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Attorneys for Plaintiff, Bourne Co.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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	:	
BOURNE CO.,	:	
	:	
Plaintiff,	:	
	:	07 Civ. 8580 (DAB)
- against -	:	
	:	DECLARATION
TWENTIETH CENTURY FOX FILM	:	<u>OF PAUL M. FAKLER</u>
CORPORATION, FOX BROADCASTING	:	
COMPANY, TWENTIETH CENTURY FOX	:	
TELEVISION, INC., TWENTIETH CENTURY	:	
FOX HOME ENTERTAINMENT, INC., FUZZY	:	
DOOR PRODUCTIONS, INC., THE CARTOON	:	
NETWORK, INC., SETH MACFARLANE,	:	
WALTER MURPHY,	:	
	:	
Defendants.	:	
-----	X	

I, PAUL M. FAKLER, declare, pursuant to 28 U.S.C § 1746, as follows::

1. I am a partner of Moses & Singer LLP, attorneys for Plaintiff Bourne Co.

(“Bourne”) in the above-captioned action, and as such, I am fully familiar with the facts set forth below.

2. This declaration is submitted in support of Plaintiff's Motion for Summary Judgment on Liability and in Opposition to Defendants' Motion for Summary Judgment on Fair Use.

3. Attached as Exhibit "A" is a true and correct copy of excerpts from the deposition transcript of Walter Murphy, taken on March 11, 2008 ("Murphy Tr.").

4. Attached as Exhibit "PL 2" is a true and correct copy of the Score for "I Need A Jew" ("Score"), which was introduced as Plaintiff's Exhibit 2 at Walter Murphy's deposition.

5. Attached as Exhibit "PL 3" is a true and correct copy of the Leadsheet for an early version of "I Need A Jew" ("Leadsheet"), which was introduced as Plaintiff's Exhibit 3 at Walter Murphy's deposition.

6. Attached as Exhibit "PL 4" is a true and correct copy of the TV Music Cue Sheet for the Weinstein Episode, which was introduced as Plaintiff's Exhibit 4 at Walter Murphy's deposition.

7. Attached as Exhibit "B" is a true and correct copy of excerpts from the deposition transcript of Ricky Blitt, taken on March 10, 2008 ("Blitt Tr.").

8. Attached as Exhibit "C" is a true and correct copy of excerpts from the deposition transcript of Linda Shima-Tsuno, taken on March 12, 2008 ("Shima-Tsuno Tr.").

9. Attached as Exhibit "PL 11" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated March 22, 1999, which was introduced as Plaintiff's Exhibit 11 at Linda Shima-Tsuno's deposition.

10. Attached as Exhibit "PL 12" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated April 30, 1999, which was introduced as Plaintiff's Exhibit 12 at Linda Shima-Tsuno's deposition.

11. Attached as Exhibit "PL 13" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated May 4, 1999, which was introduced as Plaintiff's Exhibit 13 at Linda Shima-Tsuno's deposition.

12. Attached as Exhibit "PL 14" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated May 5, 1999, which was introduced as Plaintiff's Exhibit 14 at Linda Shima-Tsuno's deposition.

13. Attached as Exhibit "PL 15" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated May 5, 1999, which was introduced as Plaintiff's Exhibit 15 at Linda Shima-Tsuno's deposition.

14. Attached as Exhibit "PL 17" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated May 12, 1999, which was introduced as Plaintiff's Exhibit 17 at Linda Shima-Tsuno's deposition.

15. Attached as Exhibit "PL 18" is a true and correct copy of correspondence between Linda Shima-Tsuno, Seth MacFarlane and David Zuckerman dated May 18, 1999, which was introduced as Plaintiff's Exhibit 18 at Linda Shima-Tsuno's deposition.

16. Attached as Exhibit "PL 19" is a true and correct copy of correspondence between Linda Shima-Tsuno, Roland McFarland, Ira Kurgan and Larry Jacobson dated May 19, 1999, which was introduced as Plaintiff's Exhibit 19 at Linda Shima-Tsuno's deposition.

17. Attached as Exhibit “D” is a true and correct copy of excerpts from the deposition transcript of Seth MacFarlane, taken on March 10, 2008 (“MacFarlane Tr.”).

18. Attached as Exhibit “PL 21” is a true and correct copy of correspondence between Seth MacFarlane and Kevin Spicer dated November 23, 2004, which was introduced as Plaintiff’s Exhibit 21 at Seth MacFarlane’s deposition.

19. Attached as Exhibit “E” is a true and correct copy of excerpts from the deposition transcript of Professor Lawrence Ferrara, taken on March 6, 2008 (“Ferrara Tr.”).

20. Attached as Exhibit “PL 1” is a true and correct copy of excerpts from Professor Ferrara’s expert report, which was introduced as Plaintiff’s Exhibit 1 at his deposition and which he modified at his deposition.

21. Attached as Exhibit “F” is a true and correct copy of excerpts from the deposition transcript of Thomas Cavanaugh, taken on March 13, 2008 (“Cavanaugh Tr.”).

22. Attached as Exhibit “G” is a true and correct copy of excerpts from the deposition transcript of Michael Nicholas Lazzo, taken on March 13, 2008 (“Lazzo Tr.”).

23. Attached as Exhibit “H” is a true and correct copy of excerpts from the deposition transcript of Lianne Siegel-Shattuck, taken on March 13, 2008 (“Siegel-Shattuck Tr.”).

24. Attached as Exhibit “I” is a true and correct copy of excerpts from the deposition transcript of Teresa Tingle-Heppner, taken on March 13, 2008 (“Tingle-Heppner Tr.”).

25. Attached as Exhibit “PL 40” is a true and correct copy of correspondence between Teresa Tingle-Heppner, Megan Dillman, Amy Lovett and Karen Cassell dated August 25-26, 2004, which was introduced as Plaintiff’s Exhibit 40 at Teresa Tingle-Heppner’s deposition.

26. Attached as Exhibit "J" is a true and correct copy of excerpts from the deposition transcript of David Zuckerman, taken on March 13, 2008 ("Zuckerman Tr.").

27. Attached as Exhibit "K" is a true and correct copy of Defendant Walter Murphy's Responses and Objections to Plaintiff's Requests for Admission.

28. Attached as Exhibit "L" is a true and correct copy of Defendants Twentieth Century Fox Film Corporation, Fox Broadcasting Company, and Twentieth Century Fox Home Entertainment, Inc.'s Responses and Objections to Plaintiff's Requests for Admission.


29. Attached as Exhibit "M" is a true and correct copy of Defendant Seth MacFarlane's Responses and Objections to Plaintiff's Requests for Admission.

30. Attached as Exhibit "N" is a true and correct copy of Defendant Twentieth Century Fox Film Corporation, Fox Broadcasting Company and Twentieth Century Fox Home Entertainment, Inc.'s Response to Plaintiff's First Set of Interrogatories.

31. Attached as Exhibit "O" is a true and correct copy of the cover of the home video release version of the Weinstein Episode on DVD.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on the 23rd of May, 2008.



Paul M. Fakler