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*Members of Proposed Author Sub-Class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		
	:	Case No. 05 CV 8136 (DC)
The Authors Guild, Inc., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Google, Inc.,	:	
	:	
Defendant.	:	
-----X		

**DECLARATION OF NAOKI GOKITA  
PURSUANT TO 28 U.S.C. § 1746  
IN SUPPORT OF THE JAPAN P.E.N. CLUB MEMBERS;  
OBJECTION TO THE SETTLEMENT AGREEMENT**

I, Naoki Gokita, make the following declaration under the penalties of perjury under the laws of the United States of America:

1. I am an executive member of the Intellectual Property Committee of Japan Book Publishers Association, Vice Chair of the Copyright Committee of Japan Magazine Publishers Association, and Deputy Manager of the Editorial Administrations Office of Kodansha, Japan's

largest publisher. I make this declaration in support of the objection by named members of the Japan P.E.N. Club to the proposed settlement agreement entered into by the named parties in the above referenced action. I make this declaration based on my personal knowledge and on a review of relevant documents.

### **Japan's Publishing Business**

2. Japan's publishing business is significant in its size as well as its importance in Japanese culture.

3. According to some figures, the total revenue for Japan's publishing industry is over \$20 billion a year -- about half of which comes from book sales and another half from magazine sales. A little less than \$5 billion of the total revenue comes from *manga* (comics) each year, nearly half of which coming from *manga* magazines. In comparison, the total revenue from book sales in the US is said to be about \$25 billion a year.

4. While they do share certain similarities, Japan's book publishing business is quite different from that in the United States. The difference exists in all areas and includes fundamental differences in: the business custom and practice; the overall distribution system and structure for the books and the logistics surrounding them; the method of marketing and publicity; the method of planning and procurement; and the relationship between authors and publishers.

5. For instance, unlike in the United States, publishers in Japan sell their books through an intermediary on a consignment basis to retail bookstores, and the books which remain unsold after a given period of time are returned to the publishers. Also, literary agents do not typically exist in Japan, and publishers sometimes take on some functions that may be played by

literary agents in the United States. For these and many other reasons, the pricing and the cost structure as well as the incentives of those involved in the publishing industry in Japan are quite different from these in the United States.

6. Obviously, we are looking at two countries with two very different overall business models in the publishing industry.

### **Notice to Japanese Rightsholders**

7. As far as we have been able to ascertain, no individual notice was sent to authors in Japan.

8. The primary means of notice given in Japan appears to have been by a Summary Notice which was only printed in a single issue of three publications. A Summary Notice was printed in *Asahi Shimbun* and *Yomiuri Shimbun* (both major Japanese dailies) on February 24, 2009. (True and correct copies of these Summary Notices are attached hereto as Exhibit A (Asahi Shimbun) and Exhibit B (Yomiuri Shimbun).) Later, another Summary Notice was printed in *Shinbunka* (a publishing industry paper) on July 2, 2009.

9. The Summary Notice printed in these papers was in small print and difficult to read.

10. Further, the Summary Notice and the Notice posted on the internet were impossible to understand because they were riddled with translation errors and awkward expressions.

11. For instance, the attention-getting statement in the Summary Notice, printed in larger type, reads in English as follows: "If You Are a Book Author, Book Publisher or Other Person Who Owns a Copyright in a Book or Other Writing." In the Summary Notice in

Japanese, it reads roughly as follows (when translated back to English charitably, without indicating the awkwardness of words and phrases chosen): “In Case of an Author of a Book, a Publisher, or Other Person Who Possesses Copyright of a Book or Other Written Material”. This sentence fragment could not have attracted, and did not attract, the attention of those in the intended audience.

12. In part due to the obvious ineffectiveness of the notice given by the proponent of the Proposed Settlement, some major publishers in Japan attempted to contact and notify their authors about the Proposed Settlement at their own significant expense, but with limited success.

#### **Class Counsel’s Statements in Japan**

13. On May 23, 2009 -- after the Proposed Settlement had already been agreed on among the class representatives in the U.S. and after the original opt-out deadline -- counsel for Author Sub-Class (Michael J. Boni, Esq.) and Publisher Sub-Class (Jeffrey P. Cunard, Esq., correctively, the “Class Counsel”) visited for the first time with some of the representatives of Japan’s publishing industry representatives. I was present at the meeting.

14. Concerning their failure to communicate with rightsholders in Japan until the Proposed Settlement was agreed on, Class Counsel insisted that they could not communicate with Japanese rightsholders because they “could not share information concerning the settlement due to the confidentiality obligation imposed on the parties.” It would have been helpful had Class Counsel advised Japanese rightsholders about the status of the case, asked about their interests and concerns, and responded to their inquiries, prior to agreeing to the Proposed Settlement.

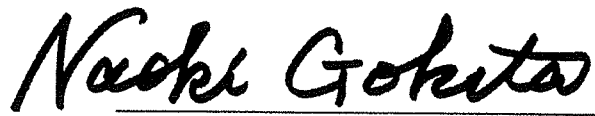
15. Class Counsel acknowledged that they failed to take into account the importance of *manga* (comics) in Japan as well as in the worldwide market. They further acknowledged that it was their mistake not to have spelled out the treatment for *manga* explicitly in the Proposed Settlement. Class Counsel admitted that, because of this omission, some *manga*, although already being scanned by Google, will not be included in the eventual settlement.

16. Concerning the Proposed Settlement's definition of "Commercially Available", which makes books published only in Japan *not* "Commercially Available" under the Proposed Settlement and makes them automatically subject to Display Uses by Google, Class Counsel stated that if these books were available to be shipped to the United States through a website such as "amazon.co.jp" then Google will consider them "Commercially Available," but did not state they would correct this problem in any other way. Because of the failure to address this problem, Class Counsel admitted that, as of now, the books published in Japan but not sold in the U.S. will be treated as *not* "Commercially Available" and will be subject to Display Use by Google.

17. Class Counsel also stated that they could have limited the definition of the class to include the right-holders in the U.S. only and excluded the foreign rightsholders.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 4, 2009.

A handwritten signature in black ink that reads "Naoki Gokita". The signature is written in a cursive style with a horizontal line underneath the name.

Naoki Gokita

# **EXHIBIT A**

**大正ヘラクレス**  
大正ヘラクレスは、大正時代から続く歴史あるブランド。最新のテクノロジーを駆使し、高品質の製品を提供しています。

**高級セントレックス**  
高級セントレックスは、洗練されたデザインと卓越した性能を兼ね備えています。ビジネスシーンからプライベートまで幅広く活躍します。

**ジャズバック**  
ジャズバックは、音楽の楽しさを最大限に引き出すためのアイテムです。高音質のスピーカーと快適な操作性を追求しています。

**名入帳**  
名入帳は、大切な人との思い出を記録するための良伴です。美しいデザインと使いやすいレイアウトが特徴です。

**名入帳**  
名入帳の魅力を最大限に引き出すためのヒントやアイデアをご紹介します。大切な瞬間を美しく記録しましょう。

**ゴルフ会員権**  
ゴルフ会員権の魅力を最大限に引き出すための情報をご紹介します。最新のゴルフ場情報や会員権のメリットを詳しく解説します。

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〒950-8588 新潟県新潟市中央区南万代2-1-1 新潟県立中央図書館



# **EXHIBIT B**

どうする製造業派遣



派遣製造業の現状と今後の見通しについて、派遣製造業の現状と今後の見通しについて、派遣製造業の現状と今後の見通しについて...



派遣製造業の現状と今後の見通しについて、派遣製造業の現状と今後の見通しについて、派遣製造業の現状と今後の見通しについて...

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同一労働同一待遇で
八代 尚宏氏
「同一労働同一待遇」を実現するための取組と今後の見通しについて...

現代に通じる「銭スラン」
不安と懸念
「現代に通じる『銭スラン』」について、現代に通じる『銭スラン』について、現代に通じる『銭スラン』について...

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