

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X	
THE WEINSTEIN COMPANY, LLC,	: Index No. 150019/2009
	: .
Plaintiff,	: <b><u>AFFIDAVIT OF WAYNE LEVIN</u></b>
	: .
vs.	: .
	: .
LIONS GATE ENTERTAINMENT CORP.,	: .
	: .
Defendant.	: .
----- X	

STATE OF CALIFORNIA            )  
  ) SS.:  
COUNTY OF LOS ANGELES        )

Wayne Levin, being duly sworn, deposes and says::

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and am currently the General Counsel and Executive Vice President of Corporate Operations of Defendant Lions Gate Entertainment Corp. ("Lionsgate"). The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. I was involved in, and have knowledge of, Lionsgate's negotiations for the exclusive United States and Canadian distribution rights to the award winning film *Push: Based on the Novel by Sapphire* ("Push").

3. While Lionsgate was aware that The Weinstein Company, LLC ("Weinstein") claimed it had an agreement for the exclusive distribution and licensing rights to *Push*, the producers of *Push* and their representatives (the "Producers") unequivocally represented to Lionsgate that no such agreement was reached. Relying on those representations, Lionsgate, through its subsidiary Lionsgate Films Inc. (also referred to herein as "Lionsgate"), entered into a written agreement for, among other things, the exclusive United States and Canadian distribution rights to *Push*.

4. The Producers further informed Lionsgate that Weinstein had threatened them—

with litigation. Following entering the written agreement for the rights to *Push*, Weinstein told Lionsgate that Weinstein would have to drag Lionsgate into any litigation.

5. In light of Weinstein's claims regarding *Push* and its threats of litigation, Lionsgate was concerned that any assertion by Weinstein of its alleged claim to the rights in *Push* would interfere with Lionsgate's distribution and marketing plans for the film. Lionsgate was also concerned that Weinstein may bring an injunction on the eve of the marketing or distribution of *Push*, which would endanger its entire distribution.

6. Distributing and marketing a film are no easy tasks and require a substantial investment of time and money. It requires extensive planning to market the film through press junkets and advertising as well as actually placing the film into theaters, which have limited space and are scheduled in advance. All of this can cost in the millions of dollars.

7. In order to protect its rights in *Push* and its substantial monetary investment, on February 4, 2009, Lionsgate Films, Inc. filed an action filed in California Superior Court for the County of Los Angeles (being *Lionsgate Films, Inc. v. The Weinstein Company, LLC*, LASC Case No. BC 406990) (the "California Action") seeking the following judicial declarations: (a) Neither The Weinstein Company, LLC nor any of its subsidiaries or affiliates entered into an enforceable or binding agreement for any rights in the film entitled *Push: Based on the Novel by Sapphire*; and (b) Neither The Weinstein Company, LLC nor any of its subsidiaries or affiliates has any right, title or interest in the film entitled *Push: Based on the Novel by Sapphire*.

8. At the time Lionsgate filed the California Action, it was unaware of whether or not Weinstein would carry out its threat of litigation, or of Weinstein's specific plans for the threatened litigation, including but not limited to when Weinstein was going to file the threatened lawsuit.

9. The day after Lionsgate filed the California Action, Lionsgate was served with a complaint filed by Weinstein in New York asserting a claim for tortious interference with contract based on Weinstein's purported rights in *Push*.

Wagner

Sworn to before me this  
9<sup>th</sup> day of February, 2009

Jen Yim  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles }

On Feb. 9, 2009 before me, Jen Yim, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Wayne Levin  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Supreme Court of State of NY Affidavit of Wayne Levin

Document Date: Feb. 9, 2009 Number of Pages: 2

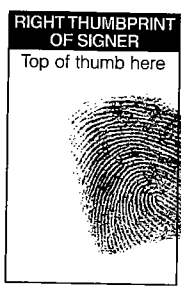
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Wayne Levin

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

