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21 **IN THE UNITED STATES DISTRICT COURT**  
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 NETGEAR, INC.,  
24 Plaintiff,  
25 v.  
26 HUAWEI TECHNOLOGIES CO.,  
27 LTD.,  
28 Defendant.

Case No. 2:24-cv-00824-AB (AJRx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
ITS MOTION FOR  
ANTI-ENFORCEMENT INJUNCTION  
OR, ALTERNATIVELY, ENTRY OF  
INTERIM LICENSE**

**Hearing:** Jan. 24, 2025

**Time:** 10:00 AM

**Place:** 350 West First Street  
Courtroom 7B  
Los Angeles, CA 90012

**Jud. Officer:** Hon. Andre Birotte Jr.

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1       **I. INTRODUCTION**

2           Plaintiff Netgear, Inc. (“Netgear”) filed this lawsuit approximately ten months  
3 ago to force Defendant Huawei Technologies Co., Ltd. (“Huawei”) to honor its  
4 commitment to license its standard essential patents (“SEPs”). Indeed, Huawei has  
5 pledged to license its Wi-Fi SEPs on reasonable and non-discriminatory (“RAND”)<sup>1</sup>  
6 terms. RAND pledges are critical to the development of technological standards and  
7 create a contractual obligation that can be relied upon by implementers like Netgear.  
8 Netgear has subsequently filed a Motion to Bifurcate, requesting that the Court  
9 expedite the consideration of a single critical issue looming between the parties in  
10 ongoing disputes around the world—what are the proper terms for the RAND license  
11 that Huawei is contractually obligated to provide to Netgear for Huawei’s Wi-Fi  
12 SEPs?

13           Defendant Huawei’s conduct does not reflect a company willing to honor its  
14 contractual obligation to provide a license to Netgear with RAND terms. Rather than  
15 provide such a license, starting in 2022, Huawei launched a worldwide blitzkrieg of  
16 infringement cases against Netgear in Germany, the Unified Patent Court (“UPC”)  
17 and China. Among those cases are multiple patent infringement suits in the UPC in  
18 2023 and multiple patent infringement suits in Germany in 2024. Decisions in two of  
19 these cases are anticipated in December of 2024 with an injunction potentially issuing  
20 in December 2024 or January 2025 if the decision is adverse to Netgear. Similarly,  
21 injunctions in the remaining two cases are anticipated in April or May of 2025 if a  
22 ruling adverse to Netgear is handed down. Huawei also filed two infringement  
23 actions against Netgear in China. As part of those proceedings, Huawei sought  
24 injunctions and received injunction orders that have not been enforced from the court  
25 in China on June 7, 2024.

26           Huawei’s strategy is not new. U.S. and foreign courts have seen this tactic

27  
28 <sup>1</sup> RAND and FRAND are generally used interchangeably. *See Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1031 n.2 (9th Cir. 2015) (“*Microsoft III*”).

1 before in the standards context and have issued anti-suit injunctions to protect their  
2 proceedings from foreign injunctive interference. The anti-suit injunctions in cases  
3 like *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872 (9<sup>th</sup> Circ. 2012) (“*Microsoft II*”)  
4 are properly tailored to the threat: they prevent an SEP holder only from pursuing  
5 injunctive relief, only based on SEPs, and only while the RAND contractual  
6 interpretation claims are being resolved.

7 Netgear respectfully requests that the Court enjoin Defendant Huawei from  
8 seeking or enforcing injunctions obtained through proceedings in foreign courts  
9 which would enjoin the manufacturing or sale of Netgear Wi-Fi capable products  
10 based on SEPs that are subject to the worldwide licensing claims already at issue in  
11 this case. The SEPs at issue in Huawei’s German, UPC and China actions are subject  
12 to Huawei’s contractual obligation to the IEEE to provide worldwide licenses to these  
13 and all of Huawei’s IEEE Wi-Fi SEPs on a RAND basis to companies like Netgear.  
14 As a result, the worldwide dispute between the parties is contractual in nature and  
15 will be resolved with a payment of money once RAND license terms are determined.  
16 Moreover, the question of the appropriate RAND terms between these parties is  
17 already before this Court through Netgear’s breach of contract claim. There is no  
18 proper basis for Huawei to seek injunctive relief for Wi-Fi SEPs, which threaten  
19 significant fines, criminal penalties and significant business disruption, before the  
20 proper amount and terms of a RAND license are resolved by this Court. Because  
21 Huawei’s foreign injunctions threaten the Court’s ability to resolve the contractual  
22 dispute between the parties and risk harm to Netgear, Huawei should be enjoined  
23 from enforcing such an injunction (or seeking more) until the RAND license issues  
24 are resolved.

25 In the event that an anti-enforcement injunction is not available, Netgear  
26 respectfully seeks an interim license to allow the parties to continue with negotiations  
27 and garner this Court’s assistance in determining RAND terms without the risk of  
28

1 further escalating disputes in these foreign jurisdictions. Huawei made a RAND  
2 commitment to IEEE and has not complied with that commitment’s obligation to  
3 provide Netgear with a RAND license. As the Federal Circuit recently recognized in  
4 *Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.*, 120 F.4th 864 (Fed.  
5 Cir. 2024), if the policy concerns underlying FRAND commitments, parties should  
6 not be entitled to spring injunctive relief in various venues against a party without  
7 having first complied with its obligations. Entry of an interim license until a final  
8 RAND determination will compensate Huawei, will be subject to adjustment after  
9 final terms are determined, and will provide both parties with the safeguards  
10 necessary to focus on the core task of complying with Huawei’s contractual  
11 obligations.<sup>2</sup>

12 **II. FACTUAL BACKGROUND**

13 This case arises from Huawei’s anticompetitive behavior that resulted, among  
14 other things, in a contractual licensing dispute between Huawei and Netgear related  
15 to the proper terms for a global patent license for Huawei’s IEEE Wi-Fi SEPs.  
16 Netgear brought suit in this Court to seek relief from Huawei’s anticompetitive  
17 tactics. Huawei and Netgear have been unable to agree on what constitutes RAND  
18 terms. Currently pending is Netgear’s Motion to Bifurcate and Request for RAND  
19 Determination Consistent with Huawei’s Contractual Obligation (“Motion to  
20 Bifurcate”) (Dkt. 113, 114). Through this motion, Netgear, a willing licensee, seeks  
21 this Court’s assistance in preventing Huawei from enforcing injunctions based on a  
22 finding of infringement of Huawei’s Wi-Fi SEPs while this Court determines the  
23 terms of a RAND license or, alternatively, requests that this Court enter an interim  
24

25 <sup>2</sup> Durin \_\_\_\_\_ Huawei did not  
26 oppose \_\_\_\_\_  
27 Ex. 8 at 9. Huawei opposed \_\_\_\_\_  
28 \_\_\_\_\_ Huawei’s position runs afoul of its contractual obligation to provide Netgear  
a worldwide license on RAND terms, not just an interim license based on U.S.  
SEPs and products.

1 license to Huawei’s Wi-Fi SEPs.

2 **A. Netgear’s Motion to Seeking This Court’s Assistance In**  
3 **Determining the Terms of a Global RAND License**

4 Through its Motion to Bifurcate filed on November 15, 2024 (Dkt. 113, 114),  
5 Netgear seeks this Court’s assistance in determining the terms of a global patent  
6 license to Huawei’s SEPs that are RAND-encumbered under Huawei’s Letters of  
7 Assurance (“LOAs”) to IEEE for the 802.11 standards (Wi-Fi 6 (802.11ax) and pre-  
8 Wi-Fi 6 (802.11ac)), which concerns wireless local area network (“WLAN”)  
9 communication. Netgear’s Motion to Bifurcate details Huawei’s contractual RAND  
10 obligation that arises out of its relationship with, and LOAs to, IEEE, an international  
11 standard-setting organization (“SSO”). *See* Dkt. 114; *see also* Dkt. 115-1.

12 **B. Huawei’s Contractual Obligation to License Its IEEE Wi-Fi SEP**  
13 **Portfolio on RAND Terms**

14 Huawei does not dispute that it is contractually obligated to license its SEPs  
15 on RAND terms. Compl. (Dkt. 10-5) at ¶74. In fact, Huawei has made an irrevocable  
16 guarantee to the IEEE on multiple occasions to grant RAND licenses to its SEPs,  
17 including through the LOAs described in Table 1 below:

18  
19 **TABLE 1**

Standard No.	LOA Date	Huawei’s Commitment
802.11n/s/u	6 Jan 2007	“The Patent Holder will grant a license under reasonable rates to an unrestricted number of applicants on a worldwide, non-discriminatory basis with reasonable terms and conditions to comply with the [Proposed] IEEE Standard.”
802.11i/ac/ah/ai	13 Aug 2013	“The Submitter will grant a license under reasonable rates to an unrestricted number of applicants on a worldwide basis with reasonable terms and conditions that are demonstrably free of unfair discrimination.”



802.11ax/aj	25 Jul 2019	“The Submitter will grant a license under reasonable rates to an unrestricted number of applicants on a worldwide basis with reasonable terms and conditions that are demonstrably free of unfair discrimination.”
802.11-1997, 802.11-1999, 802.11-2007, 802.11-2012, 802.11-2016	25 Jul 2019	“The Submitter will grant a license under reasonable rates to an unrestricted number of applicants on a worldwide basis with reasonable terms and conditions that are demonstrably free of unfair discrimination.”

Compl. at ¶ 74; *see also* ¶¶ 72-73, 75-85; Dkt. 1-1, 1-2, 1-4, and 1-5.

Further, Huawei sent these commitments to IEEE in the United States and IEEE is a not for profit organization incorporated in the state of New York. *See* Dkt. 1-1, 1-2, 1-4, and 1-5 (LOAs sent to IEEE in New Jersey) and (<https://www.ieee.org/about/tax-corp-info.html#:~:text=IEEE%20is%20a%20not%20for,for%20US%20income%20tax%20purposes>) (last visited Dec. 3, 2024). All of this further makes the United States an appropriate venue for resolution of the parties’ breach of contract dispute.

**C. Huawei Seeks Injunctions Outside the U.S. Against Netgear**

Rather than provide the contractually obligated worldwide RAND license to Netgear, Huawei improperly and aggressively pursued patent litigation and injunctions throughout the world. *See, e.g.*, Compl. at ¶¶ 111, 118, 119, 127, 134-37. On March 2, 2022, before providing Netgear with any licensing offer, Huawei filed two patent infringement proceedings in Germany seeking injunctive relief against Netgear. *Id*; Dkt. 115-2 (Declaration of Dr. Stephan Dorn (“Dorn Decl.”)) at ¶¶ 3, 11. Huawei was unsuccessful in one of those cases and appealed, while the other case was stayed pending nullity proceedings. Dorn Decl. at ¶¶ 3, 11. Huawei then filed two additional patent infringement suits in the Unified Patent Court in 2023 and an additional two patent infringement suits in Germany in 2024. *Id*. Decisions in two of these cases are anticipated in December of 2024 with an injunction potentially issuing

1 in December 2024 or January 2025 if a decision is adverse to Netgear. *Id.* Similarly,  
2 injunctions in the remaining two cases are anticipated in April or May of 2025 if a  
3 ruling adverse to Netgear is handed down. *Id.* In Germany and the UPC, an injunction  
4 is typically entered immediately after a finding of patent infringement. *Id.* at ¶6.  
5 Further, in one of the cases pending in Germany, an injunction is could be imminent  
6 as that court and the same panel of judges have already found that one of Netgear’s  
7 competitors infringed the same patent and entered an injunction. *Id.* at ¶8.

8 On March 2, 2022, Huawei filed two infringement proceedings in China. Dkt.  
9 115-3 (Declaration of Hongbin Zhang (“Zhang Decl.”)) at ¶3. Huawei sought  
10 injunctions and received injunction orders from the court in China on June 7, 2024.  
11 *Id.* at ¶¶4-6; *see also id.* at Ex. A at 17-18; *id.* at Ex. B at 16-17. Netgear appealed  
12 those decisions. *Id.* at ¶8.

13 Notwithstanding its worldwide litigation campaign, Huawei has never asked  
14 any Court to determine RAND terms or a RAND royalty rate. Dkt. 115-2 (Dorn  
15 Decl.) at ¶10; Dkt. 115-3 (Zhang Decl.) at ¶14. As such, this is the first court asked  
16 to determine Huawei’s contractual obligation in a manner that could fully resolve the  
17 parties’ disputes. And this Court is the appropriate authority to issue any anti-  
18 enforcement injunction or, alternatively, enter an interim license.

19 **III. LEGAL STANDARDS**

20 A district court may enjoin a party from prosecuting a foreign action. *Microsoft*  
21 *II*, 696 F.3d at 880-81. “Courts derive the ability to enter an anti-suit injunction from  
22 their equitable powers. Such injunctions allow the court to restrain a party subject to  
23 its jurisdiction from proceeding in a foreign court in circumstances that are unjust.”  
24 *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006).

25 Anti-suit, or anti-enforcement, injunctions<sup>3</sup> are appropriate when a party’s

26 \_\_\_\_\_  
27 <sup>3</sup> The law applicable to anti-suit injunctions and anti-enforcement injunctions is the  
28 same. Netgear seeks an anti-enforcement injunction (which seeks only to preclude

1 foreign actions “frustrate [] this court’s ability to adjudicate issues properly before  
2 it” or when “[w]ithout the issuance of an anti-suit injunction, the integrity of the  
3 action before this court will be lessened.” *Microsoft Corp. v. Motorola, Inc.*, 871 F.  
4 Supp. 2d 1089, 1100 (W.D. Wash. 2012) (“*Microsoft I*”), *aff’d*, 696 F.3d 872 (9th  
5 Cir. 2012). The Ninth Circuit emphasizes that district courts have “a duty to protect”  
6 their “legitimately conferred jurisdiction to the extent necessary to provide full justice  
7 to litigants.” *Gallo*, 446 F.3d at 995, the Ninth Circuit affirmed the district court’s  
8 issuance of an anti-suit injunction to protect its ability to resolve a global FRAND  
9 licensing dispute. The district court had enjoined Motorola from pursuing claims in  
10 Germany that were motivated by an attempt to “pressure” Microsoft to enter into an  
11 unfair license “before the [domestic] litigation is complete.” *Microsoft II*, 696 F.3d  
12 at 886. Netgear seeks the same kind of limited relief.

13 The Ninth Circuit applies a three-part inquiry as part of its “liberal approach” to  
14 granting anti-suit injunction motions. *See Quaak v. Klynveld Peat Marwick Goerdeler*  
15 *Bedrijfsrevisoren*, 361 F.3d 11, 17 (1st Cir. 2004) (the Fifth and Ninth Circuits follow  
16 the “liberal approach”). First, the Court determines “‘whether or not the parties and  
17 the issues are the same’ in both the domestic and foreign actions, ‘and whether or not  
18 the first action is dispositive of the action to be enjoined.’” *Microsoft II*, 696 F.3d at  
19 881 (quoting *Gallo*, 446 F.3d at 991). Second, the Court determines “whether at least  
20 one of the so-called ‘*Unterweser* factors’ applies.” *Id.* And, third, it assesses “whether  
21 the injunction’s ‘impact on comity is tolerable.’” *Id.* An anti-suit injunction, if  
22 granted, “enjoins the claimant, not the foreign court.” *Gallo*, 446 F.3d at 989.

23 **IV. THE PARTIES AND ISSUES ARE FUNCTIONALLY THE SAME**

24 **A. The Parties Are Functionally the Same**

25 The parties to Huawei’s actions here and in Germany, the UPC and China are

26  
27 enforcement of an injunction) whereas an anti-suit injunction is broader and can  
28 seek to stop ongoing and/or further litigation.

1 the same for purposes of an anti-suit injunction because both involve Huawei,  
2 Netgear, and/or a Netgear affiliate. “Perfect identity of parties is not required....  
3 Rather, it suffices that the parties be affiliated in such a way that their interests  
4 coincide.” *Microsoft I*, 871 F. Supp. 2d at 1098. Here, it is undisputed that (i) Huawei  
5 Technologies Co., Ltd. and Netgear, Inc. are the parties to this action and (ii) the  
6 same entities or a Netgear affiliate are the parties to Huawei’s foreign actions.  
7 *Compare* Compl. at 1, with Dkt. 115-2 (Dorn Decl.) at ¶3 (identifying the parties as  
8 Netgear and Huawei) and Dkt. 115-3 at (Zhang Decl.) at ¶2 (identifying the parties  
9 as Huawei and the Netgear affiliate operating in China). The parties are therefore  
10 functionally the same. *See Microsoft I*, 871 F. Supp. 2d at 1098.

11 **B. The Issues Are Functionally the Same**

12 The primary issue in the cases in Germany and China—the availability of  
13 injunctive relief on Huawei’s RAND-encumbered foreign SEPs—is also at issue here  
14 because Huawei’s global Wi-Fi SEP portfolio, including the patents at issue in each of  
15 the Huawei foreign cases, are at issue here as a result of Netgear’s breach of contract  
16 claim and pending Motion to Bifurcate, which seeks a RAND determination that would  
17 satisfy both parties’ contractual obligations (Dkt. 113, 114). Huawei does not dispute  
18 that it has contractual RAND obligations for its global portfolio of Wi-Fi SEPs as a result  
19 of the commitments created by the LOAs Huawei submitted to IEEE to obtain  
20 essentiality recognition for its Wi-Fi patents. Huawei’s contractual obligations  
21 undoubtedly obligate Huawei to provide a license to Netgear on RAND terms, making  
22 the breach of contract claim in this case functionally identical to the claims in Huawei’s  
23 foreign patent infringement actions. As such, functional identity of issues under the  
24 Ninth Circuit’s standard is easily met. *Applied Med. Distribution Corp. v. Surgical Co.*  
25 *BV*, 587 F.3d 909, 914-15 (9th Cir. 2009) (treating a Belgian statutory claim as  
26 functionally the same as a breach of contract claim); *InterDigital Tech. Corp. v.*  
27 *Pegatron Corp.*, No. 15-CV-02584-LHK, 2015 WL 3958257, at \*5 (N.D. Cal. June 29,

1 2015).

2 The Ninth Circuit’s *Microsoft* decision is instructive because the facts there are  
3 similar to the situation here. *Microsoft II*, 696 F.3d at 883. Motorola (like Huawei  
4 here)<sup>4</sup> had sent a series of pre-litigation letters offering Microsoft a license under a  
5 worldwide portfolio of SEPs on terms Microsoft considered too high to be RAND. *Id.*  
6 at 877-78. In response, Microsoft (like Netgear here) filed a declaratory judgment  
7 action in the Western District of Washington asserting Motorola breached its  
8 contractual obligation to license the patents on RAND terms. *Id.* at 878. With the  
9 breach of contract case pending, Motorola sought injunctions in Germany based on  
10 infringement of European SEPs that fell within the contractual scope of the portfolios  
11 being litigated in the Washington action. *Id.* at 879. The German court issued an order  
12 finding infringement and confirming an injunction would issue after appellate review.  
13 *Id.* Three weeks before review of the injunction was complete, Microsoft moved for  
14 an anti-suit injunction to bar Motorola from enforcing the German injunction. *Id.* at  
15 880. Microsoft asserted the anti-suit injunction was warranted because the U.S. district  
16 court’s resolution of the contract claims would decide the question of the availability  
17 of injunctive relief and thereby ultimately dispose of the German action. *See*  
18 Declaration of Christina Ondrick (“Ondrick Decl.”) concurrently filed herewith, Ex. 1  
19 (Microsoft’s Mot. for TRO and PI, Mar. 28, 2012, Dkt. 210) at 21 (“[The requested  
20 injunction] will bar injunctive relief...”); *see also id.* at Ex. 2 (Microsoft’s Reply in  
21 Supp. of Mot. for TRO and PI, Apr. 9, 2012, Dkt. 257) at 11. The district court agreed.  
22 *Microsoft II*, 696 F.3d at 883.

23 Rejecting Motorola’s argument that the issues were not the same because a U.S.  
24 action could not resolve a dispute involving the infringement of German patents under  
25 German law, the district court concluded the U.S. breach of contract claims squarely

26 \_\_\_\_\_  
27 <sup>4</sup> The difference, here, is that Huawei sued for patent infringement seeking  
28 injunctions before providing a RAND offer. And, when Huawei finally provided an  
offer, it was un-RAND. *See, e.g.,* Compl. at ¶¶ 112-137.

1 presented the key overlapping issue of whether injunctive relief was an appropriate  
2 remedy for infringement of Motorola’s SEPs and therefore could fully resolve the  
3 German action. *Microsoft I*, 871 F. Supp. 2d at 1099; Ondrick Decl. at Ex. 3 (Def.’s  
4 Opp’n to Microsoft’s Mot. for TRO and PI, Apr. 6, 2012, Dkt. 244) at 14-18; *Microsoft*  
5 *II*, 696 at 883. The Ninth Circuit affirmed, agreeing the state contract claims would  
6 “resolve” the German action because Motorola was obligated to license the asserted  
7 European patents on RAND terms and they fell within the worldwide license offer at  
8 the heart of the contract claim. *Microsoft II*, 696 F.3d at 883.

9 Huawei’s foreign patent infringement actions against Netgear implicate the same  
10 contractual question concerning the availability of injunctive relief for RAND-  
11 encumbered SEPs that Netgear has asked this Court to resolve.

12 **V. MULTIPLE UNTERWESER FACTORS APPLY**

13 The Court also must consider whether at least one of *Unterweser* factors apply.  
14 *Microsoft II*, 696 F.3d at 881. Multiple factors here support the requested anti-  
15 enforcement injunction. Injunctive relief entered by either German, Chinese or UPC  
16 courts will frustrate U.S. antitrust law, are vexatious and oppressive, and prejudice  
17 multiple equitable considerations. Any one of these factors alone “may justify a  
18 foreign anti-suit injunction...” *Id.* at 882 n.9.

19 **A. Huawei’s Enforcement of Injunctions Elsewhere Violates U.S.**  
20 **Antitrust Law and Will Frustrate Both U.S. Policy and the Other**  
21 **Equitable Considerations**

22 Pursuing injunctive relief against a willing manufacturer is anticompetitive,  
23 inconsistent with contractual RAND obligations, and risks harming downstream  
24 consumers, thus frustrating domestic policy and other equitable considerations  
25 (*Unterweser* factors 1 and 4).

26 Huawei itself pointed these risks out in litigation in which *it faced* the prospect  
27 of injunctive relief on SEPs:

1 [A] *consensus* is rapidly emerging among regulatory bodies and the  
2 federal courts that, when there is a dispute as to the FRAND rate for  
3 declared-essential patents, the accused infringer must be given the  
4 opportunity to accept a FRAND rate determined by a court or arbitrator,  
5 and that opportunity must be given before the patentholder can seek  
6 *injunctive relief*.

7 Ondrick Decl. Ex. 4 ((*InterDigital Commc'ns, Inc. v. Huawei Tech. Co., Ltd.*, No.  
8 1:13-cv-00008-RGA, Dkt. 17 (D. Del. Feb. 11, 2013) (Huawei's Op. Br. in Supp. of  
9 Mot. for Expedited Disc. and Expedited Trial on FRAND Countercls.)) at 1 (emphasis  
10 added). Huawei is correct a "consensus" has emerged, and is now firmly established  
11 in the U.S., that using requests for injunctive relief as a bargaining tool for SEP  
12 licensing is improper.

13 Recently, the Federal Circuit in *Telefonaktiebolaget LM Ericsson v. Lenovo*  
14 (*United States, Inc.*, 120 F.4th 864 (Fed. Cir. 2024) solidified this concept  
15 conclusively by holding that an SEP holder's (such as Huawei's) breach of its  
16 contractual FRAND commitment *precludes* it from seeking injunctive relief. *Id.* at  
17 876. The Federal Circuit explained that "a party that has made an ETSI FRAND  
18 commitment must have complied with the commitment's obligation to negotiate in  
19 good faith over a license to its SEPs *before* it pursues injunctive relief based on those  
20 SEPs." *Id.* (emphasis added). Guided by the Ninth Circuit's ruling in *Microsoft*, the  
21 Federal Circuit clarified in *Ericsson* that an SEP holder's compliance with its  
22 FRAND commitments is a *prerequisite* for *seeking* injunctive relief. *Id.* Here,  
23 Huawei's RAND commitment based on its obligation to IEEE is to *grant* a  
24 worldwide license on RAND terms to Netgear and is precluded from seeking  
25 injunctive relief because of its failure on this front. *See, e.g.*, Dkt. 1-1, 1-2, 1-4, 1-5  
26 (Huawei's LOA's to IEEE).

27 Huawei's pursuit of injunctions on its SEPs in courts throughout the world is a  
28

1 blatant attempt to renege on its contractual RAND commitments. By pursuing and  
2 attempting to enforce the injunctions in China and Germany, Huawei seeks to wield  
3 its holdup power against willing licensees to force supracompetitive royalty rates that  
4 are neither reasonable nor non-discriminatory. This conduct not only runs directly  
5 afoul of the Federal Circuit’s recent guidance in *Ericsson*, but it offends domestic  
6 policy and numerous equitable considerations. Indeed, as explained by the Federal  
7 Circuit in *Ericsson*, the bulk of precedent provides that if a RAND commitment means  
8 “anything of substance,” it must mean that an SEP holder who makes such a  
9 commitment “cannot just spring” injunctive actions against other standard  
10 implementers without complying with the standard of conduct required by the  
11 commitment. *Ericsson*, 120 F.4th at 886.

12 Under these circumstances, Huawei’s global litigation warfare campaign,  
13 designed to obtain injunctions against Netgear products under patents that both parties  
14 agree must be licensed, makes no sense and is contrary to U.S. policy. *See, e.g., id.*;  
15 *Microsoft II*, 696 F.3d at 884 (“Implicit in such a sweeping promise [made to  
16 standards-setting organizations] is, at least arguably, a guarantee that the patent-holder  
17 will not take steps to keep would-be users from using the patented material, such as  
18 seeking an injunction, but will instead proffer licenses consistent with the  
19 commitment made.”); *Realtek Semiconductor Corp. v. LSI Corp.*, 946 F. Supp. 2d  
20 998, 1006-07 (N.D. Cal. 2013) (“In promising to license on RAND terms, defendants  
21 here admit that monetary damages, namely a RAND royalty, would be adequate  
22 compensation for any injury it has suffered as a result of Realtek’s allegedly  
23 infringing conduct.”).

24 **B. Huawei’s Conduct Threatens This Court’s Jurisdiction (Factor 2)**

25 “[O]ne clear policy that all federal courts recognize—even those which have  
26 been loath to interfere with foreign proceedings—is the need to protect the court’s own  
27 jurisdiction.” *Zygna, Inc. v. Vostu USA, Inc.*, No. 11-CV-02959-EJD, 2011 WL  
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1 3516164, at \*3 (N.D. Cal. Aug. 11, 2011). Courts have therefore repeatedly found  
2 foreign litigation to frustrate domestic policy when defendants seek to use foreign  
3 litigation to evade contractual obligations or compliance with U.S. law. *See, e.g.,*  
4 *Quaak*, 361 F.3d at 20; *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d  
5 909, 927 (D.C. Cir. 1984) (“Injunctions are most often necessary to protect the  
6 jurisdiction of the enjoining court, or to prevent the litigant’s evasion of the important  
7 public policies of the forum.”).

8 Here, there can be no dispute that Huawei’s SEPs at issue in the foreign  
9 injunction requests are subject to contractual RAND licensing obligations imposed by  
10 the IEEE commitment. Beyond this, Netgear has presented the court with a breach of  
11 contract claim and seeks bifurcation and prompt resolution of the RAND contractual  
12 obligations. Under such circumstances, the only rational reason for Huawei’s not  
13 agreeing with Netgear’s proposal for determination of RAND licensing terms and  
14 driving forward with injunction requests is to bludgeon Netgear into submission so  
15 that it is forced to accept Huawei’s supracompetitive licensing demands rather than  
16 resolving the contractual dispute through this Court. Indeed, given that Netgear and  
17 Huawei are not significant competitors in the marketplace, no other possible purpose  
18 could be served by Huawei’s insistence on driving forward with foreign injunction  
19 proceedings.

20 Courts have previously recognized, in connection with RAND licensing  
21 disputes, that “[foreign] injunctions would likely force [the prospective licensee] to  
22 accept [the patentee’s] licensing terms, before any court has an opportunity to  
23 adjudicate the parties’ breach of contract claims.” *Huawei Technologies Co., Ltd. v.*  
24 *Samsung Electronics, Co., Ltd.*, No. 3:16-CV-02787-WHO, WL 1784065, at \*10  
25 (N.D. Cal. April 13, 2018); *see also Microsoft II*, 696 F.3d at 886 (foreign action  
26 seeking injunction against product sales “compromise[d] the court’s ability to reach  
27 a just result in the case before it free of external pressure on Microsoft to enter into a  
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1 ‘holdup’ settlement before the litigation is complete”). Huawei’s bullying tactics  
2 threaten the jurisdiction of this Court over Netgear’s contractual claims because  
3 injunctions throughout Germany and China undoubtedly impact the ability to  
4 determine a worldwide RAND license.

5 **C. Huawei’s Foreign Injunctions Actions Are Vexatious and**  
6 **Oppressive (Factor 3)**

7 Litigation is vexatious when it is “without reasonable or probable cause or  
8 excuse; harassing [or] annoying.” *Microsoft II*, 696 F.3d at 886 (quoting *Black’s Law*  
9 *Dictionary* 1701 (9th ed. 2009)). The Federal Circuit’s recent ruling in the *Ericsson*  
10 case, discussing the earlier *Microsoft* opinion, is again instructive. There, as here, after  
11 the district court’s adjudication of the contract dispute was underway, Ericsson sought  
12 and obtained foreign injunctions to exclude Lenovo from significant international  
13 markets and threatened it with significant penalties throughout the world. *Ericsson*,  
14 120 F.4th at 868.

15 The same vexatious and oppressive conduct exists here and militates in favor  
16 of granting Netgear’s motion. *See* Ondrick Decl. Ex. 5 (Declaration of Kay  
17 Berkowitz) at ¶¶1-13 (harm suffered should German injunctions be entered).  
18 Moreover, the vexatious conduct is further confirmed here by the fact that Netgear  
19 and Huawei are not significant competitors in the marketplace, largely because  
20 Huawei faces regulatory bans in the United States and elsewhere. *Id.* at ¶¶14-15. And  
21 any injury suffered by Huawei while the licensing dispute is being resolved can easily  
22 be compensated by money damages. Indeed, Netgear has filed a Motion to Bifurcate  
23 with this Court seeking an expedited hearing that will resolve and address any injury  
24 suffered by Huawei—but Huawei refuses to join in the request for expedited  
25 resolution of the contractual dispute.

26 Thus, because Huawei’s foreign injunctive relief serves no purpose other than  
27 to harass Netgear and cause unnecessary expense, the suits seeking foreign  
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1 injunctions are vexatious and oppressive. *Microsoft II*, 696 F.3d at 886; *Ganpat v.*  
2 *Eastern Pacific Shipping PTE, Ltd.*, 66 F.4th 578, 582-83 (5th Cir. 2023).

3 **VI. THE REQUESTED ANTI-ENFORCEMENT INJUNCTION WOULD**  
4 **NOT HAVE AN INTOLERABLE IMPACT ON COMITY**

5 The last step in determining whether an anti-suit injunction is warranted is to  
6 assess whether the injunction’s “impact on comity is tolerable.” *Gallo*, 446 F.3d at  
7 991. “Comity is ‘the recognition which one nation allows within its territory to the  
8 legislative, executive or judicial acts of another nation, having due regard both to  
9 international duty and convenience....’” *Id.* at 994 (quoting *Hilton v. Guyot*, 159 U.S.  
10 113, 164 (1895)). The Ninth Circuit has held repeatedly that private contractual  
11 disputes have little, if any, impact on comity. *See, e.g., Microsoft II*, 696 F.3d at 887  
12 (“[C]omity is less likely to be threatened in the context of a private contractual dispute  
13 than in a dispute implicating public international law or government litigants.”). In  
14 contrast, the Ninth Circuit has recognized that allowing a private party to proceed with  
15 duplicative lawsuits in multiple jurisdictions may itself have an intolerable impact on  
16 comity. *See Applied Med.*, 587 F.3d at 921; *Gallo*, 446 F.3d at 994-995. The presence  
17 of antitrust claims does not change that result. *See InterDigital*, 2015 WL 3958257, at  
18 \*8.

19 Here, the requested anti-enforcement injunction would have no impact on  
20 comity. This is a private commercial dispute between two corporations and does not  
21 implicate any foreign governments. Netgear has asked this Court to promptly resolve  
22 a global contractual dispute concerning the parties’ RAND licensing obligations and  
23 their ability to obtain injunctive relief on SEPs declared essential to IEEE (a U.S.  
24 based organization), which will obviate the SEP injunction actions Huawei has  
25 launched throughout the world. Netgear requests very focused and limited relief that  
26 does not bar German, Chinese or UPC courts from taking any specific actions, but  
27 rather asks only that the Court restrain Huawei from taking specific further actions—  
28

1 namely enforcing an injunction order—that would undermine this Court’s ability to  
2 resolve the gateway contractual RAND questions this Court has been asked to resolve.  
3 Huawei is a private party in a contractual dispute with another private party, Netgear,  
4 and this case “deals with enforcing a contract and giving effect to substantive rights.”  
5 *Gallo*, 446 F.3d at 994. Huawei would remain free to pursue litigation and seek  
6 damages for infringement of its foreign patents while this action is pending.

7 As noted in *Microsoft*, there is widespread agreement by the courts that an “anti-  
8 suit injunction in the service of ‘enforcing a contract’ between private parties does not  
9 ‘breach norms of comity....’” *Microsoft II*, 696 at 888 (quoting *Gallo*, 446 F.3d at  
10 994). While it is true that the order in which suits are filed may be relevant to the  
11 determination, the requested relief here relates to a private contractual dispute, has no  
12 consequence on international relations, and thus does not “breach norms of comity.”  
13 *Microsoft II*, 696 F.3d at 888. More critically, the requested relief here is highly  
14 focused, does not prevent Huawei’s foreign proceedings from moving forward on the  
15 merits, and thus is “no broader than necessary to avoid the harm on which the  
16 injunction is predicated.” *Id.* at 887 (citing *Laker Airways*, 731 F.2d at 933 n.81). Thus,  
17 there is no demonstrable threat to international comity from the narrowly tailored  
18 injunction requested here.

19 **VII. IN THE ALTERNATIVE, THE COURT SHOULD ISSUE AN**  
20 **INTERIM LICENSE UNTIL A MINI-TRIAL CAN ESTABLISH**  
21 **RAND LICENSING TERMS**

22 As discussed above, this case involves a contractual dispute between the  
23 parties regarding the terms of a RAND license for certain SEPs held by Defendant  
24 Huawei. Huawei contends, and Netgear does not dispute for purposes of resolution  
25 of this Motion, the patents identified by Huawei are standard essential for IEEE Wi-  
26 Fi standards. While the parties are engaged in negotiations over the terms of a RAND  
27 license, they have been unable to reach an agreement.

1 In the absence of an agreed-upon rate, as noted above, Huawei has commenced  
2 and advanced litigation in multiple jurisdictions, including Germany and China.  
3 These foreign litigations bring with them the risk of injunctive relief, a remedy that  
4 runs counter to Huawei’s contractual obligation to provide a RAND license to  
5 Netgear so that products practicing the standard may be released without the fear of  
6 exorbitant demands or economic bullying in the form of threats of injunction. Netgear  
7 above proposes a solution to rectify the injustice created by Huawei’s breach, an anti-  
8 enforcement injunction that allows the parties to focus on the RAND license that  
9 Huawei must provide to Netgear. But in the event that such an anti-enforcement  
10 injunction prohibiting enforcement of foreign injunctions is not obtained, Netgear  
11 respectfully seeks an interim license to allow the parties to continue with negotiations  
12 and garner this Court’s assistance to determine RAND terms without the risk of  
13 further escalating disputes in these foreign jurisdictions. Setting an interim license  
14 will enable the parties to proceed with a hearing focused solely on the establishment  
15 of the final RAND terms, thus simplifying and expediting the resolution of this matter  
16 while also preventing the irreparable harm that Netgear would encounter if such  
17 injunctive relief is obtained and enforced.

18 **A. The Court Has the Authority to Set an Interim License Terms**

19 This Court has broad discretion to set interim relief in cases involving  
20 contractual obligations to license SEPs on FRAND terms. The Ninth Circuit in  
21 *Microsoft* recognized the power of district courts to determine royalty rates to  
22 facilitate the resolution of RAND disputes. *Microsoft Corp. v. Motorola, Inc.*, 795  
23 F.3d 1024, 1040 (9<sup>th</sup> Cir. 2015) (“*Microsoft III*”). An interim license does exactly  
24 that. Moreover, if an anti-enforcement injunction does not exist, an interim license  
25 makes particular sense in light of the purpose of the RAND commitment, which is to  
26 encourage widespread adoption of the standard. That purpose would be substantially  
27 defeated if adopting the standard would expose implementers like Netgear to bad faith

1 injunctive relief claims that contravene contractual obligations to provide a license on  
2 RAND terms. The very purpose of the RAND agreement is to promote adoption of a  
3 standard by decreasing the risk of hold-up. *See generally* Mark A. Lemley, *Ten Things*  
4 *to Do About Patent Holdup of Standards (And One Not To)*, 48 B.C. L.Rev. 149 (2007).

5 The Court’s authority to set interim licensing terms was emphasized by the  
6 Federal Circuit’s recent rulings in *Ericsson*. Recognizing the policy issues involved with  
7 forcing an implementer to face injunctive relief when an SEP holder has breached  
8 contractual obligations to a standards body, the Court noted that “[g]iven the SEP-  
9 related concerns underlying the FRAND commitment, if the FRAND commitment  
10 means anything of substance, it must mean that an SEP holder that has made such a  
11 commitment cannot just spring injunctive actions” without “having first complied with  
12 *some* standard of conduct.” *Ericsson*, 120 F.4th at 876. That standard of conduct here  
13 is the one imposed by Huawei’s RAND commitment to provide worldwide RAND  
14 license terms to implementers practicing its WiFi SEP patents. The establishment of  
15 an interim license will lessen the prejudice caused by Huawei’s breach of contractual  
16 obligations in an effort to extort supracompetitive rates from Netgear. Indeed,  
17 Huawei’s refusal to agree to the setting of interim license terms demonstrates further  
18 intent to induce hold-up, *i.e.*, to pressure Netgear into accepting a higher RAND rate  
19 than is objectively merited, and thereby to frustrate the purpose of the contractual  
20 obligation created by IEEE standards by not proffering a license and instead trying  
21 to keep Netgear from using certain SEPs. *See Microsoft I*, 696 F.3d at 884.

22 Other courts that have spoken on this issue have viewed the issue similarly.  
23 *See, e.g. Unwired Planet Int’l v Huawei Techs, Co.*, [2020] UKSC 37, [72] (U.K.  
24 Supreme Court observing that “the operation of the ETSI regime requires the SEP  
25 owner to offer a FRAND license ... as [a] precondition of the grant of an injunction.”)  
26 (decision attached to Ondrick Decl. as Ex. 7); *Realtek Semiconductor*, 946 F. Supp.  
27 2d at 1008 (holding that SEP holders “breached their contractual obligations ... by  
28

1 seeking injunctive relief against [the implementer] before offering [it] a license”).

2 Further, at least one court has granted an interim license to address the  
3 concerns presented here. *See Panasonic Holdings Corporation v Xiaomi Technology*  
4 *UK Limited*, [2024] EWCA (Civ) 1143 (decision attached to Ondrick Decl. as Ex. 6).  
5 In discussing the fact that Xiaomi had offered, like Netgear here, to enter into an  
6 interim license pending a FRAND license terms determination and Panasonic’s (like  
7 Huawei’s here) refusal to agree to the determination of an interim license, the court  
8 noted “[a]ny rational SEP holder in the position of Panasonic would want to be paid  
9 sooner rather than later.” *Id.* at [84]. It concluded: “Panasonic’s reluctance is only  
10 explicable on the basis that it is seeking to compel Xiaomi to accept terms more  
11 favourable to Panasonic than the Patents Court would order.” *Id.*

12 If for some reason an anti-enforcement injunction is not entered here or is  
13 overturned by an anti-anti suit injunction, the Court should enter an order providing  
14 interim license terms to preserve the *status quo* and to hold Huawei to the contractual  
15 obligation that it committed to in order to have its patents declared standard essential  
16 by the IEEE. Absent such relief, Huawei will be allowed to (1) obtain standard  
17 recognition for its IEEE Wi-Fi SEPs fraudulently; by (2) violating contractual  
18 obligations to *provide* worldwide RAND license terms to Netgear; and (3) use the  
19 exclusionary power of the injunctions granted by the German courts, Chinese courts  
20 and/or the UPC to try to force Netgear to pay more than this Court would order. As  
21 observed in the *Panasonic* case, Huawei’s conduct is indefensible, and this Court  
22 should take action to prevent the indefensible conduct. Enforcing the implied  
23 covenant of good faith and fair dealing in commercial contracts through tort-like  
24 remedies, including interim licenses to protect the *status quo*, is appropriate where,  
25 as here, the contract is “characterized by elements of public interest.” *See* Matthew  
26 J. Barrett, Note, “Contort”: *Tortious Breach of the Implied Covenant of Good Faith*  
27 *and Fair Dealing in Noninsurance, Commercial Contracts—Its Existence and*

1 *Desirability*, 60 Notre Dame L. Rev. 510, 518, 528 n. 104 (1985)

2 **B. An Interim License is Necessary to Avoid Prejudice to Both**  
3 **Parties**

4 The absence of an interim license presents a significant risk of harm to both  
5 parties. Netgear faces the prospect of continued litigation in Germany, China and  
6 UPC concerning the same SEPs, which could lead to contradictory rulings,  
7 unnecessary costs, and delays in resolving the underlying RAND dispute. Huawei,  
8 on the other hand, risks having its patents used without a license in a scenario where  
9 an interim license has been proposed.

10 Setting interim license terms would provide the parties with a clear framework  
11 under which they can continue to operate while they litigate issues directly pertinent  
12 to the establishment of final RAND terms. Not only would this result in clear contract  
13 interpretation resulting in a remedy that comports with Huawei's contractual  
14 obligation to provide Netgear with a worldwide RAND license, but it would focus  
15 on the primary issue of dispute between these parties in a manner not influenced by  
16 the significant unfair pressure added to the process by injunctive relief.

17 **C. Huawei's Proposed Interim License Provides Reasonable and**  
18 **Non-Discriminatory Terms Pending Resolution to the Court's**  
19 **RAND Determination**

20 During the meet and confer process, Netgear offered to pay a lump sum interim  
21 license payment of [REDACTED] to Huawei for past use and estimated potential use  
22 through the projected hearing date where the U.S. court can determine RAND terms.  
23 Moreover, Netgear proposed that if the Court-determined RAND terms ultimately  
24 differ from the lump sum interim license payment, then the parties would rectify the  
25 difference to make the parties whole based on this Court's determination.

26 Huawei's lump sum payment accounts for a significant Qualcomm exhaustion  
27 issue that reduces by [REDACTED] the amount of worldwide products subject  
28



1 to the lump sum worldwide license. The exhaustion-based reduction results in  
2 [REDACTED] Netgear products subject to the lump sum  
3 license. Netgear's calculation leading to the offer of [REDACTED] lump sum is attached  
4 to the Ondrick Decl. at Ex. 9. As for the rate applied in calculating the lump sum,  
5 Netgear has informed Huawei [REDACTED]  
6 [REDACTED] consistent with the lump sum  
7 interim license proposed here. *See* Ondrick Decl. Ex. 8 at 7. Patent aggregators  
8 collect and manage a pool of Wi-Fi patents from various owners, including but not  
9 limited to Huawei, allowing companies to license a wide range of purportedly  
10 essential Wi-Fi 6 patents through a single agreement with the aggregator instead of  
11 negotiating with each individual patent holder separately, essentially acting as a one-  
12 stop shop for Wi-Fi patent licensing. Each of the Huawei Wi-Fi 6 patents implicated  
13 in the potential worldwide license between Netgear and Huawei is included in the  
14 aggregator license, plus many additional Wi-Fi SEPs. Ondrick Decl. Ex. 8 at 7.  
15 Huawei's patents make up approximately half of the patents in the pool, thus  
16 providing a fair calculus for discounting the amount to be offered to the aggregator  
17 in a manner that ultimately yields a lump sum paid-up interim license. The outcome  
18 of this calculation, shown in Ex. 9 attached to the Ondrick Declaration, confirms the  
19 reasonableness of Netgear's [REDACTED] lump sum offer to Huawei. This results in a  
20 reasonable and non-discriminatory interim worldwide license that can be adjusted as  
21 necessary once the Court determines final RAND terms.

22 In contrast to the reasonable and non-discriminatory terms proposed by  
23 Netgear for the nominal damages suffered here, Huawei continued its unreasonable  
24 negotiation tactics during the meet and confer regarding this issue. Rather than treat  
25 the discussions seriously as would a willing licensor, Huawei offered [REDACTED]  
26 [REDACTED] that  
27 Huawei established some time ago. Indeed, Huawei provided Netgear with a [REDACTED]

1 [REDACTED] that had previously been proposed to  
2 Netgear and rejected. Ondrick Decl as Ex. 6, 9. Huawei's [REDACTED] does  
3 not come close to providing RAND terms because the proposed rates are  
4 supracompetitive, inconsistent with other licenses entered into by Huawei and  
5 significantly exceeding industry norms, fails to address critical terms such as the  
6 number of units of past sales implicated by the license. Making matters worse, the  
7 Huawei's proposal seeks to extract [REDACTED]  
8 despite Huawei including such patents in comparable licenses without additional  
9 charge. *See, e.g.*, [https://www.huawei.com/en/news/2021/12/buffalo-huawei-wi-fi-](https://www.huawei.com/en/news/2021/12/buffalo-huawei-wi-fi-6-licence-patents)  
10 [6-licence-patents](https://www.huawei.com/en/news/2021/12/buffalo-huawei-wi-fi-6-licence-patents) (last visited Dec. 3, 2024) (press release with Buffalo license only  
11 pertaining to Wi-Fi 6 only). Huawei's proposal confirms and continues a pattern of  
12 unreasonable and discriminatory proposed terms, all based on the "gun to the head"  
13 threat of injunctive relief unless an unfair rate is agreed to by Netgear.

14 Only Netgear's proposed interim license terms provide specific factual and  
15 evidentiary support confirming the reasonable nature of the interim license. The  
16 Court should adopt Netgear's proposed RAND terms in an interim license and  
17 establish a schedule focused on determining the final RAND terms for a license  
18 between Netgear and Huawei.<sup>5</sup>

19 **VIII. CONCLUSION**

20 For the foregoing reasons, Huawei respectfully requests this Court to grant the  
21 motion for an injunction and enter an order barring Huawei from seeking or enforcing  
22 injunctive relief in Germany, the UPC or China during the pendency of the  
23 proceedings here in California.

24 In the alternative, if for some reason an anti-enforcement injunction is not  
25 entered, Netgear respectfully requests that this Court set an interim license for the

26 \_\_\_\_\_  
27 <sup>5</sup> Issues of comity are not implicated here, as with the anti-enforcement motion,  
28 because the issues here involve a global agreement between Netgear and Huawei  
and the interpretation of that contract.

1 global SEPs at issue in this RAND dispute. Setting an interim license will enable the  
2 parties to proceed to a hearing focused solely on establishing the final RAND terms  
3 and ultimately will render moot the ongoing litigation in Germany and China.  
4

5 Dated: December 4, 2024

Respectfully submitted,  
6 SPENCER FANE LLP  
7

8 By: /s/ Blair M. Jacobs

9 Blair M. Jacobs  
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**Local Rule 7-3 Attestation**

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on November 18, 2024 and which continued in correspondence through December 3, 2024.

Dated: December 4, 2024

Respectfully submitted,  
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**Local Rule 11-6.2 Attestation**

The undersigned, counsel of record for Huawei Technologies Co., Ltd., certifies that this brief is no more than 25 pages in length, which complies with the page limit set by court order dated March 14, 2024. Dkt. 41.

Dated: December 4, 2024

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the date signed below, I caused the foregoing document to be served on the following individuals via CM/ECF at the following email addresses:

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