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2017-L-008151

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
PATRICE NELSON vs. KATTEN MUCHIN ROSENMAN LLP

The transmission was received on 04/17/2018 at 5:24 PM and was ACCEPTED with
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AMENDED COMPLAINT

EXHIBITS (Exhibits 1-9)

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DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
COOK COUNTY
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CHICAGO, IL 60602

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, LAW DIVISION

PATRICE NELSON, a Personal)	
Representative of the Estate of)	
JACQUELINE NELSON, GEORGES)	
MICO NELSON, DVM, individually and)	
as sole residuary beneficiary of the Estate)	
of JACQUELINE NELSON)	
)	
Plaintiffs,)	Case No. 2017 L 8151
)	
v.)	
)	
KATTEN MUCHIN ROSENMAN LLP,)	JURY DEMANDED
WILLIAM J. DORSEY, COWEN,)	
LEIBOWITZ & LATMAN, P.C.,)	
ROBERT GIORDANELLA, and THE)	
GEORGE NELSON FOUNDATION,)	
)	
Defendants.)	

AMENDED COMPLAINT

NOW COME Plaintiffs, PATRICE NELSON, in her capacity as Personal Representative of the ESTATE OF JACQUELINE NELSON, and GEORGES MICO NELSON, DVM, individually, and as the sole residuary beneficiary of the Estate of Jacqueline Nelson (“Mico”), and for their Amended Complaint against Defendants KATTEN MUCHIN ROSENMAN LLP, WILLIAM J. DORSEY (collectively “Dorsey”), COWEN, LEIBOWITZ & LATMAN, P.C., ROBERT GIORDANELLA (collectively “Giordanella”), and THE GEORGE NELSON FOUNDATION (hereinafter “Nelson Foundation”), state as follows.

NATURE OF THE ACTION

This case arises from Dorsey's conflicted representation that resulted in Plaintiffs' loss of valuable intellectual property rights and/or interests. Dorsey represented the interests of both the Plaintiffs and the Nelson Foundation and undertook actions that led to the transfer of all the valuable intellectual property rights and/or interests that Jacqueline Nelson inherited from her late husband George Nelson to third-parties with no corresponding benefit to Plaintiffs. At the outset of Dorsey's representation, Jacqueline owned the rights to and/or interests in certain of George Nelson's intellectual property.

At the conclusion of the Defendants' representation, Jacqueline owned none of the rights and/or interests in the George Nelson IP and received inadequate consideration in return for them. The Nelson Foundation provided the vehicle for this wrongful transfer and was complicit in allowing transfers to be made to it and to third parties. Dorsey failed to advise Plaintiffs of their intellectual property rights, failed to advise Plaintiffs of their rights against Modernica and, *inter alia*, negligently allowed the rights and interests of the Plaintiffs to be improperly transferred. Giordanella, who was additional counsel for Jacqueline, also failed to take the appropriate steps to protect Plaintiffs intellectual property rights and negligently allowed those rights and/or interests to be transferred without adequate consideration.

PARTIES AND JURISDICTION

1. Patrice Nelson (“Patrice”) is a resident of the Town of Newburgh, County of Penobscot, State of Maine. Patrice is the court-appointed Personal Representative of the Estate of Jacqueline Nelson.

2. Georges Michel Nelson (“Mico”) is a resident of the Town of Newburgh, County of Penobscot, State of Maine. He is the only son of Jacqueline Nelson and is the sole residuary beneficiary of the Estate of Jacqueline Nelson.

3. At all relevant times herein, Jacqueline Nelson was in her nineties and did not have mental capacity to handle her own affairs. She was declared incompetent by order of the Penobscot Probate Court in Bangor, Maine, on September 30, 2014. She suffered from debilitating physical conditions and diminished mental capacity. Jacqueline Nelson died on December 6, 2017.

4. Katten Muchin Rosenman LLP (“Katten Muchin”) is a law firm with offices in Cook County, IL.

5. William Dorsey is an attorney licensed in Illinois whose practice is based in Cook County, IL. At all times relevant, Dorsey was a shareholder and acting as an agent and representative of Katten Muchin.

6. Cowan, Liebowitz & Latman, P.C. is a law firm based in New York, New York. Cowan has national clients and has transacted business in Illinois.

7. Robert Giordanella is an attorney licensed in New York, New York. At all times relevant, Giordanella was a shareholder and acting as an agent and representative of Cowan.

8. The Giordanella Defendants have transacted business with Illinois residents and availed themselves of the Illinois courts by *inter alia*:

- a. appearing in multiple litigation matters in the Northern District of Illinois since 2011, including: *Independent Graphic Services, Inc. v. Superior Printing Inc., Co.*, 11-cv-8241 (N.D. Ill.); *Interchem Corp. USA, et al, v. Prompt Praxis Labs, LLC, et al*, 13-cv-5501 (N.D. Ill.); *Varsity Spirit LLC et al, v. Varsity View, LLC, et al*, 16-cv-1305 (N.D. Ill.); and *DRL Enterprises, Inc. v. North Atlantic Operating Co., Inc.*, 16-cv-8384 (N.D. Ill.);
- b. regularly corresponding and communicating with Illinois attorneys, including Katten Muchin and Dorsey during the pendency of the underlying proceedings;
- c. appearing in several litigation-related mediations since 2014; and
- d. traveled to the State of Illinois at least 8 times in the last 5 years for litigation and/or client-related matters.

9. Plaintiffs' claims against Giordanella arise directly from their conduct and transacting of business with Illinois residents, including communicating and conferring with Dorsey and Katten Muchin, for the purposes of their representation of Plaintiffs in the underlying matter.

10. The Nelson Foundation is a Michigan corporation with its principal place of business in Zeeland, Michigan. The Nelson Foundation transacts business in Illinois and is represented by Illinois attorneys.

11. This Court has jurisdiction over this matter pursuant to 735 ILCS Section 5/2-209(a)(1) and (a)(2). Defendants have transacted business in Cook County, Illinois.

FACTS COMMON TO ALL COUNTS

I. George Nelson Builds a Legacy

12. George Nelson is a famous American industrial designer and one of the founding fathers of American Modernism. During his lifetime, he created many of the 20th century's most iconic modern furniture designs. George Nelson has been the subject and author of several books on iconic American design. He built considerable goodwill during his lifetime in the George Nelson name, likeness, designs, and associated trademarks, including, without limitation, registered and common-law rights in the GEORGE NELSON, NELSON, BUBBLE LAMPS, and other trademarks and trade dress associated with the Nelson-designed Bubble Lamps and other Nelson designs (the "Nelson Trademarks"). *See*, without limitation, the items listed on Exhibits A and B, in addition to the other trademarks.

13. The George Nelson legacy and brand remains strong today, with many original George Nelson-designed products bearing the Nelson Trademarks currently being offered for sale in high-end modern art and furniture stores, at auctions, and in museum stores, including The Museum of Modern Art in New York. Many iconic George Nelson designs for furniture and home accessories are currently being manufactured, marketed and sold in the United States and Europe.

14. George Nelson died on March 5, 1986. Upon his death, his widow, Jacqueline Nelson, inherited the intellectual property rights and/or interests that George

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Nelson held at the time of his death (the “Nelson IP”), which he had accumulated throughout his distinguished life of achievement and recognition in modern American design. Upon information and belief, the Nelson IP includes, without limitation,

(i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents, including all re-issuances, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof; (ii) all trademarks (including, but not limited to, the Nelson Trademarks), service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all goodwill associated therewith; (iii) all moral rights and copyrights in any original work of authorship (including but not limited to furniture designs, publications etc.) and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets and confidential information; (v) all furniture designs, lamp designs, clock designs, fireplace tool designs, planter designs and designs for room dividers (including without limitation the “Marshmallow sofa” and “Bubble lamp”); (vi) all ideas, concepts, discoveries, improvements, know-how, methods, formulas, compositions, processes, designs, models, innovations, protocols, systems, technical and other data, drawings and cost information, business and marketing plans and proposals, plans, procedures, strategies, methodologies and techniques, and any and all other intellectual property, materials, information and data; (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (viii) all proprietary rights in or to the foregoing, in each instance which were developed and/or owned by George Nelson and, upon George Nelson’s death, were acquired by Jacqueline through George Nelson’s estate.

15. Jacqueline resided in New York City from about 1960 until December of 2012.

II. Herman Miller Pushes to Form the George Nelson Foundation and uses the Head of its European Counterpart to Secure Jacqueline Nelson’s Support

16. On a number of occasions, beginning in approximately 2009, persons interested in acquiring or enforcing the Nelson IP, approached Jacqueline Nelson with

the concept of forming a nonprofit foundation to educate, exhibit, and advance the legacy of George Nelson's contributions to American Modernism.

17. One of the interested entities, and an eventual leading force behind formation of "The George Nelson Foundation," was a furniture manufacturer located in Michigan called Herman Miller, Inc. ("Herman Miller"). Herman Miller manufactured furniture and sold certain George Nelson designs in the United States, and it paid royalties to Jacqueline in connection with the sale and/or licensing of those designs pursuant to an agreement.

18. Another leading force behind formation of the "George Nelson Foundation" was a furniture manufacturer located in Switzerland, Vitra International AG and Vitra Museum ("Vitra"), which, upon information and belief, held certain rights to and/or interests in certain George Nelson designs and the GEORGE NELSON trademark in Europe and in the Middle East. Vitra's Chairman of the Board was Rolf Fehlbaum.

19. Upon information and belief, Vitra has close business ties to Herman Miller and some employees of those companies have personal ties.

20. Jacqueline Nelson, by and through her counsel at the time, Attorney Philip Raible ("Raible"), reached out to Rolf Fehlbaum ("Fehlbaum"), who was a friend she trusted, by e-mail dated March 9, 2010, in which Raible disclosed that Jacqueline was "skeptical of the need for, and the purpose and viability of, such a Foundation." (Ex. 1).

21. Raible asked for an opportunity to discuss with Fehlbaum Jacqueline's concerns about the formation of a foundation because Fehlbaum had also been contacted

by Herman Miller to participate in the formation and operation of the Nelson Foundation.

22. Fehlbaum ignored Raible's request for a conference and, instead, initiated discussions on March 21, 2010, directly with Jacqueline, outside of Raible's presence, regarding the creation of the Nelson Foundation. (Ex. 2).

23. On March 21, 2010, Fehlbaum reported to Brian Walker, the President and Chief Executive Officer of Herman Miller, as follows, in relevant part:

Yesterday I had a telephone conversation with Jacqueline. I informed her about our recent discussion.

I understood that

- she agrees in principle with the creation of a foundation
- she does not feel the present proposal is well conceived.

Her main critique is

- the scope of the foundation activities has to correspond to the economical relevance of the work.

It has to be much more modest than the ambitious Eames Foundation. Also *it cannot touch royalties which are due to Jacqueline/Mico.*

(Ex. 2) (emphasis added).

24. In correspondence of July 29, 2010, Walker and Fehlbaum jointly wrote to Jacqueline to ask for her "support for the development of a George Nelson Foundation," which they believed would "serve to protect, promote and extend the legacy of George Nelson's work." They described the Nelson Foundation as having an "independent nature," that would assist in protecting and promoting "the authenticity of our Nelson furniture products in the marketplace." (Ex. 3).

25. However, in that July 29 correspondence, they also represented that, for her support of the development of the Nelson Foundation, “it is not necessary for you to make any legal transfer of rights.”

26. In reliance upon the representation that it “would not be necessary [] to make any legal transfer of rights,” Jacqueline responded to Brian Walker on August 9, 2010, that she would add her support to the development of the Nelson Foundation and that she would consider it a privilege to serve as an honorary Board member.

27. On or about February 11, 2011, the Nelson Foundation was established as a non-profit Michigan corporation, with Action by Written Consent of a sole Incorporator reflecting the corporation’s retention of the services of Karen Stein (through Karen D. Stein, LLC) (“Stein”) to act as the Executive Director of the corporation.

28. An initial Board of Directors was designated that included Stein, Ben Watson (the Executive Creative Director at Herman Miller), and Fehlbaum. There was only one other director, the Chief Curator of Architecture and Design at The Museum of Modern Art in New York. Stein, as Executive Director, was the voice of the Nelson Foundation.

III. Dorsey is Retained to Protect and Enforce the Nelson IP

29. In July of 2012, Stein came into contact with William Dorsey, “who is an avid George Nelson collector based in Chicago who also happens to be a lawyer specializing in intellectual property.” (Ex. 4).

30. Dorsey offered legal assistance to the Nelson Foundation on a *pro bono* basis. He knew the Foundation could benefit from his specialized legal experience and

knowledge on intellectual property matters, generally, and relating specifically to the Nelson IP.

31. On July 11, 2012, Dorsey wrote an e-mail recognizing Jacqueline Nelson's rights to and/or interests in the Nelson IP. Dorsey asserted in that e-mail that he did not want to do anything that would not benefit Jacqueline or the Nelson Foundation.

32. On August 23, 2012, Dorsey prepared a memorandum to Stein outlining his opinion of who owned the rights to and/or interests in certain of George Nelson's intellectual property ("The Dorsey IP Memo"). Dorsey did not send that memorandum to Jacqueline. Dorsey's analysis was that rights to and/or interests in George Nelson's name belonged to George Nelson's wife, Jacqueline, stating:

It is our understanding that Jacqueline Nelson ("Ms. Nelson") inherited the rights to the George Nelson name for home goods and design upon George Nelson's death in 1986 pursuant to Mr. Nelson's last will and testament.

(Ex. 5).

33. The Dorsey IP Memo stated that Ms. Nelson was the rightful owner of the trademark GEORGE NELSON and recommended that the Nelson Foundation fight any ownership claimed by Modernica of the GEORGE NELSON mark.

34. Modernica was a California-based, high-end furniture manufacturer and a competitor of Herman Miller.

35. At no time, did Dorsey advise Jacqueline that she should fight any rights of ownership to the Nelson IP claimed by Modernica despite Dorsey believing and advising Jacqueline was the rightful owner.

36. On September 20, 2012, Ben Watson, who was Herman Miller's Executive Creative Director, e-mailed Dorsey supporting the issues set forth in Dorsey's IP Memo. Watson supported Dorsey and the action.

III. Jacqueline Nelson Falls Ill with Cancer and a Broken Leg, while Dorsey Assists Stein in Assigning Away the Nelson IP

37. In or about January 2012, Jacqueline was diagnosed with bladder cancer and underwent surgery. For much of the remainder of that year, Jacqueline was undergoing chemotherapy treatment and was very ill.

38. On November 26, 2012, in her weakened state, Jacqueline fell in her apartment in New York City and broke her right femoral neck.

39. As a result of that accident and other medical issues suffered by Jacqueline, and because of the impact of Hurricane Sandy on New York City's medical facilities and their inability to provide the level of medical care Jacqueline needed, it was necessary for Mico and Patrice Nelson to move Jacqueline to Maine, where they could take care of her in her diminishing physical and mental capacities.

40. On October 24, 2012, before the move to Maine, Dorsey sent Stein an e-mail with a draft assignment agreement (hereinafter, the "Nelson IP Assignment") that was revised to address some concerns raised by Stein. The concerns were not expressed in this e-mail, but the draft Assignment purported to move all of the Nelson IP to the Nelson Foundation, including diverting some of the Nelson family's interests in royalties from Herman Miller. (Ex. 6).

41. Dorsey then sent an e-mail to Stein stating that he believed the revisions addressed the “issues [Stein] raised.” Although Dorsey says the Nelson IP Assignment did not revisit or modify the existing licenses, he added clauses that diverted Jacqueline’s royalties from Herman Miller to the Nelson Foundation.

42. Dorsey’s conflicted representation was admitted in the same e-mail, where he stated,

Attached find a revised draft assignment agreement assigning the George Nelson Intellectual Property rights from Jaqueline Nelson to The George Nelson Foundation. I believe the revised whereas clauses should address the issues you [Stein] raised.

. . . [W]e made certain assumptions about the license agreements, including assuming they covered the products that Herman Miller and Vitra are currently selling, that the license agreements include royalty payments to Ms. Nelson and then her heirs or assigns, and that the license agreements may be assigned by Ms. Nelson.

(Ex. 6).

43. On October 24, 2012, Stein, who knew that Jacqueline was very ill from treatment for bladder cancer, forwarded to Jacqueline via e-mail the draft Nelson IP Assignment proposing that Jacqueline assign to the Nelson Foundation the Nelson IP – meaning all of the intellectual property rights and/or interests she inherited from George Nelson, in a broad and sweeping irrevocable assignment and transfer. (Ex. 6).

44. The e-mail communication from Stein forwarded an e-mail from Dorsey, cited above, and further stated,

[A]s Will [Dorsey] states in his email below, that assigning such rights to the Foundation is not intended to supersede or contradict any licensing and/or commercial arrangements that currently exist with Herman Miller and Vitra, but rather to provide a mechanism by which to protect against infringement by

others and also by which to make future decision about issues that are not covered by present licensing agreements.

I realize this is a lot to digest and I look forward to hearing your thoughts when you've had a time to do so. Of course, Will is also available to speak with either of you individually or together.

(Ex. 6).

45. Although Stein represented to Jacqueline that the proposed assignment did not supersede or contradict any licensing arrangement that existed with Herman Miller, Stein failed to disclose that Dorsey drafted terms in the October 24, 2012 version of the proposed Nelson IP Assignment that diverted Jacqueline's royalties from Herman Miller to the Nelson Foundation.

46. Stein sent the e-mail and proposed Nelson IP Assignment to Jacqueline, copying only Fehlbaum, Vitra's Chairman of the Board.

47. Jacqueline did not respond to or otherwise acknowledge receipt of this e-mail.

48. After the November 26, 2012, fall and right femoral head fracture, and at a time when Jacqueline was very ill, Stein sent her a copy of the Nelson IP Assignment for a second time.

49. This second copy was either hand-delivered to Jacqueline or delivered by regular U.S. Mail. (Ex. 7).

50. Included with this second copy of the Nelson IP Assignment was a hand-written note that stated,

Attached is a close to final version of the assignment agreement. What is missing are the various "Exhibits" – copies of your previous agreement with Vitra and Herman Miller.

I imagine all of your rehabilitation exercises are keeping [y]ou busy, if not exhausted[.] So I'm sending this knowing that you already have a lot to deal with and so may not have the opportunity to focus on this. If you do have questions, the attorney, Will Dorsey, or I are happy to respond. In the meantime, I wish you the speediest of recoveries and do hope that you will be home soon.

(Ex. 7).

51. Again, and not surprisingly, in light of her weakened state, Jacqueline did not respond to this correspondence.

52. As of the end of 2012, and her move to Maine, Jacqueline still had not signed either copy of the Nelson IP Assignment for the Nelson Foundation.

53. On the evening of January 23, 2013, at 9:50 pm, Stein again sent an e-mail to Jacqueline and Patrice Nelson, copied to Dorsey, stating "we finally now have a completed Nelson IP Assignment for you to review and hopefully sign." She attached a copy of the new version of the Assignment. The earlier terms diverting royalties from Herman Miller to the Nelson Foundation had been removed. Patrice was not, in January 2013, a legal agent of Jacqueline, nor was she, in any way authorized to act or make decisions for Jacqueline. Accordingly, Patrice was not monitoring Jacqueline's emails or correspondence in January 2013. Patrice and Mico were then frantically tending to pressing matters, including, but not limited to, selling Jacqueline's New York apartment, moving Jacqueline's belongings to Maine, preparing their home to accommodate Jacqueline, and managing Jacqueline's serious medical condition.

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54. Stein did not copy Mico Nelson on her e-mail forwarding the Nelson IP Assignment to Jacqueline Nelson. At no time did Stein or Dorsey reach out to, or consult with, Mico about the Nelson IP Assignment.

55. In the e-mail correspondence to Jacqueline enclosing the proposed broad and irrevocable assignment of rights, Stein addressed Jacqueline first: “Dear Jacqueline.” Stein continued, “I’m of course available to discuss any or all of this with you in whatever detail you would like. Dorsey, the Foundation’s attorney, who is copied here, is available as well, to answer any questions. He will be forwarding hard copies of this material to you as well.”

56. The very next day, on January 24, 2013, Dorsey wrote directly to Jacqueline, stating that “[i]n follow-up to Karen Stein’s e-mail earlier today, I’m enclosing for your review a hard copy of the Intellectual Property Assignment Agreement [with exhibit attachments].” (Ex. 8).

57. At the time Dorsey prepared and mailed this correspondence, Jacqueline had been placed in The Lincoln Home, a nursing home in Newcastle, Maine. She was waiting to be released to go home with Mico and Patrice, who were then living in a small rental home in Bremen, Maine. The correspondence from Dorsey was brought to Jacqueline at the nursing home unopened.

58. Dorsey never requested any information about Jacqueline’s health prior to sending the assignment. Dorsey knew or should have known that Jacqueline was incapacitated or at least frail and that she was in a hospital or a nursing care facility in Maine for that reason.

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59. Dorsey stated in this correspondence that Jacqueline should “review the enclosed documents and call [him, at his number in Chicago] if she had any questions or concerns.” His letter also stated, “Otherwise, please sign each of the enclosed documents where indicated and return them to me in the enclosed Federal Express envelope.” (Ex. 8).

60. Without consulting Patrice Nelson (who did not see the contents of Dorsey’s correspondence addressed to Jacqueline) or Mico Nelson, and apparently while she was in the nursing home, Jacqueline signed the irrevocable assignment of the Nelson IP and returned it to Dorsey in the Federal Express envelope.

61. Jacqueline did not date the assignment. However, she did write, “New Castle ME 1/24/13,” on a consent form, which was an exhibit attachment that Nelson IP Assignment. There was no witness to her signature on the assignment.

62. Jacqueline was 93 years old and very ill at the time Dorsey sent her, and she signed, the Nelson IP Assignment.

63. Jacqueline’s signature is noticeably shaky, revealing to any reasonable person that the signatory was an elderly, weak, dependent person with diminished capacity. (Ex. 8).

64. Dorsey made no effort to ascertain whether Jacqueline had obtained the advice of separate and independent legal counsel for this substantial assignment of the Nelson IP and the inherited legacy of her late husband, George. Further, Dorsey did not disclose to Mico the circumstances surrounding the transfer of the Nelson IP. It was not until September of 2015 that Mico discovered the

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65. Dorsey had a duty and obligation, as an attorney representing Jacqueline and the Nelson Foundation, to ensure that Jacqueline obtained proper independent legal counsel before proposing that she sign away all of the Nelson IP derived from her late husband George Nelson to a foundation run by Dorsey’s colleague, Stein, and effectively controlled by Herman Miller and Vitra.

66. The intellectual property rights and/or interests at issue, which included all of the Nelson IP, were described as follows.

Intellectual Property. “**Intellectual Property**” means, collectively, in any and all jurisdictions throughout the world, and in any medium: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents, including all re-issuances, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof; (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all goodwill associated therewith; (iii) all moral rights and copyrights in any original work of authorship (including but not limited to furniture designs) and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets and confidential information; (v) all furniture designs, lamp designs, clock designs, fireplace tool designs, planter designs and designs for room dividers (including without limitation the “Marshmallow sofa” and “Bubble lamp”); (vi) all ideas, concepts, discoveries, improvements, know-how, methods, formulas, compositions, processes, designs, models, innovations, protocols, systems, technical and other data, drawings and cost information, business and marketing plans and proposals, plans, procedures, strategies, methodologies and techniques, and any and all other intellectual property, materials, information and data; (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (viii) all proprietary rights in or to the foregoing, in each instance which were developed and/or owned by George Nelson and, upon George Nelson’s death, were acquired by Assignor through George Nelson’s estate. . . .

(Ex. 8).

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67. The scope of the rights and/or interests assigned included all of the Nelson IP. In other words, every conceivable right and/or interest that Jacqueline Nelson had inherited from her deceased, famous husband.

68. The scope of these irrevocably assigned and transferred rights and/or interests went far beyond any limited or restricted assignment which might have been necessary for the Foundation to obtain the legal standing it needed in order to have sufficient standing to challenge Modernica on the sub-set of Modernica issues.

69. The scope of the rights and/or interests irrevocably assigned and transferred to the Nelson Foundation created ambiguity in the Nelson family's future interest in royalties, which was one interest that Jacqueline, when she had full capacity, clearly and unambiguously expressed was never to be touched if she agreed to lend her support to the creation of the Nelson Foundation.

70. Through representations he made in correspondence before and after he presented the assignment to Jacqueline demanding her signature, Dorsey knew or should have known that a person in Jacqueline's position – even if not of diminished capacity – reasonably and justifiably believed, or held the reasonable expectation that, Dorsey was her attorney and was looking after her best interests.

71. Specifically, for example, in November 2, 2012, correspondence concerning the Nelson IP, Dorsey stated, “[t]his law firm [Katten Muchin Rosenman, LLP,] serves as intellectual property litigation counsel for Jacqueline Nelson (“Ms. Nelson”) and the George Nelson Foundation (“the Foundation”).”

72. Similarly, in correspondence dated March 15, 2013, relating to the GEORGE NELSON trademark and certain George Nelson designs, Dorsey referred to Jacqueline as “our client,” stating, “[o]n behalf of our clients, Ms. Jacqueline Nelson (“Ms. Nelson”) and the George Nelson Foundation (“the Foundation”), we demand that your client . . . [cease the unauthorized use of the trademark GEORGE NELSON, etc.]” Dorsey also represented himself to be “point person for Ms. Nelson” in an e-mail dated May 16, 2014, to Modernica’s counsel. (Ex. 9).

73. When he presented the Nelson IP Assignment to Jacqueline demanding her signature, Dorsey took no steps to ensure that she was not operating under the assumption that he was her attorney and was acting in her best interests.

74. Instead, Dorsey encouraged Jacqueline’s reasonable misapprehension by suggesting in his cover letter to her that she “call [him, at his number in Chicago] if she had any questions or concerns,” without recommending that she make sure to have an attorney of her own review the proposed assignment.

75. Dorsey made no effort to ascertain whether Jacqueline had consulted with Patrice or Mico Nelson; he did not receive any confirmation from Patrice that she read, or was even aware of, his and Karen Stein’s communications to Jacqueline; and he made no effort to confirm with Patrice or Mico that they were even aware that Mico’s compromised 93-year-old mother had just executed the Nelson IP Assignment.

76. Similarly, Stein made no efforts to confirm that the extraordinarily valuable assignment of the Nelson IP from Jacqueline to the Nelson Foundation was

executed with Patrice's or Mico's knowledge or understanding, and/or with Jacqueline being afforded the right to independent legal consultation.

77. In addition, both Dorsey and Stein understood that the Nelson Foundation was supported, financially, by Herman Miller and Vitra, and Fehlbaum sat on the Board of the Nelson Foundation.

78. If the Nelson Foundation needed a limited assignment in order to have sufficient standing to pursue the Modernica disputes, the assignment that Dorsey and Stein pressed Jacqueline Nelson to execute in January of 2013 went far beyond such scope.

79. Stein and Dorsey knew or should have known that Jacqueline was under the impression that she had been sent a more limited assignment to the Nelson Foundation in order to address only the Modernica issues.

80. As a 93-year-old person with diminishing mental capacity (who has just suffered a debilitating fall and resulting physical incapacity), one could reasonably expect Jacqueline to be under a material misapprehension that she was being asked to sign a much more limited Assignment in scope than what they put before her.

81. As such, Dorsey and Stein, on behalf of the Nelson Foundation, were in positions of clearly unequal bargaining power and unfair and unequal knowledge, exploiting the positions of trust they had endeavored to build with Jacqueline in order to procure her complete and irrevocable assignment of the Nelson IP to the Nelson Foundation without consideration.

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IV. Dorsey Attempts to Protect and Enforce Jacqueline's Intellectual Property Rights

82. In October of 2012, Dorsey filed a Notice of Opposition to Modernica's claim that it owned the rights to and/or interest in the GEORGE NELSON and NELSON trademarks. Dorsey filed the Notice of Opposition on behalf of the Nelson Foundation and Jacqueline Nelson.

83. Thereafter, on March 15, 2013, Dorsey again tried to takes steps to protect Plaintiffs' rights and/or interests. He wrote,

On behalf of our clients, Ms. Jacqueline Nelson ("Ms. Nelson") and the George Nelson Foundation ("the Foundation"), we demand your client Empire IP Holdings LLC (including its employees, agents and affiliates, including but not limited to Verichron, Kirch & Co., and Mr. Wu) immediately cease the unauthorized use of the trademark GEORGE NELSON, and immediately cease manufacturing, selling, offering and/or promoting the infringing clock design.

84. Dorsey did not follow these actions with a lawsuit on Jacqueline's behalf to protect her Nelson IP rights. Instead, armed with the recent assignment of the Nelson IP Rights to the Nelson Foundation, Dorsey sued Modernica on behalf of the Nelson Foundation.

85. The Nelson Foundation would not have had standing to bring the suit without Dorsey's procurement of the Nelson IP Assignment.

86. On September 23, 2013, Dorsey wrote to Jacqueline informing her of a lawsuit filed on behalf of the Nelson Foundation against Modernica relating to the Nelson IP.

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87. At all times relevant, Dorsey knew his representation of Jacqueline was also for the direct benefit of her heir, Mico Nelson. Mico Nelson was her heir and a third-party beneficiary of Dorsey's representation.

88. The lawsuit against Modernica moved into discovery, and Modernica served discovery requests that sought documents relating to the Nelson Foundation and Herman Miller's affiliation with it.

V. Giordanella is Retained

89. Prior to the lawsuit being resolved, Giordanella was retained to advise Jacqueline Nelson as additional counsel and to assist in protecting her rights and/or interests.

90. The move to hire Giordanella was triggered by a conversation Patrice had with Dorsey, during a call in March of 2014, in which Dorsey informed Patrice, for the first time, that he was no longer working on a *pro bono* basis for the Nelson Foundation and that Jacqueline was responsible for his fees for the *Modernica* suit.

91. After Giordanella's retention, Dorsey and Katten Muchin continued to represent Jacqueline in the *Modernica* litigation.

92. Giordanella corresponded with Mico Nelson regarding the status of the *Modernica* suit and advised him on settlement.

93. Giordanella had numerous communications with Dorsey regarding the status of the *Modernica* suit and its potential resolution.

94. Giordanella knew at the time he was communicating and negotiating with Dorsey regarding the *Modernica* suit that he was communicating with and conducting business with an Illinois attorney.

95. At no time, did Giordanella investigate or advise Mico on his intellectual property rights and/or interests, including, without limitation, the rights to and/or interests Mico had or may have been able to obtain in the Nelson IP, such as the famous Bubble Lamps designed by George Nelson and the intellectual property related to those lamps, including trademark and trade dress rights. Giordanella knew or should have known the value of the Nelson IP and that they were at-issue in the *Modernica* suit.

96. By his inattention to the case and by his failure to investigate the Nelson family's conflict-of-interest concerns, Giordanella allowed Herman Miller, which was not a party to the *Modernica* lawsuit, to obtain intellectual property and other rights and/or interests related to the valuable Bubble Lamps and other Nelson IP.

VI. The Nelson IP Assignment Serves as the Precursor to a Settlement Causing the Complete Loss of All Valuable IP Rights.

97. The *Modernica* lawsuit settled. In the settlement, Herman Miller paid to purportedly obtain intellectual property and other rights and/or interests related to the Bubble Lamps. Herman Miller now claims ownership of any intellectual property rights relating to and/or the interests in the Bubble Lamps and the molds and equipment used to manufacture the Bubble Lamps. Herman Miller would not have been able to obtain these rights in the settlement without the Nelson IP Assignment procured by Dorsey and Katten Muchin.

98. Giordanella failed to advise Mico and Patrice to take legal action relating to the forthcoming *Modernica* settlement. Giordanella failed to recognize and advise Mico and Patrice of the potential for valuable income tax deductions that might have been available to Jacqueline as a consequence of the Nelson IP Assignment.

99. Plaintiffs, Jacqueline Nelson and Mico Nelson received no intellectual property rights and/or interests as part of the settlement and currently have only an encumbered royalty. Jacqueline was already receiving royalties pursuant to a 2006 agreement with Herman Miller.

100. Without Dorsey and Katten Muchin drafting and procuring the transfer of intellectual property from Jacqueline, the settlement between Herman Miller, Modernica, and the Nelson Foundation, causing damage to Plaintiffs, would not have been possible.

101. Although he originally offered to handle the infringement matter on a *pro bono* basis, Dorsey later charged over \$800,000 in attorney's fees, which are being assessed against the Nelson family in the form of credits against Herman Miller royalties.

102. Despite repeated requests, Defendants have not disclosed what other "settlement" or "damages" have accrued to the benefit of the Nelson Foundation as a result of resolution of the Modernica disputes stemming from the January of 2013 Nelson IP Assignment benefitting the Nelson Foundation. Plaintiffs did not become aware of any improper conduct by any of the Defendants until well after the *Modernica* settlement that occurred in September of 2015.

COUNT I
(LEGAL MALPRACTICE AGAINST KATTEN MUCHIN AND DORSEY)
(Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson)

103. Plaintiff, Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson, repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

104. Beginning in approximately July of 2012 and continuing to all relevant time periods, Dorsey and Katten Muchin represented and advised Jacqueline Nelson regarding her rights to and/or interests in the Nelson IP and in the *Modernica* settlement.

105. Dorsey and Katten Muchin owed Jacqueline Nelson a duty of professional care and loyalty in protecting her interests in the Nelson IP.

106. Dorsey and Katten Muchin breached their professional duty to Jacqueline in one or more of the following ways:

- (a) Failed to protect Jacqueline from the loss of the Nelson IP;
- (b) Failed to advise Jacqueline of her rights to and/or interests in the Nelson IP;
- (c) Failed to advise Jacqueline of her rights to and/or interests in the Nelson Trademarks;
- (d) Failed to advise about the *Modernica* lawsuit and detrimental settlement of the *Modernica* lawsuit;
- (e) Engaged in conflicted representation in violation of Illinois Rule of Professional Conduct 1.7 and 1.9 by virtue of representing both Jacqueline Nelson and the Nelson Foundation; and

(f) were otherwise careless and negligent.

107. As a direct and proximate cause of one or more of the aforementioned acts or omissions, the Estate of Jacqueline Nelson suffered damages, including but not limited to, the loss of all Nelson IP in connection with the Nelson IP Assignment and subsequent *Modernica* settlement and any profits that would have been realized from those rights and/or interests.

WHEREFORE, Plaintiff Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson, demands judgment in her favor and damages representing the value of the wrongfully procured assignment and subsequent divestment of rights and/or interests, legal fees wrongfully assessed against the Estate of Jacqueline Nelson, pre- and post-judgment interest, costs and expenses of suit.

COUNT II
(LEGAL MALPRACTICE AGAINST KATTEN MUCHIN AND DORSEY)
(Mico Nelson, Individually)

108. Plaintiff Mico Nelson, individually, repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

109. At all times relevant, Dorsey and Katten Muchin represented and advised Jacqueline Nelson regarding her rights to and/or interests in the Nelson IP and in the *Modernica* settlement.

110. Dorsey and Katten Muchin's representation included services that would directly benefit Jacqueline Nelson's heir, Mico Nelson.

111. Mico Nelson was the intended beneficiary of the Estate of Jaqueline Nelson, which included the Nelson IP rights and *Modernica* settlement. Mico Nelson was a third-party beneficiary of Dorsey's representation of Jaqueline.

112. Dorsey and Katten Muchin knew at the time of their retention and representation that their advice to Jacqueline was to directly benefit the beneficiaries of Jacqueline's estate, namely Mico.

113. Dorsey and Katten Muchin continued to represent Jacqueline Nelson and Mico Nelson as an intended third-party beneficiary, and their respective interests even after the Giordanella Defendants were retained as counsel for Jacqueline Nelson.

114. As such, Dorsey and Katten Muchin owed a duty of professional care and loyalty to Mico Nelson as an intended third-party beneficiary, in addition to the duty owed by them to Jacqueline Nelson, in protecting his interests in the Nelson IP and in the *Modernica* settlement.

115. Dorsey and Katten Muchin breached their professional duties to Mico Nelson in one or more of the following ways:

- (a) Failed to protect Mico Nelson from the loss of the Nelson IP;
- (b) Failed to advise Mico Nelson of his rights to and/or interests in the Nelson IP;
- (c) Failed to advise Mico Nelson of his rights to and/or interests in the Nelson Trademarks;
- (d) Failed to properly advise Mico Nelson about the *Modernica* lawsuit and the detrimental settlement of the *Modernica* lawsuit;

- (e) Engaged in conflicted representation in violation of Illinois Rule of Professional Conduct 1.7 and 1.9; and
- (f) Was otherwise careless and negligent.

116. As a direct and proximate cause of one or more of the aforementioned acts or omissions, Mico Nelson suffered damages, including but not limited to, the loss of the rights in all of the Nelson IP in connection with the Nelson IP Assignment and subsequent *Modernica* settlement and any profits that would have been realized from those rights and/or interests.

WHEREFORE, Plaintiff, Mico Nelson demands judgment in their favor and damages representing the value of the wrongfully procured assignment and subsequent divestment of rights and/or interests, legal fees wrongfully assessed against Mico Nelson, pre- and post-judgment interest, costs and expenses of suit.

COUNT III
(LEGAL MALPRACTICE AGAINST THE GIORDANELLA DEFENDANTS)
(Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson)

117. Plaintiff, Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson, repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

118. Beginning in approximately March of 2014 and continuing to all relevant time periods, the Giordanella Defendants were retained by, represented, and advised Jacqueline Nelson as additional counsel regarding her rights to and/or interests in the Nelson IP and in the *Modernica* settlement.

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119. Giordanella owed Jacqueline Nelson a duty of professional care and loyalty in protecting her interests in the Nelson IP.

120. Giordanella breached their professional duty to Jacqueline in one or more of the following ways:

- (a) Failed to protect Jacqueline from the loss of the Nelson IP;
- (b) Failed to advise Jacqueline of her rights to and/or interests in the Nelson IP;
- (c) Failed to advise Jacqueline of her rights to and/or interests in the Nelson Trademarks;
- (d) Failed to advise about the *Modernica* lawsuit and detrimental settlement of the *Modernica* lawsuit;
- (e) failed to take steps to abrogate the Nelson IP Assignment prior to the *Modernica* settlement; and
- (f) were otherwise careless and negligent.

121. As a direct and proximate cause of one or more of the aforementioned acts or omissions, the Estate of Jacqueline Nelson suffered damages, including but not limited to, the loss of all Nelson IP in connection with the Nelson IP Assignment and subsequent *Modernica* settlement and any profits that would have been realized from those rights and/or interests.

WHEREFORE, Plaintiff, Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson, demands judgment in her favor and damages representing the value of the wrongfully procured assignment and subsequent divestment of rights

and/or interests, legal fees wrongfully assessed against the Estate of Jacqueline Nelson, pre- and post-judgment interest, costs and expenses of suit.

COUNT IV
(LEGAL MALPRACTICE AGAINST COWEN LIEBOWITZ AND ROBERT
GIORDANELLA)
(Mico Nelson, Individually)

122. Plaintiff Mico Nelson, individually, repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

123. At all times relevant, Giordanella represented and advised Jacqueline Nelson, through Mico Nelson, regarding her intellectual property rights to and/or interests in the Nelson IP and the *Modernica* settlement.

124. Giordanella's representation included services that would directly benefit Jacqueline Nelson's heir, Mico Nelson.

125. Mico Nelson was the intended beneficiary of the Estate of Jacqueline Nelson, which included the Nelson IP rights and *Modernica* settlement. Mico Nelson was a third-party beneficiary of Giordanella's representation of Jacqueline.

126. Giordanella knew at the time of their retention and representation that their advice to Jacqueline was to directly benefit the beneficiaries of Jacqueline's estate, namely Mico.

127. As such, Giordanella also owed a duty of professional care and loyalty to Mico Nelson as an intended third-party beneficiary in protecting his interests in the Nelson IP and in the *Modernica* settlement.

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128. Giordanella breached his duty to Mico Nelson in one or more of the following ways:

- (a) Failed to protect Mico Nelson from the loss of the Nelson IP;
- (b) Failed to advise Mico Nelson of his rights to and/or interests in the Nelson IP;
- (c) Failed to advise Mico Nelson of his rights to and/or interests in the Nelson trademarks;
- (d) Failed to advise Mico Nelson about the *Modernica* lawsuit settlement and circumstances and its detriments to his interests;
- (e) Failed to evaluate the improvident transfer laws available in Maine and advise Mico Nelson; and
- (f) Was otherwise careless and negligent.

129. As a direct and proximate cause of one or more of the aforementioned acts or omissions, Mico Nelson suffered damages, including but not limited to, the loss of the rights to all of the Nelson IP and any profits that would have been realized from those rights and/or interests.

WHEREFORE, Plaintiff, Mico Nelson demands judgment in his favor and damages representing the value of the wrongfully procured and subsequently divested rights and/or interests, pre- and post-judgment interest, costs and expenses of suit.

COUNT V
(VIOLATION OF THE IMPROVIDENT TRANSFER ACT, 33 M.R.S. § 1021, et seq.
AGAINST THE GEORGE NELSON FOUNDATION, DORSEY, AND KATTEN
MUCHIN)
(Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson)

130. Plaintiff repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

131. At the time that Jacqueline Nelson signed the Nelson IP Assignment, she was of diminished capacity and/or incapacitated.

132. At the time that Jacqueline signed the Nelson IP Assignment, she had been moved to an elder care and rehabilitation facility, and was residing there in the State of Maine.

133. At the time that Jacqueline signed the Nelson IP Assignment, she had just turned 93 years old.

134. At the time that Jacqueline signed the Nelson IP Assignment, she was wholly or partially dependent upon one or more other persons for care or support, because she suffered significant limitation in mobility, emotional or mental functioning, and was suffering or recovering from a major illness.

135. The estimated value of the Nelson IP assigned to the Nelson Foundation and the rights to and/or interests in the intellectual property related to the Bubble Lamps is more than 10% of Jacqueline Nelson's estate.

136. The assignment of the Nelson IP to the Nelson Foundation was for less than full consideration.

137. Jacqueline's assignment to the Nelson Foundation of the Nelson IP was in the context of a confidential or fiduciary relationship involving Jacqueline's actual placing of trust in Nelson Foundation's agents and representatives, including those

whom she respected and trusted, like Rolf Fehlbaum, who had started the Foundation on the express representation that it would not require any assignment of her legal rights and/or interests.

138. Pursuant to section 1022 of Title 33 of the Maine Revised Statutes, the Maine Improvident Transfer of Title Act, Jacqueline’s transfer of property to the Nelson Foundation is presumed to have been the result of undue influence because Jacqueline was not represented in the transfer or execution of the assignment by independent counsel.

139. The Nelson Foundation’s agents’ acts or omissions as alleged herein were intentional and committed with actual or implied malice so as to justify an additional award of punitive or exemplary damages under the common law.

WHEREFORE, Plaintiff Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson, is entitled to avoid the transfer or execution of the Nelson IP Assignment to the extent that a reformation of that assignment is necessary to return the Nelson IP to the Estate of Jacqueline Nelson; Plaintiff requests that the Court, in the alternative, impose a constructive trust upon the Nelson IP transferred to the Nelson Foundation, in order for all of those rights and/or interests to inure to the benefit of Jacqueline Nelson and her estate as if the Nelson IP Assignment had not occurred in “irrevocable” terms. Plaintiff also demands that with judgment in her favor she be awarded the costs and expenses of suit, an award of attorney’s fees, and such other injunctive or equitable relief that this Court deems just. In the alternative, Plaintiff demands judgment in her favor and damages representing the value of the wrongfully

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procured Nelson IP Assignment, damages in excess of \$800,000 for legal fees wrongfully assessed against Jacqueline Nelson, exemplary or punitive damages, pre- and post-judgment interest, costs and expenses of suit.

COUNT VI
**(UNDUE INFLUENCE AND ACTION FOR REFORMATION OF CONTRACT
AGAINST THE GEORGE NELSON FOUNDATION, DORSEY, AND KATTEN
MUCHIN)**

140. Plaintiff Patrice Nelson, as Personal Representative of the Estate of Jacqueline Nelson repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

141. The Nelson Foundation, through its authorized agents, took advantage of the disparity of bargaining power, and was the beneficiary of an actual placing of trust in the Foundation by Jacqueline Nelson, such that the Foundation had a moral or fiduciary obligation not to take advantage of that trust.

142. The Nelson Foundation breached this fiduciary position of trust by procuring Jacqueline's execution of the broad and irrevocable Nelson IP Assignment and entering the *Modernica* settlement without payment of any consideration of value to her.

143. The Nelson Foundation knew or should have known that Jacqueline Nelson was under a complete misunderstanding or lack of knowledge as to the scope of the Nelson IP Assignment that the Foundation's own lawyer drafted and pressed for her to sign; the Foundation knew or should have known that Jacqueline did not have independent legal counsel for that transaction, and indeed the Foundation intentionally

did not include Jacqueline's known personal attorney, Philip Raible, in direct communications to her, even though Raible had previously been involved in expressing Jacqueline's doubts about the Foundation's purpose; the Foundation knew or should have known that Jacqueline was operating under a misunderstanding, or with less than full information regarding the scope of the Nelson IP Assignment that the Foundation was asking her to sign when she was recuperating from a severe physical ailment and was of diminished mental capacity and residing in a nursing home.

144. The Nelson Foundation further knew or should have known that Jacqueline Nelson was under a complete misunderstanding or lack of knowledge as to the scope and consequences of the *Modernica* settlement; the Foundation knew or should have known that Jacqueline was operating under a misunderstanding, or with less than full information regarding the scope and consequences of the *Modernica* settlement when she was recuperating from a severe physical ailment and was of diminished mental capacity and residing in a nursing home.

145. The Nelson Foundation's conduct constitutes wrongful undue influence or duress.

146. The Nelson Foundation's conduct constitutes fraudulent misrepresentation, or in the alternative, negligent misrepresentation or strict misrepresentation, in the form of misrepresentation by silence when there is a duty to speak; or the Foundation acted in the context of transactions when there was knowledge on its part that the opposing side to the transactions was under a misunderstanding or lack of information as to the scope, impact, or the terms of documents drafted for and

proposed by the Foundation, including circumstances where there was a present disparity of sophistication, legal counsel, and bargaining power.

147. The Nelson Foundation's conduct constitutes abuse of an elderly, dependent person, who was 93 years old at the time, in the form of procuring a complete and irrevocable Nelson IP Assignment and disposition by settlement of valuable Nelson IP rights from an elderly person without paying for those rights.

148. The totality of circumstances compels equitable relief, in the form of avoidance and reformation of the Nelson IP Assignment, allowing for revocation of the assignment, or such other equitable relief as to that Assignment and the *Modernica* settlement so as to restore to Jacqueline Nelson and her estate the value of the Nelson IP wrongfully assigned.

149. The Nelson Foundation's agents' acts or omissions as alleged herein were intentional and committed with actual or implied malice so as to justify an award of exemplary or punitive damages under the common law.

WHEREFORE, Plaintiff Patrice Nelson , as Personal Representative of the Estate of Jacqueline Nelson, is entitled to avoid the transfer or execution of the Nelson IP Assignment to the extent that reformation of that assignment is necessary and to other relief concerning the *Modernica* settlement, all in order to return the Nelson IP to the Estate of Jacqueline Nelson; Plaintiff requests that the Court, in the alternative, impose a constructive trust upon the Nelson IP transferred to the Nelson Foundation, in order for all of those rights to inure to the benefit of Jacqueline Nelson and her estate as if the Nelson IP Assignment and *Modernica* settlement had not occurred. Plaintiff also

demands that with judgment in her favor she be awarded the costs and expenses of suit, an award of attorney's fees, and such other injunctive or equitable relief that this Court deems just. In the alternative, Plaintiff demands judgment in her favor and damages representing the value of the wrongfully procured Nelson IP Assignment and *Modernica* settlement, damages in excess of \$800,000 for legal fees wrongfully assessed against Jacqueline Nelson, exemplary or punitive damages, pre- and post-judgment interest, costs and expenses of suit.

COUNT VII
(INTENTIONAL INTERFERENCE WITH EXPECTANCY AGAINST THE GEORGE NELSON FOUNDATION, DORSEY, AND KATTEN MUCHIN)
(Mico Nelson, Individually)

150. Plaintiff Mico Nelson, individually, repeats, re-alleges, and re-incorporates herein by reference the preceding paragraphs as though fully stated herein.

151. Mico Nelson is the only child of Jacqueline Nelson. Jacqueline knew and intended that her estate would go to him upon her death.

152. Mico is the intended heir of his parents' estate and is named in Jacqueline Nelson's Last Will and Testament as the beneficiary to receive all but \$100,000 of her estate.

153. Jacqueline, similarly, was the sole beneficiary of George Nelson's legacy of intellectual property rights and/or interests.

154. George Nelson had named Mico to take under his Last Will and Testament if Jacqueline Nelson predeceased him.

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155. By the conduct of the Nelson Foundation alleged above, and the acts and omissions of the Foundation's agents (Dorsey and Katten Muchin) as alleged above, the Foundation committed tortious conduct in the form of fraud, duress, and/or undue influence to procure the improper irrevocable transfer of all intellectual property rights from Jacqueline to the Foundation before she died and the divestment of rights in the *Modernica* settlement and without any payment to her in consideration for such transfer.

156. The Nelson Foundation knew or should have known that Jacqueline Nelson was under a complete misunderstanding or lack of knowledge as to the scope of the Nelson IP Assignment that the Foundation's own lawyer (Dorsey) drafted and pressed for her to sign; the Foundation knew or should have known that Jacqueline did not have independent legal counsel for that transaction, and indeed the Foundation intentionally did not include Jacqueline's known personal attorney, Raible, in direct communications to her, even though Raible had previously been involved in expressing Jacqueline's doubts about the Foundation's purpose; the Foundation knew or should have known that Jacqueline was operating under a misunderstanding, or with less than full information regarding the scope of the Nelson IP Assignment that the Foundation was asking her to sign when she was recuperating from a severe physical ailment and was of diminished mental capacity and residing in a nursing home.

157. The Nelson Foundation also knew or should have known that Jacqueline Nelson was under a complete misunderstanding or lack of knowledge as to the scope of the terms of the *Modernica* settlement; the Foundation further knew or should have known that Jacqueline was operating under a misunderstanding, or with less than full

information regarding the scope and consequences of the *Modernica* settlement when she was recuperating from a severe physical ailment and was of diminished mental capacity and residing in a nursing home.

158. But for the Nelson Foundation's interference, including by and through its attorney Dorsey, Mico had a reasonable certainty of realizing the expectancy of his inheritance. His mother was skeptical of the Foundation's intentions and only agreed to support it when the founders, whom she trusted and respected, represented to her that no transfer of legal rights and/or interests would be required.

159. The Nelson Foundation and Dorsey's conduct was wrongful undue influence or duress.

160. The wrongful conduct of the Nelson Foundation and Dorsey in fact caused damage to the estate of Jacqueline Nelson, and, hence, damage to Mico's expectancy, in the form of the irrevocable transfer of his mother's Nelson IP, such that after she dies, the Foundation will continue to hold and control of those rights and/or interests without ever having paid any value for them, and the divestment of rights in the *Modernica* settlement, all causing the loss of the full scope of value of the Nelson IP.

161. Upon information and belief, the Nelson Foundation has also retained some benefit from the Nelson IP Assignment arising out of resolution of the disputes involving *Modernica*, and it retains that benefit without adequately compensating Jacqueline Nelson or her estate; further, the Foundation has charged Jacqueline an exorbitant amount of attorney's fees arising out of the *Modernica* legal disputes.

162. The Nelson Foundation's agents' acts or omissions as alleged herein were intentional and committed with actual or implied malice so as to justify an award of exemplary or punitive damages under the common law.

WHEREFORE, Plaintiff, Mico Nelson, demands judgment in his favor for damages in the value of lost or misappropriated expectancy, exemplary damages, pre- and post-judgment interest, the costs and expenses of suit, and such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Amir R. Tahmassebi
Attorneys for Plaintiff

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"Rolf Fehlbaum"
<Rolf.Fehlbaum@ormand.com>

To "Brian Walker"
<brian_walker@hermanmiller.com>

03/21/2010 11:36 AM

cc

Subject: Jacqueline Nelson

Dear Brian,

Yesterday I had a telephone conversation with Jacqueline. I informed her about our recent discussion.

I understood that

- she agrees in principle with the creation of a foundation
- she does not feel that the present proposal is well conceived.

Her main critique is

- the scope of the foundation's activities has to correspond to the economical relevance of the work. It has to be much more modest than the ambitious Eames Foundation. Also it cannot touch royalties which are due to Jacqueline/Mico.

- John Berry is not the person who could run a foundation. It is even questionable whether the foundation needs an active director. It probably rather needs an intelligent "secretary" who would realize what the board decides

- the proposed composition of the board shows that John Berry does not relate to the real issues. Jacqueline cannot understand what Eames Demetrios (whom she does not know in person) would do on a board of a Nelson Foundation, nor Gregg Buchbinder and others. The board should be composed of people who are knowledgeable about the work of George Nelson and respected in the world of museums and educational institutions. A name which came up is Stanley Abercrombie, the author of the book on George. Jacqueline also mentioned Tom Pratt for whom she has great respect.

My understanding is that Jacqueline would agree with the creation of a foundation if it had a clear mission (mainly the legal protection of the name and the work of George Nelson), a good board, a person which would be able to translate the board decisions into actions and the clear understanding that it would not be financed by her royalties.

CHRON 018

EXHIBIT

1

If you feel that this could be achieved a new document could be sent to Jacqueline. If you want me to contact Stanley Abercrombie I could do so. I shall be in New York around May 18 and would be available for a discussion.

Best wishes,

Rolf

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CHRON 019

Subj: Jacqueline Nelson
 Date: Tuesday, March 9, 2010 6:18:30 PM
 From: phil@raynerrowe.com
 To: rolf.fehlbaum@vitra.com
 cc: duparc34@aol.com

Dear Mr. Fehlbaum:

Today I had lunch with Jacqueline Nelson who asked that I contact you regarding two matters.

The first is to solicit your input and knowledge, generally, regarding the apparent improper use of the name "George Nelson." She is concerned that third parties, who do not pay royalties, and who are not held to any standard of craftsmanship or design, are exploiting the name for their sole benefit. Based upon your industry experience and expertise, she thought that you may have some ideas as to how to best address this.

Modernica, which manufactures or distributes the Bubble Lamps has recently trademarked the name "George Nelson" and is now marketing the bubble lamps as "George Nelson Bubble Lamps." I have attached pdf copies of both the trademark and the website to this e-mail.

I am advised by Mrs. Nelson that neither Howard Miller Company (which originally manufactured the Bubble Lamps), nor any successor to Howard Miller Company ever obtained rights to the design of the lamps.

This gives rise to two issues.

The first is the right to exploit the design of the lamps. If the design is properly the property of the George Nelson estate, it is possible that Modernica is exploiting the design improperly. Also, by trademarking the name George Nelson, and passing the lamps off as "George Nelson Bubble Lamps" Modernica is creating confusion in the marketplace by the implication that the lamps are somehow authorized by the George Nelson estate.

Additionally, there are three other trademarks or trademark applications, incorporating the name "George Nelson." These are all under the name "George Nelson by Verichron" and relate to (i) lamps; (ii) clocks; and (iii) furniture. I believe, but am not entirely certain, that the trademark for the clocks has been issued while the other two are being held up in the Trademark Office because of a conflict with the Modernica trademark. I have attached pdfs of the relevant "George Nelson by Verichron" documents as well.

The other matter which she would like me to discuss with you concerns the "George Nelson Foundation". Mrs. Nelson is skeptical of the need for, and the purpose and viability of, such a Foundation. Since you have been contacted by Herman Miller regarding Vitra's requested involvement in the Foundation, she thought it would be worthwhile for us to speak about that as well. I've attached an outline regarding the George Nelson Foundation that was sent to me by John Berry.

Please e-mail me with your contact information so that we can set up a time to speak. I look forward to discussing these matters with you.

CHRON 016

EXHIBIT

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Very truly yours,

Philip Raible

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Herman Miller

July 29, 2010

Mrs. Jacqueline Nelson
34 Gramercy Park East
Apt 4A
New York, NY 10003

Dear Jacqueline,

We are writing to ask for your support for the development of a George Nelson Foundation. We believe the establishment of a George Nelson Foundation will serve to protect, promote and extend the legacy of George Nelson's work. The independent nature of the foundation will serve as the authoritative Nelson resource and provide for the continuing authentication of all Nelson designs as an independent authority apart from any manufacturer. This will help to protect the authenticity of George's work and guard against knock-offs attempting to make a claim on his designs. A public website would be developed and launched to provide a visible and public reference source that will expand the general awareness and understanding of his work. With the additional visibility and credibility gained from the Foundation and this website, we believe we are in a stronger position to protect and promote the authenticity of our Nelson furniture products in the marketplace. All of this serves to optimize the revenue potential for your estate by increasing sales of authorized Nelson designs.

Since Herman Miller and Vitra already own the design rights to all of George's furniture designs, it is not necessary for you to make any legal transfer of rights. Of course, we would very much like your support of the Foundation by agreeing to serve as an honorary Board member.

Herman Miller and Vitra believe that this is the right thing to do for the long-term preservation of authentic Nelson designs and are prepared to provide the financial support for the Foundation. This support is in addition to your current royalty agreements with Herman Miller and Vitra and does not affect those agreements in any way.

With your support, the next step involves forming a Board of Trustees. In addition to you, there would be a representative from Herman Miller and Vitra as well as two other board members who have credibility in the design world and understand George Nelson's work. They would take the necessary steps to establish the legal structure of the Foundation as a not-for-profit entity and engage a part time Executive Director who would oversee the development of the website and other educational activities, as directed by the Board.

Herman Miller
845 East Main Avenue PO Box 1000 Zeeland MI 49684-1000
616 654 4400 www.hermanmiller.com

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In closing, we see this step as an important part of protecting a design legacy that is such an integral part of our histories. We would consider it an honor and a privilege to make this Foundation a reality.

Warm Regards,

Brian C. Walker
President & CEO
Herman Miller, Inc.

Rolf Fehlbaum
Chairman of the Board
Vitra International AG

cc: Ben Watson
Executive Creative Director

Marg Mojzak
Director of Retail

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From: Karen Stein <karenstein@karenstein.net>

To: Jacqueline Nelson <DuParc34@aol.com>; Barry Bergdoll <Barry_Bergdoll@moma.org>; Rolf Fehlbaum <Rolf.Fehlbaum@ormand.com>; Ben Watson <ben_watson@hermanmiller.com>

Subject: Fwd: George Nelson: Status of Registrations and Proposed Next Steps

Date: Thu, Jul 12, 2012 12:02 am

Attachments: Intellectual_Property.pdf (454K)

Dear all,

I've been in contact with Will Dorsey, who is an avid George Nelson collector based in Chicago who also happens to be a lawyer specializing in intellectual property. In his enthusiasm for Nelson, he offered any legal assistance the Nelson Foundation might need on a pro bono basis and I made a general comment that there were some murky issues that could potentially benefit from legal advice at some point, including the Bubble lamp. Since our conversation of yesterday, Will has on his own initiative done some digging and turned up some interesting details regarding Modernica's trademark applications for Nelson designs. Please see his email below that outlines his discoveries and potential next steps. I understand that Herman Miller has previously done some investigation into Modernica and the Bubble lamp and has also been in contact with the Howard Miller Company regarding products that it had once produced (and that Herman Miller might consider producing going forward) and so perhaps these details are known, but since there is a July 26 deadline for contesting certain applications, I wanted to make sure this material received your attention in time.

Will also raises an issue of someone producing "George Nelson" branded clocks, which, if I understand correctly, is in conflict with the designs produced by the Vitra Design Museum. In general, he is advising a proactive stance on registering and policing Nelson marks and this is something that on the face of it seems worthy of serious consideration. While any legal action shouldn't be entered into lightly, even if it's work done on a pro bono basis, I do want to make sure that we are taking the necessary steps to protect Nelson's works in the long term. Of course, action of any kind would only be taken with Jacqueline's express agreement and permission and, if appropriate, in coordination with any steps already being taken by either or both Herman Miller and Vitra.

Please let me know your thoughts.

With best regards,
Karen

Karen Stein
24 West 55th Street
New York, NY 10019
KarenStein@KarenStein.net
917/483-8599

Begin forwarded message:

From: "Dorsey, William J." <william.dorsey@kattenlaw.com>
Subject: George Nelson: Status of Registrations and Proposed Next Steps
Date: July 11, 2012 5:15:45 PM EDT
To: Karen Stein <karenstein@karenstein.net>
Cc: "Smith, Cathay Y. N." <cathay.smith@kattenlaw.com>

Karen,

Further to our conversation, I wanted to get back to you with some additional information regarding third-party efforts to register "George Nelson" as well as some initial thoughts about how the foundation and Ms. Nelson might proceed. It appears that both Modernica and Verichron have attempted to register GEORGE NELSON or NELSON in recent years. I will address each in turn:

Modernica

Modernica currently owns a number of trademark applications and registrations in the U.S. Patent and Trademark Office (USPTO) - including a trademark registration for the mark NELSON and for the mark GEORGE NELSON. Modernica registered the GEORGE NELSON mark for use with electric lamps, lamp shades, and lamps in 2010. Modernica also has new trademark applications pending in the USPTO for the marks NELSON and GEORGE NELSON in Class 8 for "Fireplace logs; fire irons; fireplace poker; fireplace shovels; fireplace tool sets consisting of a shovel, grate, poker, fire screen and fire lighter, all sold together

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as a unit." Those applications are pending and must be objected to prior to July 26th of this year. Up to a 90 day extension to object can also be requested as long as the request is made prior to that date.

Though the registrations for lamps have already issued, it is possible to go back and cancel registered marks. However, the likelihood of success would require additional factual and legal inquiry to confirm whether opposition proceedings would be successful.

Note: Modernica has also sought to register pictures of bubble lamps as trade dress.

Verichron

In addition to Modernica, an individual named Wen Chen Wu registered the mark GEORGE NELSON BY VERICHRON for use with clocks in 2008. This one particularly irks me, as he is now selling non-Viira "George Nelson" branded clocks on reputable sites like walmart.com and [ebay](http://ebay.com). Though the registration has already issued, depending on the underlying facts, there may be a good basis to cancel this mark and stop this presumed abuse. Some options potentially include cease and desist letters on behalf of the rightful owner of the mark.

Next Steps

I know we've spoken mostly of design, but my firm and I have extensive experience handling exactly these types of intellectual property disputes. I have attached a copy of our firm's brochure highlighting some of our intellectual property expertise. I personally have represented numerous clients in high profile intellectual property disputes, including TOPSHOP (the British retailer), E! Entertainment Television, and others. I have already sought and obtained permission from my firm to assist the foundation on a pro bono basis, and one of my colleagues and fellow design enthusiasts Cathay Smith would be happy to assist as well. I have copied her on this email.

I recognize the need to coordinate any steps with Ms. Nelson as well as Viira and Herman Miller. We would not want to pursue anything that would not inure to the benefit of them and the foundation. Accordingly, if the foundation and Ms. Nelson were to proceed to retain our firm, we would recommend getting additional information regarding the current state of the rights to Mr. Nelson's name, likeness, and designs. Then, assuming everyone is comfortable, we would consider pursuing these next possible steps:

- Filing an opposition to Modernica's effort to register the "GEORGE NELSON" mark for fireplace tools.
- Confirming whether there is a basis to cancel the already issued marks (Verichron and Modernica).
- Possibly sending cease and desist letters to Verichron and Modernica regarding their expansion of use of the marks.
- Possibly advising third-parties regarding rightful ownership of the marks.
- Registering and policing GEORGE NELSON marks on behalf of their rightful owners going forward.

I recognize this is probably a lot to take in by email. I would be happy to discuss this with you and any other representatives of the foundation or Ms. Nelson who may be interested. I am as dedicated to protecting the legacy of Mr. Nelson as I'm sure the foundation is.

Best regards,

Will

WILLIAM J. DORSEY
Partner
Katten Muchin Rosenman LLP
625 W. Monroe Street / Chicago, IL 60661-3693
p / (312) 902-5475 f / (312) 577-8729
william.dorsey@kattenlaw.com / www.kattenlaw.com

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Memorandum

TO: Karen Stein cc: Carolyn M. Passen

FROM: William J. Dorsey
Christine E. Bestor

DATE: August 23, 2012

SUBJECT: George Nelson Trademark Registration and Opposition Status

As you know, the George Nelson Foundation (the "Foundation") is, among other things, dedicated to maintaining and promoting the legacy of George Nelson and his works. One essential way to accomplish this goal is to register and police the use of the "GEORGE NELSON" marks in commerce to prevent abuse by third parties and to ensure that the public is not confused by knockoff/unauthorized goods.

This memorandum provides an outline of the background facts as we currently understand them related to the use of the "GEORGE NELSON" marks and sets forth some proposed courses of actions for your consideration.

The best way to protect a famous name or mark like "GEORGE NELSON" in the United States is registering it with the U.S. Patent and Trademark Office ("USPTO"). A federally registered trademark, combined with use of the mark in commerce, provides the rights holder with the *exclusive* right to use the name for that particular class of goods as well as a reasonable zone of expansion outside of that class. Disputes regarding trademark registrations are handled at the administrative level through the USPTO's Trademark Trial and Appeal Board ("TTAB").

I. Background Facts

It is our understanding that Jacqueline Nelson ("Ms. Nelson") inherited the rights to the George Nelson name for home goods and design upon George Nelson's death in 1986 pursuant to Mr. Nelson's last will and testament.¹ At the time of George Nelson's death, there were license

¹ During the course of various proceedings, we may have to produce a copy of the will confirming this to be the case.

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agreements for the authorized use of the "George Nelson" name in place with Herman Miller, Howard Miller, and Vitra. The licenses cover at least the following categories of goods:

- Herman Miller: Principally furniture;
- Howard Miller: Home accessories, including lighting;
- Vitra: Furniture and home accessories, including clocks.

We further understand that Ms. Nelson has not directly licensed the use of the George Nelson name to Modernica or Verichron, two entities which have obtained federal registrations for "GEORGE NELSON" marks with the USPTO.²

Modernica also has a pending application for the use of "GEORGE NELSON" and "NELSON" marks with fireplace tools. They have already sought and obtained federal registrations to use the "GEORGE NELSON" and "NELSON" marks for lighting and are actively marketing and selling "GEORGE NELSON" branded lighting products. In addition, Verichron has already registered the mark "GEORGE NELSON BY VERICHRON" for use with clocks and has been selling cheap, knockoff clocks through established retail outlets like walmart.com. See http://www.walmart.com/search/search-ng.do?search_query=George+Nelson+Verichron. Though these registrations have been issued, they are still subject to cancellation if the Foundation, Ms. Nelson, or other licensed users come forward with a valid basis to cancel.

Ms. Nelson, as the rightful holder of the mark "GEORGE NELSON," has two principal bases to oppose or cancel Modernica and Verichron's applications and registrations: (1) these marks suggest a false connection between their products and the designer George Nelson, and (2) the unauthorized use of the Modernica and Verichron marks is likely to cause confusion in the marketplace with licensed products currently being sold by Herman Miller and Vitra.

II. Status of TTAB Proceedings

With the permission of the Foundation and Ms. Nelson, we have already filed requests for extension of time to oppose Modernica's GEORGE NELSON and NELSON applications for fireplace tools. The deadline to file the actual opposition against the NELSON application is December 12, 2012. The deadline to file the opposition against the GEORGE NELSON application is October 24, 2012. We recommend filing a consolidated notice opposition against both of Modernica's trademark applications on October 24, 2012, and have already begun preparing this notice.³ We will circulate a draft for your review well in advance of the deadline.

We do not have a strict deadline to file cancellations against the registered marks. However, after five years, a mark becomes "incontestable" and cannot be cancelled on certain grounds,

³ There are USPTO filing fees associated with the filing of oppositions, cancellations, and trademark applications. Though our firm has agreed to handle this matter for the Foundation *pro bono*, the actual filing fees must be paid through the Foundation.

including likelihood of confusion. Accordingly, assuming we have a basis to do so, we would recommend pursuing cancellations as soon as we have settled on an action plan and have a full understanding of the current status of rights to the "GEORGE NELSON" marks. Please note that the Verichron registration will become incontestable on July 7, 2013.

III. Registering the George Nelson Marks

We understand that Vitra has recently taken action to register the "GEORGE NELSON" marks in Europe across a wide variety of goods. We would recommend undertaking a similar strategy in the United States as soon as possible. Specifically, we would recommend pursuing registrations in International Class 20 (furniture), International Class 14 (clocks), International Class 11 (lamps), and International Class 8 (fireplace tools) as well as possibly International Classes 21 (household and kitchen utensils), 24 (textiles), and 27 (carpets).⁴ Given Modernica's efforts to register "NELSON," we should also consider applying to register for registration of the mark NELSON in the same classes.

One question to be answered prior to registering the marks is which person or entity should do so. We understand that Ms. Nelson continues to be the primary holder of intellectual property rights in the "GEORGE NELSON" name and that the Foundation's intellectual property rights are limited.

Though typically the owner of the trademark rights registers a mark, it is uncommon for individuals to register trademarks, as it only provides a short term solution. For instance, the Frank Lloyd Wright marks are registered in the name of The Frank Lloyd Wright Foundation; and the Eames marks are registered in the name of Eames Office, LLC and Herman Miller.

Of course, if any person or entity other than Ms. Nelson were to register the mark, we would want to take steps to ensure that her interests were protected (possibly through the payment of royalty payments) and that the assignment of the intellectual property rights from her to the entity was valid and enforceable.

IV. Other Possible Actions

In addition to the foregoing, we would recommend consideration of the following additional actions:

- Given Verichron's blatant efforts to knock off George Nelson's clock designs and direct threat to current sales of authorized GEORGE NELSON clocks by Vitra in the United States, I would strongly consider issuing a cease and desist letter in addition to seeking to cancel the mark.

⁴ Once we pursue registrations, it is likely that the TTAB's trademark examiner will find a likelihood of confusion with the Modernica/Verichron registrations in at least some of the classes. However, pursuing the registrations will bolster our positions in the opposition/cancellation proceedings against Modernica and Verichron.

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- Given Modernica's slightly different position, it may merit a call to Modernica's attorney prior to proceeding with cancellation proceedings to explore their claimed bases for using the mark. In addition, if Ms. Nelson and others are interested, it may be possible to negotiate a license agreement with Modernica that would be in everyone's best interests and could strengthen Ms. Nelson's trademark rights.
- We would also recommend setting up a monitoring system to ensure we receive notice of any efforts to register "GEORGE NELSON" related marks going forward.

We look forward to discussing these options with you and possibly the members of the Board at your convenience. In the meantime, please do not hesitate to contact us with any questions or concerns.

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From: Karen Stein <kstein@georgenelsonfoundation.org>
To: Jacqueline Nelson <DuParc34@aol.com>; Rolf Fehlbaum <Rolf.Fehlbaum@ormand.com>
Subject: Draft document for discussion: Intellectual Property Assignment
Date: Wed, Oct 24, 2012 6:04 pm
Attachments: nelson_logo.gif (4K), IP Assignment - J, Nelson to George Nelson Foundation.DOC (77K)

Dear Jacqueline and Rolf,

In order to aid in a discussion about the long-term disposition of intellectual property and trademark rights associated with George Nelson, attorney Will Dorsey has prepared the attached draft document for your review and discussion. This is a DRAFT and is based on certain assumptions about existing agreements between Jacqueline and Vitra and Herman Miller and these assumptions would need to be confirmed before any agreement of this type were to proceed. The document is intended to provide a detailed example of one potential solution. It's important to note, as Will states in his email below, that assigning such rights to the Foundation is not intended to supersede or contradict any licensing and/or commercial arrangements that currently exist with Herman Miller and Vitra, but rather to provide a mechanism by which to protect against infringement by others and also by which to make future decisions about issues that are not covered by present licensing agreements.

I realize this is a lot to digest and I look forward to hearing your thoughts when you've had a time to do so. Of course, Will is also available to speak with either of you individually or together.

Best,
Karen

Karen Stein
Executive Director

Begin forwarded message:

From: "Dorsey, William J." <william.dorsey@kattenlaw.com>
Subject: George Nelson: Revised Draft Cease and Desist Letter and Assignment
Date: October 24, 2012 1:10:07 PM EDT
To: Karen Stein <kstein@georgenelsonfoundation.org>
Cc: "Bestor, Christine E." <christine.bestor@kattenlaw.com>

Karen,

Attached please find a revised draft assignment agreement assigning the George Nelson Intellectual Property rights from Jacqueline Nelson to the George Nelson Foundation. I believe the revised whereas clauses should address the issues you raised.

Of course, we did not have the benefit of copies of the license agreements between Ms. Nelson and Vitra or Herman Miller in creating the draft assignment agreement. Accordingly, we made certain assumptions about the license agreements, including assuming they covered the products that Herman Miller and Vitra are currently selling, that the license agreements include royalty payments to Ms. Nelson and then her heirs or assigns, and that the license agreements may be assigned by Ms. Nelson. We certainly do want to see the license agreements before the assignment is executed to ensure that Ms. Nelson would not be breaching the license agreements by entering into the assignment or otherwise adversely impacting her interests or those of the Foundation, Herman Miller, or Vitra.

The purpose of the assignment agreement is to have an ongoing mechanism by which the George Nelson Intellectual Property rights and the George Nelson legacy are protected from infringers such as Verichron and Modernica, and for any expanded use of the George Nelson mark by Vitra and Herman Miller. It benefits all the parties to ensure that the George Nelson Intellectual Property can be effectively protected on a long term basis. By the assignment agreement, we are trying to ensure a mechanism for any new agreements, not revisit or modify the existing licenses.

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For instance, this is how the Agreement is designed to function in certain possible scenarios [assuming the existing license agreements are assignable and that all applicable, non-licensed rights continue to reside with Ms. Nelson]:

- If Vitra wanted to extend the time period for its existing license to manufacture and sell clocks, the Foundation would be empowered to execute that extension as licensor.
- If Vitra or Herman Miller want to sell Nelson-designed and branded silverware, but they are not covered by the existing licenses, the Foundation would be able to enter into a new license agreement for their sale, with royalties going to Ms. Nelson and her heirs or assigns.
- And if the Foundation wanted to reissue some of Mr. Nelson's writings, it could contract with a third-party to publish them.

We are happy to discuss the assignment agreement in more detail and to answer any questions you or the Board might have.

Best regards,

Will

WILLIAM J. DORSEY
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Katten Muchin Rosenman LLP
525 W. Monroe Street / Chicago, IL 60661-3693
p / (312) 902-5475 f / (312) 577-8729
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1 Attached Images

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INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement ("Agreement") is entered into as of this ___ day of October, 2012 (the "Effective Date"), by and between Jacqueline Nelson, an individual ("Assignor"), and George Nelson Foundation, a nonprofit Michigan corporation ("Assignee" or the "Foundation").

WHEREAS, George Nelson is a famous American industrial designer, one of the founding fathers of American Modernism, and, during his lifetime, he designed much of the Twentieth Century's most iconic modern furniture, including the ball clock, marshmallow sofa, and coconut chair;

WHEREAS, George Nelson has been the subject and the author of several iconic books on American Design and built considerable goodwill in the George Nelson name, receiving numerous awards and recognition for his design legacy, including places in the permanent collections of the Museum of Modern Art in New York, Brooklyn Museum of Art, and Philadelphia Museum of Art; Lifetime Achievement Award, American Institute of Graphic Arts (1991); Scholar in Residence, Smithsonian Institute National Museum of Design (1984); Chairman, International Design Conference in Aspen (1965 and 1982); Good Design Award, Museum of Modern Art (1954); Trailblazer Award, National Home Furnishings League (1954); Best Office of the Year, New York Times (1953); Gold Medal, Art Directors Club of New York (1953); and Prix de Rome for architecture (1932);

WHEREAS, the George Nelson legacy and brand remains strong, with many original George Nelson designed products for sale in high-end modern art and furniture sales, auctions and museum stores, including the Museum of Modern Art, in addition to iconic George Nelson designs for furniture and home accessories being currently manufactured, marketed and sold by authorized licensees in the United States and Europe;

WHEREAS, Assignor, upon the death of George Nelson, inherited through George Nelson's estate all rights, title and interest in and to all Intellectual Property (as defined below) developed and/or owned by George Nelson during his lifetime;

WHEREAS, Assignor has an existing license to market and sell George Nelson products in place with Herman Miller, Inc., a United States based company that engages in the research, design, manufacture, and distribution of office furniture systems, seating, products, and related services worldwide; Herman Miller, Inc. has marketed and sold George Nelson designed and branded products since at least 1948 (the "Herman Miller License");

WHEREAS, Assignor has an existing license in place with Vitra Collections AG and certain of its affiliates to market and sell George Nelson products, including clocks, furniture, and other items (the "Vitra License");

WHEREAS, the Foundation has been established for the purpose of protecting and developing the Intellectual Property and is intended to be the long term vehicle to protect the George Nelson legacy, the goodwill associated with the George Nelson name, and perpetuate the work of Assignee in promoting the works and contributions of George Nelson;

WHEREAS, for the purpose of supporting Assignee in its efforts, Herman Miller, Inc., an authorized licensee, has agreed to pay certain royalties directly to Assignee in addition to and separate and apart from any royalties currently paid pursuant to the Herman Miller License;

WHEREAS, it is the Foundation's intent to serve as Assignor's successor as licensor under the Vitra License and Herman Miller License and to expand those relationships and other potential licensing

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opportunities, including in the areas of copyright and trademark, with a view toward protecting and expanding the George Nelson legacy;

WHEREAS, as consideration for the assignment of the Intellectual Property hereunder, Assignee agrees that all royalties payable to Assignee in connection with any license to any third party of the Intellectual Property, including the Vitra License and Herman Miller License – other than the excepted royalties from Herman Miller, Inc. payable directly to the Foundation discussed above – be paid to Assignor, and/or her heirs, assignees, or successors (as applicable);

WHEREAS, the Foundation acknowledges that Assignor shall have approval rights over any changes or modifications to the Herman Miller License or Vitra License – as well as all new licenses – during her lifetime;

NOW, THEREFORE, in consideration for Assignee's agreement to maintain the George Nelson legacy, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee (each, a "Party," and, collectively, the "Parties") agree as follows:

1. Intellectual Property.

(a) Intellectual Property. "Intellectual Property" means, collectively, in any and all jurisdictions throughout the world, and in any medium: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents, including all re-issuances, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof; (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all goodwill associated therewith; (iii) all moral rights and copyrights in any original work of authorship (including but not limited to furniture designs) and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets and confidential information; (v) all furniture designs, lamp designs, clock designs, fireplace tool designs, planter designs and designs for room dividers (including without limitation the "Marshmallow sofa" and "Bubble lamp"); (vi) all ideas, concepts, discoveries, improvements, know-how, methods, formulas, compositions, processes, designs, models, innovations, protocols, systems, technical and other data, drawings and cost information, business and marketing plans and proposals, plans, procedures, strategies, methodologies and techniques, and any and all other intellectual property, materials, information and data; (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (viii) all proprietary rights in or to the foregoing, in each instance which were developed and/or owned by George Nelson and, upon George Nelson's death, were acquired by Assignor through George Nelson's estate.

(b) Assignment. Assignor hereby irrevocably assigns and transfers to Assignee, effective with respect to each item of Intellectual Property on and as of the Effective Date, any and all rights, title and interest Assignor may have in and to all the Intellectual Property, and all related goodwill, in any and all media formats, languages, territories and jurisdictions throughout the world, now known or hereafter devised, including, but not limited to, all intellectual property and other proprietary rights in the Intellectual Property and all rights, income, royalties (subject to Section 3 below), damages, settlements and payments related to any of the Intellectual Property (including damages and payments for past,

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present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue, prosecute and recover for past, present and future infringements and other violations of the Intellectual Property.

2. Further Documentation. Upon Assignee's request, Assignor shall execute and deliver to Assignee any and all other documentation, including, but not limited to, assignments, declarations for patent applications and copyright registrations, as is reasonably necessary to effect the purposes of this Agreement and to vest in Assignee ownership of all Intellectual Property.
3. Payment of Royalties. Assignee acknowledges and agrees that all royalties payable to Assignee in connection with the license of any of the Intellectual Property to a third party (with the exception of certain royalties from Herman Miller, Inc.) is and continues to be for the benefit of Assignor and/or her heirs, assignees, or successors. Notwithstanding anything in this Agreement or otherwise to the contrary, any and all license agreements between Assignee and any third party granting any rights to the Intellectual Property under which royalties are payable to Assignee (with the exception of certain royalties from Herman Miller, Inc.) shall (i) specify that any and all such royalties be paid directly to Assignor and/or her heirs, assignees, or successors (as applicable), and (ii) name Assignor and/or her heirs, assignees, or successors (as applicable) as third party beneficiaries of each and all such license agreements, unless otherwise agreed to in writing by Assignee and Assignor (or, if deceased, her heirs, assignees, or successors).
4. Entire Agreement. This Agreement constitutes the entire understanding between the Parties, and supersedes all prior representations, agreements, negotiations and discussions between the Parties, with respect to the subject matter hereof.
5. Amendments. This Agreement may be modified, supplemented or otherwise amended only by an instrument in writing signed on behalf of a duly authorized representative of each Party and exchanged between them.
6. Binding Provisions/Third Party Beneficiaries. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns and, as applicable, the Parties agree that no provision of this Agreement is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third party (whether or not in existence, and whether or not named).
7. Assignment and Sublicensing. Except as otherwise expressly provided herein, Assignee shall not assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written approval of the other Party.
8. Dissolution of Assignee and/or Abandonment by Assignor. In the event of the dissolution of the Assignee or the abandonment of the Intellectual Property, all Intellectual Property rights under this agreement (including all right, title and interest in and to all of the Intellectual Property, and all related goodwill) shall revert to Assignor and/or her heirs, assignees, or successors. Nothing in this section shall limit the right of Assignee to assign any rights granted in this Agreement to a third party.
9. Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such determination shall not affect the

enforceability of the remainder of this Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction.

- 10. Waiver. The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by an authorized representative of each Party.
- 11. Remedies Not Exclusive. No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.
- 12. Governing Law. The validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws. Any legal action or proceeding with respect to this Agreement may be brought exclusively in the federal or state courts located in the State of New York. Service of process shall be made in any manner allowed by applicable law.
- 13. Counterparts. This Agreement may be executed in two counterparts, each of which when so executed and delivered shall be deemed an original, and both of which together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with each Party.

IN WITNESS WHEREOF, the Parties have executed this Intellectual Property Assignment Agreement as of the Effective Date.

JACQUELINE NELSON, an individual

GEORGE NELSON FOUNDATION,
a nonprofit Michigan corporation

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

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KAREN STEIN

Dear Jacqueline

Attached is a close to final version of the assignment agreement. What is missing are the various "exhibits" — copies of your previous agreements with Vitro and Herman Miller.

I imagine all of your rehabilitation exercises are keeping you busy, if not exhausted so I'm sending this knowing that you already have

a lot to deal with and so may not have the opportunity to focus on this. If you do have questions, the attorney, Will Dorsey, or I are happy to respond. In the meantime, I wish you the speediest of recoveries and do hope that you will be home soon.

Warmest,

Karen

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CHRON 114

EXHIBIT

7

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement ("Agreement") is entered into as of this ___ day of December, 2012 (the "Effective Date"), by and between Jacqueline Nelson, an individual ("Assignor"), and the George Nelson Foundation, a nonprofit Michigan corporation ("Assignee" or the "Foundation").

WHEREAS, George Nelson is a famous American industrial designer and one of the founding fathers of American Modernism; and, during his lifetime, he designed much of the Twentieth Century's most iconic modern furniture, including the ball clock, marshmallow sofa, and coconut chair;

WHEREAS, George Nelson has been the subject and the author of several iconic books on American Design and has built considerable goodwill in the George Nelson name, receiving numerous awards and recognition for his design legacy, including places in the permanent collections of the Museum of Modern Art in New York, Brooklyn Museum of Art, and Philadelphia Museum of Art; Lifetime Achievement Award, American Institute of Graphic Arts (1991); Scholar in Residence, Smithsonian Institute National Museum of Design (1984); Chairman, International Design Conference in Aspen (1965 and 1982); Good Design Award, Museum of Modern Art (1954); Trailblazer Award, National Home Furnishings League (1954); Best Office of the Year, New York Times (1953); Gold Medal, Art Directors Club of New York (1953); and Prix de Rome for architecture (1932);

WHEREAS, the George Nelson legacy and brand remains strong today, with many original George Nelson-designed products currently being offered for sale in high-end modern art and furniture stores, at auctions and in museum stores, including the Museum of Modern Art, and many iconic George Nelson designs for furniture and home accessories are currently being manufactured, marketed and sold by authorized licensees in the United States and Europe;

WHEREAS, Assignor, upon the death of George Nelson, inherited through George Nelson's estate all rights, title and interest in and to all Intellectual Property (as defined below) developed and/or owned by George Nelson during his lifetime;

WHEREAS, Assignor has granted various licenses to Herman Miller, Inc. (HMI), as documented in a 2006 "Royalty Agreement" between Assignor and HMI (attached hereto as Exhibit A, the "HMI License");

WHEREAS, Assignor has also entered into certain license agreements with the Vitra Design Museum ("VDM") (the "VDM Licenses", attached hereto as Exhibit B);

WHEREAS, Assignor also has also entered into an assignment agreement with Vitra Collections AG relating to the manufacture and sale of George Nelson furniture in Europe and the Middle East (the "Vitra AG Assignment", attached hereto as Exhibit C);

WHEREAS, Assignor has obtained the written consent of HMI, VDM, and Vitra Collections AG to the assignment as a precondition to the effectiveness of this Agreement (attached hereto as Exhibit D);

WHEREAS, the Foundation has been established for the purpose of protecting and developing the Intellectual Property and is intended to be the long term vehicle to protect the George Nelson legacy, the goodwill associated with the George Nelson name, and perpetuating the work of Assignee in promoting the works and contributions of George Nelson;

WHEREAS, for the purpose of supporting Assignee in its efforts, authorized licensee HMI has agreed to pay certain royalties directly to Assignee in addition to and separate and apart from any royalties currently paid pursuant to the HMI License;

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WHEREAS, it is the Foundation's intent to serve as Assignor's successor-in-interest, as licensor under the VDM Licenses and HMI License, and as assignor under the Vitra AG Assignment, and to expand those relationships and other potential licensing opportunities, including in the areas of copyright and trademark, with a view toward protecting and expanding the George Nelson legacy;

WHEREAS, as consideration for the assignment of the Intellectual Property hereunder, Assignee agrees that all royalties otherwise payable to Assignee in connection with any (existing or future) license or assignment to any third party of the Intellectual Property, including the VDM Licenses, the Vitra AG Assignment and the HMI License -- other than the excepted royalties from HMI payable directly to the Foundation discussed above -- be paid to Assignor, and/or her heirs, assignees, or successors (as applicable);

WHEREAS, the Foundation acknowledges that Assignor shall have approval rights over any changes or modifications to the HMI License or VDM Licenses -- and any new licenses -- during her lifetime;

NOW, THEREFORE, in consideration for Assignee's agreement to maintain the George Nelson legacy, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee (each, a "Party," and, collectively, the "Parties") agree as follows:

1. Intellectual Property.

- (a) Intellectual Property. "Intellectual Property" means, collectively, in any and all jurisdictions throughout the world, and in any medium: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents, including all re-issuances, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof; (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all goodwill associated therewith; (iii) all moral rights and copyrights in any original work of authorship (including but not limited to furniture designs) and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets and confidential information; (v) all furniture designs, lamp designs, clock designs, fireplace tool designs, planter designs and designs for room dividers (including without limitation the "Marshmallow sofa" and "Bubble lamp"); (vi) all ideas, concepts, discoveries, improvements, know-how, methods, formulas, compositions, processes, designs, models, innovations, protocols, systems, technical and other data, drawings and cost information, business and marketing plans and proposals, plans, procedures, strategies, methodologies and techniques, and any and all other intellectual property, materials, information and data; (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (viii) all proprietary rights in or to the foregoing, in each instance that were developed and/or owned by George Nelson and, upon George Nelson's death, were acquired by Assignor through George Nelson's estate. The Intellectual Property excludes rights previously assigned by Assignor, namely, the rights assigned to Vitra Collections AG under the Vitra AG Assignment, but shall include any and all rights and responsibilities of Assignor under the Vitra AG Assignment such as audit rights.
- (b) Assignment. Assignor hereby irrevocably assigns and transfers to Assignee, effective with respect to each item of Intellectual Property on and as of the Effective Date, any and

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all rights, title and interest Assignor may have in and to all the Intellectual Property, and all related goodwill, in any and all media formats, languages, territories and jurisdictions throughout the world, now known or hereafter devised, including, but not limited to, all intellectual property and other proprietary rights in the Intellectual Property and all rights, income, royalties (subject to Section 3 below), damages, settlements and payments related to any of the Intellectual Property (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue, prosecute and recover for past, present and future infringements and other violations of the Intellectual Property.

(c) Confidentiality. The Foundation acknowledges that the HMI License, the VDM Licenses, and the Vitra AG Assignment Agreement may contain proprietary and confidential information and hereby agrees to maintain the confidentiality of those agreements in accordance with the terms, if any, set forth in the consents attached hereto as Exhibit D.

2. Further Documentation. Upon Assignee's request, Assignor shall execute and deliver to Assignee any and all other documentation, including, but not limited to, assignments, declarations for patent applications and copyright registrations, as is reasonably necessary to effect the purposes of this Agreement and to vest in Assignee ownership of all Intellectual Property.
3. Payment of Royalties. Assignee acknowledges and agrees that all royalties payable to Assignee in connection with the license of any of the Intellectual Property to a third party (with the exception of certain royalties from HMI) is and continues to be for the benefit of Assignor and/or her heirs, assignees, or successors. Notwithstanding anything in this Agreement or otherwise to the contrary, any and all license agreements between Assignee and any third party granting any rights to the Intellectual Property under which royalties are payable to Assignee (with the exception of certain royalties from HMI) shall (i) specify that any and all such royalties be paid directly to Assignor and/or her heirs, assignees, or successors (as applicable), and (ii) name Assignor and/or her heirs, assignees, or successors (as applicable) as third party beneficiaries of each and all such license agreements, unless otherwise agreed to in writing by Assignee and Assignor (or, if deceased, her heirs, assignees, or successors).
4. Entire Agreement. This Agreement constitutes the entire understanding between the Parties, and supersedes all prior representations, agreements, negotiations and discussions between the Parties, with respect to the subject matter hereof.
5. Amendments. This Agreement may be modified, supplemented or otherwise amended only by an instrument in writing signed on behalf of a duly authorized representative of each Party and exchanged between them.
6. Binding Provisions/Third Party Beneficiaries. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns and, as applicable, the Parties agree that no provision of this Agreement is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third party (whether or not in existence, and whether or not named).

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7. Assignment and Sublicensing. Except as otherwise expressly provided herein, Assignee shall not assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written approval of the other Party.
8. Dissolution of Assignee and/or Abandonment by Assignor. In the event of the dissolution of the Assignee or the abandonment of the Intellectual Property, all Intellectual Property rights under this agreement (including all right, title and interest in and to all of the Intellectual Property, and all related goodwill) shall revert to Assignor and/or her heirs, assignees, or successors. Nothing in this section shall limit the right of Assignee to assign any rights granted in this Agreement to a third party.
9. Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such determination shall not affect the enforceability of the remainder of this Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction.
10. Waiver. The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by an authorized representative of each Party.
11. Remedies Not Exclusive. No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.
12. Governing Law. The validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws. Any legal action or proceeding with respect to this Agreement may be brought exclusively in the federal or state courts located in the State of New York. Service of process shall be made in any manner allowed by applicable law.
13. Counterparts. This Agreement may be executed in two counterparts, each of which when so executed and delivered shall be deemed an original, and both of which together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with each Party.

IN WITNESS WHEREOF, the Parties have executed this Intellectual Property Assignment Agreement as of the Effective Date.

JACQUELINE NELSON, an individual

GEORGE NELSON FOUNDATION,
a nonprofit Michigan corporation

Signed: _____

Signed: _____

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Name: _____

Name: _____

Title: _____

Title: _____

Katten

Katten Muchin Rosenman LLP

825 W. Monroe Street
Chicago, IL 60661-3693
312.902.6200 tel
312.902.1061 fax

William J. Dorsey
william.dorsey@kattenlaw.com
312.902.5475 direct
312.902.1061 fax

January 24, 2013

Jacqueline Nelson
c/o Patrice Nelson
383 Folger Road
Bremen, ME 04551

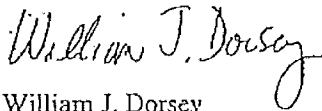
Re: Intellectual Property Assignment Agreement

Dear Jacqueline:

In follow-up to Karen Stein's email earlier today, I am enclosing for your review a hard copy of the Intellectual Property Assignment Agreement and copies of the consent forms for Vitra and Herman Miller to indicate their approval of the agreement. Vitra has already signed its consent form and we expect Herman Miller to do the same shortly. In the meantime, please review the enclosed documents and call me at (312) 902-5475 if you have any questions or concerns. Otherwise, please sign each of the enclosed documents where indicated and return them to me in the enclosed Federal Express envelope.

Thank you.

Sincerely,



William J. Dorsey

Enclosures

cc: Karen Stein (via E-mail)

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INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement ("Agreement") is entered into as of this ___ day of January, 2013 (the "Effective Date"), by and between Jacqueline Nelson, an individual ("Assignor"), and the George Nelson Foundation, a nonprofit Michigan corporation ("Assignee" or the "Foundation").

WHEREAS, George Nelson is a famous American industrial designer and one of the founding fathers of American Modernism; and, during his lifetime, he designed much of the Twentieth Century's most iconic modern furniture, including the ball clock, marshmallow sofa, and coconut chair;

WHEREAS, George Nelson has been the subject and the author of several iconic books on American Design and has built considerable goodwill in the George Nelson name, receiving numerous awards and recognition for his design legacy, including places in the permanent collections of the Museum of Modern Art in New York, Brooklyn Museum of Art, and Philadelphia Museum of Art; Lifetime Achievement Award, American Institute of Graphic Arts (1991); Scholar in Residence, Smithsonian Institute National Museum of Design (1984); Chairman, International Design Conference in Aspen (1965 and 1982); Good Design Award, Museum of Modern Art (1954); Trailblazer Award, National Home Furnishings League (1954); Best Office of the Year, New York Times (1953); Gold Medal, Art Directors Club of New York (1953); and Prix de Rome for architecture (1932);

WHEREAS, the George Nelson legacy and brand remains strong today, with many original George Nelson-designed products currently being offered for sale in high-end modern art and furniture stores, at auctions and in museum stores, including the Museum of Modern Art, and many iconic George Nelson designs for furniture and home accessories are currently being manufactured, marketed and sold by authorized licensees and/or authorized assignees in the United States and Europe;

WHEREAS, Assignor, upon the death of George Nelson, inherited through George Nelson's estate all rights, title and interest in and to all Intellectual Property (as defined below) developed and/or owned by George Nelson during his lifetime;

WHEREAS, Assignor has granted various licenses to Hermar Miller, Inc. ("HMI"), as documented in a 2006 "Royalty Agreement" between Assignor and HMI (attached hereto as Exhibit A, the "HMI License");

WHEREAS, Assignor has also entered into certain license agreements with the Vitra Design Museum ("VDM") (collectively, the "VDM Licenses", attached hereto as Exhibit B);

WHEREAS, Assignor also has also entered into an assignment agreement with Vitra Collections AG relating to the manufacture and sale of George Nelson furniture in Europe and the Middle East (the "Vitra AG Assignment", attached hereto as Exhibit C);

WHEREAS, Assignor has obtained the requisite written consents as required by and as a condition to the assignment of the HMI License, VDM Licenses and or the Vitra AG Assignment as a precondition to the effectiveness of this Agreement (attached hereto as Exhibit D);

WHEREAS, the Foundation has been established for the purpose of protecting and developing the Intellectual Property and is intended to be the long term vehicle to protect the George Nelson legacy, the goodwill associated with the George Nelson name, and perpetuating the work of Assignee in promoting the works and contributions of George Nelson;

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WHEREAS, it is the Foundation's intent to serve as Assignor's successor-in-interest, as licensor under the VDM Licenses and HMI License, and as assignor under the Vitra AG Assignment, and to expand those relationships, including in the areas of copyright and trademark, with a view toward protecting and expanding the George Nelson legacy;

WHEREAS, as consideration for the assignment of the Intellectual Property hereunder, Assignee agrees that all royalties otherwise payable to Assignee in connection with any (existing or future) license or assignment to any third party of the Intellectual Property, including the VDM Licenses, the Vitra AG Assignment and the HMI License be paid to Assignor, and/or her heirs, assignees, or successors (as applicable);

WHEREAS, the Foundation acknowledges that Assignor shall have approval rights over any changes or modifications to the HMI License or VDM Licenses – and any new licenses – during her lifetime;

NOW, THEREFORE, in consideration for Assignee's agreement to maintain the George Nelson legacy, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee (each, a "Party," and, collectively, the "Parties") agree as follows:

1. Intellectual Property.

- (a) Intellectual Property. "Intellectual Property" means, collectively, in any and all jurisdictions throughout the world, and in any medium: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all letters patent and pending applications for patents, including all re-issuances, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof; (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, and combinations thereof and all goodwill associated therewith; (iii) all moral rights and copyrights in any original work of authorship (including but not limited to furniture designs) and all applications, registrations, and renewals in connection therewith; (iv) all trade secrets and confidential information; (v) all furniture designs, lamp designs, clock designs, fireplace tool designs, planter designs and designs for room dividers (including without limitation the "Marshmallow sofa" and "Bubble lamp"); (vi) all ideas, concepts, discoveries, improvements, know-how, methods, formulas, compositions, processes, designs, models, innovations, protocols, systems, technical and other data, drawings and cost information, business and marketing plans and proposals, plans, procedures, strategies, methodologies and techniques, and any and all other intellectual property, materials, information and data; (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (viii) all proprietary rights in or to the foregoing, in each instance that were developed and/or owned by George Nelson and, upon George Nelson's death, were acquired by Assignor through George Nelson's estate. The Intellectual Property excludes any and all rights previously assigned, granted or transferred by George Nelson during his lifetime, or rights previously assigned, granted or transferred by Assignor, namely, the rights to certain products, patterns and designs under the HMI License or such other licenses that may be in existence upon execution of this Agreement, the rights assigned to Vitra Collections AG under the Vitra AG Assignment, but shall include any and all rights and responsibilities of Assignor under the Vitra AG Assignment and the HMI License, such as audit rights.

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(b) Assignment. Assignor hereby irrevocably assigns and transfers to Assignee, effective with respect to each item of Intellectual Property on and as of the Effective Date, any and all rights, title and interest Assignor may have in and to all the Intellectual Property, and all related goodwill, in any and all media formats, languages, territories and jurisdictions throughout the world, now known or hereafter devised, including, but not limited to, all intellectual property and other proprietary rights in the Intellectual Property and all rights, income, royalties (subject to Section 3 below), damages, settlements and payments related to any of the Intellectual Property (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue, prosecute and recover for past, present and future infringements and other violations of the Intellectual Property.

(c) Confidentiality. The Foundation acknowledges that the HMI License, the VDM Licenses, and the Vitra AG Assignment Agreement may contain proprietary and confidential information and hereby agrees to maintain the confidentiality of those agreements in accordance with the terms, if any, set forth in the consents attached hereto as Exhibit D.

2. Further Documentation. Upon Assignee's request, Assignor shall execute and deliver to Assignee any and all other documentation, including, but not limited to, assignments, declarations for patent applications and copyright registrations, as is reasonably necessary to effect the purposes of this Agreement and to vest in Assignee ownership of all Intellectual Property.
3. Payment of Royalties. Assignee acknowledges and agrees that all royalties payable to Assignee in connection with the license of any of the Intellectual Property to a third party is and continues to be for the benefit of Assignor and/or her heirs, assignees, or successors. Notwithstanding anything in this Agreement or otherwise to the contrary, any and all license agreements between Assignee and any third party granting any rights to the Intellectual Property under which royalties are payable to Assignee shall (i) specify that any and all such royalties be paid directly to Assignor and/or her heirs, assignees, or successors (as applicable), and (ii) name Assignor and/or her heirs, assignees, or successors (as applicable) as third party beneficiaries of each and all such license agreements, unless otherwise agreed to in writing by Assignee and Assignor (or, if deceased, her heirs, assignees, or successors).
4. Entire Agreement. This Agreement constitutes the entire understanding between the Parties, and supersedes all prior representations, agreements, negotiations and discussions between the Parties, with respect to the subject matter hereof.
5. Amendments. This Agreement may be modified, supplemented or otherwise amended only by an instrument in writing signed on behalf of a duly authorized representative of each Party and exchanged between them.
6. Binding Provisions/Third Party Beneficiaries. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns and, as applicable, the Parties agree that no provision of this Agreement is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third party (whether or not in existence, and whether or not named).

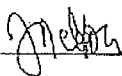
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7. Assignment and Sublicensing. Except as otherwise expressly provided herein, Assignee shall not assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written approval of the other Party.
8. Dissolution of Assignee and/or Abandonment by Assignor. In the event of the dissolution of the Assignee or the abandonment of the Intellectual Property, all Intellectual Property rights under this Agreement (including all right, title and interest in and to all of the Intellectual Property, and all related goodwill) shall revert to Assignor and/or her heirs, assignees, or successors.
9. Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such determination shall not affect the enforceability of the remainder of this Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction.
10. Waiver. The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by an authorized representative of each Party.
11. Remedies Not Exclusive. No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.
12. Governing Law. The validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Michigan, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws. Any legal action or proceeding with respect to this Agreement may be brought exclusively in the federal or state courts located in the State of Michigan. Service of process shall be made in any manner allowed by applicable law.
13. Counterparts. This Agreement may be executed in two counterparts, each of which when so executed and delivered shall be deemed an original, and both of which together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with each Party.

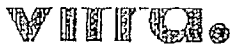
IN WITNESS WHEREOF, the Parties have executed this Intellectual Property Assignment Agreement as of the Effective Date.

JACQUELINE NELSON, an individual

GEORGE NELSON FOUNDATION,
a nonprofit Michigan corporation

Signed: 
Name: Jacqueline Nelson
Title: _____

Signed: _____
Name: _____
Title: _____



George Nelson Foundation
c/o William J. Dorsey
525 W. Monroe Street
Chicago, IL 60661-3693
USA

Birsfelden, 10 January 2013

Consent to the assignment of Agreements from Ms Jacqueline Nelson to the George Nelson Foundation

Dear William

I am writing to you in the name and on behalf of the companies Vitra Design Museum GmbH, Vitra Patente AG and Vitra Collections AG (together "Vitra").

Vitra has entered into several agreements with Ms Jacqueline Nelson (together "Agreements"), namely:

- License Agreement with Vitra Design Museum GmbH of 22 February 1998 concerning Miniatures;
- License Agreement with Vitra Design Museum GmbH of 19 May 1998 concerning Nelson Clocks;
- License Agreement with Vitra Design Museum GmbH of 31 July 2003 concerning Bubble Lamps;
- Transfer of Ownership Agreement of 5 May 2007 with Vitra Collections AG concerning the assignment of intellectual property rights in furniture designed by George Nelson (including renewed Annex I of 13 November 2008).

Under the condition that its actual legal status quo is fully preserved and confirmed by Ms Jacqueline Nelson and the George Nelson Foundation by signature of this letter, Vitra hereby agrees with the assignment of the Agreements, including the assignment of the Transfer of Ownership Agreement of 5 May 2007 in accordance with clause 6 of this agreement, from Ms Jacqueline Nelson to the George Nelson Foundation.

The preservation of the status quo implies in particular that Vitra's ownership of rights on furniture designed by George Nelson for the territory of Europe and Middle East, Vitra's rights deriving from the above mentioned License Agreements concerning the Miniatures, the

Nelson Clocks and the Bubble Lamps and Vitra's trademark registrations containing the term "George Nelson" and/or "Nelson" are not affected by any means.

It is also understood and agreed that the Agreements shall be kept confidential and that their provisions shall not be disclosed vis-à-vis third parties unless and to the extent required by the law or by the enforcement of the rights on the works of George Nelson.

This statement of consent shall be governed by Swiss law at the exclusion of the rules on international conflict of laws. All disputes arising out of or in connection with this statement of consent shall be resolved by the competent courts of Birsfelden, Switzerland.

Yours sincerely


Rolf Fehlbaum


Agreed by the George Nelson Foundation

Place and date: _____

Names and Signatures: _____

and by Ms Jaqueline Nelson

Place and date: New Castle NE 12/4/13

Signature: 

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Re: Consent to the Intellectual Property Assignment Agreement by and between
Jacqueline Nelson and the George Nelson Foundation

Dear Mr. Dorsey:

I write on behalf of Herman Miller, Inc. ("HMI") and am authorized to act on its behalf.

As you know, HMI entered into a royalty and license agreement with Jacqueline Nelson ("Ms. Nelson") in March of 2006 (the "HMI License"). Under Paragraph 19(ii) of the HMI License, Ms. Nelson may not assign the HMI License to anyone other than her son, George Michel Nelson without the consent of HMI. We write to give this formal consent to Ms. Nelson to enter into the Intellectual Property Assignment Agreement with the George Nelson Foundation ("the Foundation").

It is our understanding that HMI's rights under the HMI License are not impacted by the assignment. We agree that Ms. Nelson may assign her rights under the HMI License to the Foundation. We understand that the Foundation will act as Ms. Nelson's successor-in-interest as the licensor under the HMI License and, by the Foundation's signature below, agree to be bound by all terms of the HMI License.

We understand the Intellectual Property Assignment Agreement and the accompanying exhibits, including the HMI license, will be kept confidential and will not be disclosed to third parties unless required by law or by enforcement of the George Nelson intellectual property rights.

Sincerely,

Agreed to by:

Jacqueline Nelson

Jacqueline Nelson

1/24/13
Date

The George Nelson Foundation

Karen Stein, Executive Director

Date

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4/17/2018 5:24 PM
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- Will

From: David C. Lee (SF Office) [dlee@mrlp.com]
Sent: Wednesday, May 21, 2014 9:51 AM
To: Dorsey, William J.
Cc: Victor Sapphire (LA Office); Kasper, Julia L.; David C. Lee (SF Office)
Subject: RE: Modernica \ Lori Weise deposition

Will:

Have you resurfaced? If so, I would like to complete discussions on: (1) the propriety of Ms. Weise's deposition at this time; and (2) teeing up Ms. Nelson's deposition for June 24th. Thanks.

David

David C. Lee

Los Angeles | Orange County | Sacramento | San Francisco | New York

We've moved! Please note our new address below:
One Post Street, Suite 2500, San Francisco, CA 94104
T 415.882.7770 F 415.882.1570
E dlee@mrlp.com <http://www.mrlp.com/>

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-----Original Message-----

From: Dorsey, William J. [mailto:william.dorsey@kattenlaw.com]
Sent: Friday, May 16, 2014 12:19 PM
To: David C. Lee (SF Office)
Cc: Victor Sapphire (LA Office); Kasper, Julia L.
Subject: Re: Modernica \ Lori Weise deposition

Happy to reconsider Lori, but she was on a number of emails with Euro Lighting. I am point person for Ms. Nelson. Let's discuss early next week when I resurface.

> On May 16, 2014, at 11:53 AM, "David C. Lee (SF Office)" <dlee@mrlp.com> wrote:

>

> Will:

>

> Thanks for the response. Lori Weise is the admin manager of Modernica who has little if any knowledge of anything of value to this case. Simply put, I think her deposition would be an utter waste of time. Obviously, you're free to depose her, but my suggestion is that perhaps you depose the real players first (the principals), and consider scheduling Ms. Weise's deposition thereafter if you think more is needed. Just a thought. Regardless, the 6th is not going to work because I am not available that day (I'll be defending her depo).

>

> On a separate issue, we are subpoenaing Jacqueline Nelson for deposition in June. I understand that you previously indicated your office was the contact point for Ms. Nelson. Are you willing to accept service of the subpoena on her behalf, or should we serve her directly? Thanks.

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>

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> David
>
>
>
>
> David C. Lee
>
>
> Los Angeles | Orange County | Sacramento | San Francisco | New York
>
> 455 Market Street, Suite 1420, San Francisco, CA 94105
> T 415.882.7770 F 415.882.1570
> E dlee@mrlip.com <http://www.mrlip.com/>

> -----Original Message-----
> From: Dorsey, William J. [mailto:william.dorsey@kattenlaw.com]
> Sent: Friday, May 16, 2014 11:38 AM
> To: David C. Lee (SF Office)
> Cc: Victor Sapphire (LA Office); Kasper, Julia L.
> Subject: Re: Modernica \ Lori Weise deposition

> I'm on the road today and have a deposition Monday. Happy to discuss the notice, but Tuesday is probably the earliest I could sit down. I just wanted to see if she was available when I'm already in LA.

> On May 16, 2014, at 8:46 AM, "David C. Lee (SF Office)"
> <dlee@mrlip.com<mailto:dlee@mrlip.com>> wrote:

Will:

> Are you available to talk this morning about the above deposition you noticed?

> David

> David C. Lee
>
> <[image9f8120.JPG](http://www.mrlip.com)><<http://www.mrlip.com>>
> Los Angeles | Orange County | Sacramento | San Francisco | New York
>
> 455 Market Street, Suite 1420, San Francisco, CA 94105
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> <http://www.mrlip.com%3chttp://www.mrlip.com%3E>

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CHRON 151

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=====
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=====

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PATRICE NELSON, Individually and as)
Guardian of JACQUELINE NELSON and)
as Co-Conservator of the Estate of)
JACQUELINE NELSON,)
GEORGES MICO NELSON,)
DVM, individually and as Co-Conservator)
of the Estate of JACQUELINE NELSON,)
Plaintiffs,)

v.)

No. 17 L 8151

KATTEN MUCHIN ROSENMAN LLP,)
WILLIAM J. DORSEY, COWEN,)
LEIBOWITZ & LATMAN, P.C.,)
ROBERT GIORDANELLA, and)
THE GEORGE NELSON FOUNDATION,)
Defendants.)

JURY DEMANDED

NOTICE OF FILING

TO: See attached Service List.

PLEASE TAKE NOTICE that on **April 17, 2018**, we filed with the Cook County Circuit Clerk's office the **AMENDED COMPLAINT**, a copy of which is attached hereto and served upon you.

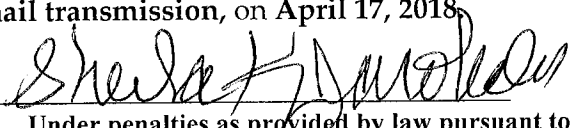
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Andrew M. Cook, acook@konicekdillonlaw.com
KONICEK & DILLON, P.C./Firm No. 37199
21 W. State Street
Geneva, IL 60134
(630)262-9655

KONICEK & DILLON, P.C.

/s/ Amir R. Tahmassebi
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned states that the foregoing **NOTICE** and **AMENDED COMPLAINT** were served upon the attorneys of record, **via e-mail transmission**, on **April 17, 2018**.


[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PATRICE NELSON, Individually and as)
Guardian of JACQUELINE NELSON and)
as Co-Conservator of the Estate of)
JACQUELINE NELSON, GEORGES)
MICO NELSON, DVM, individually and)
as Co-Conservator of the Estate of)
JACQUELINE NELSON)

Plaintiffs,)

v.)

KATTEN MUCHIN ROSENMAN LLP,)
WILLIAM J. DORSEY, COWEN,)
LEIBOWITZ & LATMAN, P.C.,)
ROBERT GIORDANELLA, and THE)
GEORGE NELSON FOUNDATION,)
Defendants.)

Case No. 2017 L 8151

JURY DEMANDED

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Law DIVISION

Litigant List

Printed on 04/18/2018

Case Number: 2017-L-008151

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Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
NELSON PATRICE			0000	
NELSON GEORGE MICO			0000	
NELSON JAQUELINE			0000	

Total Plaintiffs: 3

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
COWAN LIEBOWITZ & LATMAN	114 WEST 47TH STREET	NY	0000	
DORSEY WILLIAM	525 W MONROE	IL	0000	
GIORDANELLA ROBERT	114 WEST 47TH STREET	NY	0000	
THE NELSON FOUNDATION			0000	
KATTEN MUCHIN ROSENMAN LL			0000	

Total Defendants: 5