Doc. 193

# TABLE OF CONTENTS

# TABLE OF CONTENTS PLAINTIFFS' EXHIBITS

	<u>VOLUME 1</u>		<b>PAGES</b>
Exhibit 1	Plaintiffs' Fourth Amended Consolidated Complaint ("FAC") filed on April 29, 2014 (Dkt. 95)	1	44
Exhibit 2	Defendants' Answer to Plaintiffs' FAC filed on May 6, 2014 (Dkt. 99)	45	76
Exhibit 3	Declaration of Mark C. Rifkin in Support of Notice of Motion and Cross-Motion and Motion and Cross-Motion for Summary Judgment	77	80
Exhibit 4	Declaration of Beth A. Landes in Support of Notice of Motion and Cross-Motion and Motion and Cross-Motion for Summary Judgment	81	85
Exhibit 5	Excerpts from <i>Song Stories for the Kindergarten</i> published in 1893 by Clayton F. Summy Co. (WC0000406-412)	86	93
Exhibit 6	Articles of Incorporation for the Clayton F. Summy Company filed with the State of Illinois on or about January 14, 1895 (P003572-3586)	94	109
Exhibit 7	Digital copy of <i>Song Stories for the Kindergarten</i> , published in 1896 by Clayton F. Summy Co. (P002057-2156)	110	210
Exhibit 8	Article entitled "First Grade Opening Exercises" printed in the January 1901 edition of <i>Inland Educator and Indiana</i> <i>School Journal</i> (P003608-3609)	211	213
Exhibit 9	Excerpt from the book <i>Tell Me a True Story</i> , published by Fleming H. Revell Co., arranged by Mary Stewart, in 1909 (P003729-3732)	214	218
Exhibit 10	Excerpt from 1909 Catalog of Copyright Entries for Books, Entry for Reg. No. A239690 ( <i>Tell Me a True Story</i> ) (P006323)  VOLUME 2	219	220
Exhibit 11	Digital copy of <i>The Elementary Worker and His Work</i> published by the Board of Sunday Schools of the Methodist Episcopal Church, written by Alice Jacobs and Ermina Chester Lincoln, (P002299-2563)  VOLUME 3	221	486
Exhibit 12	Certified Copy of Additional Certificate of Registration to Claim of Copyright for <i>The Elementary Worker and His Work</i> (P006331-6333)	487	490

## VOLUME 3 (Continued) Exhibit 13 Excerpt of sheet music from the Beginners' Book of Songs 491 493 with Instructions published by the Cable Company Chicago in 1912 (P003423-3424) Exhibit 14 Excerpt of the sheet music published in *The Golden Book* 494 497 of Favorite Songs, A Treasury of the Best Songs of our People (P003425-3427) CD containing a of video compiled performances of the Exhibit 15 498 song Happy Birthday from the animated short Bosko's Party (Ex. 25) and from the motion pictures Girls About Town (Ex. 35), Strange Interlude (Ex. 26), Baby Take A Bow (Ex. 30), Way Down East (Ex. 41), and The Old Homestead (Ex. 39) [manually lodged & filed pursuant to L.R. 11-5.1] Exhibit 16 Photograph of the "Application for the RENEWAL of a 499 501 Copyright Subsisting in Any Work" submitted by Jessica Hill, as next of kin for Mildred J. Hill, Song Stories for the Kindergarten (Reg. No. 45997) on September 3, 1921 (Renewal Reg. No. 19043) (P003297-3298) Certificate of Incorporation for Educational Music Bureau Exhibit 17 502 507 ("EMB") filed with the Illinois Secretary of State on or about August 11, 1923, (WC0002034-2038) Excerpt of sheet music published in Harvest Hymns in Exhibit 18 508 512 1924 (P003590-3593) Certified Copy of Additional Certificate of Registration to 516 Exhibit 19 513 Claim of Copyright for Harvest Hymns (Reg. No. A777856) (P006325-6327) Articles of Incorporation of Clayton F. Summy Co. filed 517 Exhibit 20 523 with the Illinois Secretary of State on or about April 15, 1925 (P003537-3542) Excerpt of sheet music from Children's Praise and Exhibit 21 524 528 Worship published in 1928 (P003431-3434) Certified Copy of Additional Certificate of Registration to 529 Exhibit 22 532 Claim of Copyright for Children's Praise and Worship (A1068883) (P006328-6330) Exhibit 23 Declaration of Randall S. Newman in Support of 533 544

Plaintiffs' Motion for Summary Judgment

## VOLUME 3 (Continued) the Catalog of Copyright **Entries** Exhibit 24 545 550 Excerpt from (Cumulative Series) for Motion Pictures from 1912 to 1939 (P006351, P006353, P006357-6359) Exhibit 25 CD containing the animated short entitled *Bosko's Party* 551 [manually lodged & filed pursuant to L.R. 11-5.1] DVD containing the motion picture Strange Interlude 552 Exhibit 26 [manually lodged & filed pursuant to L.R. 11-5.1] Warner/Chappell Music, Inc.'s "New Song Information 553 Exhibit 27 555 Sheet," printed from its electronic database (WC0001983-1984) Exhibit 28 C.F.S. Musical Co. was dissolved by a decree entered by 556 557 the Superior Court of Cook County, Illinois on or about May 17, 1933 (P003547-3548) Copy of Sam H. Harris Theatrical Enterprises, Inc.'s Exhibit 29 558 574 Interrogatory Responses dated March 25, 1935, filed in the captioned action Jessica M. Hill v. Sam H. Harris, et al. Eq. No. 78-350 (P003116-3131) DVD containing the motion picture Baby Take A Bow Exhibit 30 575 [manually lodged & filed pursuant to L.R. 11-5.1] Photograph of Application for Copyright for Republished Exhibit 31 576 578 Musical Composition (Reg. No. E51988) dated December 6, 1935 (P003290-3291) "Complaint" filed August 14, 1934, in the United States Exhibit 32 579 587 District Court, Southern District of New York, captioned Jessica M. Hill v. Sam H. Harris, Eq. No. 78-350 (P002800-2807) Exhibit 33 Excerpt from 1934 Catalog of Copyright Entries for 588 598 Musical Compositions, Vols. 1 to 12 (P113096) New York Times article entitled "Shy Women Teachers Exhibit 34 590 591 Who Wrote Child's Ditty Figure in Plagarism Suit Over Broadway Hit" appearing in August 15, 1934, edition (P003598) Parts 1, 5, and 6 of Motion Picture "Girls About Town" as 592 Exhibit 35 retrieved from YouTube available at http://www.youtube.com /watch?v=zbeni6pmJHk&feature&share&list=PL8DEBB5 72FF5195FB&index=4 [manually lodged & filed pursuant to L.R. 11-5.1]

### VOLUME 3 (Continued) "Amended Complaint" filed January 28, 1935, in the Exhibit 36 593 601 United States District Court, Southern District of New York, captioned Jessica M. Hill v. Sam H. Harris, et al., Eq. No. 78-350 (P002825-2832) New York Herald article entitled "Sam H. Harris is Sued Exhibit 37 602 603 Over Melody of Song" appearing in the August 15, 1934, edition (P006322) Excerpts from 1935 Catalog of Copyright Entries for 604 612 Exhibit 38 Musical Compositions, Vols. 1 to 12 (P114300, P114523, P114524, P114589, P114980, P114903, P114966. P115008) DVD containing the motion picture The Old Homestead Exhibit 39 613 [manually lodged & filed pursuant to L.R. 11-5.1] Photograph of Application for Copyright for Republished Exhibit 40 614 616 Musical Composition with New Copyright Material submitted December 6, 1935 and Registered as E51990 (P003295-3296) CD containing the motion picture Way Down East Exhibit 41 617 [manually lodged & filed pursuant to L.R. 11-5.1] Assignment of Copyrights, Patty S. Hill & Jessica M. Hill, Exhibit 42 618 621 Assignors, and The Hill Foundation, Inc., Assignors dated June 2, 1942, recorded with the U.S. Copyright Registrar's Office on June 8, 1942 (WC00001453-1455) 622 624 Exhibit 43 Copy of the sheet music deposited and registered as Reg. No. E51988 (WC0000413-414) Certified Copy of Additional Certificate of Registration to Exhibit 44 625 627 Claim of Copyright for Reg. No. E51988 (P006334-6335) Letter from Adam Kaplan, Munger Tolles, to Betsy C. Exhibit 45 628 631 Manifold, Wolf Haldenstein dated November 6, 2014 Letter from the Copyright Office dated January 23, 1961 Exhibit 46 632 633 (WC000405) Exhibit 47 Excerpts of Deposition Transcript of Defendant 634 651 Warner/Chappell Music, Inc., Pursuant to Fed. R. Civ. P. 30(b)(6) deponent Thomas Marcotullio, taken June 3, 2014 Certified Copy of Additional Certificate of Registration to Exhibit 48 652 654 Claim of Copyright for Reg. No. E51990 (P006336-6337)

## VOLUME 3 (Continued) "Assignment of Copyrights," Patty S. Hill & Jessica M. 655 659 Exhibit 49 Hill, Assignors, and Summy Co. III, Assignee, dated September 2, 1939, recorded with the U.S. Copyright Registrar's Office on September 21, 1939 (WC0001446-1449) "Amended Complaint" filed December 16, 1943, in the 675 Exhibit 50 660 United States District Court for the Southern District of New York, captioned The Hill Foundation, Inc. v. Clayton F. Summy Co., Civil No. 19-377 (P002647-2661) "Answer to Amended Complaint" filed December 29. 689 Exhibit 51 676 1942 in the United States District Court for the Southern District of New York, captioned The Hill Foundation, Inc. v. Clayton F. Summy Co., Civil No. 19-377 (P002935-2947) "Complaint" filed March 2, 1943 in the United States Exhibit 52 690 696 District Court, Southern District of New York, The Hill Foundation, Inc. v. Postal Telegraph-Cable Co., Civil No. 20-439 (P002590-2595) "Assignment," Patty S Hill and Jessica M. Hill, as Exhibit 53 697 699 Assignees, The Hill Foundation, Inc., as Assignors, dated October 16, 1944, recorded November 10, 1944 in the U.S. Copyright Registrar's Office (WC00000106-107) "Assignment," The Hill Foundation, Inc., as Assignee, Exhibit 54 700 706 Clayton F. Summy Co., a Delaware corporation, Assignor, dated October 16, 1944, recorded November 10, 1944, in the U.S. Copyright Registrar's Office (WC0000957-962) **VOLUME 4** Exhibit 55 National Archives and Records Administration Certified 707 718 Copy of "Complaint" filed March 28, 1945, in the United States District Court, Southern District of New York, captioned Clayton F. Summy Co. v. McLoughlin Brothers, Inc., Civil No. 30-284 (P006051-6058) National Archives and Records Administration Certified Exhibit 56 719 730 Copy of "Complaint" filed March 28, 1945, in the United States District Court, Southern District of New York, captioned Clayton F. Summy Co. v. Louis Marx & Company, Inc., Civil No. 30-285 (P006042-6050)

### VOLUME 4 (Continued) National Archives and Records Administration Certified Exhibit 57 731 740 Copy of "Complaint" filed January 11, 1946, in the United States District Court, Southern District of New York, captioned Clayton F. Summy Co. v. Paul Feigay and Oliver Smith, Civil No. 34-481 (P006034-6041) Article appearing in the *New York Herald* entitled "Happy Exhibit 58 741 742 Birthday Trouble" on December 16, 1947 (P004319) Articles of Amendment to EMB filed with the Illinois Exhibit 59 743 748 Secretary of State on or about June 2, 1948 (WC0002039-2043) Article appearing in the *The American Family* entitled "The Exhibit 60 749 755 Birthday Song" in January 1950 (P004319) Certified Copy of Additional Certificate to Claim of Exhibit 61 756 758 Copyright for renewal of *Harvest Hymns* (Renewal Reg. No. R90447) (P006344-6345) Certificate of Amendment and Certificate of Incorporation Exhibit 62 759 762 changing name of Clayton F. Summy Co., a Delaware corp., to Summy Publishing Company, filed January 23, 1956, with the Delaware Secretary of State (WC0002000-2002) Excerpt from Twice 55 Community Songs, The Brown Exhibit 63 763 765 Book, Revised Ed., published 1957 by C.C. Birchard Co., of Happy Birthday sheet music (P005997-5998) Excerpts of Deposition Transcript of Plaintiffs' Expert Exhibit 64 766 798 Witness, Joel Sachs, Ph.D., taken on September 9, 2014 Certificate of Amendment and Certificate of Incorporation 799 Exhibit 65 802 changing name of Summy Publishing Company, a Delaware corp., to Summy-Birchard Publishing Company, filed

	September 27, 1957 with the Delaware Secretary of State (WC0002003-2005)		
Exhibit 66	Certificate of Amendment and Certificate of Incorporation changing name of Summy-Birchard Publishing Company, a Delaware corp., to Summy-Birchard Company, filed December 22, 1961, with the Delaware Secretary of State (WC0002006-2008)	803	806
Exhibit 67	Certified Copy of Additional Certificate of Registration of a Claim to Copyright for Renewal Reg. No. R306185 (Original Reg. No. E51988) (P006338-6340)	807	810

### VOLUME 4 (Continued) Certified Copy of Additional Certificate of Registration of Exhibit 68 811 814 a Claim to Copyright for Renewal Reg. No. R306186 (Original Reg. No. E51990) (P006341-6343) New York Times obituary article for John Sengstack, Exhibit 69 815 816 appearing on October 13, 1970 (P006354) Articles of Amendment to Articles of Incorporation for 817 Exhibit 70 822 Educational Music Bureau dated July 31. 1973 (WC0002044-2048) Articles of Merger of Domestic and Foreign Corporation Exhibit 71 823 828 for EMB and Summy-Birchard Company filed with the Illinois Secretary of State on or about December 28, 1973 (WC0002064-2068) Plan and Agreement of Merger entered into on or about Exhibit 72 829 836 December 21, 1973 between Summy-Birchard Company (Delaware) and EMB (WC002069-2075) Exhibit 73 National Archives and Records Administration Certified 837 846 Copy of "Answer" filed March 28, 1945, in the United States District Court, Southern District of New York, captioned Clayton F. Summy Co. v. Louis Marx & Company, Inc., Civil No. 30-285 (P006360-6367) Articles of Merger filed with the Wyoming Secretary of Exhibit 74 847 852 State on or about January 8, 2010 (WC0002076-2080) Articles of Merger filed with the Wyoming Secretary of Exhibit 75 853 857 State on or about March 19, 1976 (WC0002019, 2018, 2032, 2031) Exhibit 76 Agreement and Plan of Merger between Summy-Birchard 858 865 Company, an Illinois corporation, and New Summy-Birchard Company, a Wyoming corporation (WC0002029, 2028, 2027, 2026, 2025, 2024, 2030) Exhibit 77 Articles of Amendment filed with the Wyoming Secretary 866 869 of State on or about November 9, 1978 (WC0002015-2017) Exhibit 78 Articles of Amendment dated May 1, 1979 that were filed 870 872 with the Wyoming Secretary of State, (WC0002013-2014) Articles of Amendment filed with the Wyoming Secretary Exhibit 79 873 875 of State on or about August 3, 1979 (WC0002011-2012)

### VOLUME 4 (Continued) Exhibit 80 Articles of Amendment filed with the Wyoming Secretary 876 878 of State on or about October 12, 1979 (WC0002009-2010) Stock Purchase Agreement between Warner/Chappell Exhibit 81 879 947 Music, Inc. and David K. Sengstack dated December 1, 1988 (WC000760-827) VOLUME 5 Exhibit 82 Articles of Amendment of Birch Tree Group Limited filed 948 951 with the Wyoming Secretary of State on or about December 27, 1988 (WC0001995-1997) Stock Certificate for Birch Tree Group Limited dated Exhibit 83 952 953 February 12, 1986 (WC0000574) Exhibit 84 Assignment 954 955 Stock Power from Sengstack to Warner/Chappell Music, Inc., dated January 3, 1989 (WC0000573) Articles of Merger of Summy-Birchard, Inc., a Wyoming Exhibit 85 956 961 corp., and Summy-Birchard, Inc., a Wyoming corp. (WC0002076-2080) Affidavit of Joel Sachs in Support of Cross-Motions for 962 967 Exhibit 86 Summary Judgment & Exhibits of Sheet Music for *Happy* **Birthday** Exhibit A – Happy Birthday to You! 968 970 (WC0000977-978) Exhibit B – *Happy Birthday to You!* 971 973 (Deposit Copy for E51988-WC0000413-414) Exhibit C – *Happy Birthday* 974 977 (WC0000119-121) Exhibit D – *Happy Birthday* 978 984 (WC0000984-989) Exhibit E – *Happy Birthday* 991 985 (WC0000990-995) Exhibit F – *Happy Birthday* 998 992 (WC0000996-1001) Exhibit 87 Deposition Transcripts de benne esse of Patty S. Hill and 999 1043 Jessica Hill taken July 1, 1935, filed in the Hill v. Harris, Eq. No. 78-350 (P002756-2797)

# **VOLUME 5 (Continued)**

	<u>VOLUME 5 (Continued)</u>		
Exhibit 89	Metro-Goldwyn-Mayer's Notice of Intent to use Musical Compositions in Connection with the "Photoplay" Entitled "Strange Interlude" dated July 14, 1932 (production #608) identifying Happy Birthday as being in the public domain (WB042)	1044	1045
Exhibit 90	TIME Magazine article: "Music: Good Morning" appearing in the August 27, 1934, edition of TIME (P004318)	1046	1047
Exhibit 91	"Answer" filed April 12, 1943, in the United States District Court, Southern District of New York, <i>The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.</i> , Civil No. 20-439 (P002869-2877)	1048	1057
Exhibit 92	Confidential Purchase Agreement between Clayton F. Summy and John Sengstack dated August 7, 1931 (WC0002081-2090)	1058	1068
Exhibit 93	State of Illinois Death Index for Clayton F. Summy (P006368)	1069	1070
Exhibit 94	Plaintiffs' Requests for Production of Documents to Defendants – Set No. One dated February 12, 2014	1071	1082
Exhibit 95	Excerpts from Defendants' Objections and Responses to Plaintiffs' First Set of Requests for Production of Documents dated March 21, 2014	1083	1094
Exhibit 96	Excerpts from Plaintiff Good Morning To You Corp.'s Interrogatories to Defendants – Set No. One dated February 12, 2014	1095	1102
Exhibit 97	Excerpts from Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories dated April 11, 2014	1103	1116
Exhibit 98	Plaintiffs' Receipt for Additional Certificates of Registration of a Claim to Copyright for E 51988 & 7 Others from the Records Research and Certification Section, Office of Public Records and Repositories, U.S. Copyright Office dated June 12, 2014 (P006370)	1117	1118
Exhibit 99	Excerpts from Compendium of Copyright Office Practices II, Ch. 1900, Records, Indexes, And Deposits Of The Copyright Office; Inspection, Copying, Additional Certificates, And Other Certifications (1984) (P006371-6392)	1119	

# DEFENDANTS' EXHIBITS VOLUME 6

	<u>VOLUME 0</u>		
Exhibit 100	Declaration of Adam I. Kaplan in Support of Notice of Motion and Cross-Motion and Motion and Cross-Motion for Summary Judgment	1200	1203
Exhibit 101	Copy of Registration E51990 (WC0000388-90, marked as Marcotullio Dep. Ex. 9)	1204	1207
Exhibit 102	Certificate of Registration of a Claim to Renewal Copyright R306186 (WC0000103-104)	1208	1210
Exhibit 103	Copy of Registration E51988 (WC0000385-87, marked as Marcotullio Dep. Ex. 4)	1211	1214
Exhibit 104	Certificate of Registration of a Claim to Renewal Copyright R306185(WC0000953-54)	1215	1217
Exhibit 105	Record of the Filing of Copyright Deposits under the Act of March 4, 1909 (P003299)	1218	1219
Exhibit 106	Copy of sheet music for <i>Happy Birthday to You!</i> , published in 1935 by Clayton F. Summy Co. as publication number 3075 (WC0000977-979)	1220	1223
Exhibit 107	Excerpts of Deposition Transcript of Defendant Warner/Chappell Music, Inc., Pursuant to Fed. R. Civ. P. 30(b)(6) deponent Thomas Marcotullio, taken June 3, 2014	1224	1540
Exhibit 108	VOLUME 7  Declaration of Thomas B. Marcotullio in Support of	1541	1545
Exhibit 109	Defendants' Motion for Summary Judgment Excerpts of Deposition Transcript of Jeremy Blietz, taken on July 10, 2014	1546	1565
Exhibit 110	Excerpts of Deposition Transcript of Plaintiffs' Expert Witness, Joel Sachs, Ph.D., taken on September 9, 2014	1566	1622
Exhibit 111	Excerpts of Exhibit 47 to the Deposition of Joel Sachs, Ph.D (Expert Report of Joel Sachs, Ph.D. and Exs. J and L thereto)	1623	1646
Exhibit 112	Recorded Assignment of Copyright from Patty S. Hill and Jessica S. Hill to The Hill Foundation, Inc., dated October 16, 1944 (WC0001450-52) (illegible copy)	1647	1650
Exhibit 113	Recorded Assignment of Copyright from Patty S. Hill and Jessica S. Hill to The Hill Foundation, Inc., dated October 16, 1944 (WC0000844-45) (legible copy)	1651	1653

### VOLUME 7 (Continued) Exhibit 114 Recorded Assignment of Copyright from The Hill 1654 1661 Foundation, Inc., to Clayton F. Summy Co., dated October 16, 1944 (WC0001456-62) (illegible copy) Recorded Assignment of Copyright from The Hill Exhibit 115 1662 1670 Foundation, Inc., to Clayton F. Summy Co., dated October 16, 1944 (WC0000838-45) (legible copy) Exhibit 116 Declaration of David K. Sengstack, dated January 20, 1981, recorded in the Copyright Office on February 2, 1981 (WC0001998-2075) Exhibit 116 A 1671 1717 Exhibit 116 B 1718 1750 VOLUME 8 Minutes of a September 29, 1931, Meeting of the Board of Exhibit 117 1751 1754 Directors of C.F.S. Musical Co. (WC WC0002091-93) Stock Certificate for Birch Tree Group Ltd. and Stock Exhibit 118 1755 1759 Power (WC0002094-2097) Excerpt of October 1988 "Confidential Information 1760 1763 Exhibit 119 regarding Memorandum" Birch Tree Group Ltd. (WC0001137, WC0001142-43) Plaintiffs' Complaint, filed on June 20, 2013 (Dkt. 9) Exhibit 120 1764 1798 Plaintiffs' Consolidated First Amended Complaint, filed 1799 Exhibit 121 1833 on July 26, 2013 (Dkt. 29) Plaintiffs' Second Amended Consolidated Complaint, Exhibit 122 1834 1874 filed on September 4, 2013 (Dkt. 59) Plaintiffs' Third Amended Consolidated Complaint, filed Exhibit 123 1875 1916 on November 5, 2013 (Dkt. 72) Joint Report on Parties' Planning Meeting, filed February Exhibit 124 1917 1935 10, 2014 (Dkt. No. 89) Letter from United States Copyright Office to Lisa Exhibit 125 1936 1937 Minnerly (Warner/Chappell Music, Inc.) dated December 9, 2013 (WC0002098) Agreement between The Hill Foundation, Inc., 1938 1947 Exhibit 126 and Clayton F. Summy Co., dated October 16, 1944 (WC0000963-973)

Respectfully Submitted,

# WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

By: /s/Betsy C. Manifold

Dated: December 17, 2014

BETSY C. MANIFOLD

FRANCIS M. GREGOREK gregorek@whafh.com
BETSY C. MANIFOLD
manifold@whafh.com
RACHELE R. RICKERT
rickert@whafh.com
MARISA C. LIVESAY
livesay@whafh.com
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599

Telephone: 619/239-4599 Facsimile: 619/234-4599

# WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

MARK C. RIFKIN (pro hac vice) rifkin@whafh.com
JANINE POLLACK (pro hac vice) pollack@whafh.com
BETH A. LANDES (pro hac vice) landes@whafh.com
270 Madison Avenue
New York, NY 10016
Talanhana: 212/545 4600

Telephone: 212/545-4600 Facsimile: 212-545-4753

Interim Lead Counsel for Plaintiffs

## RANDALL S. NEWMAN PC

RANDALL S. NEWMAN (190547) rsn@randallnewman.net 37 Wall Street, Penthouse D New York, NY 10005 Telephone: 212/797-3737

# HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC.

ALISON C. GIBBS (257526) gibbs@huntortmann.com
OMEL A. NIEVES (134444)
nieves@huntortmann.com
KATHLYNN E. SMITH (234541)
smith@ huntortmann.com
301 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Telephone 626/440-5200
Facsimile 626/796-0107
Facsimile: 212/797-3172

# DONAHUE FITZGERALD LLP

WILLIAM R. HILL (114954) rock@donahue.com
ANDREW S. MACKAY (197074) andrew@donahue.com
DANIEL J. SCHACHT (259717) daniel@donahue.com
1999 Harrison Street, 25<sup>th</sup> Floor
Oakland, CA 94612-3520
Telephone: 510/451-0544

Facsimile: 510/832-1486

# GLANCY BINKOW & GOLDBERG LLP

LIONEL Z. GLANCY (134180) lglancy@glancylaw.com MARC L. GODINO (188669) mgodino@glancylaw.com 1925 Century Park East, Suite 2100 Los Angeles, CA 90067

Telephone: 310/201-9150 Facsimile: 310/201-9160

Attorneys for Plaintiffs

# Dated: December 17, 2014 MUNGER TOLLES & OLSON LLP

By: /s/Kelly M. Klaus

KELLY M. KLAUS

KELLY M. KLAUS (161091)

kelly.klaus@mto.com

ADAM I. KAPLAN (268182)

adam.kaplan@mto.com

560 Mission St., 27th Floor

San Francisco, CA 94105

Telephone: 415/512-4000

## MUNGER TOLLES & OLSON LLP

GLENN D. POMERANTZ (112503)

glenn.pomerantz@mto.com

MELINDA E. LEMOINE

melinda.lemoine@mto.com

355 South Grand Ave., 35th Floor

Los Angeles, CA 90071

Telephone: 213/683-9100

Attorneys for Defendants

**DECLARATION REGARDING CONCURRENCE** 

I, Betsy C. Manifold, am the ECF User whose identification and password are

being used to file this AMENDED JOINT EVIDENTIARY APPENDIX IN

SUPPORT OF NOTICE OF CROSS-MOTIONS AND CROSS-MOTIONS FOR

SUMMARY JUDGMENT FILED PURSUANT TO COURT'S DEC. 5, 2014

ORDER [Dkt. 185] (VOLUME 7, EXS. 108-116, PAGES 1541-1750). In

compliance with Civil Local Rule 5-4.3.4(a)(2), I hereby attest that Kelly M. Klaus

has concurred in this filing.

Executed this 17th day of December 2014, in the City of San Diego, State of

California.

By: <u>/s/Betsy C. Manifold</u>

BETSY C. MANIFOLD

WARNER/CHAPPELL:21420.VOL.8

- 15 -