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Attorneys for Defendants

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

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHITRUST, ET AL.,
Defendants.

Case No. 11 Civ. 6351 (HB)

**DECLARATION OF ROGER L. ZISSU IN SUPPORT OF DEFENDANTS'
MOTION FOR COSTS AND ATTORNEYS' FEES**

I, Roger L. Zissu, make the following Declaration:

1. I am a member of the Bar of this Court and of the law firm of Fross Zelnick Lehrman & Zissu, P.C. located in New York, New York. I am over the age of twenty-one; I am competent to make this Declaration. The facts set forth in this Declaration are based on my own personal knowledge, in support of Defendants' Motion for Costs and Attorneys' Fees.

2. I was admitted to the Bar of the State of New York in 1963 and have practiced law privately in the City and State of New York since 1965, when I completed services as Law Clerk to the Hon. John F. Dooling, Jr., United States District Judge for the Eastern District of New York. Thereafter, I was employed as an associate in the litigation department of Davis Polk & Wardwell for four and one-half years from 1965 to 1970. From 1970 to 1973, I served as Corporate Counsel to Vornado, Inc., a publicly owned company, and returned to private practice as an associate in 1973 and in 1974 became a partner at the New York City law firm of Cowan Liebowitz & Latman, P.C., where I specialized in copyright and trademark law. In 1990, I left Cowan Liebowitz to become a partner at Fross Zelnick, which was then named Weiss Dawid Fross Zelnick & Lehrman, P.C.

3. I have had extensive litigation practice experience for over 45 years and significant practice experience in copyright, unfair competition and trademark areas with an emphasis on litigation, representing both plaintiffs and defendants for over 35 years at Cowan Liebowitz Latman P.C. from 1974 to 1990, and thereafter to date at Fross Zelnick.

4. As a partner at Fross Zelnick Lehrman & Zissu, P.C., and a member of its Executive Committee for over 15 years, I am familiar with the rates charged by the members of my firm practicing in the areas of litigation and copyright law, including partners, senior and junior associates, and paralegals.

5. Through trade publications, surveys, my interaction with the New York legal community and copyright bar, and my own litigation experience, I am also aware of the hourly fees charged by litigation and copyright counsel in New York.

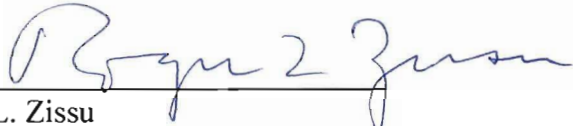
6. As a result of my involvement with copyright law and litigation, I am generally familiar with attorney fee awards in copyright litigation cases in New York and in other cities.

7. I am familiar, both personally and through reputation in the legal community, with Joseph M. Beck and the firm at which he is a partner, Kilpatrick Townsend & Stockton LLP (“Kilpatrick Townsend”), which represents the Defendants in this case. I understand that the hourly rates of Mr. Beck and Mr. Petersen and the associates who worked with them on this case are as follows:

- a. Joseph M. Beck: \$656.25
- b. Joseph Petersen: \$481.25
- c. Robert N. Potter: \$393.75
- d. W. Andrew Pequignot: \$345.65
- e. Allison Scott Roach: \$328.13

8. I understand that Defendants are seeking attorneys’ fees in this case based on the reasonable fees charged for work performed on the case by the attorneys listed above. Based on my knowledge and experience in the New York legal community and copyright law practice, as well as with Mr. Beck and Kilpatrick Townsend, I believe that the hourly rates charged in this litigation by the Kilpatrick Townsend attorneys listed above are reasonable for the type of work performed, and commensurate with the market rates customarily charged in New York by law firms performing work on matters of this kind, for attorneys of comparable skills, experience, and reputation.

I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct, and that this Declaration is dated this 23rd day of October, 2012, in New York, New York.



Roger L. Zissu