SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

PHILIPPE SELENDY, FAITH GAY, DAVID ELSBERG, JENNIFER SELENDY, ANDREW DUNLAP, MARIA GINZBURG, SEAN BALDWIN, CHRISTINE CHUNG, JORDAN GOLDSTEIN, and YELENA KONANOVA, Petitioners, v. QUINN EMANUEL URQUHART & SULLIVAN, LLP, Respondent.	Index No. 652323/18 **VERIFIED PETITION TO STAY ARBITRATION PURSUANT TO CPLR ARTICLE 75**

Petitioners Philippe Selendy, Faith Gay, David Elsberg, Jennifer Selendy, Andrew Dunlap, Maria Ginzburg, Sean Baldwin, Christine Chung, Jordan Goldstein, and Yelena Konanova (the "S&G Partners" or "Petitioners") as and for their Petition to Stay an arbitration commenced by Respondent Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel" or "Respondent"), allege as follows:

1. This is a special proceeding brought under Article 75 of the CPLR to permanently stay and enjoin an arbitration proceeding commenced by Quinn Emanuel before the American Arbitration Association ("AAA") against the S&G Partners. A copy of Quinn Emanuel's Demand for Arbitration ("Demand") is attached to this Petition as Exhibit A.[1]

2. Petitioners have made no prior request for relief.

[1] The arbitration that Petitioners seek to stay is a confidential one. Accordingly, Petitioners have asked to have the Petition and the annexed exhibits filed under seal temporarily to allow Quinn Emanuel to take a position as to whether the Petition should be filed under seal.

3. The S&G Partners were formerly partners at the New York office of Quinn Emanuel. In mid-February 2018, they departed Quinn Emanuel to establish the law partnership Selendy & Gay PLLC in New York.

4. In its Demand, filed on April 24, 2018, in California, Quinn Emanuel seeks to enforce a provision in the Second Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart & Sullivan, LLP (the "QE Partnership Agreement") that purports to require departing partners to pay Quinn Emanuel, for a period of eighteen months, 10% of the total fees each departing partner or his or her new firm earns from clients who were formerly clients of Quinn Emanuel (and not clients of the S&G Partners before their association with Quinn Emanuel). A copy of the QE Partnership Agreement is attached to this Petition as Exhibit B.

5. New York's ethical rules strictly forbid any agreement that restricts the right of a lawyer to practice after termination of the relationship created by that agreement. (Rules of Professional Conduct [22 NYCRR 1200.0] rule 5.6 [a] [1].) An agreement that requires an attorney to pay a monetary penalty to compete with his or her former firm constitutes an impermissible restriction on the practice of law in New York. (*Cohen v Lord, Day & Lord*, 75 NY2d 95 [1989]; *Denburg v Parker Chapin Flattau & Klimpl*, 82 NY2d 375, 380 [1993].)

6. Although the Petitioners do not dispute that they signed the QE Partnership Agreement, each of the Petitioners, as a lawyer licensed in New York, is bound to abide by the New York ethical rules and subject to discipline in this jurisdiction. Further, John Quinn, Quinn Emanuel's founding member, and Rick Werder, the managing partner of Quinn Emanuel's New York office, who are also licensed in New York, are bound by the same rules, which require additionally that New York lawyers not order or direct other New York-admitted lawyers to engage in, or refuse to correct, conduct that violates the New York Rules of Professional

Conduct. (Rules of Professional Conduct [22 NYCRR 1200.0] rule 5.1 [d].) Quinn Emanuel as a firm also is subject to this restriction. (Rules of Professional Conduct [22 NYCRR 1200.0] rule 5.1 [a].)

7. Despite New York's ethical prohibitions on forfeiture-for-competition provisions and efforts to enforce those provisions —which the S&G Partners called to the attention of Mr. Quinn and Mr. Werder while separating from Quinn Emanuel—Quinn Emanuel two weeks ago commenced an arbitration proceeding in California. In that arbitration, they seek an order that on its face would force the S&G Partners to violate their ethical obligations.

8. After the arbitration was filed, the S&G Partners contacted Quinn Emanuel in an effort to resolve this dispute, within the parameters of their ethical obligations. The S&G Partners proposed that the parties submit the question of the enforceability of Section 5.1(a)(iii) to an appropriate agreed-upon New York ethics panel. The S&G Partners stated that if that ethics authority rendered a determination that the S&G Partners could comply with Section 5.1(a)(iii) without violating their obligations under New York ethics rules, the S&G Partners would comply fully with that provision. Quinn Emanuel rejected the proposal.

9. Because the forfeiture-for-competition provision in the QE Partnership Agreement is void *ab initio* under New York's ethical rules, and violates the public policy of New York, any dispute arising out of that provision is not arbitrable. The arbitration should be stayed so that this Court can render an opinion and order on the operation of New York's ethical rules.

THE PARTIES

10. Petitioners are partners at Selendy & Gay PLLC, a seventeen-lawyer law firm organized under the laws of the State of New York with an office at 1290 Avenue of the Americas, New York, NY 10104. Each is a resident of New York.

11. Quinn Emanuel is an international law partnership organized under the laws of the State of California. Quinn Emanuel's largest office, by number of lawyers and revenue, is located at 51 Madison Avenue, 22nd Floor, New York, New York 10010. John Quinn, William Urquhart, and Kathleen Sullivan—three of the four name partners of Quinn Emanuel—and Rick Werder, managing partner of Quinn Emanuel's New York office, are licensed to practice law in New York.

JURISDICTION AND VENUE

12. Jurisdiction is based on conduct occurring or to be carried out in the County of New York.

13. Venue is based on Quinn Emanuel and the S&G Partners doing business in the County of New York.

FACTUAL BACKGROUND

The Reason for the Petition

14. The S&G Partners seek a stay from this Court because of a conflict between the terms of the QE Partnership Agreement and the New York rules of ethics under which they practice law and are subject to discipline.

15. Before founding Selendy & Gay in mid-February 2018, the S&G Partners were partners at Quinn Emanuel in its New York office. Each of the S&G Partners is licensed to practice law in the State of New York. None is licensed to practice law in California.

16. On January 16, 2018, Mr. Selendy, Ms. Gay, Mr. Elsberg, Ms. Selendy, and Mr. Dunlap announced to Quinn Emanuel that they were leaving Quinn Emanuel to form Selendy & Gay. By the following week, Ms. Ginzburg, Mr. Baldwin, Ms. Chung, Mr. Goldstein, and Ms. Konanova had provided notice to Quinn Emanuel that they too were departing Quinn Emanuel to join Selendy & Gay.

The QE Partnership Agreement and Ethical Obligations of the S&G Partners

17. To become partners at Quinn Emanuel, the S&G Partners, between the years of 2006 and 2018, entered into the QE Partnership Agreement. Section 5.1(a) of that agreement addresses the voluntary withdrawal of partners from the Quinn Emanuel partnership. Subsection (iii) of that section states:

> If a partner voluntarily withdraws from the Partnership, and if, at any time within eighteen (18) months after the effective date of such withdrawal, he, or any enterprise which he joins, performs any legal services in any case or other matter venued within 100 miles of any office of the Partnership for any client who was a client of the Partnership prior to the effective date of such withdrawal, and for which he or his new enterprise performed no legal services prior to the date the withdrawing partner first became an employee or partner of the Partnership, then the partner so withdrawing shall pay to the Partnership, as a reasonable estimate of the harm caused to the Partnership and the other partners by his withdrawal as a result of the loss of fees which would otherwise have been received from the Partnership's clients taken by him, a sum equal to 10% of the total fees billed by him and/or his new enterprise from that client for services rendered by them, or any of them, during the eighteen (18) month period following the effective date of his withdrawal from the Partnership.[2]

(Ex. B § 5.1(a)(iii).)

[2] This same provision also appeared in a prior version of the QE Partnership agreement, the First Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart Oliver & Hedges, LLP, which was operative when some of the S&G Partners joined Quinn Emanuel. The provisions of the two agreements relevant to this application are the same.

18. In New York, as in many other states, such a forfeiture-for-competition provision has long been deemed unenforceable by the courts as a violation of ethical rules. (Ex. C, May 11, 2018 Declaration of Hal R. Lieberman ("Lieberman Decl."), ¶¶ 19, 23.) Rule 5.6(a)(1) of the New York Rules of Professional Conduct (22 NYCRR 1200.0) forbids any "partnership . . . agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement." Such agreements are impermissible restrictions on the practice of law because they limit a departing lawyer's professional autonomy as well as the freedom of clients to select counsel of their choice. (*See* Rules of Professional Conduct [22 NYCRR 1200.0] rule 5.6 Comment [1]; *see also* Ex. C, Lieberman Decl. ¶ 21.) Not only does the Rule proscribe absolute prohibitions on competition, it also forbids any "clause that penalizes a competing attorney by requiring forfeiture of income" post-departure. (*Denburg v Parker Chapin Flattau & Klimpl*, 82 NY2d 375, 380 [1993], citing *Cohen v Lord, Day & Lord*, 75 NY2d 95, 98 [1989]); *see also Matter of Silverberg*, 427 NYS2d 480, 482 [2d Dept 1980].)

19. On information and belief, since at least 2006, when the S&G Partners first joined Quinn Emanuel, Quinn Emanuel has not sought to enforce the 10% penalty of Section 5.1(a)(iii) against any other departing Quinn Emanuel partner, in any jurisdiction. This is despite the departures of numerous partners over that twelve-year period.

20. The QE Partnership Agreement provides that the Agreement would be governed by California law, that suits "brought hereon" (i.e., upon the Agreement) would be brought in courts sitting in Los Angeles, California, that any dispute with respect to the Agreement should be resolved exclusively through an arbitration proceeding conducted pursuant to the rules of the

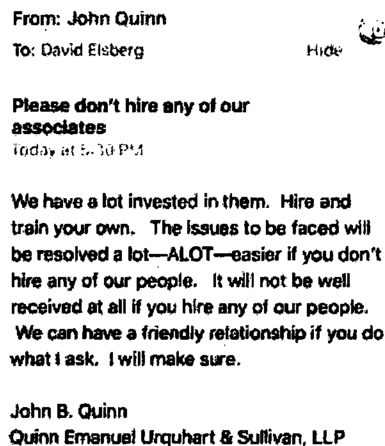
American Arbitration Association ("AAA"), also in Los Angeles, California, and that questions of arbitrability would be reserved to the arbitrator.[3]

Quinn Emanuel Attempts to Extract an Unlawful "No Poaching" Agreement From the S&G Partners, in Exchange for Dropping Any Claim for 10% of Selendy & Gay Revenues Earned from Clients of Quinn Emanuel

21. After the S&G Partners informed Quinn Emanuel of their departures, Quinn Emanuel exercised its right under the QE Partnership Agreement to compel the departing partners to serve "garden leave" of 30 days. During this period, Mr. Quinn, the founder of Quinn Emanuel, and Mr. Werder, the managing partner of the New York Office, began requesting that the S&G Partners agree not to hire Quinn Emanuel associates after leaving Quinn Emanuel.

22. On January 28, 2018, Mr. Quinn wrote to Mr. Elsberg with the subject line "Please don't hire any of our associates". Mr. Quinn continued, "The issues to be faced will be resolved a lot—A LOT—easier if you don't hire any of our people. It will not be well received at all if you hire any of our people":

[3] As explained further in the accompanying memorandum of law, however, this Petition is not brought upon the QE Partnership Agreement, and the Agreement's choice of law provision cannot control the ethical duties of New York lawyers. Further, this Court has jurisdiction to stay an arbitration and decide matters of New York public policy, notwithstanding the provision reserving the question of arbitrability to the arbitrator, particularly where, as here, Section 5.1(a)(iii) of the Agreement is invalid on its face if applied to New York lawyers. In other words, even a determination from arbitration wholly in Quinn Emanuel's favor would not justify or excuse Petitioners (or Quinn Emanuel, Mr. Quinn or Quinn Emanuel's New York lawyers) from the clear ethical duty not to enforce the 10% penalty provision.



From: John Quinn
To: David Elsberg Hide

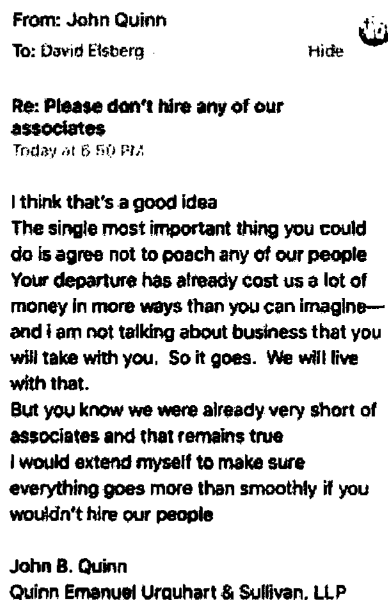
Please don't hire any of our associates
Today at 5:30 PM

We have a lot invested in them. Hire and train your own. The issues to be faced will be resolved a lot—ALOT—easier if you don't hire any of our people. It will not be well received at all if you hire any of our people. We can have a friendly relationship if you do what I ask. I will make sure.

John B. Quinn
Quinn Emanuel Urquhart & Sullivan, LLP

(Ex. D.)

23. Later that day, Mr. Quinn reiterated in writing, "The single most important thing you could do is agree not to poach any of our people.... But you know we were already very short of associates and that remains true. I would extend myself to make sure everything goes more smoothly if you wouldn't hire our people."



From: John Quinn
To: David Elsberg Hide

Re: Please don't hire any of our associates
Today at 6:50 PM

I think that's a good idea
The single most important thing you could do is agree not to poach any of our people
Your departure has already cost us a lot of money in more ways than you can imagine—and I am not talking about business that you will take with you. So it goes. We will live with that.
But you know we were already very short of associates and that remains true
I would extend myself to make sure everything goes more than smoothly if you wouldn't hire our people

John B. Quinn
Quinn Emanuel Urquhart & Sullivan, LLP

(Ex. D.)

24. In early February 2018, Mr. Werder made the same request orally to Mr. Selendy: that S&G Partners agree "not to hire away the best and the brightest" from Quinn Emanuel. Mr.

Werder also sent an agenda of items that Quinn Emanuel wished to discuss with the departing partners, the top two of which were "Associate poaching" and "Staff poaching."

25. On February 6, 2018, Mr. Quinn spoke with a group of S&G Partners to discuss the separation of those partners from Quinn Emanuel. Mr. Quinn again requested that the S&G Partners "don't hire any of our people." Addressing specifically what he wanted to happen "after" the S&G Partners left Quinn Emanuel, he suggested that for Selendy & Gay to even accept applications from associates or other employees seeking to leave Quinn Emanuel "will really send [him] around the bend." When asked why Selendy & Gay should enter into such an agreement, Mr. Quinn reiterated that it would be a "universal solvent" that would appease Quinn Emanuel and would go "a long way" towards smoothing all issues relating to the separation of the S&G Partners. Mr. Quinn stated that the agreement he was proposing that the assent of the S&G Partners to a "no-poaching" agreement could cause Quinn Emanuel not to assert any claim to enforce what he called the "10% override" and also to release draws that it was then withholding from the S&G Partners, notwithstanding Quinn Emanuel's enforcement of a 30-day garden leave period.

26. The S&G Partners refused to discuss any no-poaching arrangement with Quinn Emanuel. At the time these solicitations were made, the U.S. Department of Justice ("DOJ") had just recently reconfirmed its longstanding position that "[a]greements among employers not to recruit certain employees or not to compete on terms of compensation are illegal"—and that DOJ would soon be announcing "criminal enforcement actions against companies that have 'no-poach' agreements." (*See* Ex. E, Eleanor Tyler, Justice Dept. Is Going After 'No Poach' Agreements, Bloomberg BNA, January 19, 2018, available at https://www.bna.com/justice-dept-

going-n73014474358/ [accessed May 10, 2018].) The S&G Partners obtained an opinion from counsel with relevant expertise on the ethics and legality of such a request.

27. In the evening of February 6, the S&G Partners wrote to Mr. Quinn and Mr. Werder via email. (Ex. F.) The S&G Partners pointed Mr. Quinn and Mr. Werder to the ethical prohibitions on the agreement Quinn Emanuel had proposed, and also the DOJ's 2016 Antitrust Guidance for Human Resource Professionals ("DOJ Guidance"), which stated that entering into the proposed "no poaching" agreement, or even requesting that another do so, constituted serious misconduct that could give rise to civil or criminal liability. The DOJ Guidance cited in the S&G Partners' letter provides this illustrative example:

> ***Question***: I work in the HR department of a university that sometimes gets into bidding wars to attract faculty from rival institutions. Those efforts rarely succeed, but they take up a lot of time, energy, and resources. Recently someone in the Dean's office told me that we now had a "gentleman's agreement" with another university not to try to recruit each other's senior faculty. There isn't a written agreement, and efforts to hire each other's faculty were rarely successful. Is this okay?
>
> ***Answer***: No. An illegal agreement can be oral; it need not be written down on paper. This conduct is similar to the conduct challenged by the Division in its recent no-poaching cases involving *eBay*, *Lucasfilm*, and *Adobe*, and the FTC in its cases against *Debes Corp*. and the *Council of Fashion Designers*. If the no-poaching agreement is naked, that is, separate from or not reasonably necessary to a larger legitimate collaboration between the universities, ***it is conduct that the Division will criminally investigate and may decide to criminally prosecute***, charging institutions or individuals or both.
>
> If you stopped recruiting and bidding for faculty from another university due to a gentleman's agreement, you have become a member of that no-poaching agreement and ***could be subject to criminal liability***. You should take no further action to comply with that agreement, and notify your university's legal counsel of the university's participation in this illegal agreement....

(Ex. G at 8 (emphases added).)

28. The S&G Partners' letter cited controlling caselaw holding that no-poaching agreements like those proposed violated ethical principles as interpreted and enforced by New York courts. (Ex. F.)

Quinn Emanuel Seeks to Enforce the Forfeiture-for-Competition Clause in the QE Partnership Agreement Against the S&G Partners

29. In late February 2018, shortly after the S&G Partners began their work at Selendy & Gay, Mr. Werder emailed Jennifer Selendy, Selendy & Gay's Co-Managing Partner, to demand that the S&G Partners "pay to Quinn Emanuel 10% of all fees billed by your firm on certain specified matters for clients meeting specified criteria." (Ex. H.) Mr. Werder requested that the S&G Partners produce "a list of clients and current matters covered by the section [5.1(a)(iii)] as of today and propose a procedure for ensuring that the required payments are made with respect to those matters." (*Id.*) He further sought "a notice procedure for adding clients and matters to that list as required under the terms of the section during the period between now and August 2019." (*Id.*)

30. Mr. Werder also wrote to a client of S&G, which had directed that a matter previously handled by Quinn Emanuel be handled by a combined Selendy &Gay/Quinn Emanuel team led by Selendy & Gay partners. In an email that purported to propose terms of the agreement between Quinn Emanuel and the client, Mr. Werder again tried to impose a "no-poaching" obligation upon Selendy & Gay by demanding that it be a term of the client's engagement. He stated that "[i]n connection with QE's agreement to assist in the transition to S&G, S&G will cease efforts to recruit QE personnel on the [case name] team." Mr. Werder then forwarded the email to Selendy & Gay.

31. The S&G Partners responded to Mr. Werder's emails with correspondence to Mr. Werder and other Quinn Emanuel partners that referenced the New York rules of professional conduct that govern their conduct and practice. They informed Quinn Emanuel:

> Section 5.1(a)(iii) of the QE Partnership Agreement is unenforceable against any Selendy & Gay partner because it violates New York RPC 5.6(a). *See, e.g., Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375 (1993); *Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95 (1978). Under the New York RPCs, partners cannot agree to penalize departing partners for practicing competitively with their former firm because New York courts deem such "forfeiture-for-competition" agreements to chill competition and impinge upon clients' choice of counsel. We therefore do not acknowledge any obligations under Section 5.1(a)(iii), nor will we take steps to effectuate that provision.

(Ex. I.)[4]

Quinn Emanuel Files for Arbitration to Enforce the Unlawful Forfeiture-for-Competition Clause

32. On or around April 24, 2018, Quinn Emanuel filed a Demand for Arbitration with the AAA, seeking to enforce Section 5.1(a)(iii)—the 10% penalty clause—of the QE Partnership Agreement. (Ex. A.)

33. Specifically, Quinn Emanuel asks the arbitrator for a (i) a "monetary award for those sums owing" under that clause "as of the date of the Award"; and (ii) "declaration that [Quinn Emanuel] is entitled to payment equal to 10 % of the total revenue received by [Selendy & Gay] and/or [the S&G Partners] on account of all matters venued within 100 miles of a Firm office for all former [Quinn Emanuel] clients not represented by [the S&G Partners] before joining the Firm, for a period of 18 months following February 15, 2018." (*Id.* at 8.)

[4] The email sent by the S&G Partners also noted that the California Rules of Professional Conduct, by their own geographic limits, do not apply to New York lawyers, not admitted in California, and not practicing in California. (Ex. I (citing Cal. Rules Professional Conduct, Rule 1-100 [D] [1].)

Quinn Emanuel Rejects the S&G Partners's Proposal to Resolve the Dispute By Seeking a Determination from a New York Ethics Authority

34. Upon learning of Quinn Emanuel's commencement of the arbitration proceeding, the S&G Partners, through counsel Bartlit Beck, contacted Quinn Emanuel. The S&G Partners proposed that in light of the conflict between the forfeiture-for-competition provision in the QE Partnership Agreement and their obligations under New York ethics rules, the parties agree to submit the question of the enforceability of Section 5.1(a)(iii) to an appropriate agreed-upon New York ethics panel and stay the arbitration while awaiting the outcome. The S&G Partners proposed that if that ethics authority rendered a determination that the S&G Partners could comply with Section 5.1(a)(iii) without violating their obligations under New York ethics rules, the S&G Partners would comply fully with that provision. Quinn Emanuel responded that it was not interested in pursuing the proposal.

AS AND FOR A FIRST CAUSE OF ACTION

35. The S&G Partners repeat and reallege each of the allegations contained in paragraphs 1-34 as if set forth fully herein.

36. Quinn Emanuel's Demand for Arbitration should be stayed because it seeks an award and declaration that, if granted, would violate New York public policy.

37. The S&G Partners have complied with the procedural requirements of CPLR §§ 7502 and 7503.

38. Venue is proper in the County of New York because both Quinn Emanuel and the S&G Partners are doing business in the County.

39. On April 24, 2018, Quinn Emanuel first sent notice to the S&G Partners that Quinn Emanuel had filed a Demand for Arbitration with AAA.

40. The S&G Partners have not participated in the Arbitration, nor has Quinn Emanuel filed a motion to compel arbitration under § 7503[a].

41. The forfeiture-for-competition provision in Section 5.1(a) of the QE Partnership Agreement is facially invalid under the New York Rules of Professional Conduct, including Rule 5.6.

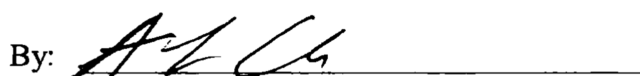
42. This Court has the power to stay an arbitration where, as here, any relief the arbitrator might grant would inevitably violate New York public policy.

43. The S&G Partners respectfully submit that they are entitled to an order permanently staying and enjoining the Arbitration pursuant to CPLR § 7503.

WHEREFORE, the S&G Partners respectfully request that the Court issue an order permanently restraining and enjoining Quinn Emanuel from prosecuting the Arbitration, and granting the S&G Partners such additional relief as the Court deems just and proper.

Dated: May 11, 2018

VLADECK, RASKIN & CLARK, P.C.

By: 

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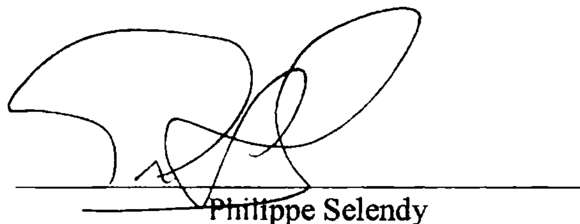
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PHILIPPE SELENDY, an attorney duly licensed to the practice of law before the Courts of the State of New York, pursuant to CPLR 2106, affirms the following to be true under penalty of perjury:

I am a partner of Selendy & Gay PLLC, and one of the petitioners in this action. I have read the foregoing Petition and know the contents thereof; the same is true to my knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

Dated: New York, New York
May 11, 2018



Philippe Selendy

Exhibit A

AMERICAN ARBITRATION ASSOCIATION

QUINN EMANUEL URQUHART & SULLIVAN, LLP, a California limited liability partnership, Claimant, vs. PHILIPPE SELENDY, FAITH GAY, DAVID ELSBERG, JENNIFER SELENDY, ANDREW DUNLAP, MARIA GINZBURG, SEAN BALDWIN, CHRISTINE CHUNG, JORDAN GOLDSTEIN AND YELENA KONANOVA, Respondents.	AAA Case No.: Locale Request: Los Angeles, California Case Manager:

DEMAND FOR ARBITRATION AND STATEMENT OF CLAIM

CONFIDENTIAL – NOT TO BE FILED IN ANY COURT WITHOUT PRIOR AUTHORIZATION FROM THE ARBITRATOR

Introduction

1. Claimant Quinn Emanuel Urquhart & Sullivan, LLP ("QEU&S" or the "Firm") brings this demand for arbitration against Respondents Philippe Selendy, Faith Gay, David Elsberg, Jennifer Selendy, Andrew Dunlap, Maria Ginzburg, Sean Baldwin, Christine Chung, Jordan Goldstein, and Yelena Konanova under Section 7.6 of the Second Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart & Sullivan, LLP (the "Partnership Agreement"), to obtain redress for Respondents' breach of contract.

2. On January 16, 2018, Respondents Philippe Selendy, Gay, Elsberg, Jennifer Selendy, and Dunlap gave notice by e-mail of their intention to withdraw from the Firm effective February 15, 2018 (the "Founder Respondents"). The Founder Respondents further declared their intention to form a new law firm named "Selendy & Gay PLLC" ("S&G"). In the following week, Ginzburg, Baldwin, Chung, Goldstein, and Konanova also provided notice and indicated their intention to join S&G.

3. Since starting S&G, Respondents have refused to honor their contractual obligations under the Partnership Agreement by refusing to pay to the Firm 10% of S&G's receipts from certain clients on certain matters, as required by the Partnership Agreement. By this Demand, the Firm seeks an Award of damages and, if the Award issues before Respondents' contractual obligation ends or their

full liability can be determined, a declaration that Respondents are obligated to honor the provision of the Partnership Agreement that is the subject of this Demand.

THE PARTIES

4. Claimant Quinn Emanuel Urquhart & Sullivan, LLP is a partnership organized under the laws of the State of California with its principal place of business at 865 S. Figueroa St., 10th Floor, Los Angeles, California 90017.

5. Respondents Philippe Selendy, Faith Gay, David Elsberg, Jennifer Selendy, Andrew Dunlap, Maria Ginzburg, Sean Baldwin, Christine Chung, Jordan Goldstein, and Yelena Konanova are all former partners in the Firm and signatories to the Partnership Agreement.

JURISDICTION AND APPLICABLE LAW

6. Section 7.6 of the Partnership Agreement provides that any dispute "between any one or more partners, on the one hand, and the Partnership on the other, with respect to th[e] Partnership Agreement, the conduct of the affairs of the Partnership or any other matter related thereto, whether in contract, tort, equity, or otherwise . . . shall be resolved exclusively through an arbitration proceeding conducted pursuant to the Commercial Rules of the American Arbitration Association and the supplementary Procedures for Large Complex Cases."

7. Section 7.6 also provides that such an "arbitration shall be conducted on a confidential basis in a private office or other private facility in Los Angeles, California . . . ."

8. Section 7.6 further provides that the "arbitrator shall have jurisdiction to determine the arbitrability of any dispute."

9. Section 7.5 of the Partnership Agreement provides that the agreement is governed by California law.

FACTUAL ALLEGATIONS

I. The Partnership Agreement

10. All Firm partners are signatories to the Second Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart & Sullivan, LLP, effective October 15, 2013 (the "Partnership Agreement").[1] Respondents signed and are bound by the Partnership Agreement.

11. Section 5.1 of the Partnership Agreement includes terms for the voluntary withdrawal by a partner from the Firm. Under Section 5.1(a)(i), "any partner may voluntarily withdraw from the Partnership" so long as that "withdrawing partner provides at least 30 days' prior written notice to the Partnership." Withdrawal is effective "upon the effective date specified in such notice."

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[1] The Partnership Agreement is attached as Exhibit A.

12. Under Section 5.1(a)(iii) if, within eighteen months of a partner's voluntary withdrawal, he or she "performs any legal services in any case or other matter venued within 100 miles of any office of the Partnership for any client who was a client of the Partnership prior to the effective date of such withdrawal, and for which he [or she] or his [or her] new enterprise performed no legal services prior to the date the withdrawing partner first became an employee or partner of the Partnership, then the partner so withdrawing shall pay to the Partnership, as a reasonable estimate of the harm caused to the Partnership and the other partners . . ., a sum equal to 10% of the total fees billed by him [or her] and/or his [or her] new enterprise from that client for services rendered by them, or any of them, during the eighteen (18) month period following the effective date" of the withdrawal.

II. Respondents' Notice of Withdrawal and Plan to Form a Competing Enterprise

13. The Founder Respondents provided written notice of their withdrawal from the partnership and the Firm by e-mail dated January 16, 2018. They designated February 15, 2018 as the effective date of their withdrawal.

14. In the same e-mail, the Founder Respondents disclosed that, following the effective date of their withdrawal, they would begin to engage in the practice of law through a new law firm called Selendy & Gay PLLC.

15. Ginzburg, Baldwin and Chung provided written notice of their withdrawal from the partnership and the Firm by e-mail dated January 17, 2018. Goldstein and Konanova provided written notice of the same by e-mails on January 18 and 22, 2018. All Respondents departed on February 15, 2018.

III. Respondents' Willful Breach of the Partnership Agreement

16. Following Respondents' departure, QEU&S demanded that Respondents perform their obligations under Section 5.1(a)(iii) of the Partnership Agreement and requested that S&G provide a monthly report of their revenue generated from former QEU&S clients, as well as remit 10% thereof as required by that provision.

17. On March 30, 2018, Respondents stated that they refused to honor their obligations under Section 5.1(a)(iii), asserting that the provision was unenforceable as a matter of public policy under New York law. Respondents conceded that this provision is enforceable under California law, which governs the Partnership Agreement.

18. Respondents are sophisticated lawyers and understood the terms of the Partnership Agreement when they signed it. They have also accepted the substantial benefits they received pursuant to that agreement. At no time prior to their departure from the Firm did Respondents claim Section 5.1(a)(iii) was

unenforceable, or that they had any objection to the application of California law in resolving disputes under the Partnership Agreement.

19. The headquarters of QEU&S is, and always has been, California. The firm was founded in California and, for a significant period, had only California offices.

20. The majority of QEU&S partners are in California.

21. Virtually every QEU&S partnership meeting has been held in California.

22. QEU&S is a California LLP.

23. The founder and managing partner of the firm, who has significant operational control, is in Los Angeles, California.

24. Compensation is determined in California.

25. All financial, human resources, and other back office operations are based in California.

FIRST CAUSE OF ACTION
(For Breach of Contract)

26. Claimant incorporates by reference all facts and allegations contained in paragraphs 1-25.

27. The Partnership Agreement expressly provides that following a partner's withdrawal, for any client who was a client of the Partnership before the effective date of the withdrawal, and for which neither the withdrawing partner nor

his or her new enterprise performed any legal services before the date he or she became an employee or partner of the Firm, the Firm is entitled to a sum equal to 10% of the total fees billed by a withdrawing partner and/or his or her new enterprise on matters venued within 100 miles of a Firm office, for a period of eighteen months.

28. Since their withdrawal from the Firm, Respondents and S&G have performed legal services and thereby generated fee receipts from Firm clients for whom Respondents performed no legal services before their becoming employees or partners of the Firm on matters that are subject to the terms of Section 5.1(a)(iii).

29. Claimant has made a demand that Respondents comply with their obligations under Section 5.1(a)(iii). Respondents have refused to do so, and have stated their intention to continue to refuse to do so.

30. By failing to make the payments required by Section 5.1(a)(iii), Respondents have breached the Partnership Agreement. The Firm is accordingly entitled to an Award in an amount to be determined by the Arbitrator, but not less than 10% of all fees billed on matters venued within 100 miles of a Firm office through July 16, 2019 by Respondents and/or S&G to any client who was a client of the Partnership before the effective date of Respondents' withdrawal and for

which Respondents had not performed any legal services before the date they became employees or partners of the Firm.

SECOND CAUSE OF ACTION
(For Declaratory Relief)

31. Claimant incorporates by reference all facts and allegations contained in paragraphs 1-30.

32. An actual controversy exists between QEU&S and Respondents in that the Firm contends Respondents are obligated to comply with Section 5.1(a)(iii) of the Partnership Agreement. Respondents dispute such obligation.

33. In the event the Arbitrator issues an Award in favor of the Firm before Respondents' obligations under Section 5.1(a)(iii) of the Partnership Agreement end or can be fully quantified, the Firm requests an Award declaring that Respondents are obligated to comply with such provision.

PRAYER FOR RELIEF

WHEREFORE, Claimant seeks entry of an Award in its favor upon such terms and in an amount to be determined following a full and fair hearing, including without limitation:

(a) A monetary award for those sums owing as of the date of the Award;

(b) A declaration that QEU&S is entitled to payment equal to 10% of the total revenue received by S&G and/or Respondents on account of all matters venued within 100 miles of a Firm office for all former QEU&S clients not represented by Respondents before joining the Firm, for a period of 18 months following February 15, 2018;

(c) Prejudgment interest; and

(d) For such other and further relief as the Arbitrator finds just and proper.

DATED: April 24, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

WILLIAM C. PRICE
BRUCE E. VAN DALSEM

By /s/ William C. Price
William C. Price
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017

Attorneys for Claimant Quinn Emanuel Urquhart & Sullivan, LLP

Exhibit B

SECOND AMENDED AND RESTATED PARTNERSHIP AGREEMENT OF QUINN EMANUEL URQUHART & SULLIVAN, LLP

00811.GL578/5103977.2

SECOND AMENDED AND RESTATED

PARTNERSHIP AGREEMENT

This Second Amended and Restated Partnership Agreement is made as of the 15th day of October, 2013, by and among the undersigned partners of Quinn Emanuel Urquhart & Sullivan, LLP, formerly known as Quinn Emanuel Urquhart Oliver & Hedges, LLP, with reference to the following facts:

A. The undersigned are all of the partners of Quinn Emanuel Urquhart & Sullivan, LLP, (the "Partnership") pursuant to that certain partnership agreement, dated as of January 1, 1994 as amended by a First Amendment to Partnership Agreement, dated as of April 27, 1999, and a Second Amendment to Partnership Agreement, dated as of April 27, 1999.

B. To reflect all of the foregoing amendments and to adopt certain additional amendments, the Partnership adopted a First Amended and Restated Partnership Agreement dated as of August 24th, 2000. (hereinafter the "Partnership Agreement").

C. The partners wish to create a Second Amended and Restated Partnership Agreement, as provided herein.

THEREFORE, IT IS AGREED that the Partnership Agreement is hereby further amended and restated in its entirety to read as follows:

ARTICLE I.
Definitions.

The term "partner" shall mean each of the undersigned and each other person that may hereafter be admitted as a partner of the Partnership, in each case for so long as such person remains a partner of the Partnership.

The term "capital account" shall mean the capital account of each partner determined strictly in accordance with the regulations of the United States Treasury Department pertaining to the income tax.

The terms "net profits" and "net losses" for any fiscal period shall mean the net income and net loss, respectively, of the Partnership determined strictly in accordance with federal income tax principles.

References in this Partnership Agreement to "Articles," "Sections," "Exhibits" and "Schedules" shall be to the Articles, Sections, Exhibits and Schedules of this Partnership Agreement, unless otherwise specifically provided; all Exhibits and Schedules to this Partnership Agreement are incorporated herein by reference; any of the terms defined in this Partnership Agreement may, unless the context otherwise requires, be used in the singular or the plural and in any gender depending on the reference; the words "herein", "hereof" and "hereunder" and words of similar import, when used in this Partnership Agreement, shall refer to this Partnership Agreement as a whole and not to any particular provision of this Partnership Agreement; and except as otherwise specified in this Partnership Agreement, all references in this Partnership

Agreement (a) to any person shall be deemed to include such person's heirs, personal representatives, successors and permitted assigns; (b) to any agreement, any document or any other written instrument shall be a reference to such agreement, document or instrument together with all exhibits, schedules, attachments and appendices thereto, and in each case as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof; and (c) to any law, statute or regulation shall be deemed references to such law, statute or regulation as the same may be supplemented, amended, consolidated, superseded or modified from time to time.

ARTICLE II.
The Partnership and the Interests of the Partners.

Section 2.1 Purpose and Name. The purpose of the Partnership shall be to engage in the general practice of law. The name of the Partnership shall be changed from QUINN EMANUEL URQUHART & HEDGES, LLP to QUINN EMANUEL URQUHART & SULLIVAN, LLP (as an LLP in the United States and in any other corporate form required by a non-U.S. jurisdiction in which the firm maintains an office) and such name shall be continued and maintained by the Partnership so long as the use thereof is both legal and ethical.

Section 2.2 Registered Limited Liability Partnership. The Partnership is and shall remain a registered limited liability partnership organized under Article 3 of the California Uniform Partnership Act of 1994, as amended. Notwithstanding anything else stated in this Partnership Agreement to the contrary, subject only to the provisions of subsections (d), (e), (f) and (h) of Section 16306 of the California Corporations Code, no partner of the Partnership shall be liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise for any debts, obligations or liabilities of or chargeable to the Partnership or another partner in the Partnership, whether arising in tort, contract or otherwise, that are incurred, created or assumed by the Partnership while the Partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the Partnership. Any provision of this Partnership Agreement which is inconsistent with the foregoing shall be of no force or effect. Furthermore, any provision of this Partnership Agreement relating to the allocation of the Partnership's losses among the partners shall have effect solely for tax and capital account purposes and shall not be construed as creating any liability of any partner in derogation of the protections afforded to that partner by the provisions of Section 16306(c) of the California Corporations Code, nor shall any partner be obligated, for any reason or at any time, to contribute additional capital to the Partnership or to restore any negative balance in such partner's capital account if the same would nullify, limit or alter in any way the protections afforded to that partner by the provisions of Section 16306(c) of the California Corporations Code.

Section 2.3 Term. The term of the Partnership shall continue indefinitely until the Partnership is dissolved in accordance with the requirements of ARTICLE VI.

Section 2.4 Interests of the Partners; Personal Property. A partner's interest in the Partnership is limited solely to his capital account, and no partner shall have any ownership rights with respect to any of the Partnership's assets, including, but not limited to, the invested capital of the Partnership, the Partnership name (and any other firm name as may hereafter be

adopted by the Partnership), or any leasehold interests, law books, receivables, work in process, real property, office furniture, equipment, supplies, goodwill, fees earned, services rendered or profits of the Partnership (collectively, the "Partnership Assets").

Section 2.5 Interest in Partnership and Right to Payments are Nontransferable. No partner shall have any right or power, nor shall he attempt, to sell, assign, bequeath, give, mortgage, pledge or otherwise encumber or dispose of his interest in the Partnership or his right to receive any monthly or other distributions or payments from the Partnership.

Section 2.6 Exclusive Services. No partner shall engage in the practice of law except as a member of the Partnership and for its account. Each partner shall devote as much time to the Partnership business as the services assigned to him reasonably require, and no partner shall engage in any business, charitable, political, civic or other similar activity that will require amounts of his time sufficient to interfere with the performance by him of his normal functions for the Partnership, without first obtaining the consent of the partners.

Section 2.7 Termination of Partnership Interest. Upon the date a partner ceases to be a partner of the Partnership for any reason, his entire interest in the Partnership shall cease, he shall not have any ownership rights with respect to any of the Partnership Assets and he shall only be entitled to receive the payments specified in Section 5.3(a) in respect of his former interest as a partner.

ARTICLE III.
Net Profits and Net Losses: Distributions: Capital Accounts.

Section 3.1 Participation in Net Profits and Net Losses. Net profits and net losses of the Partnership for income tax purposes shall be allocated as determined by the partners from time to time pursuant to Section 3.2.

Section 3.2 Distributions. Partners shall receive monthly draws in amounts determined from time to time by the partners. Whenever the Partnership has cash funds available for distribution in excess of drawing accounts, the distribution thereof shall be as determined by the partners from time to time.

Section 3.3 Capital Accounts. At the end of each fiscal year of the Partnership, each partner shall have credited to his capital account the amount of his share of the Partnership net profits (or net losses) for such year, determined as provided in Section 3.1, and at the time of each distribution of cash or other property to the partners, there shall be debited to the capital account of each partner the amount of the cash or the fair value of the other property so distributed to such partner.

Section 3.4 Costs and Expenses. The firm expects partners to directly assume some of the costs associated with maintaining a successful law practice. This may include, among other things, certain business and professional expenses incurred, including but not limited to business development expenses that have not been charged to the client, bar dues and professional organization expenses, computer equipment and accessories that are not located in their firm office and extraordinary furnishings for individual offices. In addition, the firm may not reimburse partners for additional non-client chargeable cell phone or internet charges above

the monthly allowance, although partners are expected to be available and reachable when they are out of the office.

ARTICLE IV.
Management of the Partnership.

Section 4.1 Management; Action Without a Meeting; Meetings. Except for such day-to-day operating decisions taken in the ordinary course of the Partnership's business which are delegated to John B. Quinn and Richard A. Schirtzer or such other specific partners as may be designated in the future, including the authority to sign all the documents required for the process of registration of a Branch of the Partnership and for the process of opening, managing and closing of bank accounts of the Partnership, and except as otherwise specifically provided in this Partnership Agreement, all decisions or actions of the Partnership shall require the affirmative vote or written consent of a majority of all the partners. Whenever in this Partnership Agreement reference is made to an act or determination "of the partners" or to the affirmative vote or written consent "of the partners," such reference shall mean (a) the affirmative vote of at least a majority in number of all the partners, whether or not present at the Partnership meeting at which the vote is taken, or (b) if the action is taken by written consent without a meeting, the written consent of at least a majority in number of all the partners. Meetings of the partners may be held in person and/or by audio or video conference. Notwithstanding the foregoing, the admission of a new partner to the Partnership shall require the affirmative vote or written consent of at least sixty-six and two-thirds percent (66 2/3%) of the partners who are in attendance, in person or by telephone, at the annual meeting in which new partners are elected. All other matters related to the consideration of candidates for partners on which votes are taken at the annual meeting(s), including any vote to defer consideration of a candidate for partnership, shall require the affirmative vote or written consent of a majority of the partners in attendance, by person or telephone. For any voting at the annual meeting(s) to be valid, a quorum of seventy – five percent (75%) of the total number of partners in the Partnership must be present, either in person or by telephone.

Section 4.2 Contractual Obligations. While the Partnership is a registered limited liability partnership, the Partnership may not, without first obtaining the affirmative vote or written consent of at least sixty-six and two-thirds percent (66 2/3%) of all the partners, enter into any obligation whatsoever if the recourse of the person or entity to whom that obligation is owed is not limited to the assets of the Partnership, whether by contract, the provisions of Section 16306(c) of the California Corporations Code or otherwise.

Section 4.3 Accounting. The financial books of the Partnership shall be kept on the cash receipts and disbursements basis and otherwise in accordance with generally accepted accounting principles or as required by local statute on a fiscal year basis. The fiscal year of the Partnership shall be January 1 to December 31.

ARTICLE V.
Withdrawal or Disassociation from the Partnership.

Section 5.1 Voluntary.

(a) Withdrawal.

(i) So long as the withdrawing partner provides at least 30 days' prior written notice to the Partnership, any partner may voluntarily withdraw from the Partnership. The withdrawing partner shall cease to be a partner upon the effective date specified in such notice.

(ii) In connection with a partner's withdrawal pursuant to Section 5.1(a)(i), the withdrawing partner shall not inform clients of the Partnership of his intended withdrawal except as follows: after the withdrawing partner has provided notice to the Partnership, in accordance with section 5.1(a)(i), of his intent to withdraw, the withdrawing partner shall, in conjunction with a representative of the Partnership to be designated by the remaining partners, jointly inform any clients of the Partnership designated by the Partnership or by the withdrawing partner of the withdrawing partner's intention to withdraw, and of the fact that the client receiving the information may elect to remain with the Partnership, or may choose to seek legal services from the withdrawing partner. The information may be given by letter or by a meeting or telephone call, as determined by the Partnership, in its sole discretion. After the withdrawing partner's resignation has become effective pursuant to Section 5.1(a)(i), then the foregoing limitation on advising clients of the Partnership of the withdrawing partner's withdrawal shall cease to apply.

(iii) If a partner voluntarily withdraws from the Partnership, and if, at any time within eighteen (18) months after the effective date of such withdrawal, he, or any enterprise which he joins, performs any legal services in any case or other matter venued within 100 miles of any office of the Partnership for any client who was a client of the Partnership prior to the effective date of such withdrawal, and for which he or his new enterprise performed no legal services prior to the date the withdrawing partner first became an employee or partner of the Partnership, then the partner so withdrawing shall pay to the Partnership, as a reasonable estimate of the harm caused to the Partnership and the other partners by his withdrawal as a result of the loss of fees which would otherwise have been received from the Partnership's clients taken by him, a sum equal to 10% of the total fees billed by him and/or his new enterprise from that client for services rendered by them, or any of them, during the eighteen (18) month period following the effective date of his withdrawal from the Partnership. Such sum shall be paid on an on-going, pro-rata basis, within 30 days of the receipt of any such fees from any such client. The foregoing remedy shall be in addition to, and not in lieu of, any other rights or remedies available to the Partnership or the other partners arising from a partner's withdrawal from the partnership. Furthermore, to the extent that any such funds are due to the Partnership at any time when any amounts are payable to the withdrawing partner in respect of his capital account pursuant to Section 5.3(a), then the amount so due to the Partnership may be offset against the payment otherwise due to the withdrawing partner. Any sums later

becoming due to the Partnership hereunder shall be paid within thirty (30) days of their becoming due.

(b) Leave of Absence. By action of the other partners, any partner may at his request be granted a leave of absence for any definite period of time and for any specific purpose (including but not limited to service in the Armed Forces), and the partners may extend or terminate such leave of absence with or without cause. During all or any portion of such leave of absence, the partners may cause to be distributed to him all or a portion of the distributions of cash or other property he would have received had he not been on such leave of absence, and the partners may impose such other terms and conditions as they, in their discretion, deem appropriate or desirable. Upon the effective date of any such leave of absence, he shall cease to be a partner, but if he desires to be reinstated on or prior to the expiration of such leave of absence, he may be restored to the status of a partner if he has not become incapacitated or otherwise unable to engage in the full time practice of law, and such restoration shall not be deemed to be the admission of a new partner.

Section 5.2 Involuntary.

(a) Loss of Authority to Practice Law. Any partner who ceases for any reason to be authorized to practice law by any appropriate jurisdiction, shall automatically cease to be a partner as of the effective date of such loss of authorization.

(b) Compulsory Termination. Any partner may be terminated from the Partnership at any time for any reason, with or without cause, by the affirmative vote or written consent of at least sixty-six and two-thirds percent (66 2/3%) of the other partners. Such termination shall be effective immediately upon the service of notice of such action upon him.

Section 5.3 Rights and Obligations upon Withdrawal or Other Disassociation.

(a) Payment of Capital Account. Within one (1) year after the date a partner ceases to be a partner under any of the provisions of this ARTICLE V or for any other reason, there shall be paid to him the amount of his capital account as shown on the Partnership's books and records as of the end of the month in which he ceased to be a partner, less any unpaid balance of accounts receivable then due from him to the Partnership (including any amounts due from him under Section 5.1(a)(ii)), and less the amounts of any accounts receivable then due to the Partnership from clients with respect to bills issued by him on behalf of the Partnership prior to his withdrawal or other disassociation from the Partnership.

(b) No Priorities of Partners. Except as otherwise specified in Section 5.3 with respect to payments upon withdrawal or other disassociation from the Partnership, no partner shall have a priority over any other partner as to any distribution of cash or other property of the Partnership, whether by way of return of capital or by way of profits, or as to any allocation of net profits or net losses for income tax purposes.

(c) Liability for Certain Claims Against the Partnership. If, after a partner ceases to be a partner of the Partnership for any reason, the Partnership satisfies a claim or liability arising from a negligent or willfully wrongful act or omission of such partner, the Partnership and the other partners, to the extent that such liability or claim is not fully

reimbursed by insurance proceeds, shall not be precluded from recovering from such partner or his heirs, personal representatives or successors any losses, costs or damages occasioned thereby to the Partnership or the other partners.

(d) Limitation of Partnership's Right Against Partners. The Partnership shall have no right to recover from any partner by virtue of any claim or liability against the Partnership arising from the acts or omissions of such partner to the extent that such claim or liability is fully reimbursed to the Partnership by insurance carried by the Partnership.

ARTICLE VI.
Dissolution of Partnership; Distribution Upon Liquidation.

Section 6.1 By Written Agreement. The Partnership may be dissolved upon the affirmative vote or written consent of the partners.

Section 6.2 Waiver of Action for Partition or Dissolution. Each of the partners irrevocably waives during the term of the Partnership and during any period of winding up and dissolution of the Partnership any right he may have to maintain any action for partition with respect to the property of the Partnership, or to obtain dissolution of the Partnership in any other manner or upon the happening of any other event.

Section 6.3 Changes in Partners; Dissolution or Merger of Partnership. The admission, death, permanent disability, withdrawal, termination, retirement or leave of absence of a partner shall not cause a dissolution of the Partnership. Rather, the Partnership business and the Partnership itself shall survive and continue notwithstanding any such event, and the remaining partners shall have the exclusive right to continue the Partnership under the name of "QUINN EMANUEL URQUHART & SULLIVAN, LLP" or any other name then used by the Partnership. Furthermore, the merger (by transfer of assets, operation of law or otherwise) of the Partnership into another law partnership, whether or not the Partnership is the surviving entity, if effected upon the affirmative vote or written consent of the partners, shall not constitute a dissolution of the Partnership for these purposes.

Section 6.4 Distribution Upon Liquidation. Distributions of the net assets of the Partnership in the event of any liquidation of the Partnership shall be made to each of the partners, after repayment of the capital accounts of the partners as they existed at the conclusion of the fiscal year immediately preceding the date of dissolution of the Partnership, in proportion to the ratio of the net profits of the Partnership allocated among the partners for the three (3) fiscal years immediately preceding the date of dissolution, determined as hereinafter set forth. Such ratio shall be computed for a partner who has been a partner for the three (3) preceding fiscal years by averaging the net profits of the Partnership (but not the net loss, if any, for any fiscal year) allocated to that partner for each of the three (3) fiscal years immediately preceding the date of dissolution. For a partner who has been a partner for less than three (3) years, such ratio shall be computed by averaging the net profits allocated to that partner on the same basis as provided above for each fiscal year during which he was a partner.

Section 6.5 No Liability. No partner shall have any liability to the Partnership, any other partner or any creditor of the Partnership on account of any deficit balance in his capital account.

ARTICLE VII.
Miscellaneous Provisions.

Section 7.1 On Whom Binding and for Whose Benefit. This Partnership Agreement shall be binding upon and, except as otherwise provided herein, shall inure to the benefit of each of the partners and each of their respective heirs, personal representatives, spouses, and successors; provided, however, that no third person, including, but not limited to, a person designated as a beneficiary of a partner prior to the death of such partner, has or shall obtain any rights or interests in or under the provisions of this Partnership Agreement. Each partner by signing this Partnership Agreement agrees that he is hereby binding the community properly interest of his spouse, if any, in his interest in the Partnership and represents that he has and will maintain the sole management power with respect thereto.

Section 7.2 Obligations of Successor of the Partnership. The obligations of the Partnership arising under or referred to in this Partnership Agreement shall also be binding upon any law firm or corporation formed principally for the purpose of the practice of law in which a majority in number of the partners are or become partners, members, associates, employees or stockholders.

Section 7.3 Indemnification. The Partnership shall defend, indemnify and hold harmless any partner (including a former partner) from and against any and all losses, claims, damages and liabilities, joint or several, incurred by such partner and arising from or in connection with the conduct of the business of the Partnership, provided, however, that:

(a) counsel representing any partner pursuant to this provision shall be selected by the Partnership;

(b) no partner shall be entitled to indemnification under this provision for any losses, claims, damages, liabilities, costs or expenses so incurred which arise from that partner's own willful acts or omissions undertaken or omitted in bad faith, or in willful or reckless disregard of established standards of professional care and competence;

(c) no partner shall be entitled to indemnification under this provision if that partner refuses or fails to cooperate fully with the Partnership in connection with the defense of any related claim, circumstance or legal proceeding of any kind against the Partnership; and

(d) the right of indemnification created hereby is intended to be a right against the Partnership and its assets only, and no other partner shall be required to contribute any amount to any such indemnification or reimbursement or to any Partnership loss created thereby.

The foregoing indemnification provision is intended to benefit only the parties hereto (and their respective heirs, personal representatives and successors) and not to create any rights in third parties.

Section 7.4 Amendment of Partnership Agreement. This Partnership Agreement may be amended at any time or from time to time by the affirmative vote or written consent of the partners.

Section 7.5 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Subject to the provisions of Section 7.6, any suit brought hereon, whether in contract, tort, equity or otherwise, shall be brought in the state or federal courts sitting in Los Angeles, California, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper.

Section 7.6 Arbitration. In the event of any dispute between or among any partners or between any one or more partners, on the one hand, and the Partnership on the other, with respect to this Partnership Agreement, the conduct of the affairs of the Partnership or any other matter related thereto, whether in contract, tort, equity or otherwise, and whether arising from facts or circumstances first existing before or after the adoption of this arbitration provision by the partners, such dispute shall be resolved exclusively through an arbitration proceeding conducted pursuant to the Commercial Rules of the American Arbitration Association and the supplementary Procedures for Large Complex Cases. The arbitration shall be conducted before a single arbitrator appointed either by agreement of the parties (to be made not later than 20 days after the filing of a response to the last-filed arbitration demand), or, failing that, from the Commercial Large Complex Case Panel of the American Arbitration Association. The arbitration shall be conducted on a confidential basis in a private office or other private facility in Los Angeles, California and shall be agreed to by the parties (or selected by the arbitrator if the parties cannot agree). All matters pertaining to the arbitration shall be kept strictly confidential, and any party may have an interim order to that effect made by the arbitrator, or as appropriate a court having jurisdiction during the pendency of the arbitration proceeding. An order preserving the confidentiality of all matters relating to the arbitration shall be included in the final award, and said award shall become part of any judgment entered thereon by a court of appropriate jurisdiction. Any arbitration claim must be filed within one year after the dispute arises. This period shall be treated as a statute of limitations under California law and the arbitrator shall not have jurisdiction to decide, on the merits, any claim which is not duly filed with the AAA within this limitations period. The arbitrator shall have jurisdiction to determine the arbitrability of any dispute. The arbitration hearings shall be held (including the completion of submission of evidence, motions, arguments and briefing) within one year of the date of filing of the last affirmative claim in the arbitration proceeding. The final award in the arbitration shall be binding on the parties and may be specifically enforced by legal proceedings, including but not limited to entry of a judgment on the award by any court of appropriate jurisdiction. The arbitrators' fees shall be borne equally by the parties to the arbitration, and each party will be responsible for paying his or her own costs for the arbitration, including but not limited to attorneys' fees, witness fees, transcript costs or other expenses. The obligation to arbitrate any such dispute will survive any partner's disassociation from the Partnership.

Section 7.7 Purpose of Headings and Table of Contents References. The Article and Section headings hereof are for convenience only and are not intended nor shall they be used to interpret or modify the provisions of this Partnership Agreement.

Section 7.8 Number of Executed Copies and Authentication of Balance. This Partnership Agreement and any amendment or supplement hereto shall be executed at least in triplicate. One executed copy of this Partnership Agreement and of any amendment and supplement hereto shall be maintained in the files of the Partnership

Section 7.9 Use of Pronouns. The masculine pronoun as used herein shall include the feminine and the neuter where the context requires.

Section 7.10 Effective Date. This Second and Amended Partnership Agreement shall become effective as of September 3, 2013, and is intended to supersede any and all other partnership agreements among the partners of the Partnership.

IN WITNESS WHEREOF, the parties hereto have executed this instrument effective as of October 15, 2013.

Exhibit C

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

PHILIPPE SELENDY, FAITH GAY, DAVID ELSBERG, JENNIFER SELENDY, ANDREW DUNLAP, MARIA GINZBURG, SEAN BALDWIN, CHRISTINE CHUNG, JORDAN GOLDSTEIN AND YELENA KONANOVA v. QUINN EMANUEL URQUHART & SULLIVAN, LLP	Index No. ____________________ **DECLARATION OF HAL R. LIEBERMAN**

I, Hal R. Lieberman, declare as follows:

1. I submit this declaration in connection with a Petition to Stay Arbitration filed by Philippe Selendy, Faith Gay, David Elsberg, Jennifer Selendy, Andrew Dunlap, Maria Ginzburg, Sean Baldwin, Christine Chung, Jordan Goldstein, and Yelena Konanova (the "Selendy & Gay Partners").

2. I have been asked by counsel for the Selendy & Gay Partners to provide an opinion regarding whether the forfeiture-for-competition provision in the Second Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel Partnership Agreement"), as described more fully below, is ethical under New York law. My opinion is that it is not ethical under New York law.

3. I have also been asked by counsel for the Selendy & Gay Partners to provide an opinion regarding whether "no-poach" agreements, or agreements not to recruit associates and staff from another law firm, are ethical under New York law. My opinion is that it is not ethical under New York law.

Qualifications

4. I have worked in the field of legal ethics and attorney discipline on a full-time basis for more than thirty years, during nearly ten of which (from January 1989 until June 1998) I held the position of Chief Counsel to the Departmental Disciplinary Committee (the "Committee") for New York's First Judicial Department (covering approximately 75,000 lawyers in Manhattan and the Bronx). As Chief Counsel to the Committee, I reviewed literally thousands of lawyer disciplinary matters, including numerous cases involving interpretation of the lawyer disciplinary rules and rules of professional conduct concerning, among other things, restrictions on a lawyer's right to practice. During the same period, I formally prosecuted more than 50 cases involving lawyer misconduct, and personally handled hundreds of less serious matters.

5. Further, in my capacity as Chief Counsel to the Committee I provided my professional opinion on legal ethics and disciplinary issues on numerous occasions to Justices of the Appellate Division and the Appellate Term, to the New York Office of Court Administration, to other state and federal judges (including, frequently, the Chair of the Grievance Committee for the Southern District of New York), to lawyer and non-lawyer members of the Committee, to bar committees, and to members of the bar who sought my advice.

6. For thirteen years I was a member of the adjunct faculty of Brooklyn Law School, where I taught a course entitled The Legal Profession, was recently an Adjunct Professor at Columbia Law School teaching legal ethics, and have been a visiting lecturer on legal ethics at a number of other law schools.

7. I have also published articles for professional journals on legal ethics and professional discipline, have lectured widely in the field, and have served on New York State,

New York City and New York County bar committees concerned with professional discipline and professional responsibility.

8. I am a current member of the Committee on Professional Ethics of the New York City Bar Association, a past member of the Committee on Professional Responsibility of the New York City Bar Association, the principal author of N.Y. City Op. 2000-1 (2000), and I was Chair of the Committee on Professional Discipline of the New York City Bar Association from 2001-2004.

9. I am co-author of the recently published book NEW YORK ATTORNEY DISCIPLINE: PRACTICE AND PROCEDURE (ALM, 2017). I am also a regular columnist for the New York Law Journal on the subject of Professional Discipline.

10. A complete list of my qualifications is set forth in my *curriculum vitae*, which is attached to this Declaration as Exhibit A.

11. Since 1998, I have provided expert testimony on legal ethics in approximately 45 cases, state and federal.

Factual Background

12. My opinions are based on the following facts, which I understand to be true and accurate:

13. The Selendy & Gay Partners were formerly partners at Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), working out of Quinn Emanuel's New York office. Each of the Selendy & Gay Partners is licensed to practice law in New York.

14. In January 2018, the Selendy & Gay Partners announced that they were departing Quinn Emanuel to form a new law firm, Selendy & Gay, PLLC, which has one office located at 1290 Avenue of the Americas, New York, NY 10104.

15. As partners at Quinn Emanuel, the Selendy & Gay Partners were parties to the Quinn Emanuel Partnership Agreement, which contains a section addressing voluntary departures from the Quinn Emanuel partnership. That Partnership Agreement contains the following provision:

> If a partner voluntarily withdraws from the Partnership, and if, at any time within eighteen (18) months after the effective date of such withdrawal, he, or any enterprise which he joins, performs any legal services in any case or other matter venued within 100 miles of any office of the Partnership for any client who was a client of the Partnership prior to the effective date of such withdrawal, and for which he or his new enterprise performed no legal services prior to the date the withdrawing partner first became an employee or partner of the Partnership, then the partner so withdrawing shall pay to the Partnership, as a reasonable estimate of the harm caused to the Partnership and the other partners by his withdrawal as a result of the loss of fees which would otherwise have been received from the Partnership's clients taken by him, a sum equal to 10% of the total fees billed by him and/or his new enterprise from that client for services rendered by them, or any of them, during the eighteen (18) month period following the effective date of his withdrawal from the Partnership.

(Quinn Emanuel Partnership Agreement, Section 5.1(a)(iii)). This type of provision is frequently referred to in ethics opinions and case law as a forfeiture-for-competition clause.

16. Quinn Emanuel filed a Demand for Arbitration in California, seeking to enforce Section 5.1(a)(iii) of the Quinn Emanuel Partnership agreement against the Selendy & Gay Partners in New York. Specifically, Quinn Emanuel asks the arbitrator for (i) a "monetary award for those sums owing" under that section "as of the date of the Award"; and (ii) a "declaration that [Quinn Emanuel] is entitled to payment equal to 10 % of the total revenue received by [Selendy & Gay] and/or [the Selendy & Gay Partners] on account of all matters venued within 100 miles of a Firm office for all former [Quinn Emanuel] clients not represented by [the Selendy & Gay Partners] before joining the Firm, for a period of 18 months following February 15, 2018."

17. During discussions regarding the S&G Partners' departure from Quinn Emanuel, John Quinn and Rick Werder on numerous occasions tried to solicit a "no poaching" agreement from the Selendy & Gay Partners, under which the Selendy & Gay Partners would agree not to recruit or hire any current Quinn Emanuel associates or staff. The Selendy & Gay Partners rejected these requests, and informed Mr. Quinn and Mr. Werder that, based on the Selendy & Gay Partners' review of the law, and supported by an opinion from an outside law firm, the requests violated the antitrust laws and ethical rules.

Relevant New York Rule of Professional Conduct

18. In evaluating whether Section 5.1(a)(iii) of the Quinn Emanuel Partnership Agreement is ethical and/or could be enforced against New York-licensed lawyers—and whether New York-licensed lawyers could ethically comply with that provision—one must examine New York RPC 5.6.[1] That Rule states, in relevant part:

> ***RPC 5.6: Restrictions on Right to Practice***
>
> (a) A lawyer shall not participate in offering or making:
>
> (1) a partnership, shareholder, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
>
> (2) an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a client controversy.
>
> (b) This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.
>
> Comment [1]
>
> An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except

[1] While Section 5.1(a)(iii) of the Quinn Emanuel Partnership Agreement likely runs afoul of other New York ethical rules, in this Declaration I focus solely on Rule 5.6.

for restrictions incident to provisions concerning retirement benefits for service with the firm.

Section 5.1(a)(iii) of the Quinn Emanuel Partnership Agreement Violates RPC 5.6(a)(1)

19. In my opinion Section 5.1(a)(iii) of the Quinn Emanuel Partnership Agreement violates New York RPC 5.6(a)(1) based on the plain language of the governing ethics rule in New York, and longstanding case law. Specifically, New York RPC 5.6(a)(1), concerning restrictions on the right to practice law, provides that a lawyer shall not participate in offering or making a partnership (or other similar type) agreement that restricts the right of a lawyer to practice after termination of the relationship created by the agreement (except an agreement concerning benefits upon retirement). In my opinion, Section 5.1(a)(iii) of the QE Partnership Agreement clearly violates New York RPC 5.6(a)(1) in this regard.

20. In a seminal case, *Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95 (1989), the New York Court of Appeals determined that a law firm partnership agreement which conditioned payment of earned but uncollected partnership revenues upon a withdrawing partner's obligation to refrain from the practice of law in competition with the former law firm restricted the practice of law in violation of the precursor to RPC 5.6(a)(1) under the former New York Code of Professional Responsibility, and, therefore, was unenforceable in those circumstances as against public policy. *Id.* at 96. In reaching its decision, the Court found that, while the provision in question did not expressly or completely prohibit a withdrawing partner from engaging in the practice of law, the significant monetary penalty it exacted, if the withdrawing partner practiced competitively with the former firm, constituted an impermissible restriction on the practice of law. *Id.* at 98.

21. Under New York law, forfeiture-for-competition clauses both restrict an attorney's ability to practice and a client's ability to select counsel of his or her choice. As the

Court in *Cohen* explained, "[t]he purpose of the rule is to ensure that the public has the choice of counsel." *Id.* Thus, "[t]he forfeiture-for-competition provision would functionally and realistically discourage and foreclose a withdrawing partner from serving clients who might wish to continue to be represented by the withdrawing lawyer and would thus interfere with the clients' choice of counsel." *Id.*

22. Comment 1 to RPC 5.6 is also instructive. It states that "[a]n agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer." *See also Denburg v. Parker Chapin Flatteau & Klimpl*, 82 N.Y.2d 375, 380 (1993) ("[R]estrictions on the practice of law, which include 'financial disincentives' against competition as well as outright prohibitions, are objectionable primarily because they interfere with the client's choice of counsel.").

23. It is my opinion, to a reasonable degree of professional certainty, that Section 5.1(a)(iii) of the Quinn Emanuel Partnership Agreement violates New York RPC 5.6, and that an arbitration order that the Selendy & Gay Partners comply with Section 5.1(a)(iii) would force them to violate RPC 5.6.

The No-Poaching Agreement Quinn Emanuel Sought to Obtain from the S&G Partners Violates RPC 5.6(a)(1)

24. As noted, RPC 5.6(a)(1) provides that a lawyer, with one exception not applicable here, shall not participate in offering or making a partnership (or other similar type) agreement that restricts the right of a lawyer to practice after termination of the relationship created by the agreement. In my opinion, the demand that the S&G Partners agree to refrain from hiring QE associates and staff violates RPC 5.6(a)(1) because, if adhered to, the S&G Partners would be participating in an agreement to restrict an attorney's right to practice.

25. Since Mr. Quinn and Mr. Werder are licensed to practice in New York, conduct on their part wherein the "predominant effect" occurs in New York would be governed by the New York Rules pursuant to RPC 8.5(b)(2)(ii).

26. Mr. Quinn's and Mr. Werder's demands that the S&G Partners, all of whom are licensed and work in New York, agree to refrain from hiring New York QE associates and staff to work in Selendy &Gay's New York office, plainly has its "predominant effect" in New York. Therefore, in my opinion, to a reasonable degree of professional certainty, Mr. Quinn and Mr. Werder are required to refrain from conduct proscribed by the New York Rules, including, *inter alia*, RPC 5.6(a)(1), and their conduct in that connection constitutes a violation of that Rule.

27. *Gibbs v. Breed, Abbott & Morgan*, 271 A.D.2d 180 (1st Dep't 2000), is a leading case on the issue of when a lawyer contemplating withdrawal from a firm can recruit internally. In *Gibbs*, the court stated that "[p]artners may not be restrained from inviting qualified personnel to change firms with them." *Id.* at 187, *citing Jacob v. Norris, McLaughlin & Marcus*, 128 N.J. 10, 30-31 (1992) (striking down provision which would prohibit partner from soliciting firm employees for a year after leaving the firm, and explaining that "[t]he 'practice of law' consists not only of lawyers' interactions with their clients, but also includes their interactions with colleagues. Agreements discouraging departing lawyers from contacting those lawyers with whom they would like to associate violate RPC 5.6."). The *Jacob* court concluded:

> The practice of law also involves seeking the best services for one's clients. In some cases, lawyers may believe that the interests of their clients will be hindered by agreements that prohibit the free flow of attorneys and paraprofessionals. An associate familiar with the complex facts of a major case for a client who chooses to follow a departing partner may be an irreplaceable asset to that case. If agreements discourage lawyers from soliciting such associates' continued assistance, attorneys may feel that their ability to represent their clients is being compromised. The same may be true of paraprofessionals. . . Accordingly, we conclude that the unrestricted "practice of law" includes the right to solicit both attorneys and those

> members of the paraprofessional staff that attorneys believe are necessary to provide the best legal service for their clients.

Jacob v. Norris, McLaughlin & Marcus, 128 N.J. at 31-32. *See Lampert, Housler & Rodham v. Gallant*, 2005 WL 1009522, at *7-8 (Mass. Super. Apr. 4, 2005) (court rejected a breach of fiduciary duty claim based on a partner's coordinated activity with an associate in planning and preparing for a move).

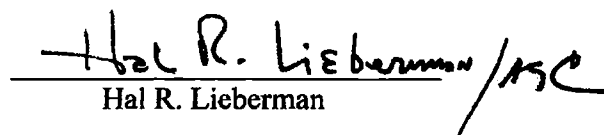
28. Similarly, the Restatement (Third) of the Law Governing Lawyers (ALI, 2000) states:

> With respect to other firm lawyers and employees, [lawyers] may plan mutual or serial departures from their law firm with such persons, so long as the lawyers and personnel do nothing prohibited to either of them (including impermissibly soliciting clients, as above) and so long as they do not misuse firm resources (such as copying files or client lists without permission or unlawfully removing firm property from its premises) or take other action detrimental to the interests of the firm or of clients, aside from whatever detriment may befall the firm due to their departure.

Restatement § 9, Cmt. [i].

29. It is my opinion to a reasonable degree of professional certainty that Quinn Emanuel's demand that the S&G Partners agree to refrain from hiring QE associates and staff violates RPC 5.6(a)(1).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 11th day of May, 2018.



Hal R. Lieberman

Exhibit D

From: John Quinn <johnquinn@quinnemanuel.com>
Date: January 28, 2018 at 6:50:19 PM EST
To: David Elsberg <davidelsberg@quinnemanuel.com>
Subject: Re: Please don't hire any of our associates

I think that's a good idea
The single most important thing you could do is agree not to poach any of our people
Your departure has already cost us a lot of money in more ways than you can imagine—and i am not talking about business that you will take with you. So it goes. We will live with that.
But you know we were already very short of associates and that remains true
I would extend myself to make sure everything goes more than smoothly if you wouldn't hire our people

John B. Quinn
Quinn Emanuel Urquhart & Sullivan, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: 213-443-3000
Facsimile: 213-443-3100
E-mail: johnquinn@quinnemanuel.com
Web: www.quinnemanuel.com
Twitter: @jbqlaw

"There is a wisdom that is woe; but there is a woe that is madness. And there is a Catskill eagle in some souls that can alike dive down into the blackest gorges, and soar out of them again and become invisible in the sunny spaces. And even if he forever flies within the gorge, that gorge is in the mountains; so that even in his lowest swoop the mountain eagle is still higher than other birds upon the plain, even though they soar."

--Herman Melville, Moby Dick

On Jan 28, 2018, at 6:45 PM, David Elsberg <davidelsberg@quinnemanuel.com> wrote:

John- I hope that we still have, and always will have, a friendly relationship. And the same goes for so many others at QE I've been friends with for a long time. Our friendship will not change, I hope, no matter what happens with these business issues.

I can tell you I haven't recruited any QE associates and my clear understanding is that nobody else has either (and that RW has been assured that what he said about that recruiter was incorrect).

I think it would make sense for there to be a conversation soon with you, Philippe, Faith, Rick and me about wrapping up the business issues, including issues relating to hiring associates after our notice period is over.

David

From: John Quinn
Sent: Sunday, January 28, 2018 5:30 PM
To: David Elsberg
Subject: Please don't hire any of our associates

We have a lot invested in them. Hire and train your own. The issues to be faced will be resolved a lot—ALOT—easier if you don't hire any of our people. It will not be well received at all if you hire any of our people. We can have a friendly relationship if you do what I ask. I will make sure.

John B. Quinn
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Facsimile: 213-443-3100
E-mail: johnquinn@quinnemanuel.com
Web: www.quinnemanuel.com
Twitter: @jbqlaw

"There is a wisdom that is woe; but there is a woe that is madness. And there is a Catskill eagle in some souls that can alike dive down into the blackest gorges, and soar out of them again and become invisible in the sunny spaces. And even if he forever flies within the gorge, that gorge is in the mountains; so that even in his lowest swoop the mountain eagle is still higher than other birds upon the plain, even though they soar."

--Herman Melville, Moby Dick

Exhibit E

January 19, 2018

Justice Dept. Is Going After 'No-Poach' Agreements

From Antitrust on Bloomberg Law

Stay current on the latest developments from agencies including the CFPB, Federal Reserve, FDIC, and OCC to advise clients on real-life regulatory situations.

By Eleanor Tyler

The Justice Department will soon announce criminal enforcement actions against companies that have "no-poach" agreements, the agency's top antitrust cop said Jan. 19.

"We've been very active" in reviewing potential violations of the antitrust law that take the form of agreements not to compete for workers, said Makan Delrahim, the DOJ's assistant attorney general for the antitrust division, at a conference sponsored by the Antitrust Research Foundation at George Mason University in Virginia.

"In the coming couple of months you will see some announcements," he said.

In Oct. 2016, the DOJ issued an " Antitrust Guidance for Human Resource Professionals." "Agreements among employers not to recruit certain employees or not to compete on terms of compensation are illegal," the guidance said. It also reminded companies that repercussions from such an antitrust violation can include criminal prosecution.

Corporate officers shouldn't be surprised by the forthcoming enforcement or the rules themselves. The DOJ's 2016 statement followed several high-profile lawsuits about no-poach agreements among the biggest Silicon Valley employers, saying the intent was to stifle demand for skilled workers and keep their wages lower.

The DOJ's guidance in 2016 was "less a guidance and more of a reminder," Delrahim said.

Even after the DOJ's clear statement on these agreements, Delrahim said there have been continued violations and they risk severe sanctions.

But if the DOJ knows of a no-poach agreement involving conduct before the 2016 guidance, it might bring civil complaints against the parties to that agreement, he said. If the parties continued their conduct after the DOJ's policy announcement, "we'll treat those as criminal," he said.

Private Litigation
Delrahim also said his division will be more active in private litigation. "We're actively looking" for cases that might make law on issues important to the division. When division attorneys find such cases, the DOJ will file briefs on the agency's view of the law.

The DOJ made its first foray into this initiative in November, when it filed an amicus brief in a lawsuit challenging a Seattle ordinance that allows ride-hailing drivers to unionize.

Such briefs, written not on behalf of one side or the other but as friendly assistance to the court, are important to the division because bad court decisions impact the division's enforcement, Delrahim said.

The DOJ enforces the "exact same law that private parties litigate," he said.

In the past, the antitrust division has been more reticent, filing briefs in private cases primarily when invited to do so. Now, Delrahim said, the agency won't necessarily wait for an invitation. If the case is important, the division will be more aggressive about weighing in on its view of what the law should be.

To contact the reporter on this story: Eleanor Tyler in Washington atetyler@bloomberglaw.com

To contact the editor responsible for this story: Fawn Johnson atfjohnson@bloomberglaw.com

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Exhibit F

February 6, 2018

Dear John and Rick,

As we said when we first spoke two weeks ago, our foremost objective has been to have a respectful and orderly process of separating, with no disruption to the service our clients expect and deserve, and in strict compliance with the terms of our partnership agreement. We have been scrupulous in adhering to that objective.

By contrast, there has been a string of breaches and false accusations made by your side. We have exercised forbearance in responding to your emails, Rick, in which you state or suggest that we have breached our fiduciary duties to the partnership. So that there is no confusion, the withdrawing partners disagree with each statement and each suggestion, categorically. It is now clear that your strategy has been to make such allegations to coerce the withdrawing partners into entering a "no poaching" agreement with QE.

At this point, you both have repeatedly asked the withdrawing partners to agree that, after our partnership with QE has ended and when we are working at our new firm, Selendy & Gay PLLC (S&G), S&G will refuse to accept applications from, solicit, or hire QE associates and staff. You have made clear that if we refuse to enter into such a "no poaching" agreement, QE will take retaliatory and punitive measures against us, including without limitation refusing to release our draws and initiating legal proceedings against us. You have also stated, both orally and in writing, that if the withdrawing partners accede to your demand that we enter into a "no poaching" agreement, you will refrain from taking such retaliatory actions against us and, instead, that things will go a lot easier for the withdrawing partners. For example, John, you sent emails saying:

> *Please don't hire any of our associates. We have a lot invested in them. Hire and train your own. The issues to be faced will be resolved a lot—A LOT—easier if you don't hire any of our people. It will not be well received at all if you hire any of our people. We can have a friendly relationship if you do what I ask. I will make sure.... The single most important thing you could do is agree not to poach any of our people.... I would extend myself to make sure everything goes more than smoothly if you wouldn't hire our people.*

Rick, you likewise asked us to agree "*not to hire away the best and the brightest.*" You listed as the first two items in your agenda for today's call the "poaching" of associates and staff.

Then, during the phone call this morning, John, you reiterated the "ask" that the withdrawing partners "*don't hire any of our people*" after we depart, reiterated that if we do recruit or hire or even accept applications from QE associates or other employees "*that will really send [you] around the bend*"; and stated that if the withdrawing partners accede to the no-poaching agreement, that would be what you terms a universal solvent that would go a long way towards resolving all related issues such as paying the draws that QE has withheld from the withdrawing partners.

It is a basic principle of antitrust law that entering into such a "no poaching" agreement, or requesting that another do so, constitutes serious misconduct that gives rise to both civil and criminal liability. *See* DOJ's 2016 Antitrust Guidance for Human Resource Professionals (https://www.justice.gov/atr/file/903511/download) ("DOJ Guidance"). Indeed, the DOJ Guidance includes Questions and Answers that are directly on point here, and we strongly encourage you both to read them.

Over the past few weeks—during the very same time period in which you have made your demands—it has been widely reported that the DOJ reconfirmed its longstanding position that "[a]greements among employers not to recruit certain employees or not to compete on terms of compensation are illegal"—and that the "Justice Department will soon announce criminal enforcement actions against companies that have 'no-poach' agreements." *See* "Justice Dept. Is Going After 'No Poach' Agreements," BNA, 1/19/18 (https://www.bna.com/justice-dept-going-n73014474358/).

In addition to civil and criminal antitrust laws, your conduct runs afoul of ethical principles as interpreted and enforced by the courts. *See, e.g., Nixon Peabody LLP v. De Senilhes, Valsamdidis*, 20 Misc. 3d 1145(A), 873 N.Y.S. 235 (Sup. Ct. Monroe Cty. 2008) (citing cases and holding unenforceable an agreement providing that neither firm in merger negotiations would poach associates from the other); *Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95, 99 (1989) (citing with approval ABA Informal Opinion No. 1417 (1978), which "prohibit[s] agreements forbidding arrangements for lawyer associates to accompany a withdrawing partner").

Your conduct also obviously constitutes material breaches of fiduciary duty both to the withdrawing partners and to all other QE partners.

By contrast, the withdrawing partners are fully comfortable defending our own actions since we gave notice of our intent to withdraw. In each instance referenced by Rick, if anything, we made conscious decisions to sacrifice our own interests and those of our new firm to ensure that our record of fulfilling our duties to QE and to clients is beyond reproach.

We believe that the actions taken by QE, even setting aside the unlawful and unethical solicitation to enter into a "no-poaching" agreement, would be seen by any reasonable outside observer to have violated important terms of the partnership agreement, and to be inconsistent with our clients' interests. Such actions include, by way of example:

- Refusing the withdrawing partners' request to issue a joint press release and instead issuing a unilateral and misleading press release that constituted notice to clients, waiving QE's right to insist upon any further "joint" notice.
- Despite requiring the withdrawing partners to remain partners of QE for the full 30-day notice period, removing on January 18 public identifying information for the withdrawing partners, including website bios, causing difficulties for our clients and hampering our ability to work.

- Removing the withdrawing partners without notice from group emails, including conflicts emails and case team emails on matters for which such partners hold primary responsibility, and excluding them from client and team meetings without permission from clients and to the clients' detriment.

- Taking the position that, despite the incomplete public notice given by QE, the withdrawing partners could not communicate with clients to respond to and address confusion and uncertainty created by that notice, until QE issued a further notice that it regarded as "joint," and, then, failing to send all such "joint" notices.

- Issuing a series of pre-textual demands for information that QE claimed to need to issue its redundant second notices, while using the time gained to pitch clients to stay with QE without giving clients full and accurate information needed for them to make an informed decision.

- Making false and disparaging comments about the withdrawing partners to other partners and associates.

- Falsely accusing the withdrawing partners of "breaches of fiduciary duty," including by removing partners from cases and then claiming that the failure to bill time since January 15, 2018 is a derogation of duty to the firm.

- Withholding the withdrawing partners' draws while requiring them to work for QE.

Rick's email sent before the call this morning asked the withdrawing partners to retain copies of communications with clients since announcing our departures. We are happy to do so, and likewise ask that QE and the relevant partners preserve and do not destroy emails and all other materials concerning the departure of the withdrawing partners and the following topics:

- All records and communications since January 15, 2018, relating to associate retention, and your proposed "no-poaching" agreement with the withdrawing partners.

- All pending and prospective contingency matters in which investments of time or money have been made during the time the withdrawing partners have been partners at QE.

- All agreements with third-party funders [redacted]

- All clients with which QE communicated unilaterally after January 15, 2018, regarding our departure or the transition of matters.

- All QE associates who were offered bonuses, raises or other compensation, promotions, titles or perquisites contingent on their agreement that they will not seek employment at S&G.

- All putative facts on which you based the false accusation that work in the energy sector was presented [redacted].

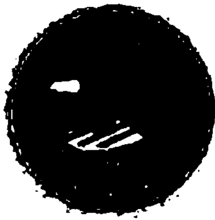
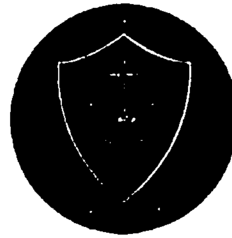
- All communications relating to any review by the Contingency Committee of proposed cases in the energy sector.

While we cannot, and will not, accede to your demands, our hope remains what it has been from the start: We simply want to part ways amicably and remain friends as we compete fairly in the marketplace.

Sincerely,

Faith, Philippe, David, Chris

Exhibit G

ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

FEDERAL TRADE COMMISSION

OCTOBER 2016

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision-making with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR professionals often are in the best position to ensure that their companies' hiring practices comply with the antitrust laws. In particular, HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees.

The antitrust laws establish the rules of a competitive employment marketplace.

Free and open markets are the foundation of a vibrant economy. Just as competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation, competition among employers helps actual and potential employees through higher wages, better benefits, or other terms of employment. Consumers can also gain from competition among employers because a more competitive workforce may create more or better goods and services.

From an antitrust perspective, firms that compete to hire or retain employees are competitors in the employment marketplace, regardless of whether the firms make the same products or compete to provide the same services. It is unlawful for competitors to expressly or implicitly agree not to compete with one another, even if they are motivated by a desire to reduce costs. Therefore, HR professionals should take steps to ensure that interactions with other employers competing with them for employees do not result in an unlawful agreement not to compete on terms of employment. Any company, acting on its own, may typically make decisions regarding hiring, soliciting, or recruiting employees. But the company and its employees should take care not to communicate the company's policies to other companies competing to hire the same types of employees, nor ask another company to go along.

The federal antitrust agencies have taken enforcement actions against employers that have agreed not to compete for employees. Based on those cases, here are some general principles to help HR professionals and the companies they represent avoid running afoul of the antitrust laws as they relate to agreements and communications among employers. Note that this guidance does not address the legality of specific terms contained in contracts between an employer and an employee, including non-compete clauses.

Violations of the antitrust laws can have severe consequences. Depending on the facts of the case, the DOJ could bring a criminal prosecution against individuals, the company, or both. And both federal antitrust agencies could bring civil enforcement actions. In addition, if an employee or another private party were injured by an illegal agreement among potential employers, that

party could bring a civil lawsuit for treble damages (i.e., three times the damages the party actually suffered).

Agreements among employers not to recruit certain employees or not to compete on terms of compensation are illegal.

An HR professional should avoid entering into agreements regarding terms of employment with firms that compete to hire employees. It does not matter whether the agreement is informal or formal, written or unwritten, spoken or unspoken.

An individual likely is breaking the antitrust laws if he or she:

- agrees with individual(s) at another company about employee salary or other terms of compensation, either at a specific level or within a range (so-called wage-fixing agreements), or
- agrees with individual(s) at another company to refuse to solicit or hire that other company's employees (so-called "no poaching" agreements).

Even if an individual does not agree orally or in writing to limit employee compensation or recruiting, other circumstances – such as evidence of discussions and parallel behavior – may lead to an inference that the individual has agreed to do so.

Naked wage-fixing or no-poaching agreements among employers, whether entered into directly or through a third-party intermediary, are per se illegal under the antitrust laws. That means that if the agreement is separate from or not reasonably necessary to a larger legitimate collaboration between the employers, the agreement is deemed illegal without any inquiry into its competitive effects. Legitimate joint ventures (including, for example, appropriate shared use of facilities) are not considered per se illegal under the antitrust laws.

The DOJ filed a civil enforcement action against the Arizona Hospital & Healthcare Association for acting on behalf of most hospitals in Arizona to set a uniform bill rate schedule that the hospitals would pay for temporary and per diem nurses. The case resulted in a consent judgment. And in the past few years, the DOJ brought three civil enforcement actions against

technology companies (eBay and Intuit, Lucasfilm and Pixar, and Adobe, Apple, Google, Intel, Intuit, and Pixar) that entered into "no poach" agreements with competitors. In all three cases, the competitors agreed not to cold call each other's employees. In two cases, at least one company also agreed to limit its hiring of employees who currently worked at a competitor. All three cases ended in consent judgments against the technology companies. The FTC has brought two cases relating to competition for employment. One was against Debes Corp. for entering into agreements to boycott temporary nurses' registries in order to eliminate competition among the nursing homes for the purchase of nursing services. The FTC also brought a case against the Council of Fashion Designers of America and the organization that produces the fashion industry's two major fashion shows for attempting to reduce the fees and other terms of compensation for models. Both cases ended in consent judgments.

Going forward, the DOJ intends to proceed criminally against naked wage-fixing or no-poaching agreements. These types of agreements eliminate competition in the same irredeemable way as agreements to fix product prices or allocate customers, which have traditionally been criminally investigated and prosecuted as hardcore cartel conduct. Accordingly, the DOJ will criminally investigate allegations that employers have agreed among themselves on employee compensation or not to solicit or hire each others' employees. And if that investigation uncovers a naked wage-fixing or no-poaching agreement, the DOJ may, in the exercise of its prosecutorial discretion, bring criminal, felony charges against the culpable participants in the agreement, including both individuals and companies.

Avoid sharing sensitive information with competitors.

Sharing information with competitors about terms and conditions of employment can also run afoul of the antitrust laws. Even if an individual does not agree explicitly to fix compensation or other terms of employment, exchanging competitively sensitive information could serve as evidence of an implicit illegal agreement. While agreements to share information are not per se illegal and therefore not prosecuted criminally, they may be subject to civil antitrust liability when they have, or are likely to have, an anticompetitive effect. Even without an express or implicit agreement on terms of compensation among firms, evidence of periodic exchange of current wage

information in an industry with few employers could establish an antitrust violation because, for example, the data exchange has decreased or is likely to decrease compensation. For example, the DOJ sued the Utah Society for Healthcare Human Resources Administration, a society of HR professionals at Utah hospitals, for conspiring to exchange nonpublic prospective and current wage information about registered nurses. The exchange caused defendant hospitals to match each other's wages, keeping the pay of registered nurses in Salt Lake County and elsewhere in Utah artificially low. The case ended in a consent judgment so that registered nurses could benefit from competition for their services.

Even if participants in an agreement are parties to a proposed merger or acquisition, or are otherwise involved in a joint venture or other collaborative activity, there is antitrust risk if they share information about terms and conditions of employment.

However, not all information exchanges are illegal. It is possible to design and carry out information exchanges in ways that conform with the antitrust laws. For example, an information exchange may be lawful if:

- a neutral third party manages the exchange,
- the exchange involves information that is relatively old,
- the information is aggregated to protect the identity of the underlying sources, and
- enough sources are aggregated to prevent competitors from linking particular data to an individual source.

Also, in the course of determining whether to pursue a merger or acquisition, a buyer may need to obtain limited competitively sensitive information. Such information gathering may be lawful if it is in connection with a legitimate merger or acquisition proposal and appropriate precautions are taken.

For more information on information exchanges, you can review the DOJ's and FTC's specific guidance to the healthcare industry on when written surveys of wages, salaries, or benefits are less likely to raise antitrust concerns (see Statement 6).

If your company is considering sharing specific information or otherwise collaborating with competitors regarding compensation or other terms of

employment, and you have questions regarding the legality of the activity, the federal antitrust agencies are available to offer further guidance. The Division has a business review process that enables businesses to determine how the Division may respond to proposed joint ventures or other business conduct. The FTC has a similar process for obtaining an advisory opinion for future conduct. When the federal antitrust agencies are able to analyze and comment on the possible competitive impact of proposed business conduct *before* that conduct is implemented, companies are more likely to avoid enforcement investigations and lawsuits.

Questions and Answers

Question: I work as an HR professional in an industry where we spend a lot of money to recruit and train new employees. At a trade show, I mentioned how frustrated I get when a recent hire jumps ship to work at a competitor. A colleague at a competing firm suggested that we deal with this problem by agreeing not to recruit or hire each other's employees. She mentioned that her company had entered into these kinds of agreements in the past, and they seemed to work. What should I do?

Answer: What that colleague is suggesting is a no-poaching agreement. That suggestion amounts to a solicitation to engage in serious criminal conduct. You should refuse her suggestion and consider contacting the Antitrust Division's Citizen Complaint Center or the Federal Trade Commission's Bureau of Competition to report the behavior of your colleague's company. If you agree not to recruit or hire each other's employees, you would likely be exposing yourself and your employer to substantial criminal and civil liability.

Question: My friend and I are both managers at different companies in an industry where employee wage growth seems to be out of control. Over lunch, my friend proposed that we could solve this problem by reaching out to other industry leaders to establish a more reasonable pay scale for our employees. Is this legal?

Answer: An agreement among competitors to set wages or establish a pay scale is an illegal wage-fixing agreement. If you take your friend's suggestion and form such an agreement on behalf of your company with your

friend or others acting on behalf of their companies, you would likely be exposing yourself and your employer to substantial criminal and civil liability. The DOJ could open a criminal investigation, and if it determines that your agreement is a naked wage-fixing agreement, it could bring criminal charges against you, your employer, your friend, and other individuals or companies that participate in the agreement. Participants could also be subject to substantial civil liability.

Additionally, merely inviting a competitor to enter into an illegal agreement may be an antitrust violation – even if the invitation does not result in an agreement to fix wages or otherwise limit competition. In antitrust terms, an "invitation to collude" describes an improper communication to an actual or potential competitor that you are ready and willing to coordinate on price or output or other important terms of competition. For instance, the FTC took action after an online retailer emailed a competitor to suggest that both companies sell their products at the same price, which was higher than either company was charging. The competitor declined the invitation and notified the FTC. Be aware that private communications among competitors may violate the FTC Act if (1) the explicit or implicit communication to a competitor (2) sets forth proposed terms of coordination (3) which, if accepted, would constitute a per se antitrust violation.

Question: I work as a senior HR professional at a nonprofit organization that works hard to keep costs down so we can serve more people. One idea we had is to cap wage increases for certain employee groups, but we are worried that we might lose employees to other nonprofit organizations that don't cap wage increases. So, I would like to call other nonprofit organizations in my region to ask them if they would consider a cap on wage growth rates as well. Should I do that? What if, instead of reaching out to other nonprofit organizations directly, we all agree to hire the same consultant who communicates the pay scale to the nonprofit organizations?

Answer: No. You would likely violate antitrust law if you and the other nonprofit organizations agreed to decrease wages or limit future wage increases. A desire to cut costs is not a defense. Your nonprofit organization and the others are competitors because you all compete for the same employees. It does not matter that your employer and the other organizations are not-for-profit; nonprofit organizations can be criminally or civilly liable for antitrust law violations. It also makes no difference if you propose to hire a consultant who will determine and set the pay scale; employing a third-

party intermediary does not insulate you or your organization from liability under the antitrust law.

Question: I work in the HR department of a university that sometimes gets into bidding wars to attract faculty from rival institutions. Those efforts rarely succeed, but they take up a lot of time, energy, and resources. Recently someone in the Dean's office told me that we now had a "gentleman's agreement" with another university not to try to recruit each other's senior faculty. There isn't a written agreement, and efforts to hire each other's faculty were rarely successful. Is this okay?

Answer: No. An illegal agreement can be oral; it need not be written down on paper. This conduct is similar to the conduct challenged by the Division in its recent no-poaching cases involving eBay, Lucasfilm, and Adobe, and the FTC in its cases against Debes Corp. and the Council of Fashion Designers. If the no-poaching agreement is naked, that is, separate from or not reasonably necessary to a larger legitimate collaboration between the universities, it is conduct that the Division will criminally investigate and may decide to criminally prosecute, charging institutions or individuals or both.

If you stopped recruiting and bidding for faculty from another university due to a gentleman's agreement, you have become a member of that no-poaching agreement and could be subject to criminal liability. You should take no further action to comply with that agreement, and notify your university's legal counsel of the university's participation in this illegal agreement. The university may wish to report the conduct to the Division under its Corporate Leniency Policy, which provides that the first qualifying corporation (including universities and other non-profit entities) to report the antitrust offense and cooperate with the Division's investigation will not be criminally charged for the reported antitrust offense. If you have already participated in the illegal agreement, you may wish to report the conduct to the Division under its Leniency Policy for Individuals, which provides that the first qualifying individual to report the antitrust offense and cooperate with the Division's investigation will not be criminally charged for the reported antitrust offense. For more information on these policies, see this link.

Question: I am the CEO of a small business. In my industry, firms traditionally offer gym memberships to all employees. Gym membership fees are increasing, so I would like to stop offering memberships, but I am worried

that current employees will become disgruntled and move to other companies. I would like to ask other firms in the industry to stop offering gym memberships, as well. Can I do that?

Answer: No, you would likely violate antitrust law if you and the other companies agreed to cease offering gym memberships. Job benefits such as gym membership, parking, transit subsidies, meals, or meal subsidies and similar benefits of employment are all elements of employee compensation. An agreement with a competitor to fix elements of employee compensation is an illegal wage-fixing agreement.

Question: I am an HR professional who serves on the board of our industry's professional society. We are interested in determining current and future trends in industry wages. Can we distribute a survey asking companies within the industry about current and future wages?

Answer: It may be unlawful for you, a member of the industry, to solicit a competitor's company-specific response to a wage survey that asks about current or future wages, or to respond to a competitor's request to provide such information. In addition, it may be unlawful for the professional society to distribute company-specific information about past, current, and future wages. Competitors' exchange of nonpublic, company-specific information about current and future wages may violate antitrust law, unless certain survey procedures are followed to mitigate the risk of competitive harm.

For more guidance on the antitrust treatment of information exchanges among competitors, see Statement 6 of the DOJ's and FTC's guidance to the healthcare industry.

Question: I am a new HR professional, and I am attending my first professional conference next week. What should I watch out for to avoid violating antitrust law?

Answer: You should not enter into agreements about employee compensation, other terms of employment, or employee recruitment with other HR professionals who work at competitors, meaning other companies that compete for the same types of employees. Also, avoid discussing specific compensation policies or particular compensation levels with HR professionals who work for competitors.

Other resources are available.

The federal antitrust agencies have prepared a list of red flags that HR professionals and others should look out for in employment settings.

When in doubt, seek legal assistance.

If HR professionals have questions regarding whether particular conduct violates the antitrust laws, they should consider seeking legal advice.

Report potential violations.

If HR professionals or other interested parties have information about a possible antitrust violation regarding agreements among competitors to fix wages, salaries, benefits, or other terms of employment, or agreements not to compete for employees in hiring decisions, the federal antitrust agencies encourage them to report such conduct.

Reports can be made to the Division through the Citizen Complaint Center by e-mail (antitrust.complaints@usdoj.gov), phone (1-888-647-3258, toll free in the U.S. and Canada, or 202-307-2040), or mail (Citizen Complaint Center, 950 Pennsylvania Avenue, NW, Room 3322, Washington, DC 20530).

Reports can be made to the FTC through the Bureau of Competition's Office of Policy and Coordination by email (antitrust@ftc.gov), phone (202-326-3300), or mail (Office of Policy and Coordination, Room CC-5422, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580).

The federal antitrust agencies encourage HR professionals or others with information to use the following questions as a guideline to describe your complaint.

- What are the names of companies, individuals, or organizations that are involved?
- In what manner have these companies, individuals, or organizations potentially violated the federal antitrust laws?

- What examples can you give of the conduct that you believe may violate the antitrust laws? Please provide as much detail as possible.
- Who is affected by this conduct?
- How do you believe competition may have been harmed?
- What is your role in the situation?

With respect to potential criminal violations, in particular, it can be beneficial to report personal involvement in an antitrust violation quickly. Through the Division's leniency program, corporations can avoid criminal conviction and fines, and individuals can avoid criminal conviction, prison terms, and fines, by being the first to confess participation in a criminal antitrust violation, fully cooperating with the Division, and meeting other specified conditions. Additional information about the leniency program is available here.

Exhibit H

From: Rick Werder
To: Jennifer Selendy
Subject: Partnership Agreement
Date: Wednesday, February 28, 2018 12:15:47 PM

Dear Jennifer,

As your new firm approaches the end of what we assume will be its first client billing cycle, we write with respect to your continuing obligations to Quinn Emanuel.

I direct your attention to section 5.1(a)(iii) of the Second Amended and Restated Partnership Agreement of Quinn Emanuel Urquhart & Sullivan, LLP. That provision covers the activities of Selendy & Gay for a period of 18 months, commencing on February 15, 2018, and requires that your firm pay to Quinn Emanuel 10% of all fees billed by your firm on certain specified matters for clients meeting specified criteria, and that such payments be made on an ongoing, pro-rata basis within 30 days of the receipt of such fees. We believe that much of your firm's current business falls within the terms of this provision.

As you may be aware, we sought to engage with members of your group concerning appropriate procedures for implementing section 5.1(a)(iii) before the effective date of your withdrawal. We did not make meaningful progress. We would appreciate it if you would promptly: (a) acknowledge on behalf of Selendy & Gay that your firm and its partners intend to fully comply with section 5.1(a)(iii); (b) send me a list of clients and current covered by the section as of today and propose a procedure for ensuring that the required payments are made with respect to those matters; and (c) propose a notice procedure for adding clients and matters to that list as required under the terms of the section during the period between now and August 2019. We envision a monthly statement in an agreed format, but that at the least will list the clients and matters and set forth the total fees billed and received on those matters, and a monthly payment of the amount called for in section 5.1(a)(iii).

As expressly provided by section 5.1(a)(iii), Quinn Emanuel reserves all of its rights and remedies, including but not limited to its right to seek an accounting concerning your firm's compliance.

Thank you for your courtesy.

Rick Werder
New York Office Managing Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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Exhibit I

From: Christine Chung <cchung@selendygay.com>
Sent: Friday, March 30, 2018 6:12 PM
To: rickwerder@quinnemanuel.com; johnquinn@quinnemanuel.com; Petercalamari@quinnemanuel.com; michaelcarlinsky@quinnemanuel.com; Jennifer Selendy <jselendy@selendygay.com>; harryolivar@quinnemanuel.com; kathleensullivan@quinnemanuel.com
Cc: Philippe Selendy <pselendy@selendygay.com>; Faith Gay <fgay@selendygay.com>; David Elsberg <delsberg@selendygay.com>
Subject: Response to QE emails re Withdrawal

Dear Rick and John,

This email responds on behalf of the partners of Selendy & Gay to Rick's February 28, 2018, email to Jennifer and his March 7, 2018, email to Sean. For convenience, I have pasted the text of Rick's emails below my signature block. Philippe also attempted to reach John and Peter by phone earlier today.

As I am sure you know, Section 5.1(a)(iii) of the QE Partnership Agreement is unenforceable against any Selendy & Gay partner because it violates New York RPC 5.6(a). *See, e.g., Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375 (1993); *Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95 (1978). Under the New York RPCs, partners cannot agree to penalize departing partners for practicing competitively with their former firm because New York courts deem such "forfeiture-for-competition" agreements to chill competition and impinge upon clients' choice of counsel. We therefore do not acknowledge any obligations under Section 5.1(a)(iii), nor will we take steps to effectuate that provision.

It makes no difference that QE is historically California-based or that the Partnership Agreement specifies the application of California law. We have obtained advice and opinions from ethics experts on both the East and West coasts. Although California's RPCs and *Howard v. Babcock*, 6 Cal.4th 409 (1993), embrace a minority view more favorable to the enforceability of Section 5.1(a)(iii) among California lawyers practicing in California, the California RPCs themselves are limited in geographic scope. They acknowledge that lawyers admitted in California may be "required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules." *See* California RPC 1-100(D)(1). The New York RPCs obligate us, as New York-admitted lawyers who practice principally in New York, to comply with New York rules. *See* New York RPC 8.5(b). None of us is admitted in California nor do we practice there. We do not believe that any judge or arbitrator could, or would, compel us to violate the New York ethical rules under which we practice. And we could not agree to comply with Section 5.1(a)(iii) without violating those same rules.

Further, by operation of the rules and law cited here, you, John, and the other name partners of QE, as members of the New York bar,[1] are all obligated to comply with New York's RPC insofar as you are attempting to affect us and our practice of law in New York. New York-admitted lawyers cannot order or direct other New York-admitted lawyers to engage in conduct that violates the New York RPCs. *See* New York RPC 5.1(d). No New York-admitted lawyer at QE can play any role in trying to compel the Selendy & Gay partners to observe an agreement that, according to New York's highest court, violates public policy and the New York RPCs. Moreover, QE itself must comply with the New York RPCs since QE itself is directly subject to the New York RPCs. See New York RPC 5.1(a).

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[1] Only Eric Emanuel among the name partners is not admitted in New York, and he is a non-equity partner whose involvement in the partnership is limited.

Your emails seeking "implementation" of Section 5.1(a)(iii) also fail to take into account the record that QE has made in the last two months that its true interest is not in seeking any "reasonable" estimate of damages suffered by QE, as *Howard* requires (even assuming that any estimate that offends the rules of the state in which we are admitted and practice could ever be deemed "reasonable"). We all know the reason we have been singled out: because you and John failed to convince us to enter into the only agreement that John truly cares about—an illegal and unethical anti-poaching agreement. John made absolutely clear in both his emails and in our February 6 call with him that all of QE's purported grievances with us as departing partners, including as to Section 5.1(a)(iii), would be resolved if only we agreed, after we left QE for Selendy & Gay, not to solicit or hire each other's associates or personnel.[2] Notably, we are unaware of any effort to enforce Section 5.1(a)(iii) against any other departing partners.

[2] QE's proposal was not, as you and John have at times implied, an agreement between an employer and a departing employee to protect trade secrets or customers (which in any event are subject to the rule of reason); it was a naked restraint between two competing employers.

Even after we wrote QE that the unethical demand made by you and John also constituted an attempted antitrust violation, and even after we cited to you the January 2018 Department of Justice guidance that affirmed prior law, you nonetheless solicited our client to compel us to violate the ethics rules and the antitrust laws on your behalf. Your February 28, 2018, email to our client [redacted] unequivocally sought to enlist them to obtain Selendy & Gay's agreement that "In connection with QE's agreement to assist in the transition to S&G, S&G will cease efforts to recruit QE personnel on the [redacted] team." Your email to [redacted] in the face of our warning confirmed QE's willful state of mind in engaging in anti-competitive conduct. We also have obtained opinions from an antitrust expert regarding QE's conduct up to February 6, 2018, and relating to your attempt to enlist [redacted] to pressure Selendy & Gay up to March 7, 2018.

Independently, the idea that it is 'reasonable' for QE to demand the 10% payments specified in Section 5.1(a)(iii) has no force where, as here, any arguable detriment to the firm from our departure is more than offset by the share of income, including that derived from new financing arrangements with third-party funders, from presently pending contingent fee cases in which the firm invested while we were equity partners, and which QE demands that we leave behind. QE cannot have it both ways.[3]

[3] Section 5.1(a)(iii) is also overbroad because it purports to force departing partners to identify even new Selendy & Gay matters for any client who was previously a QE client, and to pay to QE 10% of the revenues earned from such matters. These terms are unlike any considered by a California court and facially call upon Selendy & Gay to violate confidentiality and other obligations to its clients.

Finally, because QE failed to abide by its contractual, fiduciary, and good faith commitments to us as departing partners, it is not entitled to enforce Section 5.1(a)(iii) even if that provision were otherwise enforceable under California and New York law. Section 5.1(a)(iii) is part of an overall procedure for

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"withdrawal" as set out in Section 5.1(a), and QE has flouted subsections (i) and (ii). Since our February 6, 2018, email which laid out a number of these violations, QE has additionally:

- Continued to defame us to clients regarding our skills and capabilities, orally and in writing;
- Continued to defame us to QE personnel;
- Portrayed John's email about Faith to the media as a response to her, knowing that our emails had all been cut off and were no longer operational;
- Tortiously interfered with our clients, including [redacted];
- Refused to comply with written directives from clients to transfer files; and
- Continued to withhold our draws, without any articulation of a reason.

This conduct was, and is, intended to be harmful to us and to our clients.

QE does not have any legal claim with merit. We cannot help but question, given the positions you have taken and the demands QE keeps repeating, without citation to any law, whether you have consulted with anyone who has assessed QE's "claims" without favor or bias.

Rick, both you and John have said, independently, that QE's various demands are not a lead-up to QE suing us. Of course, that evaluation is the sensible one. We have taken and plan to continue to take great pains, for example, not to speak of the declining financial state of the firm or of other matters that played a role in our decision to leave. And we have done this even as you and others have defamed us, with lies, to our former colleagues and our clients. It beggars belief—and would be unfortunate for QE partners, employees, and clients—that the firm would inflict the additional self-harm that would come from escalating your email rhetoric.

We say again that we have no desire to be at odds with QE and want only to pursue our new practice which, as we have tried to convey, is on a platform wholly distinct from QE. John may mock it but our loyalty to the firm and its people drove our strict adherence to the Partnership Agreement despite QE's repeated breaches and defamatory conduct. Our affection for the firm likewise makes the constant QE demands and threats wearing to us and to our clients, as well as to QE and its clients.

It has been a mystery to us, and to many others both inside and outside of Quinn Emanuel, why the ordinary course of wishing each other well is beyond the firm's instinct or ability. This course remains in our view the correct way forward.

Best regards,

The S & G Partners

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