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 23 SEAN SWEENEY, IN HIS CAPACITY AS TRUSTEE
 24 OF THE ESTATE OF JAMES JOYCE, AND THE
 25 ESTATE OF JAMES JOYCE

26 UNITED STATES DISTRICT COURT
 27 NORTHERN DISTRICT OF CALIFORNIA

28 **CAROL LOEB SHLOSS,**

Plaintiff,

v.

**SEAN SWEENEY, in his capacity as
 trustee of the Estate of James Joyce, and
 THE ESTATE OF JAMES JOYCE,**

Defendants.

Case No. C 06 3718 JW HRL

**JOINT CASE MANAGEMENT
 STATEMENT AND FED. RULE CIV.
 P. 26(F) REPORT**

Date: Jan. 31, 2007

Time: 10:00 a.m.

Place: Courtroom, Hon. James Ware

1 Plaintiff Carol Loeb Shloss ("Shloss") and defendants Sean Sweeney and the Estate of
2 James Joyce ("Estate") jointly submit this Case Management Statement and Proposed Order, and
3 report to the Court after their meeting held pursuant to Fed. R. Civ. P. 26(f).

4 DESCRIPTION OF THE CASE

5 Shloss wrote a book about Lucia Joyce, including about her influence on her father James
6 Joyce's work *Finnegans Wake* (the "Book"). Prior to the Book's publication, the Estate
7 contacted both Shloss and her publisher, Farrar Straus & Giroux (the "Publisher"). The Book was
8 published in December 2003 with the title *Lucia Joyce: To Dance in the Wake*. In or about
9 March 2005, Shloss notified the Estate she intended to publish a website to supplement her book,
10 and attached a copy of that proposed website for the Estate to evaluate (the "Website"). Shloss's
11 lawyers and the Estate's lawyers engaged in correspondence about the Website in 2005. In June
12 2006, Shloss commenced an action before this Court, seeking a declaratory judgment and
13 injunctive relief that publication of the Website would not infringe any copyright of the Estate's,
14 that the 1922 Paris first edition of *Ulysses* is in the public domain in the United States, that
15 publication of the Website would constitute fair use, and that the Estate was barred from
16 enforcing its copyrights against Shloss because it had engaged in copyright misuse and unclean
17 hands.

18 After the Complaint was filed, Shloss expanded the Website to add new materials. The
19 new materials consist of new text from Shloss, as well as quotes from works by James Joyce and
20 Lucia Joyce. The revised version of the Website is referred to as the 2006 Website. The
21 materials added to the Website are referred to as the "Additional Materials." Shloss had not
22 disclosed to the Estate the Additional Materials before she filed the Complaint, but did provide
23 the Estate with a full copy of all Additional Materials in September 2006. Shloss filed an
24 Amended Complaint on October 25, 2006, to cover the 2006 Website and the Additional
25 Materials. The Estate covenanted not to sue Shloss as to the Website as it existed in 2005.

26 FACTUAL ISSUES IN DISPUTE

27 The parties differ as to whether Shloss had an objectively reasonable apprehension that the
28 Estate intended to initiate litigation over the Website. The parties also differ as to whether the

1 Estate's covenant that it will not sue Shloss for copyright infringement based on the contents of
2 the 2005 Website mooted the controversy.

3 Additionally, the parties do not agree as to whether James Joyce's 1922 Paris first edition
4 of *Ulysses* is in the public domain in the United States.

5 **LEGAL ISSUES IN DISPUTE**

6 The parties differ as to the following:

7 a) Whether the Additional Materials Shloss intends to publish in her 2006 Website, if and
8 when published, will infringe any copyrights owned or controlled by the Estate of James Joyce;

9 b) Whether Shloss's use of Defendants' copyrighted materials is protected by fair use;

10 c) Whether Shloss may raise the affirmative defenses of copyright misuse and unclean
11 hands in her Amended Complaint and, if so, whether the Estate's alleged conduct thereby
12 prevents the Estate from enforcing its copyright ownership against Shloss;

13 d) Whether the First, Third and Fourth causes of actions of Shloss's Amended Complaint
14 should be stricken; and

15 e) Whether either party should be awarded attorney's fees and costs for the lawsuit.

16 **MOTION PRACTICE**

17 Pending before the Court is the Estate's Motion to Dismiss, or in the Alternative, to Strike
18 Portions of, the Amended Complaint, as well as evidentiary objections to certain evidence
19 submitted by Shloss in opposition thereto. Further, the Estate contends that the Estate itself is not
20 a proper party to the action because it has no capacity to sue or be sued. The Estate also contends
21 that the issues of copyright infringement or fair use of the Additional Materials, to the extent they
22 need to be reached, can be substantially narrowed, if not resolved altogether, by motion practice.

23 **PARTIES**

24 All named defendants have been served with process and have appeared in this action.

25 Shloss contends that Stephen James Joyce may need to be joined in this dispute either
26 individually or as a trustee of the Estate.

27 The Estate does not contemplate joinder of any additional parties.

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