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 Plaintiffs Capitol Records, Inc., and Priority
 9 Records, LLC

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

13 GEORGE CLINTON, an individual,

14 Plaintiff,

15 v.

16 CAPITOL RECORDS, INC., a
 Delaware corporation; PRIORITY
 17 RECORDS, LLC, a Delaware limited
 liability company; and DOES 1 through
 18 100, inclusive,

19 Defendants,

Case No. CV 06-8106 R (SHx)

The Honorable Manuel L. Real

**DECLARATION OF ALASDAIR
 MCMULLAN IN OPPOSITION TO
 PLAINTIFF GEORGE CLINTON'S
 MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

Date: December 17, 2007

Time: 10:00 a.m.

Ctrm.: 8

20 AND RELATED THIRD PARTY
 21 ACTION.

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DECLARATION OF ALASDAIR MCMULLAN IN OPPOSITION TO PLAINTIFF'S
 MOTION FOR PARTIAL SUMMARY JUDGMENT

1 I, ALASDAIR McMULLAN, the undersigned, declare:

2 1. I am the Senior Vice President of Legal Affairs of EMI Music North
3 America ("EMI"). Defendants and Third Party Plaintiffs Capitol Records, Inc.
4 ("Capitol"), and Priority Records, LLC ("Priority"), are affiliates of EMI. I make
5 this declaration in opposition to Plaintiff George Clinton's Motion for Partial
6 Summary Judgment in this action. I know all of the following facts of my own
7 personal knowledge and/or on the basis of my review of Capitol's and Priority's
8 business records and, if called and sworn as a witness, could and would testify
9 competently thereto.

10 2. Capitol and Priority are record companies that are in the business of
11 manufacturing and distributing sound recordings. Capitol acquired a 50%
12 ownership interest in Priority Records, LLC, in 1996. Capitol acquired the
13 remaining 50% of Priority Records, LLC, in 1998, and now wholly owns that
14 company. Prior to November 1996, Capitol did not have any ownership interest in
15 Priority Records, LLC, or in any of its predecessors, including Priority Records,
16 Inc.

17 3. On or about August 16, 1993, Priority and a company named Tercer
18 Mundo entered into an exclusive license agreement for sound recordings known as
19 the Funkadelic Masters pursuant to which Priority was granted the exclusive right
20 to exploit those masters for the term of the agreement (the "1993 License
21 Agreement"). The Funkadelic Masters consist of the following sound recordings:
22 (1) *One Nation Under a Groove*; (2) *Hardcore Jollies*; (3) *Uncle Jam Wants You*;
23 and (4) *The Electric Spanking of War Babies*. A true copy of the 1993 License
24 Agreement is attached to this declaration as Exhibit A.

25 4. Priority entered into the 1993 License Agreement after Tercer Mundo
26 represented to Priority that Tercer Mundo owned all right and title to and in the
27 Funkadelic Masters.

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1 5. Priority released records embodying the Funkadelic Masters
2 throughout the United States on or about October 31, 1993, pursuant to the 1993
3 License Agreement.

4 6. Capitol and Priority re-released records embodying the Funkadelic
5 Masters throughout the United States on or about July 16, 2002, with cover art
6 indicating that the masters were released “under exclusive license to Priority
7 Records, LLC” from “Funk Mob Music, LLC.” Capitol and Priority did so after
8 Funk Mob Music, LLC (“Funk Mob”) represented to Capitol and Priority that
9 Funk Mob had rightfully acquired all right and title to and in the Funkadelic
10 Masters. Based on the representations made by Funk Mob, Capitol and Priority
11 treated Funk Mob as having replaced Tercer Mundo under the 1993 License
12 Agreement.

13 7. In 2003, Capitol and Priority learned that there were competing claims
14 to ownership of the Funkadelic Masters. Among those claiming to own the
15 Funkadelic Masters were Plaintiff George Clinton (“Plaintiff”) and Funk Mob. As
16 a result, Capitol and Priority put the royalty account for the re-released Funkadelic
17 Masters on hold because of these competing claims. On or about May 21, 2003,
18 Capitol and Priority sent a letter to counsel for the competing claimants, including
19 to Plaintiff’s counsel Janet Conway, informing them that Defendants were putting
20 the Funkadelic royalty account on hold. A true copy of this May 21, 2003, letter is
21 attached to this declaration as Exhibit B.

22 8. Defendants have never had any ownership interest in Tercer Mundo or
23 Funk Mob, or any other interest in their businesses or affairs.

24 9. Defendants had no participation in, or control over, any party in the
25 action titled *Montes v. Kaplan, Kenegos & Kagin, et al.*, U.S.D.C. C.D. Cal. Case
26 No. CV 03-8955 R, including Tercer Mundo and Funk Mob..

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1 10. From 1993 to at least 2002, Priority has paid to Warner Bros. Records
2 nearly \$130,000 as override royalties under paragraph 23 of the 1993 License
3 Agreement. Priority also paid Tercer Mundo over \$495,000 in advances in return
4 for the right to exploit the Funkadelic Masters under the 1993 License Agreement.
5 In 2003, Capitol also paid Funk Mob a \$45,000 advance for the right to exploit the
6 Funkadelic Masters in a Greatest Hits album, which was never released. Funk
7 Mob has not refunded that money to Capitol.

8 11. In addition, Priority and Capitol have spent considerable money and
9 time negotiating the rights to exploit the Funkadelic Masters and distributing and
10 marketing the Funkadelic Masters.

11 12. If it had been determined in 1993 that Tercer Mundo did not have
12 rights to the Funkadelic Masters to license to Defendants, Defendants would not
13 have re-released those masters in 2002 without a license from the rights holder.
14 Conversely, if it had been determined in 1993 that Tercer Mundo did have the right
15 to license the Funkadelic Masters, Defendants would not today be subject to a suit
16 by Plaintiff for infringement of those masters because of the re-release. Either
17 way, Plaintiff's failure to file suit in 1993 has caused Defendants to suffer
18 significant prejudice.

19 13. Over the last several years, the employees of Priority who had
20 knowledge of the Funkadelic Masters, the 1993 License Agreement, the release of
21 the Funkadelic Masters under the 1993 License Agreement, and the 2002 re-
22 release of Funkadelic Masters in association with Funk Mob, have left the
23 company. These former employees include Bryan Turner, Craig Marshall, Nancy
24 McCullough, and Christos Badavas. There are others as well. In addition, the
25 memories of the few employees who remain who have any knowledge of the
26 Funkadelic Masters have faded and are incomplete.

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1 14. In 1999, Priority and Capitol transitioned their e-mail system from the
2 cc:Mail system to their current system, Microsoft Exchange. Prior to 1999, Capitol
3 utilized an unsupported Novell and cc:Mail platform system for email. Neither of
4 these systems is currently in use by Capitol or generally available today. The pre-
5 1999 system utilized Arcserve backup software that is no longer in use by Capitol
6 or generally available today. The pre-1999 systems used 4mm and 8mm DAT tape
7 technology which is no longer in use by Capitol or generally available today.

8 15. In 2002, Capitol and Priority began utilizing a new computer system
9 for tracking royalties and expenses. Because of these various computer system
10 changes, it has been very difficult, if not impossible, for Capitol to recover all
11 information concerning its exploitation of the Funkadelic Masters and Priority's
12 negotiation of the 1993 License Agreement. Defendants' existing files are
13 incomplete, and potentially critical documents may have been lost. Capitol lacks
14 the necessary tape hardware, backup software, and messaging package required to
15 access any of Priority's pre-1999 data. Accordingly, Capitol is unable to access
16 many such documents.

17 I declare under penalty of perjury under the laws of the United States that the
18 foregoing is true and correct, that this declaration was executed at New York, New
19 York, on November 3, 2007.
20 *December*

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22 
23 Alasdair McMullan

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