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13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 SCORPIO MUSIC (BLACK SCORPIO) S.A. and
 16 CAN'T STOP PRODUCTIONS, INC.

17 Plaintiffs,

18 vs.

19 VICTOR WILLIS

20 Defendant.

Case No. 3:11-CV-01557-BTM (RBB)

**DECLARATION OF BRIAN D.
 CAPLAN IN SUPPORT OF
 DEFENDANT'S MOTION TO
 DISMISS THE COMPLAINT**

Date: November 18, 2011
 Time: 11:00 a.m.
 Courtroom: 15 – Fifth Floor
 Judge: Hon. Barry T. Moskowitz

1 I, BRIAN D. CAPLAN, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of New
3 York, and am a member of Caplan & Ross, LLP, attorneys for Defendant. My application for
4 admission *pro hac vice* in this action is being filed contemporaneously herewith. I have personal
5 knowledge of all facts set forth herein and could and would competently testify thereto if called as a
6 witness.

7 2. Attached hereto as **Exhibit A** is a copy of the Complaint in this action, which seeks
8 Declaratory Relief with respect to a Notice of Termination of Post-1977 Grants of Copyright served
9 by Defendant Victor Willis in January 2011 (the "Notice"). A copy of the Notice is annexed as
10 Exhibit 1 to the Complaint. The Notice concerns the termination of several grants of copyrights in
11 musical compositions executed by Mr. Willis in 1978 and 1979 (the "Grants"), covering 33 separate
12 musical compositions that were originally recorded by the recording group the Village People,
13 including such classic hits of the disco era as *Y.M.C.A.*, *In the Navy* and *Go West*.

14 3. In this action, Plaintiffs seek to have the Notice declared invalid and of no force or
15 effect for several reasons, including their allegations that the musical compositions were "works-
16 made-for-hire" because Mr. Willis was either an employee of Plaintiff Can't Stop Productions, Inc.
17 ("CSP") at the time of the creation of the songs or that the works were otherwise commissioned or
18 ordered as works made for hire, pursuant to applicable copyright law.

19 4. Although Plaintiffs have not attached to the Complaint a copy of any of the Grants
20 referred to in the Complaint, Plaintiff CSP has previously filed a copy of one of the Grants in a
21 separate action commenced against it by Willis in the United States District Court for the Southern
22 District of New York earlier this year. I was lead counsel of record for Willis in that action.
23 Annexed hereto as **Exhibit B** is a true and correct copy of the Affidavit of Stewart L. Levy, counsel
24 for CSP, dated June 8, 2011, filed in that action (the "Levy Affidavit"). In Paragraph 8 thereof, CSP,
25 through its counsel, acknowledges that each of the Grants are identically worded, other than for their
26 dates, the names of the specific songs covered by the respective Grants, and the respective royalty
27 rates contained therein. In addition, as noted in Paragraph 8 of the Levy Affidavit, annexed to the

1 Levy Affidavit as Exhibit E is a copy of one of the Grants (pertaining to the musical composition
2 Y.M.C.A.). Included within Exhibit B annexed hereto, is a copy of the filed Exhibit E to the Levy
3 Affidavit. (The other Exhibits to the Levy Affidavit, which are not relevant to the instant motion,
4 have been omitted). Nothing in the Grant reflects an employer-employee relationship between CSP
5 and Willis, or that the parties considered the compositions to be works made for hire. To the
6 contrary, the actual terms of the Grant evidence that it is an assignment, conveyance and grant of
7 Willis' copyrights in the musical compositions.

8 5. Plaintiffs have also failed to annex to the Complaint in this Action any copies of the
9 copyright Registrations for the musical compositions filed in the U.S. Copyright Office, even
10 though, as with the Grants, Plaintiffs refer to and rely upon those Registrations in the Complaint.
11 Annexed hereto as **Exhibit C** is a true and correct copy of a certified copy (certified on August 13,
12 2010) of the U.S. Copyright Office Certificate of Registration of a Claim to Copyright in the musical
13 composition Y.M.C.A., dated January 22, 1979. This registration, contemporaneously prepared and
14 filed in 1979, unambiguously identifies Willis as an "author" of the musical composition in Section
15 2 thereof, and further expressly states in that Section that Willis' contribution to the work was not a
16 work made for hire. The registrations for all of the other 32 musical compositions subject to the
17 Notice contain identical statements. Should the Court deem it necessary, we will promptly submit
18 copies of those Registrations to the Court as well.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct. Executed on September 26, 2011, at New York, New York.

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BRIAN D. CAPLAN, DECLARANT