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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
	)	
Distribution of 2014-2017	)	Docket No. 16-CRB-0009-CD
Cable Royalty Funds	)	(2014-2017)
	)	

Multigroup Claimants' Reply in Support of Motion for Partial Distribution of 2015-2017 Cable Royalties

A. WSG dba Multigroup Claimants is an established claimant, without any change in represented Devotional claimants since 2003.

Worldwide Subsidy Group LLC ("WSG") is a Texas limited liability company that has utilized a variety of fictitious business names, including Independent Producers Group ("IPG"), Multigroup Claimants ("MGC"), and Spanish Language Producers. Starting in 2015 and prior to being fictitious business names of WSG, the latter two were fictitious business names of Alfred Galaz, who acquired significant ownership in WSG at the beginning of calendar 2017. In December 2017, Alfred Galaz conveyed all his interests in all the foregoing entities to his grandson, the current and sole owner of WSG, and all entities were merged into WSG. These facts have been briefed extensively to the Judges in a multitude of circumstances.

Notwithstanding, where convenient the SDC has characterized all the foregoing entities as one in the same (such as when the SDC sought to have a denial of presumption of validity imposed on MGC), and where convenient as separate legal entities, such as the present circumstance, where the SDC seek to establish that the foregoing entities are disparate, varying, and unstable. Common sense dictates that a mere change of ownership

does not deem a participant "new" to the proceedings, and all WSG-related entities have participated in these proceedings with the identical legal counsel and personnel.

Regardless of which WSG entity was standing at the forefront as a participant in six distribution proceedings over the last two decades -- 1997 cable, 1998-1999 cable, 2000-2003 cable, 1999-2009 satellite, 2004-2009 cable, 2010-2013 cable/satellite -- ***all*** of the represented copyright claimants have been represented vis-à-vis agreements entered into with WSG. In fact, since WSG's inception in 1998, nominal attrition has occurred in any category of WSG-represented copyright claimants, and ***zero*** attrition in the devotional programming category.[1] Over the last two decades no copyright claimant represented by WSG in the devotional programming category has ever terminated its agreement with WSG, while during the same timeframe at least half of the SDC members have exited as members of the SDC.[2]

Notwithstanding, the SDC assert that WSG's represented claimants are ever-fluctuating, and that WSG has not represented the "same copyright owners and programming over time." This was a knowingly false statement, and if the SDC could have pointed to any WSG-represented claimants in the devotional programming category that are no longer represented by WSG, it could easily have done so. It did not do so for the obvious reason that the SDC developed its line of argument *then* made false statements where convenient in order to support such line of argument.

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[1] Billy Graham Evangelistic Association was represented only during calendar years 2002 and 2003, per the original terms of agreement.

[2] The SDC's lineup has not fared well. Only 7 of the 14 SDC entities for the 2000-2003 cable proceedings were identified as part of the SDC for the 2014-2017 cable proceedings, demonstrating 50% attrition. *Cf. Direct Statement of SDC on Remand* (Apr. 15, 2016), App. B-2, Docket no. 2008-2 CD 2000-03 (Phase II) *with* SDC *Joint Petition to Participate* (Mar. 8, 2019) in this proceeding.

B. The Devotional award or valuation to WSG-represented claimants has been consistently stable, and WSG has conservatively valued its anticipated award.

In the 2014 order cited by the SDC, wherein WSG was denied a partial distribution, such denial was based on the fact that WSG had previously settled all prior claims prior to their procedural conclusion, or had received an award that remained subject to appellate review. See *Order Denying IPG Motion for Partial Distribution*, at pp. 4-5 (Feb. 11, 2014). Given such circumstance, WSG was not yet deemed an "established claimant". That is no longer the circumstance, as since that ruling WSG has obtained devotional programming awards in multiple proceedings, including the 1998-1999 cable, 2000-2003 cable, 1999-2009 satellite, 2004-2009 cable, and 2010-2013 cable/satellite proceedings, none of which remain subject to appellate review.

As has been set forth in several rulings, "Partial distributions are primarily based upon percentages established in a prior proceeding." Id. at 5, citing *Order*, Docket No. 2001-8 CARP CD 98-99 at 2-3 (April 10, 2002). Consequently, in its moving brief MGC provided the Judges with the awarded percentages from the immediately prior proceeding, *specifically* as precedent dictates. Notwithstanding, the SDC seek to make comparison beyond the scope of the stated precedent, identifying the percentages awarded to WSG going back to 1999. The SDC initially focus on 2014, for which no awards have been issued to any participant, and misrepresent that MGC received a 0% award when, in reality, MGC did not submit a claim. The SDC next mischaracterize the 2004-2009 cable/1999-2009 satellite awards as far below the figures to which WSG-

represented devotional claimants would have received, but for a discovery sanction issued upon WSG.[3]

By its opposition brief, the SDC ignore their own stated percentages of what WSG-represented devotional claimants should have otherwise received, and seek to institutionalize a discovery sanction on seventeen royalty pools. No basis exists to suggest any comparable discovery sanction would be imposed for the 2015-2017 royalty pools, and no such sanction was imposed in the immediately preceding 2010-2013 proceeding. Contrary to the figures presented by the SDC, the following are the percentages that either were awarded to WSG or which the SDC opined should have been awarded to WSG, prior to imposition of the discovery sanction:

YEAR	CABLE SHARE	SATELLITE SHARE
1999	28.7	24.4
2000	31.25	14.6
2001	31.25	17.0
2002	31.25	33.2
2003	31.25	42.7
2004	31.2	39.7
2005	25.4	30.3
2006	32.6	43.0
2007	22.5	32.9
2008	19.7	36.2
2009	19.5	19.5

[3] As the Judges are aware, the Judges imposed a discovery sanction on WSG for WSG's non-production in discovery of a single email, from twelve years prior, that had been sent directly to the SDC claimants' legal counsel, and that had been produced in the immediately preceding distribution proceeding and ruled by the Judges in that proceeding to be of no consequence. *Memorandum Opinion and Ruling on Validity and Categorization of Claims* (March 13, 2015), at 39, Docket nos. 2012-6 CRB CD (2004-2009) (Phase II), 2012-7 CRB SD (1999-2009) (Phase II). The sanction imposed by the Judges was to disqualify the claims for all seventeen royalty pools of the three most significant claimants represented by WSG – Kenneth Copeland Ministries, Creflo Dollar Ministries, and Benny Hinn Ministries – who collectively accounted for half the retransmitted devotional broadcasts from 1999-2009. As WSG briefed to the Court of Appeals for the District of Columbia, the discovery sanction equated to a sanction of $28 million, *according to the percentages of the devotional pool that the SDC accorded to the three WSG-represented claimants.* *Appellant's Brief* (Nov. 11, 2019), at 18-39, U.S.C.A. (Distr. of Columbia) case no. 18-1337.

2010	22.9	24.7
2011	17.4	11.7
2012	15.2	9.3
2013	10.9	2.3
Average	**24.73**	**25.43**

See *Amended Written Direct Statement of Settling Devotional Claimants* (2004-2009 Cable), Test. of Erkan Erdem (July 8, 2014), at 26, Docket no. 2012-6 CRB CD 2004-2009 (Phase II); *Amended Written Direct Statement of Settling Devotional Claimants* (1999-2009 Satellite), Test. of Erkan Erdem (July 8, 2014), at 26, Docket no. 2012-7 CRB SD 1999-2009 (Phase II).

Consequently, MGC's use of the figures accorded in the immediately prior 2010-2013 proceeding was neither extraordinary or misrepresentative, and demonstrates that use of a 16.6% average as a basis of comparison for MGC's cable royalties actually reflects a reduction of the 15-year average of cable royalties to which WSG would receive, even according to the SDC.

C. The SDC has made unsubstantiated contentions of Multigroup Claimants' unwillingness to disgorge any overpayment, and insolvency, despite its own unwillingness to disgorge overpayments to the SDC.

No "reasonable objection" to MGC's motion has been made. The only party filing an opposition, the SDC, advocate denying MGC ***any*** partial distribution of the royalties to which MGC will likely be entitled, advocating that the Judges disregard the percentages awarded in the most recent proceeding (as precedent dictates). The SDC's encouragement that the Judges ignore the most recent awards is not based on any claim that MGC will not eventually be awarded a substantial percentage of the devotional programming royalty pools. Rather, it is based on nothing more than the SDC's

fabricated claim of MGC's "unwillingness or inability to disgorge funds" and the SDC's fabricated "concerns about MGC's continued solvency".

The SDC's patchwork of accusations, even if accurate, would not support the conclusions the SDC advocate. The accusations do not support a determination that MGC was unwilling or unable to disgorge overdistributed funds, do not raise issue with MGC's solvency, and in any event could not warrant the Judges' refusal to partially distribute to MGC royalty percentages consistent with that which the Judges most recently ordered and the SDC stipulated.

It has been a hallmark of these proceedings that the SDC will make grand allegations of fraud and corruption based on attenuated, irrelevant, and unsubstantiated claims by the SDC and others, and this proceeding appears to be no different. Most recently, in response to a myriad of accusations against MGC, WSG, their former and present principals, and unrelated entities owned by them, the Judges found no intentional misconduct, no wrongdoing, and no "transactions for the purpose of defrauding creditors", as the SDC had alleged. *Order on Order to Show Cause*, at 13-14 (Nov. 13, 2020), Consolidated Docket no. 14-CRB-0010-CD/SD (2010-2013). In fact, in the 2014 order cited by the SDC whereby WSG dba IPG was denied a partial distribution, the Judges addressed the identical claims of the SDC that WSG would be unwilling to disgorge any overpayment and was insolvent, and stated the following:

> "The Judges have no evidence, either from the hearings in the 2000-03 distribution hearing or proffered to support the theories of the objecting parties, regarding [WSG's] financial status. Claims of inability to pay, without more, are insufficient to sustain a reasonable objection to partial distribution."

See *Order Denying IPG Motion for Partial Distribution*, at 5 (Feb. 11, 2014). No different than there, the SDC have failed to proffer any evidence for its contentions, which remain unsubstantiated.

a. The SDC's failure to return its overpayment.

Nonetheless, a particular irony of the SDC's current accusation cannot be overlooked. On February 4, 2021, the Judges issued their *Order Modifying Order Granting Multigroup Claimants' Third Motion for Final Distribution of 2010-2013 Satellite Royalty Funds*, noting that an overpayment had been made to the Allocation Phase Parties (of which the SDC is a member), each of whom had executed repayment agreements in the event of the overpayment *to the collective group*. Because of the overpayment, MGC remains to be paid the aggregate of the 2010-2013 satellite royalties which it was awarded. For each of the 2010-2013 satellite royalty pools, the SDC was twice the recipient of partial distributions to which the SDC remains jointly and severally liable for overpayments. Notwithstanding, and despite the SDC receiving direct notice of the Judges' February 4, 2021 order, after six months the SDC (and other parties) have failed to remit the overpayment to the Licensing Division.[4] Consequently, WSG remains the *only* party to have executed a repayment agreement and fully abided by the terms thereof. WSG's record remains unblemished, while the SDC's record remains tarnished.

b. The SDC's contradictory and repetitive arguments and actions.

[4] Because of the seeming indifference of the SDC and Allocation Phase Parties to comply with their repayment agreements, MGC had no alternative other than to file a motion seeking to compel the Licensing Division to pursue repayment. See *Multigroup Claimants' Motion to Direct Licensing Division to Comply with February 4, 2021 Order* (July 23, 2021), Consolidated docket no. 14-CRB-0010-CD/SD (2010-2013). Predictably, the SDC did not file an opposition brief, as it would have only highlighted breach of its repayment agreement.

The SDC's contradictions do not stop there. The SDC grasp for a distinction between MGC and other participants who regularly receive partial distributions. According to the SDC, MGC is not "a trade organization or stable and long-lasting collection of associated entities (like the Motion Picture Association or the Joint Sports Claimants)". Opp. at 3. Yet the SDC gloss over the fact that the MPA is not the participant in these proceedings, but rather the "MPA-represented Program Suppliers", an amalgamation of producers and distributors of which only an infinitesimal fraction are actually members of the MPA trade organization. Nor are the "Joint Sports Claimants" a trade organization. No different than the MPA and JSC, MGC participates in these proceedings pursuant to contractual agreements dictating the terms of programming and claimant representation. Any attempt to distinguish the entities is futile.

Along the same lines, the SDC contends that because of MGC's agent status, any distribution to MGC would be in jeopardy if an overpayment were made, unless all MGC-represented claimants receive partial distributions directly, and separately execute repayment agreements. Opp. at 4. Notwithstanding, the SDC has adamantly maintained over several proceedings that it is not a singular entity, but rather several entities represented by common legal counsel. Such description therefore gives rise to an obvious question of whether any significance can be given to the covenants made in the SDC's repayment agreements when the putative representative is of an entity that acts as a singular entity for repayment agreement purposes, but contends that it is not a singular entity. Following the SDC's argument to its logical conclusion, the SDC members should be prohibited from receiving any partial distributions unless each receives partial

distributions directly, and separately execute repayment agreements with the Licensing Division.

Finally, the SDC again seek to make relevant WSG's prior dispute with Bob Ross, Inc., a public broadcasting category claimant. The SDC has raised the matter on innumerable occasions since 2013, which was addressed at length at a December 11, 2014 hearing in the consolidated 1999-2009 satellite/2004-2009 cable proceeding. The SDC's brief acknowledges it presents the *identical* information presented in early 2020, and found unworthy of comment by the Judges after it appeared in the *SDC's Further Briefing in Response to MGC's Response to Order to Show Cause*, Consol. Dkt. 14-CRB-0010-CD/SD (2010-13) (Mar. 16, 2020). Opp. at 11. As such, the information presented by the SDC is not "new information" or a matter that has developed further. In fact, the last "evidence" cited by the SDC is correspondence from April 2017 that was itself the product of the SDC attempting to revive a matter already resolved years prior. Id.

In response to attempts by the MPAA and SDC to make relevant the Bob Ross, Inc. dispute, in 2016 the Judges held the following:

> "Assuming, for the sake of argument, that MPAA's allegations are true, MPAA describes a contract dispute between IPG and a claimant. The Act does not authorize the Judges to adjudicate or mediate contract disputes."

Order Granting in Part and Denying in Part IPG's Motion for Partial Distribution of Program Suppliers' Royalties, at 9 (Sept. 29, 2016), Docket nos. 2012-6 CRB CD (2004-2009) (Phase II), 2012-7 CRB SD (1999-2009) (Phase II). Nothing has changed. No different than in 2014, 2016, or on any other of the multitude of occasions that the SDC

has raised WSG's dispute with Bob Ross, Inc., the SDC seek to have the Judges address a private contractual dispute.

c. The SDC's misrepresentation of legal determinations, and cite to irrelevant third-party allegations.

In order to bolster its position, the SDC brazenly misstates the rulings in two legal actions brought by WSG against former clients. Falsely representing that a federal court found that WSG did not have authority to collect royalties for the David Letterman Show, the SDC cites to *Worldwide Subsidy Group, LLC v. Worldwide Pants, Inc.* Opp. at 13. In fact, WSG's claims were dismissed based on the statute of limitations, having nothing to do with WSG's authority to make claim. See **Exhibits A, B**. Nor, as the SDC assert, was there ever a "finding that WSG had no contract with FIFA to collect royalties on its behalf." Opp. at 13. After a federal court of appeals found that WSG had demonstrated from correspondence with FIFA that a *prima facie* case for the existence of an agreement was present, and no evidence to the contrary was presented by FIFA at trial, a jury nonetheless determined that WSG *had not met its burden* to establish the existence of an agreement. See **Exhibit C**. Such jury determination, which appeared logically at odds with the prior decision of the court of appeals, was nevertheless affirmed by the court of appeals. Id. Such decision is a far cry from an affirmative finding that WSG had no contract with FIFA, as the SDC has misrepresented.

Finally, the SDC cite to untested third-party *allegations* that are actively disputed as a matter of record. Two of the actions are before a U.S. Bankruptcy Court in Tulsa, Oklahoma, one before a U.S. District Court in San Antonio, Texas, and none of which have any relation to MGC's clients, willingness to repay any overpayment of royalties, or

solvency. Interestingly, it has been acknowledged by the plaintiffs in all actions that their allegations were developed only after SDC-counsel Matthew MacLean contacted them and presented documents reflecting the Judges' award of royalties to WSG, encouraging those persons to assert claims against WSG, its owners, and its personnel.

WSG has represented as many as 250 clients at a time, most for twenty years, yet no WSG client has ever asserted that WSG refused to pay owed royalties, and WSG has never been sued by a client or been the subject of a counterclaim by a client.

Respectfully submitted,

Dated: August 13, 2021

________/s/____________________

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CERTIFICATE OF SERVICE

I certify that on August 13, 2021, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

____________/s/____________________
Brian D. Boydston, Esq.

EXHIBIT A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WORLDWIDE SUBSIDY GROUP, LLC, a Texas Limited Liability Company Plaintiff, v. WORLDWIDE PANTS INCORPORATED, a California corporation, and DOES 1 through 10, inclusive, Defendants.	Case No. CV 14-03682-AB (ASx) **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DKT. NO. 44) AND DENYING PLAINTIFF'S MOTION TO STRIKE (DKT. NO. 66)**

Pending before the Court is Defendant Worldwide Pants Incorporated's ("WPI") Motion for Summary Judgment against Plaintiff Worldwide Subsidy Group, LLC ("WSG"). Dkt. No. 44 ("Motion"). WSG filed an Opposition, Dkt. No. 52 ("Opposition"), and WPI filed a Reply, Dkt. No. 58 ("Reply"). Also pending is WSG's Motion to Strike WPI's Motion for Summary Judgment, Dkt. No. 66, along with WPI's Opposition to the Motion to Strike, Dkt. No. 68, and WSG's Reply Dkt. No. 72.

The Court held a hearing on this motion on September 12, 2016 and took the Motion under submission. Dkt. No. 69.

Having carefully reviewed the materials submitted by the parties and the arguments presented during oral argument, and for the reasons indicated below, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion to Strike.

I. BACKGROUND

In April 2014, WSG filed a complaint in California state court against WPI for breach of contract, breach of the covenant of good faith and fair dealing, quantum meruit, declaratory relief and account, and in May WPI removed it to federal court based on diversity jurisdiction. *See* Dkt. No. 1. WSG collects royalties distributed by agencies around the world on behalf of the producers and distributors it represents and in return for that effort keeps a portion of those royalties. This case arises out of efforts by WSG to collect royalties on behalf of WPI for various television shows, most notably "The Late Show with David Letterman." WSG collected the royalties for WPI programs from 1999-2002 pursuant to a written agreement ("2002 Agreement") that was terminated, and WSG has argued that in 2007 the parties orally agreed to resume the agreement. Compl., Ex. A. WSG has filed this lawsuit because WPI refused to cooperate in securing royalties from the United States Copyright Royalty Board. WPI argues that all of WSG's claims are barred by the statute of limitations, WSG's breach of contract claims fail because the 2002 Agreement excluded U.S. royalties, WSG did not perform on that contract regardless, and that the remaining claims fail as a matter of law. WPI now moves for summary judgment on all counts. *See* Mot.

II. LEGAL STANDARD

A motion for summary judgment must be granted when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a

matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). The moving party bears the initial burden of identifying the elements of the claim or defense and evidence that it believes demonstrates the absence of an issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the nonmoving party will have the burden of proof at trial, the movant can prevail merely by pointing out that there is an absence of evidence to support the nonmoving party's case. *Id.* The nonmoving party then "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248.

"Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Court must draw all reasonable inferences in the nonmoving party's favor. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Anderson,* 477 U.S. at 255). Nevertheless, inferences are not drawn out of thin air, and it is the nonmoving party's obligation to produce a factual predicate from which the inference may be drawn. *Richards v. Nielsen Freight Lines,* 602 F.Supp. 1224, 1244–45 (E.D. Cal. 1985), *aff'd,* 810 F.2d 898 (9th Cir. 1987). "[M]ere disagreement or the bald assertion that a genuine issue of material fact exists" does not preclude summary judgment. *Harper v. Wallingford*, 877 F.2d 728, 731 (9th Cir. 1989).

III. UNDISPUTED FACTS

The following material facts are largely undisputed and are drawn from the Parties' pleadings and exhibits. [1]

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[1] The Court notes that the parties purportedly "dispute" many facts on artificial or highly technical grounds, and/or by raising only tangential factual issues. Thus, to the extent the Court finds such "disputes" to be non-existent, it will simply treat the fact as undisputed without further explanation.

Except as otherwise noted in this order, any objections that are inconsistent with the Court's ruling are **OVERRULED**. The Court also declines to address objections made to facts and declarations not relevant to this disposition.

WPI is a production company founded by David Letterman that produced programs including "Late Show with David Letterman," "The Late Late Show with Tom Snyder," and "The Late Late Show with Craig Kilborn." [2] RUF 2–3. Under the Copyright Act, 17 U.S.C. §§ 111, 119, programs such as these generate copyright royalties associated with "secondary transmissions" both in the United States and abroad. RUF 5. In early 2002 WSG and WPI entered into the 2002 Agreement which authorized WSG to retroactively collect certain copyright royalties starting on May 1, 1999. RUF 13; 2002 Agreement. In exchange for collecting the royalties from copyright collection societies throughout the world, WSG could keep 20% of the royalties it collected and would remit 80% of the royalties back to WPI. 2002 Agreement ¶ 4. The 2002 Agreement had a minimum term of four years, and thereafter permitted either party to terminate "upon completion of the first full calendar semi-annual period following written notice." *Id.* ¶ 2. The 2002 Agreement also specified that it could not be modified except by a writing signed by the parties, was governed by California law, and disputes must be brought in federal or state court in Los Angeles County. *Id.* ¶¶ 12–13.

However, in June 2002, less than two months later after the 2002 Agreement was signed, Raul Galaz, a principal and co-founder of WSG, was convicted of mail fraud in connection with the collection of cable and satellite retransmission royalties. RUF 22; RCF 63. He was incarcerated from February 2003 to May 2004. RUF 26. In January 2003 WSG and WPI amended the 2002 Agreement ("2003 Amendment"). Def.'s Ex. 8, Dkt. No. 44–2 at 112. On December 18, 2003, WPI sent WSG a letter that noted that WSG had made a filing for copyright royalties on behalf of WPI, but since the parties had terminated the 2002 Agreement the filing must have been an

[2] The Court identifies the facts by reference to their number in Defendant's Response to Plaintiff's Separate Statement in Opposition to Uncontroverted Facts ("RUF" or "RCL") (Dkt. No.58–3) or Defendant's Response to Plaintiff's Separate Statement of Controverted Facts ("RCF") (Dkt. No. 58–2).

"inadvertent error" and WSG needed to delete WPI from the filing "to indicate that [WSG] no longer are acting on behalf of WPI . . . ." Def.'s Ex. 9, Dkt. No. 44–2 at 114. Both the 2003 Amendment and the December 2003 letter were addressed to Marian Oshita, who was acting as President and was majority shareholder of WSG from 2002 to 2005. Def.'s Ex. 10, Dkt. No. 44–2 at 130; *Galaz v. Oshita,* No. BC 297015, Plaintiff's Judgment on Jury Verdict at 8 (Cal. Super. Ct. L.A. County, Jan. 26, 2005), J.A. 197; *Galaz v. Oshita*, 2006 WL 1461134, at *1 (Cal. Ct. App. May 30, 2006).

On January 19, 2007, Lisa Katona, a co-founder and principal of WSG, sent a letter to WPI informing it that the Canadian Copyright Collective ("CCC") was preparing its second distribution of retransmission royalties for 1990–1997 and its first distribution from the year 2001 onwards, and that WPI likely stood to receive millions of dollars. Def.'s Ex. 11, Dkt. No. 44–2 at 139. However, because of Galaz's conviction, the CCC required that WSG's clients sign an attached declaration confirming that WSG is authorized to collect such royalties, and that WPI is not owned or controlled by Galaz. *Id.* Katona also attached a copy of the 2002 Agreement that did not include the 2003 Amendment. *Id.* On February 1, 2007, WPI signed and returned the declaration after making some changes to its language. Compl. Ex. B. However, on March 1, 2007, WPI sent the CCC another declaration which revoked WSG's authority to collect Canadian retransmission royalties for transmissions occurring after January 1, 2005. Def.'s Ex. 12, Dkt. No. 44–2 at 150. The CCC then forwarded the second declaration to WSG, which produced it in discovery in this case.[3] RUF 39–40.

[3] The parties dispute whether CCC sent WSG the second declaration on March 14, 2007, but they agree that it was sent by CCC to WSG on May 15, 2007. RCF 39. This dispute however is not material given the Court's holdings below.

IV. DISCUSSION

A. Claims for Breach of the 2002 Agreement are Barred by the Statute of Limitations

WPI asserts that the 2002 Agreement was either terminated by the 2003 Amendment, RUF 29, or breached when WPI wrote the letter in December 2003 informing WSG that it could no longer act on WPI's behalf in collecting royalties from the U.S. Copyright Office, RUF 34. In either case, four year statute of limitations began to run in 2003 and would have therefore expired in 2007, well before this case was filed in April 2014. Cal. Code Civ. Proc § 337. For the reasons explained below, the Court agrees that the December 2003 letter was a breach of the 2002 Agreement and thus any claims for breach of that agreement are time-barred.

The 2002 Agreement authorized WSG to pursue worldwide copyright royalties owed to WPI under various copyright transmission royalty statutes, and in exchange WSG could keep 20% of the royalties it collected. 2002 Agreement ¶¶ 1, 4. Two important aspects of the 2002 Agreement for this case are that it was an exclusive authorization, which meant that only WSG had been granted that right (subject to a number of qualifications and restrictions not relevant here), and that the agreement could be terminated with notice but had a minimum term of four years.[4] *Id.* ¶¶ 1, 2. Following Galaz's conviction, in January 2003 the parties wrote the 2003 Amendment which removed the notice and termination provision entirely and replaced it with a line saying "The term of this Agreement shall commence on May 1, 1999 and shall continue through December 31, 2002." Def.'s Ex. 8; RUF 22.[5] In December 2003, WPI noticed that WSG had filed on its behalf for 2001 cable royalties with the Library

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[4] The actual termination provision appears to require notice and then the completion of a "full calendar semi-annual period" suggesting that termination would take somewhere between six months and a year following notice.

[5] The parties dispute the impact of the 2003 Amendment and whether it terminated WSG's right to collect royalties. RCF 29. The Court declines to address this issue because it is not relevant to its disposition of the case.

1 of Congress. RUF 31. WPI's counsel then sent a letter to WSG indicating WPI's
2 belief that the 2002 Agreement had been terminated, and telling WSG to "please
3 promptly forward to me evidence that you have amended the Filing to indicate that
4 you no longer are acting on behalf of WPI and deleting WPI from the list of entities
5 set forth in Exhibit 'A' of the Filing." Def.'s Ex. 9. WPI also attached a copy of the
6 filing in question where WSG "purports to act on behalf of WPI" and WPI states that
7 "I trust that this error was in fact inadvertent." *Id.* This letter therefore clearly
8 informs WSG that it no longer has the authority to collect copyright royalties on
9 WPI's behalf and is therefore a breach of any rights that WSG still had under the
10 2002 Agreement as amended.

11 WSG disagrees with this conclusion on a number of grounds, but each
12 argument is either unsupported by the record, or irrelevant as a matter of law. WSG
13 first argues that it does not currently have a copy of the letter. Opp'n at 18. WPI
14 however provided a fax confirmation sheet from when it faxed the letter to WSG.
15 Def. Ex. 9 at 9. WSG does not dispute that a fax confirmation creates a rebuttable
16 presumption that a fax was sent, RCL 22, and more importantly, WSG does not
17 dispute that it received the letter. WSG's current possession of the letter in its record
18 is thus irrelevant, and even this fact is provided by Galaz, who was incarcerated at the
19 time it was sent. Galaz Decl. ¶ 20. WSG next argues that the letter does not assert
20 that WPI will take any particular action or refuse to cooperate with WSG in collecting
21 U.S. royalties. Opp'n at 18. To the contrary however, this letter by its plain terms
22 clearly expresses WPI's belief that WSG has no right to such royalties, and tells WSG
23 to fix its filing by removing WPI. WSG also argues that at worst, the letter only
24 reflects a misunderstanding of the 2003 Amendment. Opp'n at 18. However, if this
25 letter misstates the 2003 Amendment, then that further proves WPI's point that the
26 letter put WSG on notice that it could no longer act on behalf of WPI. Reply at 4.
27 Finally, WSG simultaneously argues that "no evidence exists as to the resolution" of
28 this letter, but also that after receiving this letter WSG did not amend its filing. WSG

1 argues that its failure to amend the filing actually put Defendant on notice that WSG
2 intended to continue making such claims, despite having had their authorization
3 revoked. Opp'n at 18. WSG is correct that there is no evidence in the record from
4 either party as to what the parties did after this letter was received. That however also
5 includes WSG's own assertion that it failed to amend its filing, because it has not
6 provided this information in any sort of admissible way. *See S.A. Empresa De Viacao*
7 *Aerea Rio Grandense v. Walter Kidde & Co., Inc.,* 690 F.2d 1235, 1238 (9th
8 Cir.1982) (holding that "a party cannot manufacture a genuine issue of material fact
9 merely by making assertions in its legal memoranda").

10 In short, WSG received a letter informing it that it no longer had WPI's
11 authorization to collect these copyright royalties, and without such authorization WSG
12 was not entitled to receive the royalty distribution as a matter of both contract and
13 copyright law. Def. Ex. 10; Copyright Arbitration Royalty Panels; Rules and
14 Regulations, 59 FR 23964-01 at 23992 (rules in effect at the time requiring claims to
15 be filed by the claimant or a duly authorized representative); s*ee Indep. Producers*
16 *Grp. v. Library of Cong.*, 759 F.3d 100, 107 (D.C. Cir. 2014) (holding that under
17 longstanding precedent the Copyright Royalty Judges and their predecessors could
18 only decide distributional issues and could not resolve other disputes between parties,
19 including contract claims). This put WSG on notice that it was not entitled to any
20 benefits from the 2002 Agreement as amended, and therefore began the four year
21 statute of limitations. Cal. Civ. Proc. Code § 337; *Reichert v. Gen. Ins. Co. of Am.*, 68
22 Cal. 2d 822, 830 (1968) ("A cause of action for breach of contract accrues at the time
23 of the breach"); *E-Fab, Inc. v. Accountants, Inc. Servs.*, 153 Cal. App. 4th 1308, 1317
24 (2007) ("The limitations period commences when the cause of action accrues.").
25 WSG did not bring a suit within the limitations period and therefore all of its claims
26 relating to the 2002 Agreement are barred.
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B. Claims for Breach of the 2007 Oral Contract are Barred by the Statute of Limitations and the Statute of Frauds

WSG has alleged that in 2007 it was orally reengaged by WPI to begin collecting royalties as it had under the 2002 Agreement. WSG's attempt to enforce the terms of this oral contract however is barred by both the statute of frauds, and the statute of limitations.

1. The 2007 Oral Contract is barred by the Statute of Frauds

California's statute of frauds bars oral contracts which cannot be completed within one year. Cal. Civ. Code § 1624(a)(1). There is an exception however if there is a "note, memorandum, or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker." *Id.* § 1624(b)(3)(D). A memorandum must identify the subject of the parties' agreement, show that they made a contract, and state the essential contract terms with reasonable certainty. *Sterling v. Taylor*, 40 Cal. 4th 757, 766 (2007). "Only the essential terms must be stated, the details or particulars need not be. What is essential depends on the agreement and its context and also on the subsequent conduct of the parties . . . ." *Id.* (quotations omitted). "[I]t is a question of law whether a memorandum, considered in light of the circumstances surrounding its making, complies with the statute of frauds." *Id.* at 772.

WSG contends that in 2007 WPI re-engaged WSG and authorized it to "continue making claims on behalf of Worldwide Pants and to pick up exactly where it had picked up before, doing the exact same thing" and that "we were basically adopting the exact same terms that had already been negotiated before."[6] Galaz Depo. at 108:11–15, 109:24–25.[7] The 2002 Agreement did not specify a particular

[6] Plaintiff's position in the complaint and this motion is that the oral contract adopted the terms of the 2002 Agreement but not the 2003 Amendment. Compl. ¶ 12; Opp'n at 17. If the 2007 oral contract had adopted the 2003 Amendment version, then it would not have allowed WSG to file for most of the claims that it did. Def. Supp. Ex. 3 at 100, Dkt. No. 58–1.

[7] The Court notes the conflict between Galaz's assertion in his deposition that he contacted WPI and

1 term, but could in no situation be terminated in less than four years. 2002 Agreement
2 ¶ 2. The 2002 Agreement therefore could not be performed within one year. *See*
3 Worldwide Subsidy Grp., LLC v. Fed'n Int'l De Football Ass'n, No. 14-00013 MMM
4 (MANX), Dkt. No. 25 at 31 (C.D. Cal. June 9, 2014) (interpreting an identical
5 contract of WSG's with a three year term and finding it fell within California's statute
6 of frauds) *rev'd on other grounds,* No. 14-56819, 2017 WL 104831 (9th Cir. Jan. 11,
7 2017) (reversing and holding that the documents provided by WSG when taken
8 together were sufficient on a motion to dismiss to satisfy the memorandum exception
9 to the statute of frauds).

10 WSG also argues that WPI's first declaration related to Canadian royalties
11 satisfies the writing requirement of the statute of frauds because it reflects "the
12 existence of an agreement beyond the terms of the" 2002 Agreement. Opp'n at 28.
13 For a memorandum to satisfy the statute of frauds however, it must not just indicate
14 the existence of an oral agreement, it must also contain the agreement's essential
15 terms. *See Sterling*, 40 Cal. 4th at 766. In the context of retransmission royalties, it is
16 clear that the essential terms include the territories covered, the episodes the party is
17 collecting for, the term or period of time it is authorized to collect, and the
18 commission or compensation the party is entitled to receive. In this case it would also
19 have to include that WSG would be entitled to collect those royalties in perpetuity.
20 While the declaration does provide that WSG can collect royalties on behalf of WPI,
21 in every other way the declaration contradicts the terms that WSG seeks to enforce.[8]
22 The declaration does not specify the shows WSG can collect for, is geographically

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24 negotiated the terms of the oral contract in 2007 with the declaration Denise Vernon, principal and current majority owner of WSG, who states that Galaz only began working again for WSG as an
25 employee in 2008. Vernon Decl. ¶ 6, Dkt. No. 52–5. WPI however does not dispute this point so the Court will treat it as uncontroverted for the purposes of this motion.

26 [8] WSG has not identified any piece of writing besides the declarations that the Court could read together to satisfy the memorandum exception, nor has WSG argued that such terms can be supplied
27 by implication or law. *See House of Prayer: Renewal & Healing Ctr. of Yuba City v. Evangelical Ass'n for India*, 113 Cal. App. 4th 48, 54 (2003) (holding that where a real estate contract is
28 sufficient in all other essential terms, the law implies a reasonable time of performance).

1 limited to just Canada, does not provide for WSG's commission, does not contain any
2 minimum term, duration, or termination terms, and states that this authority is
3 revocable at any time. *Compare* Compl. Ex. A ¶¶ 1, 2, 4 *with* Compl. Ex. B.[9] For
4 these reasons, it does not demonstrate that WPI chose to be bound by the 2002
5 Agreement and therefore cannot satisfy the memorandum exception to the statute of
6 frauds.

7 **2. The 2007 Oral Contract is barred by the Statute of**
8 **Limitations**

9 Claims related to the 2007 oral contract are also barred by the statute of
10 limitations. After sending the first declaration in February 2007, WPI sent the second
11 declaration to the Canadian Copyright Collective which then forwarded it to WSG by
12 May 2007 at the latest. RUF 39. WSG does not dispute receiving the second
13 declaration. RUF 39. The second declaration was largely the same as the first, except
14 that it revoked WSG's authority to collect retransmission royalties for any
15 transmission made after January 1, 2005. Def.'s Ex. 12 at 5. Assuming the existence
16 and terms of the 2007 oral contract as explained above, *see Gailing v. Rose, Klein &*
17 *Marias*, 43 Cal. App. 4th 1570, 1577 n.8 (1996) (assuming negligence occurred for
18 determining when statute of limitations began), the second declaration revoked
19 WSG's authorization to collect post-2004 Canadian royalties and was therefore a
20 breach of the alleged terms. This put WSG on notice of the breach and began the two
21 year statute of limitations. Cal. Code. Civ. Proc. § 339; *Zecos v. Nicholas-Applegate*
22 *Capital Mgmt.*, 42 F. App'x 31, 32 (9th Cir. 2002) ("A cause of action for a breach of
23 an oral contract accrues at the time of the breach . . . ."). WSG did not bring a suit
24 within the limitations period and its claims relating to breach of the 2007 oral contract
25 are therefore barred.

26 Because WSG's claims from the 2007 oral contract (and 2002 Agreement, as
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28 [9] This analysis also applies to the second declaration WPI sent to the CCC (discussed below) which revoked WSG's authority to collect any Canadian royalties for post-2005 retransmissions.

explained above) are barred by the statute of limitations and statute of frauds, the rest of WSG's causes of action are also barred. *See Jang v. State Farm Fire & Cas. Co.*, 80 Cal. App. 4th 1291, 1301 (2000) *as modified* (June 8, 2000) (stating that a claim for breach of the covenant of good faith is barred when brought outside the statute of limitations); (*Maglica v. Maglica*, 66 Cal. App. 4th 442, 452 (1998) ("The statute of limitations for quantum meruit claims is two years"); *Maguire v. Hibernia Sav. & Loan Soc.*, 23 Cal. 2d 719, 733–34 (1944) (holding that an action for declaratory relief cannot be brought after the limitations period has expired); *Janis v. California State Lottery Com.*, 68 Cal. App. 4th 824, 833–34 (1998) ("A right to an accounting is derivative; it must be based on other claims.").

C. The Motion to Strike is Denied

Plaintiff has filed a motion to strike portions of argument from WPI's motion for summary judgment. Dkt. No. 66. WSG does not cite to any authority supporting this Court's power to strike, but all of the cases it cites involved motions to strike a pleading under Rule 12(f). *E.g.*, *Anderson v. Davis Polk & Wardwell LLP*, 850 F. Supp. 2d 392, 416 (S.D.N.Y. 2012) (analyzing motion to strike sections of a complaint under Rule 12(f); *Righthaven LLC v. Democratic Underground, LLC*, 791 F. Supp. 2d 968, 977 (D. Nev. 2011) (same); *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992) (same). Properly construed as a motion to strike under Rule 12(f), WSG's motion fails because a motion for summary judgment is not a pleading, and because it is untimely. A motion to strike under Rule 12(f) only applies to pleadings. *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) ("Under the express language of the rule, only pleadings are subject to motions to strike."). A motion for summary judgment is not a pleading. Fed. R. Civ. P. 7(a). Even if it were, Rule 12(f) requires a motion to strike be filed before the party responds, or within 21 days after being served with the pleading if a response is not allowed. Fed. R. Civ. P. 12(f). WPI's motion for summary judgment was filed on May 23, 2016, Dkt. No. 44, and WSG's motion to strike was filed on September 5,

2016, Dkt. No. 66, 15 weeks later. For both of these reasons the motion to strike is therefore DENIED.

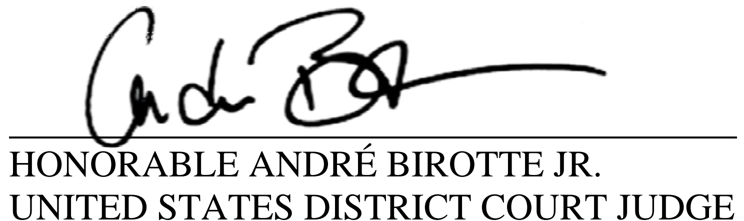
V. CONCLUSION

For the reasons stated in this Order, WPI has successfully established that WSG's claims for breach of contract, breach of the covenant of good faith and fair dealing, quantum meruit, and declaratory relief are all barred by the statute of frauds or the applicable statute of limitations. As a consequence, WSG's claim for accounting is also barred.

Accordingly, WPI's Motion for Summary Judgment, Dkt. No. 44, is **GRANTED** and WSG's Motion to Strike, Dkt. No. 66, is **DENIED**. WPI shall file and lodge a proposed judgment within ten (10) days of the issuance of this Order.

IT IS SO ORDERED.

Dated: February 14, 2017



HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 09 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WORLDWIDE SUBSIDY GROUP, LLC, a Texas Limited Liability Company,

Plaintiff-Appellant,

v.

WORLDWIDE PANTS INCORPORATED, a California corporation and DOES, 1-10, inclusive,

Defendants-Appellees.

No. 17-55353

D.C. No.
2:14-cv-03682-AB-AS

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Submitted June 7, 2018[**]
Pasadena, California

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: D.W. NELSON and CHRISTEN, Circuit Judges, and SHEA,[***] District Judge.

Worldwide Subsidy Group (WSG) appeals the district court's order granting summary judgment in favor of Worldwide Pants Inc. (WPI) and denying its motion to strike. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not err by ruling WSG's breach of contract claims arising from the 2002 written agreement were time-barred. California's four-year statute of limitations for written agreements "accrues at the time of the breach." *Reichert v. Gen. Ins. Co. of Am.*, 442 P.2d 377 (Cal. 1968). Assuming WSG maintained post-term collection rights under the 2002 written agreement, WPI put WSG on notice in December 2003 that it had no intention to honor said rights when WPI and WSG mutually agreed to terminate the 2002 agreement. Accordingly, the statute of limitations ran on WSG's claims in December 2007, making its 2014 complaint untimely.

2. The district court did not err by ruling WSG's claims arising from the alleged 2007 oral contract were time-barred. In California, the statute of limitations for oral contracts is two years, and is triggered on the date of the alleged breach. Cal. Civ. Proc. Code § 339. If an oral contract existed, WPI breached it in

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[***] The Honorable Edward F. Shea, United States District Judge for the Eastern District of Washington, sitting by designation.

March 2007 when WPI issued a declaration expressly revoking WSG's authorization to collect royalties on its behalf. WSG received notice of this revocation by at least May of that year.

3. The district court did not err by denying WSG's motion to strike. WSG filed a Rule 12(f) motion to strike which is inapplicable to a motion for summary judgment.

AFFIRMED.

EXHIBIT C

FILED

JUN 10 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, Plaintiff-Appellant, v. FEDERATION INTERNATIONAL DE FOOTBALL ASSOCIATION, Defendant-Appellee.	No. 18-56033 D.C. No. 2:14-cv-00013-AB-JC MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Submitted May 20, 2019**
San Francisco, California

Before: BERZON, CHRISTEN, and NGUYEN, Circuit Judges.

Worldwide Subsidy Group, LLC ("Worldwide") alleges it previously entered into a contract with Fédération Internationale de Football Association ("FIFA") to pursue copyright retransmission royalties on its behalf, and that FIFA

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

has breached that contract. FIFA insists no contract exists. After this panel reversed the district court's dismissal on jurisdictional grounds, a jury agreed with FIFA. Worldwide moved for judgment as a matter of law or, in the alternative, a new trial, relying on this court's previous disposition. The district court denied those motions. Worldwide now appeals the district court's denial of those motions, as well as its pre-trial denial of Worldwide's motion in limine to exclude evidence of its sole witness's prior criminal conviction. We affirm.

1. At trial Worldwide had the burden to prove that it had entered into a contract. *See, e.g.*, *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977). And this court has been clear that "[p]retrial rulings, often based on incomplete information, don't bind district judges for the remainder of the case." *Peralta v. Dillard,* 744 F.3d 1076, 1088 (9th Cir. 2014). Contrary to Worldwide's assertion, in contract cases like this one we do not employ the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Accordingly, FIFA was not, as Worldwide contended, required to prove the absence of a contract at trial due to our previous holding that Worldwide had "made a prima facie showing of an enforceable contract." *Worldwide Subsidy Grp., LLC v. Fed'n Internationale De Football Ass'n*, 675 F. App'x 682, 684 (9th Cir. 2017). Because Worldwide's argument is entirely premised on the burden-

shifting framework, it presents no persuasive argument for judgment as a matter of law or for a new trial.

2. In balancing the probative value of Worldwide's witness's prior conviction for mail fraud against that evidence's prejudicial effect, as required by Federal Rule of Evidence 609(b), the district court properly considered five relevant factors identified by this circuit. *See United States v. Hursh*, 217 F.3d 761, 768 (9th Cir. 2000). All five of these factors could reasonably be viewed as counseling for the conviction's admissibility, so the district court did not abuse its discretion in denying Worldwide's motion in limine.

AFFIRMED.

Proof of Delivery

I hereby certify that on Friday, August 13, 2021, I provided a true and correct copy of the Multigroup Claimants' Reply in Support of Motion for Partial Distribution of 2015-2017 Cable Royalties to the following:

Public Television Claimants, represented by Ronald G. Dove Jr., served via ESERVICE at rdove@cov.com

Commercial Television Claimants / National Association of Broadcasters, represented by David J Ervin, served via ESERVICE at dervin@crowell.com

Devotional Claimants, represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

Canadian Claimants, represented by Lawrence K Satterfield, served via ESERVICE at lksatterfield@satterfield-pllc.com

National Public Radio, represented by Gregory A Lewis, served via ESERVICE at glewis@npr.org

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via ESERVICE at ted@copyrightroyalties.com

ASCAP, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

Joint Sports Claimants, represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@arnoldporter.com

Program Suppliers, represented by Lucy H Plovnick, served via ESERVICE at lhp@msk.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Broadcast Music, Inc. (BMI), represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@dbr.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Signed: /s/ Brian D Boydston