

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Literary Works in Electronic
Databases Copyright Litigation

No. 05-5943-cv

DECLARATION IN SUPPORT OF MOTION TO STRIKE

Charles D. Chalmers, do declare:

1. I am counsel for the appellants.
2. In from October 2005 to March 2006 I engaged in extensive communications with Michael Boni, representing all plaintiffs, and Charles Sims, representing all defendants, regarding the content of the Appendix. They never said anything to me about presenting post-judgment information about class member claims to this Court.
3. Attached as Exhibit A are the portions of the Combined Reply of Appellants which are meaningless when read against the corrected briefs of the appellees.
4. Attached as Exhibit B, which is sequentially paged for reference in the Memorandum, are true copies of correspondence (letters and emails) with counsel for appellees, and a letter from counsel for plaintiffs-appellees to the Clerk of the Court.

5. After I wrote to the Clerk urging that appellees corrected brief not be filed, I was called by Julius Crockwell, the deputy clerk responsible for this case, and told his supervisor had decided to file the briefs and that my remedy was to file a motion to strike. He said the reason was the Clerk's office did not think it should be responsible for determining what is a true "correction."

6. Before I learned that the factual statements in the appellees' briefs were wrong I proposed a stipulation to strike them. That is shown in Exhibit B, p. ... I was concerned that the Court would actually think the issues were moot, even though I thought, and appellants argued in the Reply, that the figure demonstrated the error of the parties "certainty" that the C Reduction would not occur. But I dropped the proposal after I learned that the factual statements were an understatement of the filed claims, and the value of the claims by named plaintiffs. This information is very important to the appellants' position.

Executed at Fairfax, CA on August 1, 2006. I declare under penalty of perjury under the law of the United States that the foregoing is true and correct.


Charles D. Chalmers

