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Attorneys for Defendants

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

THE AUTHORS GUILD, INC., <i>et al.</i>
Plaintiffs,
v.
HATHITRUST, <i>et al.</i>
Defendants.

11 CIV 6351 (HB)(JLC)

STIPULATION

WHEREAS, on or about October 6, 2011, plaintiffs filed an Amended Complaint (the "Amended Complaint") in the above-captioned action (the "Action") naming, among other defendants, Julia Donovan Darlow, Laurence B. Deitch, Denise Ilitch, Olivia P. Maynard, Andrea Fischer Newman, Andrew C. Richner, S. Martin Taylor and Katherine E. White (collectively, the "Michigan Regents"), Richard C. Blum, David Crane, William De La Pena, Russell Gould, Eddie Island, Odessa Johnson, George Kieffer, Sherry L. Lansing, Monica

Lozano, Hadi Makarechian, George M. Marcus, Alfredo Mireles, Jr., Norman J. Pattiz, Bonnie Reiss, Fred Ruiz, Leslie Tang Schilling, Bruce D. Varner, Paul Wachter and Charlene Zettel (collectively, the "California Regents"), Jeffrey Bartell, Mark J. Bradley, Judith V. Crain, John Drew, Tony Evers, Michael J. Falbo, Edmund Manydeeds, Katherine Pointer, Charles Pruitt, Troy Sherven, Brent Smith, Michael J. Specter, S. Mark Tyle, Jose F. Vasquez and David G. Walsh (collectively, the "Wisconsin Regents"), William R. Cast, Patrick A. Shoulders, Maryellen Kiley Bishop, Bruce Cole, Philip N. Eskew, Jr., Cora J. Griffin, Thomas E. Reilly, Jr., Derica W. Rice and William H. Strong (collectively, the "Indiana Trustees") (all of the foregoing named individuals, collectively, the "Individual Defendants");

WHEREAS, the defendants in the Action (including the Individual Defendants) served their answer on December 2, 2011 (the "Answer").

WHEREAS, the defendants warrant and represent that "HathiTrust" is the name of a service of the University of Michigan in which the Universities and other institutions participate under agreements with UM (the "Hathitrust Service"); and

WHEREAS, in lieu of engaging motion practice on the issue of whether the Individual Defendants are sufficiently involved in the alleged activities set forth in the Amended Complaint to support jurisdiction under *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L. Ed. 714 (1908) and its progeny, plaintiffs and defendants have agreed to substitute certain other individuals in the place and stead of the Individual Defendants in the Action.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between plaintiffs and defendants, as follows:

1. The Individual Defendants are hereby dismissed from the Action with prejudice.

2. Mary Sue Coleman, President, The University of Michigan, is hereby substituted as a named defendant in the Action in the place and stead of the Michigan Regents.

3. Mark G. Yudof, President, The University of California, is hereby substituted as a named defendant in the Action in the place and stead of the California Regents.

4. Kevin Reilly, President, The University of Wisconsin System, is hereby substituted as a named defendant in the Action in the place and stead of the Wisconsin Regents.

5. Michael McRobbie, President, Indiana University, is hereby substituted as a named defendant in the Action in the place and stead of the Indiana Trustees.

6. In view of the substitutions set forth above, the individuals substituted in the place and stead of the Individual Defendants (the "Substituted Defendants") agree not to challenge the Amended Complaint on the grounds that the Substituted Defendants are not sufficiently involved in the alleged activities set forth in the Amended Complaint to support jurisdiction under *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L. Ed. 714 (1908) and its progeny. Each Substituted Defendant represents that he or she has the authority and control necessary to cause his or her respective university to comply with the terms of an injunction or other court order with respect to the alleged activities set forth in the Amended Complaint in the event the Court orders such relief. Further, Mary Sue Coleman represents that she has the authority and control necessary to cause the Hathitrust Service to comply with the terms of an injunction or other court order with respect to the alleged activities set forth in the Amended Complaint in the event the Court orders such relief.

7. Nothing in this Stipulation shall impair any defenses not expressly addressed herein including, without limitation, all defenses under the 11th Amendment of the United States Constitution (for example, and solely for illustrative purposes, the Substituted

Defendants reserve their right of qualified immunity under the discretionary functions doctrine and reserve the right to argue that alleged infringement of copyrights does not constitute a violation of federal law for purposes of *Ex Parte Young*).

8. The caption in the Amended Complaint is deemed amended to reflect the substitution of the Substituted Defendants in the place and stead of the Individual Defendants. It is agreed among the parties that the operative complaint in the Action is the Amended Complaint and that the operative answer is the Answer and that the parties shall not be obligated to, nor shall they, serve an amended complaint or answer reflecting the dismissal of the Individual Defendants and/or the substitution of the Substituted Defendants.

Dated: New York, New York
December 16, 2011

**FRANKFURT KURNIT KLEIN &
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SO ORDERED:

Hon. Harold Baer, Jr. U.S.D.J.
12/21/11