, including the U.S. real estate services industry, as well as for the Company and its affiliated franchisees" and described Realogy's actions to adapt to market conditions and maintain liquidity during the crisis. (May 7, 2020 Realogy Form 10-Q, at 34-36).

ANSWER: Defendants admit that Realogy issued a quarterly report on Form 10-Q on May 7, 2020 and the Realogy CEO participated in an earnings call on that

same day, but deny the allegations in paragraph 173 to the extent they paraphrase or characterize the Form 10-Q or transcript from the earnings call in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context. The Form 10-Q and transcript from the earnings call speak for themselves and Defendants respectfully refer the Court to their full contents. Defendants deny that Realogy is a stable, going concern.

(6) May 8th

174. On May 8, 2020, during the parties' oral argument regarding Realogy's Motion to Expedite Proceedings, SIRVA raised, for the very first time, its theory that the Debt Financing Letter had expired by its terms on May 7, 2020 and therefore specific performance was unavailable as a remedy. If that were true, it would not relieve SIRVA of its obligations to consummate the Closing or deprive Realogy of a specific performance remedy. But it would give rise to SIRVA's obligation to use its reasonable best efforts to secure Alternative Financing and use its reasonable best efforts to consummate the Closing. Inferably, SIRVA took no steps to secure Alternative Financing or consummate the Closing, further breaching the Purchase Agreement, consistent with its bad faith conduct concerning its obligations.

ANSWER: Defendants deny the allegations in paragraph 174.

175. The Court found that Realogy had demonstrated a colorable claim under the Purchase Agreement, based on Realogy's allegations that SIRVA breached the agreement by wrongfully refusing to close the transaction because there had been no Material Adverse Effect, and under the Limited Guaranty against Madison Dearborn Partners for the termination fee. The Court further concluded that, "[a]t bottom ... the specific performance claim remains colorable."

ANSWER: The allegations in paragraph 175 characterize the Court's oral ruling issued and transcribed on May 8, 2020, a ruling that speaks for itself. Defendants deny the allegations in paragraph 175 to the extent they paraphrase or characterize the Court's ruling in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to its May 8 ruling for its complete and accurate contents.

(d) No Material Adverse Effect Occurred Prior To April 25, 2020

176. Realogy has performed all of its obligations under the Purchase Agreement. Cartus's financial condition, business and results of operations, taken as a whole, have not suffered a Material Adverse Effect, as defined in the Purchase Agreement. And, in any event, under the definition of Material Adverse Effect in Section 1.1 of the Purchase Agreement, "acts of God [or] natural disasters," such as COVID-19, cannot qualify as a Material Adverse Effect, unless Cartus is disproportionately adversely affected by COVID-19 relative to other similarly

situated participants in industries in which it operates. Cartus has not been disproportionately adversely affected. [redacted]

ANSWER: Defendants deny the allegations in the first, second, fourth, and fifth sentences in paragraph 176. The allegations in the third sentence in paragraph 176 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the third sentence in paragraph 176 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

177. [redacted]

[redacted]

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences in paragraph 177, and so deny these allegations. Defendants deny the allegations in the last two sentences in paragraph 177.

178. Nor are SIRVA's and Madison Dearborn's arguments regarding Cartus's or Realogy's solvency indicative in any way of a Material Adverse Effect. Nowhere in the Purchase Agreement is Realogy required to prove that it will remain a going concern for the duration of its post-Closing obligations, and in any event, changes in the stock price or trading volume of Realogy are expressly excluded from the definition of a Material Adverse Effect. Moreover, Realogy expects to remain a going concern for the duration of its post-Closing obligations, and none of Realogy's recent public filings, including its May 7, 2020 10-Q, contains any disclosure expressing any doubt about Realogy's ability to continue as a going concern, as would be required if such doubt existed. In fact, as Realogy noted in its first quarter of 2020 earnings call, Realogy had "delivered" on

"momentum" it noted in Realogy's Q4 2019 earnings call, "with a very strong Q1, 8% volume growth and a $35 million increase in operating EBITDA."

ANSWER: Defendants deny the allegations in the first sentence in paragraph 178. The allegations in the second sentence in paragraph 178 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the second sentence in paragraph 178 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents. Defendants deny that Realogy will remain a going concern for the duration of its post-Closing obligations. The remaining allegations in the third sentence in paragraph 178 characterize the Form 10-Q and public filings, documents that speak for themselves. Defendants deny the remaining allegations in the third sentence in paragraph 178 to the extent they paraphrase or characterize the Form 10-Q or public filings in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Form 10-Q and public filings for their complete and accurate contents. The allegations in the fourth sentence in paragraph 178 characterize the earnings call, which has a transcript that speaks for itself. Defendants deny the allegations in the fourth sentence in paragraph 178 to the extent they paraphrase or characterize the

earnings call in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the earnings call transcript for its complete and accurate contents.

179. As described above, SIRVA and Madison Dearborn's position that Cartus has suffered a Material Adverse Effect is nothing more than a poorly disguised pretext to renege on a deal they no longer want to go through with for reasons entirely unrelated to Cartus or its actual or projected financial condition.

ANSWER: Defendants deny the allegations in paragraph 179.

(e) SIRVA Breached Its Numerous "Reasonable Best Efforts" Obligations And The Implied Covenant Of Good Faith And Fair Dealing

180. The Purchase Agreement requires that SIRVA exercise "reasonable best efforts" to satisfy the conditions to Closing as soon as reasonably practicable. It also requires that SIRVA use its reasonable best efforts with respect to its various obligations with respect to financing. Here, rather than exercising reasonable best efforts, SIRVA, together with Madison Dearborn, concocted a scheme ***specifically designed to scuttle the financing it had obtained in connection with the Transaction and thwart the Closing of the Transaction.***

ANSWER: The allegations in the first two sentences in paragraph 180 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the first two sentences in paragraph 180 to the

extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents. Defendants deny the allegations in the third sentence in paragraph 180.

(f) Realogy Is Entitled To Specific Performance

181. As set forth above, SIRVA has breached, and continues to breach, numerous of SIRVA's obligations under the Purchase Agreement, including, but not limited to, its obligations to: (i) use its reasonable best efforts to obtain and maintain in effect Debt Financing in connection with the Transaction, including using reasonable best efforts to satisfy or obtain a waiver of all conditions applicable to Buyer and its Affiliates in the Debt Financing Commitments (PA § 7.3(a)); (ii) use its reasonable best efforts to arrange and obtain, as promptly as practicable, Alternative Financing if the Debt Financing expires, is terminated, repudiated, withdrawn or rescinded for any reason (*id.*)*;* (iii) use its reasonable best efforts to obtain and maintain in effect the Equity Financing Commitments, including taking all actions to consummate the Equity Financing at or prior to the Closing, enforcing its rights (including seeking specific performance of the parties' obligations) under the Equity Financing Commitments, and causing the Equity Financing Sources to fund the Equity Financing no later than the

Closing (PA § 7.3(d)); and (iv) use its reasonable best efforts to cause the conditions to Closing set forth in Article X to be satisfied as soon as practicable (PA § 7.6(a)).

ANSWER: Defendants deny the allegations in paragraph 181.

182. Section 13.8 of the Purchase Agreement provides that "the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity."

ANSWER: The allegations in paragraph 182 quote the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 182 to the extent they quote the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

183. *First,* Realogy is entitled to an order requiring SIRVA to specifically perform all of its covenants and obligations under the Purchase Agreement, aside from SIRVA's obligation to consummate the Transaction. The four conditions set forth in Section 13.8(b) have no relevance to an order of specific performance requiring SIRVA to comply with all of its covenants and obligations under the Purchase Agreement, such as the reasonable best efforts

obligations set forth in the preceding paragraph, other than an order for specific performance to "consummate the Transaction."

ANSWER: Defendants deny the allegations in the first sentence in paragraph 183. The allegations in the second sentence in paragraph 183 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the second sentence in paragraph 183 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

184. *Second,* Realogy is entitled to an order of specific performance requiring SIRVA to consummate the Transaction, notwithstanding the four conditions set forth in Section 13.8(b), because any purported failure of those conditions to be satisfied are a result of SIRVA's own bad faith conduct and breaches of the Purchase Agreement. To the extent *any* condition set forth in Section 13.8(b) has not been or will not be met, those conditions for performance are excused because SIRVA either caused or materially contributed to its failure, through its wrongful conduct, bad faith, and breaches of the Purchase Agreement. Likewise, to the extent any condition to SIRVA's obligation to close the Transaction has not been or will not be satisfied, those conditions cannot provide a basis for SIRVA's refusal to close the Transaction. That is because all conditions

to SIRVA's obligation to close the Transaction were satisfied (other than those conditions that by their nature are to be satisfied at the Closing) at the time Realogy's counsel sent the Closing Letter to SIRVA's counsel on April 24, as Realogy irrevocably confirmed in the Closing Letter. SIRVA's wrongful conduct, bad faith, and breaches of the Purchase Agreement either caused or materially contributed to any purported failure of those conditions, including SIRVA's repudiations by phone and letter on April 25 and continuing up to and including SIRVA's conduct in the course of this litigation.

ANSWER: Defendants deny the allegations in paragraph 184.

FIRST CAUSE OF ACTION
(Breach Of Contract Against SIRVA)
(Reasonable Best Efforts/Iterative Steps To Close)

185. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

186. The Purchase Agreement is a valid and binding contract between Realogy and SIRVA. Realogy and SIRVA are each sophisticated parties, advised by experienced and reputable legal and financial advisors who bargained at arm's length over the terms and conditions of the Purchase Agreement.

ANSWER: Defendants admit the allegations in paragraph 186, but expressly state that SIRVA validly terminated the Purchase Agreement on April 28 and May 1.

187. Realogy has fully performed all of its obligations under, and has not breached, the provisions of the Purchase Agreement, and all conditions under the Purchase Agreement to closing on the Transaction have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing) or were not satisfied as a result of SIRVA's wrongful conduct. As a result, the Purchase Agreement requires SIRVA to, among other things, use its "reasonable best efforts" to do all things necessary and proper to: (i) to satisfy or obtain a waiver of all conditions applicable to Buyer and its Affiliates in the Debt Financing Commitments pursuant to Section 7.3(a); (ii) arrange and obtain, as promptly as practicable, Alternative Financing if the Debt Financing expires or is terminated, repudiated, withdrawn or rescinded for any reason pursuant to Section 7.3(a); (iii) enter into a definitive debt commitment letter with respect to any Alternative Financing pursuant to Section 7.3(a); (iv) obtain and maintain in effect the Equity Financing Commitments, which, in turn, includes taking all actions to consummate the Equity Financing at or prior to Closing, enforcing its rights (including seeking specific performance of the parties' obligations) under the Equity Financing Commitments, and causing the Equity Financing Sources to fund the Equity

Financing no later than the Closing pursuant to Section 7.3(d); and (v) cause the conditions to Closing set forth in Article X to be satisfied as soon as practicable.

ANSWER: Defendants deny the allegations in paragraph 187.

188. SIRVA has materially breached the Purchase Agreement and acted in bad faith by refusing to perform the unambiguous contractual obligations thereunder.

ANSWER: Defendants deny the allegations in paragraph 188.

189. SIRVA expressly agreed in Section 13.8 of the Purchase Agreement that Realogy is entitled to an injunction requiring SIRVA to specifically perform its obligations under the Purchase Agreement, and that SIRVA's failure to perform its obligations would cause irreparable harm to Realogy.

ANSWER: The allegations in paragraph 189 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in paragraph 189 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents.

190. SIRVA's material breaches of the Purchase Agreement threaten to prevent Realogy from receiving the benefit of the parties' bargain, which would

result in irreparable harm to Realogy. Consequently, Realogy is entitled to an Order requiring SIRVA to specifically perform its contractual obligations set forth in Sections 7.3 and 7.6 of the Purchase Agreement and prohibiting SIRVA from continuing to breach the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 190.

191. Realogy has no adequate remedy at law.

ANSWER: Defendants deny the allegations in paragraph 191.

SECOND CAUSE OF ACTION
(Breach Of Contract Against SIRVA)
(Consummation Of Transaction)

192. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

193. The Purchase Agreement is a valid and binding contract between Realogy and SIRVA. Realogy and SIRVA are each sophisticated parties, advised by experienced and reputable legal and financial advisors who bargained at arm's length over the terms and conditions of the Purchase Agreement.

ANSWER: Defendants admit the allegations in paragraph 193, but expressly state that SIRVA validly terminated the Purchase Agreement on April 28 and May 1.

194. Realogy has fully performed all of its obligations under, and has not breached, the provisions of the Purchase Agreement, and all conditions under the Purchase Agreement to closing on the Transaction have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing), or were not satisfied as a result of SIRVA's wrongful conduct. As a result, the Purchase Agreement required SIRVA to, among other things, deliver the Closing Date Payment and consummate the transactions contemplated by the Purchase Agreement no later than April 29, 2020.

ANSWER: Defendants deny the allegations in paragraph 194.

195. SIRVA has materially breached the Purchase Agreement by refusing to perform the unambiguous contractual obligations thereunder, and acting in bad faith.

ANSWER: Defendants deny the allegations in paragraph 195.

196. SIRVA expressly agreed in Section 13.8 of the Purchase Agreement that Realogy is entitled to an injunction requiring SIRVA to specifically perform its obligations under the Purchase Agreement, and that SIRVA's failure to perform its obligations would cause irreparable harm to Realogy. To the extent they apply, in light of SIRVA's bad faith conduct, all contractual preconditions to specific performance are satisfied or have failed to be satisfied as a result of SIRVA's own conduct.

ANSWER: The allegations in the first sentence in paragraph 196 characterize the Purchase Agreement, a document that speaks for itself. Defendants deny the allegations in the first sentence in paragraph 196 to the extent they paraphrase or characterize the Purchase Agreement in a manner inconsistent with its actual terms or substance, taken as a whole, in the proper context, and respectfully refer the Court to the Purchase Agreement for its complete and accurate contents. Defendants deny the allegations in the second sentence in paragraph 196.

197. SIRVA's material breaches of the Purchase Agreement threaten to prevent Realogy from receiving the benefit of the parties' bargain, which would result in irreparable harm to Realogy. Consequently, Realogy is entitled to an Order requiring SIRVA to consummate the Closing and prohibiting SIRVA from terminating the Purchase Agreement or taking, causing or permitting any action to prevent or impede consummation of the Transaction or any related transactions required under the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 197.

198. Realogy has no adequate remedy at law.

ANSWER: Defendants deny the allegations in paragraph 198.

ONLY IN THE ALTERNATIVE,
THIRD CAUSE OF ACTION
(Breach Of Contract Against SIRVA)
(Termination Fee)

199. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

200. The Purchase Agreement is a valid and binding contract between Realogy and SIRVA. Realogy and SIRVA are each sophisticated parties, advised by experienced and reputable legal and financial advisors who bargained at arm's length over the terms and conditions of the Purchase Agreement.

ANSWER: Defendants admit the allegations in paragraph 200, but expressly state that SIRVA validly terminated the Purchase Agreement on April 28 and May 1.

201. Realogy has fully performed all of its obligations under, and has not breached, the provisions of the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 201.

202. SIRVA has materially breached the Purchase Agreement by refusing to perform the unambiguous contractual obligations thereunder, and acting in bad faith.

ANSWER: Defendants deny the allegations in paragraph 202.

203. Accordingly, if the Court determines Realogy is not entitled to specific performance of SIRVA's ultimate obligation to consummate the Transaction and the Purchase Agreement is deemed terminated, then ***as an alternative*** to the specific performance remedy described above, Realogy is entitled to an Order requiring SIRVA to specifically perform its contractual obligation under the Purchase Agreement to pay to Realogy a $30 million termination fee.

ANSWER: Defendants deny the allegations in paragraph 203.

FOURTH CAUSE OF ACTION
(Declaratory Judgment Against SIRVA)

204. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

205. No Material Adverse Effect has occurred, and effects caused by the COVID-19 pandemic do not constitute a Material Adverse Effect under the express terms of the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 205.

206. Because no Material Adverse Effect has occurred, all conditions precedent to Closing under the Purchase Agreement are fully satisfied (other than those conditions that by their nature are to be satisfied at the Closing), or were not satisfied as a result of SIRVA's wrongful conduct.

ANSWER: Defendants deny the allegations in paragraph 206.

207. None of the alleged circumstances concerning the COVID-19 pandemic provide any basis for SIRVA to terminate the Purchase Agreement because such circumstances were expressly agreed to not constitute a Material Adverse Effect as defined in Section 1.1 of the Purchase Agreement. Furthermore, Cartus has not experienced any disproportionately adverse effect from the COVID-19 pandemic.

ANSWER: Defendants deny the allegations in paragraph 207.

208. SIRVA had and has no valid basis to terminate the Purchase Agreement, and SIRVA is not excused from performing its obligations under the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 208.

209. Realogy has not breached, and has complied in all material respect with, the provisions of the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 209.

210. Pursuant to 10 *Del. C.* § 6501 and Court of Chancery Rule 57, Realogy requests a declaratory judgment that: (i) SIRVA has breached its obligations under the Purchase Agreement, specifically including its obligations to take all steps necessary to consummate the Closing and to consummate the Closing; (ii) nothing has had or would reasonably be expected to have a Material Adverse Effect; (iii) Realogy has not breached, and has complied in all material respects with, the provisions of the Purchase Agreement; (iv) all conditions to Closing under the Purchase Agreement have been satisfied, or were not satisfied as a result of SIRVA's wrongful conduct; (v) SIRVA had and has no right to terminate the Purchase Agreement; and (vi) SIRVA is not excused from performing its obligations under the Purchase Agreement.

ANSWER: The allegations in paragraph 210 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations in paragraph 210.

FIFTH CAUSE OF ACTION
(Good Faith And Fair Dealing Against SIRVA)

211. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

212. SIRVA has breached the implied covenant of good faith and fair dealing.

ANSWER: Defendants deny the allegations in paragraph 212.

213. SIRVA's actions were designed to frustrate the overarching purpose of the Purchase Agreement, *i.e.,* consummation of the Transaction itself.

ANSWER: Defendants deny the allegations in paragraph 213.

214. SIRVA has acted in bad faith and in an unreasonable manner, and with the intent of preventing Realogy from receiving the benefit of the Purchase Agreement.

ANSWER: Defendants deny the allegations in paragraph 214.

ONLY IN THE ALTERNATIVE,
SIXTH CAUSE OF ACTION
(Breach Of Contract Against Madison Dearborn)

215. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

ANSWER: Defendants repeat, reallege, and incorporate their responses to each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

216. The Limited Guaranty is a valid and binding contract by Madison Dearborn in favor of Realogy. Madison Dearborn and Realogy are each sophisticated parties, advised by experienced and reputable legal and financial advisors who bargained at arm's length over the terms and conditions of the Limited Guaranty.

ANSWER: Defendants admit the allegations in paragraph 216.

217. Realogy has fully performed all of its obligations under, and has not breached, the provisions of the Limited Guaranty.

ANSWER: Defendants deny the allegations in paragraph 217.

218. The Limited Guaranty requires that Madison Dearborn pay the Termination Fee under the terms and conditions set forth therein.

ANSWER: Defendants deny the allegations in paragraph 218.

219. SIRVA has materially breached the Purchase Agreement by refusing to perform the unambiguous contractual obligations thereunder.

ANSWER: Defendants deny the allegations in paragraph 219.

220. Accordingly, if (1) the Court determines Realogy is not entitled to specific performance of SIRVA's ultimate obligation to consummate the Transaction and the Purchase Agreement is deemed terminated and (2) SIRVA fails to pay the $30 million termination fee, then ***as an alternative***, Realogy is entitled to an Order requiring Madison Dearborn to specifically perform its

contractual obligation under the Limited Guaranty to pay to Realogy a $30 million termination fee.

ANSWER: Defendants deny the allegations in paragraph 220.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that the Court enter judgment in their favor, against Realogy.

ADDITIONAL DEFENSES

Without assuming any burden of proof that they otherwise would not bear or admitting that they are in any way liable to Realogy, Defendants assert that Realogy's claims against them are barred pursuant to the following additional defenses, each of which is raised in the alternative. Defendants reserve the right to amend this Answer and to assert additional defenses as this case progresses through discovery.

(a) FIRST ADDITIONAL DEFENSE

Realogy's Complaint fails to state a claim upon which relief can be granted.

(b) SECOND ADDITIONAL DEFENSE

Realogy's claims, if any, are barred in whole or in part because Realogy willfully breached the Purchase Agreement, as explained more fully in Defendants' Verified Counterclaim.

(c) THIRD ADDITIONAL DEFENSE

Realogy's claims, if any, are barred in whole or in part because Defendants lawfully terminated the Purchase Agreement, which forecloses any right to specific performance or the termination fee, as explained more fully in Defendants' Verified Counterclaim.

(d) FOURTH ADDITIONAL DEFENSE

Realogy's claims, if any, are barred in whole or in part pursuant to Section 13.8(b) of the Purchase Agreement because Realogy did not comply with the preconditions to seek specific performance, as explained more fully in Defendants' Verified Counterclaim.

(e) FIFTH ADDITIONAL DEFENSE

Realogy's claims, if any, are barred in whole or in part because Realogy's breaches of the Purchase Agreement automatically terminated Madison Dearborn's equity commitments and the Debt Financing, as explained more fully in Defendants' Verified Counterclaim.

(f) SIXTH ADDITIONAL DEFENSE

Realogy's claims for specific performance are barred, in whole or in part, by the doctrine of unclean hands based on its provision of materially false and misleading financial information to Defendants, as explained more fully in Defendants' Verified Counterclaim.

(g) SEVENTH ADDITIONAL DEFENSE

Realogy's claims for the termination fee are barred, in whole or in part, because Realogy has not terminated, and cannot terminate, the Purchase Agreement pursuant to any provisions of the Purchase Agreement that would require payment of the termination fee.

(h) EIGHTH ADDITIONAL DEFENSE

Realogy's claims for the termination fee are barred, in whole or in part, because Realogy is not entitled to the termination fee pursuant to the terms of the Purchase Agreement, as explained more fully in Defendants' Verified Counterclaim.

(i) NINTH ADDITIONAL DEFENSE

To the extent Realogy has proved any damages, Realogy has failed to mitigate such damages.

VERIFIED COUNTERCLAIM

1. Months after Realogy Holdings Corp. agreed to sell Cartus Corp. to SIRVA Worldwide, the COVID-19 pandemic began to unfold, severely damaging Cartus' executive relocation business. To assess the impact on Cartus, SIRVA repeatedly asked Realogy to provide updated forecasts throughout March and April 2020, as required by the parties' November 2019 Purchase Agreement. But, presumably aware that an honest response would expose the dire state of Cartus' business and jeopardize the deal, Realogy slow-walked SIRVA's repeated requests, provided incomplete information, and then attempted to conceal the impact on its profitability by amending its forecast.

2. Just two days after finally providing the forecast SIRVA had been requesting for a month, and with a multitude of questions and information requests still unanswered, Realogy falsely declared all conditions to closing had been satisfied and insisted SIRVA close three business days later. When SIRVA immediately disagreed, Realogy made literally no effort to resolve the parties' issues. Instead, the morning of the first business day after providing its false certification, and three days before Realogy claimed SIRVA could be obligated to close, Realogy opted for a pressure play. It raced to Court, suing SIRVA and its equity sponsor, Madison Dearborn Partners, and publicizing its baseless allegations in the press. This tactic had the opposite effect. Realogy's suit against MDP

breached the parties' carefully negotiated transaction documents, causing the automatic and immediate termination of MDP's equity commitment, which, in turn, caused the failure of a necessary condition to the Debt Financing. Without either equity or debt financing—both gone forever—the transaction will never close.

3. Through these counterclaims, SIRVA[2] requests an order from the Court declaring that Realogy breached the Purchase Agreement, that the commitments under the Equity Commitment Letter and Amended Debt Commitment Letter have terminated, and that SIRVA validly terminated the Purchase Agreement based on Realogy's breaches. MDP seeks a declaration that its obligations under the Equity Commitment Letter terminated. SIRVA and MDP each separately seek damages in amounts to be proven at trial for the substantial harms caused by Realogy's breaches.

[2] SIRVA and North American Van Lines, Inc. entered into an Assignment and Assumption of Agreement, pursuant to which SIRVA Worldwide, Inc. assigned its rights under the Purchase Agreement to North American Van Lines, Inc. That Assignment and Assumption of Agreement was executed on November 6, 2019. As set forth in the counts below, North American Van Lines, Inc. also seeks this relief.

PARTIES AND RELEVANT NON-PARTIES

4. Counterclaimant SIRVA Worldwide, Inc. is a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware. SIRVA is headquartered in Oakbrook Terrace, Illinois.

5. Counterclaimant North American Van Lines, Inc. is a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware and an affiliate of SIRVA. North American Van Lines is headquartered in Fort Wayne, Indiana.

6. Counterclaimants Madison Dearborn Capital Partners VII-A, L.P., Madison Dearborn Capital Partners VII-C, L.P., and Madison Dearborn Capital Partners VII Executive-A, L.P. (collectively, "MDP"), are each a Delaware limited partnership and an investment fund advised by Madison Dearborn Partners, LLC ("MDP LLC"). MDP LLC's principal place of business is Chicago, Illinois. MDP acquired SIRVA in August 2018.

7. Counterclaim-Defendant Realogy is a corporation organized and existing under the laws and by virtue of the General Corporation Law of the State of Delaware. Realogy is headquartered in Madison, New Jersey.

8. Non-party Cartus is an indirect, wholly-owned subsidiary of Realogy.

JURISDICTION, VENUE, AND GOVERNING LAW

9. This Court has subject matter jurisdiction over these counterclaims ancillary to its jurisdiction over the equitable claims alleged by Realogy in its Complaint.

10. Section 13.9 of the Purchase Agreement and Section 14 of the Equity Commitment Letter and Limited Guaranty dictate that "[a]ll actions, proceedings or counterclaims ... arising out of or relating to" the agreements "shall be governed by, and construed in accordance with, the laws of the state of Delaware, without giving effect to any choice of law or conflict of laws provision or rule."

11. This Court has personal jurisdiction over Realogy because it has commenced and continues to prosecute this action in this Court.

FACTUAL ALLEGATIONS

12. SIRVA is a global moving and relocation service provider, providing integrated business-to-business mobility solutions for corporations, government institutions, and consumers. On November 6, 2019, long before COVID-19 posed any threat or concern in the United States, SIRVA agreed to purchase Cartus, an executive relocation-services provider, from Realogy subject to the terms and conditions of the Purchase Agreement. Cartus is an operating subsidiary of Realogy.

13. This was an important deal for both SIRVA and MDP. SIRVA and MDP believed that the combination presented significant potential synergies and that SIRVA's vertically integrated model would enhance the profitability of the Cartus business. In a November 7, 2019 press release, Tom Oberdorf, Chief Executive Officer at SIRVA, observed that "[t]he winners in this transaction are undoubtedly our clients and their employees."

I. THE DEBT COMMITMENT LETTER AND THE EQUITY COMMITMENT LETTER.

14. To finance the $400 million acquisition, SIRVA arranged for both debt and equity financing. The commitments SIRVA secured were subject to numerous terms, covenants, and conditions.

15. SIRVA entered into an Equity Commitment Letter with MDP. (Ex. 2.) MDP's commitments under the Equity Commitment Letter "automatically and immediately terminate" under two circumstances that are relevant here: (i) "the valid termination of the Purchase Agreement in accordance with its terms" and (ii) Realogy's filing of a lawsuit containing claims "other than Retained Claims" against MDP.[3] (*Id*. § 3(a), (c).) There is no cure provision under the Equity

[3] "Retained Claims" are defined in the Limited Guaranty provided by the MDP Defendants to guarantee the $30 million termination fee. Retained Claims are limited to:

> (i) claims by Seller against any Guarantor (and its permitted legal successors and permitted assigns of its obligations hereunder pursuant to Section 18 hereof) under, in

Commitment Letter: the termination under either event is "automatic" and "immediate." MDP's commitments under the Equity Commitment Letter terminated under both provisions.

16. Realogy reviewed and negotiated the terms of the Equity Commitment Letter prior to signing the Purchase Agreement.

17. SIRVA also entered into a Debt Commitment Letter with a consortium of three banks (which the Purchase Agreement called the "Financing Sources") at the same time it entered the Purchase Agreement. The Debt Commitment Letter was later amended to add additional banks and restated on December 19. (Ex. 4, Debt Commitment Letter.) MDP's funding of the equity commitment under the Equity Commitment Letter was a condition to the banks'

> accordance with and subject to all limitations of this Limited Guaranty (the "Retained Guaranty Claims"), (ii) claims by Seller against Buyer under and in accordance with and subject to all limitations set forth in the Purchase Agreement (the "Retained Purchase Agreement Claims"), (iii) with respect to the Confidentiality Agreement, dated September 15, 2019, between Buyer and Seller (the "NDA"), claims by Seller against Buyer under and in accordance with the NDA (the "Retained NDA Claims") or (iv) to the extent (but only to the extent) Seller is expressly entitled to enforce the Equity Commitment Letter in accordance with Section 7 of the Equity Commitment Letter and Section 13.8(b) of the Purchase Agreement, and subject to all of the terms, conditions and limitations herein and therein, claims by Seller against Buyer seeking to cause Buyer to enforce the Equity Commitment Letter in accordance with its terms …

(Ex. 3, Limited Guaranty.)

obligations under the Amended Debt Commitment Letter. Further, the Amended Debt Commitment Letter "automatically terminate[s]" (i) "on the date that is five business days after the Outside Date[,]" i.e., May 7, 2020 or (ii) if SIRVA terminates the Purchase Agreement. (*Id.* at p. 15.) The Amended Debt Commitment Letter has terminated under both of these provisions.

II. THE PURCHASE AGREEMENT.

18. The Purchase Agreement contained numerous representations, warranties, covenants, and other commercial terms that governed the transaction. Executed on November 6, 2019, the parties agreed that either could terminate the Agreement if the closing did not occur before the Outside Date—11:59 p.m. Eastern Time on April 30, 2020. (Ex. 1, § 11.1(a).)

19. Importantly, the parties also expressly defined when Realogy would be permitted to sue for specific performance to force SIRVA to close. Realogy agreed that it could "bring an Action" for specific performance to force SIRVA to close the Transaction "**if (and only if and for so long as)**":

> (A) **all of the conditions set forth in Section 10.1 and Section 10.2 have been and continue to be satisfied** or (to the extent permitted by applicable Law) waived (other than those conditions that by their terms or nature are to be satisfied at the Closing, each of which shall then be capable of being satisfied at the Closing and the date of termination) **and Buyer fails to consummate the Closing on the date required pursuant to the terms of Section 2.3**,
>
> (B) **the proceeds of the Debt Financing (or any alternative debt**

> **financing) have been funded to Buyer** or the agent for the Debt Financing Sources under the Debt Financing Commitments (or any definitive agreements executed pursuant thereto) has **irrevocably confirmed in writing to Buyer that the Debt Financing will be funded** subject only to the funding of the Equity Financing,
>
> … **and**
>
> (D) Buyer has failed to consummate the Closing **within three (3) Business Days** after receipt of such irrevocable confirmation.

(Ex.1, § 13.8(b)(ii) (emphasis added).) Each condition, without exception, must be satisfied as a threshold requirement to Realogy suing to specifically force closing, let alone obtaining an order of specific performance. None of these three conditions was satisfied at the time Realogy filed its April 27 Complaint. And, as a consequence of Realogy's breaches and the expiration of the Debt Financing by its own terms, they can *never* be satisfied.

20. As is standard in transactions of this size, SIRVA and Realogy agreed on a heavily negotiated definition of Material Adverse Effect. The MAE definition includes two prongs. Prong (a) relates to changes in the "results of operations or financial condition of the [Cartus] Business." (*Id*. at p. 10-11.) Prong (b), a separate and specifically negotiated provision that SIRVA insisted on, relates to changes that would impair Realogy's ability to consummate the Transaction. (*Id*. at p. 11.) The Purchase Agreement defines "Transaction" to mean more than just closing. It also includes each of the "transactions contemplated by the Transaction

Documents." (*Id*. at p. 16.) The Transaction Documents, in turn, include both the Transaction Services Agreement and the Sublease Agreements, each of which requires Realogy to provide services for SIRVA up to five years post-closing, as well post-closing obligations under the Purchase Agreement, where valuable indemnities in favor of SIRVA reside.

21. There is no carve-out from prong (a) of the MAE definition for pandemics generally, or COVID-19 specifically, and there are no carve-outs at all from prong (b) of the MAE definition.

22. The parties agreed that the absence of an MAE would be an independent condition to SIRVA's obligation to consummate the closing under Section 10.2(c). (*Id*.)

23. The parties agreed on other conditions to closing as well, including that Realogy "shall have performed and complied with, in all material respects, each covenant and obligation required by this Agreement to be so performed or complied with by Seller on or before the Closing." (*Id*. § 10.2 (b).)

24. The conditions to closing in Section 10.2 have not been and cannot be satisfied.

III. REALOGY DELAYS THE DEAL.

25. Although the parties set the Outside Date at nearly six months after execution of the Purchase Agreement, SIRVA pushed to move quickly after

signing. The parties received antitrust approval in December 2019, faster than anticipated. However, under the Purchase Agreement, the transaction could not close until the banks completed an eighteen-business-day Marketing Period to syndicate the debt financing that would finance SIRVA's purchase of Cartus. (*Id*. at p. 9-10.) That Marketing Period would not begin until Realogy provided the "Required Financial Information," as defined by the Purchase Agreement, about Cartus to SIRVA and the banks. (*Id*. §§ 1.1, 7.4(a); Ex. 4 at Ex. C § 11.)

26. During the week of February 10, conditions in the debt markets were favorable, and the banks offered to start the Marketing Period even though Realogy had not yet provided the Required Financial Information. Had the Marketing Period started in early February, both financing and closing would have occurred by the end of March because the Marketing Period lasts eighteen business days and closing occurs by "the third Business Day immediately following the final day of the Marketing Period." (Ex. 1 § 2.3(a).) To avail themselves of this early marketing opportunity, all that the banks required was for Realogy to (1) deliver the Required Financial Information (for a debt offering) before closing and (2) publish some of the information in an 8-K so the information would not be considered material non-public information that would restrict the banks' marketing efforts. SIRVA informed Realogy, but it refused and the opportunity to close the deal early passed.

27. Instead, Realogy delivered certain of the Required Financial Information on February 29, 2020 (as it existed assuming a bank debt financing, rather a secured notes financing) and gave notice to SIRVA that it had delivered the Required Financial Information on March 3, 2020. By then, market conditions were no longer favorable, and the COVID-19 pandemic was in the beginning stages of changing Cartus' financial condition substantially (perhaps forever). As a result, on March 9, 2020, the banks exercised "flex" rights under the Debt Commitment Letter that allowed them to sell notes in lieu of syndicating the loan or providing a loan facility. (Ex. 5, Fee Letter § 4(h).)

28. Under their "flex" rights, the banks were entitled to a new Marketing Period to sell the notes that did not start until Realogy provided additional Required Financial Information, including audited 2019 financial statements for Cartus. (*Id*. § 5; *see* Ex. 1 §§ 1.1, 7.4(c).) Realogy finally provided the additional Required Financial Information on March 31, 2020—the last possible day under the Purchase Agreement. (Ex. 1 § 7.4.) Because the Marketing Period lasts at least eighteen business days and the closing occurs three business days thereafter, the earliest the closing could occur was April 28, 2020—two days before the Outside Date. (Ex. 1 §§ 1.1, 2.3(a).) Based on SIRVA's delivery of an offering memorandum for the notes, Realogy later took the position that closing was not required until April 29, 2020.

29. While SIRVA and the banks waited for the Required Financial Information necessary to market the notes, SIRVA worked towards closing. In mid-March, for example, SIRVA's counsel began exchanging drafts of the notes' offering memorandum and the accompanying agreements with counsel for the banks, exchanging thirty-four drafts in total. SIRVA also worked with the banks to create a forty-one page investor presentation to use with prospective purchasers of the notes. Further, SIRVA also responded to numerous diligence requests from the banks.

30. SIRVA's conversations with the banks continued right up until Realogy filed suit. For example, SIRVA sent comments on the closing memorandum and updates on the documentary diligence to counsel for the banks on April 24, 2020, the last weekday before Realogy filed this lawsuit.

31. Likewise, SIRVA continued to work in good faith towards closing of the Purchase Agreement while simultaneously trying to understand the impact of COVID-19 on the Cartus' business and the corresponding effect on the Purchase Agreement. This was an important deal for SIRVA and MDP and they both worked tirelessly to get to a closing, all the while evaluating, and enforcing, their contractual rights.

32. Throughout April 2020, the parties held regular calls to discuss, among other things, the checklist for a potential closing, exchanged closing

checklists, and prepared a draft funds flow memorandum. During the week of April 20, SIRVA prepared employment letters, worked on the subleases, and began the process of obtaining signatures on various documents. On April 23, 2020, the day before Realogy falsely certified that all conditions to closing had been satisfied (as discussed in detail below), counsel for SIRVA exchanged estimated closing statements with counsel for Realogy. Ultimately, as discussed in detail below, this transaction was doomed by Realogy's delayed provision of misleading forecasts, followed by its knee-jerk complaint filing that violated multiple provisions of the parties' heavily-negotiated transaction documents and terminated SIRVA's financing for the transaction.

IV. REALOGY OBSCURES CARTUS' RAPID DETERIORATION.

33. COVID-19 spread throughout the United States in March and April 2020. In response, states and cities across the country imposed shelter-in-place orders, requiring all but essential personnel to remain at home. Because Cartus focuses almost exclusively on the movement of people across cities, states, and countries, COVID-19 had an inevitable effect on its business. The full extent of that effect, however, remained unclear. Like any purchaser would, SIRVA set out to investigate.

34. On March 20, 2020, SIRVA requested Cartus' forecast for Q2-Q4 2020 in an effort to understand COVID-19's anticipated impact on the business.

Sections 7.4 and 7.17 of the Purchase Agreement required Realogy to provide this information and all other books and records necessary to consummate the transaction and arrange the debt financing. But Realogy stalled for nearly a month.

35. SIRVA continued to press. Based on "flash reports" provided by Cartus, SIRVA could see that "initiations" for Cartus' services were declining rapidly in March and April. Initiations are essentially a new order for Cartus' relocation services, and they precede closings (when Cartus gets paid) by 90 days on average. Initiations are Cartus' biggest driver of revenue because there is no revenue without a closing and there is no closing without an initiation.

36. On March 27, Tom Souleles, a managing director at MDP LLC, requested some of this basic financial information again, asking Cartus' CEO to explain why Cartus wasn't incorporating the decrease in new initiations for its services into Cartus' twelve-month forecast. Realogy refused to give a straight answer. So SIRVA wrote Realogy on March 30, 2020 "reiterating [the] request pursuant to Section 7.4 and 7.17 of the Purchase Agreement to receive an updated forecast for the Business for 2020, as adjusted to reflect Q1 results and the revised 2020 outlook." The next day, Cartus' CEO assured SIRVA it was working on the Q2 forecast, and that it would "give thought" to scenario planning related to COVID-19's impact on the Q3 and Q4 forecast.

37. Despite these assurances, Realogy kept SIRVA in the dark. On April 3, the parties held an update call. Although Realogy did not provide the forecast that SIRVA had been requesting for weeks, Cartus' CEO and CFO promised that [redacted]

38. As another week passed, Souleles tried a new point of entry, emailing Cartus' CFO on April 7 to "check to make sure [he] and [his] team were working on the Q2 and 2020 forecast." Cartus' CFO assured SIRVA [redacted] Despite this second round of assurances, the forecasts still did not come.

39. Although Realogy still had not provided its Q2 and 2020 forecasts, on April 9, 2020, Realogy [redacted] In March, the first half-month of the country's stay-at-home orders, [redacted] As stay-at-home orders continued to take hold, [redacted]

40. The Q1 results [redacted] As Realogy's CFO explained on April 13, [redacted]

41. By contrast, SIRVA has an integrated model with moving and international relocation that supports EBITDA in the home sale offseason of Q1 and Q4. Because SIRVA has a moving segment in addition to its relocation segment, unlike Cartus, SIRVA's business has a significant consumer component, which is affected less by COVID-19 as the corporate relocation market on which Cartus relies exclusively. This observation about Cartus' business had two major implications. First, Cartus had experienced a worse Q1 than SIRVA. Second, COVID-19's impact on demand for Cartus' service would occur during [redacted]

42. On April 9, SIRVA asked for the Q2 and 2020 forecast for at least the fourth time. And again, Realogy ignored SIRVA's requests. Instead, on April 14—more than three weeks after SIRVA's initial request—Realogy provided both SIRVA and the banks with assumptions for its 2020 forecast that Realogy characterized as [redacted] Despite SIRVA's repeated requests for this

information, Realogy had not shared its revenue or EBITDA forecasts with MDP or SIRVA before providing them directly to the banks and the detail came as a complete surprise to SIRVA and MDP.

43. The April 14 forecasts were summary, lacking any detail beyond the one-page bottom-line numbers Realogy provided the banks. But they nevertheless confirmed [redacted] perhaps explaining why Realogy had refused to provide the information to SIRVA and MDP for nearly a month. Realogy projected [redacted]

44. This [redacted] Realogy explained: [redacted]

45. Realogy forecasted [redacted] For the second quarter, [redacted]

[redacted]

46. Even more importantly, the April 14 forecast raised serious questions about [redacted] But Cartus' April 14 forecast contained [redacted] The math did not add up, suggesting Realogy was simply picking numbers to soften the perceived blow. Most notably, the April 14 forecast projected [redacted]

47. Using Realogy's data, [redacted] If that were correct, [redacted]

[redacted]

48. The April 14 forecast lacked the detail necessary to understand how Cartus purported to support its highly suspect EBITDA forecast. Only the detailed Q2 and 2020 forecast that SIRVA first requested on March 20 would allow SIRVA to understand the assumptions underlying these anomalous results, and Realogy still had not provided it. During telephone calls on April 16 and April 17, SIRVA insisted for at least the fifth and sixth times that Realogy provide the full forecast.

49. During the April 16 call, SIRVA told Cartus [redacted] Cartus CFO, Eric Barnes, said [redacted]

50. The parties then had yet another call the next day to discuss the high-level forecast Realogy provided the banks. On the April 17 call, SIRVA identified an apparent error in the Q3 EBITDA forecast. If [redacted] Cartus' CEO and CFO agreed [redacted]

51. After the April 17 call, SIRVA made clear to Realogy that it could not accept the high-level forecast at face value. It sent a follow-up email, explaining

that it needed to understand how "the initiation volumes translate to revenues in future quarters." SIRVA even suggested a simple way to provide this information, proposing "the easiest way to see this is a simple analysis of how initiations today are translating to closings in the future." With this analysis, SIRVA could have assessed how COVID-19's impact would affect Cartus' business and whether Cartus' forecasts were concealing that impact. SIRVA also asked Realogy to explain the disconnect between revenue and EBITDA, noting the forecasted [redacted]

52. Having received no response from Realogy, on April 21, Souleles asked again. He told Realogy that SIRVA "still [did] not understand the flow through either to revenue and especially to EBITDA that you walked the banks through last week." Souleles again requested a simple analysis of how "initiations today are translating to closings in the future and how month-to-date closings and referral revenue are translating into Q2 revenue." Souleles emphasized that "[i]t's important we get to the bottom on this by Thursday [April 23]." April 23 was, as Realogy understood, the banks' scheduled diligence bringdown, and the banks had previewed that this would be a discussion item.

53. The next day, Souleles demanded the model as soon as possible after Realogy again tried to put off the request: "Late today would be preferable to

tomorrow given other expectations tomorrow. We want to make sure we can follow the [redacted]

54. Realogy promised to look into these questions again and again, but never provided answers. Its Amended Complaint falsely implies SIRVA's first request for this detail came on the April 16 call. That is not true. More than once a week, SIRVA requested a forecast with sufficient detail to understand COVID-19's impact on Cartus, including requests on March 20, March 27, April 9, April 10, April 16, April 17, April 21, April 22, and April 24. Realogy had ample time to provide this information, but it refused to deliver. Instead, Realogy ignored SIRVA's requests, sent forecasts it labeled "high level" without the detail necessary to assess the underlying assumptions, and provided pre-pandemic budgets that told only the historical part of the story.

V. REALOGY PROVIDES AN UNSUPPORTABLE UPDATED FORECAST THAT UNDERSCORES CARTUS' RAPID DETERIORATION.

55. Realogy finally provided a full forecast on April 22. SIRVA immediately observed that a quick comparison to the April 14 forecast showed Realogy changed the forecast to conceal COVID-19's devastating impact on Cartus' business. Just eight days earlier, Realogy had told SIRVA—and the

banks—that [redacted] In the April 22 forecast, however, Realogy [redacted] It forecasted [redacted] The "downside case" forecasted [redacted]

56. Moreover, the "base case" in the April 22 forecast was [redacted] This was unexpected because Eric Barnes, Cartus' CFO, acknowledged that [redacted] During a call on April 22 shortly after Cartus sent the revised forecast, Barnes [redacted]

57. With the data underlying Realogy's analysis, SIRVA quickly figured out that Realogy's optimistic April 22 forecast was predicated on unsupported assumptions about [redacted] As discussed above, [redacted]

[redacted]

58. After Realogy created that budget in February, [redacted] As of March 23, March [redacted] By April 23, [redacted]

59. To conceal the impact of COVID-19 in the April 22 forecasts, Realogy made baseless assumptions about [redacted] made Realogy's gambit plain. In it, [redacted] Tellingly, Realogy's forecast included this calculation even though Realogy had repeatedly told SIRVA that it did not look at its business in this way.

60. This hidden calculation revealed that [redacted] As just one example, [redacted]

[redacted]. In other words, [redacted]

61. SIRVA requested an initiation roll-forward summary that would show how [redacted] Realogy never provided this analysis, despite [redacted] on both April 22 and April 24.

62. Realogy also attempted to conceal the extent of [redacted] The April 22 downside forecast [redacted]

63. SIRVA knew the forecast could not have it both ways. [redacted]

64. Even with those drastic cost-cutting measures, Cartus' downside forecast still showed that [redacted]

65. On separate calls with Cartus on April 22 and April 24, SIRVA raised these questions about the April 22 forecast, focusing on how to reconcile the revenue forecast with the actual initiation and closing trends and the apparent disconnect in its accounting for costs. On the April 22 call, SIRVA once again requested an initiation roll-forward summary to understand how Cartus was forecasting initiations would lead to closings and revenue. Cartus agreed to provide such a summary. Again, Cartus failed to deliver.

66. During the April 24 call, SIRVA reiterated to Cartus that it believed there was a disconnect between Cartus' forecasted volumes and cost structure, and that SIRVA did not understand how Cartus' initiations assumptions tied to closings and revenue. SIRVA, yet again, asked Cartus to provide a bridge showing how initiations converted to revenue. Cartus again said [redacted] Cartus' CEO ended the call by saying [redacted]

[redacted]

67. Realogy did not provide that reconciliation [redacted] or indeed ever. Rather than defend its work, Realogy tried to shift blame. After the April 24 call, Cartus' CEO sent an email asking SIRVA to [redacted] But Ms. Helmkamp did not respond to any of the questions that SIRVA had raised earlier in the day. Ms. Helmkamp's email did not:

- provide a roll-forward summary explaining the relationship between initiations and revenue,
- provide a simplified model where revenues track initiations,
- explain how Realogy assumed it could cut costs at a time when it forecasted increasing volumes,
- justify Realogy's assumption that [redacted], or
- explain why [redacted]

68. In response to Ms. Helmkamp's email, MDP's Tom Souleles reached out to Realogy's CEO, Ryan Schneider on the afternoon of April 24, requesting a call to discuss these issues, SIRVA's outstanding information requests, and

SIRVA's concerns about the transaction in light of the information Realogy had provided on April 22 and the information it was seemingly refusing to provide. Mr. Schneider stated that he was not available to talk until the morning of April 25.

69. To this day, Realogy has not explained its assumptions or provided the initiation roll-forward summary. These questions and information requests remained outstanding and unanswered when, as discussed below, (a) Realogy sent a letter just hours after the conclusion of the April 24 call claiming that all conditions to closing had been satisfied and (b) it filed its Complaint on April 27.

70. The Amended Complaint accuses SIRVA of wanting a "simple" model that does not "reflect how the Cartus business worked." But Realogy still has not explained "how the Cartus business work[s]" such that SIRVA could get "comfortable" with Realogy's unrealistic (or indeed impossible) assumptions. Instead, Realogy relied on naked assertions that the projections were valid, which do not satisfy its obligations to provide this information under the Purchase Agreement, much less assuage SIRVA's legitimate concerns.

71. Remarkably, in its Amended Complaint, Realogy also complains that SIRVA did not ask more questions about Realogy's April 22 forecast. That is pure fiction. SIRVA had been asking Realogy and Cartus for that forecast for more than a month and then immediately asked numerous follow-up questions that Realogy never answered. Realogy also disregards that it claimed all closing

conditions had been satisfied and demanded that SIRVA close ***only two days after*** finally providing the forecast that SIRVA had been requesting for a month, and ***just hours after*** the parties had finished a call in which SIRVA asked fundamental questions that Realogy could not explain. Then, without answering these questions, Realogy promptly filed its lawsuit on the morning of April 27, the first business day after sending its letter claiming that all closing conditions were satisfied. Put simply, Realogy's precipitous actions cut short any opportunity for further questions.

72. Moreover, even taking Cartus' flawed forecasts at face value, they still [redacted] They also made clear that Cartus has been affected by COVID-19 far more severely than its competitors. Cartus has a [redacted] Indeed, the margins for SIRVA's relocation business alone exceed 20%.

73. Cartus' [redacted]. This [redacted] than the consumer moving segment, which provides competitors like SIRVA with some diversification against the headwinds

presented by COVID-19. Unlike SIRVA, which will remain EBITDA positive as a result of its higher revenue base and higher margins (including in the relocation business), [redacted] Cartus already [redacted] and the data Realogy has provided reveal these conditions will have a severe and lasting impact on Cartus' financial condition.

VI. THE RAPID DETERIORATION OF REALOGY'S SOLVENCY.

74. Realogy—like its subsidiary Cartus—has experienced a dramatic downturn.

75. While the financial condition of Cartus is relevant to prong (a) of the MAE definition, the deterioration in Realogy's financial condition is relevant to prong (b), which relates to the ability of Realogy to consummate the "Transaction." Under that provision, an MAE includes "any change, event, occurrence, circumstance or effect that would or would reasonably be expected to prevent or materially impair or materially delay the ability of Seller to consummate the Transaction." Realogy wants "Transaction" to mean closing. But "the Transaction" is contractually defined to include all acts required by the related Transaction Documents, not just closing. The Purchase Agreement defines

"Transaction" to include "the ***transactions*** contemplated by the Transaction Documents," which is in turn defined to include specific documents, including the Transition Services Agreement and the Sublease Agreement, as well as post-closing obligations under the Purchase Agreement.

76. The Transition Services Agreement would have required Realogy to continue to engage in transactions for 18 months post-closing. And the Sublease Agreements would have required Realogy to continue engaging in transactions for up to five years. Realogy's inability to fulfill its ongoing obligations under these Transaction Documents constitutes a failure to consummate the "Transaction" as the Purchase Agreement requires.

77. Realogy's insolvency threatens its ability to perform these obligations. On November 8, 2019—two days after the parties executed the Purchase Agreement—Yahoo! Finance published a report asking, "Is Realogy Holdings (NYSE:RLGY) Using Too Much Debt?"[4] According to the report, Realogy had a "disturbingly high net debt to EBITDA ratio" and a "snowball's chance in hell of paying off that debt" unless earnings improved.

78. Of course, earnings have not improved. They have gotten worse as COVID-19 ravages Realogy's business. Analysts project record-setting

[4] Available at https://finance.yahoo.com/news/realogy-holdings-nyse-rlgy-using-144214688.html.

contractions and job losses across the U.S. and world economy. Realogy has been hit especially hard. As of April 24, Realogy's stock price had fallen over 60% since the signing of the Purchase Agreement, and nearly 75% since February 25.

79. Realogy's debt complex has also deteriorated, as reflected in the precipitous drop in the price of its senior unsecured notes. The price reflects the market's assessment of the company's financial position: the lower the price, the less confident the market is that the company will pay back its obligations under the notes. Between the November 6, 2019 Purchase Agreement and April 28, 2020, the price of Realogy's senior unsecured notes due in 2027 fell dramatically from $97^{5/8}$ to $61^{1/2}$, or nearly 37%. This enormous price drop signals that the market sees a substantial risk that Realogy will file for bankruptcy and fail to make payment on the notes when due in 2027.

80. The credit rating agencies have taken notice, too. On April 30, Moody's Investors Service downgraded Realogy's investment grade across the board.

- Moody's downgraded Realogy's corporate family rating to B2 from B1. According to Moody's rating system, "[o]bligations rated B are considered speculative and are subject to high credit risk."[5] B rated

[5] Available at https://www.moodys.com/sites/products/productattachments/ap075378_1_1408_ki.pdf.

obligations are considered "Non-Investment Grade," and a B2 rating is the second lowest B rating Moody's issues.

- Moody's increased its probability of default rating for Realogy from B1-PD to B2-PD. "Corporate families rated B-PD are considered speculative and are subject to high default risk."

- Moody's downgraded Realogy's senior secured bank credit facility from Ba2 to Ba3. "Obligations rated Ba are judged to have speculative elements and are subject to *substantial credit risk*." Like B-graded investments, Ba-graded investments are considered "Non-Investment Grade."

- Realogy downgraded Realogy's senior unsecured notes from B3 to Caa1. B3 is the lowest B-grade Moody's gives an investment. When Realogy's unsecured notes were further downgraded to Caa1, they were "judged to be of poor standing and are subject to very high credit risk."

81. Moody's also downgraded Realogy's Speculative Grade Liquidity Rating from SGL-2 to SGL-3, reflecting Moody's assessment of Realogy's "ability to generate cash from internal resources and the availability of external sources of committed financing, in relation to its cash obligations over the coming 12 months." Issuers rated SGL-3, like Realogy, "may require covenant relief in order to maintain orderly access to funding lines." This is the second-lowest Speculative Grade Liquidity rating Moody's gives issuers.

82. JPMorgan recently predicted that Realogy's net debt to EBITDA ratio will be 21.8x by the end of 2020, substantially impairing Realogy's solvency. JPMorgan further commented:

> The COVID-19 pandemic will significantly slow residential real estate transactions in the coming months, and cash flows at [Realogy] will be pressured ... . In RLGY's case, the hit to EBITDA is going to be dramatic in our estimation, given its direct leverage to transaction activity; it is roughly a $15 million EBITDA impact for every 1% move in y/y transaction volume in the system. We are going from prior operating EBITDA estimates of $532.2 million in 2020 and $567.8 million in 2021 to $140.2 million and $435.1 million, respectively. Given the company's high financial leverage, we think this will result in a cash flow loss at the equity level, debt covenants will have to be watched, and it will need to aggressively conserve cash and may have to work with its lenders.

(April 9, 2020 JPMorgan Report.)

83. In yet another sign of financial distress, the pricing on Realogy's five-year credit default swap has increased significantly. Credit default swaps protect against a company's risk of default, and the more likely the company is to default—the more likely the swap will be paid—the more the swap costs. Investors demand a higher price to take on additional risk. The significant increase in the cost of Realogy's swaps reflects investors' demand for protection against Realogy's potential insolvency.

84. According to Bloomberg, the likelihood that Realogy will not be able to make its scheduled debt payments—measured by CDS market implied default probability—over the next five years was 58.4% as of April 9. Realogy's CDS pricing further widened in the following month, signaling that Realogy's likelihood of default is even higher than it was in early April. These numbers demonstrate

that the market believes Realogy will default on its debt obligations before it can fully perform under the Transaction Documents.

85. The market's concerns are already proving prescient. On June 8, 2020, Realogy filed an 8-K with the SEC stating "Material revenue declines relating to this crisis, including in the second quarter of 2020, are expected to have a material negative impact on the Company's earnings and may also adversely impact its liquidity, notwithstanding the mitigation actions taken to date, given the significant uncertainties created by the COVID-19 crisis and related economic downturn, may continue to have such an effect in future periods."

86. With a greater than equal chance that Realogy will fail to make its scheduled debt payments—and growing given the economy's continued deterioration—it is more than reasonable to conclude that Realogy will not be able to meet its obligations as they become due, including its obligations to SIRVA under the Transition Services Agreement and the Sublease Agreements. By Realogy's own admission, the pandemic is having a "material" impact on revenues that are going to have a "material negative impact" that may "adversely impact its liquidity." The Purchase Agreement does not force SIRVA to close under these circumstances.

VII. SIRVA INFORMS REALOGY THAT IT BELIEVES THERE HAS BEEN AN MAE AND REALOGY IMMEDIATELY FILES SUIT.

87. On the evening of April 24, 2020, just hours after the call regarding the April 22 forecasts and before Mr. Schneider had responded to Mr. Souleles' requests for a call, Realogy sent SIRVA a letter asserting that all conditions to closing had been satisfied. It claimed "that assuming the Debt Financing and Equity Financing are funded, Seller will consummate the Closing on April 29, 2020, the third Business Day following the expiration of the Marketing Period." (Ex. 6, 4/24/20 Realogy Letter.)

88. After sending the letter, Realogy's CEO, Ryan Schneider, responded to Tom Souleles' earlier text and the two scheduled a call for the next morning. During that call on April 25, Souleles informed Schneider that SIRVA disagreed with Realogy's April 24 letter and that it believed certain closing conditions, including the absence of an MAE, had not been satisfied. SIRVA reiterated that message in a letter it sent to Realogy later that day. (Ex. 7, 4/25/20 Letter.)

89. Based upon the available information, SIRVA raised legitimate and serious concerns that the conditions to closing had not been and could not be satisfied. But despite those concerns—and contrary to Realogy's assertions in the Amended Complaint—SIRVA did not state in writing or otherwise that it was terminating or refusing to comply with any of its obligations under the Purchase

Agreement. SIRVA fully expected a phone call or letter from Realogy to address SIRVA's serious and legitimate concerns.

90. During the April 25 phone call, Schneider stated that SIRVA was "welcome" to close the transaction on or before the Outside Date and that if SIRVA elected not to close the transaction because of the failure of the closing conditions, Realogy would seek to recover the $30 million termination fee referenced in Section 11.3 of the Purchase Agreement. Schneider never suggested Realogy would seek specific performance or immediately file suit.

91. Realogy never responded to SIRVA's April 25 letter and never provided any of the follow-up information SIRVA requested about the April 22 forecast. At the time Realogy insisted SIRVA close the transaction, Realogy still had not:

- provided a roll-forward summary explaining the relationship between initiations and revenue,
- provided a simplified model where revenues track initiations,
- explained how Realogy assumed it could cut costs at a time when it forecasted increasing volumes,
- justified its [redacted] or

- explained why the [redacted]

[redacted]

VIII. REALOGY'S FILING OF THE APRIL 27 COMPLAINT BREACHED THE TRANSACTION DOCUMENTS.

92. Rather than respond to SIRVA's month-old questions or SIRVA's April 25 letter, Realogy raced to court and filed its lawsuit against SIRVA and MDP early in the morning on April 27, seeking a declaration that "Defendants have breached their obligations under the Purchase Agreement" and that "Defendants are not excused from performing their obligations under the Purchase Agreement." (Compl. ¶ 112.)

93. The day Realogy filed its April 27 Complaint, it also launched a publicity campaign boasting that it sued both MDP and SIRVA for beaching the Purchase Agreement. In its press release, it proclaimed "Realogy Files Litigation Against Madison Dearborn Partners and SIRVA Worldwide To Enforce Commitments Under Purchase Agreement."[6] Realogy claimed "that MDP and SIRVA have made false claims in an attempt to avoid their obligations under the purchase agreement" and asserted that it "will pursue all legal remedies to ensure

[6] Available at www.realogy.com/news/2020/04/27/realogy-files-litigation-against-madison-dearborn-partners-and-sirva-worldwide-to-enforce-commitments-under-purchase-agreement

that SIRVA and MDP honor the commitments made under the purchase agreement."

94. Realogy's press release had its desired effect—to trash MDP's name publicly as leverage to try to force a closing. Outlet after outlet picked up on Realogy's lawsuit, leading with references to MDP. Crain's Chicago Business put it bluntly: "Madison Dearborn Sued Over Acquisition Agreement."[7] Law360 published an article titled, "Realogy Sues to Push Through $400M Madison Dearborn Deal."[8] As Law360 described it, Realogy "assert[ed] a breach of contract claim against certain MDP affiliated funds, SIRVA and affiliated North American Van Lines Inc." Bloomberg Law wrote a similar article, titled "Realogy Says Madison Dearborn, SIRVA Breaking Deal Over Pandemic."[9] Bloomberg explained that Realogy's suit "accuses relocation services company SIRVA and its private equity owners—various Madison Dearborn funds—of using the Covid-19 pandemic to renege on their planned acquisition of Cartus." And in a Wall Street Journal article about MAE litigation, the Journal reported "[o]ther recent MAC-

[7] Available at www.chicagobusiness.com/finance-banking/madison-dearborn-sued-over-acquisition-agreement.

[8] Available at https://www.law360.com/articles/1267847/realogy-sues-to-push-through-400m-madison-dearborn-deal.

[9] Available at www.bloomberglaw.com/mergers-and-antitrust/realogy-says-madison-dearborn-sirva-breaking-deal-over-pandemic

related disputes involving private equity include a lawsuit against Madison Dearborn Partners and its portfolio company Sirva Worldwide Inc. by residential real estate services provider Realogy Holdings Corp."

95. Realogy's April 27 Complaint had instantaneous and irreversible implications for the Equity Commitments and the Debt Commitments. Under the terms of the Equity Commitment Letter, filing the April 27 Complaint against MDP on a "Non-Retained Claim"—like breach of the Purchase Agreement to which MDP was not a party—"automatically and immediately terminate[d]" MDP's equity financing commitment. (Ex. 2, § 3.) As noted above, Realogy's "Retained Claims" against MDP are limited to claims "under and in accordance with and subject to all limitations of this Limited Guaranty." (Ex. 3, §4(c).) Because MDP is not a party to the Purchase Agreement, Realogy has no Retained Claim against MDP related to it.

96. The Purchase Agreement reinforces, for SIRVA's benefit, Realogy's limited right to sue MDP: the last clause of Section 13.8(b) states that "in no event shall Seller be entitled to seek to specifically enforce any provision of this Agreement or to obtain an injunction or injunctions, or to bring any other Action in equity in connection with the transactions contemplated by this Agreement, against Buyer *other than against Buyer*." (Ex. 1, § 13.8(b) (emphasis added).) And

Section 13.16 of the Purchase Agreement, again for SIRVA's benefit, dictates that the "Agreement may be enforced only against Seller and Buyer." (*Id.*, § 13.16.)

97. Realogy ignored those contractual promises not to sue MDP. On page one of its April 27 Complaint, Realogy defined "Defendants" to include both MDP and SIRVA. Then, just as it announced in its press release, Realogy sought a declaratory judgment that MDP breached the Purchase Agreement:

> a declaratory judgment that: (i) ***Defendants have breached their obligations under the Purchase Agreement***, specifically including their obligations to close the Transaction and to use their reasonable best efforts to consummate the transactions contemplated by the Purchase Agreement; (ii) nothing has had or would reasonably be expected to have a Material Adverse Effect; (iii) Realogy has not breached, and has complied in all material respects with, the provisions of the Purchase Agreement; (iv) all conditions to closing under the Purchase Agreement have been satisfied; (v) SIRVA has no right to terminate the Purchase Agreement; and (vi) ***the Defendants are not excused from performing their obligations under the Purchase Agreement***.

(Complaint ¶ 112 (emphasis added).)

98. Realogy sought a similar declaration in its Prayer for Relief, which further made its intentions clear:

> (a) Declaring that the Purchase Agreement remains in full force and effect, that SIRVA has no valid basis to terminate the Purchase Agreement, the ***Defendants are not excused from performing their obligations under the Purchase Agreement***, and that the ***Defendants committed material breaches of the Purchase Agreement*** by declaring their intention to cease performing their obligations without a valid basis;

...

> (c) In the alternative, ordering Defendants to specifically perform their contractual obligations to pay to Realogy a $30 million termination fee[.] (emphasis added).

99. These allegations were no mistake. Realogy knew how to distinguish between SIRVA and MDP and did so throughout the April 27 Complaint when it wanted to bring specific claims against a specific party. For instance, in Paragraph 112, Realogy made certain allegations against "Defendants" (in subparts (i) and (vi)) and others against SIRVA alone (subpart (v)). Realogy made similar distinctions in Count I and Count II. In Count I, Realogy asserted a breach of the Purchase Agreement against SIRVA only. And in Count II, related to the termination fee, Realogy sued SIRVA under the Purchase Agreement and MDP under the Limited Guaranty.

100. Now that it appreciates the consequences of its decision, Realogy tries to excuse its decision as a "scrivener's error." (Am. Compl. ¶ 164.) But Realogy knew exactly what it was doing, as its press release makes its intent clear: "Realogy Files Litigation Against Madison Dearborn Partners and SIRVA Worldwide To Enforce Commitments Under Purchase Agreement."[10]

[10] Available at https://www.realogy.com/news/2020/04/27/realogy-files-litigation-against-madison-dearborn-partners-and-sirva-worldwide-to-enforce-commitments-under-purchase-agreement.

101. Realogy's April 27 Complaint had the dual effect of terminating the Equity Financing and crippling the Debt Financing for the transaction. The equity automatically terminated when Realogy filed suit, leaving SIRVA without a source of financing necessary for the transaction. And without the equity financing, a critical condition to the banks' commitments under the Amended Debt Commitment Letter could not be satisfied, effectively terminating the Debt Financing. Indeed, the banks expressly conditioned their financing obligation on SIRVA receiving equity financing from MDP "in an aggregate amount that is not less than [redacted]" (Ex. 4 at Ex. A ¶ e.) The Debt Commitment further provides that, "[p]rior to or substantially concurrently with the initial fundings contemplated by the Commitment Letter, (i) Parent Borrower [i.e., SIRVA] shall have received the Equity Contributions (to the extent not otherwise applied to the Transactions) substantially in the manner described in Exhibit A to the Commitment Letter." (*Id*. at Ex. C ¶ 2.)

102. In short, Realogy's rush to file its April 27 Complaint and claim MDP breached the Purchase Agreement (and smear MDP's name in the press) destroyed SIRVA's carefully negotiated financing and has rendered closing impossible.

103. Realogy's filing of the April 27 Complaint also breached multiple other provisions of the Purchase Agreement.

104. Realogy's breaches of the Purchase Agreement constitute Willful Breaches. At the time, it knew its actions constituted material breaches of the Purchase Agreement, and it knew these actions destroyed the deal's financing and equity commitments.

105. ***First***, Realogy's claim for specific performance against MDP violated the Purchase Agreement. Section 13.8(b) stipulates that "in no event shall Seller be entitled to seek to specifically enforce any provision of this Agreement or to obtain an injunction or injunctions, or to bring any other Action in equity in connection with the transactions contemplated by this Agreement, against Buyer *other than against Buyer*." (Ex. 1, § 13.8(b) (emphasis added).) Yet the very first paragraph in Realogy's Prayer for Relief sought a declaration that "Defendants," defined to include both SIRVA and MDP, "are not excused from performing their obligations under the Purchase Agreement." (Compl. Prayer (a).) Realogy also asked the Court to "order[] Defendants to specifically perform their contractual obligations to pay to Realogy a $30 million termination fee." (Prayer (c).)

106. ***Second***, Realogy's claims against MDP similarly breached Section 13.16's non-recourse provision, which provides that the "Agreement may be enforced only against Seller and Buyer." (Ex. 1, § 13.16.) Under this section, Realogy agreed that it has no recourse against anyone other than SIRVA for any breach of the Purchase Agreement. But in Count III of its April 27 Complaint,

Realogy sought an order that "Defendants have breached their obligations under the Purchase Agreement" and that "Defendants are not excused from performing their obligations under the Purchase Agreement." (Compl. ¶ 112.)

107. ***Third***, Realogy's filing also breached multiple clauses of Section 13.8(b)(ii) of the Purchase Agreement. Under Section 13.8(b)(ii), Realogy agreed it would seek to specifically enforce SIRVA's obligation to close "if (and only if and for so long as)" four specific conditions are satisfied. (Ex. 1, § 13.8(b)(ii).) Three of the four conditions were not satisfied at the time Realogy filed the April 27 Complaint.

108. *Section 13.8(b)(ii)(B).* Under clause (B), Realogy cannot sue for—or obtain—specific performance to force SIRVA to close unless "the proceeds of the Debt Financing (or any alternative debt financing) have been funded to Buyer or the agent for the Debt Financing Sources ... has irrevocably confirmed in writing to Buyer that the Debt Financing will be funded subject only to the funding of the Equity Financing." (*Id.* § 13.8(b)(ii)(B).) The Debt Financing was not funded or irrevocably committed when Realogy filed suit. Nor will it ever be, for two separate reasons.

109. First, Realogy's filing of Non-Retained Claims, as discussed above, "automatically and immediately terminate[d]" MDP's equity commitment and, with it, caused the Debt Financing to fail because the Equity Financing is a

condition to the banks' commitment to provide the Debt Financing. (Ex. 2, § 3.) Thus, Realogy will never be able to satisfy this condition under Section 13.8(b)(ii)(B) as the banks have no obligation to fulfill their obligations under the Amended Debt Commitment Letter.

110. Second, the Amended Debt Commitment Letter expired by its terms. According to the Amended Debt Commitment Letter, the banks' financing commitments "automatically terminate ... if the initial borrowing ... does not occur on or before 11:59 p.m. ... on the date that is five business days after the Outside Date." (Ex. 4, p. 15.) The Purchase Agreement defines the Outside Date as April 30, (Ex. 1, § 11.1(a)), meaning the Debt Financing expired by its own terms on May 7. May 7 has long since come and gone, and the Debt Financing under the Amended Debt Commitment Letter went with it.

111. *Section 13.8(b)(ii)(D).* Clause D addresses the timing of when Realogy may sue for specific performance. Under that provision, Realogy can sue for specific performance if and only if "Buyer has failed to consummate the Closing within three (3) Business Days after receipt of" Realogy's irrevocable confirmation that it has satisfied Sections 10.1 and 10.2 of the Agreement.

112. Realogy certified that all of the conditions to closing were satisfied on the evening of April 24, 2020. Under Section 13.8(b)(ii)(D), the earliest Realogy could have filed its action for specific performance to force a closing was after the

close of business on April 29, three business days later. Realogy's rush to court—and the press—breached Section 13.8(b)'s unequivocal requirement to wait until after (and only if) SIRVA had actually refused to comply with an obligation to close (something SIRVA has never done).

113. *Section 13.8(b)(ii)(A).* Clause A bars Realogy from suing for specific performance unless "all of the conditions set forth in Section 10.1 and Section 10.2 have been and continue to be satisfied." (Ex. 1, § 13.8(b)(ii)(A).)

114. Section 10.2(b) was not satisfied when Realogy first filed its April 27 Complaint and cannot ever be satisfied. Under Section 10.2(b), Realogy must "have performed and complied with, in all material respects, each covenant and obligation required by this Agreement to be so performed or complied with by Seller on or before Closing." (*Id*. § 10.2(b).)

115. Realogy's lawsuit precludes it from ever complying with "each covenant and obligation required by" the Agreement. As just discussed, Realogy breached several covenants and obligations under the Purchase Agreement. Sections 13.8(b) and 13.16 expressly prohibit Realogy from suing MDP, and Realogy brought Non-Retained Claims anyway. (Compl. ¶ 112; *see also* Prayer (a).) Section 13.8(b)(ii)(A) prohibited Realogy from bringing its claim for specific performance when SIRVA had not "fail[ed] to consummate the Closing on the date required pursuant to the terms of Section 2.3," i.e., April 29, yet Realogy filed suit

on April 27. Section 13.8(b)(ii)(B) prohibited Realogy from bringing a claim for specific performance to force a close unless the Debt Financing had been funded or irrevocably confirmed—neither of which has ever occurred and nor will they. And Section 13.8(b)(ii)(D) prohibited Realogy from suing unless and until "Buyer has failed to consummate the Closing within three (3) Business Days after" Realogy irrevocably confirmed Section 10.1 and 10.2 had been satisfied, yet Realogy sued on the morning of the first business day after providing such certification.

116. Additionally, Realogy breached the Purchase Agreement by seeking specific performance when Section 10.2(c)—the MAE condition—had not been satisfied. Section 10.2(c) provides: "Since the date of this Agreement, no events or circumstances shall have occurred that, individually or in the aggregate, have had a Material Adverse Effect." (*Id.* § 10.2(c).)

117. The Purchase Agreement's definition of an MAE includes two prongs. Each has been triggered, independently precluding Realogy from satisfying the requirement of Section 13.8(b)(ii)(A) that "all of the conditions set forth in Section 10.1 and Section 10.2 have been and continue to be satisfied." The first relevant definition of MAE relates to changes in the "results of operations or financial condition of the Business." As discussed above, the COVID-19 health crisis has materially and disproportionately affected the financial condition and operations of Cartus. Cartus' own forecasts and initiation and closing data alone show

[redacted]. And COVID-19 has "disproportionately adversely affected" Cartus "relative to other similarly situated participants in" the industry: Cartus' [redacted] has caused Cartus to experience—and will cause Cartus to continue to experience—devastating financial results that are disproportionate to SIRVA and others in the industry, [redacted]

118. The second relevant MAE definition relates to "any change, event, occurrence, circumstance or effect that would or would reasonably be expected to prevent or materially impair or materially delay the ability of Seller to consummate the Transaction." As discussed above, this provision applies to Realogy's performance of the Transaction Services Agreement, the two Sublease Agreements, and its ongoing, post-closing obligations under the Purchase Agreement. Realogy's financial distress, which has been widely reported in the financial press, will likely result in insolvency in the next 18 months, threatening Realogy's ability to perform its obligations under the Transaction Documents.

119. Because an MAE has occurred, Realogy has not and cannot satisfy its obligation in Section 10.2(c). Thus, Realogy breached the Purchase Agreement by seeking specific performance before the conditions to closing were satisfied.

IX. SIRVA TERMINATES THE AGREEMENT.

120. On April 28, 2020, SIRVA sent Realogy a notice terminating the Purchase Agreement pursuant to Section 11.1(c), which allows SIRVA to terminate the Agreement if "Seller has breached or failed to comply with any of its obligations under this Agreement such that the condition set forth in Section 10.2(b) would not be satisfied at the Closing." (*See* Ex. 8, 4/28/20 Letter; Ex. 1, § 11.1(c).) SIRVA told Realogy that its April 27 Complaint constituted a breach of Section 13.8(b) of the Purchase Agreement and that the conditions of Section 10.2(b) could not be satisfied at closing as a result.

121. As SIRVA explained in its April 28 termination letter, Realogy "falsely allege[d] that each of the four conditions set forth in Section 13.8(b) has been satisfied and Realogy is entitled to specific performance of SIRVA's obligation to close under the Purchase Agreement." (Ex. 8.) Three of the four requirements were not satisfied and thus Realogy's lawsuit constituted a breach, including a Willful Breach, of the Purchase Agreement.

122. Realogy's breaches, coupled with Realogy's press release and subsequent customer communications, disrupted SIRVA and MDP's operations and caused substantial monetary and reputational harm to both SIRVA and MDP. As noted above, it also resulted in the automatic and immediate termination of the debt and equity commitments for the transaction.

123. On April 30, the Outside Date passed without the deal closing.

124. After receiving a letter from Realogy on April 30 disputing the validity of SIRVA's termination on April 28, on May 1, 2020, SIRVA sent Realogy a supplemental termination notice pursuant to Section 11.1(a) because the closing did not occur by the Outside Date. (Ex. 9, Termination Notice.)

125. SIRVA's terminations of the Purchase Agreement on April 28 and May 1 provided separate and independent bases for the termination of the Debt Financing Commitments (Ex. 4, § 10) and the Equity Financing Commitments (Ex. 2, § 3(c)) and relieved SIRVA of all obligations under the Purchase Agreement. As such, the Purchase Agreement, the Debt Financing Commitments, and the Equity Financing Commitments are all now terminated.

COUNT I
SIRVA and NAVL Against Realogy
(Breach of Contract — Breach of the Purchase Agreement)

126. SIRVA and NAVL ("SIRVA" for the purposes of this Count) repeat and reallege the foregoing paragraphs as if fully set forth herein.

127. The Purchase Agreement is a valid and binding contract between Realogy and SIRVA.

128. SIRVA validly terminated the Purchase Agreement on April 28, 2020 and again on May 1, 2020.

129. SIRVA complied with all of its obligations under the Purchase Agreement.

130. Under Section 11.2, following SIRVA's termination of the Purchase Agreement, Realogy remains liable for any Willful Breach of the Purchase Agreement and in such case SIRVA "shall be entitled to all rights and remedies available at law or in equity."

131. The Purchase Agreement Section 1.1 defines a Willful Breach as "a breach that is a consequence of an act or omission undertaken by the breaching party with the knowledge that the taking of, or failure to take, such act would, or would be reasonably expected to, cause or constitute a material breach of this agreement." Realogy has Willfully Breached multiple provisions of the Purchase Agreement.

132. Realogy's Willful Breaches include:

i. Realogy's filing of its April 27 Complaint against non-Buyer MDP breached the non-recourse provision in Purchase Agreement Section 13.16, which states that the Purchase Agreement "may be enforced only against Seller and Buyer." Specifically, Count III asked for a declaration that "Defendants have breached their obligations under the Purchase Agreement," and that "Defendants are not excused from performing their obligations under the

Purchase Agreement." (Compl. ¶ 112.) And in its Prayer for Relief, Realogy sought an order that "Defendants are not excused from performing their obligations under the Purchase Agreement, and that the Defendants committed material breaches of the Purchase Agreement." (Prayer (a).)

ii. Realogy breached the final clause of Purchase Agreement Section 13.8(b) by seeking specific performance against non-Buyer MDP. Specifically, Count III of the April 27 Complaint asked for a declaration that "Defendants have breached their obligations under the Purchase Agreement" and that "Defendants are not excused from performing their obligations under the Purchase Agreement." (Compl. ¶ 112.) And the Prayer for Relief asked for a declaration to that effect and an order requiring "Defendants" "to pay Realogy a $30 million termination fee." The Prayer for Relief in the April 27 Complaint also asks for specific performance against "Defendants" despite the unequivocal prohibition in Section 13.8 that "in no event shall Seller be entitled to seek to specifically enforce any provision of this Agreement ... other than against Buyer… ."

iii. Realogy's decision to assert Non-Retained Claims against MDP resulted in the automatic and immediate termination of MDP's equity financing commitment provided to SIRVA under Section 3 of the Equity Commitment Letter. MDP's equity commitment was a condition to the Amended Debt Commitment Letter. By causing a failure of a condition to the Debt Financing, Realogy's April 27 Complaint breached Section 7.4 of the Purchase Agreement, which required Realogy to cooperate with SIRVA in seeking to obtain the Debt Financing, and Section 7.6(a) of the Purchase Agreement.

iv. Realogy breached Section 13.8(b)(ii)(A) because the conditions set forth in Section 10.2(b) and Section 10.2(c) were not satisfied when it filed its April 27 Complaint. Realogy itself acknowledged on April 24 that the earliest date on which Buyer could be obligated to consummate the closing was April 29, two days *after* Realogy filed its April 27 Complaint.

v. Realogy breached Section 13.8(b)(ii)(B) by filing its April 27 Complaint seeking specific performance without the "proceeds of the Debt Financing ... funded to Buyer … or irrevocably confirmed in writing to Buyer."

vi. Realogy breached Section 13.8(b)(ii)(D) because it failed to wait three business days to file its April 27 Complaint after it (falsely) certified in writing that all conditions to closing were met and that it would close the transaction if the Debt Financing and Equity Financing were each funded.

vii. Realogy also breached the cooperation requirements of Section 7.4 of the Purchase Agreement by providing knowingly misleading forecasts about Cartus' expected performance to the banks and SIRVA on April 14, 2020 and April 22, 2020, and by its delays in providing reasonably requested information throughout March and April 2020.

133. As a direct consequence of these breaches and the wrongful conduct alleged herein, SIRVA has suffered substantial monetary damages in an amount to be proven at trial.

COUNT II
SIRVA and NAVL Against Realogy
(Declaratory Judgment — Breach of the Purchase Agreement)

134. SIRVA and NAVL ("SIRVA" for the purposes of this Count) repeat and reallege the foregoing paragraphs as if fully set forth herein.

135. The Purchase Agreement is a valid and binding contract between Realogy and SIRVA.

136. SIRVA validly terminated the Purchase Agreement on April 28, 2020 and again on May 1, 2020.

137. SIRVA complied with all of its obligations under the Purchase Agreement.

138. Realogy has claimed it is entitled to performance under the Purchase Agreement and related Transaction Documents. As such, an actual controversy exists between the parties as to whether Realogy has breached the Purchase Agreement.

139. Realogy has breached multiple provisions of the Purchase Agreement.

140. Accordingly, SIRVA is entitled to a judgment declaring that Realogy has materially breached the Purchase Agreement and SIRVA's termination of the Purchase Agreement is valid.

COUNT III
SIRVA, NAVL, and MDP Against Realogy
(Declaratory Judgment – Termination of Commitments under the Equity Commitment Letter and Amended Debt Commitment Letter)

141. SIRVA and NAVL ("SIRVA" for the purposes of this Count) repeat and reallege the foregoing paragraphs as if fully set forth herein. MDP repeats and realleges paragraphs 1-125 as if fully set forth herein.

142. The Equity Commitment Letter is a commitment by MDP to provide [redacted] in Equity Financing for the transaction under certain terms and conditions. (Ex. 2, § 1.)

143. The Amended Debt Commitment Letter is a commitment by seven banks to provide Debt Financing for the transaction under certain terms and conditions. (Ex. 4, § 1.)

144. Realogy has claimed it is entitled to performance under the Purchase Agreement and related Transaction Documents. As such, an actual controversy exists between the parties as to whether the Equity Commitment Letter and Amended Debt Commitment Letter have terminated.

145. MDP's obligation to provide the Equity Financing under the Equity Commitment Letter "automatically and immediately terminate[d]" on April 27, 2020 when Realogy asserted Non-Retained Claims against MDP in its April 27 Complaint. (Ex. 2, § 3(c).)

146. The banks' Debt Financing Commitments under the Amended Debt Commitment Letter terminated no later than May 7, "the date that is five business days after the Outside Date []as defined in the Purchase Agreement," (Ex. 4, p. 15), and effectively terminated when Realogy asserted Non-Retained Claims against MDP in this lawsuit, (*id.* at Ex. C. § 2(i).)

147. Moreover, the Equity Commitment Letter and Amended Debt Commitment Letter automatically and immediately terminated when SIRVA terminated the Purchase Agreement on April 28 and May 1. (Ex. 2, § 3(c)(b); Ex. 4, § 6(a)(ii).)

148. Accordingly, SIRVA and MDP are entitled to a judgment declaring that both the Equity Commitment Letter and the Amended Debt Commitment Letter have terminated.

COUNT IV
MDP Against Realogy
(Breach of Contract – Limited Guaranty)

149. MDP repeats and realleges paragraphs 1-125 and 141-148 as if fully set forth herein.

150. The Limited Guaranty is a valid and binding contract among MDP and Realogy.

151. MDP has complied with its obligations under the Limited Guaranty.

152. In the Limited Guaranty, Realogy "covenant[ed] and agree[d] that it shall not institute ... any Action arising under, or in connection with this Limited Guaranty, the Purchase Agreement, the Financing Commitments or the transactions contemplated hereby or thereby, against any Guarantor or any Guarantor Affiliate except for" Retained Claims. (Ex. 3, § 4(c).)

153. Realogy breached the Limited Guaranty when it asserted non-Retained Claims against MDP under the Purchase Agreement when it sought a declaratory judgment that "Defendants have breached their obligations under the Purchase Agreement" and that "Defendants are not excused from performing their obligations under the Purchase Agreement." (Compl. ¶ 112.) Realogy further breached the Limited Guaranty when it sought an order declaring that "Defendants are not excused from performing their obligations under the Purchase Agreement, and that the Defendants committed material breaches of the Purchase Agreement." (Prayer (a).)

154. Additionally, the Limited Guaranty provides that MDP guaranteed payment of the termination fee "when due pursuant to the terms and conditions of Section 11.3 of the Purchase Agreement." (Ex. 3, § 1.) Termination by Realogy pursuant to specific clauses of 11.1 is a necessary, but not sufficient, condition to any claim for the termination fee. (Ex. 1, § 11.3.) Because Realogy has specifically alleged that the Purchase Agreement has not terminated, it breached the Limited Guaranty by asserting a claim seeking to force MDP to pay the termination fee without actually terminating the Agreement.

155. Realogy's breaches of the Limited Guaranty have caused MDP damages, in an amount to be proved at trial.

COUNT V
MDP Against Realogy
(Declaratory Judgment – Termination of the Limited Guaranty)

156. MDP repeats and realleges the paragraphs 1-125, 141-155 as if fully set forth herein.

157. The Limited Guaranty is a valid and binding contract between MDP and Realogy.

158. MDP has complied with its obligations under the Limited Guaranty.

159. Realogy has claimed it is entitled to specific performance under the Purchase Agreement and related Transaction Documents, including a right to the Termination Fee under the Limited Guaranty. As such, an actual controversy exists between the parties as to whether the Limited Guaranty has terminated.

160. In the Limited Guaranty, Realogy "covenant[ed] and agree[d] that it shall not institute ... any Action arising under, or in connection with this Limited Guaranty, the Purchase Agreement, the Financing commitments or the transactions contemplated hereby or thereby, against any Guarantor or Guarantor Affiliate except for" Retained Claims. (Ex. 3, § 4(c).)

161. Realogy breached the Limited Guaranty when it asserted Non-Retained Claims against MDP in its April 27 Complaint. Specifically, Realogy breached the Limited Guaranty when it asserted Non-Retained Claims against MDP under the Purchase Agreement when it sought a declaratory judgment that

"Defendants have breached their obligations under the Purchase Agreement" and that "Defendants are not excused from performing their obligations under the Purchase Agreement." (Compl. ¶ 112.) Realogy further breached the Limited Guaranty when it sought an order declaring that "Defendants are not excused from performing their obligations under the Purchase Agreement, and that the Defendants committed material breaches of the Purchase Agreement." (Prayer (a).)

162. Realogy further breached the Limited Guaranty by bringing non-Retained Claims when it sought to specifically enforce MDP's obligation to guaranty the Termination Fee without having first terminated the Purchase Agreement. (Compl. ¶¶ 99–104; Prayer (c).)

163. The Limited Guaranty stipulates that MDP "shall have [no] further liability or obligation under this Limited Guarantee from and after ... the valid termination of the Purchase Agreement in accordance with its terms" other than a termination for which the Termination Fee is due under Section 11.3(a) of the Purchase Agreement.

164. SIRVA terminated the Purchase Agreement on April 28, 2020 under Section 11.1(c). SIRVA's termination under Section 11.1(c) is not one of the specifically enumerated termination provisions giving rise to the Termination Fee. (*See* Ex. 1, § 11.3(a).)

165. SIRVA also terminated the Purchase Agreement on May 1, 2020 under Section 11.1(a). This termination cannot support a Termination Fee, including because (a) not "all conditions to Closing set forth in Section 10.1 ... and Section 10.2 are satisfied or capable of being satisfied" and (b) the conditions in "Section 10.1(a)(i) or Section 10.1(b) with respect to Antitrust Laws" have been satisfied. (*Id*. §§ 11.1(a), 11.3(a).)

166. Accordingly, MDP is entitled to a judgment declaring that the Limited Guaranty has terminated without payment by MDP.

COUNT VI
SIRVA, NAVL, and MDP Against Realogy
(Declaratory Judgment – Termination Fee Unavailable)

167. SIRVA and NAVL ("SIRVA," for purposes of this Count) repeat and reallege paragraphs 1-148 as if fully set forth herein. MDP repeats and realleges paragraphs 1-125, 141-166 as if fully set forth herein.

168. The Purchase Agreement is a valid and binding contract among SIRVA and Realogy.

169. SIRVA validly terminated the Purchase Agreement on April 28, 2020 and again on May 1, 2020.

170. SIRVA complied with all of its obligations under the Purchase Agreement.

171. The Limited Guaranty is a valid and binding contract between MDP and Realogy.

172. MDP has complied with all of its obligations under the Limited Guaranty.

173. Realogy has claimed it is entitled, as an alternative remedy, to the Termination Fee under the Purchase Agreement and Limited Guaranty. As such, an actual controversy exists between the parties as to whether Realogy is entitled to the Termination Fee.

174. SIRVA validly terminated the Purchase Agreement on April 28 under Section 11.1(c) of the Purchase Agreement because Realogy's filing of its April 27 Complaint constituted a breach of multiple covenants and obligations in the Purchase Agreement. Under Section 11.3(a), Realogy is not entitled to the Termination Fee in event of a termination under Section 11.1(c).

175. Further, SIRVA terminated the Purchase Agreement under Section 11.1(a) on May 1, 2020, which does not give rise to the Termination Fee here, including because (a) not "all conditions to Closing set forth in Section 10.1 ... and Section 10.2 are satisfied or capable of being satisfied" and (b) the conditions in "Section 10.1(a)(i) and Section 10.1(b) with respect to Antitrust Laws" have been satisfied. (Ex. 1, §§ 11.1(a), 11.3(a).)

176. MDP guaranteed payment of the Termination Fee pursuant to the Limited Guaranty only "if and when due pursuant to the terms and conditions of Section 11.3 of the Purchase Agreement." (Ex. 3, § 1.) Because Realogy has no right to the Termination Fee under Section 11.3, MDP has no obligation to pay the Termination Fee under the Limited Guaranty.

177. Accordingly, SIRVA is entitled to a judgment declaring that Realogy is not entitled to the Termination Fee under the Purchase Agreement. And MDP is entitled to a judgment declaring that it has no duty to pay the Termination Fee under the Limited Guaranty.

PRAYER FOR RELIEF

WHEREFORE, SIRVA, NAVL, and/or MDP respectfully request that this Court enter an order as follows:

(a) Declaring that Realogy breached the Purchase Agreement;

(b) Declaring that as a consequence of Realogy's breaches, SIRVA validly terminated the Purchase Agreement and Realogy is not entitled to the Termination Fee;

(c) Declaring that Realogy breached the Limited Guaranty;

(d) Declaring that as a consequence of Realogy's breaches, MDP's obligations under the Limited Guaranty have terminated;

(e) Declaring that MDP's commitment under the Equity Commitment

Letter has expired and terminated;

(f) Declaring that the Amended Debt Commitment Letter has expired and terminated;

(g) Awarding SIRVA and MDP damages in an amount to be proven at trial;

(h) Awarding costs, including but not limited to reasonable attorneys' fees, to the extent appropriate;

(i) Awarding pre-judgment and post-judgment interest; and

(j) Granting such other and further relief as the Court deems proper.

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June 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, copies of the foregoing document were served, by File & Serve*Xpress*, on the following attorneys of record:

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