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

27 Defendants.
 28

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

**DECLARATION OF ANTHONY T.
 FALZONE 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 ANTHONY T. FALZONE declares and states as follows:

2 1. I am admitted to practice law in California and before this Court, and I am counsel of
3 record for plaintiff Carol Shoss in this case. I have personal knowledge of the facts stated in this
4 declaration, and could testify competently to them if called to do so.

5 2. Shloss filed her Amended Complaint in this action on October 25, 2006.

6 3. The Estate of James Joyce and its Trustee Sean Sweeney (collectively “Defendants”)
7 moved to dismiss this action for lack of subject matter jurisdiction on November 17, 2006. Prior
8 to that date, neither Shloss nor her counsel had received a covenant not to sue Shloss.

9 4. In support of their motion to dismiss, Defendants filed and served a declaration from
10 Sweeney that contained a purported covenant not to sue Shloss for material contained in a
11 previous version of her Electronic Supplement. Although that declaration was filed and served
12 on November 17, 2006, the declaration itself appears to be dated October 24, 2006 – the day
13 before Shloss filed her Amended Complaint. Notwithstanding that, neither Shloss nor her
14 counsel received Sweeney’s declaration (or any purported covenant not to sue) until Sweeney’s
15 declaration was served on November 17, 2006.

16 5. On May 7, 2007, Anna Raimer, counsel for Defendants, sent a letter to my colleague,
17 David Olson asking Shloss to withdraw her motion for attorneys’ fees and threatening personal
18 sanctions against Mr. Olson if Shloss failed to withdraw her motion. A true and correct copy of
19 this May 7 letter is attached to this declaration as Exhibit A.

20 6. On May 10, 2007, I responded to Ms. Raimer’s letter and advised her that Defendants
21 had failed to provide any basis for demanding the withdrawal of Shloss’s motion, or the
22 imposition of sanctions, and that Shloss declined to withdraw her motion. A true and correct
23 copy of this May 10 letter is attached to this declaration as Exhibit B.

24 7. On May 14, 2007, Anna Raimer responded to my May 10 letter. A true and correct
25 copy of this May 14 letter is attached to my declaration as Exhibit C.

26 8. On May 16, 2007, I responded to Anna Raimer’s letter of May 14. A true and correct
27 copy of this May 16 letter is attached to this declaration as Exhibit D.

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