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13 CV 7734

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

G8 HOLDINGS, INC. d/b/a G8 CAPITAL,	Case No.:
Plaintiff,	ECF Case
- against -	
DEUTSCHE BANK SECURITIES INC.,	**COMPLAINT**
Defendant.	(JURY TRIAL DEMANDED)

Plaintiff G8 Holdings, Inc. d/b/a G8 Capital ("Plaintiff" or "G8 Capital"), by its attorneys, Mishcon de Reya New York LLP and Singer Deutsch LLP, as and for its Complaint against Defendant Deutsche Bank Securities Inc. ("Defendant" or "Deutsche Bank"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for breach of contract, breach of the implied covenant of good faith and fair dealing, unfair competition and unjust enrichment. As alleged more fully below, Defendant Deutsche Bank has breached the Confidentiality Agreement between it and Plaintiff G8 Capital (defined below) by unfairly, wrongfully, unlawfully, and in bad faith, misappropriating the confidential and proprietary products of G8 Capital's significant and valuable labor, skills, experience and other expenditures. In addition, Deutsche Bank has been unjustly enriched to G8 Capital's detriment by means of its use of certain confidential and proprietary information that G8 Capital provided to Deutsche Bank under the Confidentiality Agreement.

2. As a result, Plaintiff seeks damages for Deutsche Bank's wrongful, unfair and unlawful conduct, including but not limited to Deutsche Bank's breaches of the Confidentiality Agreement and its misappropriation of G8 Capital's work product, resulting in Deutsche Bank's unjust financial benefit at G8 Capital's expense.

PARTIES

3. Plaintiff G8 Holdings, Inc. d/b/a G8 Capital is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 999 Corporate Drive, Suite 215, Ladera Ranch, California 92694. Plaintiff does business under the name G8 Capital.

4. Defendant Deutsche Bank Securities Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 60 Wall Street, New York, New York 10005. Deutsche Bank is an indirect, wholly owned subsidiary of Deutsche Bank AG.

JURISDICTION

5. This Court has subject-matter jurisdiction over these claims pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and because the dispute is between citizens of different states.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Deutsche Bank is subject to personal jurisdiction in this District based upon: (i) its substantial and regular business activities in the District; and (ii) its consent (a) to personal jurisdiction, as set forth in the Confidentiality Agreement described herein, and (b) to the exclusive jurisdiction of the state and federal courts in the State of New York for the adjudication of any dispute arising from such Agreement.

FACTUAL BACKGROUND

7. G8 Capital is a prudent and disciplined investment firm focused on opportunity-based acquisitions of both residential and commercial real-estate assets. It acquires real-estate and loan (*i.e.*, mortgage) portfolios from financial institutions and other sellers that are looking to get fair wholesale value for their real-estate assets.

8. G8 Capital brings unique value to transactions, stemming from its extensive experience in the real-estate industry. Spanning several decades, G8 Capital's management team has collectively managed more than $10 billion in real-estate-related transactions. What's more, since 2007, G8 Capital has completed and successfully managed more than sixty-five (65) portfolio acquisitions across forty (40) managed funds, representing more than $500 million in principal balance or real-estate value.

9. The portfolios G8 Capital acquires typically range in value from approximately $10 to 25 million.

G8 Capital's Significant and Valuable Experience
Bidding on JPMC's Real-Estate and Loan Portfolios

10. In the wake of the 2008 financial crisis, JPMorgan Chase ("JPMC") acquired most of the banking operations of now-defunct Washington Mutual, Inc. ("WaMu"), including WaMu's real-estate and loan assets. Soon thereafter, through a newly formed group, JPMC began packaging, marketing and selling many of these legacy real-estate and loan assets to outside investors.

11. In May and September 2010, G8 Capital successfully bid on, and purchased from JPMC, two portfolios comprised of these real-estate and loan assets ("JPMC Portfolio One" and "JPMC Portfolio Two"). By virtue of those bids/purchases, G8 Capital developed a good and valuable relationship with the newly created group within JPMC. In fact, JPMC came to regard G8 Capital as a trusted counterparty that would, among other things, reasonably and quickly negotiate deal documentation and, thereafter, reliably finance and close deals.

12. G8 Capital gained valuable information that, in the future, would prove useful in bidding on other JPMC loan portfolios. In particular, in connection with its acquisitions of JPMC Portfolios One and Two, G8 Capital acquired a strong and reliable sense of the monetization potential of future deals and developed a sophisticated sense of the appropriate bid and purchase-price levels for JPMC's real-estate and loan portfolios. (Industry insiders often refer to the proposed bid/purchase price as "pricing color," referring to the price level – typically as a percentage of the unpaid principal balance of all of the loans comprising a given portfolio – at which the portfolio will sell.)

13. This information and experience was extremely valuable for the purpose of developing and implementing bid proposals for the acquisition of future – and potentially larger – portfolios from JPMC.

G8 Capital Learns of JPMC's Nutcracker
Portfolio and Commences Due Diligence

14. In early November 2010, G8 Capital learned that the JPMC group from which it had acquired JPMC Portfolios One and Two just months prior would be accepting bids for another much larger mortgage-loan portfolio, known as "Nutcracker" (the "Nutcracker Portfolio").

15. As of this time, the JPMC group that was selling the WaMu mortgage-loan portfolios had sold a total of only three such mortgage-loan portfolios, with G8 Capital having purchased two of the three (*i.e.*, JPMC Portfolios One and Two). Thus, from JPMC's perspective, G8 Capital was unquestionably a trusted and known bidder and potential purchaser.

16. With its knowledge and experience arising from its recent dealings with JPMC, G8 Capital began to analyze the Nutcracker Portfolio in detail, to commence the due-diligence process and, eventually, to develop a successful bidding strategy.

17. Initial bids for the Nutcracker Portfolio were due on December 9, 2010, and the bidding process was facilitated by CB Richard Ellis ("CBRE"), a national real-estate broker.

18. The Nutcracker Portfolio's total value (*i.e.*, aggregate unpaid loan balance) was approximately $126 million – significantly larger than the previous mortgage-loan portfolios G8 Capital had acquired.

19. After conducting an initial review and basic due diligence, G8 Capital was interested in bidding on, and hoped to acquire, the Nutcracker Portfolio. Given its experience, skill and preliminary analysis, G8 Capital believed that a successful bid for the entire Nutcracker Portfolio would need to be somewhere in the range of $60 to $70 million. Unfortunately, however, G8 Capital did not have sufficient capital to submit a bid of that size.

20. Thus, G8 Capital's options were somewhat limited. Either it had to self-finance and bid on only the portion of the Nutcracker Portfolio that it could purchase without the assistance of outside financing, or it had to partner with a financier with access to sufficient capital, to enable G8 Capital to bid on the entire Portfolio. The risk inherent to G8 Capital with respect to the former option was that bidding on less than the entirety of the Nutcracker Portfolio put it at a competitive disadvantage, because sellers generally prefer to work with a single buyer, if possible.

The Contemplated Joint Acquisition by G8 Capital
and Deutsche Bank of JPMC's "Nutcracker" Portfolio

21. On or about November 10, 2010, Daryl Schwartz, Vice President of Acquisitions at G8 Capital, contacted Kevin Carney, a Deutsche Bank employee, regarding financing and potential lines of credit, in general. Immediately following this initial contact, Mr. Schwartz engaged in subsequent discussions with Mr. Carney and/or Randal Johnson, a Director in Deutsche Bank's Credit Solutions Group Americas ("CSGA"), as well as other members of the CSGA team regarding various ways in which G8 Capital and Deutsche Bank might work together in order to generate profit from additional acquisitions of real-estate and loan portfolios. The subject of those discussions included: (i) the possible extension of a line of credit from Deutsche Bank to G8 Capital; and/or (ii) G8 Capital and Deutsche Bank doing business together via a joint venture.

22. In addition to discussing general financing and collaboration opportunities, Mr. Schwartz informed Messrs. Carney and Johnson, as well as other members of the CSGA team, that G8 Capital had begun due diligence into the Nutcracker Portfolio and inquired whether Deutsche Bank might be interested in either providing G8 Capital with the financing necessary for G8 Capital to acquire the Portfolio in its entirety, or exploring joint-acquisition options.

23. At that time, Deutsche Bank had had no experience with, and had not acquired any portfolios or other assets from, the new group within JPMC. What's more, the assets forming the Nutcracker Portfolio were of a type that Deutsche Bank subsequently self-admittedly described as "out of [its] footprint" and "really not in [its] wheelhouse."

24. Additionally, Deutsche Bank knew, from the outset, that, during the previous months: (i) G8 Capital had successfully bid on, acquired and substantially worked-out the assets developing a solid track record for two smaller – yet similar – portfolios from JPMC (namely, JPMC Portfolios One and Two); and (ii) G8 Capital had a good and valuable relationship with the JPMC group offering the Nutcracker Portfolio.

25. Accordingly, to the extent that G8 Capital and Deutsche Bank were exploring a possible financing transaction and/or joint acquisition, they each understood that G8 Capital's primary roles in the potential acquisition of the Nutcracker Portfolio would be with regard to its: (i) expertise completing due diligence and analysis, bidding on, purchasing, managing and disposing of (*i.e.*, monetizing) the type of real-estate and loan assets that comprised the Nutcracker Portfolio; (ii) good and valuable relationship with the new JPMC group offering the Portfolio; and (iii) its possible role in providing a not-insignificant portion of the necessary capital. Deutsche Bank's primary role, by contrast, would be to provide the remainder of the necessary capital – whether as a loan or via a joint venture with G8 Capital – required to bid competitively – if not successfully – on the Nutcracker Portfolio.

The Parties' Confidentiality Agreement

26. With these respective roles clearly defined, and in order to enable and encourage G8 Capital "to furnish certain confidential or proprietary information . . . to Deutsche Bank" (the "Information"), on November 17, 2010, Deutsche Bank provided G8 Capital with a proposed,

draft Confidentiality Agreement (the "Confidentiality Agreement"). That same day, representatives from Deutsche Bank and G8 Capital executed the Confidentiality Agreement.

27. The Confidentiality Agreement expressly provided that the purpose behind G8 Capital sharing Information with Deutsche Bank was "to enable [Deutsche Bank] to evaluate the merits of [Deutsche Bank] and [G8 Capital] entering into a business relationship involving a potential whole loan financing transaction" (the "Stated Purposes").

28. Moreover, as consideration for G8 Capital furnishing Information to Deutsche Bank, and as an express condition to such disclosure, Deutsche Bank agreed that it would "not use any Information for any purpose other than for the [Stated Purposes]." Deutsche Bank also agreed that it would "not disclose any Information to any person or entity other than employees, affiliates, directors, officers, outside advisors or agents of [Deutsche Bank] who need to have access to that Information in order for [Deutsche Bank] to carry out the [Stated Purposes]."

Deutsche Bank Requests, and G8 Capital Provides,
<u>Critical Confidential and Proprietary Information</u>

29. After executing the Confidentiality Agreement, Deutsche Bank and G8 Capital continued their discussions, exploring in greater depth G8 Capital's history, experience and methodology, in general, and the parameters and specific characteristics and qualities of the Nutcracker Portfolio, in particular. At the time, G8 Capital believed that Deutsche Bank took part in those discussions, and explored the question of whether a joint acquisition of the Nutcracker Portfolio was feasible and appropriate, in good faith and with proper motives.

30. On or about November 18, 2010, representatives from G8 Capital and Deutsche Bank took part in a telephonic discussion regarding the details of the Nutcracker Portfolio. During that discussion, G8 Capital agreed to provide Deutsche Bank with access to the due-diligence materials regarding the Nutcracker Portfolio to which it already had access. To that

end, following the discussion, G8 Capital contacted CBRE to request that three Deutsche Bank employees (namely, Mr. Carney, Mr. Johnson, and Andrew McDermott) be granted access to CBRE's Nutcracker Portfolio data under G8 Capital's account.

31. CBRE quickly granted this request, and G8 Capital contacted Mr. Johnson via email to inform him that the accounts had been set up and that Deutsche Bank now had access to the Nutcracker Portfolio data provided by CBRE. G8 Capital also confirmed that it would begin gathering and producing a large amount of its own proprietary information regarding G8 Capital generally, the Nutcracker Portfolio specifically, as well as similar acquisitions G8 Capital had made in the past, including JPMC Portfolios One and Two.

32. In an email dated November 24, 2010, Mr. Carney, the Deutsche Bank employee affiliated with CSGA, emailed Mr. Schwartz and Mark Evans of G8 Capital, requesting that Messrs. Schwartz and Evans call Mr. Carney and raising questions that appear to have been provided to Mr. Carney from another (unknown) Deutsche Bank employee. Mr. Carney also asked G8 Capital to provide: (i) due-diligence information; (ii) valuations; (iii) performance data and returns on similar assets that G8 Capital had recently acquired from JPMC; (iv) forecasted cash flows; (v) projected bidding amounts; (vi) pricing "color" for the Nutcracker Portfolio; and (vii) other confidential and valuable information.

33. On November 29, 2010, Mr. Schwartz responded to Mr. Carney's email requests, providing Deutsche Bank with detailed and specific answers to Deutsche Bank's questions and other requests from the November 18, 2010 telephonic discussion, as well as access to files containing G8 Capital's confidential information regarding G8 Capital as a company, its analysis of the Nutcracker Portfolio, and performance statistics for previous loan portfolios G8 Capital had acquired from JPMC and elsewhere.

34. As part of his response, Mr. Schwartz also provided Deutsche Bank with his initial assessment of a proper bid price for the Nutcracker Portfolio, explaining, among other things, that "[G8 Capital's] unlevered pricing on these type of deals is 45-50% of the current UPB [*i.e.*, "pricing color"] and 60-65% of value. Which puts us at a [sic] estimated purchase price of around $70-78mm unlevered." Mr. Schwartz added that he would be traveling to Northern California, together with one of his colleagues, in order to assess some of the real-estate assets included in the Nutcracker Portfolio.

35. On December 2, 2010, representatives from both G8 Capital and Deutsche Bank, including Mr. Johnson and Ryan Stark (another CSGA team member), took part in another telephonic discussion as part of which they discussed the Nutcracker Portfolio and certain funding options that Deutsche Bank might provide.

36. On December 3, 2010, after having personally visited some of the Nutcracker Portfolio's assets, and after conducting a further analysis of the Portfolio as a whole, Mr. Schwartz responded to another email he received from Mr. Carney the previous day, providing more specific bidding guidance and stating "[a]s anFYI [sic], pricing color right now is 46-47."

Deutsche Bank Breaches the Confidentiality Agreement By Utilizing G8 Capital's Confidential Information for the Purpose of Independently Acquiring the Nutcracker Portfolio

37. On December 3, 2010, after Mr. Carney received the updated bidding guidance from Mr. Schwartz, Deutsche Bank's CSGA team members, including Mr. Carney, Mr. Johnson and Mr. Stark, had yet another telephonic discussion with G8 Capital team members, including Mr. Schwartz. During that conversation, Deutsche Bank told G8 Capital that, given apparent time constraints necessary to complete the transaction, it would be difficult for Deutsche Bank to fund the contemplated joint purchase of the Nutcracker Portfolio.

38. In response, Mr. Schwartz emailed Mr. Carney later that day, reiterating G8 Capital's desire to work with Deutsche Bank in acquiring the Nutcracker Portfolio and outlining three alternative options aimed at ameliorating the purported timing issues raised by Deutsche Bank, whereby G8 Capital would provide a substantial portion of the bidding amount prior to, or immediately after, bidding on and acquiring the Nutcracker Portfolio.

39. In response to Mr. Schwartz's email, Mr. Carney stated "take a look . . . timing is a problem for us . . . ," after which he appeared to have cut-and-pasted the text of an email sent to him by another (unknown) Deutsche Bank colleague, requesting certain additional information regarding the Nutcracker Portfolio's assets, and noting timing issues. Specifically, Mr. Carney explained that "[e]ven with the options below I think its [sic] going to be extremely tough to get something actually funded by the end of the year. We have a meeting to discuss a few of these NPL [*i.e.*, non-performing loan] opportunities monday [sic] [December 6, 2010] though so if we can run some analytics ahead of time we [sic] their updated values we can at least discuss it."

40. Thereafter, including over the weekend of December 4-5, 2010, and up until the aforementioned Deutsche Bank meeting on December 6, 2010, at Deutsche Bank's request, G8 Capital continued to provide Deutsche Bank with further due-diligence and other information regarding the Nutcracker Portfolio, including a spreadsheet containing updated valuation information, as well as access to the thousands of pages of loan documents, property valuations, and other due diligence upon which G8 Capital premised this valuation information. G8 Capital further advised Deutsche Bank that a number of loans were going to be removed from the Nutcracker Portfolio, thereby reducing the total value (*i.e.*, the aggregate value of all outstanding loans) of the Loan Package to approximately $127 million and, based upon G8 Capital's initial

bid suggestion (or pricing color) of 46-47%, putting the purchase price at approximately $58 million.

41. G8 Capital hoped that its provision of this extra information might assuage any lingering concerns that Deutsche Bank might have regarding the limited time frame during which Deutsche Bank and G8 Capital could jointly put together, and/or fund, a competitive bid for the Nutcracker Portfolio. In providing this information, G8 Capital trusted that, pursuant to the Confidentiality Agreement, Deutsche Bank would either: (i) elect to proceed with financing, and/or jointly acquire, the Nutcracker Portfolio; or (ii) essentially ignore the confidential information G8 Capital had provided.

42. On December 9, 2010, the date that initial bids on the Nutcracker Portfolio had to be submitted to CBRE, Deutsche Bank definitively and finally informed G8 Capital that Deutsche Bank would not be involved in the Nutcracker Portfolio bid because it could not fund the joint acquisition in a timely fashion.

43. Because G8 Capital had been informed by Deutsche Bank that there was insufficient time to proceed with the joint acquisition of the Nutcracker Portfolio, because G8 Capital was unable to move forward, on its own, with a bid for the entirety of the Nutcracker Portfolio, and because it was too late in the process to attempt to partner with any other financiers, G8 Capital submitted a bid to JPMC for an approximately $15 million portion of the Nutcracker Portfolio.

44. G8 Capital understood that, all other things being equal, its bid would be at a serious competitive disadvantage to any bidder(s) for the entirety of the Portfolio. Even so, on December 10, 2010, CBRE notified G8 Capital that it had been selected to participate in the "Best and Final Round" of bidding for the Nutcracker Portfolio.

45. On December 14, 2010, G8 Capital submitted its "Best and Final" bid on the Nutcracker Portfolio to CBRE.

46. On December 15, 2010, CBRE advised G8 Capital that its final bid for a portion of the Nutcracker Portfolio was being considered alongside another bid for the entire Nutcracker Portfolio submitted by an "unexpected third party" that purported to be able to close the deal by Friday, December 17, 2010. CBRE informed G8 Capital that it was waiting to hear from JPMC as to whether JPMC was willing to give this "unexpected" bidder the opportunity to close the deal, despite the fact that this surprise bidder had not actively discussed the deal with CBRE throughout the process. CBRE further expressed doubts about whether this surprise bidder could complete the necessary level of due diligence in the short time frame between final bidding and the agreed-upon closing date.

47. On December 16, 2010, CBRE informed G8 Capital that it did not win its bid on a portion of the Nutcracker Portfolio because JPMC had accepted the offer from the "unexpected third party" that bid on the entire portfolio. CBRE notified G8 Capital that it still may have a shot if this competing bidder was unable to close by the following day, December 17, 2010.

48. On December 17, 2010, CBRE confirmed to G8 Capital that the then-undisclosed competing bidder was able to come up with the financing in a timely manner, and, as a result, that bidder was able to acquire the entirety of the Nutcracker Portfolio.

Deutsche Bank's True Identity as the
<u>"Unexpected" Bidder is Finally Revealed</u>

49. A number of weeks later, in or about early February 2011, G8 Capital learned from a Florida real estate broker – who G8 Capital had hired to complete some of the property visits and other due diligence in connection with the Nutcracker Portfolio – that the ultimate acquirer of the Nutcracker Portfolio was German American Capital Corporation ("GACC"), a

Deutsche Bank business unit. In other words, the anonymous and unexpected "third party" CBRE had referred to in December 2010 was, in fact, Deutsche Bank.

50. This after-the-fact revelation raised a number of serious concerns that Deutsche Bank may have wrongfully and unlawfully utilized G8 Capital's confidential and proprietary business information in order to bid successfully on the Nutcracker Portfolio and thereby elbow G8 Capital out of the transaction in violation of the Confidentiality Agreement. Unfortunately, further investigation confirmed the validity of G8 Capital's concerns.

Deutsche Bank Had Submitted Its Own Independent Bid For the Nutcracker Portfolio Thereby Breaching the Confidentiality Agreement

51. On December 9, 2010, Deutsche Bank representatives, working within the Special Situations Group ("SSG"), a business unit within Deutsche Bank, had submitted to JPMC's agent, CBRE, an "indicative" (*i.e.*, preliminary) bid for the Nutcracker Portfolio in the amount of $56,184,847.68. This indicative bid reflected pricing "color" of 46.0% – *the exact bidding guidance that G8 Capital had provided to Deutsche Bank* on December 3, 2010 when Mr. Schwartz responded to Mr. Carney's request for information regarding JPMC's pricing "color."

52. Upon information and belief, Deutsche Bank simply utilized the very same bidding guidance that G8 Capital had provided, backing its way into the indicative bid that it submitted to JPMC on December 9, 2010. Such utilization was made possible because, upon information and belief, personnel within Deutsche Bank's CSGA business unit had shared with their colleagues within Deutsche Bank's SSG business unit the confidential and proprietary information that G8 Capital had provided to representatives of Deutsche Bank's CSGA business unit in advance of Deutsche Bank's bid for the Nutcracker Portfolio.

53. Thereafter, on December 14, 2010, Deutsche Bank representatives again submitted, via CBRE, a bid to acquire the Nutcracker Portfolio. Deutsche Bank's self-described "best and final" bid, in the amount of $60,500,000.00, reflected pricing "color" of 47.87%.

54. Upon information and belief, having previously utilized the bidding guidance provided by G8 Capital in connection with the submission of Deutsche Bank's indicative bid, Deutsche Bank simply adjusted its bid price upward slightly in order to accommodate certain adjustments made by JPMC in the Nutcracker Portfolio and, ultimately, to "seal the deal" for the acquisition of that Portfolio. In other words, Deutsche Bank effectively raised its bid by 1.87% over its indicative bid in order to "sweeten the pot" and increase the bid to a round number.

55. Although Deutsche Bank's bidding documentation appears to have been prepared and submitted by Deutsche Bank employees within its SSG business unit – rather than those employees nominally affiliated with the CSGA business unit, the Deutsche Bank business unit with which G8 Capital had had primary contact – that documentation unmistakably identifies "Deutsche Bank" and/or "Deutsche Bank Securities" as the bidding entity.

56. In any case, the Confidentiality Agreement between G8 Capital and Deutsche Bank legally bound both business units (CSGA and SSG) within Deutsche Bank. Indeed, internal email communications reveal that SSG and CSGA team members themselves believed that a single confidentiality agreement executed by a Deutsche Bank signatory from either business unit applied equally to both SSG and CSGA business units.

57. Furthermore, upon information and belief, Deutsche Bank's various employees and representatives within its SSG and CSGA business units, respectively, were in frequent and substantial contact with one another, including for the purpose of exchanging information regarding the purchase of real-estate and loan portfolios.

58. In fact, Deutsche Bank personnel in both business units frequently shared with each other information regarding bidding guidance for various portfolios and real-estate investment opportunities, including but not limited to bidding guidance related to the Nutcracker Portfolio.

59. Upon information and belief, the "[M]onday" (December 6, 2010) meeting mentioned in Mr. Carney's December 3, 2010 email referred to a meeting attended by Deutsche Bank employees from both the CSGA and SSG business units. Upon information and belief, during that meeting, CSGA employees shared G8 Capital's confidential and proprietary information regarding the Nutcracker Portfolio – including information regarding G8 Capital's bidding guidance – with Deutsche Bank employees nominally affiliated with Deutsche Bank's SSG business unit.

60. Upon information and belief, neither of Deutsche Bank's CSGA or SSG business units could have successfully bid on and won the Nutcracker Portfolio without the confidential and proprietary information G8 Capital had provided under the terms of the Confidentiality Agreement. After all, the assets forming the Nutcracker Portfolio were "out of [Deutsche Bank's] footprint" and "really not in [its] wheelhouse." What's more, JPMC disclosed to G8 Capital that, throughout the process, the winning bidder had not actively discussed the deal with CBRE.

61. Even if such information had not been directly shared between Deutsche Bank's business units, at a minimum, those business units within Deutsche Bank were able to leverage the information that G8 Capital had spent hundreds of hours developing – including but not limited to bidding levels, property valuations, loan reviews and other due diligence – to inform

and to expedite any otherwise independently generated analyses and due diligence concerning the Nutcracker Portfolio.

62. In fact, when Mr. Carney – the CSGA sales representative with whom G8 Capital had had substantial contact and who would have earned a commission had Deutsche Bank and G8 Capital jointly acquired the Portfolio – first learned that Deutsche Bank had submitted the winning bid and closed the deal to acquire the Nutcracker Portfolio at a February 7, 2011 conference in Orlando, Mr. Carney expressed his frustration to Messrs. Schwartz and Evans that G8 Capital had been cut out of the bidding process. Indeed, Mr. Carney was well aware that Deutsche Bank employees from the CGSA and SSG business units had met together regularly to review deals and to collaborate. In his words, "there was no way they both didn't know."

Deutsche Bank's Wrongful and Unlawful Use of
G8 Capital's Confidential and Proprietary Information
Has Caused G8 Capital to Suffer Substantial Monetary Loss

63. Had G8 Capital's and Deutsche Bank's joint acquisition of the Nutcracker Portfolio proceeded as contemplated under the Confidentiality Agreement, G8 Capital provisionally estimates that it would have netted at least $30 million in the collection of payments and the disposition of the assets comprising the Nutcracker Portfolio.

64. In fact, after taking into account financing costs and operational expenses, G8 Capital provisionally estimates that it would have generated net profits of at least $25 million from the contemplated joint acquisition of the Nutcracker Portfolio.

65. Furthermore, by making use of G8 Capital's proprietary information in violation of the Confidentiality Agreement to bid on the entire Nutcracker Portfolio, Deutsche Bank effectively crowded out all other bidders, preventing G8 Capital from winning the approximately $15 million portion of the Nutcracker Portfolio it bid on individually.

FIRST CAUSE OF ACTION
(Breach of Contract)

66. Plaintiff repeats and re-alleges each of its allegations contained in Paragraph 1 through and including Paragraph 65 herein, as if fully set forth at length hereafter.

67. Defendant breached Section (2) of the Confidentiality Agreement by using confidential, proprietary and innovative information subject to the Confidentiality Agreement, novel and unknown to Defendant (defined in that Agreement as "Information"), for a deal that did not involve the Relationship with Plaintiff, as defined in the Confidentiality Agreement, all to the detriment of Plaintiff.

68. Defendant breached Section (3) of the Confidentiality Agreement by disclosing confidential, proprietary and innovative information subject to the Confidentiality Agreement, novel and unknown to Defendant (defined in that Agreement as "Information"), to a person and/or entity for a purpose other than to carry out the Stated Purposes of the Confidentiality Agreement, all to the detriment of Plaintiff.

69. Plaintiff has been damaged by Defendant's breaches.

70. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees.

SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

71. Plaintiff repeats and re-alleges each of its allegations contained in Paragraph 1 through and including Paragraph 70 herein, as if fully set forth at length hereafter.

72. Defendant owed Plaintiff a duty to act in good faith and deal fairly with Plaintiff in carrying out the actions contemplated by the Confidentiality Agreement, and to exercise any discretion it had under the Confidentiality Agreement in a fair and reasonable manner.

73. Defendant breached this duty by, among other things: (i) holding itself out as interested in entering into a business relationship with Plaintiff in order to collectively and jointly purchase the Nutcracker Portfolio from JPMC; (ii) requesting, receiving and using confidential, proprietary and innovative information from Plaintiff; (iii) inducing Plaintiff to provide valuable confidential information and business advice and services related to the purchase of the Nutcracker Portfolio from JPMC without the intention of honoring its obligations to Plaintiff; (iv) unreasonably exercising its discretion to inform Plaintiff that there was not enough time remaining to jointly acquire the Nutcracker Portfolio, but ultimately concluding that there was sufficient time for Deutsche Bank to independently bid on and acquire the Nutcracker Portfolio; and (v) unreasonably exercising its discretion to ignore a variety of viable alternative joint acquisition arrangements offered by G8 Capital for the purpose of ameliorating Deutsche Bank's purported "timing" concerns.

74. Defendant's conduct was arbitrary, unreasonable, contrary to industry standards, and had the effect of preventing Plaintiff from receiving the protection bargained for under the Confidentiality Agreement and/or participating in the purchase of the Nutcracker Portfolio from JPMC.

75. Plaintiff has been damaged by Defendant's breach of the duty of good faith and fair dealing in a number of ways, including, but not limited to, extra-contractual damages resulting from Plaintiff's efforts in: (i) identifying the potential business opportunity associated with the Nutcracker Portfolio; (ii) providing business and financial advice to Defendant; and (iii) refraining from actions in reliance upon Defendant's (in)actions. Defendant's breach is the proximate cause of these damages.

76. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees.

THIRD CAUSE OF ACTION
(Unfair Competition)

77. Plaintiff repeats and re-alleges each of its allegations contained in Paragraph 1 through and including Paragraph 76 herein, as if fully set forth at length hereafter.

78. Plaintiff had a property right in the material and information it prepared and disclosed to Defendant pursuant to and in accordance with the terms of the Confidentiality Agreement.

79. The material, information and ideas prepared and proposed by Plaintiff were innovative and novel.

80. Plaintiff utilized substantial skill, exerted substantial labor and made substantial expenditures in connection with proposed joint acquisition of the Nutcracker Portfolio.

81. Defendant misappropriated the product of the labors, skills and expenditures of Plaintiff for Defendant's own commercial advantage and profit, all in an effort to cut Plaintiff out of the Nutcracker Portfolio transaction, acquire the Nutcracker Portfolio independently, and to maximize its own profits at Plaintiff's expense and detriment.

82. Defendant's actions were commercially immoral and in bad faith in that Defendant repeatedly requested that Plaintiff: (i) perform services for Defendant; (ii) provide material, analyses, strategies and information to Defendant; and (iii) make significant expenditures in time and money for Defendant's benefit, without compensating Plaintiff and while covertly seeking to exclude, bypass and circumvent Plaintiff from the transaction.

83. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

84. Plaintiff repeats and re-alleges each of its allegations contained in Paragraph 1 through and including Paragraph 83 herein, as if fully set forth at length hereafter.

85. Defendant used confidential, novel and innovative ideas and information provided by Plaintiff, as well as the efforts, skills, knowledge, expenditures and labors of Plaintiff for Defendant's sole financial benefit, in violation of the Confidentiality Agreement.

86. Plaintiff expended substantial labor, effort, expenditures and skills, much of which were at Defendant's request, and such labor, effort, expenditures and skills conferred a significant benefit upon Defendant for which Plaintiff has not been compensated.

87. Defendant acted improperly and in a manner inconsistent with both the spirit and letter of the Confidentiality Agreement by circumventing, bypassing, avoiding and obviating Plaintiff's involvement in the transaction at issue, resulting in Defendant's unjust enrichment.

88. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees.

WHEREFORE, Plaintiff G8 Capital respectfully requests that the Court enter judgment on the Complaint:

(i) On the first cause of action for breach of the Confidentiality Agreement, awarding monetary damages to Plaintiff and against Defendant in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees;

(ii) On the second cause of action for breach of the implied covenant of good faith and fair dealing, awarding monetary damages to Plaintiff and against Defendant in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees;

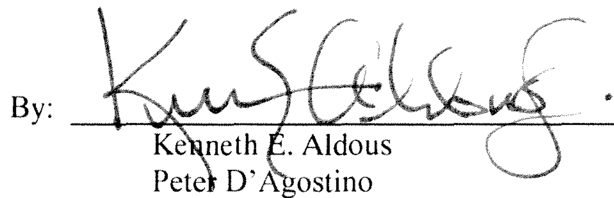
(iii) On the third cause of action for unfair competition, awarding monetary damages to Plaintiff and against Defendant in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees;

(iv) On the fourth cause of action for unjust enrichment, awarding monetary damages to Plaintiff and against Defendant in an amount to be determined at trial, but not less than $25 million, together with pre-judgment interest, post-judgment interest, expenses, costs and attorneys' fees; and

(v) Awarding such further and other relief as the Court deems just and proper.

Dated: New York, New York
October 31, 2013

MISHCON de REYA NEW YORK LLP

By: 

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