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7 Attorneys for RISTER EDITIONS

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 SOUTHERN DIVISION

12 BRYAN PRINGLE, an individual,)
 13 Plaintiff,)
 14 v.)
 15 WILLIAM ADAMS, JR.; STACY)
 16 FERGUSON; ALLAN PINEDA; and)
 17 JAIME GOMEZ, all individually and)
 collectively as the music group The)
 Black Eyed Peas, et al.,)
 18 Defendants.)
 19)
 20)
 21)

Case No. SACV 10-1656 JST(RZx)
 Hon. Josephine Staton Tucker
 Courtroom 10A

DECLARATION OF BARRY I. SLOTNICK IN SUPPORT OF NONPARTY RISTER EDITIONS' APPLICATION TO RECOVER ITS EXPENSES, COSTS, AND ATTORNEYS' FEES INCURRED ON ITS MOTION TO DISMISS BASED ON IMPROPER SERVICE

Complaint Filed: October 28, 2010
 Trial Date: Not Assigned

1 I, BARRY I. SLOTNICK, declare as follows:

2 1. I am a partner at the law firm of Loeb & Loeb LLP (“Loeb”), attorneys
3 for Rister Editions (“Rister”) in the above-captioned action. I am a member in good
4 standing of the State Bar of New York. I have personal knowledge of the facts set
5 forth in this Declaration and, and if called as a witness, could and would testify
6 competently thereto.

7 2. I submit this declaration pursuant to, and in compliance with, the
8 Honorable Josephine Staton Tucker’s April 12, 2011 Order granting Rister’s motion
9 to recover its expenses, costs and attorneys’ fees incurred in filing its motion to
10 dismiss for improper service, and directing Rister to file a declaration as to such
11 expenses, costs and fees.

12 **Background**

13 3. On or about December 13, 2010, Rister filed a Motion to Dismiss
14 pursuant to Rule 12(b)(5) on the grounds that Plaintiff improperly attempted to serve
15 Rister through Shapiro, Bernstein & Co., Inc. (“Shapiro Bernstein”), an independent
16 music publishing company which acts as Rister’s sub-publisher. (Dkt. No. 53)
17 Plaintiff did not oppose this Motion.

18 4. On or about January 27, 2011, the Court ordered Plaintiff to “promptly
19 serve” the summons and complaint on Rister no later than 120 days from the
20 October 28, 2010 commencement of the action – or by February 25, 2011. (Dkt.
21 No. 95 at 11)

22 5. On or about March 16, 2011, after Plaintiff’s Court-ordered deadline to
23 serve Rister expired, Plaintiff again attempted to serve Rister through Shapiro
24 Bernstein.

25 6. Following Plaintiff’s March 16, 2011 attempted service, counsel for
26 Rister corresponded with Plaintiff’s counsel in an effort to meet and confer regarding
27 Plaintiff’s improper service, and to resolve the matter without necessitating Rister to
28

1 file a second motion to dismiss based on improper service. Plaintiff's counsel,
2 however, was unwilling to either withdraw its purported service on Rister via
3 Shapiro Bernstein, or properly serve Rister in France.

4 7. Rister was therefore forced to prepare and file a second motion to
5 dismiss based on improper service. (Dkt. No. 122.) Because Plaintiff contended
6 that Shapiro Bernstein was impliedly authorized to accept service on Rister's behalf
7 based on certain public statements by Shapiro Bernstein and others, it was necessary
8 for Rister's counsel to research case law addressing implied authority to accept
9 service of process and purported service on a party's licensee, and to prepare a
10 declaration of Shapiro Bernstein's principal explaining the limited relationship
11 between Shapiro Bernstein and Rister. Rister also sought, pursuant to 28 U.S.C.
12 section 1927, the expenses, costs and attorneys' fees it incurred in making its
13 motion. Plaintiff opposed Rister's motion to dismiss on April 4, 2011 (Dkt. No.
14 123) and Rister filed a Reply on April 11, 2011 (Dkt. Nos. 124, 125) The above-
15 described efforts undertaken by Loeb on behalf of Rister are hereafter referred to as
16 the "Second Motion To Dismiss."

17 **The Court's Order Granting Rister its Attorneys' Fees and Costs**

18 8. On or about April 12, 2011, the Court entered an Order quashing
19 Plaintiff's ineffective service and granting Rister's Motion for attorneys' fees
20 pursuant to 28 U.S.C. § 1927. (Dkt. No. 126.) The Court found that "Plaintiff's
21 decision to disregard this Court's order with regard to its service on Rister amounts
22 to recklessness, and unreasonably and veraciously multiplied the proceedings by
23 requiring Rister to file this second motion for dismissal pursuant to Rule 12(b)(5)."
24 The Court therefore ordered that "Plaintiff's counsel shall pay to Rister sanctions in
25 the amount of the reasonable expenses, costs, and attorneys' fees Rister incurred in
26 filing this motion." Attached hereto as Exhibit "A" is a true and correct copy of the
27 Court's April 12, 2011 Order.

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Rister's Reasonable Attorneys' Fees and Costs

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2 9. Each Loeb professional who performed services for Rister in
3 connection with the Second Motion To Dismiss maintained a detailed time record of
4 the time expended and services rendered on a daily basis. These records are entered
5 into a computer database maintained and supported by Loeb's client accounting and
6 billing department in the regular and ordinary course of business.

7 10. Attached hereto as Exhibit "B" is a "Time Detail" report containing
8 billing entries made by myself and my colleagues, Donald A. Miller, Tal E.
9 Dickstein, Thomas D. Nolan III, Eric Schwartz, Timothy B. Cummins, and
10 Antoinette Pepper, in connection with Rister's Second Motion To Dismiss and the
11 preparation of this declaration. Although, the fees reflected in the Time Detail have
12 not yet been billed to Rister, they will be in the next billing cycle.

13 11. I have reviewed the Time Detail, and based on my thirty-nine years of
14 experience as a litigator and my knowledge of the facts of this case, the entries
15 reflect time reasonably and necessarily expended in the representation of Rister's
16 rights and interests regarding the Second Motion To Dismiss.

17 12. In addition, based on my experience and personal knowledge, the
18 hourly rates charged by Loeb partners, associates and paralegals in this case are less
19 than those charged by other California and New York law firms of comparable size
20 and reputation to defend similarly complex cases.

21 13. Thomas D. Nolan is a litigation associate in Loeb's New York City
22 office. He is a graduate of the University of Virginia School of Law, where he was
23 an Editor on the *Virginia Law Review*, and has been licensed to practice law in the
24 State of California since 2005 and in the State of New York since 2011. Mr. Nolan
25 has extensive experience handling a broad array of complex litigation matters,
26 specifically concentrating on copyright and other intellectual property matters,
27 media, and entertainment. Through April 22, 2011, Mr. Nolan billed 36.7 hours in
28 connection with the Second Motion To Dismiss, for total fees of \$18,350, such that

1 his average hourly rate in connection with these proceedings was \$500.00. Mr.
2 Nolan's time on this matter was primarily spent researching and drafting motion
3 papers in connection with the Second Motion To Dismiss.

4 14. Tal Dickstein is a litigation associate in Loeb's New York City office.
5 He is a graduate of the Benjamin N. Cardozo School of Law, Yeshiva University,
6 where he graduated *magna cum laude*, and has been licensed to practice law in the
7 State of New York since 2004. Mr. Dickstein has served as a law clerk for the
8 Honorable Louis L. Stanton of the United States District Court for the Southern
9 District of New York. Mr. Dickstein has extensive litigation experience with
10 particular experience in intellectual property matters in the music and advanced
11 media industries. Through April 22, 2011, Mr. Dickstein billed 19.3 hours in
12 connection with the Second Motion To Dismiss, for total fees of \$10,615, such that
13 his average hourly rate in connection with these proceedings was \$550. Mr.
14 Dickstein's time on this matter was primarily spent meeting and conferring with
15 Plaintiff in an attempt to resolve the matter without Court involvement, and revising
16 motion papers in connection with the Second Motion To Dismiss and this
17 declaration.

18 15. I am a partner and the chair of the Intellectual Property and
19 Entertainment Litigation Practice Group in Loeb's New York City office. I am a
20 graduate of the Syracuse University College of Law, where I graduated With
21 Honors, and have been licensed to practice law in the State of New York since 1972.
22 From 2004 to 2006, I served as President of the Copyright Society of the U.S.A. I
23 am a nationally recognized copyright and trademark litigator who has represented
24 clients in the entertainment, advertising, licensing and merchandising industries in
25 courts throughout the United States. Through April 22, 2011, I billed 4.8 hours in
26 connection with the Second Motion To Dismiss, for total fees of \$3,240, such that
27 my average hourly rate in connection with the Second Motion To Dismiss was \$675.
28 My time on this matter was primarily spent supervising the Loeb associates in the

1 meet and confer process and the drafting of papers in connection with the Second
2 Motion To Dismiss.

3 16. Donald A. Miller is a litigation associate in Loeb's Los Angeles,
4 California office. He is a graduate of the University of California at Berkeley, Boalt
5 Hall School of Law, and has been licensed to practice law in the State of California
6 since 2003. Mr. Miller has extensive experience litigating a wide range of
7 intellectual property and entertainment matters on behalf of prominent clients in the
8 motion picture, television, music, and book publishing industries. Through April
9 22, 2011, Mr. Miller billed 1.2 hours in connection with the Second Motion To
10 Dismiss, for total fees of \$660, such that his average hourly rate in connection with
11 the Second Motion To Dismiss was \$550. Mr. Miller's time on this matter was
12 primarily spent reviewing the Second Motion To Dismiss in preparation for ECF
13 filing.

14 17. Eric Schwartz is a litigation associate in Loeb's Los Angeles,
15 California office. He is a graduate of the University of California Hastings College
16 of the Law, where he graduated *cum laude* and was the Executive Editor of the
17 *Hastings Law Journal*. Mr. Schwartz has been licensed to practice law in the State
18 of California since 2009. Through April 22, 2011, Mr. Schwartz billed 8 hours in
19 connection with the Second Motion To Dismiss, for total fees of \$2,800, such that
20 his average hourly rate in connection with these proceedings was \$350. Mr.
21 Schwartz's time on this matter was primarily spent drafting this declaration.

22 18. Antoinette Pepper is an experienced litigation paralegal in Loeb's New
23 York City office. Through April 22, 2011, Ms. Pepper billed 0.3 hours on this case,
24 for total fees of \$106.50, such that her average hourly rate in connection with these
25 proceedings was \$355. Ms. Pepper's time on this matter was primarily spent
26 assembling case files and organizing documents in connection with the Second
27 Motion To Dismiss.

1 19. Timothy B. Cummins is an experienced litigation paralegal and
2 Managing Clerk in Loeb's New York City office. Through April 22, 2011, Mr.
3 Cummins billed 1 hour on this case, for total fees of \$320.00, such that his average
4 hourly rate in connection with these proceedings was \$320.00. Mr. Cummins' time
5 on this matter was primarily spent assisting with the Second Motion To Dismiss.

6 20. The following chart accurately summarizes all time billed by myself
7 and my colleagues in connection with the Second Motion to Dismiss, including the
8 preparation of this declaration:

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Timekeeper	Position	Hours	Rate	Dollars
Timothy B. Cummins	Paralegal	1.00	\$320	\$320.00
Tal Dickstein	Associate	19.30	\$550	\$10,615.00
Donald A. Miller	Associate	1.20	\$550	\$660.00
Thomas D. Nolan	Associate	36.70	\$500	\$18,350.00
Antoinette Pepper	Paralegal	0.30	\$355	\$106.50
Eric Schwartz	Associate	8.00	\$350	\$2,800.00
Barry I. Slotnick	Partner	4.80	\$675	\$3,240.00
Total				\$36,091.50

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18 21. Based upon my experience, these hourly rates are reasonable and
19 commensurate with those generally charged for similar work done by similarly
20 qualified attorneys in their given jurisdictions.

21 22. Attached hereto as Exhibit "C" is a true and correct copy of the
22 National Law Journal billing summary from December 6, 2010. The survey shows
23 that a billing rate of \$675 is commensurate with or below rates charged for other
24 similarly qualified partners in New York City. The survey likewise shows that a
25 billing rate of \$500 - \$550 is commensurate with the rates charged for other high-
26 level associates at large law firms in markets with a high cost of living, such as Los
27 Angeles and New York City. Finally, the survey demonstrates that a billing rate of
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1 \$350 is commensurate with the rates charged for other second-year associates at
2 large law firms in markets with a high cost of living.

3 23. The total amount of reasonable attorneys' fees and paralegal expenses
4 incurred by Rister in connection with the Second Motion To Dismiss, including the
5 preparation of this declaration, total no less than \$36,091.50.

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct. Executed this 21st day of April,
8 2011.

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10 /s/ Barry I. Slotnick

11 BARRY I. SLOTNICK
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