

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UMB BANK, N.A., solely in its capacity as Trustee under the Contingent Value Rights Agreement by and between Bristol-Myers Squibb Company and Equiniti Trust Company, dated November 20, 2019,

Plaintiff,

v.

BRISTOL-MYERS SQUIBB COMPANY,

Defendant.

Case No. 1:21 Civ. 4897 (JMF)

**DECLARATION OF MICHAEL DUKE
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

I, MICHAEL DUKE, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an associate at the law firm of Selendy & Gay PLLC (“Selendy & Gay”), counsel for Plaintiff UMB Bank, N.A., in its capacity as Trustee under the Contingent Value Rights Agreement by and between Bristol-Myers Squibb Company and Equiniti Trust Company, dated November 20, 2019, and am a member in good standing of the bar of New York and this Court. I respectfully submit this declaration in support of Plaintiff’s Opposition to Defendant’s Motion to Dismiss. The facts set forth herein are based on my personal knowledge and/or information obtained in consultation with others at Selendy & Gay PLLC that I believe to be true and correct.

2. Attached as Exhibit 1 is a true and correct copy of the Indenture among U.S. Timberlands Klamath Falls, LLC, U.S. Timberlands Finance Corp., and State Street Bank and Trust Company, as trustee, dated November 19, 1997, as filed on the docket in Delaware Court of Chancery in *U.S. Bank National Association v. U.S. Timberlands Klamath Falls LLC*, C.A. No. 112-N, on December 12, 2003.

3. Attached as Exhibit 2 is the 8% Cash Pay Notes Indenture among Mariposa Merger Sub LLC, Mariposa Borrower, Inc., and U.S. Bank National Association, as trustee, dated October 21, 2013 (the “Cash Pay Notes Indenture”), as filed on the docket in New York Supreme Court,

County of New York in *UMB Bank, N.A. v. Neiman Marcus Group Inc.*, Index No. 654509/2019 (“*UMB Bank v. Neiman Marcus*”), on August 8, 2019.

4. Attached as Exhibit 3 is the First Supplemental Cash Pay Notes Indenture, as filed on the docket in *UMB Bank v. Neiman Marcus* on August 8, 2019.

5. Attached as Exhibit 4 is the Second Supplemental Cash Pay Notes Indenture, as filed on the docket in *UMB Bank v. Neiman Marcus* on August 8, 2019.

6. Attached as Exhibit 5 is the PIK Notes Indenture, among Mariposa Merger Sub LLC, Mariposa Borrower, Inc., and U.S. Bank National Association, as trustee, dated October 21, 2013 (the “PIK Notes Indenture”), as filed on the docket in *UMB Bank v. Neiman Marcus* on August 8, 2019.

7. Attached as Exhibit 6 is the First Supplemental PIK Notes Indenture, as filed on the docket in *UMB Bank v. Neiman Marcus* on August 8, 2019.

8. Attached as Exhibit 7 is the Second Supplemental PIK Notes Indenture, as filed on the docket in *UMB Bank v. Neiman Marcus* on August 8, 2019.

For each of the foregoing exhibits, to avoid confusion, I have omitted the original exhibit cover sheets.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2021, in New York, New York.

/s/ Michael Duke

Michael Duke

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record have been served with copies of the foregoing Declaration of Michael Duke in Support of the Opposition to Defendant's Motion to Dismiss, and the exhibits attached hereto, filed through the CM/ECF system, this 14th day of September, 2021.

/s/ Michael Duke

Michael Duke