**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

JOHN S. SHEPARD FAMILY TRUST,
through John S. Shepard and Lawrence Jaffe,
as Co-Trustees,

Plaintiff,

v.

NH HOTELS USA, INC., NH HOTEL GROUP, S.A., and JOLLY HOTELS U.S.A., INC.,

Defendants.

Civil Action No.: 19-cv-9026(JSR)

**DECLARATION OF DAVID A. SHARGEL IN SUPPORT OF MOTION TO DISMISS**

DAVID A. SHARGEL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner with the law firm Bracewell LLP, 1251 Avenue of the Americas, New York, New York, 10020, counsel for Defendants in this action. I submit this declaration in support of the Motion to Dismiss the Amended Complaint ("Motion") filed by defendants NH Hotels USA, Inc. ("NH USA"), NH Hotel Group, S.A. ("NH Spain") and Jolly Hotels U.S.A., Inc. ("Jolly") (together, "Defendants").

2. The Amended Civil Action Complaint, dated January 17, 2020 ("Amended Complaint"), is attached as **Exhibit A**. The Amended Complaint includes as Exhibit 1 an Amended Proposed Decision of the United States Foreign Claims Settlement Commission ("FCSC").

3. For the Court's use in deciding the Motion, I have attached as **Exhibit B** the FCSC's original Proposed Decision, which provides information pertinent to Plaintiff's purported Certified Claim but which was omitted from the attachment to the Amended Complaint.

4. NH Spain is seeking dismissal for lack of personal jurisdiction. As set forth in the corporate registry information attached as **Exhibit C**, which is publicly available, NH Spain is a

corporation organized under the laws of Spain, with its principal place of business at Santa Engracia 120, Edificio Central, Planta 7° 28003 Madrid, Spain.

5. NH Spain's website, which I accessed on January 30, 2020, shows that there are 362 NH hotels in 29 countries around the world. *See* **Exhibit D**.

6. Of those 362 hotel properties one hotel is located in the United States: the NH New York Jolly Madison, located in New York City. *See* **Exhibit E**. That hotel is owned by Jolly, as set forth in the Bargain and Sale Deed dated December 1, 2017, attached as **Exhibit F**.

7. It is my understanding that NH Spain does not own, operate or manage, directly or indirectly, any other hotels in the United States and that it does not have any branches, corporate offices, or other facilities in New York or the United States.

8. I also understand that NH Spain is not licensed to do business in New York, and that it does not have a registered agent for service of process in New York or elsewhere in the United States. I have confirmed this by conducting a search of the online records of the New York State Department of State, Division of Corporations, which reflects no records for NH Spain.

9. As to NH USA, I have been informed that this entity is a dormant affiliate of NH Spain. NH USA was originally incorporated under the laws of Texas in 1998 under the name Mexican Hotels Corporation, and changed its name to NH Hotels USA, Inc. in 2001. *See* **Exhibit G** (Articles of Incorporation); **Exhibit H** (Articles of Amendment).

10. It is my understanding that NH USA, which maintained its principal place of business in Texas, ceased business operations several years ago, in late 2014. The last meeting of its Board of Directors was held in 2014, and the last employees separated from the company in 2015. It is my understanding that, since that time, NH USA has not owned or leased any property in the United States and has not engaged in any business activities.

11. According to the Affidavit of Service, Plaintiff attempted to serve the Summons and Complaint in this action upon NH Spain by serving NH USA, via the New York Secretary of State, "as its agent." *See* **Exhibit I** (Proof of Service).

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

Dated: New York, New York
January 31, 2020

/s/ David A. Shargel
DAVID A. SHARGEL