

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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MARILYN MOFFAT, KAREN KEMMIS,  
DANILLE PARKER and MARK RICHARDS,

Plaintiffs,

v.

Case No. 15-cv-626-JDP

ACADEMY OF GERIATRIC PHYSICAL  
THERAPY,

Defendant.

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**SEVENTH CIRCUIT RULE 3(c)(1) DOCKETING STATEMENT  
OF PLAINTIFFS-APPELLANTS MARILYN MOFFAT, KAREN KEMMIS,  
DANILLE PARKER and MARK RICHARDS**

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Plaintiffs, Marilyn Moffat, Karen Kemmis, Danille Parker, and Mark Richards, in the above named case, by and through undersigned counsel, hereby submit this Docketing Statement pursuant to Circuit Rule 3(c)(1) of United States Court of Appeals for the Seventh Circuit and states as follows:

**I. DISTRICT COURT JURISDICTION**

The United States District Court for the Western District of Wisconsin (“District Court”) had original jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331 and 1338, as the claims presented a federal question under the Copyright Act, 17 U.S.C. § 101 *et seq.* Plaintiffs are four individuals; Defendant is the Academy of Geriatric Physical Therapy (“AOGPT”), an individual membership professional organization representing physical therapists who specialize

in treating geriatric adults. The AOGPT has its principal place of business in the Western District of Wisconsin.

## **II. APPELLATE COURT JURISDICTION**

The United States Court of Appeals for the Seventh Circuit has jurisdiction over Plaintiffs' appeal pursuant to 28 U.S.C. § 1291. There is one order for review under this appeal: the Opinion and Order granting in part and denying in part Defendant's motion for attorneys' fees entered by the District Court on September 20, 2017. (Dkt. No. 116). Plaintiffs' Notice of Appeal was timely filed with the District Court on October 18, 2017.

## **III. THIS IS AN APPEAL OF AN IMMEDIATELY APPEALABLE FINAL DECISION**

Plaintiffs appeal from the Opinion and Order entered on September 20, 2017, granting in part and denying in part Defendant's motion for attorneys' fees. (Dkt. No. 1116). A statutory award of attorneys' fees is a final decision, appealable separately from a judgment on the merits. See *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S.Ct. 1979 (2016) (reviewing, vacating, and remanding fee award under Section 505 of the Copyright Act, 17 U.S.C. § 505); *Ray Haluch Gravel Co. v. Central Pension Fund of Int'l Union of Operating Engineers and Participating Emp'rs*, 133 S.Ct. 2825 (2013) (a pending motion for attorneys' fees does not keep a judgment on the merits from being a final judgment for purposes of appeal).

## **IV. ADDITIONAL REQUIREMENTS OF CIRCUIT RULE 3(c)(1)**

This is a civil case that does not involve any criminal convictions. 28 U.S.C. § 1915(g) is inapplicable. None of the parties to the litigation appear in an official capacity. This case does not involve a collateral attack on a criminal conviction.

A prior appeal (Case No. 17-1432) was filed in this case on February 27, 2017, from the Judgment entered by the District Court on January 27, 2017 (Dkt. No. 90), and the underlying

Opinion and Order dated December 22, 2016 (Dkt. No. 61), granting Defendant's motion for summary judgment and dismissing Plaintiffs' claims against Defendant. In response to the prior notice of appeal, the Court of Appeals requested briefing from the parties concerning the existence of appellate jurisdiction and suspended briefing pending further Court order. The parties briefed the jurisdictional issue, which remains pending before the Court of Appeals.

Respectfully Submitted,

Dated: October 18, 2017

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