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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

BRYAN PRINGLE, an individual,

Plaintiff,

v.

WILLIAM ADAMS, JR.; STACY FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and collectively as the music group The Black Eyed Peas, et al.,

Defendants.

Case No. SACV 10-1656 JST(RZx)

Hon. Josephine Staton Tucker
Courtroom 10A

**SUPPLEMENTAL 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: February 28, 2012

I, BARRY I. SLOTNICK, declare as follows:

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

2. I submit this Declaration in response to the three declarations filed by Plaintiff's various counsel, Dean A. Dickie (Dkt. No. 129, "Dickie Decl."), George I. Hampton IV (Dkt. No. 130, "Hampton Decl.") and Ira Gould (Dkt. No. 131, "Gould Decl."), and in further support of Rister's Application to Recover its Expenses, Costs and Attorneys' Fees Incurred on its Motion to Dismiss Based on Improper Service (Dkt. No. 128.)

3. Plaintiff's counsel argues that: (1) Loeb spent too much time successfully challenging Plaintiff's repeated bad faith attempts to serve Rister through an entity which, as Plaintiff was repeatedly told, had no authority to accept service on Rister's behalf, (2) the fees charged by Loeb's experienced California and New York attorneys are too high, and (3) Rister is not entitled to recover fees incurred in preparing its fee application. With the exception of two time entries which were inadvertently included in Rister's initial fee application (discussed in ¶ 7 below), none of Plaintiff's arguments have any merit.

**The Amount of Time Spend by Loeb Attorneys Was Reasonable**

4. Plaintiff's counsel argue that Loeb spent too much time on Rister's Second Motion to Dismiss because, they claim, that motion was "based on the same grounds as presented in the initial Motion to Dismiss for improper service of process" and was merely a "rehash" of Rister's first motion to dismiss based on improper service. (Dickie Decl. ¶¶ 4, 21; Gould Decl. ¶ 16; Hampton Decl. ¶¶ 8,

10.) This is incorrect.[1] Plaintiff's arguments that Shapiro Bernstein had the "implied authority" to accept service on Rister's behalf, and that Shapiro Bernstein was Rister's "managing agent", were presented for the first time on Rister's Second Motion to Dismiss – indeed, as the Court recognized in its April 12, 2011 Order, Plaintiff presented absolutely *no* argument in response to Rister's first motion to dismiss based on improper service. (Dkt. No. 126 at 1.) Thus, in preparing its Second Motion to Dismiss, Rister was required to research and brief the "implied authority" and "managing agent" issues as they apply in the context of a music sub-publisher licensee. The amount of time spent on this research and briefing – which ultimately led to the Court granting Rister's motion and quashing Plaintiff's purported service – was entirely reasonable.

5. Moreover, Plaintiff's counsel fail to recognize that significant time was incurred by Loeb attorneys in (a) drafting letters to Plaintiff's counsel demanding withdrawal of the manifestly improper service; (b) conducting a telephonic conference with Plaintiff's counsel regarding the improper service,[2] and (c) working with the President of Shapiro Bernstein to prepare a factual declaration setting forth the nature of the relationship between Rister and Shapiro Bernstein.

6. Plaintiff's counsel next object to Loeb's assignment of three senior associates to work on Rister's motion to dismiss. (Dickie Decl. ¶ 35.) As an initial matter, it is ironic indeed that Plaintiff's counsel's submitted declarations by three

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[1] Assuming *arguendo* that this were correct, it demonstrates that Plaintiff's first two attempts to serve Rister through Shapiro Bernstein in 2010 were equally as frivolous as their March 2011 service attempt. Yet Rister seeks to recover fees in connection with its challenge to only Plaintiff's March 2011 improper service, not its challenge to Plaintiff's first two frivolous service attempts. Any doubt as to the reasonableness of Rister's fees should therefore be resolved in Rister's favor.

[2] Although Plaintiff's counsel objects to Rister's inclusion of time spent researching the requirements for service under the Hague Convention (Hampton Decl. ¶ 11), such research was necessary to inform our communications with Plaintiff's counsel, and, indeed, Plaintiff's counsel themselves researched the issue. (Dickie Decl. ¶ 7.)

partners in order to criticize Loeb's staffing three senior associates on the motion to dismiss. Moreover, Plaintiff's characterization of the time spent by Loeb attorneys is misleading. Donald Miller's role was limited to the finalization and electronic filing of the moving and reply papers, and billed a mere 1.2 hours in connection with Rister's motion. The bulk of Tal Dickstein's time was spent communicating with Plaintiff's counsel in an attempt to resolve the matter without the need for wasteful motion practice, and in reviewing and editing the motion papers which were drafted by Thomas Nolan, the most junior of the "senior associates" assigned to the matter. This efficient division of labor allowed me, the highest billing attorney and sole partner on this matter, to spend only 4.8 hours primarily supervising and reviewing the associates' work.

7. Plaintiff's counsel correctly point out that certain fees charged in connection with service of process on Frederic Resiterer, and in drafting an Answer on Mr. Riesterer's behalf, were inadvertently included in the fees Rister seeks to recover in this application. (Dickie Decl. ¶ 37; Hampton Decl. ¶ 11.) These fees include 0.20 hours ($135) billed by me on March 15, 2011, and 4.10 hours ($2,050) billed by Thomas Nolan on April 12, 2011. Thus, the total fees sought in this application are $33,906.50 (the initial $36,091.50 application, less $2,185).

**The Rates of Loeb Attorneys and Paralegals are Reasonable**

8. Plaintiff's counsel argues that the rates charged by sixth-year associate Thomas Nolan and seventh-year associate Tal Dickstein are too high. (Gould Decl. ¶¶ 19-20.) Although he correctly notes that only three of the 42 firms listed on page 10 of the billing summary attached to my initial declaration charge more than $500 an hour for sixth-year associates, or more than $550 an hour for seventh-year associates, he fails to mention that two of those three firms are in New York or Los Angeles, the cities in which Loeb's associates assigned to this matter work.

9. Moreover, counsel himself acknowledges that the New York and California firms on the billing summary charge an average of $471.5 per hour for

sixth-year associates and $501.75 per hour for seventh-year associates, which is only 0.057% and 0.087% less than Loeb's rates for Mr. Nolan and Mr. Dickstein, respectively. (Gould Decl. ¶ ¶ 19-20.) These associates have significant copyright litigation experience, including on behalf of music publishing companies such as Rister. This modest premium on the average hourly rate is thus more than reasonable.

10. Finally, Timothy Cummins, the Managing Clerk of Loeb's New York litigation department, and Antoinette Pepper, a senior paralegal in Loeb's litigation department, each have over 20 years of paralegal experience, including experience working on numerous copyright infringement cases on behalf of music publishing companies such as Rister. Their rates of $320 and $355 per hour, respectively, are therefore reasonable.

**Rister is Entitled to Collect its Fees Incurred in Preparing its Fee Application**

11. Plaintiff's counsel argue that Rister may not recover fees incurred in preparing the fee application pursuant to the Court's April 12, 2011 Order. (Dickie Decl. ¶ 33.) This is incorrect—numerous cases have held that fees incurred in preparing fee applications are recoverable. *See, e.g.*, *Harris v. Maricopa Cty. Superior Court*, 631 F.3d 963, 979 (9th Cir. 2011); *Stewart v. Cty. of Sonoma*, 634 F. Supp. 773, 777 n.1 (N.D. Cal. 1986).

12. Moreover, the 10.7 total hours billed in connection with preparing the attorneys fees application is entirely reasonable, given that the Court Order required Rister to submit a "detailed" declaration in support of its application, and that, as counsel acknowledges (Dickie Decl. ¶ 34), this task was assigned primarily to a junior associate with a low billing rate.

**Plaintiff Needlessly Raises Issues Unrelated to This Application**

13. Plaintiff's counsel, Dean Dickie, inexplicably raises discussions the parties had with respect to service of process on Frederic Riesterer. (Dickie Decl. ¶¶

10-13, 15.) Mr. Dickie's statements are irrelevant to this application. However, because his statements are also misleading, I feel compelled to briefly respond.

14. First, contrary to Mr. Dickie's assertions, Loeb never stated that it did not represent Mr. Riesterer, only that it was not authorized to accept service on his behalf. This was made abundantly clear in the letters attached to Mr. Dickie's declaration. (Dickie Decl., Ex. C, March 16, 2011 Letter from Barry I. Slotnick to Dean Dickie) ("Certainly you must be aware that a lawyer, merely by the fact of generally representing a client, does not become an agent for service of process.")

15. Second, Loeb never "attempt[ed] to frustrate Plaintiff's attempts at service of Rister via Shapiro Bernstein and Mr. Riesterer[.]" (Dicke Decl. ¶ 13.) As this Court's April 12, 2011 Order confirms, Rister was entirely justified in insisting that Plaintiff serve it properly, rather than through Shapiro Bernstein. Further, although we initially refused to provide Mr. Riesterer's mailing address when Plaintiff requested it from Loeb in its separate capacity, we promptly provided that information when Plaintiff clarified that it was being requested from Loeb in its capacity as counsel for Shapiro Bernstein. (Dickie Decl., Ex. F, March 21, 2011 Letter from Barry I. Slotnick to Dean Dickie) ("Your March 18 letter now appears to request Mr. Riesterer's contact information from us as counsel for Shapiro Bernstein. We have therefore consulted with out client and will agree to furnish Mr. Riesterer's contact information to you in that capacity.")

16. Plaintiff's counsel's inclusion of irrelevant and factually incorrect statements only further shows their willingness to "multipl[y] the proceeding . . . unreasonably and vexatiously[.]"

**Conclusion**

17. For all the reasons in Rister's April 22, 2011 attorneys fees application (Dkt. No 128), and the reasons stated above, Rister respectfully requests that the Court award it $33,906.50 incurred in connection with its Second Motion to Dismiss based on improper service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2nd day of May, 2011.

/s/ Barry I. Slotnick
BARRY I. SLOTNICK