

1 LAWRENCE LESSIG
 ANTHONY T. FALZONE (SBN 190845)
 2 anthony.falzone@stanford.edu
 DAVID S. OLSON (SBN 231675)
 3 dolson@law.stanford.edu
 STANFORD LAW SCHOOL
 4 CENTER FOR INTERNET AND SOCIETY
 559 Nathan Abbott Way
 5 Stanford, California 94305-8610
 Telephone: (650) 724-0517
 6 Facsimile: (650) 723-4426

7 MARK A. LEMLEY (SBN 155830)
 mlemley@kvn.com
 8 MATTHEW M. WERDEGAR (SBN 20047)
 mwerdegar@kvn.com
 9 KEKER & VAN NEST LLP
 710 Sansome Street
 10 San Francisco, California 94111
 Telephone: (415) 391-5400
 11 Facsimile: (415) 397-7188

12 BERNARD A. BURK (No. 118083)
 bburk@howardrice.com
 13 ROBERT SPOO (admitted *pro hac vice*)
 rspoo@howardrice.com
 14 HOWARD RICE NEMEROVSKI CANADY
 FALK & RABKIN
 15 A Professional Corporation
 Three Embarcadero Center, 7th Floor
 16 San Francisco, California 94111-4024
 Telephone: (415) 434-1600
 17 Facsimile: (415) 217-5910

18 Attorneys for Plaintiff

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

21 CAROL LOEB SHLOSS,

22 Plaintiff,

23 v.

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

26 Defendants.

No. C 06 3718 JW HRL

**PLAINTIFF'S OBJECTIONS AND
 REQUEST TO STRIKE PORTIONS OF
 THE DECLARATION OF ANTIONETTE D.
 DOZIER AND THE DECLARATION OF
 ANNA E. RAIMER**

1 Plaintiff Carol Loeb Shloss submits her Objections and Request to Strike portions of the
2 Declaration of Antionette D. Dozier and the Declaration of Anna E. Raimer. Pursuant to Civil Local
3 Rule 7-5(b), Rule 56(e) of the Federal Rules of Civil Procedure, and Rules 401, 402, 403, 602, 1002,
4 and 1003 of the Federal Rules of Evidence, Plaintiff hereby objects to portions of the Declaration of
5 Antionette D. Dozier (“Dozier Declaration”) and objects to the entirety of the Declaration of Anna
6 E. Raimer (“Raimer Declaration”) for the following reasons:

7 Plaintiff objects to paragraphs 6 and 7 of the Dozier Declaration with respect to Dozier’s
8 inappropriate legal analysis and speculation regarding the Court’s reasoning and ruling. These
9 paragraphs are objectionable due to speculation (lack of personal knowledge) and opinion testimony
10 in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and is also argumentative in
11 violation of F.R.C.P. 56(e).

12 Plaintiff objects to the entirety of the Raimer Declaration under the “Best Evidence Rule.”
13 F.R.E. 1002, 1003. To the extent that the writings presented in Exhibit B were relevant and
14 important to these proceedings, there is no justification made for an exception to the Best Evidence
15 Rule (requiring an “original writing” or a “duplicate”) F.R.E. 1002, 1003. The Raimer Declaration
16 is inadmissible because it purports to bring into evidence the actual writings, but instead refers to
17 quotes used by Plaintiff as they compare to the originals—thereby entering into evidence only
18 portions of the original writings selected by (and with handwriting interpreted by) Raimer and
19 Raimer’s summary. The declaration is an objectionable substitute for “original writings” or
20 “duplicates” of the original writings. F.R.E. 1002, 1003.

21 Plaintiff also objects to the entirety of the Raimer Declaration pursuant to Civil Local Rule 7-
22 5(b). As Defendants themselves note, Civil Local Rule 7-5(b) provides that “[a]n affidavit or
23 declarations may contain only facts, must conform as much as possible to the requirements of
24 [Federal Rule of Civil Procedure] 56(e), and must avoid conclusions and argument.” Federal Rule
25 of Civil Procedure 56(e) requires that the Raimer Declaration be made based on personal
26 knowledge, set forth facts that would be admissible in evidence, and evidence counsel’s competency
27 to testify to the contents within. The Raimer Declaration is replete with conclusions, argument, and
28 speculation regarding (among other things): other people’s thoughts, Raimer’s own opinion about

1 the need or usefulness of certain material in Plaintiff's book, Raimer's own opinion about the
2 sufficiency of using portions of documents or summaries, Raimer's own opinion as to the character
3 of material that was included or omitted, Raimer's own opinion regarding the relevance of materials,
4 and Raimer's own opinion regarding the merits of literary and historical theories, descriptions, and
5 conclusions made by Plaintiff in Plaintiff's writings. In the Raimer Declaration, Raimer blurred her
6 role with that of a witness, and acted as an advocate throughout the declaration.

7 Plaintiffs offer the following more specific objections applicable to individual portions of the
8 Raimer Declaration (note that the Best Evidence Rule is not reasserted for each section due to its
9 applicability to the entire Raimer Declaration):

- 10 1. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 1" and
11 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
12 F.R.C.P. 56(e) and irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 13 2. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 2" and
14 particularly objects to Raimer's statement, "These same lines...do not add anything further
15 for the reader." This statement is, inter alia, argumentative in violation of F.R.C.P. 56(e),
16 irrelevant in violation of F.R.E. 401, 402, and/or 403, and objectional due to speculation
17 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
18 Local Rule 7-5(b), and F.R.E. 602.
- 19 3. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 3" and
20 particularly objects to Raimer's statement, "[t]here appears to be no purpose to including
21 this quote..." and "...she was not inhibited...." These statements are, inter alia, irrelevant in
22 violation of F.R.E. 401, 402, and/or 403, argumentative in violation of F.R.C.P. 56(e), and
23 objectional due to speculation (lack of personal knowledge) and opinion testimony in
24 violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b), and F.R.E. 602.

25 //

26 //

27

28

- 1 4. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 4" and
2 particularly objects to Raimer's statement, "Thus, any "threats" made ... could not have
3 affected her decision." This statement is, inter alia, argumentative in violation of F.R.C.P.
4 56(e) and objectional due to speculation (lack of personal knowledge) and opinion testimony
5 in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b), and F.R.E. 602.
- 6 5. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 6" and
7 particularly objects to Raimer's statement with respect to the first three of four sentences.
8 These sentences are, inter alia, argumentative in violation of F.R.C.P. 56(e), objectional due
9 to speculation (lack of personal knowledge) and opinion testimony in violation of F.R.C.P.
10 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402,
11 and/or 403.
- 12 6. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 7" and
13 particularly objects to Raimer's statement with respect to the allegation that the quote is
14 redundant and that other statements "more specifically describe the family's financial
15 status." This allegation is, inter alia, argumentative in violation of F.R.C.P. 56(e),
16 objectional due to speculation (lack of personal knowledge) and opinion testimony in
17 violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and irrelevant in
18 violation of F.R.E. 401, 402, and/or 403.
- 19 7. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 8" and
20 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
21 F.R.C.P. 56(e), objectional due to speculation (lack of personal knowledge) and opinion
22 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and
23 irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 24 8. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 9" and
25 particularly objects to Raimer's statement for, inter alia, being argumentative in violation of
26 F.R.C.P. 56(e), objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
27 Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402, and/or
28 403.

- 1 9. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 10” and
2 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
3 F.R.C.P. 56(e), objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
4 Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 5 10. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 11” and
6 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
7 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
8 Local Rule 7-5(b) and F.R.E. 602.
- 9 11. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 12” and
10 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
11 F.R.C.P. 56(e), objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
12 Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 13 12. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 13” and
14 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
15 F.R.C.P. 56(e), objectional due to speculation (lack of personal knowledge) and opinion
16 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and
17 irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 18 13. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 14” and
19 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
20 F.R.C.P. 56(e), objectional due to speculation (lack of personal knowledge) and opinion
21 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, irrelevant
22 in violation of F.R.E. 401, 402, and/or 403.
- 23 14. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 15” and
24 particularly objects to Raimer’s statement for, inter alia, being argumentative in violation of
25 F.R.C.P. 56(e), objectional due to speculation (lack of personal knowledge) in violation of
26 F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, irrelevant in violation of F.R.E. 401,
27 402, and/or 403.
- 28

1 15. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 18" and
2 particularly objects to Raimer's statement for, inter alia, being argumentative in violation of
3 F.R.C.P. 56(e).

4 16. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 19" and
5 particularly objects to Raimer's statement, "Shloss would add this quote for the proposition
6 that the Joyces were 'baffled' to be invited to the wedding of Laurence Vail and Peggy
7 Guggenheim. However, it does not make sense to cite this letter from January 1920
8 supposedly about Vail to support the proposition that Joyce did not know why he was
9 invited to a wedding that occurred in March 1922. Even if Joyce did not know Vail in 1920,
10 he could still have become familiar with him and Ms. Guggenheim in the 2 years prior to
11 their wedding." This statement is, inter alia, objectionable due to speculation (lack of
12 personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil Local Rule
13 7-5(b) and F.R.E. 602, and is also argumentative in violation of F.R.C.P. 56(e), and
14 irrelevant in violation of F.R.E. 401, 402, and/or 403.

15 17. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 21" and
16 particularly objects to Raimer's statement, "The highlighted area simply makes Shloss's
17 point more succinctly." This statement is, inter alia, argumentative in violation of F.R.C.P.
18 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil Local
19 Rule 7-5(b) and F.R.E. 602

20 18. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 22" and
21 particularly objects to Raimer's statement, "Once again, the inclusion of the entire allegedly
22 omitted quote is unnecessary and would add nothing further to Shloss's analysis...The
23 remainder of the quote that was not included is merely a description of a room and James
24 Joyce's appearance, which adds nothing to Shloss's description of Lucia going to dancing
25 classes -- the point of the paragraph." This statement is, inter alia, argumentative in
26 violation of F.R.C.P. 56(e), objectional due to opinion testimony in violation of F.R.C.P.
27 56(e), Civil Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402,
28 and/or 403.

- 1 19. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 26" and
2 particularly objects to Raimer's statement as, inter alia, a conclusion in violation of F.R.C.P.
3 56(e), argumentative in violation of F.R.C.P. 56(e), and objectional due to opinion testimony
4 in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602.
- 5 20. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 27" and
6 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
7 F.R.C.P. 56(e), objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
8 Local Rule 7-5(b) and F.R.E. 602, and irrelevant in violation of F.R.E. 401, 402, and/or 403.
- 9 21. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 28" and
10 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
11 (lack of personal knowledge) in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b), and
12 F.R.E. 602, a conclusion in violation of F.R.C.P. 56(e), and argumentative in violation of
13 F.R.C.P. 56(e).
- 14 22. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 29" and
15 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
16 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
17 Local Rule 7-5(b) and F.R.E. 602.
- 18 23. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 30" and
19 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
20 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
21 Local Rule 7-5(b) and F.R.E. 602.
- 22 24. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 31" and
23 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
24 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
25 Local Rule 7-5(b) and F.R.E. 602.
- 26 25. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 33" and
27 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
28 F.R.C.P. 56(e).

1 26. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 34" and
2 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
3 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
4 Local Rule 7-5(b), and F.R.E. 602, a conclusion in violation of F.R.C.P. 56(e), and
5 argumentative in violation of F.R.C.P. 56(e).

6 27. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 35" and
7 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
8 F.R.C.P. 56(e).

9 28. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 37" and
10 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
11 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
12 Local Rule 7-5(b), and F.R.E. 602, and argumentative in violation of F.R.C.P. 56(e).

13 29. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 38" and
14 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
15 F.R.C.P. 56(e).

16 30. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 39" and
17 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
18 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
19 Local Rule 7-5(b), and F.R.E. 602.

20 31. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 42" and
21 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
22 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
23 Local Rule 7-5(b), and F.R.E. 602, and argumentative in violation of F.R.C.P. 56(e).

24 32. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 44" and
25 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
26 F.R.C.P. 56(e).

27 33. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 47" and
28 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation

1 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
2 Local Rule 7-5(b), and F.R.E. 602, argumentative in violation of F.R.C.P. 56(e), and
3 irrelevant in violation of F.R.E. 401, 402, and/or 403.

4 34. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 48" and
5 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
6 F.R.C.P. 56(e).

7 35. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 50" and
8 particularly objects to Raimer's statement, "This quote is unnecessary...The deletion makes
9 the passage more fluid and the sentence read better." This statement is, inter alia,
10 argumentative in violation of F.R.C.P. 56(e), and objectional due to opinion testimony in
11 violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b), and F.R.E. 602.

12 36. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 52" and
13 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
14 (lack of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil
15 Local Rule 7-5(b), and F.R.E. 602 and argumentative in violation of F.R.C.P. 56(e).

16 37. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 53" and
17 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
18 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
19 Local Rule 7-5(b), and F.R.E. 602.

20 38. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 54" and
21 particularly objects to Raimer's statement for being, inter alia, objectional due to speculation
22 (lack of personal knowledge) in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b), and
23 F.R.E. 602 and argumentative in violation of F.R.C.P. 56(e).

24 39. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 55" and
25 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
26 F.R.C.P. 56(e).

1 40. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 56" and
2 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
3 F.R.C.P. 56(e) and objectional due to speculation (lack of personal knowledge) and opinion
4 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602.

5 41. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 57" and
6 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
7 F.R.C.P. 56(e), and objectional due to speculation (lack of personal knowledge) and opinion
8 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602.

9 42. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 59" and
10 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
11 F.R.C.P. 56(e), and objectional due to speculation (lack of personal knowledge) and opinion
12 testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602.

13 43. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 60" and
14 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
15 F.R.C.P. 56(e).

16 44. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 63" and
17 particularly objects to Raimer's statement, "Though the citation is to Finnegans Wake, the
18 passage must be Shloss's own speculations since Giorgio did not visit Ivy on Sundays in
19 Finnegans Wake. This omission of this quotation is therefore irrelevant." This statement is,
20 inter alia, argumentative in violation of F.R.C.P. 56(e), objectional due to speculation (lack
21 of personal knowledge) and opinion testimony in violation of F.R.C.P. 56(e), Civil Local
22 Rule 7-5(b) and F.R.E. 602, a conclusion in violation of F.R.C.P. 56(e), and irrelevant in
23 violation of F.R.E. 401, 402, and/or 403.

24 45. Plaintiff objects to the portion of Raimer's Declaration relating to "Quote No. 64" and
25 particularly objects to Raimer's statement for being, inter alia, argumentative in violation of
26 F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil
27 Local Rule 7-5(b) and F.R.E. 602.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

46. Plaintiff objects to the portion of Raimer’s Declaration relating to “Quote No. 67” and particularly objects to Raimer’s statement for being, inter alia, argumentative in violation of F.R.C.P. 56(e), and objectional due to opinion testimony in violation of F.R.C.P. 56(e), Civil Local Rule 7-5(b) and F.R.E. 602.

DATED: January 29, 2007

STANFORD LAW SCHOOL
CENTER FOR INTERNET AND SOCIETY

By: _____ /S/
Anthony T. Falzone
Attorneys for Plaintiff
CAROL LOEB SHLOSS