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16 Attorneys for Plaintiff

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN JOSE DIVISION**

20 CAROL LOEB SHLOSS,
 21

22 Plaintiff,

23 v.

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

27 Defendants.
 28

CASE NO. CV 06-3718 (JW) (HRL)

**SUPPLEMENTAL DECLARATION OF
 DAVID OLSON IN SUPPORT OF
 PLAINTIFF'S MOTION FOR AWARD
 OF ATTORNEYS' FEES AND COSTS**

Date: June 4, 2007
 Time: 9:00 a.m.
 Judge: Hon. James Ware

1 DAVID S. OLSON declares and states as follows:

2 1. I am an attorney admitted to practice in California and in this district and am one
3 of the attorneys of record for plaintiff Carol Loeb Shloss. I have personal knowledge of the facts
4 set forth in this declaration, and could testify competently to them if called to do so. I submit
5 this declaration in support of Plaintiff's Reply to Defendants' Opposition to Motion for Award of
6 Costs and Attorneys Fees.

7 2. After filing her initial Complaint, Professor Shloss supplemented her Website
8 once in the summer of 2006. The supplementation made clear the sources for the materials
9 already quoted on the Website, and also added a substantial number of additional quotations
10 from relevant materials including Lucia Joyce's writings, the 1922 version of *Ulysses*, and
11 portions of the James Joyce *Finnegans Wake Notebooks*.

12 3. On July 25, 2006, I informed counsel for Defendants, Maria Nelson, that material
13 was being added to the Website. I told her that we would provide her with access to the
14 supplemented Website and offered to give Defendants any necessary extensions to their deadline
15 to respond to the Complaint.

16 4. On August 24, 2006, I sent Defendants' counsel a link and password needed to
17 access the Website as well as a document showing all of the rest of the quotations that were
18 going to appear on the Website (but that didn't quite yet appear due to a delay in coding on the
19 Website). I made clear in my email that no quotations from Defendants' copyrighted works
20 would be added beyond the material contained on the Website and in my email. And indeed, no
21 additional quotes were ever added beyond what I provided Ms. Nelson on that day. Thus, as of
22 August 24, 2006, Defendants knew the entire universe of material to be published on the
23 Website. Defendants had the password for the Website as of August 24, 2006, and thus were
24 able to continually monitor the Website, through which they could easily confirm that nothing
25 more was ever added.

26 5. A true and correct copy of my August 24, 2006 email to Maria Nelson is attached
27 as Exhibit A to this declaration.

28

1 6. The final coding of the Website was completed by around mid-September.
2 During the course of September I had occasion to speak with Maria Nelson a number of times on
3 the telephone. I clearly remember conveying to her more than once that no more quotations
4 were to be added to Shloss's Website beyond what I had shown her on August 24, 2006.

5 7. After filing the motion for attorney's fees on April 10, 2007, I emailed counsel for
6 Defendants, Maria Nelson, and invited her to let me know if she wanted to discuss the hearing
7 date or wanted an extension for filing her opposition to the motion. A true and correct copy of
8 my April 10, 2007 email to Maria Nelson is attached as Exhibit B to this declaration.

9 8. On April 12, 2007, Maria Nelson emailed me and asked for a two week
10 postponement of the fees motion hearing. A true and correct copy of this email is attached as
11 Exhibit C.

12 9. Ms. Nelson and I corresponded about the hearing date again on April 16 and 17,
13 2007. On April 17, 2007 I agreed to postpone the hearing by two weeks and stipulate to a
14 requested hearing date of June 4, 2007. The postponement was to give Ms. Nelson additional
15 time for her opposition brief. A true and correct copy of my April 17, 2007 email to Maria
16 Nelson, which shows the chain of prior correspondence on this issue, is attached as Exhibit D to
17 this declaration.

18 10. On April 19, 2007, Ms. Nelson agreed to the June 4, 2007 hearing date. Her
19 email also stated "that by agreeing to the hearing date we do not waive any argument that the
20 motion was improperly filed." I did not understand what Ms. Nelson's reference to alleged
21 "improper filing" was about, so I asked her to explain herself the same day. A true and correct
22 copy of my April 19, 2007 email to Ms. Nelson, which includes her original email to me, is
23 attached as Exhibit E to this declaration.

24 11. Ms. Nelson never responded to my emailed query. On April 25, 2007, she left me
25 a voicemail regarding who would file the stipulation and order. I emailed her the same day, and
26 then on April 26, 2007, counsel for Defendants, Anna Raimer, sent me a stipulation to approve.
27 I approved the stipulation and Ms. Raimer filed it. Defendants' counsel never mentioned any
28 improper filing of our motion or the desire to meet and confer during these many

1 communications.

2 12. A true and correct copy of my April 25, 2007 email to Ms. Nelson is attached as
3 Exhibit F to this declaration.

4 13. A true and correct copy of my April 26, 2007 email to Ms. Raimer, which
5 includes her April 26 email to me, is attached as Exhibit G to this declaration.

6 14. I did not hear from counsel for Defendants again until May 7, 2007. While at a
7 conference in Bonn, Germany, I received an email from Anna Raimer, counsel for Defendants,
8 which attached a pdf copy of a letter of the same date. In the letter, which was addressed and
9 sent only to me, Ms. Raimer asserted that Shloss had “no basis” to file her fee motion. Ms.
10 Raimer also accused Shloss of “ambush[ing]” Defendants with the fee motion. This letter, which
11 we received nearly a month after I first began discussing the schedule for the fee motion with
12 Defendants’ counsel, was the first time that Defendants expressed surprise at the motion. Ms.
13 Raimer’s letter also asserted that Shloss’s motion for fees was improperly filed due to a failure to
14 meet and confer, and because Shloss did not attach documents detailing and supporting her
15 attorneys’ time worked. This was the first time Defendants brought up a failure to meet and
16 confer or any other alleged procedural defect in Shloss’s motion for fees. In addition, the letter
17 threatened me with personal sanctions under 28 U.S.C. § 1927. A true and correct copy of Ms.
18 Raimer’s May 7, 2007 email is attached as exhibit H to this declaration.

19 15. A true and correct copy of Ms. Raimer’s May 7, 2007 letter is attached as Exhibit
20 I to this declaration.

21 16. The finalized version of the Electronic Supplement, as it appears on Shloss’s
22 Website, is 158 pages long, as can be seen from Exhibit B to the Declaration of David S. Olson
23 in support of Shloss’s Opposition to Defendants Motion to Dismiss. [Docket # 39.]

24

25 I declare under penalty of perjury that the foregoing is true and correct, and that this
26 Declaration was executed on May 21, 2007 at Stanford, California.

27

28

/s/

DAVID S. OLSON