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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 MICHAEL SKIDMORE, *etc.*,

19 Plaintiff,

20 vs.

21 LED ZEPPELIN, *et al.*,

22 Defendants.
23

) Case No. 2:15-cv-03462 RGK (AGRx)

)
) DECLARATION OF DR.
) LAWRENCE FERRARA IN
) SUPPORT OF MOTION FOR
) SUMMARY JUDGMENT OR, IN
) THE ALTERNATIVE, PARTIAL
) SUMMARY JUDGMENT

)
) Date: March 28, 2016
) Time: 9:00 a.m.

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25 Courtroom of the Honorable
R. Gary Klausner
26 United States District Judge
27
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DECLARATION OF LAWRENCE FERRARA, Ph.D.

I, Lawrence Ferrara, Ph.D., declare and state:

1. I am over the age of 18 and have personal knowledge of the following facts and could competently testify to the following facts if called upon to do so.

2. I am a pianist, a music theorist and a Full Professor of Music and the Director Emeritus of all studies in Music and the Performing Arts in New York University's Steinhardt School.

3. After being asked to perform a comparative musicological analysis of the musical compositions in (1) "Taurus" written by Randy California and (2) "Stairway to Heaven" written by Jimmy Page and Robert Plant (hereafter "Stairway"), I prepared the Report that is attached to this Declaration as Exhibit 1, and the Audio Exhibit 1 referenced in that Report and which accompanies this Declaration. My Report, including its Audio Exhibit 1, are made a part of and incorporated in this Declaration and I can and do testify to my statements in my Report.

4. I have received and reviewed the Report dated February 10, 2016, by Dr. Alexander Stewart, in this action, and attached to this Declaration as Exhibit 2 is a true and correct copy of his Report, without its exhibits or attachments. I intend to submit a rebuttal report as permitted by this Court's rules, and the following is not a complete statement of my views and rebuttal of Dr. Stewart's Report.

5. Dr. Stewart's Report does not mention the transcription of the "Taurus" musical composition stamped, "Dec 22, 1967" and "Eu 35222" (the "Taurus Transcription"). Instead, his Report analyzes and compares recordings of performances of Taurus, on the one hand, and a recording of Stairway, on the other hand. Of course, transcriptions of a musical composition can and generally do vary from performances, including recorded performances, of the musical composition. That is the case here, and Track 1 on Audio Exhibit 2 submitted with this Declaration is my playing of the Taurus Transcription, which is sheet music readily

1 played on the piano. To the extent that the Taurus Transcription is the copyrighted
 2 musical composition at issue, Dr. Stewart's Report relies upon and analyzes and
 3 compares the wrong work.

4 6. Also, Dr. Stewart's Report relies upon and analyzes and compares
 5 performance elements in "Taurus" recordings that are nowhere mentioned in the
 6 Taurus Transcription. The Taurus Transcription does not mention or reflect, for
 7 example, performance techniques, instrumentation and orchestration, or tempo (i.e.,
 8 performance speed). However, Dr. Stewart's Report refers to, for example,
 9 "fingerpicking style" [p. 1 / ¶ 3], "acoustic guitar" [p. 2 / ¶ 4], tempo [p. 2 / ¶ 4],
 10 "classical instruments such as flute...strings and harpsichord" [p. 2 / ¶ 4],
 11 "atmospheric sustained pads" [p. 3 / ¶ 4] and "fretboard positioning and fingering"
 12 (on the guitar) [p. 4 / ¶ 7]. None of this is mentioned or reflected in the Taurus
 13 Transcription.

14 7. Disregarding the performance elements identified in Dr. Stewart's
 15 Report, leaves the following claimed similarities.

16 THE CLAIM OF STRUCTURAL SIMILARITIES

17 8. Dr. Stewart finds similarities in interchanging "A" and "B" sections in
 18 "Taurus" and "Stairway". Aside from the fact that he refers to recordings of
 19 "Taurus" rather than the Taurus Transcription, (1) interchanging "A" and "B"
 20 sections have been generic in music for centuries, (2) Dr. Stewart's structural
 21 analysis fails to analyze the very different structures in the last almost six minutes of
 22 "Stairway" (more than 70% of "Stairway"), and (3) even within the limited portion
 23 of "Stairway" he does analyze, Dr. Stewart finds "structural differences" with
 24 "Taurus". [p. 3 / ¶ 5] I respectfully refer the Court to my attached Report's
 25 discussion of the structure of the Taurus Transcription and "Stairway", at page 5,
 26 paragraph 9, and Attachment A – Analysis of Structure.

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THE CLAIM OF HARMONIC SIMILARITIES

9. Dr. Stewart finds five identical chords (with differences thereafter) in “Taurus” and “Stairway”. [p. 4 / ¶ 10] Once again, he refers to recordings of “Taurus” rather than the Taurus Transcription. Also, Dr. Stewart acknowledges the similarity between the chord progressions in “Taurus” and “Stairway” and the 17th century “Lament.” He does state that the chord progressions in “Taurus” and “Stairway” “depart from the traditional [‘Lament’] sequence in similar and significant ways.” [p. 4 / ¶ 8] However, the only difference Dr. Stewart finds between the centuries-old “Lament” and the chord progressions in “Taurus” and “Stairway” is that the “Lament” has an extra descending chord. Thus, as analyzed by Dr. Stewart, the “Lament” includes six descending chords while the chord progressions in “Taurus” and “Stairway” stop at the fifth chord. That is hardly a “significant” difference.

10. More importantly, Dr. Stewart fails to acknowledge that these chord progressions in “Taurus” and “Stairway” are not only centuries old, but are commonplace musical devices even now, sometimes termed “minor line cliché” in jazz theory books, and are found in numerous well-known popular musical works that predate “Taurus”. My Report demonstrates that ending the progression one chord short of the “Lament” is found in popular musical works that predate “Taurus” such as “Cry Me a River” (1963 Davey Graham), “The Meaning of the Blues” (1957 Julie London), “Michelle” (1965 The Beatles), and “How Insensitive” (1965 Astrud Gilberto). I respectfully refer the Court to my attached Report’s discussion of the harmony of the Taurus Transcription and Stairway, at pages 5-6, paragraphs 10-12, and **Attachment B–Analysis of Harmony**.

11. Thus, there is nothing “unusual” about the cliché chord progressions in “Taurus” and “Stairway” or ending one chord short of the “Lament”.

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1 CLAIMED SIMILARITY IN MELODY

2 12. Dr. Stewart provides a table graph on p. 5 of his report with boxes that
 3 identify pitches that are played in the corresponding guitar parts in recordings of
 4 “Taurus” and “Stairway”. Again, he did not purport to analyze the Taurus
 5 Transcription. In addition, his table graph fails to distinguish between high and low
 6 pitches. That is, an E and an A pitch can be a high or a low E and A, and his graph
 7 fails to reflect whether, for example, the melody is going from an E up to an A or
 8 from an E down to an A, basically ignoring that the A pitches in the compositions
 9 are an octave apart. He also fails to acknowledge that many of the intervals (i.e.,
 10 tones) between these pitches are significantly different in the two melodies.

11 13. Dr. Stewart provides with his Report, transcriptions of the guitar
 12 melodies in “Stairway” in Visual Exhibit B and recordings of “Taurus” in Visual
 13 Exhibit C to his report. On Track 2 of Audio Exhibit 2 to this Declaration, I play
 14 those melodies as transcribed by Dr. Stewart back-to-back and demonstrate that the
 15 similarity is merely (1) a descending chromatic scale (a musical building block), (2)
 16 within a “minor line cliché” chord progression, and (3) with a commonplace eighth-
 17 note rhythm, and also that there are significant melodic differences between the
 18 guitar melodies in “Taurus” and “Stairway” that are absent in Dr. Stewart’s analysis.

19 14. Moreover, approximately half of the notes in the iterations of the guitar
 20 melody in the recordings of “Taurus” in Dr. Stewart’s Visual Exhibit C are not in the
 21 Taurus Transcription.

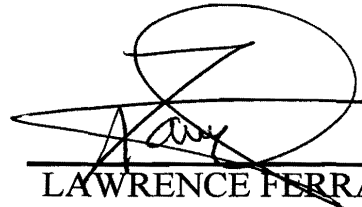
22 CLAIMED SIMILARITY IN VOCAL MELODY

23 15. In ¶ 17 (p. 6) of his report, Dr. Stewart finds that the vocal melody in
 24 “Stairway” is similar to the harpsichord melody at 1:37 in a recording of “Taurus”
 25 and the clavinet melody in recordings of “live versions” of “Taurus”. Dr. Stewart
 26 fails to provide *comparative* transcriptions of these melodies. Instead, in the body of
 27 his report, he only lists the pitch sequences, namely, “A B C A” in “Taurus” and “A
 28 B C B A C” in “Stairway”. Also, as he transcribes them in Visual Exhibits B and C,

1 the harpsichord melody in "Taurus" begins on beat 1, but the vocal melody in
2 "Stairway" begins on beat 4, and the rhythmic duration of the third pitch, C, is a
3 quarter note (or longer) in "Stairway", but only an eighth note in "Taurus". Since
4 the placement and rhythm is different, the only identity in the melodies is moving up
5 a minor scale from A to B to C. This purported similarity is minimal and generic.

6 I declare under penalty of perjury that the foregoing is true and correct.
7 Executed on February 23, 2016.

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LAWRENCE FERRARA, Ph.D.