



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

TIFFANY & CO., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LVMH MOËT HENNESSY-LOUIS )  
 VUITTON SE; BREAKFAST )  
 HOLDINGS ACQUISITION CORP.; )  
 AND BREAKFAST ACQUISITION )  
 CORP., )  
 )  
 Defendants. )

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Case No. 2020 – \_\_\_\_ - \_\_

**VERIFIED COMPLAINT**

Plaintiff Tiffany & Co. (“Tiffany” or the “Company”), by and through its undersigned counsel, hereby files this Verified Complaint against defendants LVMH Moët Hennessy-Louis Vuitton SE (“LVMH” or “Parent”), Breakfast Holdings Acquisition Corp., and Breakfast Acquisition Corp. (collectively, with Breakfast Holdings Acquisition Corp. and LVMH, the “LVMH Entities”). Upon knowledge as to itself and information and belief as to all other matters, Tiffany alleges the following.

**NATURE OF THE ACTION**

1. This action seeks to require the LVMH Entities to abide by their contractual obligations under a November 24, 2019 Merger Agreement (the “Merger Agreement”). The Merger Agreement was the culmination of a relentless,

unsolicited pursuit by LVMH, the French serial acquirer of luxury-goods businesses, to purchase Tiffany, the famous American retailer. Tiffany agreed to LVMH's acquisition proposal only after LVMH increased its unsolicited bid five times, including three price increases over the course of a single day, totaling collectively \$1.8 billion. LVMH insisted that it and its counsel had extensively reviewed the two businesses, and assured Tiffany that the transaction posed zero antitrust risk around the world and that LVMH did "not foresee any impediments to a successful and timely closing of [the] transaction." Reflective of LVMH's zeal to acquire the iconic Tiffany brand at all costs, LVMH agreed after just four days of negotiation to a Merger Agreement that is highly favorable to Tiffany.

2. Under the Merger Agreement, LVMH assumed all antitrust-clearance risk through a burdensome "hell-or-high-water" clause and assumed all financial risk related to adverse industry trends or economic conditions. Despite squarely assuming these risks in the Merger Agreement, LVMH now seeks to evade its obligations based precisely on these two points by (i) breaching its express contractual promise to "do or cause to be done all things, necessary or advisable" to secure antitrust clearances "as promptly as practicable," and (ii) wrongly asserting that recent pandemic-related effects on the global economy and social-justice protests in the United States give LVMH a right to avoid closing the transaction. The Merger Agreement forecloses both tactics.

3. The Merger Agreement requires LVMH to prepare and file, “as promptly as practicable,” all antitrust-clearance applications and to obtain, “as promptly as practicable,” all antitrust clearances. Despite this express contractual obligation, as of September 9, 2020—*more than nine months after signing the Merger Agreement*—LVMH has yet even to *file* its formal *requests* for antitrust approvals in the European Union (“EU”) and Taiwan, and the transaction has yet to receive clearance in both Japan and Mexico as a result of LVMH’s inexcusable delay in responding to the reviewing authorities’ requests for information in those countries. After having initially insisted that the deal poses no antitrust risk—and having assumed in the Merger Agreement 100% of any risk of adverse clearance outcomes through a robust hell-or-high-water clause—LVMH simply has *refused even to ask* for the requisite approvals in two jurisdictions and has dragged out the antitrust-clearance process for more than nine months in two other jurisdictions.

4. Recognizing that its very own antitrust analyses confirmed that approvals for the deal are inevitable and having seen the deal breeze through the antitrust-approval process in the United States more than seven months ago, LVMH has held back on even putting the question to the remaining agencies. These concerted delays flagrantly violate LVMH’s agreed-upon contractual obligations, and are a transparent attempt to run out the clock under the Merger Agreement or, at the very least, to delay closing in the false hope that some termination event may

arise. It is striking that LVMH failed even to file its formal requests for approvals in three jurisdictions (the EU, Taiwan and Japan) before the initial August 24 “drop-dead” date in the Merger Agreement, which both parties had selected at signing as a date that would provide more than ample time to obtain all necessary clearances and complete the transaction.

5. After delaying the antitrust-clearance processes at every turn to make it to the initial “drop-dead” date, LVMH recently has taken the position—without one shred of support—that the global economic downturn incident to the COVID-19 pandemic qualifies as a “material adverse effect” (“MAE”) under the Merger Agreement that prevents Tiffany from extending the “drop-dead” date by three months. That contention is unquestionably false. LVMH cites no decline specific to Tiffany’s business, but rather relies only on an industry-wide downturn throughout the entire luxury-goods sector. Even then, LVMH points only to quarter-to-quarter declines among luxury-goods retailers, including LVMH itself, but offers not even a suggestion of any industry declines of significant duration, much less material declines unique to Tiffany—the only relevant consideration under the Merger Agreement. In fact, updated forecasts provided by Tiffany to LVMH in August 2020 at LVMH’s insistence project that Tiffany’s earnings for the fourth quarter of 2020 will be *greater than the same period in 2019*, demonstrating a rapid return to (and surpassing of) Tiffany’s pre-pandemic performance. Nor can

LVMH claim that an MAE has occurred because Tiffany over its last two quarters has not met the projections that were exchanged before the Merger Agreement was signed. The Merger Agreement specifically disclaims any agreement as to those projections and makes clear that a failure to meet those projections alone cannot form the basis of an MAE.

6. LVMH's assertion of an MAE is simply one of LVMH's latest excuses to avoid its obligations under the Merger Agreement. LVMH has made clear that its real goal is to attempt to renegotiate the merger price to which the parties agreed last November and, barring renegotiation, run out the clock. That attempt is entirely improper. Indeed, the very fact that LVMH has sought to misuse the still-pending regulatory approvals as a negotiating tool demonstrates that the pending regulatory applications pose no genuine hurdle to closing. On September 8, 2020, LVMH laid bare these improper tactics when it informed Tiffany that LVMH would refuse to close the transaction before the drop-dead date—*even if all outstanding regulatory approvals were received*—supposedly in deference to a letter LVMH had received more than a week earlier from a French politician requesting LVMH to defer closing until after January 6, 2021 in support of a trade dispute with the U.S. Even then, patriotism aside, LVMH made clear that not one of these issues presented an impediment to closing at a reduced price.

7. LVMH is the world's largest luxury-goods conglomerate and a serial acquirer of luxury-goods brands. Bernard Arnault, LVMH's patriarch and one of the richest persons in the world, has long coveted Tiffany, among the most famous luxury brands in the world. On October 15, 2019, LVMH approached Tiffany with an unsolicited acquisition bid, and thereafter aggressively pursued the transaction, bidding against itself through five price increases. After LVMH conducted just five days of due diligence, the parties negotiated the Merger Agreement over the span of only four days, a testament to LVMH's enthusiasm for the transaction. LVMH and Tiffany ultimately agreed to a merger that valued Tiffany at \$16.2 billion.

8. The carefully crafted Merger Agreement places any risk related to antitrust clearance squarely on LVMH, requires LVMH to "do or cause to be done all things necessary or advisable" to secure antitrust clearances "as promptly as practicable," gives LVMH no unilateral option to walk away from the transaction before the "drop-dead" date and contains a narrow MAE clause giving LVMH a right to resist closing only in exceedingly limited circumstances not remotely present here.

9. For several months after signing, LVMH enthusiastically supported the transaction and sought to close as quickly as possible—even sooner than the "middle of 2020" timeline LVMH announced upon signing the Merger Agreement. By December 2019, LVMH announced that it was seeking to obtain "all clearances

ASAP and in any event in H1 of 2020.” At that time, LVMH proposed in a timeline that it shared with the European Commission (the “EC”), the merger review authority in the European Union, that LVMH would file the final merger-notification form with the EC by the end of February 2020, only three months after signing. LVMH also insisted that the parties accelerate schedules for antitrust approval in the United States and for Tiffany’s stockholder approval, which were received on February 3 and February 4, 2020, respectively. The parties sped full steam ahead toward a second quarter 2020 closing.

10. In early 2020, news of COVID-19’s spread from Asia to other continents started to surface. By January 30, 2020, the World Health Organization had categorized COVID-19 as a Public Health Emergency of International Concern.<sup>1</sup> Initially unfazed as the COVID-19 pandemic worsened around the globe, LVMH first sought to take advantage of the pandemic-related market disruptions to lower its acquisition costs.

11. In February 2020, LVMH announced that it had successfully raised more than \$10 billion to help pay for the Tiffany acquisition (notwithstanding that obtaining financing was not a condition of the transaction). Taking advantage of drastically cheaper interest rates resulting from COVID-19-related stimulus

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<sup>1</sup> *Timeline of WHO’s Response to COVID-19*, WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/detail/29-06-2020-covidtimeline> (last updated July 30, 2020).

packages implemented in the EU, LVMH was able to borrow much of that cash at *negative interest rates*—in other words, investors have paid LVMH to hold that debt since February. Press reports described LVMH’s actions as “blasting aside fears among some players of the economic impact of the coronavirus outbreak.”

12. In March 2020, as the effects of COVID-19 began to ripple through Europe and reached the United States, LVMH again initially sought to exploit the market disruption for its own economic benefit and to cement its commitment to the deal. After Tiffany’s stock price endured a short pandemic-induced price decline in March, LVMH asked Tiffany to waive a standstill provision in the parties’ confidentiality agreement (the “Confidentiality Agreement”) so that LVMH could begin purchasing Tiffany stock in the open market at a substantial discount to the agreed-upon merger price.

13. But LVMH’s aggressive approach in the face of the pandemic soon began to falter, and its enthusiasm for the Tiffany acquisition—at least at the price to which it had agreed in November—soured. After rumors surfaced of LVMH’s plans to purchase Tiffany stock—and after Tiffany explained to LVMH that any waiver would have to be disclosed publicly—LVMH issued a press release on March 23, 2020 stating that “[t]hese rumors [led] LVMH to recall” that it was “currently committed” not to buy Tiffany stock in the open market. In retrospect,



LVMH’s decision not to buy Tiffany stock in the open market was among the first of many signs to come of a developing case of buyer’s remorse.

14. As the pandemic continued to spread across the globe, LVMH at first acknowledged publicly that it had no choice but to complete the Tiffany acquisition, telling its investors in April 2020 that LVMH “will stick to the contract, full stop.”<sup>2</sup> Soon after the end of Tiffany’s first fiscal quarter on April 30, 2020, however, LVMH appears to have formally adopted a different corporate strategy—to evade through any means possible its obligations under the Merger Agreement and to force Tiffany to agree to a price cut. By the beginning of June 2020, LVMH’s Managing Director cut off all informal communications with Tiffany’s CEO and Chairman. This change in corporate strategy was blessed at a June 2020 meeting of LVMH’s Board of Directors. At that meeting, which was followed immediately by a detailed leak of the Board’s discussions to the press (in violation of the Merger Agreement), LVMH’s Board reportedly sent a “clear message” to management that “the acquisition should be reconsidered” and that LVMH should press Tiffany to agree to a reduced merger price. Rather than deny these press reports after its Board meeting, LVMH issued a press release containing the intentionally obtuse statement

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<sup>2</sup> Joelle Diderich, *LVMH Sees Sharp Rebound in China After 15% Q1 Sales Drop*, WOMEN’S WEAR DAILY (Apr. 16, 2020), <https://wwd.com/business-news/financial/lvmh-sales-drop-15-percent-in-first-quarter-due-to-coronavirus-impact-1203562387/>.

that its Board met to discuss “the development of the pandemic and its potential impact on the results and perspectives of Tiffany & Co with respect to the agreement that links the two groups.” In other words, the binding Merger Agreement that LVMH pledged in April to honor “full stop” was by June dismissed merely as “the agreement that links the two groups.” LVMH then proceeded to seek to sever those links.

15. By the time LVMH settled on its new corporate strategy, antitrust approval in the United States and Tiffany stockholder approval had long ago been received, and there were no material obstacles to closing other than the remaining antitrust clearances, none of which were expected to raise any substantive issues and all of which were expected to be received by mid-summer. Indeed, LVMH understood from its own antitrust analyses that the remaining antitrust approvals were all but inevitable because, as its analyses indicated, the deal poses no material antitrust risk. In the face of this knowledge, its Board’s directive and the resulting change in corporate strategy, LVMH recognized two truths: (1) that it had absolutely no hope of any outright blockage of the deal; and (2) that the merger-clearance process could serve only to make the deal even less palatable to LVMH because of the hell-or-high-water provision obligating LVMH to accept whatever changes or conditions are necessary to facilitate clearance. As LVMH realized, this meant that LVMH’s only potential way out of the deal was not to seek approval at all—or at

least not “as promptly as practicable” as required by the Merger Agreement—in an effort to reach the drop-dead date with the closing conditions not having been met.

16. With that realization, LVMH has adopted the strategy of seeking delay at every turn in the hopes of running out the clock on the Merger Agreement or providing itself as much time as possible to uncover some other entirely improper avenue to sabotage the deal. Under this strategy, rather than requesting the approvals that LVMH itself touted repeatedly as insignificant obstacles to closing, LVMH has sought to delay and impede the regulatory approval processes in every manner possible. As just one example, LVMH took more than three months to respond to the EC’s first request for information (“RFI”), a relatively straightforward initial “list of clarification questions” that should have taken a diligent party acting “as promptly as practicable” only a few weeks to address. Throughout the clearance process, LVMH has failed to meet its own proposed deadlines, agreed to and then again failed to meet revised deadlines (even when the deadlines were proposed *by LVMH’s counsel*) and—after several more rounds of that—eventually refused even to try to set deadlines. Continuing its evasive measures, just last week LVMH outright refused Tiffany’s request to schedule additional status calls to discuss LVMH’s progress (or lack thereof) on pending clearance proceedings. This history belies any claim by LVMH that it was “do[ing] or caus[ing] to be done all things, necessary or advisable” to secure antitrust clearances “as promptly as practicable.”

17. Over Tiffany’s repeated protests, LVMH continuously declared itself incapable of acting with any greater speed because of its “decentralized” business structure and related inefficiencies exacerbated by the COVID-19 pandemic. But LVMH’s structure did not seem to inhibit LVMH during the period when it was motivated to pursue this transaction, or when LVMH previously had pursued other major acquisitions, many of which received all required regulatory approvals in just a few months.

18. Likewise, although French regulators granted French companies a one-month extension of the time to file their half-year reports in light of the COVID-19 pandemic, LVMH was able to meet *that* filing deadline without an extension, filing its 2020 first-half report on July 27, 2020—just one business day later than LVMH had filed its first-half report in 2019. Indeed, LVMH and its businesses have crowed about their accomplishments during the COVID-19 pandemic, with one of LVMH’s largest businesses announcing that in the months since March 2020, it had not only designed and introduced a new watch collection, but also coordinated with other brands to organize a pan-European luxury watch conference.<sup>3</sup> Yet despite all of this, LVMH’s COVID-19-related excuses for its regulatory failures persisted, if not

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<sup>3</sup> Mimoso Spencer, *Bulgari’s CEO Offers Bullish Outlook at Geneva Days*, WOMEN’S WEAR DAILY (Aug. 26, 2020), <https://wwd.com/accessories-news/watches/bulgaris-jean-christophe-babin-offers-bullish-outlook-at-geneva-days-1203706276/>.

intensified, *even after Europe began reopening*, presumably in deference to the LVMH Board's June 2020 directive to find a way to escape or renegotiate the Merger Agreement.

19. LVMH's delay is even more glaring when compared with the progress in other major transactions announced around the same time. Among the ten largest transactions announced since the beginning of the fourth quarter of 2019, *this is the only transaction that has not yet been formally filed with the EC*. In each of those nine other transactions, the parties completed all of their pre-filing consultations and filed their formal notifications with the EC between March 27 and July 7, notwithstanding the challenges posed by COVID-19. Even in the face of the COVID-19 pandemic, none of those transactions suffered anything remotely resembling the delay in filing with the EC that LVMH has engineered here.

20. In a further effort to avoid its obligations under the Merger Agreement, LVMH also has bombarded Tiffany with pretextual information requests desperately seeking some morsel of information that would support a colorable claim of an MAE or a breach by Tiffany. Despite having nothing to do with the clearance process or other conditions to closing—and even though LVMH was entitled to seek Tiffany's information “only to evaluate, negotiate and implement” the merger—LVMH has sent Tiffany no fewer than seven written requests demanding granular information about Tiffany's day-to-day (and store-by-store) responses to the COVID-19

pandemic, recent social-justice protests in the United States and other issues. The nature and frequency of LVMH's questions, and LVMH's repeated refusal to engage with Tiffany on these subjects other than through letters, made clear that LVMH's questions were not part of a good-faith effort to integrate the two businesses, but rather that LVMH was compiling information it hoped to use to manufacture a claim of breach by Tiffany. Tiffany has promptly responded to these detailed requests, all while for many months LVMH declared itself entirely incapable of assembling the most rudimentary information for legally required antitrust-clearance filings.

21. By any measure, LVMH's inexcusable delay and foot-dragging have breached its obligations under the Merger Agreement. Neither the pandemic nor hindsight regret provides a lawful basis for LVMH to try to escape its contractual obligations. Shortly after the Merger Agreement was signed, LVMH stated that it expected to complete the EC filing by February 2020 and to have secured all regulatory approvals by the second quarter of 2020. Yet, LVMH still has not filed with the EC or Taiwan, and the parties' clearance applications remain pending in Japan and Mexico as a result of LVMH's delay in responding to requests for information in those countries. Thus, even though the Merger Agreement clearly allocates the antitrust clearance risk to LVMH, LVMH has tried to manufacture a non-existent termination right by refusing to seek timely clearance from antitrust regulators, in flagrant breach of the Merger Agreement. This falls miles short of

LVMH's agreed-upon contractual obligations as well as LVMH's stated intentions before deciding to change strategies.

22. LVMH's end game only recently came into focus when Tiffany exercised its unilateral right under the Merger Agreement to extend the initial August 24, 2020 "drop-dead" date to November 24, 2020—an action necessitated by LVMH's extreme delays in responding to requests for information from various competition authorities and in making the necessary filings to obtain antitrust clearance. In response, LVMH asserted a right to "challenge the validity of Tiffany's extension of the Outside Date" and has invented a non-existent right to terminate the Merger Agreement. For the first time, LVMH has expressed the view that an MAE had occurred which, in its view, would prohibit Tiffany from extending the drop-dead date to November 24 and would therefore give LVMH a termination right as of August 25, since the regulatory approvals were not fully obtained by August 24. LVMH also strongly implied that it would, however, be willing to close the transaction if Tiffany agrees to a reduction in the merger price. LVMH's position is entirely baseless. No event has occurred that possibly could qualify as an MAE under the Merger Agreement, and LVMH has no ability to assert an MAE now, whether to resist closing or in an attempt to oppose Tiffany's extension of the Outside Date.

23. LVMH has now abandoned all pretense of complying with its obligations under the Merger Agreement. On September 8, 2020, LVMH for the first time disclosed that it had received a letter dated August 31, 2020—eight days earlier—from the French Ministry for Europe and Foreign Affairs. To date, LVMH has refused to provide Tiffany with a copy of that letter. According to a purported English translation provided by LVMH, however, the letter states that the Ministry is opposed to certain tariffs on French goods that the U.S. government announced on July 10, 2020 (but deferred until January 6, 2021) and suggests that LVMH “should defer the closing of the pending Tiffany transaction until January 6, 2021” to support France’s intention to “take measures in order to dissuade the American authorities from putting these tariff sanctions into effect.” LVMH admitted that Arnault already has met with French officials to discuss the letter—a clear breach of LVMH’s obligation to consult Tiffany in advance of any discussions with governmental entities—and stated that notwithstanding the express language of the Merger Agreement, LVMH intended to comply with the Ministry’s request not to close the transaction before January 6, 2021. LVMH further stated that because of its view that an MAE had occurred and that Tiffany has not operated its business in accordance with the Merger Agreement—a claim never before raised by LVMH—LVMH also is unwilling to extend the Outside Date beyond November 24, 2020 (or at least is unwilling to do so unless Tiffany agrees to a reduced merger price). These



statements made unmistakably clear that LVMH is unwilling to comply with its obligations under the Merger Agreement, thus necessitating this litigation.

24. LVMH's recent actions shed light on the true motives behind LVMH's contrived delays and missed deadlines. It is now unmistakably clear that LVMH has been running out the clock for the last five months in an effort to get to the initial August 24, 2020 "drop-dead" date without the necessary antitrust clearances so that LVMH could manufacture (or at least threaten Tiffany with) a non-existent right to terminate (or refuse to extend) the Merger Agreement, all part of an entirely improper effort to strong-arm Tiffany into agreeing to reduce the merger price. Such a strategy should not be countenanced.

25. As a result of LVMH's breaches of the Merger Agreement, Tiffany is suffering ongoing irreparable harm and is entitled to specific performance of the terms of the Merger Agreement. LVMH should not be permitted to walk away from its contractual obligations or to try to bully Tiffany into a price reduction by exploiting LVMH's own misconduct. Tiffany also is entitled to a declaratory judgment that there has been no MAE under the Merger Agreement and that LVMH thus has no right to terminate the agreement on that or any other ground.

### **PARTIES**

26. Plaintiff Tiffany is a corporation incorporated under the laws of the State of Delaware, with its headquarters in New York, New York. Tiffany is an

iconic American brand that has operated in the luxury-jewelry and specialty-goods businesses for more than 180 years, and maintains 322 stores globally.

27. Defendant LVMH is a corporation organized under the laws of France and headquartered in Paris, France. LVMH is the world's largest luxury-goods conglomerate, and is a sophisticated and experienced player in the world of mergers and acquisitions, with a market capitalization of more than \$210 billion as of December 31, 2019. LVMH's Chairman and Chief Executive Officer is Bernard Jean Etienne Arnault, the on-and-off-again richest person in the world. Arnault often is described as "the wolf in cashmere" due to his "ruthless approach to acquisitions."<sup>4</sup> As a result of Arnault's voracious appetite for acquisitions, LVMH has amassed more than 75 brands in its luxury-goods portfolio in fewer than 40 years. In the last ten years alone, LVMH acquired Bulgari, Moynat, Nicholas Kirkwood, Le Parisien, Fenty, Belmond and Château d'Esclans; purchased minority stakes in Maxime Simoens, Stella McCartney, Gabriela Hearst, Repossi and Masoni; invested large sums in private equity firm L Catterton; entered into joint ventures with Marco de Vincenzo and Marcolin; and more. But it was the Tiffany acquisition

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<sup>4</sup> Harriet Agnew, *Bernard Arnault: "I Always Liked Being Number One,"* FINANCIAL TIMES (June 21, 2019), <https://www.ft.com/content/21f64410-9117-11e9-aea1-2b1d33ac3271>; *see also* Vanessa Friedman, *For the Wolf of Luxury, a Chance to Be a Lamb*, NEW YORK TIMES (Oct. 4, 2014), <https://www.nytimes.com/2014/10/05/business/international/a-cultural-gift-to-paris-could-redesign-lvmhs-image.html>.

that would be “the largest luxury deal in Arnault’s long and storied career of luxury consolidation.”<sup>5</sup>

28. Defendant Breakfast Holdings Acquisition Corp. is a Delaware corporation and a wholly owned subsidiary of LVMH that was formed solely for the purpose of engaging in the transaction contemplated by the Merger Agreement.

29. Defendant Breakfast Acquisition Corp. is a Delaware corporation and a wholly owned subsidiary of Breakfast Holdings Acquisition Corp. that also was formed solely for the purpose of engaging in the transaction contemplated by the Merger Agreement. Upon the transaction’s closing, Breakfast Acquisition Corp. will merge with and into Tiffany, with Tiffany as the surviving corporation.

#### **JURISDICTION, VENUE AND GOVERNING LAW**

30. This Court has subject-matter jurisdiction over this action (1) under 10 *Del. C.* § 6501 to declare the rights, status and legal obligations of the parties under the Merger Agreement; (2) under 10 *Del. C.* § 341 “to hear and determine all matters and causes in equity,” such as Tiffany’s request for specific performance; and (3) under 8 *Del. C.* § 111(a) “to interpret, apply, enforce or determine the validity of the provisions of . . . [a]ny agreement . . . of merger.”

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<sup>5</sup> Evan Clark, *The Dealmaking That Brought Tiffany to LVMH*, WOMEN’S WEAR DAILY (Jan. 29, 2020), <https://wwd.com/business-news/financial/tiffany-lvmh-bernard-arnault-dealmaking-16-2-billion-goldman-sachs-1203455061>.

31. In the Merger Agreement, each defendant consented “irrevocably and unconditionally . . . to the exclusive jurisdiction” of the Court of Chancery of the State of Delaware. Ex. 1, §§ 1.1, 10.5(a).

32. Venue is proper before this Court. Under the Merger Agreement, each party “irrevocably agree[d] that . . . it shall bring any Proceeding in connection with, arising out of, or otherwise relating to this Agreement, any instrument or other document delivered pursuant to this Agreement or the transactions contemplated by this Agreement exclusively” in the Court of Chancery of the State of Delaware and “irrevocably submitt[ed] to the exclusive venue of any such Proceeding in” this Court. *Id.* §§ 1.1, 10.5(a).

33. The Merger Agreement is governed by Delaware law. *Id.* § 10.5(a).

### **FACTUAL ALLEGATIONS**

#### **A. LVMH Relentlessly Pursues Tiffany.**

34. Under Bernard Arnault’s leadership, LVMH has been a serial acquirer of luxury consumer businesses with vast experience in collecting high-status brands. As a result, LVMH is no stranger to the complex regulatory requirements that govern major international mergers and acquisitions. In 2019, LVMH turned its sights on Tiffany, the iconic American luxury retailer.

35. LVMH (and Bernard Arnault) had a long and close relationship with Francesco Trapani, one of Tiffany’s directors at the time LVMH made its unsolicited

offer. Trapani is the great grandson of the founder of the jewelry brand Bulgari and was the CEO of Bulgari when it agreed to be acquired by LVMH in 2011. Trapani served as Chairman and CEO of LVMH's Watches and Jewelry Division from 2011 through 2014, on LVMH's Board of Directors from 2011 through 2016 and as an advisor to Arnault from 2014 through 2016. Trapani also served as a director of Bulgari until February 2017, only leaving LVMH and Bulgari weeks before being elected as a director of Tiffany in March 2017.

36. The dates of meetings of Tiffany's Board of Directors are not publicly disclosed, and are generally known only to Tiffany's directors and the top management of Tiffany. On October 15, 2019, one day before Tiffany's previously-scheduled October 2019 Board meetings, LVMH approached Tiffany with an unsolicited bid to acquire Tiffany for \$120 per share, in a deal that would have valued Tiffany at around \$14.4 billion. This overture, as with numerous other LVMH steps along the way, was promptly and strategically leaked to the press.

37. In the two years before LVMH's bid, Tiffany had not had any meaningful discussions with any other party regarding a potential acquisition of Tiffany. Nor had Tiffany even been entertaining the idea of a merger at the time of LVMH's approach.

38. In fact, Tiffany had in January 2017 engaged counsel from Cleary Gottlieb Steen & Hamilton ("Cleary") to assist Tiffany in evaluating how to

approach and defend against unsolicited bids and activist campaigns. In the course of that engagement, Cleary regularly represented Tiffany on a range of matters, including by attending Tiffany's October 16 and 17, 2019 Board meetings and advising Tiffany's Board regarding its fiduciary duties and other legal considerations regarding LVMH's unsolicited offer.

39. Given that LVMH's bid for Tiffany was unsolicited—and thus there was no particular time pressure or deadline for LVMH to make its bid—LVMH had ample time to evaluate the advantages and potential pitfalls of the acquisition before making its approach. From the outset and throughout the parties' discussions, LVMH made clear to Tiffany that LVMH already had evaluated the risk related to antitrust approvals and had concluded that antitrust approvals were non-issues. LVMH's initial October 15, 2019 unsolicited offer touted the work LVMH and its advisors already had done reviewing competition issues, proclaiming:

Our proposal provides certainty with minimal conditionality . . . we are confident that the transaction would receive all necessary regulatory approvals including anti-trust clearance, and we do not foresee any impediments to a successful and timely closing of a transaction.

40. LVMH reiterated these points throughout the parties' negotiations, stating that it had been studying the potential acquisition in consultation with its advisors for some time and repeatedly assuring Tiffany that there was no antitrust risk. LVMH did not disclose the identity of its antitrust counsel at that time.

41. Tiffany's Board asked Cleary to interview Trapani (and other Tiffany executives with prior connections to LVMH) to evaluate any potential conflicts of interest. On October 16, 2019, the first day of Tiffany's October 2019 Board meetings, Cleary discussed the matter with Trapani. Tiffany advised Trapani that he would not be indemnified in his role as director in the event that he breached his duty of loyalty to Tiffany. Trapani, Tiffany and Cleary agreed that Trapani should be recused from the discussions of the potential LVMH transaction, and Trapani was in fact excluded from those discussions. Trapani ultimately resigned from Tiffany's Board on November 26, 2019, the day after the Merger Agreement was executed.

42. For more than a week after Tiffany's October 16 and 17, 2019 Board meetings, Cleary continued to work with Tiffany on a daily basis on a wide range of issues relating to LVMH's unsolicited bid. Shortly thereafter, Tiffany learned that Cleary had been serving as LVMH's antitrust counsel in connection with LVMH's proposed acquisition of Tiffany. Cleary had agreed to represent LVMH (and may at one point have been representing both Tiffany and LVMH concurrently in connection with LVMH's acquisition bid), and continues to represent LVMH today, without ever obtaining a conflict waiver from Tiffany. As LVMH's antitrust counsel, Cleary has been either the architect of, or at the very least a principal participant in, LVMH's campaign of delay in obtaining antitrust clearance in the EU and other jurisdictions.

43. Tiffany was aware of Arnault’s reputation and his ruthless approach to acquisitions—his “playbook” has been described as “ousting founders, dividing families, or driving a wedge between business partners”<sup>6</sup>—and in considering LVMH’s bid, wanted to ensure that any potential merger agreement would include ample protections for Tiffany and its stockholders. In that regard, Tiffany made clear to LVMH that Tiffany and its stockholders would not assume any antitrust risk at all—particularly given LVMH’s insistence on moving quickly to close the transaction. Tiffany thus demanded that LVMH assume all antitrust risk through a robust hell-or-high-water clause placing the burden entirely on LVMH to agree to whatever concessions, divestitures, restrictions or other changes were necessary to secure the required antitrust approvals. This type of provision, which is unusual in merger agreements between large public companies and serial strategic acquirers, was a key point of negotiation from Tiffany’s perspective. Indeed, this was one of the last remaining points of negotiation between the parties, to which LVMH finally agreed on the day the Merger Agreement was signed.

44. LVMH also agreed to a requirement that the merger be completed by August 24, 2020, with either side having the unilateral right to extend that “drop-dead” date by three months to November 24, 2020 in the event that regulatory approvals had not yet been obtained but that the other merger conditions had been

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<sup>6</sup> See Harriet Agnew, *supra* n.4.



satisfied (the “Outside Date”). At the time the Merger Agreement was signed, the parties expected to close the transaction by the middle of 2020. As a result, this “drop-dead” date, if extended by three months, provided a nearly six-month cushion after the expected closing, affording the parties more than sufficient time to obtain the requisite antitrust approvals and giving LVMH ample time to agree to and implement any measures required under the hell-or-high-water clause to secure the approvals.

45. Tiffany’s Board of Directors also was focused on ensuring that the Merger Agreement did not give LVMH an option to walk away from the transaction, and LVMH acceded to that demand as well. Assisted by experienced counsel at Cleary and Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”), LVMH understood that by agreeing to these terms in the Merger Agreement, LVMH essentially obligated itself irretrievably to complete the acquisition at the agreed-upon price.

46. LVMH and its counsel pressed aggressively through the negotiations, with LVMH increasing its offer to \$125 per share on November 6 and increasing it again to \$130 per share on November 11. On November 19, Tiffany and LVMH signed the Confidentiality Agreement, and Tiffany granted LVMH access to documents to conduct its due-diligence process. Although it has taken LVMH more than nine months after signing the Merger Agreement to prepare the required

regulatory filings in multiple jurisdictions (to the extent they have been filed at all), LVMH completed the entirety of its due diligence on a more than \$16 billion acquisition in fewer than five calendar days.

47. LVMH sent Tiffany a first draft of a proposed merger agreement on November 20, and—following a series of price increases by LVMH—the parties executed the Merger Agreement on November 24, 2019. Under the Merger Agreement, LVMH agreed to acquire Tiffany for \$135 per share in cash, in a transaction that valued Tiffany at approximately \$16.2 billion.

48. On November 25, 2019, the day after the parties signed the Merger Agreement, LVMH issued a press release celebrating the addition of Tiffany to its portfolio of brands, praising Tiffany’s “unparalleled heritage and unique position in the global jewelry world” and boasting that “[t]he acquisition of Tiffany will strengthen LVMH’s position in jewelry and further increase its presence in the United States.”<sup>7</sup> Bernard Arnault recognized that the Tiffany deal was a long-term investment, stating that LVMH would “develop this jewel with the same dedication and commitment that we have applied to each and every one of our *Maisons*” (a term that LVMH uses to refer to its brands) and that he looked forward “to ensuring that Tiffany continues to thrive for centuries to come.” Yet just a few months later,

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<sup>7</sup> Press Release, LVMH, LVMH Reaches Agreement with Tiffany & Co. (Nov. 25, 2019), <https://www.lvmh.com/news-documents/press-releases/lvmh-reaches-agreement-with-tiffany-co/>.

Arnault determined to renege on or seek to renegotiate LVMH’s “centuries”-long investment in response to disappointing short-term financial performance.

49. Notably, LVMH’s public announcement also represented that “[t]he transaction is expected to close in the middle of 2020 and is subject to customary closing conditions[.]”

**B. The Merger Agreement Allocates All Antitrust Risk to LVMH and Gives LVMH Very Few Options to Terminate.**

50. Tiffany and LVMH negotiated a Merger Agreement that allocates significant risk to LVMH, with few options for LVMH to terminate. With respect to antitrust clearance, LVMH agreed to bear all risk, including agreeing to any and all divestitures or business restrictions required by regulators as conditions to clearance. LVMH further agreed to a narrowly defined MAE clause that explicitly excludes from the definition of an MAE general economic and other conditions, unless those conditions have had a materially disproportionate impact on Tiffany as compared to the industries and regions in which Tiffany operates. The Merger Agreement also contains very limited termination rights—and in particular, contains no provision allowing LVMH to walk away from the deal in the absence of a material breach by Tiffany. In the event of LVMH’s breach of the Merger Agreement, LVMH also agreed that Tiffany has the right to compel LVMH to comply with its obligations under the Merger Agreement and to seek specific performance.

**1. LVMH Is Obligated to “Do or Cause to Be Done All Things, Necessary or Advisable” to Obtain Antitrust Clearance “as Promptly as Practicable.”**

51. The Merger Agreement obligates LVMH to “do or cause to be done all things, necessary or advisable” to obtain all required regulatory approvals “as promptly as practicable.” Section 7.3(b)(i) requires both parties to:

cooperate with each other and use . . . their **respective reasonable best efforts** to take or cause to be taken all actions, and **do or cause to be done all things, necessary or advisable** on its part under this agreement and applicable Laws **to consummate and make effective the transactions** contemplated by this Agreement **as promptly as practicable** after the date of this Agreement, including (A) **preparing and filing, in consultation with the other, as promptly as practicable** with any Governmental Entity, documentation to effect all necessary notices, reports, consents, registrations, approvals, permits, authorizations, expirations of waiting periods and other filings, and (B) **obtaining as promptly as practicable** after the date of this Agreement all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any Governmental Entity, including the Company Approvals and the Parent Approvals, in order to consummate the transactions contemplated by this Agreement. Ex. 1, § 7.3(b)(i) (emphasis added).

52. LVMH also agreed to a hell-or-high-water clause making clear that, in connection with “obtaining clearance under any applicable Antitrust Laws,” LVMH’s obligations included:

(i) **taking or committing to take actions that may limit or impact Parent’s** or any of its Subsidiaries’ (including the Company’s or any of its Subsidiaries’) **freedom of action** with respect to, or its ability to retain, any of Parent’s or any of its Subsidiaries’ (including the Company’s or any of its Subsidiaries’) operations, divisions, businesses, products lines, contracts, customers or assets, (ii) entering into any orders, settlements, undertakings, contracts, consent decrees,

stipulations or other agreements to effectuate any of the foregoing or in order to vacate, lift, reverse, overturn, settle or otherwise **resolve any order that prevents, prohibits, restricts or delays the consummation of the Merger** and the other transactions contemplated hereby, in any case, that may be issued by any court or other Governmental Entity, and (iii) **creating, terminating or divesting relationships, contractual rights or obligations of the Company, Parent or their respective Subsidiaries**, in each case **in connection with obtaining all, or eliminating any requirement to obtain any, waiting period expirations or terminations, consents, clearances, waivers, exemptions, licenses, orders, registrations, approvals, permits, and authorizations for the transactions contemplated by this Agreement under . . . any [] Antitrust Law or from any Governmental Entity so as to enable to the Closing to occur no later than the Outside Date.** *Id.*, § 7.3(b)(ii)(B) (emphasis added).

53. In other words, LVMH was required to use “reasonable best efforts” to “do or cause to be done all things, necessary or advisable” to obtain, “as promptly as practicable,” all required regulatory approvals. This “reasonable best efforts” requirement imposed on LVMH “obligations to take all reasonable steps to solve problems and consummate the transaction.” *Williams Cos. v. Energy Transfer Equity, L.P.*, 159 A.3d 272 (Del. 2017). LVMH also was required to agree to any and all divestitures or business restraints as necessary “so as to enable . . . the Closing to occur no later than the Outside Date.” This meant that, barring an outright rejection of the proposed merger on any terms, LVMH bore 100% of any antitrust risk—something that LVMH would not have accepted had it believed that the transaction involved meaningful antitrust risk.

54. The Merger Agreement similarly requires both LVMH and Tiffany to “provide any information, document or filing or any supplementary information, document or filings requested or **required by any Governmental Entity with jurisdiction over enforcement of any Antitrust Law** with respect to the transactions contemplated by this Agreement **as promptly as practicable[.]**” *Id.*, § 7.3(b)(ii)(A)(emphasis added).

55. The Merger Agreement grants LVMH the authority to “direct and implement (or direct the implementation by [Tiffany] of) the regulatory strategy”<sup>8</sup> but also requires LVMH to consult with Tiffany and to consider in good faith Tiffany’s views before making any decisions with respect to such strategy or communicating with any Governmental Entity. *Id.*, § 7.3(b)(iii). Section 7.3 of the Merger Agreement further requires LVMH to keep Tiffany apprised of the status of regulatory approvals, and affords Tiffany the right to review information LVMH plans to submit to regulators. *Id.*, § 7.3(b)(iii). Neither LVMH nor Tiffany is permitted to “participate in any material discussions or meetings with any Governmental Entity” regarding approvals without consulting the other party and providing the other party the opportunity to attend and participate. *Id.*

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<sup>8</sup> It is typical in acquisitions for the buyer to take the lead in the antitrust-approval process because the buyer usually possesses more of the information sought by the relevant regulators.

56. These provisions imposed upon LVMH the obligation to gather and provide information, make the required filings, and to do everything within its power to file for approvals as promptly as practicable and to receive regulatory rulings not only before the Outside Date, but also sufficiently in advance of the Outside Date to enable LVMH to meet its hell-or-high-water obligation to agree to and implement any remedies required after those filings to achieve clearance, and then close the deal.

57. The Merger Agreement sets an Outside Date of August 24, 2020 but also grants either party the unilateral right to extend the Outside Date to November 24, 2020 in the event that the required regulatory approvals are the only outstanding condition to closing. *Id.*, § 9.2(a). On August 14, 2020, and again on August 24, 2020, Tiffany sent LVMH notice extending the Outside Date to November 24, 2020. LVMH responded by disputing Tiffany's right to extend the Outside Date. In connection with its supposed reservation of rights, LVMH has referenced a purported MAE and reserved an imagined right to terminate the Merger Agreement. No such termination right exists under the Merger Agreement.

**2. LVMH's Obligation to Close Is Subject to Only Very Limited Conditions.**

58. Consistent with Tiffany's insistence that the Merger Agreement allocate minimal deal risk to Tiffany and its stockholders, there are limited conditions on LVMH's obligation to close the transaction. Under the Merger

Agreement, Tiffany made certain representations and warranties regarding its organizational structure, capital structure, corporate approvals and the absence of certain changes *before* the signing of the Merger Agreement. Ex. 1, § 5. Under Section 8.2(a)(i) of the Merger Agreement, those representations and warranties have to be either reaffirmed (as they related to circumstances before signing) or “brought down” to closing such that they must be “true and correct as of the Closing Date.” *Id.*, § 8.2(a)(i). The various other representations and warranties in Article V also are “brought down” to closing, but are not a condition to closing “where the failure of any such representation or warranty to be so true and correct has not had and would not, individually or in the aggregate, reasonably be expected to have” an MAE.

59. To Tiffany’s knowledge, LVMH has not disputed the accuracy of any of Tiffany’s representations and warranties as of the time of signing. Nor has LVMH asserted that any of Tiffany’s representations and warranties that are required to be “brought down” to closing could not be so “brought down” when the transaction is otherwise ready to close—except for LVMH’s recent (and inaccurate) claim of an MAE.

60. As a standalone condition to closing, Section 8.2(d) of the Merger Agreement requires that, between the signing of the Merger Agreement and the



Closing Date, “there shall not have occurred any” MAE. *Id.*, § 8.2(d). The Merger Agreement defines an MAE in relevant part as any effect that:

(a) has had or would be reasonably expected to have a material adverse effect on the business, condition (financial or otherwise), properties, assets, liabilities (contingent or otherwise), business operations or results of operations of the Company and its Subsidiaries, taken as a whole or (b) would or would reasonably be expected to prevent, materially delay or materially impair the ability of the Company [*i.e.*, Tiffany] to consummate the Merger or to perform any of its obligations under this Agreement by the Outside Date. *Id.*, § 1.1, p. 9.

61. Significantly, however, the Merger Agreement explicitly excludes from the definition of MAE in clause (a) several categories of events, including “**changes or conditions generally affecting the industries in which the Company and any of its Subsidiaries operate,**” “**general economic or political conditions** (including U.S.-China relations), commodity pricing or securities, credit, financial or other capital markets conditions,” “any change in Law applicable to the Company’s business,” “geopolitical conditions” and “the outbreak or escalation of hostilities (including the Hong Kong protests and the “Yellow Vest” movement),” except to the extent that any of these effects has a “**materially disproportionate adverse effect**” on Tiffany “**relative to others in the industries and geographical regions in which affected businesses of the Company and its Subsidiaries operate** in respect of the business conducted in such industries and applicable geographical regions.” *Id.*, § 1.1, pp. 9-10 (emphasis added). Accordingly, to assert an MAE based on the COVID-19 pandemic, LVMH would have to show that the magnitude

and duration of the pandemic's effects on Tiffany rose to the level of an MAE, *even after* carving out from the analysis each of the aforementioned factors, except to the extent that LVMH could show that those factors had a *materially* disproportionate adverse effect on Tiffany's business relative to others in the same industries and geographical regions. The Merger Agreement also expressly excludes from the definition of MAE in clause (a) "any failure, in and of itself, by [Tiffany] to meet any internal or published" financial projections or forecasts. *Id.*, § 1.1, p. 10.

62. While clause (b) includes within the definition of an MAE events or occurrences that impair *Tiffany's* ability to consummate the merger, no similar excuse is available to LVMH. Quite intentionally, effects that might prevent LVMH from performing any of its obligations under the Merger Agreement by the Outside Date do not qualify as an MAE.

63. Section 8.2(b) also includes as a condition to closing that Tiffany has "performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date." LVMH has never contended that Tiffany is in breach of any of its obligations under the Merger Agreement.

64. Equally important is what the Merger Agreement does *not* include. The Merger Agreement does not give LVMH any fiduciary out. It does not include a *force majeure* clause or any other provision giving LVMH a unilateral option to terminate the transaction (whether by paying a termination fee or otherwise) absent

a material breach by Tiffany. The Merger Agreement also does not include any financing contingencies. Although either party may terminate the Merger Agreement if the Merger is not closed by the Outside Date, that right is not available to LVMH where LVMH's breaches are "the principal cause of, or directly resulted in, the failure of the Closing to occur by the Outside Date." *Id.*, § 9.2.

65. Section 10.6 of the Merger Agreement reflects the parties' agreement that, in the event of breach, such as the one LVMH has committed through its sabotage of the antitrust-approval processes, "each Party shall be entitled to seek to enforce specifically the terms and provisions of this Agreement and to obtain or to seek an injunction restraining any breach or violation or threatened breach or violation of the provisions of this Agreement." *Id.*, § 10.6(a).

**C. LVMH Initially Supports the Transaction and Seeks to Pursue Prompt Antitrust Clearance and Closing.**

66. Despite signing the Merger Agreement on the Sunday before Thanksgiving, and with the looming year-end holidays, LVMH insisted that the parties push forward immediately and aggressively to clear all conditions to closing. The parties thus promptly prepared and filed on January 3, 2020 the merger clearance notification in the United States with the Federal Trade Commission and the Department of Justice. On February 3, 2020, the applicable waiting period under the United States antitrust laws expired without further inquiry or action from United

States antitrust regulators. As a result, *the merger has been cleared in the United States for more than seven months.*

67. At the same time, LVMH insisted that Tiffany accelerate the preparation and filing of its proxy statement and expedite convening a stockholder meeting to obtain stockholder approval of the transaction. Tiffany filed a preliminary proxy statement on December 18, 2019 and its final merger proxy statement on January 6, 2020, in advance of a February 4, 2020 stockholder meeting. At the stockholder meeting, 99.3% of the votes cast (representing more than 71% of all outstanding Tiffany shares) approved the merger. In a press release issued by LVMH that same day, Bernard Arnault applauded the approval as a “significant milestone” and reiterated his commitment to acquiring “an iconic company” and “globally recognized symbol of love”:

This approval is a significant milestone as we move closer to completing our acquisition of Tiffany, an iconic company with a rich heritage and unique positioning in the global luxury jewelry market. A globally recognized symbol of love, Tiffany will be an outstanding addition to our unique portfolio of luxury brands. We look forward to welcoming Tiffany into the LVMH family and helping the brand reach new heights as an LVMH *Maison*.<sup>9</sup>

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<sup>9</sup> Press Release, LVMH, Tiffany & Co. Stockholders Approve Acquisition by LVMH (Feb. 4, 2020), <https://www.lvmh.com/news-documents/press-releases/tiffany-co-stockholders-approve-acquisition-by-lvmh/>.

In the same February 4 press release, LVMH represented that “[t]he transaction is still expected to close in the middle of 2020[.]”<sup>10</sup>

68. LVMH initially pressed forward with dispatch in seeking the required regulatory clearances in other required jurisdictions beyond the United States. There are typically several stages to this process in each jurisdiction. For example, in the EU, the process for obtaining antitrust clearance from the EC involves first filing a Case Team Allocation Request (“CTAR”), which LVMH submitted to the EC promptly on November 26, 2019. The next step is filing with the EC a draft Form CO, the EU’s merger notification form. After the draft Form CO is filed, the EC and the parties engage in informal discussions during the “pre-notification process.” At the conclusion of the pre-notification process, the parties formally notify the EC of the transaction, which involves filing the finalized Form CO. For a transaction without substantive antitrust concerns, the filing of the finalized Form CO results in clearance from the EC within 25 business days.

69. On December 12, 2019, LVMH proposed to Tiffany that LVMH submit the draft Form CO to the EC in the second half of January 2020 and file the final Form CO in the second half of February 2020. LVMH reiterated this proposed timetable in a slide deck submitted to the EC the next day. During a December 16,

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<sup>10</sup> *Id.*

2019 meeting with the EC case team assigned to the transaction, LVMH suggested that its proposed timeline could result in EC clearance by the end of March 2020.

70. Tiffany worked diligently to facilitate antitrust clearance and requested that LVMH agree to specific deadlines and timetables for regulatory filings. On December 18, 2019, LVMH told Tiffany that it agreed with the goal of achieving final clearances in all relevant jurisdictions as soon as possible and in any event in the first half of 2020. The following day, Tiffany's counsel noted that LVMH's stated goal of "hav[ing] everything done asap in H1 2020" was too vague to satisfy Tiffany's internal and external reporting requirements, and instead proposed specific, and feasible, timelines for antitrust filings and clearances for each jurisdiction based on prior experience with similar filings.

71. For the EU, Tiffany and LVMH agreed to file the draft Form CO with the EC in January. Given the EC case team's feedback during the December 16, 2019 meeting, Tiffany estimated that pre-notification discussions would take three to four months, which would result in a formal filing between April and May 2020 with final clearance from the EC by May or June 2020. LVMH's counsel responded that Tiffany's "timing estimates generally make sense to us, though it will ultimately very much depend on the data collection process, including from Tiffany."

**D. As the COVID-19 Pandemic Worsens, LVMH First Hits the Accelerator, Re-Affirming Its Commitment to the Merger.**

72. As January 2020 progressed, COVID-19 spread rapidly. By January 30, 2020, the World Health Organization categorized COVID-19 as a Public Health Emergency of International Concern.<sup>11</sup> In response, LVMH took advantage of favorable market conditions and stimulus efforts by the European Central Bank prompted by COVID-19 to secure cheap financing for the transaction. On February 5, 2020, LVMH announced that it was issuing more than \$10 billion in new debt to help finance the acquisition (notwithstanding that obtaining financing was not a condition to closing under the Merger Agreement). According to press reports, LVMH's debt offering was the largest issuance of corporate bonds since 2016, and LVMH was able to lock in the financing "cheaper than Bernard Arnault's wildest hopes," with portions of the bonds "placed at negative yields, meaning investors are paying single A-rated LVMH to borrow money."<sup>12</sup>

73. Buoyed by its smashing success in raising unexpectedly cheap financing, LVMH continued to press forward with the regulatory clearance process. For example, on February 11, 2020, LVMH's counsel provided Tiffany with an

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<sup>11</sup> *Timeline of WHO's Response to COVID-19, supra* n.1.

<sup>12</sup> Marcus Ashworth, *France's Richest Man Gets a Free Lunch From the ECB*, BLOOMBERG (Feb. 7, 2020), <https://www.bloomberg.com/opinion/articles/2020-02-07/louis-vuitton-gets-help-from-the-ecb-for-16-billion-tiffany-deal>.

initial draft of portions of the Form CO. Tiffany’s counsel provided comments on those portions on a rolling basis, starting the very next day (February 12). LVMH’s counsel provided a near-final version of the draft Form CO on February 27, and asked Tiffany’s counsel to prioritize commenting on the Form CO, expressing hopes of “obtaining Tiffany’s signoff this week if possible.” Consistent with LVMH’s request and its continued efforts to facilitate EC clearance, Tiffany’s counsel provided additional comments on a rolling basis starting that same day. Even though LVMH’s February 27 draft contained 57 pages of new material, Tiffany provided all remaining comments and signed off on submission of the draft Form CO in less than a week. LVMH filed the draft Form CO with the EC on March 4, 2020. Based on the parties’ agreed projections, this should have triggered a three- to four-month period of pre-notification discussions, followed by a formal filing between early June and early July 2020, resulting in EC clearance by early July or (at the latest) early August 2020.

74. By this time, the effects of COVID-19 had started rippling through Europe and the United States. The first death attributable to COVID-19 outside of Asia was reported on February 14, 2020 in France, and by late February, parts of northern Italy had been locked down in an effort to contain the virus.<sup>13</sup> The United

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<sup>13</sup> Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html>.



States reported its first death on February 29, 2020,<sup>14</sup> and by March 9, 2020, the WHO reported 3,993 new daily cases.<sup>15</sup> On March 13, 2020, President Trump declared COVID-19 a national emergency and announced a ban on non-U.S. citizens traveling from Europe to the United States, one of the first major signs of restrictions on movement that ultimately would cripple the global travel industry and significantly affect the retail space in which both LVMH and Tiffany operate.<sup>16</sup>

75. On or about March 14, 2020, in response to pandemic-related governmental edicts—many of which banned non-essential shopping—and in the interests of the safety of its staff and customers, Tiffany started to close many of its European stores, including all stores in Italy, Spain and France as well as stores in Brussels, Prague and Vienna. LVMH did as well, as did retailers across the industry.

76. Starting the week of March 16, 2020, in the midst of the COVID-19 pandemic's spread and as part of a market-wide downturn, Tiffany's shares began trading at a significant discount to the Merger Agreement's agreed-upon acquisition

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<sup>14</sup> *Id.*

<sup>15</sup> *Coronavirus Disease 2019 (COVID-19) Situation Report—49*, WORLD HEALTH ORGANIZATION (Mar. 9, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200309-sitrep-49-covid-19.pdf?sfvrsn=70dabe61\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200309-sitrep-49-covid-19.pdf?sfvrsn=70dabe61_4).

<sup>16</sup> Proclamation No. 2020-05794, 85 Fed. Reg. 15337 (Mar. 18, 2020); Phillip Connor, *More Than Nine-in-Ten People Worldwide Live in Countries with Travel Restrictions Amid COVID-19*, PEW RESEARCH CENTER (Apr. 1, 2020), <https://www.pewresearch.org/fact-tank/2020/04/01/more-than-nine-in-ten-people-worldwide-live-in-countries-with-travel-restrictions-amid-covid-19/>.

price of \$135 per share. When Tiffany closed all of its North American and British stores starting on or about March 18, 2020, Tiffany's stock traded as low as \$104 per share, a price 23% lower than the agreed-upon acquisition price of \$135 per share.

77. In response to these developments, LVMH again attempted to take advantage of the global pandemic to reduce its costs in acquiring Tiffany. On March 17, 2020, LVMH approached Tiffany's Board to inquire about a waiver of the Confidentiality Agreement's standstill provision that would allow LVMH to purchase Tiffany shares in the open market at a significant discount to the merger price. After rumors of LVMH's plans began circulating in the press—and after Tiffany explained that any waiver would have to be disclosed publicly—LVMH issued a press release on March 23, 2020, stating that “[t]hese rumors lead LVMH to recall that, in accordance with the agreement concluded with Tiffany in November 2019, LVMH is currently committed not to buy Tiffany shares.”<sup>17</sup> In issuing this press release, LVMH apparently did not recall its request to Tiffany's Board less than a week earlier for relief from that same standstill provision.

78. As Tiffany would later learn, LVMH had begun developing a burgeoning case of buyer's remorse, prompting Bernard Arnault to reconsider his

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<sup>17</sup> Eric Pfanner, *LVMH Says It Currently Can't Buy Tiffany Shares in Open Market*, BLOOMBERG (Mar. 23, 2020), <https://www.bloomberg.com/news/articles/2020-03-23/lvmh-says-it-currently-can-t-buy-tiffany-shares-in-open-market>.

commitment to the transaction—at least at the agreed-upon price in the Merger Agreement. This case of buyer’s remorse initially manifested itself in a dramatic slowdown of LVMH’s efforts to obtain clearance in the EU and other jurisdictions, as LVMH management explored in vain its legal options under the Merger Agreement. Finding none, that remorse matured into a concerted corporate strategy on the part of LVMH to sabotage the antitrust-clearance processes in flagrant breach of its contractual obligations.

**E. As the COVID-19 Pandemic Continues to Worsen, LVMH Slams on the Brakes, Abandoning Its Obligation Under the Merger Agreement to File and Secure Antitrust Approvals as Promptly as Practicable.**

79. As the COVID-19 pandemic began adversely affecting retail markets around the globe, LVMH abandoned its aggressive push toward obtaining antitrust clearances, and instead began delaying at every turn the regulatory processes. Most egregiously, LVMH took *more than three months* to respond to the EC’s first RFI (issued on March 19, 2020), a relatively straightforward set of initial information requests that could have been disposed of within weeks. LVMH repeatedly blamed this inexplicable delay on LVMH’s organizational structure and related inefficiencies exacerbated by the COVID-19 pandemic, but neither excuse justified LVMH’s protracted delays, which appear initially to have been designed to buy LVMH and its advisors time to explore LVMH’s legal options, and—finding none—

later used as a tool to manufacture a purported termination right under the Merger Agreement.

80. By May or June 2020, out of lawful options under the Merger Agreement, LVMH affirmatively determined as part of a new corporate strategy to renege on or renegotiate the Merger Agreement, abandoning entirely its contractual obligation to file and secure antitrust approvals as promptly as practicable. Even after it finally responded to the EC's first RFI, LVMH has continued to stall the antitrust-approval process, taking almost three weeks to provide Tiffany with even a partial first draft of a response to the EC's second RFI and delaying progress on filings in other jurisdictions—proving that LVMH's delay tactics have now become the rule and not the exception. Most recently, LVMH has sought to use a relatively straightforward set of wrap-up questions from the EC as an excuse to further delay the EC filing process, refusing even to agree to deadlines to respond to those questions. These delays, entirely of LVMH's own making, have put the parties in the inexplicable position of being months past the expected mid-2020 closing date and less than three months from the *extended* Outside Date, with requests for antitrust approvals *not even filed* in two jurisdictions and approvals still outstanding in two other jurisdictions.

**1. At Every Turn Starting in Mid-March, LVMH Steadfastly Refuses to Advance the Approval Process in the EU.**

81. On March 19, 2020, the EC issued its first RFI seeking additional detail on certain discrete topics addressed in the March 4, 2020 draft Form CO, including the proportion of revenue generated by different parts of LVMH's and Tiffany's businesses, the segmentation of the luxury-goods market and contact information for the parties' primary wholesale customers and competitors. The EC's first RFI requests were perfectly standard practice and did not indicate any substantive concerns regarding the transaction. Based on experience with similar requests and prior discussions with LVMH, Tiffany's counsel anticipated that the parties could respond to the EC's first RFI in a few weeks, at most. Indeed, LVMH itself had anticipated back in December that all EC questions would be answered and a final Form CO filed within a month of filing the draft Form CO.

82. On March 23, 2020—the same day LVMH announced that it would pass on purchasing Tiffany stock in the open market—LVMH's counsel at Cleary canceled a standing weekly antitrust clearance call in which LVMH's and Tiffany's lawyers were supposed to address outstanding antitrust issues. LVMH's counsel also proposed dispensing with future weekly calls entirely, suggesting instead that LVMH and Tiffany have “as-needed conferences for the RFIs that require them.” Instead of maintaining open channels of communication to close out the EC's

questions (and any other open antitrust issues), LVMH went dark, and not a single “as-needed conference” was held for more than a month.

83. On March 24, 2020, Tiffany’s counsel asked LVMH’s counsel for an estimated response date to the EC’s first RFI, offering to provide any assistance or information to expedite the process. LVMH’s counsel responded that the response date was “[v]ery difficult to tell at present given the circumstances.”

84. Thereafter, LVMH continued to evade Tiffany’s efforts to press LVMH to fulfill its obligations under the Merger Agreement, even though Tiffany responded immediately to all requests for comment or information from LVMH, usually within hours or days. For example, on March 25, 2020, LVMH’s counsel asked for input on certain EC questions relating to standalone perfume shares. Tiffany’s counsel provided its response two days later on March 27, and again asked LVMH’s counsel to circulate a draft response to the EC’s first RFI. On March 30, LVMH’s counsel responded that LVMH would “send [] a first draft this week” (*i.e.*, by April 3). LVMH’s agreed-upon April 3 deadline came and went without a draft or an explanation for the delay.

85. On April 6, 2020, Tiffany’s counsel again asked LVMH’s counsel for an update on the draft RFI response. LVMH’s counsel responded that LVMH would send a draft of a “first batch” of responses “this week” (*i.e.*, by April 10), with a draft of a “second batch” of responses to follow. LVMH’s extended deadline of April 10

again came and went without LVMH's providing a draft of the RFI response or an update on timing.

86. On April 14, 2020, Tiffany's counsel confirmed that LVMH did not require further information from Tiffany for the first RFI response. Tiffany's counsel also continued to press LVMH's counsel on the lack of progress with respect to the EC RFI, and on similar delays in filings to be made in other jurisdictions, observing: "Some of the RFIs have been in for almost a month, and we understand we have provided all necessary input for quite some time (please let us know if otherwise). Our client does not really understand why we don't file responses (e.g., in Japan, EU, Taiwan, what about Mexico/Korea?) . . . Any sign of progress on all these fronts and expected completion targets would be much appreciated!"

87. Given LVMH's repeated delays and lack of communication regarding its filing strategy and expected timing, Tiffany's counsel attempted to restore order to the antitrust-clearance process by preparing a chart (the "Antitrust Process Tracker") that set out detailed deadlines for each remaining stage of antitrust clearance in the outstanding jurisdictions. On April 17, 2020, four weeks after receipt of the EC's first RFI, and after LVMH already had twice set and missed deadlines to provide a draft RFI response, Tiffany's counsel sent LVMH's deal counsel (Skadden) the Antitrust Process Tracker. The tracker proposed target dates of April 22 to respond to the EC's first RFI, May 8 to file for EC approval, and

June 17 to receive EC clearance. Tiffany's counsel asked Skadden to inform them if they "receive[d] different feedback with respect to any of the estimates" from LVMH's antitrust counsel (Cleary).

88. Later that same day, LVMH pushed back yet again another deadline to provide the long-overdue draft RFI response, promising to "share a first draft response next week" (*i.e.*, by April 24, 2020, three weeks later than initially promised).

89. On April 23, 2020, LVMH responded with edits to the Antitrust Process Tracker, now proposing vague targets of "May" for the EC RFI response (indicating that the April 24 deadline would also be missed), "June" for the EC filing, and "July" for receiving EC clearance. The edits included footnotes stating that "RFI response dates are contingent on the Parties' ability to collect and verify all data and advocacy, which may be affected by current COVID-19 countermeasures," and that "estimated clearance dates may be affected by any delays caused by COVID-19."

90. After LVMH *for the third time* missed its own promised deadline to provide a draft of the EC RFI response, Tiffany's counsel again pressed LVMH's counsel for an update on antitrust filings across various jurisdictions, including the EU. LVMH's counsel responded that LVMH was continuing to work on the draft EC RFI response (which LVMH's counsel initially had promised to provide nearly a month earlier), but refused to provide a new deadline.



91. On April 25, 2020, Tiffany’s counsel noted to LVMH’s counsel that the timetable for EC filings and approval that LVMH had proposed in the Antitrust Process Tracker “doesn’t seem to be very ambitious and is lacking concrete target dates.” Tiffany proposed instead “early May for the RFI response, early June for the formal filing, and early July for clearance.” LVMH’s counsel did not answer this April 25 email, or an April 29 follow-up email from Tiffany’s counsel. After a third follow-up on April 30, LVMH’s counsel at Cleary finally deigned to respond, stating that LVMH would “shortly” circulate the first draft response promised a month earlier and that “[w]e think targeting a formal filing in June and clearance in July makes sense, and will work to put this in as early in that month as possible.”

92. LVMH’s April 30 email also noted a new—and contractually prohibited—excuse for LVMH’s incessant delays and refusal to make progress with the EC:

LVMH have emphasized that it is crucial that their responses to authorities’ RFIs reflect the market understanding of their *Maisons*. This is not just to ensure that we do not provide any misleading information in the context of this merger review procedure, *but also to ensure that any future luxury goods transactions or investigations (including ones that involve Tiffany and the luxury jewelry segment) are not undermined by advocacy we submit today.* (emphasis added).

Under the Merger Agreement, LVMH is obligated to “do or cause to be done all things, necessary or advisable” to obtain antitrust clearance “as promptly as practicable.” LVMH expressly agreed that this obligation included “taking or

committing to take actions that may limit or impact [LVMH's] or any of its Subsidiaries' (including [Tiffany's] or any of its Subsidiaries') freedom of action with respect to, or its ability to retain," any of LVMH's businesses or other operations. Ex. 1, § 7.3(b)(ii)(B). Nothing in the Merger Agreement permits LVMH to delay in any way the antitrust clearance process for *this transaction* in the hopes of greasing the skids for LVMH to receive antitrust clearance in *potential future transactions*. To the contrary, the Merger Agreement *obligates* LVMH to sacrifice its other acquisition plans—actual or prospective—to ensure closing before the Outside Date.

93. Later on April 30, 2020, Tiffany's counsel again asked LVMH "when you intend to file the response?" The next day, May 1, 2020, having received no response from LVMH's counsel, Tiffany's counsel reiterated its timing concerns, adding: "Can we also file the EU and Japan responses next week to also get started in these jurisdictions?"

94. Five days later, on May 6, 2020, LVMH's counsel at Cleary finally replied that LVMH had "largely prepared responses to the data-related questions" in the by-then seven-week-old EC RFI, but that they were "still working with LVMH to gather internal documents that the Commission has requested," a process they claimed was made more difficult because "LVMH is highly decentralized" and many documents are typically held within each of LVMH's *Maisons*. For the second

time in a week, LVMH’s counsel also reiterated that LVMH had delayed intentionally the EC process as part of its self-serving and improper effort to ensure that LVMH’s “current approach would not create problems in a future deal or investigation,” in breach of the Merger Agreement. Responding that same day, Tiffany’s counsel stressed that “concerns with respect to market definitions for potential future transactions . . . should not be a basis to further delay the approvals process for this transaction.”

95. On May 7, 2020, more than a month later than originally promised, and a full *seven weeks* after receiving the EC’s first RFI, LVMH’s counsel finally provided a *first draft* of the RFI response, noting that they were “still working with LVMH to identify more [internal] documents on their end.” Despite purportedly having been working on it since March 19, this draft from highly experienced lawyers at Cleary was such a disaster that it could only have been intended so. The draft was woefully incomplete, had placeholders for entire sections and included notes throughout the draft describing all of the work that LVMH’s counsel had yet to complete (or even begin). For example, the draft RFI response flagged multiple sections where LVMH’s counsel claimed that they were awaiting further documents from or discussions with Tiffany, even though Tiffany had confirmed that it had provided all outstanding documents and information to LVMH’s counsel more than three weeks earlier (on April 14, 2020) and had not received any follow-up requests

from LVMH in the interim. The draft also included multiple sections where LVMH's counsel noted that they planned to later prepare responses after receiving additional materials from LVMH or—most egregiously—initial sets of materials that LVMH still had not provided. The draft did not state when LVMH planned to provide those materials to LVMH's counsel, or why seven weeks had passed without LVMH providing even an initial set of materials for certain responses.

96. Notwithstanding the shockingly incomplete state of the draft RFI response that Cleary circulated, Tiffany's counsel provided initial comments that same day. Tiffany's counsel continued to provide relevant materials and additional comments on the portions of the RFI response that LVMH's counsel had provided, while still awaiting LVMH's draft responses for the remaining questions.

97. On May 11, 2020, Tiffany's counsel once again asked LVMH's counsel to confirm the revised EC timetable that Tiffany had proposed more than two weeks earlier—"early May for the RFI response, early June for the formal filing, and early July for clearance"—noting that Tiffany was "of course particularly interested in when we will file the various responses." LVMH's counsel never responded to this request, instead waiting for more than a week to send on May 19, 2020 a proposed "Closing Checklist" that included no deadlines for the RFI response or formal EC filing, and stated only that "clearance under Antitrust Laws of EU" was "currently expected to be obtained in July." LVMH's counsel described the deadlines

contained in the checklist as “mildly conservative estimates which may need to be revised once we engage further with the authorities.”

98. Tiffany’s counsel continued to press LVMH’s counsel about the status of the EC RFI response, which was mostly complete other than with respect to input from LVMH’s *Maisons*, asking for updates on May 22, 25 and 28. Each inquiry went unanswered by LVMH’s counsel at Cleary. On May 29, Tiffany’s counsel again confirmed to LVMH’s counsel that “as far as the EU RFI is concerned, Tiffany has completed their document search and has no additional relevant files to share.” Five days later, on June 3, LVMH’s counsel stated that a revised draft of the “first batch” of RFI responses would be “submitted to your review shortly.” Tiffany’s counsel asked LVMH’s counsel to explain what “shortly” meant, but LVMH’s counsel never responded.

**2. In May and June 2020, Arnault and His Board Determine to Derail Entirely the Clearance Processes in Order to Kill or Renegotiate the Deal.**

99. During the initial post-signing period when LVMH remained committed to the Merger Agreement, LVMH had insisted on frequent personal meetings and telephone calls among the most senior management at LVMH and Tiffany. These included more than a dozen in-person meetings and telephone calls between Tiffany’s CEO Alessandro Bogliolo and LVMH’s Managing Director and Board member Antonio Belloni in the first five or so months after the parties signed

the Merger Agreement. As LVMH soured on its agreed-upon acquisition, LVMH ceased working cooperatively with Tiffany, relying instead on lawyers to explain LVMH's delays to Tiffany. In fact, the last conversation between Messrs. Bogliolo and Belloni occurred in early May 2020, despite Bogliolo sending Belloni weekly update emails regarding Tiffany's business operations and repeatedly offering to discuss any issues (a practice that began in March 2020 and that continues to this day).

100. The reason for this change soon became apparent. In early June 2020, the press reported that "Arnault has been in talks with his advisors this week to identify ways to pressure Tiffany to lower the agreed deal price of \$135 per share," including "considering whether he can argue that the New York-based company is in breach of its obligations under the merger agreement."<sup>18</sup> Consistent with LVMH's extensive delays in responding to regulatory inquiries over the prior several weeks, the press also reported that Arnault had "been looking for ways since the coronavirus outbreak to renegotiate the takeover."<sup>19</sup>

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<sup>18</sup> Greg Roumeliotis, *LVMH's Arnault Mulls Ways to Renegotiate Deal with Tiffany: Sources*, REUTERS (June 3, 2020), <https://www.reuters.com/article/us-tiffany-m-a-lvmh/lvmhs-arnault-mulls-ways-to-renegotiate-deal-with-tiffany-sources-idUSKBN23A2KX>.

<sup>19</sup> Alistair Gray, James Fontanella-Khan and Arash Massoudi, *Tiffany Dents LVMH Hopes to Recut \$16.5bn Deal*, FINANCIAL TIMES (June 9, 2020), <https://www.ft.com/content/997bb892-8f67-400a-b8e1-d173c923d208>.

101. As part of this strategy, Arnault convened a meeting of LVMH’s Board on June 2, 2020, the existence and contents of which were leaked to the press that same night.<sup>20</sup> According to press reports, LVMH’s Board reportedly sent the “clear message” that LVMH’s management should use the COVID-19 pandemic and recent social-justice protests in the United States as excuses to pressure Tiffany to agree to reduce the merger price.<sup>21</sup> LVMH’s Board also reportedly discussed ways to try to manufacture a claim that Tiffany somehow had breached the Merger Agreement by virtue of the manner in which Tiffany was conducting its business.<sup>22</sup>

102. Given that LVMH could be the only source aware of the contents of its own Board’s discussions, LVMH likely is responsible for leaking this information to the press, in violation of the Merger Agreement. *See* Ex. 1, § 7.7. After news of LVMH’s Board meeting leaked, Tiffany’s stock price dropped by more than 10%—perhaps one goal of LVMH’s meeting and the subsequent leak.

103. Rather than reaffirming its intent to complete the transaction in response to these leaks, LVMH’s only comment was a June 4, 2020 statement that

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<sup>20</sup> Miles Socha, *LVMH-Tiffany Deal Seen as Uncertain: Sources*, WOMEN’S WEAR DAILY (June 2, 2020), <https://wwd.com/business-news/mergers-acquisitions/lvmh-tiffany-deal-seen-as-uncertain-sources-1203645650/>.

<sup>21</sup> *Id.*

<sup>22</sup> Greg Roumeliotis, *LVMH’s Arnault Mulls Ways to Renegotiate Deal with Tiffany: Sources*, *supra* n.18.

essentially confirmed the press reports and offered a meaningless comment that LVMH did not intend to purchase Tiffany shares in the open market:

The Board of Directors of LVMH Moët Hennessy Louis Vuitton, met on Tuesday, June 2nd, 2020 and notably focused its attention on the development of the pandemic and its potential impact on the results and perspectives of Tiffany & Co with respect to the agreement that links the two groups. Considering the recent market rumors, LVMH confirms, on this occasion, that it is not considering buying Tiffany shares on the market.<sup>23</sup>

104. Just a few days after LVMH's June 2 Board meeting, the press reported that "LVMH has decided it will not raise the issue of repricing the deal with Tiffany for now, after it considered the legal hurdles involved."<sup>24</sup> Instead, LVMH cast aside the legal hurdles and redoubled its efforts to avoid in every manner possible the required regulatory approvals, in furtherance of LVMH's apparent overall strategy to find any way possible to avoid or renegotiate the Merger Agreement. As part of this corporate strategy, LVMH's most senior business executives cut off almost all verbal communications with Tiffany, with LVMH instead resorting to incessant, seemingly accusatory written information requests from LVMH's General Counsel seeking improperly to bolster LVMH's renegotiation strategy. It later became clear

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<sup>23</sup> *LVMH Not Considering Buying Tiffany Shares on the Market*, CNBC (June 4, 2020), <https://www.cnbc.com/2020/06/04/lvmh-not-considering-buying-tiffany-shares-on-the-market.html>.

<sup>24</sup> Greg Roumeliotis, *LVMH Refrains from Negotiating Tiffany Deal, Sources Say*, REUTERS (June 5, 2020), <https://www.reuters.com/article/us-tiffany-m-a-lvmh/lvmh-refrains-from-renegotiating-tiffany-deal-sources-say-idUSKBN23C1SH>.



that LVMH's goal in this new corporate strategy was to string out the antitrust-clearance processes as far into the future as possible in the false hope that some valid termination right might arise, or in an effort to get to the initial Outside Date of August 24, 2020 without the necessary approvals and claim (falsely) that LVMH had a right to resist the extension of the Outside Date and avoid closing.

**3. Following the Lead of Its Board and Bernard Arnault, LVMH Fully Deploys Its Strategy to Avoid Antitrust Approvals in Breach of the Merger Agreement.**

105. By June 8, 2020, more than a month had passed since LVMH's counsel at Cleary had provided on May 7 the woefully incomplete first draft of a "first batch" of responses to the EC's first RFI. After repeated prodding from Tiffany's counsel, LVMH's counsel finally provided a revised draft of those responses, noting that "there are a few questions where LVMH's *Maisons* are still working to confirm and validate statements." While LVMH's initial May 7 draft may have been a disaster, the "revised" draft that LVMH's lawyers at Cleary served up on June 8 managed to be even more calamitous, and a significant step backwards. In the intervening nearly five weeks, LVMH's lawyers had managed to add only minor line edits, drafting notes, three new paragraphs of information about certain LVMH revenue figures, two simple paragraphs about competitors (added at Tiffany's counsel's suggestion) and a section containing responses to a question about Tiffany's largest wholesale customers (based on data that Tiffany had provided much earlier). Even worse,

LVMH’s counsel had *removed* substantial portions of the proposed response—seven of the 25 responses in the May 7 draft had been replaced with the placeholder, “To follow.”

106. Tiffany’s counsel responded with comments on June 9 and June 11, and reiterated that it was “very difficult to understand what justified 12 weeks [since the RFI was issued on March 19] to put this draft together, and what progress justified 5 weeks to pass since the last draft we saw.” Tiffany’s counsel also noted that “given the nature of the outstanding questions (mostly requiring to draft answers on known issues based on internal documents which were provided several weeks ago), it is difficult to understand why we need to file the response in two batches.”

107. On *June* 12, 2020, LVMH’s counsel sent the EC a partial set of responses to the EC’s *March* 19 RFI. In other words, after LVMH said in December that it expected to complete the *entire* EC approval process in only two months, LVMH took nearly three months to provide even a partial response to the EC’s first information request.

108. On June 16, 2020, in response to Tiffany’s counsel’s repeated questions about timing, LVMH’s counsel contended that its delay was due to LVMH’s business structure—which of course was unchanged since LVMH initially had proposed in December that EC approvals would be secured in two months, and was

something LVMH, as a serial acquirer, was accustomed to working through in past transactions—and was further complicated by COVID-19:

[W]hat Tiffany needs to do to respond to any question, LVMH is required to do 34 times as LVMH needs to coordinate with its 34 *Maisons*, and this [is] in the context of a largely decentralized organization, where obtaining and approving data is complex and where advocacy requires a careful process to integrate the input of the various *Maisons*. All this is of course happening in the face of the unprecedented challenges posed by COVID-19[.]

109. At the same time LVMH’s counsel proclaimed that LVMH’s “*Maisons*” were stalled by “unprecedented challenges posed by COVID-19,” LVMH publicly touted the rapidly improving circumstances and enormous strides made by its *Maisons* in returning to normal operations. In a June 9, 2020 press release announcing that its “*Maisons* reopen[ed] after several week hiatus” and citing “the slowdown in the spread of the virus,” LVMH stated that “governments in several countries have recently relaxed quarantine measures, enabling LVMH *Maisons* to progressively restart their activities,” including several *Maisons* for which “business is now virtually at full strength at all sites.”<sup>25</sup>

110. On June 17, 2020, as large swaths of LVMH’s response to the first RFI remained outstanding, LVMH’s and Tiffany’s counsel held a telephone conference with EC representatives to discuss the status of the EC clearance process. During

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<sup>25</sup> Press Release, LVMH, LVMH Maisons Reopen After Several Week Hiatus (June 9, 2020), <https://www.lvmh.com/news-documents/news/lvmh-maisons-reopen-after-several-week-hiatus/>.

the call, LVMH's counsel reiterated the same excuses for its delay, stating: "The issue with LVMH is that it is an umbrella group for 34 *Maisons* operating as independent businesses and which have all obviously been affected by the coronavirus lockdown." Against the backdrop of LVMH's continued failure to submit a complete response to the EC's March 19 RFI, an EC representative noted that given the parties' minimal progress to date and the approaching summer break, the parties would have to be "realistic" about the timing of the final EC filing. Tiffany's counsel acknowledged that the EC's response was understandable in light of LVMH's "long silence" between the EC's March 19 RFI and LVMH's partial responses on June 12, but reiterated that the parties still wanted to move as quickly as possible toward submission of the final Form CO and clearance. The EC representative responded that "it would make little sense to engage in market investigation in July-early August," but that the EC was open to discussing timing again in two-to-three weeks.

111. On June 18, 2020, Tiffany's counsel asked LVMH's counsel to provide the remaining responses to the EC's first RFI as soon as possible, and to reach out to the EC case team to "confirm[] that given the circumstances and the delay we're already facing, we would greatly value the case team's efforts to advance the review as quickly as possible and that we are fully committed to facilitating this." LVMH's

counsel replied that night with first drafts of the remaining RFI responses and added—bizarrely—“What delay are you referencing? We are not aware of any.”

112. Tiffany’s counsel provided its comments on the outstanding RFI responses the next day, and again urged LVMH to express to the EC case team the parties’ desire to move as quickly as possible to complete the clearance process, noting that this outreach was part of the “usual next steps that need to be taken in a timely fashion in order to maximize our chances to proceed with the actual filing as promptly as possible.”

113. On June 20, 2020, LVMH submitted a second batch of responses to the EC’s March 19 RFI, and on June 25, 2020, LVMH finally submitted the remaining responses to that RFI. LVMH thus transformed a process that easily could have been completed within the span of a few weeks into a 14-week campaign to avoid LVMH’s obligations under the Merger Agreement.

114. While LVMH and its global law firms expressed an inability (or unwillingness) to move quickly, the EC responded promptly. On July 13, 2020, the EC sent LVMH a second RFI. Tiffany’s counsel immediately began providing LVMH’s counsel with the information requested in the second RFI, asked LVMH’s counsel to discuss the strategy and timing of the response, and offered to provide any assistance that would help expedite the process of responding.

115. On a July 14, 2020 status call, Tiffany’s counsel noted that the second RFI was “relatively straightforward” and expressed confidence that the parties should be able to respond to it by the end of the following week (*i.e.*, by July 24). Imposing yet another excuse for delay, LVMH’s counsel contended that certain straightforward requests in the second RFI likely would require input from an economist (the “Coordinated Effects Question”) or from many of LVMH’s *Maisons*. Tiffany’s counsel pressed to set deadlines for receiving input from the *Maisons* and responding to the EC, but LVMH’s counsel refused, claiming that setting deadlines would be “counter-productive” and that “as soon as possible has always been our line.”

116. On July 16, 2020, Tiffany’s counsel offered to provide any other information necessary to facilitate LVMH’s response to the second EC RFI and asked for updates on LVMH’s outreach to the *Maisons* and on timing for a draft response. In an effort to speed the process along, Tiffany’s counsel even went so far as to send LVMH’s counsel a proposed response to the Coordinated Effects Question. LVMH’s counsel responded later that day with neither questions for Tiffany nor proposed deadlines, instead arguing only that “this is an important and burdensome EC RFI” and that a lengthy response to the Coordinated Effects Question was necessary.

117. On July 17, 2020, four days after receiving the EC’s second RFI, LVMH’s counsel for the first time (i) asked for Tiffany’s input on the questions in the second RFI response, and (ii) stated that LVMH—not LVMH’s counsel—had decided to take charge of the process of coordinating with LVMH’s *Maisons* to request information for the second RFI response. Tiffany’s counsel responded that same day with its views on each of the questions in the second RFI, offered to work over the weekend to draft answers in order to expedite the response and reiterated that the process of responding to these questions should be straightforward.

118. On July 21, 2020, LVMH’s counsel argued that the EC’s second RFI was “not at all simple questions” and rejected Tiffany’s proposed response to the Coordinated Effects Question sent nearly a week earlier. Instead, LVMH’s counsel suggested that Tiffany use a template and memorandum from LVMH’s economist as guides to collect incredibly granular data from across Tiffany’s business. LVMH claimed that the requested data were essential to answer the Coordinated Effects Question (which the EC did not raise as a concern but only as a topic that the Form CO would need to cover, and to which Tiffany’s counsel had proposed a response within three days) and another question regarding different retail channels (which Tiffany’s counsel deemed straightforward as well, in particular because the conclusion was not instrumental to the EC’s assessment of the transaction). In making these sweeping requests, LVMH was once again seeking to transform

limited, targeted questions from the EC into exhaustive requests requiring data-heavy, bottom-up economic analysis.

119. Not surprisingly, Tiffany’s counsel was concerned by this approach and pressed LVMH’s counsel again to set a deadline for submitting the second RFI response. LVMH ultimately agreed to finish collecting information from its *Maisons* by July 29 and to submit the responses by “end of next week” or “the beginning of the week after” (*i.e.*, by July 31, 2020, or the beginning of the following week, August 3).

120. On July 31, 2020—LVMH’s proposed date to file its response to the second RFI with the EC—LVMH’s counsel first provided Tiffany’s counsel with an initial draft. Despite having worked on it for nearly three weeks, LVMH’s initial draft included numerous placeholders for a wide range of information that LVMH supposedly had yet to gather from its *Maisons*. The draft response included only a few minor follow-up questions addressed to Tiffany, which Tiffany’s counsel answered beginning that same day.

121. During a July 31, 2020 status call, Tiffany’s counsel pressed LVMH’s counsel on the timing of the response to the EC’s second RFI, observing that LVMH had agreed on July 21 to submit the response by July 31, 2020 or the beginning of the following week (August 3). LVMH’s counsel at Cleary dismissed their own



agreed-upon deadline, instead announcing simply that LVMH would submit the response “when we are ready.”

122. On August 4, 2020, Tiffany’s counsel sought and received LVMH’s counsel’s agreement to target August 7 as the new deadline for filing the response to the second RFI. That same day, LVMH’s counsel sent Tiffany’s counsel a number of new requests and questions that LVMH claimed were necessary to respond to the EC’s second RFI. Tiffany’s counsel provided the requested information three days later. That same day, on August 7, 2020, LVMH’s counsel finally sent Tiffany’s counsel a revised draft of the second EC RFI response, which continued to include multiple incomplete answers and placeholders. After ignoring for several days Tiffany’s pleas for a complete draft and a commitment to a filing date, LVMH’s counsel at Cleary instead sent a lengthy email on August 11, 2020 defending LVMH’s delays and arguing that Tiffany should not be surprised by the delays. (In fact, Tiffany was shocked by Cleary’s repeated delays.) LVMH’s counsel also claimed that Tiffany should not “constantly move the goalposts when it comes to timing and imply a deadline where none was fixed.”

123. Notwithstanding that LVMH had only a few weeks earlier agreed to submit a complete response to the second EC RFI by July 31 or “beginning of the week after,” LVMH now proposed for the first time to submit the second RFI response in two “batches,” with the first batch of responses being submitted by

August 12 (*i.e.*, the next day). LVMH’s counsel also promised to provide Tiffany with “signoff version[s]” of the remaining RFI responses by August 14, and to submit those remaining responses shortly thereafter. LVMH’s counsel reiterated these deadlines during a status call later that same day.

124. Despite *twice* promising on August 11 that LVMH would submit an initial batch of responses to the second EC RFI on August 12, LVMH did not do so. This represented the *third* submission deadline in a row that LVMH’s counsel had committed to and then promptly abandoned.

125. On August 13, 2020, Tiffany’s counsel once again pressed LVMH’s counsel for updates on the responses to the EC’s second RFI. LVMH’s counsel responded later that day with a draft cover email to the EC and drafts of some—but not all—of the outstanding questions in the second RFI.

126. LVMH did not file a complete response to the EC’s second RFI until Friday, August 21—more than one month after the issuance of the second RFI and the last business day before the August 24 initial “drop-dead” date under the Merger Agreement.

127. On Friday, August 28, 2020, the EC sent LVMH a third RFI that was less than two pages and included only a few basic questions tying up some loose ends. In response, LVMH has made clear that it plans to exploit the EC’s relatively straightforward follow-up questions to further delay the EC filing process for as long

as possible. After receiving the EC's request at 5:24 p.m. Brussels time (11:24 a.m. in New York), LVMH sat on it for more than six hours before sharing it with Tiffany's counsel in Brussels at 11:31 p.m. on a Friday (5:31 p.m. in New York). LVMH and its advisors then did nothing to advance a response to the RFI, suggesting incredibly in a Tuesday, September 1, 2020 status call that LVMH's *Maisons* simply do not work on weekends. Tiffany and its counsel, on the other hand, went to work immediately over the weekend to gather the remaining Tiffany information requested by the EC and already had provided a substantial amount of that information to LVMH's counsel in advance of the September 1 status call. In stark contrast, LVMH and its counsel did literally nothing between Friday and Tuesday to gather information from LVMH's *Maisons*.

128. After Tiffany's counsel pressed LVMH to agree to respond to the EC's third RFI by the end of the week (*i.e.*, by September 4, 2020), LVMH's counsel not only rejected that reasonable timeline, but also refused to agree to *any* timeline to respond. LVMH's counsel also (wrongly) suggested that certain of the EC's follow-up questions would require extensive analysis to address issues that could be meaningful to the EC's evaluation. LVMH's counsel even flatly rejected Tiffany's request to schedule more frequent status calls to discuss LVMH's progress in responding to the EC's third RFI.

129. LVMH’s slow-walking has not gone unnoticed by the EC. On September 3, 2020 the EC asked LVMH and Tiffany for an update regarding the “anticipated timing of the submission of replies to RFI 3 . . . and of the formal filing,” and noted that the EC’s case team “could process a filing in the coming days.” The EC followed up again on Saturday, September 5—at 12:27 a.m. Brussels time—to confirm the limited scope of certain of the requests in the EC’s third RFI (which the EC already had discussed with LVMH and Tiffany in a September 4, 2020 telephone call) and to reiterate that the EC was “willing to receive information in batches, as it becomes available, and to consider pragmatic solutions for generating relevant insights in response to its questions.”

130. Despite these clear signals from the EC, LVMH has continued to drag its feet. More than ten days after the issuance of the EC’s third RFI, and despite the EC’s door being wide open for a timely filing, in emails and calls on September 8, 2020, LVMH’s counsel not only rejected Tiffany’s proposed filing strategy but refused again to commit to any deadlines to respond to the EC’s third RFI or to file the finalized Form CO with the EC. As of the date of this Complaint, LVMH still has not responded to the EC’s third RFI and has refused even to commit to deadlines to collect the requisite information.

**4. While Intentionally Delaying EC Approvals, LVMH Fails Entirely to Advance Approvals Elsewhere.**

131. Although LVMH's delay in obtaining EC antitrust clearance may be the most egregious example of LVMH's breach of its obligation to prepare and file, "as promptly as practicable," all antitrust-clearance applications and to obtain, "as promptly as practicable," all antitrust clearances, LVMH also has breached its contractual obligations by delaying the antitrust-clearance process in other jurisdictions, including three jurisdictions where approvals remain outstanding. As a result of this campaign of delay, *more than nine months* after signing the Merger Agreement, LVMH has yet even to file its formal request for antitrust approvals in Taiwan, and the parties continue to await approval in Japan and Mexico.

**a. Taiwan**

132. On March 5, 2020, the parties filed a first notification draft with the Taiwanese regulator, the Taiwan Fair Trade Commission ("TFTC"). The TFTC followed up less than two weeks later with a first RFI on March 16, 2020, with responses due by March 27, 2020. Tiffany immediately began providing LVMH with the Tiffany information necessary to respond to the TFTC's first RFI.

133. On April 2, 2020, six days *after* the initial response deadline set by the TFTC, LVMH's counsel provided Tiffany's counsel for the first time with a draft response, stating that LVMH planned to submit the response early the following week (*i.e.*, by April 6 or 7). Tiffany's counsel provided comments starting April 3,

but on April 7, LVMH's counsel stated that they would be pushing the response deadline back to April 10.

134. By April 17, 2020, LVMH had yet to submit the response. Nevertheless, given the relatively straightforward nature of the TFTC's first RFI, Tiffany's counsel proposed to LVMH's counsel that LVMH respond to this first RFI by April 22, that the parties make the formal filing with the TFTC by April 29, and that the parties target June 2020 to receive final clearance. On April 23, LVMH's deal counsel at Skadden responded by proposing that the parties' response to the TFTC's first RFI be filed by April 30, that the TFTC filing be completed in early July and that clearance follow in early August.

135. On April 27, Tiffany's counsel noted that Tiffany had no further comments on the response to the TFTC's first RFI, and on April 28, Tiffany's counsel asked LVMH's counsel to provide a final draft of the response for its review. Although LVMH's counsel provided a final draft the next day, they also stated for the first time that they had removed answers to five of the questions, which they supposedly were still finalizing with LVMH and would submit to the TFTC as a second batch of responses once ready. Despite repeated requests from Tiffany's counsel, LVMH did not complete its response to the TFTC's first RFI until May 22, almost a month after it was due.

136. As with the EC, the TFTC continued to move much faster than LVMH. On June 5, 2020, the TFTC issued a second RFI with a response due a week later on June 12. On June 10, Tiffany's counsel confirmed with LVMH that it had provided all of the necessary input from Tiffany on the response, and on June 12, asked LVMH for an update on the expected submission date. On June 16, four days *after* the due date set by the TFTC for the second RFI response, LVMH's counsel notified Tiffany's counsel that LVMH's Taiwanese counsel, in breach of the Merger Agreement, had *unilaterally* requested from the TFTC a nearly three-week extension (to June 29) of the deadline for responding to the TFTC's second RFI. Notwithstanding this delay of their own making, LVMH's counsel also reiterated on June 16 that LVMH still expected formally to notify the TFTC of the transaction by the end of June, with final clearance expected around the end of July.

137. On June 26, 2020, three days before the extended deadline for submission, LVMH's counsel noted that they were still waiting for input from certain of LVMH's *Maisons*. On June 28, LVMH's counsel again pointed to delayed *Maison* input as the excuse for why LVMH could not meet even the extended deadline of June 29. LVMH ultimately did not complete its response to the TFTC's second RFI until July 5—again, *almost a full month* after the initial due date set by the TFTC.

138. On July 3, 7, 14 and 20, 2020, the TFTC case handler asked LVMH's Taiwanese counsel a series of clarifying questions about the second RFI response. Tiffany followed up immediately, providing input on a rolling basis starting July 6, 2020. On July 22, LVMH's counsel circulated a draft response to the TFTC's outstanding questions that was again incomplete and riddled with placeholders for information not yet received from LVMH, including information responsive to questions posed by the TFTC three weeks earlier. On a July 28 status call, when Tiffany's counsel asked LVMH when it expected to answer the outstanding TFTC questions, LVMH's counsel stated that they did "not want to commit to any timing given that timing pinpoints have proven useless in the past."

139. On August 3 and 5, 2020, the TFTC sent additional follow-up questions related to the second RFI response. On August 7, 2020, LVMH finally responded to some of the TFTC's outstanding questions—some of which had been pending since July 3. The TFTC's August 5 questions, however, remained unanswered.

140. On August 11, 2020, after reviewing the parties' response to the clarifying questions, the TFTC sent four further follow-up inquiries, all directed at LVMH, and requested that LVMH respond by August 14. On August 13, the day before these responses were due, Taiwanese counsel for Tiffany and LVMH held a telephone conference with the TFTC. During that call, LVMH's Taiwanese counsel requested a one-week extension to respond to these follow-up questions, relying on



the familiar excuse of the difficulty of obtaining information from LVMH's various *Maisons*, apparently exacerbated this time by the European summer vacation period.

141. The TFTC asked additional clarifying questions of the parties on August 14 and 18. LVMH's counsel finally finished responding to the TFTC's questions on September 2.

**b. Japan**

142. On December 19, 2019, Tiffany's counsel told LVMH's counsel that Tiffany was targeting a March or April 2020 filing in Japan, with clearance to follow the next month, but noted that clearance could take until August if the Japanese regulator, the Japanese Fair Trade Commission ("JFTC"), decided to engage in a more intensive "Phase II" analysis. (A "Phase II" analysis was not expected and, as of the date of this Complaint, has not occurred.) LVMH's counsel agreed that the proposed Japanese timeline "generally ma[de] sense[.]"

143. On February 1, 2020, LVMH's counsel provided Tiffany's counsel with a draft explanatory letter to be submitted to the JFTC before formally notifying the JFTC of the transaction. That letter stated that the parties "intend[ed] to complete the [t]ransaction by the middle of 2020" and requested that the JFTC "clear the [t]ransaction by the end of April 2020 at the latest"—a timeline even more ambitious than Tiffany's counsel's December estimates. LVMH included this same proposed timeline in the final version of this letter filed with the JFTC on March 4.

144. By the second half of March, however, consistent with LVMH’s slowdown in the EU, LVMH’s enthusiasm for pursuing a timely Japanese clearance apparently had dissipated. The JFTC issued its first RFI on March 24, 2020, with a tentative response deadline of April 3. On April 8, 2020—more than two weeks after receiving the JFTC’s first RFI and several days beyond the tentative April 3 response deadline—LVMH’s counsel told Tiffany’s counsel that they were “finalizing the draft response to the JFTC’s RFI” and expected to circulate the draft “this week” (*i.e.*, by April 10, 2020). LVMH’s counsel missed that deadline and cited varying excuses over the next few weeks to justify their continued failure to provide a draft response. On April 30, 2020, LVMH’s counsel stated that they expected “to circulate a draft response shortly, so a submission in May seems feasible.” On May 8, 2020 *more than six weeks* after receiving the JFTC’s first RFI and *a full month* after LVMH’s counsel said that it was “finalizing the draft response,” LVMH’s counsel finally sent Tiffany’s counsel a first draft of a response to the JFTC’s RFI. Even that long-delayed draft, however, was rife with placeholders for information that LVMH had yet to collect. Despite these placeholders, Tiffany’s counsel provided feedback on the draft that same day.

145. Notwithstanding repeated requests by Tiffany for follow-up, LVMH’s counsel provided no further meaningful updates on the RFI response until June 3—*nearly a month* after their last communication with Tiffany’s counsel on the subject.

At that point, LVMH’s counsel stated only that the revised draft would be “submitted to [Tiffany’s counsel for] review shortly.”

146. On June 8, 2020, LVMH’s counsel sent Tiffany’s counsel “a couple of queries from LVMH on Tiffany’s input to the JFTC RFI” and a revised draft of the RFI response. Tiffany’s counsel promptly provided comments over the next two days and noted that the RFI response should be submitted “asap . . . . As with the EU, we’re not sure to understand what required so much time to implement since the last draft around[.]”

147. On June 12, 2020, LVMH’s counsel stated that they had “made some revisions to the Japan draft,” that they were reconciling certain information with LVMH and that they “intend[ed] to submit the response as soon as this is done.” LVMH finally filed the RFI response on June 15, *nearly three months* after the RFI was received and *over two months* after the initial response deadline set by the JFTC.

148. On June 20, 2020, the parties submitted a draft notification filing to the JFTC for its review. This draft, however, contained numerous placeholders for information that LVMH had not yet provided. Given the holes in the draft filing, the JFTC’s feedback, promptly provided on June 24, was necessarily incomplete.

149. On July 2, 2020, the JFTC issued a second RFI, which asked only four questions. Consistent with their previous delay tactics, LVMH’s counsel claimed that “some of the [JFTC’s] questions are quite searching as regards LVMH, and

others are a bit ambiguous as to what is being sought.” Attempting to use the JFTC’s second RFI as an excuse to delay further formally notifying the JFTC of the transaction, LVMH’s counsel argued that “this request means that submitting the revised [notification] filing on Monday is no longer feasible.” Tiffany’s counsel quickly replied that LVMH’s counsel should “discuss [with the JFTC] the possibility of making a formal filing ahead of a full RFI response” to expedite the process, and added that it was “important to make it clear to the JFTC that we are now keen on making a formal filing asap.” LVMH’s counsel refused, insisting that the parties hold off on seeking JFTC input on the draft notification filing until after LVMH had completed the second RFI response.

150. On July 21, 2020, nearly three weeks later, LVMH’s counsel said that the second RFI response was “basically ready,” and that the notification filing would be ready “in a matter of days.” On July 31, having heard nothing for ten days, Tiffany’s counsel again pressed LVMH’s counsel for an update on the second RFI response and draft notification filing. LVMH’s counsel finally responded on August 4 with drafts (which Tiffany reviewed and signed off on the next day).

151. On August 5, 2020, LVMH finally submitted the response to the four questions in the JFTC’s second RFI—which had been issued more than a month earlier—and the draft notification filing. The JFTC promptly provided feedback on the draft notification filing on August 11.

152. On August 31, 2020, more than nine months after signing and a week after the initial Outside Date set for the transaction, LVMH at long last completed the process of filing the formal notification with the JFTC.

**c. Mexico**

153. LVMH’s pursuit of antitrust clearance in Mexico has followed the same familiar pattern of delay. In Mexico, unlike other jurisdictions, the parties file a formal merger notification before engaging in substantive discussions with the antitrust authorities—here, the Comisión Federal de Competencia Económica (“COFECE”). After that formal notification is filed, COFECE begins requesting information from the parties before ultimately deciding whether to clear the merger.

154. On December 19, 2019, Tiffany proposed an estimate of five to six months to obtain clearance, reflecting the unpredictable nature of the Mexican review process where each new information request restarts the statutory review clock. Assuming an initial filing with COFECE in January and a “smooth process,” this would have resulted in clearance by June or July. LVMH agreed that the “timing estimates generally make sense.”

155. LVMH’s counsel sent Tiffany’s counsel a first draft of the Mexico merger notification form on February 20, 2020, and on March 3 expressed a goal of filing “as soon as possible” that week (*i.e.*, by March 6). Tiffany’s counsel provided

all remaining comments by March 5, and LVMH ultimately filed the merger notification form with COFECE on March 12.

156. On March 26, 2020, COFECE issued its first RFI, with an April 16 deadline to respond. On April 8, having yet to see a draft response and with the deadline fast approaching, Tiffany's counsel asked for a status update. In response, LVMH's counsel claimed that they planned to send Tiffany a draft that week or early the following week. On April 14, just two days before COFECE's deadline, Tiffany's counsel again asked for an update, and LVMH's counsel responded that "the request is extremely burdensome on LVMH, and we will likely need to seek an extension . . . Local counsel have advised that this should not have a material impact on timing. We are working with LVMH to get their sign-off on a partial response that can go in this week."

157. The next day, April 15, 2020, LVMH's counsel submitted a partial response to COFECE's first RFI, without ever having provided a draft to Tiffany for review and approval—a breach of the Merger Agreement's requirement that both parties "shall have the right to review in advance . . . all of the information relating to Parent or the Company, as the case made be . . . in any presentation or filing made with, or written materials submitted to, any Governmental Entity in connection with the transactions contemplated by this Agreement." Ex. 1, § 7.3(iii). LVMH tried to justify this breach by claiming that certain of the responses "were entirely clerical"—

raising the question why it had taken LVMH weeks to prepare “entirely clerical” responses—and that it was necessary to submit those responses before April 16 in order for LVMH to seek an extension of time. LVMH’s counsel assured Tiffany that LVMH was “progressing the request” and that, for the “remaining questions,” LVMH would “of course share with [Tiffany] for comments before submission.”

158. Along with submitting this partial response, LVMH also asked to extend the deadline for the remaining responses to May 7 or 8—again without requesting or receiving Tiffany’s approval for this request for a three-week extension. Despite the additional time, LVMH continued to delay and miss deadlines. For example, LVMH’s counsel did not send Tiffany a draft of the remaining RFI responses until May 5, and then claimed that the response deadline was a mere three days later and that LVMH needed Tiffany’s comments within 36 hours. Tiffany’s counsel provided its comments the following day. Despite claiming that the now-extended deadline for COFECE’s first RFI was May 8, LVMH submitted only a partial response before that date, and ultimately did not complete its response to the first RFI until May 15, 2020, *nearly a month after COFECE’s initial deadline.*

159. On May 27, 2020, COFECE issued a second RFI, with a June 17 deadline to respond. Although Tiffany’s counsel repeatedly pressed LVMH’s counsel to move this process forward, and provided input on June 2, 2020, LVMH

did not provide a meaningful update on a draft response until June 16, the day before COFECE's deadline, when LVMH's counsel claimed for the first time that the "Mexican RFI response still requires a substantial amount of input from the *Maisons* and Tiffany" and stated that LVMH intended to request a 15-business-day extension of COFECE's deadline.

160. Tiffany pushed back on this immediately, noting the following day that the final RFI responses needed to be submitted by the end of June if LVMH hoped to meet the (already extended) "late July clearance target" that LVMH had most recently proposed. Tiffany's counsel noted that COFECE's vacation period lasted from July 27 through August 10 and that any delays in submissions could significantly extend the approval process. LVMH's response was noncommittal, stating that LVMH was "aware of COFECE's vacation schedule" but that it intended to request the extension anyway. On June 24, LVMH finally provided Tiffany with a draft response to COFECE's second RFI received almost a month earlier on May 27. Tiffany promptly provided its comments over the next two days and followed up again on June 29 to press LVMH to respond to COFECE's second RFI by the end of June 2020. On July 8—having ignored Tiffany's requests that the submissions be completed by the end of June—LVMH's counsel circulated a revised draft response to COFECE's May 27 RFI. Tiffany's counsel provided its comments the following day, and followed up again on July 10. LVMH finally submitted the



response to COFECE's second RFI on July 10, more than six weeks after receiving the RFI and three weeks after COFECE's initial deadline for the response.

161. Tiffany's counsel has continued to urge LVMH's counsel to press forward in obtaining antitrust clearance as promptly as practicable. After COFECE asked follow-up questions about the second RFI response (mostly as a result of LVMH's failure to address fully some of the questions in the second RFI), LVMH's counsel told Tiffany's counsel during a July 28, 2020 call that LVMH did not plan to respond to those follow-up questions until after the COFECE vacation period ended on August 10 "or shortly thereafter." Tiffany's counsel asked to see the draft response and pushed LVMH's counsel to agree that the response would be submitted by August 11, the day after the vacation period ended. LVMH's counsel repeatedly refused to make any commitment to a submission date, stating that although there were "no reasons now" why they could not file by August 11, they "need[ed] to keep [their] options open." LVMH's counsel added that an August 11 submission "may not be possible for reasons that may come up but we are not currently aware of," and refused even to set a date for providing a draft response to Tiffany, stating only that they would "do our best and send when we feel it's ready for your review." When Tiffany's counsel noted that "it feels that we cannot pin down dates for any of this," LVMH's counsel responded candidly: "We have been trying to pin down dates at

your request for the past 5 months and we have failed. And you are still trying to pin down dates. Look at the irrelevance of your tracker that you requested.”

162. After significant pressure from Tiffany’s counsel, LVMH finally responded to COFECE’s follow-up questions on August 12 and 25. After additional discussions with the parties, COFECE confirmed on August 25, 2020—more than nine months after the parties signed the Merger Agreement and one day after the initial Outside Date set for the transaction—that it considered the file to be complete. As a direct result of LVMH’s concerted effort to delay and stall at every turn, the parties continue to await antitrust clearance in Mexico.

**F. After the LVMH Board and Bernard Arnault Decide to Reconsider the Merger, LVMH Abandons All Pretense of Cooperation and Embarks on an Information-Gathering Campaign in a Bad-Faith Attempt to Manufacture a Claim of Breach by Tiffany.**

163. Almost immediately after signing the Merger Agreement, Tiffany and LVMH began a free-flowing and extensive exchange of information in furtherance of their—at the time—jointly shared goal of promptly closing the transaction and integrating the two companies’ businesses. That close collaboration included an in-person meeting between senior management of Tiffany and LVMH (including Bernard Arnault), routine meetings and calls among senior management, the establishment of numerous working groups across different business units and, once the COVID-19 pandemic began to spread globally, weekly emails from Tiffany’s CEO to LVMH’s management regarding business operations and Tiffany’s response

to the pandemic. For more than six months, LVMH insisted upon, and appeared satisfied by, these channels of communication among business executives and the information Tiffany was providing.

164. LVMH's approach to these communications changed dramatically in May and June 2020, as Bernard Arnault asked his advisors to search for ways out of the Merger Agreement and LVMH's Board directed management to try to escape or renegotiate the Merger Agreement. In May 2020, LVMH's Managing Director and Board member, Antonio Belloni, cut off all communications with Tiffany's CEO. On June 2, 2020—the same day as LVMH's Board meeting—Antonio Belloni also cut off communications with Tiffany's Chairman. This corporate cold shoulder was part of LVMH's new corporate strategy of seeking an escape from the Merger Agreement. LVMH's abrupt change of tactics included backing away from the parties' cooperative communications in favor of a pretextual letter-writing campaign by LVMH's General Counsel repeatedly demanding that Tiffany produce immediately vast swaths of information on a broad set of topics.

165. LVMH's General Counsel sent these requests to Tiffany's General Counsel under the guise of Section 7.5 of the Merger Agreement, which provides that LVMH may reasonably request access to information concerning Tiffany's "businesses, properties and assets . . . and personnel." Ex. 1, § 7.5(c). Under the parties' Confidentiality Agreement, however, LVMH is permitted to use any such

information from Tiffany only to evaluate, negotiate and implement the transaction—not to manufacture a claim of breach by Tiffany that LVMH could attempt to use to escape the merger or renegotiate the merger price. Even though much of the information that LVMH has requested since May 2020 is entirely irrelevant to the process of closing the transaction or integrating the two companies, Tiffany has, in the interest of transparency and cooperation, provided LVMH with everything to which LVMH is entitled under the Merger Agreement (and much more).

166. The nature of LVMH’s questions, the frequency with which LVMH’s General Counsel sent these demands and LVMH’s continuing refusal to engage with Tiffany business insiders on these subjects despite Tiffany’s repeated suggestions to schedule such discussions made clear that LVMH was not simply planning for the eventual integration of the two businesses. Rather, LVMH’s true goal was obvious: at the same time that LVMH was claiming that COVID-19 prevented it from gathering critical information or making any meaningful progress on the antitrust-clearance process, LVMH was busy compiling exhaustive information requests seeking reams of information from Tiffany that LVMH transparently hoped to use to conjure up a breach by Tiffany. Despite the COVID-19 pandemic, Tiffany simultaneously responded to regulatory inquiries and LVMH’s contrived information requests without delay.

167. LVMH sent the first of these requests on May 29, 2020, demanding that Tiffany provide “on an expedited basis,” but “no later than close of business on June 2, 2020”—*i.e.*, the same day as the LVMH Board meeting—detailed information about Tiffany’s outstanding credit facilities and other indebtedness. LVMH claimed—falsely—that its “concerns” were “heightened by recent market rumors that there may be issues” related to certain of Tiffany’s debt, and asserted that any non-compliance by Tiffany would “mak[e] it extremely challenging for our companies to coordinate and move forward cooperatively.” LVMH’s request revealed that LVMH was operating under a distinct misimpression that Tiffany’s drawdown against its credit facilities might provide LVMH an out under the Merger Agreement. Not so. The Merger Agreement explicitly allows Tiffany to make “drawdowns or prepayments” under certain pre-existing agreements of which LVMH was already aware “or borrowings under the Company’s existing commercial paper program and letters of credit in the Ordinary Course of Business.” Ex. 1, § 7(a)(ix).

168. Tiffany responded to LVMH’s first letter two days later on May 31, 2020, providing the information that LVMH had requested. Tiffany explained that it was in compliance with all of its covenants under the debt agreements and credit facilities and that, as a precautionary measure, Tiffany was in the process of negotiating amendments to certain covenants of those facilities to maximize

flexibility. All of these amendments were permitted (without LVMH's consent) under the Merger Agreement.

169. LVMH's May 29 letter was merely the opening salvo in this information-gathering campaign. It quickly was followed by a bevy of similar letters purporting to rely on Section 7.5 of the Merger Agreement to demand a mass of information about Tiffany's ongoing operations, desperately searching for any leverage to use against Tiffany or a way out of the transaction, to no avail.

170. On June 2, 2020, the same day that LVMH's Board discussed a desire to renegotiate the merger and acquire Tiffany at a lower price, LVMH sent its second sweeping information demand. LVMH's June 2 letter cited the same pretextual concerns—"the pandemic and the current protests and civil unrest in many cities across the United States"—and attached a list of 24 detailed requests seeking information broadly related to Tiffany's consolidated financial condition, its operations in light of the pandemic and the social-justice protests, and its contracts, leases and lending arrangements.

171. While LVMH sought reams of information from Tiffany for its own self-serving and inappropriate goal of evading its contractual obligations, LVMH continued to profess to be utterly incapable of assembling even the most rudimentary information about its own businesses to advance, as was its contractual obligation, the antitrust-clearance processes. Rather than devoting its attention—as the Merger

Agreement requires—to responding to RFIs and obtaining as promptly as practicable all clearances, including in the EU, Taiwan, Japan and Mexico, LVMH focused its efforts on compiling information requests designed for no purpose other than to seek in bad faith a way out of the Merger Agreement.

172. On June 5, 2020, LVMH sent Tiffany a third set of information demands, this one seeking extensive information and materials relating to Tiffany’s credit facilities. Tiffany responded to this third request four days later with the information and documents that LVMH had demanded.

173. On June 15, 2020, Tiffany provided its comprehensive response to LVMH’s second information request, together with 51 pages of annexes. Tiffany also offered to schedule calls with LVMH to discuss any of the issues that LVMH had raised. LVMH did not take Tiffany up on that offer.

174. On July 6, 2020, LVMH sent Tiffany its fourth sweeping request for information, feigning interest in a “dramatic upsurge of COVID-19 cases in many states across the U.S.” and seeking granular information about, among other things, Tiffany’s overall management plan, Tiffany’s sales and other financial metrics for stores in an LVMH-defined set of “Affected States,” and changes to store operation procedures.

175. Three days later, on July 9, 2020, LVMH sent a fifth request for information seeking various minutiae regarding, among other things: (i) temporary

closures of individual stores, including whether each store closure was in response to government edict or law; (ii) any “new undisclosed liabilities, *regardless* of whether they have had, or would reasonably be expected to result in, a Material Adverse Effect” (emphasis added); and (iii) hypothetical breaches of certain contracts, with the bizarre request that Tiffany include in its response any such hypothetical breaches regardless of whether Tiffany was aware of them. Each of these information requests was an obvious attempt by LVMH to probe for material that might possibly qualify as an MAE or otherwise allow LVMH to assert that Tiffany had breached the Merger Agreement.

176. On July 17 and 20, Tiffany responded to LVMH’s fourth and fifth requests, providing more than 170 pages of annexes. Tiffany again offered to organize calls among the subject-matter experts. LVMH again declined to take Tiffany up on that offer.

177. On August 3 and 5, 2020, LVMH sent two more formal information requests—their sixth and seventh such requests since May 29—seeking additional store-level information about Tiffany’s operations, updated information about Tiffany’s financial performance and projections, and granular information about Tiffany’s credit facilities and other transactions. On August 13 and 15, Tiffany promptly responded to both sets of requests and again offered to organize calls



among the subject-matter experts. LVMH again declined to take Tiffany up on that offer.

178. LVMH's seriatim information requests were interposed in bad faith and in breach of the Merger Agreement. Section 7.5(a) allows only "reasonable" requests. LVMH's seven separate requests for information over a two-month period—all delivered outside of the integration-team process and obviously in furtherance of a desire to find a way to escape its obligations under the Merger Agreement—were plainly unreasonable. Further, LVMH's transparent plan to use the information provided to exert leverage over Tiffany violated the use restrictions in the parties' Confidentiality Agreement, which, as relevant here, requires LVMH to use such information only to implement the transaction. Ex. 1, § 7.5(c). Any doubts as to LVMH's lack of sincerity were dispelled when LVMH repeatedly ignored Tiffany's proposals to arrange calls between subject-matter experts from the parties to provide further information regarding the topics in LVMH's letters.

179. While bombarding Tiffany with irrelevant and improper information requests, LVMH persistently evaded Tiffany's good-faith requests for LVMH's consent to various business decisions. After initially insisting for months that Tiffany include LVMH in important decisions regardless of whether LVMH's consent technically was required under the Merger Agreement, LVMH began delaying its responses to Tiffany's consent requests as part of LVMH's broader

strategy shift. LVMH's stonewalling was followed by a declaration in a June 20, 2020 letter from LVMH's General Counsel that LVMH would no longer respond to consent requests unless Tiffany represented that the requests "actually require LVMH's consent under the Merger Agreement." In an obvious attempt to manufacture a future claim that some Tiffany action required but lacked LVMH's consent, LVMH stated that Tiffany alone "must exercise its own judgement to determine whether LVMH's consent is contractually required." This was not the behavior of an acquirer acting in good faith to prepare for post-closing integration.

**G. LVMH Has Breached the Merger Agreement by Failing to Respond to Requests for Information and File Formal Merger-Clearance Applications as Promptly as Practicable.**

180. In the Merger Agreement, the parties agreed that Tiffany will bear little or no antitrust risk with respect to the transaction. As an experienced acquirer, LVMH carefully considered the antitrust risk before signing the Merger Agreement. In negotiating the transaction with Tiffany, LVMH stressed from the outset that the deal posed no antitrust risk, and the deal sailed through the United States antitrust-clearance process nearly seven months ago. On top of that, Tiffany secured LVMH's agreement to a robust hell-or-high-water clause that requires LVMH to take any remedial measures necessary to obtain the required antitrust clearances *before* the Outside Date. Under this clause, LVMH is required to accept any conditions to closing imposed by any antitrust authority anywhere in the world. Given that both

parties agreed that there was no prospect that any antitrust regulator would flatly refuse to approve the transaction, Tiffany thus faced zero antitrust risk so long as LVMH sought and received a response from antitrust authorities at any point between signing and the Outside Date. Faced with these facts, LVMH did the only thing it could to avoid closing the transaction: notwithstanding its obligation to proceed as promptly as practicable, LVMH has dragged its feet since mid-March in making the required filings in the EU, Taiwan and Japan and in responding to information requests in Mexico. The lack of approval from these regulators is the direct result of LVMH's failure, despite nonstop prodding from Tiffany's counsel, to "do or cause to be done all things, necessary or advisable" to obtain the required regulatory approvals in good faith and "as promptly as practicable."

181. In its effort to avoid at all costs the closing of the merger as promptly as practicable, LVMH has breached the Merger Agreement and the Confidentiality Agreement in numerous other respects, including, among other things, (i) pursuing a regulatory strategy designed to benefit LVMH in future acquisitions; (ii) failing to cooperate with Tiffany and clear in advance all regulatory and governmental communications with Tiffany; (iii) interposing pretextual and unauthorized information requests deployed for improper purposes; and (iv) leaking or otherwise disclosing information concerning the merger in furtherance of LVMH's campaign to seek to renegotiate the merger price.

182. As of the date of this Complaint, more than nine months have passed since the parties signed the Merger Agreement, and LVMH still has not *requested* antitrust approval in the EU and Taiwan, and the parties still are awaiting approval in Japan and Mexico. These delays are particularly glaring given that no regulator anywhere in the world has identified any substantive antitrust concerns about the transaction.

183. As a result of LVMH's campaign of delay, this transaction has lagged significantly behind other similarly sized transactions announced since the beginning of the fourth quarter of 2019, all of which already have formally filed with the EC notwithstanding the pandemic. LVMH's stalling and delay tactics constitute a clear breach of LVMH's obligations under the Merger Agreement.

**1. LVMH's Delay in Filing Formal Merger Notifications More Than Nine Months After Signing Is Inexcusable.**

184. To date, no regulator has raised any substantive concerns about the transaction. Indeed, in most jurisdictions (particularly those where LVMH had made substantial progress before mid-March), the transaction already has received prompt clearances, without even a suggestion of any complications. For example, LVMH filed the final notification with the United States regulators in January 2020 and received the go-ahead on February 3, 2020, and the transaction also has received final clearance without any concerns being expressed in Australia, Canada, China, South Korea and Russia. These rapid clearances, especially in the midst of the

COVID-19 pandemic, confirm LVMH's view from the outset that antitrust approval is not a stumbling block for this transaction (and would not be a stumbling block but for LVMH's deliberate efforts to make it one by delaying as much as humanly possible necessary filings).

185. The EC has not raised any substantive concerns about the transaction or suggested that any divestiture or similar remedy may be required, but instead has asked only targeted questions that seem focused on ensuring a comprehensive filing while avoiding burdening the parties with disproportionate requests (such as exhaustive internal document productions). The reviewing authorities in Taiwan, Japan and Mexico similarly have not expressed a single concern about the transaction. The lack of any substantive concerns from the four remaining jurisdictions that have not cleared the merger undermines any argument LVMH might make to justify its delay in filing for antitrust approval in the EU and Taiwan and in responding to requests for information in Japan and Mexico.

**2. LVMH's Continued Delay More Than Nine Months After Signing Stands in Stark Contrast to the Progress Made in Other Transactions.**

186. LVMH's extraordinary delay also is indefensible when compared to the progress in other M&A transactions announced since the beginning of the fourth quarter of 2019, or to the speed of filings in other LVMH acquisitions or other acquisitions involving LVMH's antitrust counsel at Cleary.

187. As set forth in Figure 1 below, LVMH’s tardiness is pronounced when compared to the ten largest M&A transactions announced since the beginning of the fourth quarter of 2019, some of which are known to have raised serious antitrust concerns. Among these transactions, LVMH’s acquisition of Tiffany is *the only one in which the parties have not yet filed with the EC*.

**Figure 1: Ten Largest M&A Transactions Announced Since Q4 of 2019**

<b>Parties</b>	<b>Transaction Size (USD)</b>	<b>Signing Date (estimate)</b>	<b>EC Filing Date</b>
PSA/Fiat Chrysler	\$50 billion	October 31, 2019	May 8, 2020
Advent/Cinven/ Thyssenkrupp Elevator	\$18.7 billion	February 27, 2020	May 12, 2020
Hitachi/Honda Suppliers	\$17 billion	October 29, 2019	July 7, 2020
<b>LVMH/Tiffany</b>	<b>\$16.2 billion</b>	<b>November 24, 2019</b>	<b>N/A</b>
Hexcel/Woodward (ultimately abandoned)	\$6.4 billion	January 12, 2020	March 27, 2020
Alstom/Bombardier	\$6.3 billion	February 17, 2020	June 11, 2020
AMS/Osram	\$5.1 billion	December 6, 2019	May 29, 2020
Lone Star Funds/BASF Construction Chemicals	\$3.5 billion	December 21, 2019	June 22, 2020
LOV Group/Banijay/ESG	\$2.2 billion	October 26, 2019	May 25, 2020
Google/Fitbit	\$2.1 billion	November 1, 2019	June 15, 2020

188. LVMH’s delay is an outlier not only in comparison to other transactions announced since the beginning of the fourth quarter of 2019, but also in comparison to LVMH’s prior acquisitions. LVMH is a repeat player in the luxury acquisition market, and historically has moved quickly to complete the required antitrust filings. For example, LVMH announced its \$5.2 billion acquisition of jeweler Bulgari on March 7, 2011, and filed for EC antitrust approval *just two and a half months later*,

on May 24, 2011.<sup>26</sup> More recently, LVMH announced its \$3.2 billion acquisition of hospitality and leisure company Belmond Limited on December 14, 2018, and filed for EC antitrust approval *just three months later*, on March 15, 2019.<sup>27</sup> The speed with which LVMH acted in the first few months after signing the Merger Agreement before it slammed on the brakes, as well as LVMH’s own prior experience in filing approval applications in the EU, refutes LVMH’s repeated claim that the complexity of LVMH’s *Maison*-based corporate structure renders LVMH unable to respond to simple information requests on any kind of a reasonable timetable. When LVMH *wants* to move quickly to obtain antitrust approval, it can clearly do so—*Maisons* or no. In fact, LVMH has boasted about its ability to manage the challenges of the COVID-19 pandemic, stating that LVMH’s “executive committee meets much more

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<sup>26</sup> Press Release, LVMH, The Bulgari Family Joins Forces with LVMH and Transfers Its Majority Shareholding in Bulgari S.p.A. (Mar. 7, 2011), <https://www.lvmh.com/news-documents/press-releases/the-bulgari-family-joins-forces-with-lvmh-and-transfers-its-majority-shareholding-in-bulgari-s-p-a/>; Press Release, European Commission, Mergers: Commission Clears Acquisition of Bulgari by LVMH (June 30, 2011), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_819](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_819).

<sup>27</sup> Press Release, LVMH, LVMH Reaches an Agreement with Belmond to Increase Its Presence in the Ultimate Hospitality World (Dec. 14, 2018), <https://www.lvmh.com/news-documents/press-releases/lvmh-reaches-an-agreement-with-belmond-to-increase-its-presence-in-the-ultimate-hospitality-world/>; European Commission Case M.9278 (LVMH/Belmond), 2019 O.J. (C 140).

often than usual to ensure responsiveness and agility in a still very fluid situation” and specifically emphasizing that the same was true for LVMH’s *Maisons*.<sup>28</sup>

189. Although LVMH’s antitrust counsel at Cleary repeatedly has pointed to the COVID-19 pandemic as justification for its delay, Cleary’s other clients do not appear to have been so affected. As one recent example, Cleary (including at least one antitrust lawyer also representing LVMH) represented French train maker Alstom in its nearly \$7 billion acquisition of the rail business of Canadian firm Bombardier.<sup>29</sup> That deal was announced on February 17, 2020, and the EC was formally notified of the transaction on June 11, 2020, less than four months later.<sup>30</sup> In another example, Cleary has been acting as counsel for Google in its \$2.1 billion purchase of the fitness-tracking company Fitbit. That deal was announced on

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<sup>28</sup> Maria Silvia Sacchi, *Toni Belloni (Lvmh): la filiera della moda sostiene già la ripartenza*, L’ECONOMIA (Apr. 27, 2020), [https://www.corriere.it/economia/moda-business/20\\_aprile\\_27/toni-belloni-lvmh-filiera-moda-sostiene-gia-ripartenza-ec32e190-864c-11ea-9ac6-16666bda3d31.shtml](https://www.corriere.it/economia/moda-business/20_aprile_27/toni-belloni-lvmh-filiera-moda-sostiene-gia-ripartenza-ec32e190-864c-11ea-9ac6-16666bda3d31.shtml).

<sup>29</sup> Myriam Balezou, *Alstom to Buy Bombardier Train Unit for up to \$6.7 Billion*, BLOOMBERG (Feb. 17, 2020), <https://www.bloomberg.com/news/articles/2020-02-17/alstom-to-buy-bombardier-train-unit-for-up-to-6-7-billion>.

<sup>30</sup> Press Release, Alstom, *Acquisition of Bombardier Transportation: Accelerating Alstom’s Strategic Roadmap* (Feb. 17, 2020), <https://www.alstom.com/press-releases-news/2020/2/acquisition-bombardier-transportation-accelerating-alstoms-strategic>; Press Release, European Commission, *Mergers: Commission Clears Alstom’s Acquisition of Bombardier, Subject to Conditions* (July 31, 2020), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1437](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1437).



November 1, 2019, and the EC was formally notified of the transaction on June 15, 2020, less than eight months later.<sup>31</sup> Here, however, Cleary required more than three months simply to respond to the EC’s first RFIs and still has not formally notified the EC of the transaction more than nine months after the Merger Agreement was signed.

#### **H. Tiffany Has Not Experienced an MAE.**

190. LVMH’s correspondence with Tiffany—and LVMH’s Board discussions leaked to the press—reflect that LVMH has been intently focused on trying to find ways to use the COVID-19 pandemic and social-justice protests in the United States as excuses to renegotiate or even escape the Merger Agreement. But the impact of these events on Tiffany does not even come close to qualifying as an MAE under the Merger Agreement. Bernard Arnault announced at the outset of this transaction that LVMH’s acquisition of Tiffany was a “centuries”-long investment. His attempt to avoid LVMH’s obligation to close the deal based on a temporary industry decline is supported by nothing.

191. LVMH agreed to a narrowly defined MAE clause in the Merger Agreement that clearly excludes from the definition of MAE any effects from the

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<sup>31</sup> Foo Yun Chee, *EU Antitrust Regulators Set July 20 Deadline for Google, Fitbit Deal*, REUTERS (June 16, 2020), <https://www.reuters.com/article/us-fitbit-m-a-alphabet-eu/eu-antitrust-regulators-set-july-20-deadline-for-google-fitbit-deal-idUSKBN23N1ZL>.

COVID-19 pandemic and social-justice protests in the United States, except to the extent that those events have had a materially disproportionate adverse effect on Tiffany relative to the industries and geographical regions in which Tiffany operates. Tiffany has not experienced *any* disproportionate adverse effects from these events relative to the industries and geographical regions in which it operates, much less a *materially* disproportionate adverse effect.

192. Although temporary store closures caused by the COVID-19 pandemic had a substantial impact on Tiffany’s financial performance in its first fiscal quarter ended April 30, 2020, the effects of the pandemic on Tiffany’s business have not been significant in duration. After suffering a loss in its first fiscal quarter of 2020, Tiffany swung back to a profit in the second quarter and expects to see continuing financial improvement for the remainder of 2020 and beyond. More than 96% of Tiffany’s stores worldwide have reopened for business, and Tiffany’s e-commerce platform is outperforming expectations—in fact, Tiffany’s e-commerce sales for its second fiscal quarter of 2020 increased 123% over the prior year.<sup>32</sup>

193. As its more recent financial results make clear, Tiffany’s business is recovering more quickly than even Tiffany had projected just a few months ago. For example, Tiffany’s *actual* net sales in its second fiscal quarter of 2020 (May 1, 2020 through July 31, 2020) were more than 40% greater than Tiffany’s June 2020

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<sup>32</sup> Tiffany & Co., Quarterly Report (Form 10-Q), at 8 (Aug. 27, 2020).

projection for that same period. Tiffany’s latest forecasts similarly show a short-term impact from COVID-19, consistent with Tiffany’s rapid recoveries after other market shocks like the September 11 attacks and the 2008 financial crisis. Having already returned to profitability after just one quarter of loss, Tiffany’s most recent forecast—which has been shared with LVMH—projects that Tiffany’s net earnings and earnings per share for its fourth fiscal quarter of 2020 will be *greater than the same period in 2019*, demonstrating a rapid return to (and surpassing of) Tiffany’s pre-pandemic performance. Other LVMH-owned luxury brands have expressed similar views regarding the short-term impact of COVID-19. For instance, Jean-Christophe Babin, CEO of LVMH-owned luxury jeweler Bulgari, recently stated that he is “very bullish” for the third and fourth quarters and “confident that over a period of 24 months, we will have recovered most of what was lost during COVID,” and further advised the market that “[i]n our business, it’s never lost, it’s more postponed” and that the COVID-19 pandemic “doesn’t change our strategy an inch.”<sup>33</sup> The fact that Tiffany experienced just one quarter of loss, followed by what it expects to be just two quarters of lower-than-2019 profits before surpassing its

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<sup>33</sup> Mimoso Spencer, *supra* n.3; Francine Lacqua, Flavia Rotondi and Angelina Rascouet, *Bulgari CEO Expects to Recover Lost Sales Within Two Years*, BUSINESS OF FASHION (July 7, 2020), <https://www.businessoffashion.com/articles/news-analysis/bulgari-recover-sales-covid-19-jean-christophe-babin>.

pre-pandemic performance in the fourth quarter of 2020 cannot under any definition constitute an MAE.

194. Even if the COVID-19 pandemic's effects on Tiffany's financial performance were significant enough to qualify as an MAE (and they are not), the Merger Agreement explicitly carves out numerous categories of events from the definition of an MAE. These include "changes or conditions generally affecting the industries in which the Company and any of its Subsidiaries operates," "general economic or political conditions . . . in the United States or any foreign jurisdiction in which the Company or any of its subsidiaries operations," "any change in Law applicable to the Company's business," "geopolitical conditions" and "the outbreak or escalation of hostilities (including the Hong Kong protests and the 'Yellow Vest' movement)," except to the extent those events have "a materially disproportionate adverse effect" on Tiffany "*relative to the industries and geographies in which Tiffany operates.*" Ex. 1, § 1.1, pp. 9-10 (emphasis added).

195. The COVID-19 pandemic has affected all luxury-goods retailers, including LVMH itself. If anything, Tiffany's financial results compare favorably with those of other firms in that industry. For example, Tiffany's sales for the period April 1 through June 30, 2020 were down 43% year-over-year, less than the declines for luxury competitors Richemont (-47%) and Kering (-43.7%), and similar in

magnitude to LVMH's own decline in sales for that same period (-38%).<sup>34</sup> And since the beginning of June, Tiffany's performance has outstripped even its own projections.

196. LVMH also has tried to make hay out of the impact on Tiffany of the social-justice protests in the United States—examples of political unrest analogous to the Hong Kong protests and “Yellow Vest” movement that are expressly excluded from the MAE analysis under the Merger Agreement. LVMH has suggested that Tiffany's business is more exposed to the pandemic and those protests than other luxury retailers because Tiffany operates a United States-centric business. Under the Merger Agreement, however, the question is whether Tiffany's business has been materially disproportionately affected relative to others that operate in the same geographical region. There can be no claim that Tiffany has been disproportionately affected (much less materially disproportionately affected) by the pandemic and social-justice protests compared with other luxury-goods retailers in the United

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<sup>34</sup> Press Release, Richemont, Trading Update for the First Quarter Ended 30 June 2020 (July 16, 2020), [https://www.richemont.com/files/press/company\\_announcement\\_16072020\\_d83md762njds62.pdf](https://www.richemont.com/files/press/company_announcement_16072020_d83md762njds62.pdf); Press Release, Kering, Strong Resilience in Unprecedented Health Crisis – Solid Operating Margin (July 28, 2020), <https://keringcorporate.dam.kering.com/m/9938d265274a4cd/original/Press-release-2020-half-year-results-07-28-2020.pdf>; Press Release, LVMH, LVMH Shows Good Resilience in the First Half of 2020 (July 27, 2020), <https://www.lvmh.com/news-documents/press-releases/lvmh-shows-good-resilience-in-the-first-half-of-2020/>; Tiffany sales figures exclude wholesale diamond sales and royalties from Coty (fragrance) and eyewear lines.

States—including LVMH. Indeed, Tiffany believes that recent protests may have affected Tiffany even less than they affected LVMH,<sup>35</sup> as very few Tiffany stores were victimized by looting and most of the damage was covered by insurance. Most of Tiffany’s U.S. stores that closed due to protest activity were closed for less than a week, and every store that was closed in response to protest activity has re-opened.

197. Given Tiffany’s resilient performance in the face of the COVID-19 pandemic and other events, there has not been a material adverse effect on Tiffany’s business, much less an MAE as that term is narrowly defined in the Merger Agreement. LVMH’s suggestion that it has the ability to reject Tiffany’s extension of the Outside Date and declare an MAE as of August 24, 2020 is baseless for another reason. Under the Merger Agreement, the question of whether an MAE has occurred is tested only in connection with closing, not months earlier as part of an effort to extract a price cut.

**I. Tiffany Has Complied in All Material Respects with the Operating Covenants in the Merger Agreement.**

198. Despite facing significant uncertainties stemming from the COVID-19 pandemic, Tiffany has complied in all material respects with the Interim Operating Covenants, which in relevant part require Tiffany to “conduct its business in all

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<sup>35</sup> Rosemary Feitelberg, *Chicago Retailers Lose ‘Millions’ in Looting*, WOMEN’S WEAR DAILY (Aug. 10, 2020), <https://wwd.com/business-news/business-features/chicago-luxury-stores-hardest-hit-by-looting-added-security-in-the-works-1203696804/>.

material respects in the Ordinary Course of Business.” Ex. 1, § 7.1. LVMH never suggested otherwise, even after LVMH decided to change its corporate strategy and seek to renegotiate or renege on the Merger Agreement. LVMH raised this issue for the very first time on September 8, 2020 (without providing details) as part of a last-ditch effort to justify its unwillingness to comply with its contractual obligations.

199. Like other retailers, Tiffany has taken reasonable measures to manage its business and mitigate the effects of COVID-19. Tiffany has attempted to coordinate closely with LVMH on these efforts, including by discussing temporary store closures, real estate negotiations and personnel matters. In many cases, Tiffany has taken an identical approach to LVMH. Tiffany’s actions in the face of these events—for example, allowing employees to work from home where feasible and implementing sanitization protocols in its retail locations—are all commercially reasonable steps that other similarly situated companies are taking in the ordinary course of their businesses.

200. In response to the pandemic’s spread, Tiffany began to temporarily close large numbers of retail stores beginning in late January (in China) and continuing through late April (in Japan), and it has observed operational restrictions on certain stores after they reopened. These temporary store closures and other restrictions were implemented in accordance with applicable governmental guidance, laws and regulations, and in recognition of Tiffany’s obligation to

maintain safe and healthy facilities for its employees and customers. Moreover, these temporary store closures and other restrictions are not without precedent. Long before the COVID-19 pandemic, Tiffany developed health-and-safety guidance addressing various scenarios, including weather-related events, civil disorder and other circumstances requiring store closures or other activity restrictions. Tiffany's actions in modifying its operations in response to the COVID-19 pandemic were undertaken in the ordinary course of business, consistent with its pre-existing health-and-safety guidance, and also consistent with the global approaches of other similarly situated retail businesses, including LVMH itself. Tiffany also kept LVMH regularly informed of these changes, and LVMH did not raise any objections (or even attempt to engage with Tiffany on these changes, other than by asking questions designed to hunt for ways for LVMH to evade its obligations under the Merger Agreement).

201. Beyond temporary store closings, the other temporary changes implemented in response to the COVID-19 pandemic, such as implementing store sanitization procedures and requiring that personnel and customers wear face masks, are immaterial to Tiffany's overall business. By carefully managing its employees, business and vendors, Tiffany has not experienced any material supply-chain disruptions or difficulties as a result of the COVID-19 pandemic. Indeed, Tiffany's



production facilities already have resumed full operation, and Tiffany has begun increasing staffing in light of demand projections.

202. Tiffany also has maintained its strong financial position. Tiffany's cash on hand at the end of its second quarter (\$1.044 billion) was essentially unchanged from the prior quarter (\$1.059 billion), and has continued to increase, totaling \$1.170 billion as of the week ending August 21, 2020. Tiffany has maintained this strong cash position while continuing to declare and issue its regular quarterly dividends, as expressly permitted—and in fact, required—by the Merger Agreement. Ex. 1, § 7.1(a).

**J. The French Foreign Ministry's Letter to LVMH Does Not Provide a Basis for LVMH to Disregard Its Contractual Obligation to Close the Transaction.**

203. On September 8, 2020, during a telephone call that LVMH's Managing Director, Antonio Belloni, specifically requested with Tiffany's Chairman, Roger Farah, LVMH disclosed for the first time that it had received a letter from the French Ministry for Europe and Foreign Affairs on August 31, 2020. LVMH provided no explanation for its failure to share this letter with Tiffany for eight days and to date has refused to even provide Tiffany with a copy of the letter.

204. According to a purported English translation provided by LVMH, the letter states that the French Ministry for Europe and Foreign Affairs is opposed to certain tariffs on French goods that the U.S. government announced on July 10, 2020

(but deferred until January 6, 2021). As part of the Ministry's analysis of the impact of those tariffs on French investments, the French Secretary of State's "attention was drawn to" LVMH's "pending acquisition of Tiffany." Appealing to LVMH's patriotism as a French company, the letter states that LVMH "should defer the closing of the pending Tiffany transaction until January 6, 2021" to support France's intention to "take measures in order to dissuade the American authorities from putting these tariff sanctions into effect."

205. During this September 8 call, Belloni disclosed that LVMH had been considering the French Foreign Ministry's letter for several days, and that Bernard Arnault already had met with the French Secretary of State to discuss the issues raised in the letter. LVMH's actions are clear breaches of LVMH's obligations under the Merger Agreement to keep Tiffany apprised of the status of matters relating to the completion of the transaction, to promptly provide Tiffany with copies of material communications from governmental entities regarding the transaction and to consult with Tiffany and consider in good faith Tiffany's views before making any decisions regarding regulatory strategy or meeting with any governmental authorities regarding any inquiries concerning the transaction. Ex. 1, § 7.3(b)(iii).

206. Belloni also added that LVMH's Board had met to discuss the French Foreign Ministry's letter and other issues related to the pending Tiffany acquisition, including that Tiffany had not acquiesced to LVMH's recent efforts to renegotiate

the merger price. Belloni stated that LVMH continued to believe that an MAE had occurred (notwithstanding Tiffany's strong financial performance in its most recently completed fiscal quarter and its current quarter to date) and—for the first time—expressed the view that Tiffany has not operated its business in accordance with the Merger Agreement. Despite Farah's requests, Belloni refused to provide any details to support either position.

207. Belloni further informed Farah that (i) LVMH intends to comply with the French Foreign Ministry's request that LVMH refuse to close the transaction before January 6, 2021; and (ii) LVMH is not willing to extend the Outside Date beyond November 24, 2020. In essence, Belloni made clear that LVMH is unwilling to comply with its obligations under the Merger Agreement.

208. The French Foreign Ministry Letter does not provide a basis for LVMH to refuse to close the transaction in accordance with the Merger Agreement. Section 8.1(c) of the Merger Agreement sets forth the limited circumstances in which action by a governmental entity can excuse a party's obligation to complete the transaction. That section provides, in relevant part, that a party need not close if a governmental entity has issued an "Order . . . that is in effect and enjoins, prevents or otherwise prohibits, materially restrains or materially impairs or makes unlawful consummation of the transactions contemplated by this Agreement (a 'Legal Restraint')." Ex. 1, § 8.1(c). Section 9.2(c) of the Merger Agreement further

provides that, for a party to seek to terminate the Merger Agreement on the basis of such a Legal Restraint, the restraint must “be in effect and shall have permanently restrained, enjoined or otherwise prohibited the consummation of the Merger and such Legal Restraint shall have become final and non-appealable.” *Id.*, § 9.2(c)). Section 9.2(c) also makes clear that this termination option is not available to any party “that has breached . . . in any material respect its obligations set forth in this Agreement in any manner than shall have been the principal cause of, or directly resulted in the issuance of such final, non-appealable Legal Restraint.” *Id.*

209. The French Foreign Ministry’s request does not come close to qualifying as a “final and non-appealable” Legal Restraint prohibiting LVMH from completing the acquisition. Moreover, the parties already would have closed the transaction this summer were it not for LVMH’s breach of its obligation to secure antitrust clearances as promptly as practicable.

210. LVMH’s actions surrounding its disclosure of the French Foreign Ministry’s letter further confirm that LVMH is not acting in good faith to comply with the Merger Agreement. LVMH’s unexplained delay in disclosing the existence of the French Foreign Ministry’s letter is consistent with LVMH’s pattern of delay and obfuscation, and LVMH’s unilateral and entirely improper contact with the French government represents a further escalation of LVMH’s stalling tactics and a breach of its obligations under the Merger Agreement.

**K. LVMH's Failure to Complete the Transaction Would Cause Irreparable Harm to Tiffany.**

211. Tiffany will suffer irreparable harm absent intervention by this Court. While Tiffany recognizes (and has itself experienced) the disruptions caused by the COVID-19 pandemic, LVMH's delay tactics are a transparent attempt to give LVMH a termination right that does not exist in the Merger Agreement. At the direction of billionaire Bernard Arnault, one of the richest persons in the world, LVMH is trying to take advantage of the pandemic and recent social-justice protests in the United States to strong-arm Tiffany into agreeing to a reduced merger price.

212. The parties agreed that specific performance would be available as a remedy to force both parties to perform their carefully negotiated obligations. Section 10.6 of the Merger Agreement provides that "each Party shall be entitled to seek to enforce specifically the terms and provisions of this Agreement and to obtain or to seek an injunction restraining any breach or violation or threatened breach or violation of the provisions of this Agreement."

213. Unless and until the transaction closes, Tiffany suffers daily harm. Tiffany's stockholders approved this transaction on an expedited basis with the expectation of receiving the agreed-upon consideration, to be paid upon the closing of the transaction. Tiffany also already has incurred—and continues to incur—significant costs in connection with the transaction and integration process, and its

employees and corporate strategy are suffering the effects of uncertainty about the transaction created by LVMH's tactics.

214. Tiffany has upheld a strong brand image for more than 180 years. Before LVMH's approach, Tiffany was not seen by the market as "for sale." Tiffany agreed to enter into the Merger Agreement with LVMH based on LVMH's representations and assurances about the certainty of the deal. A failure of the merger has the potential to affect Tiffany's stock price, and undervalue significantly the Tiffany brand going forward for investment or potential transactions with other companies.

**COUNT I**  
**(Breach of Contract and Specific Performance Against LVMH)**

215. Tiffany incorporates by reference all facts and allegations above as if fully set forth herein.

216. The Merger Agreement is a valid and binding contract between Tiffany and the LVMH Entities.

217. Tiffany has fully performed all of its obligations under the Merger Agreement.

218. LVMH has breached the Merger Agreement by, among other things, (i) failing to do or cause to be done all things, necessary or advisable to obtain the required antitrust clearances as promptly as practicable, and (ii) failing to carry out

its obligations under the Merger Agreement in good faith and in a manner designed to ensure Tiffany received fairly the benefits of its bargain.

219. The Merger Agreement provides that “irreparable harm would occur in the event that the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached or threatened to be breached and for which money damages would not be an adequate remedy.” Ex. 1, § 10.6(a). The parties further agreed that “each Party shall be entitled to seek to enforce specifically the terms and provisions of [the] Agreement and to obtain or to seek an injunction restraining any breach or violation or threatened breach or violation of the provisions of [the] Agreement,” and both parties also “waive[d] the defense[] that there is an adequate remedy at law, and any right [they] may have to require the obtaining, furnishing or posting of any bond or similar instrument.” *Id.*

220. There is nothing inequitable about requiring LVMH to honor contractual obligations it willingly undertook. Accordingly, the balance of equities weighs decidedly in Tiffany’s favor.

221. Tiffany has no adequate remedy at law.

222. If this Court determines that Tiffany is not entitled to specific performance of LVMH’s obligation to consummate the transaction in accordance with the Merger Agreement, Tiffany is entitled to an award of damages in an amount to be determined at trial.

**COUNT II**  
**(Declaratory Judgment)**

223. Tiffany incorporates by reference all facts and allegations above as if fully set forth herein.

224. This Court has authority to issue a declaratory judgment under 10 *Del. C.* § 6501.

225. A valid and justiciable controversy exists between Tiffany and LVMH because LVMH has (i) failed to perform its obligations under the Merger Agreement and (ii) taken the position that Tiffany does not have the right to extend the Outside Date under the Merger Agreement because an MAE supposedly has occurred, thus purportedly giving LVMH the right to terminate the Merger Agreement.

226. Accordingly, Tiffany seeks a declaration from this Court that:

- a. LVMH has breached its obligations under the Merger Agreement, including its obligations (i) to do or cause to be done all things, necessary or advisable to obtain all required antitrust clearances for the transaction as promptly as practicable, and (ii) to perform fairly and in good faith its contractual obligations;
- b. Tiffany has validly extended the Outside Date under the Merger Agreement until November 24, 2020;
- c. no MAE has occurred;



- d. Tiffany has complied in all material respects with its obligations and covenants under the Merger Agreement;
- e. The French Foreign Ministry's letter does not relieve LVMH of its obligation to close the transaction in accordance with the Merger Agreement; and
- f. LVMH has no right to terminate the Merger Agreement at the Outside Date and is not excused from performing its obligations under the Merger Agreement.

**PRAYER FOR RELIEF**

WHEREFORE, Tiffany respectfully requests that this Court enter judgment in its favor and further enter an order:

- A. compelling LVMH to specifically perform its obligations under the Merger Agreement, including making all necessary antitrust filings with and/or responding to all requests for information from the European Commission, Taiwan, Japan and Mexico and taking all other actions necessary to obtain antitrust clearance for the transaction in those four jurisdictions as promptly as practicable and thereafter to close the transaction;
- B. in the alternative, awarding damages (including pre-judgment and post-judgment interest thereon) to Tiffany in an amount to be determined at

trial, to the extent that specific performance is unavailable and damages are deemed appropriate;

- C. prohibiting LVMH from terminating the Merger Agreement following the Outside Date;
- D. rendering the declaratory judgment requested above; and
- E. awarding costs, attorneys' fees and other relief the Court deems appropriate.

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Dated: September 9, 2020