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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,  
HAREBRAINED HOLDINGS, INC.,  
JORDAN WEISMAN, PIRANHA GAMES  
INC. and DOES 1–10,

Defendants.

CASE NO.

COMPLAINT

Plaintiff Harmony Gold U.S.A., Inc. (“Harmony Gold”) alleges as follows:

**PARTIES**

1. Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.
2. Defendant Harebrained Schemes LLC is a limited liability company formed under the laws of the State of Washington with its principal place of business in Kirkland, Washington.
3. Defendant Harebrained Holdings, Inc., is a corporation formed under the laws of the State of Washington with its principal place of business in Bellevue, Washington. On information and belief, Harebrained Holdings, Inc., does business under the name Harebrained Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to collectively as “Harebrained Schemes”).

1 4. Defendant Jordan Weisman (“Weisman”) is an individual who, on information and  
2 belief, resides in Bellevue, Washington. On further information and belief, Weisman is the CEO  
3 and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained Holdings,  
4 Inc. Weisman is the moving, active and conscious force behind Harebrained Schemes; has  
5 directed and controlled the activities of Harebrained Schemes complained of herein; has  
6 participated in, assisted in and/or is responsible for the conduct alleged herein; and entered into  
7 the Settlement Agreement with Harmony Gold at issue in the breach-of-contract claim set forth  
8 in this Complaint.

9 5. Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under  
10 the laws of British Columbia, Canada, with its principal place of business in Vancouver, British  
11 Columbia, Canada.

12 6. On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are  
13 individuals and business entities who have participated or assisted in the conduct alleged herein  
14 or are otherwise responsible therefor. The identities of these Doe Defendants presently are not  
15 and cannot be known to Harmony Gold, but these persons and/or entities will be added as named  
16 defendants to this action as and when they are identified (collectively, Harebrained Schemes  
17 LLC, Harebrained Holdings, Inc., Weisman, Piranha Games and the Doe Defendants are referred  
18 to herein as “Defendants”).

#### **JURISDICTION AND VENUE**

19  
20 7. This Court has jurisdiction because (i) this action arises under the Copyright Act,  
21 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331 and  
22 1338(a); and (ii) this is an action between citizens of different states in which the value of the  
23 amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest  
24 and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the  
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1 Washington State common law claim is conferred in accordance with the principles of  
2 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

3 8. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) in that Defendants  
4 Harebrained Schemes LLC, Harebrained Holdings, Inc., and Weisman reside in this judicial  
5 district. Venue is proper under 28 U.S.C. § 1391(c)(3) in that Defendant Piranha Games is a  
6 foreign resident based in Vancouver, British Columbia, Canada, and on information and belief  
7 there is no other judicial district in which venue would be more appropriate. Venue is also proper  
8 under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the  
9 claims herein occurred in this judicial district.

10 **FACTS**

11 **Harmony Gold and the History of “Robotech”**

12 9. This case involves animated giant warrior robots. In about 1980, Japan-based  
13 Tatsunoko Production Company, Ltd. (“Tatsunoko”), created a series of original warrior robots  
14 and incorporated them into an animated television series in Japan named “Macross.” Tatsunoko  
15 was the exclusive owner and producer of the Macross television series in Japan.

16 10. In the 1980s, Tatsunoko produced two additional animated television series in  
17 Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern Cross”—  
18 for which it was also the exclusive owner in Japan.

19 11. In 1984, Tatsunoko granted entertainment production company Harmony Gold an  
20 exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a television  
21 series in the United States, which Harmony Gold named “Robotech.” In 1985, the first of 85  
22 episodes of the Harmony Gold-produced Robotech animated series aired in the United States.  
23 (Hereinafter, all of Harmony Gold’s Macross, Mospeada, The Southern Cross and Robotech  
24 shows, characters, products and derivative works are referred to as “Robotech.”)  
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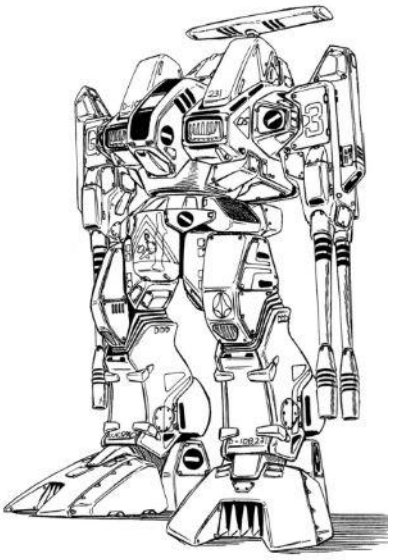
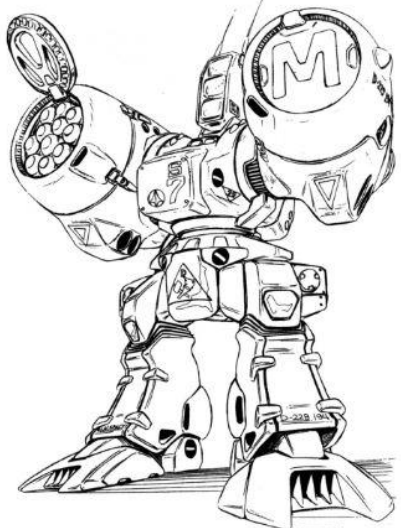
1           12.     Tatsunoko also granted Harmony Gold an exclusive license to market in the  
2 United States products incorporating Robotech warrior robots, such as books, toys, video games,  
3 films, comic books and apparel. Harmony Gold possesses this exclusive license to this day.

4           13.     Harmony Gold and Tatsunoko are owners of a large portfolio of United States  
5 Copyright Registrations for animated programs, books, comic books and other materials  
6 incorporating images of the Robotech warrior robots, including the following:

- 7           •     “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date
- 8           •     “Mospeada” (PAu 740,321); March 28, 1985 registration date
- 9           •     “Southern Cross” (PAu 740,322); March 28, 1985 registration date
- 10          •     “Macross” (PAu 740,323); March 28, 1985 registration date
- 11          •     “Robotech” (PA 260,432); August 22, 1985 registration date
- 12          •     “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date
- 13          •     “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11, 1987  
14 registration date
- 15          •     “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date

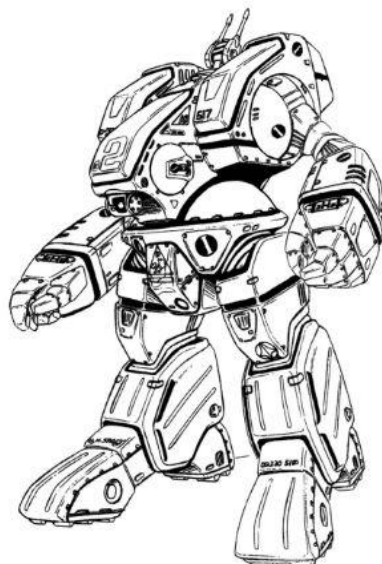
16 The certificates for these registrations are attached as Exhibit A.

17           14.     The warrior robots depicted in the Robotech copyright registrations owned by  
18 Harmony Gold include, but are not limited to, the following:

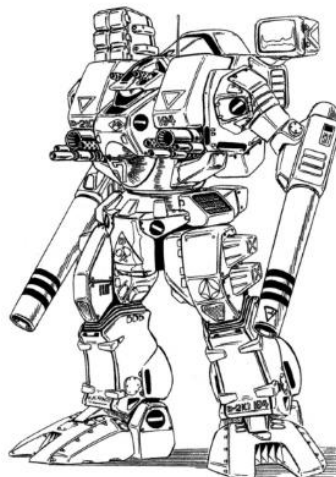
Robotech Warrior Robot Name	Robotech Warrior Robot Image
1 2 3 4 5 Armored Valkyrie 6 7 8	
9 10 11 12 13 Destroid Defender 14 15 16 17	
18 19 20 21 22 Destroid Phalanx 23 24 25	

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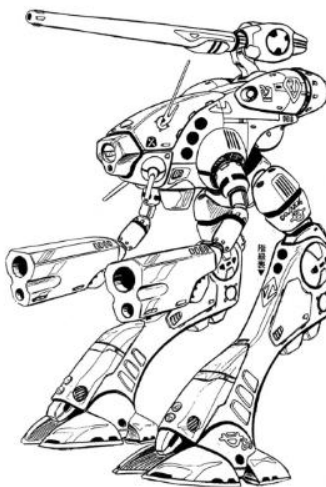
Destroid Spartan



Destroid Tomahawk



Officer's Pod (Glaug)

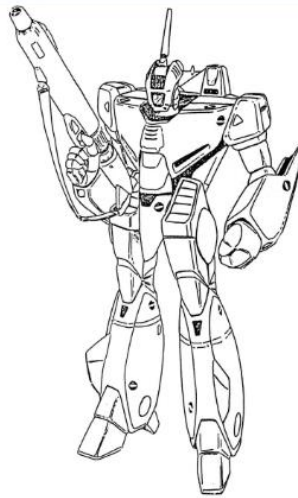


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Super Valkyrie



Valkyrie VF-1A



Valkyrie VF-1S



1 15. Harmony Gold has the exclusive right to make copies of, distribute, publicly  
2 perform, display and make derivative works of the Robotech warrior robots in the United States.

3 Harmony Gold's Prior Litigation Against Weisman

4 16. In 1995, Harmony Gold filed a copyright infringement and unfair competition  
5 complaint against FASA Corporation, which was owned by Weisman, and Virtual World  
6 Entertainment for infringement of the Robotech copyrights by the warrior robot designs in the  
7 defendants' "BattleTech" virtual reality computer games, role playing games, merchandise and a  
8 planned animated television series and toy line.

9 17. This prior litigation concluded when the parties agreed to a "Settlement  
10 Agreement and Mutual General Release" (the "Settlement Agreement"), which had an effective  
11 date of December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to a  
12 monetary payment, Weisman and his co-defendants agreed that they would not "make any use,  
13 and will not authorize [their] licensees to make any use, of the visual design images of the twelve  
14 (12) Battlemechs listed below except as provided in this agreement." These 12 "Battlemechs"  
15 include those detailed below in Paragraph 27, which presents side-by-side comparisons of  
16 Harebrained Schemes' and Weisman's current warrior robot designs and the corresponding  
17 Harmony Gold Robotech designs. Weisman also agreed to the entry of a permanent injunction  
18 and acknowledged that violating the use restriction would cause Harmony Gold "irreparable  
19 harm." Further, Weisman agreed that he would not "contest, nor [would he] assist any other  
20 person or entity in contesting, Harmony Gold's exclusive ownership worldwide, excluding  
21 Japan," of the Robotech merchandising rights. This Settlement Agreement is confidential, and  
22 therefore has not been attached to this Complaint.

23 Current Unauthorized Copying by Defendant Piranha Games

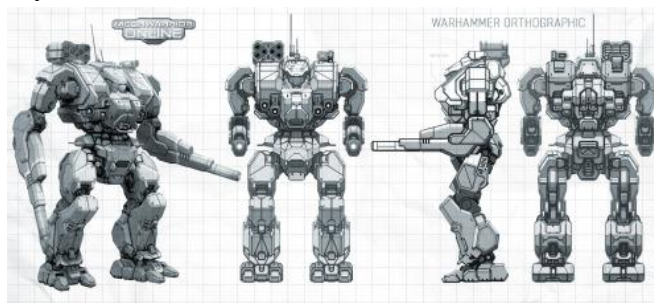
24 18. Defendant video game production company Piranha Games developed and  
25 distributes an online game named "MechWarrior Online" incorporating warrior robots, which it



1 calls “A BattleTech Game.” In April 2013, Piranha Games submitted a proposed design to  
2 Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion  
3 from Harmony Gold if this new design infringed Harmony Gold’s Robotech copyrights.  
4 Harmony Gold determined that Piranha Games’ design was derivative of its copyrighted  
5 Destroid Tomahawk warrior robot, and Harmony Gold’s outside counsel sent an e-mail to  
6 Piranha Games’ founder and president Russ Bullock informing him of that decision. On  
7 information and belief, Piranha Games never used this proposed 2013 design.


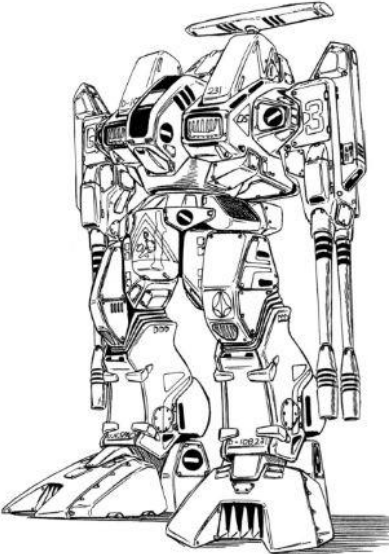
8 19. In May 2013, Mr. Bullock sent another proposed design for a MechWarrior  
9 Online warrior robot to Harmony Gold’s counsel. Harmony Gold determined that Piranha  
10 Games’ new design was derivative of Harmony Gold’s copyrighted Zentradei OBP warrior  
11 robot, and therefore infringed Harmony Gold’s registered copyrights. Harmony Gold’s counsel  
12 again informed Mr. Bullock of that determination via e-mail. On information and belief, Piranha  
13 Games never used this other proposed 2013 design.

14 20. In July 2016, Harmony Gold discovered infringing images that were derivative  
15 works of its Destroid Tomahawk warrior robot featured on the website of Catalyst Game Labs  
16 (“Catalyst”), a purveyor of board games. A blog post from Catalyst reads, “It’s been an absolute  
17 blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team)  
18 generating these lore vignettes.” The following image of the infringing robot warriors appeared  
19 on the blog post by Catalyst:



21. Harmony Gold’s counsel immediately e-mailed Mr. Bullock regarding this infringement, and in his response Mr. Bullock admitted that Piranha Games had developed these warrior robot designs, and that Catalyst created fan fiction around these designs. He also wrote: “At Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold.”

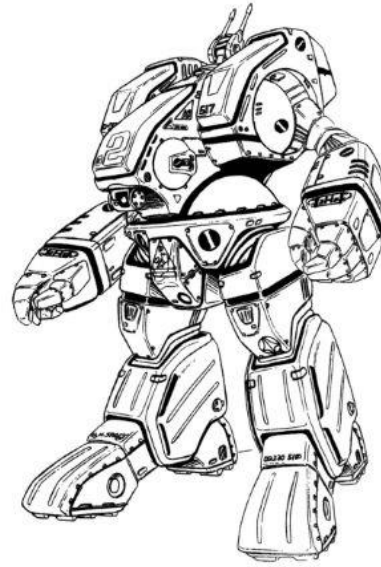
22. Despite Mr. Bullock’s admission that Piranha Games does not have the right to use Harmony Gold’s copyrighted Robotech designs, Piranha Games is doing exactly that without Harmony Gold’s permission. Piranha Games operates a website for its MechWarrior Online game at [www.mwomers.com](http://www.mwomers.com). On this site, Piranha Games displays the following images of robot warriors that infringe Harmony Gold’s copyrights and that appear to be used in the MechWarrior Online game:

Piranha Games’ Infringing Image	Harmony Gold’s Copyrighted Image
 <p data-bbox="228 1661 370 1692">(Rifleman)</p>	 <p data-bbox="824 1688 1081 1719">(Destroid Defender)</p>

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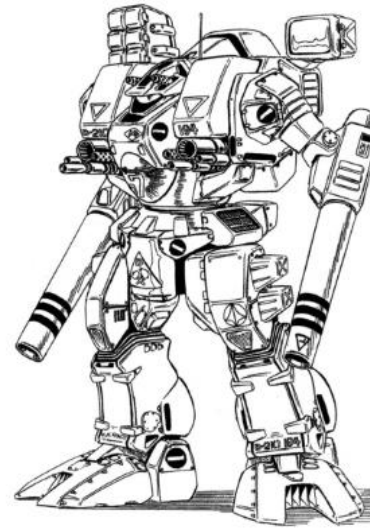
(Archer)



(Destroid Spartan)



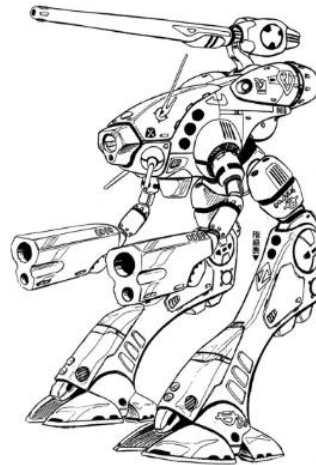
(Warhammer)



(Destroid Tomahawk)



(Marauder/Marauder IIC)



(Officer's Pod/Glaug)



(Phoenix Hawk)



(Super Valkyrie)

23. On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online. Piranha Games retained U.S. counsel and denied that the robot warriors in MechWarrior Online infringe Harmony Gold's copyrights.


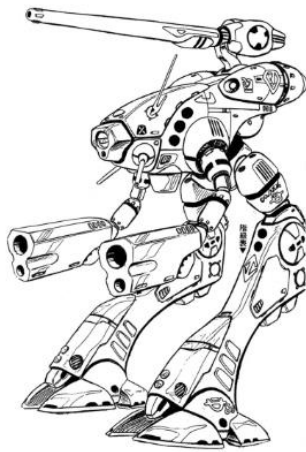
24. To this date, Piranha Games' infringement continues.

Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman

25. Defendant video game production studio Harebrained Schemes is in the process of developing a new PC video game named “BattleTech.” The BattleTech website at [www.battletechgame.com](http://www.battletechgame.com) reads, “Jordan Weisman, the creator of BattleTech and MechWarrior, is back with the first turn-based BattleTech game for PC in over two decades. BATTLETECH will feature modern turn-based combat, PVP multiplayer, and a story-driven, Mercenaries-style campaign set in the 3025 era of the BattleTech universe.”

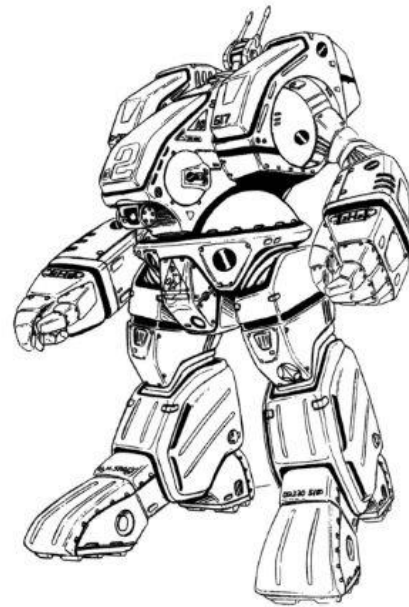
26. Harebrained Schemes held two crowdfunding campaigns for its BattleTech game. As of February 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733 backers, and its BackerKit campaign had raised \$372,387.95 from 48,681 backers.

27. On its websites at [www.harebrained-schemes.com](http://www.harebrained-schemes.com) and [www.battletechgame.com](http://www.battletechgame.com), Harebrained Schemes displays the following images of robot warriors that infringe Harmony Gold’s copyrights. On information and belief, these are depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

Harebrained Schemes’ Infringing Image	Harmony Gold’s Original Image
	 <p>(Officer’s Pod/Glaug)</p>



(Armored Valkyrie)



(Destroid Spartan)

21           28.     Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded  
22 on November 7, 2016, to the October 3, 2016, letter from Harmony Gold’s counsel described  
23 above in Paragraph 23. In that letter, he claimed that, “Our use of these designs and images is  
24 solely through licenses we have obtained from Piranha Games. Our relationship with Piranha  
25 Games is solely as a licensee of certain intellectual property.”



1 37. Harmony Gold is entitled to recover damages sustained from Defendants'  
2 unlawful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at  
3 Harmony Gold's election, statutory damages.

4 **COUNT II**

5 **(BREACH OF CONTRACT AGAINST WEISMAN AND**  
6 **HAREBRAINED SCHEMES)**

7 38. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1  
8 through 30 as if fully set forth herein.

9 39. Harmony Gold and Weisman entered into a contract (*i.e.*, the Settlement  
10 Agreement) in December 1996, which is still valid and in effect today. The Settlement  
11 Agreement prohibits Weisman from using colorable imitations of certain Robotech warrior  
12 robots owned by Harmony Gold, including making derivative works of these warrior robots.

13 40. As shown in Paragraphs 25–30 above, Weisman, through and with Harebrained  
14 Schemes, has created and announced plans to copy, display and distribute warrior robots that are  
15 unauthorized derivative works of Harmony Gold's Robotech warrior robots which Weisman  
16 agreed in the Settlement Agreement not to use. Therefore, under the law of the State of  
17 Washington, Weisman and Harebrained Schemes have breached the Settlement Agreement.

18 41. As a result of this breach of the Settlement Agreement through Weisman's own  
19 actions and those of his company Harebrained Schemes, Harmony Gold has suffered and is  
20 suffering monetary damages in an amount to be determined at trial.



**PRAAYER FOR RELIEF**

WHEREFORE, Harmony Gold prays that the Court:

1. Preliminarily and permanently enjoin Defendants, their agents, servants, employees, attorneys and all those acting in concert with them from infringing Harmony Gold's copyrights;

2. Award Harmony Gold its damages or Defendants' profits, or alternatively, at Harmony Gold's election, statutory damages, as a result of Defendants' infringement of Harmony Gold's copyrights;

3. Award Harmony Gold its monetary damages it has incurred on account of Harebrained Schemes' and Weisman's breach of the Settlement Agreement;

4. Issue an order requiring Harebrained Schemes and Weisman, their agents, servants, employees, attorneys and all those acting in concert with them to abide by the Settlement Agreement;

5. Award Harmony Gold its costs and reasonable attorney's fees in this action; and

6. Award Harmony Gold such other and further relief as the Court deems just and proper.

///

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///

1 DATED: March 1, 2017

Respectfully submitted,

2 CALFO EAKES & OSTROVSKY PLLC

3 By s/ Damon C. Elder

4 Damon C. Elder, WSBA #46754  
5 Andrew R.W. Hughes, WSBA #49515  
6 1301 Second Avenue, Suite 2800  
7 Seattle, WA 98101-3808  
8 Phone: (206) 407-2200  
9 Fax: (206) 407-2224  
10 Email: damone@calfoeakes.com  
11 andrewh@calfoeakes.com

12 Brett A. August (*pro hac vice* to be filed)  
13 baa@pattishall.com  
14 Jason Koransky (*pro hac vice* to be filed)  
15 jmk@pattishall.com  
16 Pattishall, McAuliffe, Newbury, Hilliard &  
17 Geraldson LLP  
18 200 South Wacker Drive, Suite 2900  
19 Chicago, Illinois 60606  
20 Telephone: (312) 554-8000  
21 Facsimile: (312) 554-8015

22 *Attorneys for Plaintiff Harmony Gold U.S.A.,*  
23 *Inc.*