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Filing date: **10/20/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92073434
Party	Plaintiff Seated Technologies, Inc.
Correspondence Address	JENNIFER L BARRY LATHAM & WATKINS LLP 12670 HIGH BLUFF DRIVE SAN DIEGO, CA 92130 UNITED STATES Primary Email: jennifer.barry@lw.com Secondary Email(s): ipdocket@lw.com 858-523-5400
Submission	Other Motions/Submissions
Filer's Name	Jennifer L. Barry
Filer's email	jennifer.barry@lw.com, ipdocket@lw.com, Dennis.Mai@lw.com, Alethia.Corneil@lw.com
Signature	/s/ Jennifer L. Barry
Date	10/20/2021
Attachments	2021_10_19_Notice of Subpoena with Exhibits 1-3.pdf(5624055 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Seated Technologies, Inc.,  
a Delaware corporation,

Petitioner,

v.

Seated, Inc.,  
a Delaware corporation,

Respondent.

Cancellation No. 92073434

Trademark: SEATED

Serial Number 87/374456

Registration No. 5,337,225

**SEATED TECHNOLOGIES, INC.'S NOTICE OF THIRD PARTY SUBPOENAS**

Petitioner Seated Technologies, Inc. (“Petitioner”), by and through counsel, intends to serve the attached subpoenas on the following entities, pursuant to Rules 30(b)(6) and 45 of the Federal Rule of Civil Procedure and Trademark Trial and Appeal Board Manual of Practice (“TBMP”) §404.03(a)(2).

On October 19, 2021, Petitioner drafted subpoenas to the following third parties and provided Respondent, Seated Inc. (“Respondent”) with notice and a copy of the subpoenas before issuing the subpoenas to the third parties.

1. Techstars Music  
5410 Wilshire Blvd  
Los Angeles, CA 90036
2. Right Side Capital Management, LLC  
649 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94105
3. UENO  
1263 Mission St Floor 3  
San Francisco CA 94103

A true and correct copy of the subpoenas are attached hereto as Exhibits 1-3.

Dated: October 19, 2021

/s/ Jennifer L. Barry  
Jennifer L. Barry  
LATHAM & WATKINS LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
(858) 523-5400 / (858) 523-5450 Fax  
*jennifer.barry@lw.com; ipdocket@lw.com*

Counsel for Petitioner  
SEATED TECHNOLOGIES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.'S NOTICE OF THIRD PARTY SUBPOENAS**

was sent via email to the following:

Christina L. Winsor  
DISERIO MARTIN O'CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

# **EXHIBIT 1**

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
12670 High Bluff Drive  
3 San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA

8 Seated Technologies, Inc.,  
9 a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
13 a Delaware corporation,  
14 Respondent.

CASE NO. 2:21-mc-1082

**SEATED TECHNOLOGIES, INC.’S  
MOTION/APPLICATION FOR  
ISSUANCE OF SUBPOENA TO  
THIRD PARTY TECHSTARS  
MUSIC AND MEMORANDUM IN  
SUPPORT**

(Re Cancellation No. 92073434 in the  
U.S. Trademark Trials and Appeal  
Board)

15 TO THE COURT, RESPONDENT, AND ITS COUNSEL OF RECORD:  
16 PLEASE TAKE NOTICE THAT Petitioner Seated Technologies, Inc.  
17 (“Petitioner”), by and through counsel, applies to this Court for the issuance of a  
18 subpoena to Techstars Central LLC, Techstars Music Accelerator (“Techstars  
19 Music”) pursuant to 35 U.S.C. § 24 and Federal Rules of Civil Procedure 34 and  
20 45. Petitioner is the challenger in the above-captioned cancellation proceeding  
21 currently pending before the Trademark Trial and Appeal Board in the United  
22 States Patent and Trademark Office (the “Cancellation Proceeding”). Respondent  
23 Seated, Inc. (“Respondent”) is the owner of the mark SEATED, Registration No.  
24 5,337,225 (the “225 Registration”). Techstars Music is a third-party with  
25 information and documents relevant to the claims and defenses in the Opposition.  
26 Based upon Petitioner’s investigation, it appears that Techstars Music’s principal  
27 place of business is located at 5410 Wilshire Blvd., Los Angeles, California 90036,  
28

1 in this district. Accordingly, pursuant to 35 U.S.C. § 24, the United States District  
2 Court for the Central District of California is the appropriate court to issue the  
3 subpoena. A memorandum in support of this motion follows.

4

5 Dated: October 19, 2021

Respectfully submitted,

6

/s/ Jennifer L. Barry

7

Jennifer L. Barry

8

LATHAM & WATKINS LLP

12670 High Bluff Drive

San Diego, CA 92130

(858) 523-5400 / (858) 523-5450 Fax

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*jennifer.barry@lw.com; ipdocket@lw.com*

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Counsel for Petitioner

SEATED TECHNOLOGIES, INC.

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1 **MEMORANDUM IN SUPPORT**

2 On March 16, 2017, Respondent filed its application for the SEATED mark  
3 on an intent-to-use basis. On September 19, 2017, Respondent subsequently filed  
4 a Statement of Use, claiming a first use date of April 24, 2017 for all services listed  
5 in the application. The SEATED mark was classified in International Class 41 for  
6 *“Arranging for ticket reservations for sporting events, musical concerts and other*  
7 *live entertainment events; Ticket agency services for entertainment, art, sports and*  
8 *special events rendered online, through phone orders and through ticket outlets.”*  
9 Relying upon Respondent’s assertions submitted under penalty of perjury, the  
10 United States Patent and Trademark Office issued the ‘225 Registration.

11 On February 14, 2020, Petitioner filed a Petition to Cancel the ‘225  
12 Registration on the basis of fraud. Petitioner alleges that Respondent was not  
13 legitimately using the SEATED mark in commerce in either April or September  
14 2017. Specifically, Petitioner alleges that Respondent submitted a falsified  
15 specimen of use. Further, Petitioner was demonstrably not using the SEATED  
16 mark for numerous services claimed in the ‘225 Registration.

17 On April 1, 2021, counsel for Petitioner deposed Mr. David McKay, the  
18 Chief Executive Officer of Seated, Inc. During the course of his deposition, Mr.  
19 McKay identified Techstars Music as a party with information relevant to the  
20 claims and defenses in the Cancellation Proceeding. For example, Mr. McKay  
21 noted that Techstars Music was an investor in Seated, Inc. (Exhibit A, Transcript  
22 of Deposition of David McKay, at 128:4-7), that Respondent worked closely with  
23 Techstars Music as Respondent branched into the music ticket business (Exhibit A  
24 at 249:19-250:3), and that Techstars Music’s investment resulted in Respondent  
25 entering a startup competition (Exhibit A at 253:12-16).

26 Techstars Music is not a party to this Cancellation Proceeding. The TTAB  
27 has no inherent power to require individuals and entities that are not parties to an  
28 action before it to produce documents or to submit for a deposition. However,



1 Congress has directed the United States District Courts to issue subpoenas to  
2 secure testimony and documents in contested cases before the USPTO, including  
3 cases pending before the TTAB. 35 U.S.C. § 24. Pursuant to this statutory  
4 authority and the Federal Rules of Civil Procedure 34 and 45, Petitioner seeks a  
5 subpoena commanding Techstars Music to produce certain documents identified in  
6 the proposed subpoena, as well as for a designated officer, director, or managing  
7 agent familiar with these facts to submit to a deposition regarding facts relevant to  
8 the claims and defenses in this Cancellation Proceeding.

9 Petitioner seeks to cancel Respondent's registration of the SEATED mark, in  
10 part, by demonstrating that Respondent was not engaged in legitimate use of the  
11 mark in either April 2017 or September 2017. Petitioner is currently in the  
12 discovery phase of the Cancellation Proceeding. In order to present evidence in  
13 support of its arguments to cancel the SEATED mark, and to refute Respondent's  
14 arguments in this proceeding, Petitioner seeks to obtain discrete categories of  
15 documents and information from Techstars Music related to its investment  
16 relationship with Respondent both before and after September 2017.

17 Accordingly, Petitioner respectfully requests that the Court order the Clerk  
18 to issue the attached proposed subpoena to Techstars Music, pursuant to the  
19 authority provided under 35 U.S.C. § 24.

20  
21 Dated: October 19, 2021

Respectfully submitted,

22  
23 /s/ Jennifer L. Barry

Jennifer L. Barry  
LATHAM & WATKINS LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
(858) 523-5400 / (858) 523-5450 Fax  
*jennifer.barry@lw.com; ipdocket@lw.com*

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27 Counsel for Petitioner  
SEATED TECHNOLOGIES, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.’S MOTION/APPLICATION FOR  
ISSUANCE OF SUBPOENA TO THIRD PARTY TECHSTARS MUSIC  
AND MEMORANDUM IN SUPPORT**

was sent via email to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

# **EXHIBIT A**

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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SEATED TECHNOLOGIES, INC., a ) Case No.  
DELAWARE CORPORATION, ) 92073434  
Petitioner, )  
vs. )  
SEATED, INC., a Delaware )  
corporation, )  
Respondent. )  
\_\_\_\_\_)

REMOTE DEPOSITION BY VIRTUAL ZOOM OF  
DAVID MCKAY  
Thursday, April 1, 2021

Reported by:  
Ashala Tylor, CSR #2436, CLR, CRR, RPR  
JOB NO. 4457999  
PAGES 1 - 269

1 A. Somewhere between 20 and 30.

2 Q. Can you name them?

3 A. Probably not all of them, no.

4 Q. Name some of them.

5 A. Techstars Music. It's a large startup  
6 accelerator that invests in lots of promising  
7 companies. Right Side Capital Management. Early  
8 Light Ventures.

9 THE REPORTER: Did you say Right Side or  
10 Bright Side, please?

11 THE WITNESS: Right, R-I-G-H-T.

12 A handful of friends and family as well.

13 Damon Metzner. He's the manager for the  
14 sports podcast. And, you know, others I can't think  
15 of off the top of my head. We have 20 to 30  
16 investors.

17 BY MR. MAI:

18 Q. You'd have records of all of your  
19 investors, though, right?

20 A. Yes.

21 Q. You mentioned that some of your friends  
22 invested in Seated. Which of your friends?

23 A. My friend Matt Resnick, my friend Roy  
24 Helou.

25 Q. Can you spell that?

1 Q. Were these events that Seated was  
2 promoting?

3 A. Seated was promoting these events on our  
4 website, yes.

5 Q. And Seated was also offering ticket  
6 services for those events, right?

7 A. These are all Seated clients, I believe.  
8 So that would make sense, yes. I don't know  
9 specifically all the events that we ticketed, but I  
10 would imagine that we were involved in some  
11 capacity.

12 Q. So a customer could buy tickets to, let's  
13 say, Robert Plant, Forest Hills Stadium, from the  
14 seated.com website, right? There's a link right  
15 below that says "Buy tickets."

16 A. That's right. There was a short window of  
17 time where we were experimenting with a lot of  
18 different things on our website.

19 As I mentioned, in early 2018, we had a  
20 music investor, Techstars Music. I mentioned that  
21 eight hours ago. And Techstars encouraged us to  
22 constantly experiment and try new things on our  
23 website.

24 And April '18 would have been a time where  
25 we were working closely with Techstars Music. So I

1 imagine this brief change in our website had  
2 something to do with us working with that music  
3 investor Techstars.

4 Q. You're familiar with Seated Technologies,  
5 Incorporated, the petitioner in this cancellation  
6 proceeding, correct?

7 A. Yeah -- yes.

8 MR. MAI: I'm introducing another exhibit  
9 here. It will be Exhibit -- I believe it's 19 now.

10 (Exhibit 19 was marked for  
11 identification and attached  
12 hereto.)

13 BY MR. MAI:

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. This appears to be the cease and desist  
18 that we sent to Seated Technologies, Inc. on  
19 September 26, 2019, when we were experiencing  
20 significant confusion between our business and  
21 theirs.

22 Q. The law firm letterhead Diserio Martin  
23 O'Connor & Castiglioni LLP, is that the law firm  
24 that represents Seated, Incorporated?

25 A. Correct. Jon and Christina are on this

1 Q. Do you know when this article came out?

2 A. The document you've provided me is dated  
3 June 6, 2018.

4 Q. Did you read this article prior to this  
5 litigation?

6 A. Prior -- prior to this litigation -- not  
7 recently, but I've read it, likely when it came out  
8 and perhaps after, but I haven't read it recently,  
9 no.

10 Q. Do you recall being interviewed for this?

11 A. I was not interviewed for this.

12 Q. Tell me more about the startup  
13 competition. How did you decide to enter it?

14 A. We were asked to enter it. We had just,  
15 as I mentioned, in February gotten an investment  
16 from a company called Techstars Music.

17 Midem is a worldwide music conference, and  
18 our music investors were encouraging us to explore  
19 the music space head-on. We gained a lot of  
20 notoriety after that investment took place, and we  
21 were asked to fly to France to compete for a really  
22 widely regarded startup competition in the music  
23 space where a lot of successful companies prior to  
24 us have won.

25 Q. When you say "we were asked to enter it,"



# **EXHIBIT B**

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Central District of California

Seated Technologies, Inc.
Plaintiff
v.
Seated, Inc.
Defendant
Civil Action No.

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Techstars Music

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Latham & Watkins LLP, 355 South Grande Avenue, Suite 1000, Los Angeles, CA 900071-1560) and Date and Time (11/15/2021 9:00 am)

The deposition will be recorded by this method: Video

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment A.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Seated Technologies, Inc., who issues or requests this subpoena, are:

Jennifer Barry, Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130, jennifer.barry@lw.com, 858-523-5400

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# ATTACHMENT A

**REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:**

All documents, including communications, drafts, and partially or fully executed contracts, and mark-ups, related to Techstars Music's decision to invest in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 2:**

All documents, including communications, investor brochures, company materials, and partially or fully executed contracts, provided to Techstars Music by Seated, Inc. as part of Techstars Music's decision to invest in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 3:**

All documents, including communications, drafts, and partially or fully executed contracts, establishing when a business relationship between Techstars Music and Seated, Inc. began.

**REQUEST FOR PRODUCTION NO. 4:**

All documents, including communications and drafts, involving Techstars Music's assistance in getting Seated, Inc. involved in the music ticket business.

**REQUEST FOR PRODUCTION NO. 5:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning the goods and services actually offered by Seated, Inc. when Techstars Music first invested in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 6:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning Seated, Inc.'s trademark applications or registrations.

**REQUEST FOR PRODUCTION NO. 7:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning Seated, Inc.'s website between April 2017 and September 2017.

**REQUEST FOR PRODUCTION NO. 8:**

All documents, including communications, drafts, and partially or fully executed contracts, included in any data room or due diligence files exchanged between Techstars Music and Seated, Inc., including those related to intellectual property rights and licenses.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)  
 OR OF PARTY APPEARING IN PRO PER  
 Jennifer L. Barry  
 LATHAM & WATKINS LLP  
 12670 High Bluff Drive  
 San Diego, CA 92130  
 (858) 523-5400  
 jennifer.barry@lw.com

ATTORNEY(S) FOR: Seated Technologies, Inc.

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

Seated Technologies, Inc., a Delaware corporation,

Plaintiff(s),

v.

Seated, Inc., a Delaware Corporation

Defendant(s)

CASE NUMBER:

2:21-mc-1082

**CERTIFICATION AND NOTICE  
 OF INTERESTED PARTIES  
 (Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for Seated Technologies, Inc.  
 or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in  
 the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification  
 or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

<b>PARTY</b>	<b>CONNECTION / INTEREST</b>
Seated Technologies, Inc.	Seated Technologies, Inc. does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.
Seated, Inc.	Respondent/Defendant
Techstars Central LLC	Third Party
Techstars Music Accelerator	Third Party

October 19, 2021

Date

/s/ Jennifer L. Barry

Signature

Attorney of record for (or name of party appearing in pro per):

Seated Technologies, Inc.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) Seated Technologies, Inc., a Delaware corporation	<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) Seated, Inc., a Delaware corporation
(b) County of Residence of First Listed Plaintiff <u>Outside California</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Jennifer L. Barry LATHAM & WATKINS LLP 12670 High Bluff Drive, San Diego, CA 92130 (858) 523-5400	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

1. Original Proceeding  
  2. Removed from State Court  
  3. Remanded from Appellate Court  
  4. Reinstated or Reopened  
  5. Transferred from Another District (Specify) \_\_\_\_\_  
  6. Multidistrict Litigation - Transfer  
  8. Multidistrict Litigation - Direct File

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT:** \$ 0

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Issuance of subpoena pursuant to 35 U.S.C. § 24 and Federal Rules of Civil Procedure 34 and 45.

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 530 General	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS PERSONAL INJURY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<b>Other:</b>	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 485 Telephone Consumer Protection Act	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<b>REAL PROPERTY</b>	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<b>LABOR</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 444 Employment Accommodations	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 896 Arbitration		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 790 Other Labor Litigation	
<input type="checkbox"/> 950 Constitutionality of State Statutes			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>QUESTION A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern
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<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1.</b> Do 50% or more of the defendants who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question B.2.
<b>B.2.</b> Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1.</b> Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question C.2.
<b>C.2.</b> Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

<b>QUESTION D: Location of plaintiffs and defendants?</b>	<b>A.</b> Orange County	<b>B.</b> Riverside or San Bernardino County	<b>C.</b> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>D.1. Is there at least one answer in Column A?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION.  Enter "Southern" in response to Question E, below, and continue from there.  If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION.  Enter "Eastern" in response to Question E, below.  If "no," your case will be assigned to the WESTERN DIVISION.  Enter "Western" in response to Question E, below. ↓
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<b>QUESTION E: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western

<b>QUESTION F: Northern Counties?</b>
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**IX(a). IDENTICAL CASES:** Has this action been previously filed **in this court**?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**A civil forfeiture case and a criminal case** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

**X. SIGNATURE OF ATTORNEY  
(OR SELF-REPRESENTED LITIGANT):** \_\_\_\_\_

Jennifer L. Barry

DATE: October 19, 2021

**Notice to Counsel/Parties:** The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

# **EXHIBIT 2**

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
3 12670 High Bluff Drive  
San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80249

**SEATED TECHNOLOGIES, INC.’S  
MOTION/APPLICATION FOR  
ISSUANCE OF SUBPOENA TO THIRD  
PARTY RIGHT SIDE CAPITAL  
MANAGEMENT AND MEMORANDUM  
IN SUPPORT**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

16 TO THE COURT, RESPONDENT, AND ITS COUNSEL OF RECORD: PLEASE  
17 TAKE NOTICE THAT Petitioner Seated Technologies, Inc. (“Petitioner”), by and through  
18 counsel, applies to this Court for the issuance of a subpoena to Right Side Capital Management,  
19 LLC (“Right Side Capital Management”) pursuant to 35 U.S.C. § 24 and Federal Rules of Civil  
20 Procedure 34 and 45. Petitioner is the challenger in the above-captioned cancellation proceeding  
21 currently pending before the Trademark Trial and Appeal Board in the United States Patent and  
22 Trademark Office (the “Cancellation Proceeding”). Respondent Seated, Inc. (“Respondent”) is  
23 the owner of the mark SEATED, Registration No. 5,337,225 (the “225 Registration”). Right  
24 Side Capital Management is a third-party with information and documents relevant to the claims  
25 and defenses in the Opposition. Based upon Petitioner’s investigation, it appears that Right Side  
26 Capital Management’s principal place of business is located at 649 Mission Street, 5<sup>th</sup> Floor, San  
27 Francisco, California 94105, in this district. Accordingly, pursuant to 35 U.S.C. § 24, the United

28 ///

1 States District Court for the Northern District of California is the appropriate court to issue the  
2 subpoena.

3 A memorandum in support of this motion follows.

4 Dated: October 19, 2021

Respectfully submitted,

5

/s/ Jennifer L. Barry

6

Jennifer L. Barry

7

LATHAM & WATKINS LLP

12670 High Bluff Drive

8

San Diego, CA 92130

(858) 523-5400 / (858) 523-5450 Fax

*jennifer.barry@lw.com; ipdocket@lw.com*

9

Counsel for Petitioner

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SEATED TECHNOLOGIES, INC.

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**MEMORANDUM IN SUPPORT**

1  
2 On March 16, 2017, Respondent filed its application for the SEATED mark on an intent-  
3 to-use basis. On September 19, 2017, Respondent subsequently filed a Statement of Use,  
4 claiming a first use date of April 24, 2017 for all services listed in the application. The SEATED  
5 mark was classified in International Class 41 for “*Arranging for ticket reservations for sporting*  
6 *events, musical concerts and other live entertainment events; Ticket agency services for*  
7 *entertainment, art, sports and special events rendered online, through phone orders and through*  
8 *ticket outlets.*” Relying upon Respondent’s assertions submitted under penalty of perjury, the  
9 United States Patent and Trademark Office issued the ‘225 Registration.

10 On February 14, 2020, Petitioner filed a Petition to Cancel the ‘225 Registration on the  
11 basis of fraud. Petitioner alleges that Respondent was not legitimately using the SEATED mark  
12 in commerce in either April or September 2017. Specifically, Petitioner alleges that Respondent  
13 submitted a falsified specimen of use. Further, Petitioner was demonstrably not using the  
14 SEATED mark for numerous services claimed in the ‘225 Registration.

15 On April 1, 2021, counsel for Petitioner deposed Mr. David McKay, the Chief Executive  
16 Officer of Seated, Inc. During the course of his deposition, Mr. McKay identified Right Side  
17 Capital Management as a party with information relevant to the claims and defenses in the  
18 Cancellation Proceeding. For example, Mr. McKay noted that Right Side Capital Management  
19 was an investor in Seated, Inc. Exhibit A, Transcript of Deposition of David McKay, at 128:4-7;  
20 130:24-131:19.

21 Right Side Capital Management is not a party to this Cancellation Proceeding. The TTAB  
22 has no inherent power to require individuals and entities that are not parties to an action before it  
23 to produce documents or to submit for a deposition. However, Congress has directed the United  
24 States District Courts to issue subpoenas to secure testimony and documents in contested cases  
25 before the USPTO, including cases pending before the TTAB. 35 U.S.C. § 24. Pursuant to this  
26 statutory authority and the Federal Rules of Civil Procedure 34 and 45, Petitioner seeks a  
27 subpoena commanding Right Side Capital Management to produce certain documents identified  
28 in the proposed subpoena, as well as for a designated officer, director, or managing agent

1 familiar with these facts to submit to a deposition regarding facts relevant to the claims and  
2 defenses in this Cancellation Proceeding.

3         Petitioner seeks to cancel Respondent’s registration of the SEATED mark, in part, by  
4 demonstrating that Respondent was not engaged in legitimate use of the mark in either April  
5 2017 or September 2017. Petitioner is currently in the discovery phase of the Cancellation  
6 Proceeding. In order to present evidence in support of its arguments to cancel the SEATED  
7 mark, and to refute Respondent’s arguments in this proceeding, Petitioner seeks to obtain  
8 discrete categories of documents and information from Right Side Capital Management related  
9 to its investment relationship with Respondent both before and after September 2017.

10         Accordingly, Petitioner respectfully requests that the Court order the Clerk to issue the  
11 attached proposed subpoena to Right Side Capital Management, pursuant to the authority  
12 provided under 35 U.S.C. § 24.

13  
14 Dated: October 19, 2021

Respectfully submitted,

15         /s/ Jennifer L. Barry  
16 Jennifer L. Barry  
17 LATHAM & WATKINS LLP  
18 12670 High Bluff Drive  
19 San Diego, CA 92130  
20 (858) 523-5400 / (858) 523-5450 Fax  
21 *jennifer.barry@lw.com; ipdocket@lw.com*

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Counsel for Petitioner  
SEATED TECHNOLOGIES, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.’S MOTION/APPLICATION FOR ISSUANCE OF  
SUBPOENA TO THIRD PARTY RIGHT SIDE CAPITAL MANAGEMENT AND  
MEMORANDUM IN SUPPORT**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry



# EXHIBIT A

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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SEATED TECHNOLOGIES, INC., a ) Case No.  
DELAWARE CORPORATION, ) 92073434  
Petitioner, )  
vs. )  
SEATED, INC., a Delaware )  
corporation, )  
Respondent. )  
\_\_\_\_\_)

REMOTE DEPOSITION BY VIRTUAL ZOOM OF  
DAVID MCKAY  
Thursday, April 1, 2021

Reported by:  
Ashala Tylor, CSR #2436, CLR, CRR, RPR  
JOB NO. 4457999  
PAGES 1 - 269

1 A. Somewhere between 20 and 30.

2 Q. Can you name them?

3 A. Probably not all of them, no.

4 Q. Name some of them.

5 A. Techstars Music. It's a large startup  
6 accelerator that invests in lots of promising  
7 companies. Right Side Capital Management. Early  
8 Light Ventures.

9 THE REPORTER: Did you say Right Side or  
10 Bright Side, please?

11 THE WITNESS: Right, R-I-G-H-T.

12 A handful of friends and family as well.

13 Damon Metzner. He's the manager for the  
14 sports podcast. And, you know, others I can't think  
15 of off the top of my head. We have 20 to 30  
16 investors.

17 BY MR. MAI:

18 Q. You'd have records of all of your  
19 investors, though, right?

20 A. Yes.

21 Q. You mentioned that some of your friends  
22 invested in Seated. Which of your friends?

23 A. My friend Matt Resnick, my friend Roy  
24 Helou.

25 Q. Can you spell that?

1 A. I don't believe so.

2 Q. Do your investors invest only cash  
3 (inaudible) --

4 A. I missed the question.

5 Q. The investments we just referenced, is it  
6 just cash?

7 A. I don't understand -- I don't understand  
8 the question. How else would someone invest?

9 Q. So it was a cash investment?

10 MR. KELSON: Objection.

11 THE WITNESS: Yes. I don't understand the  
12 question. They -- we -- we took investment,  
13 financial investment.

14 BY MR. MAI:

15 Q. Nobody else -- nobody was investing  
16 through like board expertise or anything like that?

17 A. No. We have no advisory board. We have  
18 no investment board.

19 Q. No loaning of plants or equipment as an  
20 investment?

21 A. No.

22 Q. So it was truly all cash investments?

23 A. That's right.

24 Q. Who is Seated's largest investor?

25 A. I believe it's Right Side Capital

1 Management through one of their funds.

2 Q. Do you know which fund?

3 A. I think it was called Peregrine Select  
4 or -- I don't recall specifically.

5 Q. How much do they have invested?

6 A. Probably close to half a million dollars.  
7 I don't know exactly. I forget exactly. But that  
8 would be the largest.

9 Q. Do you recall when they invested?

10 A. They invested at multiple times, so that's  
11 why I think they would be the largest investor, but  
12 I don't recall specifically the dates.

13 Q. How about their first investment, any  
14 recollection?

15 A. 2018 or 2019, probably.

16 Q. Would you say it was late 2018?

17 A. I wouldn't say anything. I don't know the  
18 specifics of the dates. I don't have any of that  
19 information in front of me.

20 MR. MAI: I've introduced another exhibit,  
21 Exhibit 7. It's a document produced bearing the  
22 Bates numbers RESP445 through 447.

23 (Exhibit 7 was marked for  
24 identification and attached  
25 hereto.)

# **EXHIBIT B**

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

**UNITED STATES DISTRICT COURT**  
for the  
Northern District of California

Seated Technologies, Inc.	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
Seated, Inc.	)	
<i>Defendant</i>	)	

**SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION**

To: Right Side Capital Management, LLC

*(Name of person to whom this subpoena is directed)*

**Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Latham & Watkins LLP, 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538	Date and Time:  11/11/2021 9:00 am
---	--

The deposition will be recorded by this method: Video

**Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment A.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

*CLERK OF COURT*

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* \_\_\_\_\_  
Seated Technologies, Inc. \_\_\_\_\_, who issues or requests this subpoena, are:

Jennifer Barry, Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130, jennifer.barry@lw.com,  
858-523-5400

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# ATTACHMENT A

**REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:**

All documents, including communications, drafts, and partially or fully executed contracts, and mark-ups, related to Right Side Capital Management, LLC's decision to invest in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 2:**

All documents, including communications, investor brochures, company materials, and partially or fully executed contracts, provided to Right Side Capital Management by Seated, Inc. as part of Right Side Capital Management, LLC's decision to invest in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 3:**

All documents, including communications, drafts, and partially or fully executed contracts, establishing when a business relationship between Right Side Capital Management, LLC and Seated, Inc. began.

**REQUEST FOR PRODUCTION NO. 4:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning the goods and services actually offered by Seated, Inc. when Right Side Capital Management, LLC first invested in Seated, Inc.

**REQUEST FOR PRODUCTION NO. 5:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning Seated, Inc.'s trademark applications or registrations.

**REQUEST FOR PRODUCTION NO. 6:**

All documents, including communications, drafts, and partially or fully executed contracts, included in any data room or due diligence files exchanged between Right Side Capital Management, LLC and Seated, Inc., including those related to intellectual property rights and licenses.

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
3 12670 High Bluff Drive  
San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80249

**SEATED TECHNOLOGIES, INC.’S  
CERTIFICATION OF INTERESTED  
ENTITIES OR PERSONS**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

14 Pursuant to Civil Local Rule 3-15, the undersigned certifies that the following listed  
15 persons, associations of persons, firms, partnerships, corporations (including parent corporations)  
16 or other entities (i) have a financial interest in the subject matter in controversy or in a party to  
17 the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could  
18 be substantially affected by the outcome of this proceeding:

- 19 Seated Technologies, Inc., a Delaware corporation
- 20 Seated, Inc., a Delaware corporation
- 21 Right Side Capital Management, LLC

22 Dated: October 19, 2021

Respectfully submitted,

23 /s/ Jennifer L. Barry  
24 Jennifer L. Barry  
LATHAM & WATKINS LLP  
25 12670 High Bluff Drive  
San Diego, CA 92130  
26 (858) 523-5400 / (858) 523-5450 Fax  
jennifer.barry@lw.com; ipdocket@lw.com

27 Counsel for Petitioner  
28 SEATED TECHNOLOGIES, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.’S CERTIFICATION OF INTERESTED ENTITIES  
OR PERSONS**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
3 12670 High Bluff Drive  
San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80249

**SEATED TECHNOLOGIES, INC.’S  
CORPORATE DISCLOSURE  
STATEMENT**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

14 Pursuant to Federal Rule of Civil Procedure 7.1, Petitioner Seated Technologies,  
15 Inc. hereby make the following disclosure. Seated Technologies, Inc. does not have a parent  
16 corporation, and no publicly held corporation owns 10% or more of its stock.

19 Dated: October 19, 2021

Respectfully submitted,

20 /s/ Jennifer L. Barry  
21 Jennifer L. Barry  
22 LATHAM & WATKINS LLP  
23 12670 High Bluff Drive  
San Diego, CA 92130  
(858) 523-5400 / (858) 523-5450 Fax  
jennifer.barry@lw.com; ipdocket@lw.com

24 Counsel for Petitioner  
25 SEATED TECHNOLOGIES, INC.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:  
**SEATED TECHNOLOGIES, INC.’S CORPORATE DISCLOSURE STATEMENT**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Seated Technologies, Inc., a Delaware corporation

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jennifer L. Barry (858) 523-5400 LATHAM & WATKINS LLP 12670 High Bluff Drive San Diego, CA 92130

DEFENDANTS

Seated, Inc., a Delaware corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Issuance of subpoena pursuant to 35 U.S.C. § 24 and Federal Rules of Civil Procedure 34 and 45.

Brief description of cause: Issuance of subpoena

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/19/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer L. Barry



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# **EXHIBIT 3**

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
12670 High Bluff Drive  
3 San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80250

**SEATED TECHNOLOGIES, INC.’S  
MOTION/APPLICATION FOR  
ISSUANCE OF SUBPOENA TO THIRD  
PARTY UENO AND MEMORANDUM IN  
SUPPORT**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

15 TO THE COURT, RESPONDENT, AND ITS COUNSEL OF RECORD: PLEASE  
16 TAKE NOTICE THAT Petitioner Seated Technologies, Inc. (“Petitioner”), by and through  
17 counsel, applies to this Court for the issuance of a subpoena to UENO (“UENO”) pursuant to 35  
18 U.S.C. § 24 and Federal Rules of Civil Procedure 34 and 45. Petitioner is the challenger in the  
19 above-captioned cancellation proceeding currently pending before the Trademark Trial and  
20 Appeal Board in the United States Patent and Trademark Office (the “Cancellation Proceeding”).  
21 Respondent Seated, Inc. (“Respondent”) is the owner of the mark SEATED, Registration No.  
22 5,337,225 (the “225 Registration”). UENO is a third-party with information and documents  
23 relevant to the claims and defenses in the Opposition. Based upon Petitioner’s investigation, it  
24 appears that UENO’s principal place of business is located at 1263 Mission St., San Francisco,  
25 California, 94103, in this district. Accordingly, pursuant to 35 U.S.C. § 24, the United States  
26 District Court for the Northern District of California is the appropriate court to issue the  
27 subpoena.

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A memorandum in support of this motion follows.

Dated: October 19, 2021

/s/ Jennifer L. Barry  
Jennifer L. Barry  
LATHAM & WATKINS LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
(858) 523-5400 / (858) 523-5450 Fax  
*jennifer.barry@lw.com; ipdocket@lw.com*

Counsel for Petitioner  
SEATED TECHNOLOGIES, INC.

**MEMORANDUM IN SUPPORT**

1  
2 On March 16, 2017, Respondent filed its application for the SEATED mark on an intent-  
3 to-use basis. On September 19, 2017, Respondent subsequently filed a Statement of Use,  
4 claiming a first use date of April 24, 2017 for all services listed in the application. The SEATED  
5 mark was classified in International Class 41 for “*Arranging for ticket reservations for sporting*  
6 *events, musical concerts and other live entertainment events; Ticket agency services for*  
7 *entertainment, art, sports and special events rendered online, through phone orders and through*  
8 *ticket outlets.*” Relying upon Respondent’s assertions submitted under penalty of perjury, the  
9 United States Patent and Trademark Office issued the ‘225 Registration.

10 On February 14, 2020, Petitioner filed a Petition to Cancel the ‘225 Registration on the  
11 basis of fraud. Petitioner alleges that Respondent was not legitimately using the SEATED mark  
12 in commerce in either April or September 2017. Specifically, Petitioner alleges that Respondent  
13 submitted a falsified specimen of use. Further, Petitioner was demonstrably not using the  
14 SEATED mark for numerous services claimed in the ‘225 Registration.

15 On April 1, 2021, counsel for Petitioner deposed Mr. David McKay, the Chief Executive  
16 Officer of Seated, Inc. During the course of his deposition, Mr. McKay identified UENO as a  
17 party with information relevant to the claims and defenses in the Cancellation Proceeding. For  
18 example, Mr. McKay noted that Respondent hired UENO in approximately 2019 to design  
19 Respondent’s logo, web page, and software products. Exhibit A, Transcript of Deposition of  
20 David McKay at 96:2-13; 144:8-145:23.

21 UENO is not a party to this Cancellation Proceeding. The TTAB has no inherent power  
22 to require individuals and entities that are not parties to an action before it to produce documents  
23 or to submit for a deposition. However, Congress has directed the United States District Courts  
24 to issue subpoenas to secure testimony and documents in contested cases before the USPTO,  
25 including cases pending before the TTAB. 35 U.S.C. § 24. Pursuant to this statutory authority  
26 and the Federal Rules of Civil Procedure 34 and 45, Petitioner seeks a subpoena commanding  
27 UENO to produce certain documents identified in the proposed subpoena, as well as for a  
28

1 designated officer, director, or managing agent familiar with these facts to submit to a deposition  
2 regarding facts relevant to the claims and defenses in this Cancellation Proceeding.

3         Petitioner seeks to cancel Respondent’s registration of the SEATED mark, in part, by  
4 demonstrating that Respondent was not engaged in legitimate use of the mark in either April  
5 2017 or September 2017. Petitioner is currently in the discovery phase of the Cancellation  
6 Proceeding. In order to present evidence in support of its arguments to cancel the SEATED  
7 mark, and to refute Respondent’s arguments in this proceeding, Petitioner seeks to obtain  
8 discrete categories of documents and information from UENO related to the purported design of  
9 Respondent’s logo, web page, and software products after September 2017.

10         Accordingly, Petitioner respectfully requests that the Court order the Clerk to issue the  
11 attached proposed subpoena to UENO, pursuant to the authority provided under 35 U.S.C. § 24.

13 Dated: October 19, 2021

Respectfully submitted,

14 /s/ Jennifer L. Barry  
15 Jennifer L. Barry  
16 LATHAM & WATKINS LLP  
17 12670 High Bluff Drive  
18 San Diego, CA 92130  
19 (858) 523-5400 / (858) 523-5450 Fax  
20 *jennifer.barry@lw.com; ipdocket@lw.com*

21 Counsel for Petitioner  
22 SEATED TECHNOLOGIES, INC.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.’S MOTION/APPLICATION FOR ISSUANCE OF  
SUBPOENA TO THIRD PARTY UENO AND MEMORANDUM IN SUPPORT**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

# EXHIBIT A



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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SEATED TECHNOLOGIES, INC., a ) Case No.  
DELAWARE CORPORATION, ) 92073434  
Petitioner, )  
vs. )  
SEATED, INC., a Delaware )  
corporation, )  
Respondent. )  
\_\_\_\_\_)

REMOTE DEPOSITION BY VIRTUAL ZOOM OF  
DAVID MCKAY  
Thursday, April 1, 2021

Reported by:  
Ashala Tylor, CSR #2436, CLR, CRR, RPR  
JOB NO. 4457999  
PAGES 1 - 269

1 was created at some point in 2020 likely.

2 Q. You mentioned in your answer there that it  
3 incorporated more recent branding. What do you mean  
4 by that?

5 A. We hired a branding agency to redesign our  
6 logo and our web page and our software product, and  
7 we rebranded, just as companies often do as they  
8 have all --

9 Q. What was the name of this branding agency?

10 A. Ueno, U-E-N-O.

11 Q. When did you engage Ueno?

12 A. Couldn't say for certain, but it was  
13 towards the end of 2019.

14 Q. Who did the branding prior to 2019?

15 A. Me.

16 Q. Anyone else?

17 A. Not that I recall.

18 Q. Mr. Griffin?

19 A. He would have implemented the branding  
20 and, you know, he built it, but I was the primary  
21 designer when we started the company.

22 Q. So no other employees?

23 A. Not that I recall.

24 Q. A few answers ago you mentioned that this  
25 was a generic pitch deck tailored toward the music

1 in 2020.

2 Q. Why did you add the logo?

3 A. We wanted something distinct to  
4 distinguish ourselves as a -- as a brand, and we  
5 thought that just the word "Seated" that we were  
6 using before wasn't just -- wasn't the best that it  
7 could be. And we created a logo to add to that.

8 Q. Did that branding agency you mentioned  
9 earlier, Ueno, assist you in creating this logo?

10 A. Yes.

11 Q. Was that their primary intent?

12 A. I missed the question.

13 Q. Let me strike that question.

14 Were they engaged primarily to create this  
15 logo for you?

16 A. No.

17 Q. What were they engaged primarily to do?

18 A. To rebrand the company: New colors, new  
19 website, new product design, a number of things that  
20 I mentioned earlier today.

21 The logo was a by-product of that that  
22 happened to be a part of the branding work, but we  
23 went in and told them that the logo is our least  
24 priority, and if we get out of this work without  
25 creating a specific logo, the other things are more

1 important, the design of the product and things like  
2 that.

3 Q. You mentioned a new website. When did  
4 Ueno redesign your website?

5 A. At some point in 2019, we engaged them, as  
6 I mentioned earlier. I don't remember exactly when  
7 their work completed. But we rolled out their work  
8 within our product and on our website at some point  
9 in 2020.

10 Q. Do you recall when in 2020?

11 A. During the pandemic. So April, May, June,  
12 sometime around that time.

13 Q. You also mentioned new colors. What --  
14 what were Seated's original colors?

15 A. We didn't have colors. We used in our  
16 products like a blue and a purple and white and  
17 black and a number of different colors. But we  
18 didn't define -- we didn't have a brand. We didn't  
19 have a brand guideline. I should correct that. We  
20 didn't have a brand guideline, so we weren't focused  
21 in specific colors.

22 Q. Do you have brand guidelines now?

23 A. Yes.

24 MR. MAI: Jon and Christina, this is  
25 something we'll have to follow up with as well.

# **EXHIBIT B**

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Seated Technologies, Inc. )

Plaintiff )

v. )

Seated, Inc. )

Defendant )

Civil Action No.

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: UENO

(Name of person to whom this subpoena is directed)

**Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Latham & Watkins LLP, 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538	Date and Time: 11/19/2021 9:00 am
---	--------------------------------------

The deposition will be recorded by this method: Video

**Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment A.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

\_\_\_\_\_  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_  
Seated Technologies, Inc. \_\_\_\_\_, who issues or requests this subpoena, are:

Jennifer Barry, Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130, jennifer.barry@lw.com,  
858-523-5400

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



# ATTACHMENT A

**REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:**

All documents, including communications, drafts, partially or fully executed contracts, and mark-ups, related to the design of Seated, Inc.'s logo.

**REQUEST FOR PRODUCTION NO. 2:**

All documents, including communications, drafts, partially or fully executed contracts, and mark-ups, related to the design of Seated, Inc.'s web page.

**REQUEST FOR PRODUCTION NO. 3:**

All documents, including communications, drafts, partially or fully executed contracts, and mark-ups, related to the design of Seated, Inc.'s software products.

**REQUEST FOR PRODUCTION NO. 4:**

All documents, including communications, drafts, and partially or fully executed contracts, establishing when a business relationship between UENO and Seated, Inc. began.

**REQUEST FOR PRODUCTION NO. 5:**

All documents, including communications, drafts, and partially or fully executed contracts, concerning the goods and services actually offered by Seated, Inc. when UENO began providing services to Seated, Inc.

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
3 12670 High Bluff Drive  
San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80250

**SEATED TECHNOLOGIES, INC.’S  
CERTIFICATION OF INTERESTED  
ENTITIES OR PERSONS**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

14 Pursuant to Civil Local Rule 3-15, the undersigned certifies that the following listed  
15 persons, associations of persons, firms, partnerships, corporations (including parent corporations)  
16 or other entities (i) have a financial interest in the subject matter in controversy or in a party to  
17 the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could  
18 be substantially affected by the outcome of this proceeding:

- 19 Seated Technologies, Inc., a Delaware corporation
- 20 Seated, Inc., a Delaware corporation
- 21 UENO

22 Dated: October 19, 2021

Respectfully submitted,

23 /s/ Jennifer L. Barry  
24 Jennifer L. Barry  
LATHAM & WATKINS LLP  
25 12670 High Bluff Drive  
San Diego, CA 92130  
26 (858) 523-5400 / (858) 523-5450 Fax  
jennifer.barry@lw.com; ipdocket@lw.com

27 Counsel for Petitioner  
28 SEATED TECHNOLOGIES, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.’S CERTIFICATION OF INTERESTED ENTITIES  
OR PERSONS**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

1 Jennifer L. Barry (CA 228066)  
Jennifer.Barry@lw.com  
2 LATHAM & WATKINS LLP  
3 12670 High Bluff Drive  
San Diego, CA 92130  
4 Phone: (858) 523-5400  
Fax: (858) 523-5450

5 Attorneys for Petitioner Seated Technologies, Inc.

6 UNITED STATES DISTRICT COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA

9 Seated Technologies, Inc.,  
a Delaware corporation,  
10 Petitioner,  
11 v.  
12 Seated, Inc.,  
a Delaware corporation,  
13 Respondent.

CASE NO. 3:21-mc-80250

**SEATED TECHNOLOGIES, INC.’S  
CORPORATE DISCLOSURE  
STATEMENT**

(Re Cancellation No. 92073434 in the U.S.  
Trademark Trials and Appeal Board)

14 Pursuant to Federal Rule of Civil Procedure 7.1, Petitioner Seated Technologies,  
15 Inc. hereby make the following disclosure. Seated Technologies, Inc. does not have a parent  
16 corporation, and no publicly held corporation owns 10% or more of its stock.

19 Dated: October 19, 2021

Respectfully submitted,

20 /s/ Jennifer L. Barry  
21 Jennifer L. Barry  
22 LATHAM & WATKINS LLP  
23 12670 High Bluff Drive  
San Diego, CA 92130  
(858) 523-5400 / (858) 523-5450 Fax  
jennifer.barry@lw.com; ipdocket@lw.com

24 Counsel for Petitioner  
25 SEATED TECHNOLOGIES, INC.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2021, a true and correct copy of the foregoing:  
**SEATED TECHNOLOGIES, INC.’S CORPORATE DISCLOSURE STATEMENT**

was sent via email by prior agreement to the following:

Christina L. Winsor  
DISERIO MARTIN O’CONNOR & CASTIGLIONI LLP  
1010 Washington Blvd., Suite 800  
Stamford, CT 06901  
Christina L. Winsor  
Email: *cwinsor@dmoc.com*  
*smaldonado@dmoc.com*  
*dsullivan@dmoc.com*  
*apyatt@dmoc.com*  
*JKelson@dmoc.com*  
*sgarrison@dmoc.com*

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry  
Jennifer L. Barry

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Seated Technologies, Inc., a Delaware corporation

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jennifer L. Barry LATHAM & WATKINS LLP 12670 High Bluff Drive San Diego, CA 92130 (858) 523-5400

DEFENDANTS

Seated, Inc., a Delaware corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Issuance of subpoena pursuant to 35 U.S.C. § 24 and Federal Rules of Civil Procedure 34 and 45.

Brief description of cause: Issuance of subpoena

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/19/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer L. Barry

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.