UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OKSANA S. BAIUL

Plaintiff,

-against-

NBCUNIVERSAL MEDIA, LLC, NBC SPORTS NETWORK, LP, and DISSON SKATING, LLC

Defendants.

Civil Action No. 13-cv-02205-KBF

ECF Case

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR JUDICIAL DISQUALIFICATION (RECUSAL) AND THE VACATING OF ALL ORDERS AND JUDGMENTS

OKSANA S. BAIUL AND OKSANA, LTD

Plaintiffs,

-against-

STEPHEN DISSON AND DISSON SKATING, LLC

Defendants.

Civil Action No. 13-cv-02208-KBF

ECF Case

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDICIAL DISQUALIFICATION (RECUSAL) AND THE VACATING OF ALL ORDERS AND JUDGMENTS

OKSANA BAIUL

Plaintiff,

-against-

WILLIAM MORRIS AGENCY, LLC f/k/a WILLIAM MORRIS AGENCY, INC.; WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC; SHELDON SCHULTZ; MICHAEL CARLISLE; JAMES GRIFFIN; ALAN DWORKIN; RICHARD HERSH; WALLIN, SIMON & BLACK; PATRICIA BLACK, ALAN A. WALLIN; ALAN SUSKIND; THE SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS; OLYMPIC CHAMPIONS LTD (BVI); OLYMPIC CHAMPIONS LTD (DEL); UKRAINIAN FINANCIAL GROUP JSC;

Civil Action No. 13-cv-08683-KBF

ECF Case

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR JUDICIAL DISQUALIFICATION (RECUSAL) AND THE VACATING OF ALL ORDERS AND JUDGMENTS

GALINA ZMIEVSKAYA; VICTOR PETRENKO; NINA PETRENKO; PJSC GALA RADIO; JOSEPH LEMIRE AKA JOSEPH C. LEMIRE; VALERY G. BABICH AKA VLASISLAV V. BABYCH; KEY BRAND ENTERTAINMENT INC; MICHAEL ROSENBERG and NANCY ROSENBERG.

Defendants.

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**MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS' MOTIONS
FOR JUDICIAL DISQUALIFICATION (RECUSAL)
AND THE VACATING OF ALL ORDERS AND JUDGMENTS**

Plaintiffs Oksana S. Baiul, Oksana, LTD and Oksana Baiul aka Oksana Baiul-Farina ("Plaintiffs") by their attorney, Raymond J. Markovich, Esq., hereby respectfully request that the Court, in accordance with 28 U.S.C. §455(a) and/or 28 U.S.C. §455(b)(1), will disqualify (recuse) itself from the above-captioned Actions and issue the necessary orders to effectuate such recusals. Additionally, Plaintiffs respectfully request the Court, in accordance with Federal Rules of Civil Procedure 60(b)(1) and 60(b)(6) as described below, issue orders vacating all orders and judgments of the Court entered to date in these three Actions. In support of Plaintiffs' Motions For Judicial Disqualification (Recusal) And The Vacationing Of All Orders And Judgments, Plaintiffs' submit this Memorandum of Law in Support of Plaintiffs' Motions For Judicial Disqualification (Recusal) And The Vacating Of All Orders And Judgments ("RJM MOL"), the Declaration of Raymond J. Markovich ("Markovich Decl"), the Affidavit of Oksana Baiul-Farina ("Baiul Aff") and the Affidavit of Carlo J. Farina ("Farina Aff"). Plaintiff respectfully requests that the Court grant the orders stated above.

I. INTRODUCTION

It is axiomatic that judges should avoid the appearance of impropriety. Even where a judge harbors no actual bias towards a party, a judge should recuse “himself or herself if the judge’s impartiality might reasonably be questioned….” Code of Conduct for United States Judges, Cannon 3(C)(1)(c).

II. RELEVANT FACTS

A. ACTIONS LINKED

Since the commencement of these three actions at issue (13-cv-02205-KBF (the "NBC

Action"), 13-cv-02208-KBF (the "Disson Action") and 13-cv-08683-KBF (the "WME Action")), the Court has never disclosed to the parties any potential conflicts of interest and specifically has not disclosed any potential conflict of interest since the merger between Time Warner Cable[1] and Comcast Corporation[2] was announced on February 13, 2014[3], almost three months prior to the Court's Judgments, Opinions and Orders in these three Actions[4].

The NBC Action and the Disson Action were linked together by the Court since on or about the time of removal of both Actions by the defendants. (Baiul Aff, ¶1; Ex. K; Ex. L). As noted above, the rulings by the Court in the NBC Action and the Disson Action were delivered in one Judgment, Opinion and Order. (Ex. P). The issue of damages necessarily links all three Actions. In the NBC Action and Disson Action, Plaintiffs' calculations of lost future profits necessarily have to be based upon, and Plaintiffs have based them upon, Plaintiffs' actual and unrealized (or earned and due but unpaid) historical earnings. (Ex. K; Ex. L; Ex. M; Ex. U). Damages for Plaintiffs' lost future profits were claimed over the course of 10 years much like the Court's own disclosed Deferred Income/Future Benefits from her former employer, Cravath, Swaine & Moore are being paid over the course of 10 years. (Ex. U and Ex. A, Questions 20, p. 32-33).

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[1] Time Warner Cable, Inc. was owned by Time Warner, Inc. until March 2009. (Ex. B). The Court was lead counsel from September 2007 to October 2010 representing Time Warner Cable, Inc. and Turner Broadcasting Systems, Inc. (owned by Time Warner, Inc. (Ex. C), p. 1), co-defendants with NBC Universal, Inc., Comcast Corporation (current parent of Defendant NBCUniversal Media, LLC (Ex. D, p. 1)) and Comcast Cable Communications (affiliate of Defendant NBCUniversal Media, LLC (Ex. D, p. 3)), in *Brantley v. NBC Universal, Inc.,* 675 F.3d 1192 (9th Cir. 2012).

[2] Comcast Corporation owns and controls Defendant NBCUniversal Media, LLC. (Ex. D, p. 1).

[3] The merger between Time Warner Cable, Inc. and Comcast Corporation was announced on February 13, 2014. (Ex. E).

[4] The rulings by the Court in the NBC Action and the Disson Action were delivered in one Judgment, Opinion and Order (Ex. P); the ruling by the Court in the WME Action was delivered in a separate Judgment, Opinion and Order (Ex. Q).

Plaintiffs' actual and unrealized (or earned and due but unpaid) historical earnings are central to the allegations and evidence already provided by Plaintiff in the NBC Action, the Disson Action and the WME action. (Ex. U; Ex. M; Ex. K; Ex. L; Ex. Y). In the WME Action, Plaintiff claims millions of dollars in damages in royalties and/or other compensation due from copyrighted audiovisual works and/or other work. (Ex. M). While Plaintiff's claims in the WME action are against agents, business managers, representatives and/or third parties, some or all of the monies at issue should have been paid to Plaintiff by the studios. (Farina Aff, ¶1). One of the studios that Plaintiff alleges should have paid Plaintiff (for the Nutcracker 1 and the Nutcracker 2) is Defendant NBCUniversal Media, LLC and Plaintiff filed a separate action for these damages against Defendant NBCUniversal Media, LLC in New York County Supreme Court. *Oksana Baiul, et al. v. NBCUniversal Media, LLC et. al.,* Index No. 654420/2013. (Farina Aff, ¶2). Damages link the NBC Action, the Disson Action and the WME Action and thus damages and Defendant NBCUniversal Media, LLC ties all three Actions before this Court together. (Farina Aff, ¶3; Ex. K; Ex. L; Ex. M; Ex. U). As noted prior, the NBC Action and the Disson Action were linked together by the Court since on or about the time of removal of both Actions by the defendants. (Ex. K; Ex. L; Baiul Aff, ¶1). The Court, perhaps because of the common damages issue, has chosen to cross-reference or link the three Actions in its Opinions and Orders. (Ex. P, p. 2; Ex. Q, p. 2; Ex. T, p. 9).

Recently, in the Court's July 14, 2014 Memorandum Decision & Order in the NBC Action, the Court again referenced the WME Action because the Court stated "Baiul did not present a single document obtained from any of these third parties in support of her wild claims of lost profits (in the tens of millions of dollars)." (Ex. T, p. 9). The damages claimed in the NBC Action, primarily for lost future profits, are only just over $4,000,000 plus punitive damages that

is certainly not the "tens of millions of dollars" that the Court references so the Court must have been referencing the WME Action which again supports Plaintiffs' assertion that the Court has been treating all three Actions as linked. ((Farina Aff, ¶4; Ex. M; Ex. K, p. 14 of the Complaint).

Plaintiffs respectfully disagree with the three recent Judgments, Opinions and Orders in the NBC Action, the Disson Action and the WME Action respectively. (Ex. P; Ex. Q; Baiul Aff, ¶2). Plaintiffs respectfully believe that such Opinions and Orders are unnecessarily emotional, linked to one another and are contrary to the authorities and facts. (Ex. P; Ex. Q; Baiul Aff, ¶3; (Farina Aff, ¶5). Plaintiffs have timely appealed the three recent Judgments, Opinions and Orders to the Second Circuit. (Ex. S).

Plaintiffs did not have inquiry notice of the Court's potential conflicts of interest until storm warnings appeared in the Court's July 14, 2014 Memorandum Decision & Order concerning attorney's fees in the NBC Action. (Ex. T; Baiul Aff, ¶4; Farina Aff, ¶6). Plaintiffs respectfully believe such Memorandum Decision & Order is clearly contrary to the authorities and facts.[5] (Baiul Aff, ¶5). In the NBC Action, Plaintiff had produced evidence of unauthorized uses of Plaintiff's likeness, persona, picture, image and/or name by the defendants[6] of no less than twenty-six (26) times in total and no less than ten (10) times as alleged in the complaint. (Baiul Aff, ¶7). Plaintiff plans to appeal the Court's Memorandum Decision & Order. (Baiul Aff, ¶8).

B. PRIOR REPRESENTATIONS BY THIS COURT

As a result of the storm warnings explained above, Plaintiffs reasonably began an inquiry

[5] Plaintiffs fail to understand how Plaintiff's NBC Action could possibly be compared to the action over one $10 pair of jeans by the foreign producer in *Viola*? *Viola Sportswear, Inc. v. Mimum,* 574 F.Supp. 619 (E.D.N.Y. 1983). (Baiul Aff, ¶6).

[6] The defendants failed to produce in the record any executed contract with Plaintiff specifically for the use of her name or likeness in any advertising or promotions.

and have just discovered that on February 13, 2014, Time Warner Cable, Inc.[7] announced a merger with Comcast Corporation[8]. Plaintiffs discovered in the last 14 days that the Court has personally represented the following parties, in some cases repeatedly and/or in the recent past. (Baiul Aff, ¶9):

1. From September 2007 to October 2010, the Court was lead counsel for defendants Time Warner Cable Inc. and Turner Broadcasting Systems, Inc. (owned by Time Warner, Inc. (Ex. C, p. 1), co-defendants with NBC Universal, Inc.[9], Comcast Corporation[10] and Comcast Cable Communications[11], in *Brantley v. NBC Universal, Inc.,* 675 F.3d 1192 (9th Cir. 2012). (Ex. A, Question 17, p. 23-25).

2. From May 2006 to June 2009, the Court was lead counsel for plaintiffs The Cartoon Networks LP[12], LLLP, co-plaintiffs with Universal City Studios Productions LLP[13] and NBC Studios Inc.[14] with an amici curiae brief in support from Screen Actors Guild, Inc. (either the same entity or an affiliate of Defendant The Screen Actors Guild - American Federation Of Television And Radio Artists) in *The Cartoon Networks LP[15], LLLP v. CSC Holdings, Inc.,* 536 F.3d 121 (2d Cir. 2008). (Ex. A, Question 17, p. 20-21).

3. From August 2006 to May 2010, the Court was lead counsel for UMG

[7] See Footnote 1 above and Ex. A, Questions 20 & 24, p. 32-33.
[8] Current parent of Defendant NBCUniversal Media, LLC (Ex. D, p. 1) and also an affiliate through Comcast-Spectacor (Ex. D, p. 9) of Disson Skating, LLC (PA).
[9] Successor and/or Predecessor in interest to Defendant NBCUniversal Media, LLC. (Ex. G).
[10] Current parent of Defendant NBCUniversal Media, LLC. (See Footnote 9 above and Ex. D, p. 1).
[11] Affiliate of Defendant NBCUniversal Media, LLC. (Ex. D, p. 3).
[12] The Cartoon Networks LP is owned and controlled by Time Warner, Inc. (Ex. H, p. 1).
[13] Since October 10, 2003 a subsidiary of Defendant NBCUniversal Media, LLC. (Ex. I, p. 1).
[14] Predecessor in interest to and/or subsidiary of Defendant NBCUniversal Media, LLC (Ex. G).
[15] See Footnote 12 above. (Ex. H, p. 1).

Recordings, Inc. aka Universal Music Group[16] and other major record companies in *Arista Records LLC v. Lime LLC,* 784 F.Supp.2d 398 (S.D.N.Y. 2011). (Ex. A, Question 17, p. 22-23).

4. From August 2002 to January 2006, the Court was counsel for Time Warner, Inc. in *Silvester v. Time Warner, Inc.,* 787 N.Y.S.2d 870 (2d Dep't 2005). (Ex. A, Question 17, p. 26-27).

5. From November 2003 to October 2005, the Court was lead counsel for Time Warner Entertainment Company, L.P. and Time Warner Cable, Inc. in *Am. Movie Classics Co. v. Time Warner Entm't L.P. and Time Warner Cable, Inc.,* 2005 WL 3487852 (N.Y. Sup. Ct. July 8, 2005). (Ex. A, Question 17, p. 25-26).

6. From August 2002 to January 2006, the Court was counsel for Time Warner, Inc.[17] in *Chambers v. Time Warner, Inc.,* 282 F.3d 147 (2d Cir. 2002). (Ex. A, Question 17, p. 26-27).

7. From January 2000 to November 2000, the Court was counsel for Warner Music Group (co-plaintiff was UMG Recordings, Inc. aka Universal Music Group) in *UMG Recordings, Inc. v. MP3.com, Inc.,* 92 F.Supp. 2d 349 (S.D.N.Y. 2000). (Ex. A, Question 17, p. 28).

C. SENATE QUESTIONAIRRE, THE NBC ACTION, THE DISSON ACTION AND THE WME ACTION

The Court stated in her United States Senate Questionnaire For Judicial Nominees dated May 2, 2011 ("Senate Questionnaire") that she would recuse herself for a period of time from

[16] A subsidiary of Universal Studios (predecessor in interest to Defendant NBCUniversal Media, LLC) from 1996-2006 and an affiliate of Defendant NBCUniversal Media, LLC until January 26, 2011. (Ex. J, p. 1).

[17] Co-defendant was Universal Music Group, Inc. and its attorneys are listed by the Court as co-counsel.

matters involving Cravath, Swaine & Moore or Time Warner, Inc. since they would represent potential conflicts of interest[18]. (Ex. A, Question 24, p. 33). On February 1, 2013, Plaintiff Oksana S. Baiul filed a Summons and Complaint against NBCUniversal Media, LLC, NBC Sports Network, LP and Disson Skating, LLC in New York County Supreme Court (Index No. 151051/2013). (Ex. K). On April 3, 2013, the defendants filed a notice of removal of the action to the United States District Court for the Southern District of New York (Civil Action No. 13-cv-02205-KBF). (Ex. K). At no time, did the Court disclose to the parties her prior representation of UMG Recordings, Inc. aka Universal Music Group, a subsidiary of Universal Studios[19]. On February 26, 2013, Plaintiffs Oksana S. Baiul and Oksana, LTD filed a Summons and Complaint against Stephen Disson and Disson Skating, LLC in New York County Supreme Court (Index No. 151698/2013). (Ex. L). On April 3, 2013, the defendants filed a notice of removal of the action to the United States District Court for the Southern District of New York (Civil Action No. 13-cv-02208-KBF). (Ex. L). Although Civil Action No. 13-cv-02208-KBF was linked by the Court with Civil Action No. 13-cv-02205-KBF, at no time, did the Court disclose her prior representation of UMG Recordings, Inc. aka Universal Music Group, a subsidiary of Universal Studios[20]. On October 8, 2013, Plaintiff Oksana Baiul filed a Summons and Complaint against William Morris Agency, LLC FKA William Morris Agency, Inc., William Morris Endeavor

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[18] Time Warner Cable, Inc. was owned by Time Warner, Inc. until March 2009. (Ex. B). The Court was lead counsel from September 2007 to October 2010 representing Time Warner Cable, Inc. and Turner Broadcasting Systems, Inc. (owned by Time Warner, Inc. - Ex. C), co-defendants with NBC Universal, Inc. (successor and/or predecessor in interest to Defendant NBCUniversal Media, LLC - Ex. G), Comcast Corporation (current parent of Defendant NBCUniversal Media, LLC - Ex. D, p. 1) and Comcast Cable Communications (affiliate of Defendant NBCUniversal Media, LLC - Ex. D, p. 3), in *Brantley v. NBC Universal, Inc.,* 675 F.3d 1192 (9th Cir. 2012). (Ex. A, Question 17, p. 23-25).

[19] Predecessor in interest to Defendant NBCUniversal Media, LLC from 1996-2006 and an affiliate until January 26, 2011 of Defendant NBCUniversal Media, LLC. (Ex. J, p. 1; Ex. G, p. 6).

[20] *Id.*

Entertainment, LLC, and numerous other parties in New York County Supreme Court (Index No. 653491/2013). (Second Amended Complaint attached hereto as Ex. M). On December 9, 2013, the defendants filed a notice of removal of the action to the United States District Court for the Southern District of New York (Civil Action No. 13-cv-08683-KBF). (Ex. N).

On January 6, 2014, Plaintiff again brought to the Court's attention in their Memorandum Of Law In Support Of Plaintiff's Motion For Leave To Amend Complaint the affiliate, related party, joint enterprise relationships and/or successor liability by and between Defendant NBCUniversal Media, LLC, Disson Skating, LLC (VA) and/or Disson Skating, LLC (PA). (Ex. O). On February 13, 2014, the merger between Time Warner Cable, Inc. and Comcast Corporation (current parent of Defendant NBCUniversal Media, LLC) was announced. (Ex. E). At no time did the Court disclose to the parties her prior representation of Time Warner Cable, Inc. (Baiul Aff, ¶10). On April 30, 2014 in a Judgment dated April 30, 2014 and filed electronically by the Court on April 30, 2014, the Court granted Defendants NBCUniversal Media, LLC's, NBC Sports Network, LP's, Stephen Disson's and Disson Skating, LLC's summary judgment motions in the NBC Action and the Disson Action. (Ex. P). In the decision, the Court makes reference(s) to the WME Action. (Ex. P, p. 2). On May 6, 2014 in a judgment dated May 6, 2014 and filed electronically by the Court on May 6, 2014, the Court granted Defendants' motions to dismiss Plaintiff's Second Amended Complaint, dismissed the action and referenced the NBC Action and the Disson Action. (Ex. M, Ex. Q; Ex. Q, p. 2). The Court made serious and material errors or "mistakes" in reading Plaintiff's Second Amended Complaint which are discussed in great detail below. (Ex. Q).

On May 22, 2014, Defendants NBCUniversal Media, LLC and NBC Sports Network, LP filed a motion for attorneys' fees and costs in the NBC Action. (Ex. R). This motion was filed 28

days after the parties had been served with the decision and order on April 24, 2014 and 22 days after the Court's judgment dated April 30, 2014 was filed electronically by the Court on April 30, 2014. (Ex. P). On May 22, 2014, Plaintiffs filed their Notices of Appeal in the NBC Action and the Disson Action. (Ex. S, p. 1-2). On June 2, 2014, Plaintiff filed her Notice of Appeal in the WME Action. (Ex. S, p. 3). The Second Circuit has assigned such appeals case numbers 14-1813, 14-1741 and 14-1837 respectively. (Ex. S, p. 4-6). On July 14, 2014, the Court granted the motion for attorneys' fees and costs by Defendants NBCUniversal Media, LLC and NBC Sports Network, LP. (Ex. T). Plaintiff plans to appeal this Court's Memorandum Decision & Order concerning attorneys' fees and costs in the NBC Action. (Baiul Aff, ¶ 11).

III. ARGUMENT

A. TIMELINESS OF PLAINTIFFS' MOTIONS

A party must bring a disqualification motion "at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." *Apple v. Jewish Hosp. and Medical Center,* 829 F.2d 326, 333 (2d Cir. 1987). To date, the Court has not disclosed to the parties any potential conflicts of interest. (Baiul Aff, ¶12). Only as a result of the storm warnings contained in the July 14, 2014 Memorandum Decision & Order concerning attorney's fees in the NBC Action explained in Section II.A above, Plaintiffs reasonably began an inquiry and have only just discovered that the Court has personally represented the aforementioned parties, in some cases repeatedly and/or in the recent past. (Ex. T; Baiul Aff, ¶13). Plaintiffs' motions are thus timely. *U.S. v. Brinkworth,* 68 F.3d 633, 639 (2d Cir. 1995).

B. RECUSAL REQUIRED

"A judge is required to recuse herself from "any proceeding in which h[er] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard for disqualification under 28

U.S.C. § 455(a) is "an objective" one, *ISC Holding AG v. Nobel Biocare Finance AG,* 688 F.3d 98, 107 (2d Cir.2012) ("*ISC Holding* ") (internal quotation marks omitted); the question is whether an objective and disinterested observer, knowing and understanding all of the facts and circumstances, could reasonably question the court's impartiality, *see, e.g., id.*; *In re Drexel Burnham Lambert Inc.,* 861 F.2d 1307, 1313 (2d Cir.1988), *reh'g denied en banc,* 869 F.2d 116 (2d Cir.), *cert. denied,* 490 U.S. 1102, 109 S.Ct. 2458, 104 L.Ed.2d 1012 (1989)." *S.E.C. v. Razmilovic,* 738 F.3d 14, 29 (2d Cir. 2013). "Specific instances where recusal is required include situations in which the judge has "a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). We have interpreted 28 U.S.C. § 455 as asking whether "an objective, disinterested observer fully informed of the underlying facts, [would] entertain significant doubt that justice would be done absent recusal," or alternatively, whether "a reasonable person, knowing all the facts," would question the judge's impartiality. *United States v. Lovaglia,* 954 F.2d 811, 815 (2d Cir.1992) (citations omitted)." *U.S. v. Yousef,* 327 F.3d 56, 169 (2d Cir. 2003).

In *In re Kensington Intern, Ltd.,* the Third Circuit agreed with the Fourth Circuit and held that "the hypothetical reasonable person under § 455(a) must be someone outside the judicial system because judicial insiders, "accustomed to the process of dispassionate decision making and keenly aware of their Constitutional and ethical obligations to decide matters solely on the merits, may regard asserted conflicts to be more innocuous than an outsider would." *United States v. DeTemple,* 162 F.3d 279, 287 (4th Cir.1998); see also *United States v. Jordan,* 49 F.3d 152, 156-57 (5th Cir.1995) (remarking that average person on street "is less likely to credit judges' impartiality than the judiciary"); *In re Mason,* 916 F.2d 384, 386 (7th Cir.1990) (noting that lay observer is less inclined to presume judge's impartiality than members of judiciary)." *In*

re Kensington Intern. Ltd., 368 F.3d 289, 303 (3rd Cir. 2004). "[T]he appearance of impropriety must be viewed from the perspective of the objective, reasonable layperson...." *Id.*

Although the prior representation of a party does not automatically require recusal, it can be the basis for recusal under certain circumstances. The Court must determine whether the particular representation in dispute would cause a reasonable observer to question the Court's impartiality. Plaintiffs believe that a reasonable person or objective, reasonable layperson would surely question the Court's impartiality in these three Actions that the Court has chosen to link. (Ex. K; Ex. L; Ex. P; Ex. Q; Ex. T).

Commentators examining the ethical constraints of judges presiding over cases involving former clients have identified a variety of factors the Court should consider in determining whether recusal is appropriate. See e.g. Gray, Ethical Issues for New Judges, American Judicature Society 1996. Among those factors are: (1) the length of time since the earlier representation ended; (2) the nature of the prior and present cases; (3) the nature, frequency, intensity and duration of the representation; and (4) whether the former client will be defending practices the judge helped to formulate or defend. Id. at p. 15. Applying these factors here, the Plaintiffs respectfully believe that the Court's prior representations of the following parties at various periods from January 2000 to October 2010 (Specified in great detail in Section II.B above), individually and/or collectively, constitute grounds for disqualification (recusal) from all three Actions: (1) Time Warner Cable, Inc., (2) Turner Broadcasting Systems, Inc., (3) The Cartoon Networks LP, LLLP, (4) UMG Recordings, Inc. aka Universal Music Group, (5) Time Warner, Inc., (6) Time Warner Entertainment Company, L.P. and (7) Warner Music Group.

Because of the merger between Time Warner Cable, Inc. and Comcast Corporation announced on February 13, 2014, Comcast Corporation and its subsidiaries and affiliates

including Defendant NBCUniversal Media, LLC and unnamed Disson Skating, LLC (PA) have effectively become former clients of this Court. (Ex. E; Ex. D, p. 1, 9; Ex. F).

Chase Manhattan Bank dealt with a purchase of stock by the district judge in the merged entity after the merger but before the transfer of the action to the district judge. *Chase Manhattan Bank v. Affiliated FM Ins. Co.,* 343 F.3d 120, 123 (2d Cir. 2003). Because of the name changes resulting from the merger, the district judge apparently did not understand that he had a conflict until later in the action but proceeded to divest himself of the stock once he learned of his conflict. *Id.* at 123. The court held that "divestiture after remand could not cure the past appearance of a disqualifying financial interest at the time of trial". *Id.* at 123. The court further held that vacatur of all decisions and orders made by the district judge in the action was a proper remedy and that the district judge's denial of Affiliated's recusal motion was an abuse of discretion. *Id.* at 132-133.

In *Union Planters Bank,* the district judge heard a sanctions motion after a merger that caused Union Planters Bank, with which the district judge had economic relations, to become a party to the action. *Union Planters Bank v. L&J Development Co., Inc.,* 115 F.3d 378, 380 (6th Cir. 1997). Following the announcement of the merger, the district judge had convened the parties in his chambers and the parties "...suggested to the court that they do not view the court's business relationships with Union Planters National Bank as a conflict and do not wish the court to recuse itself." *Id.* at 381. The court held that notwithstanding its broad reach, 28 U.S.C. § 455(a) may be waived after full disclosure under 28 U.S.C. § 455(e) and that the parties did in fact waive disqualification concerning the sanctions motion but the district judge recused himself from the remaining triable claim. *Id.* at 383-384. The court noted that the district judge's "decision to entertain the sanctions motion but not the remaining triable claim constituted a

reasonable exercise of his discretion in light of the parties' posture." *Id.* at 384. But it is important to note that the district judge recused himself from the remaining triable claim that the parties had not waived. *Id.* at 384. In stark contrast, in these three Actions before this Court, there has been no disclosure by the Court of any potential conflict of interest and no waiver by the parties. (Baiul Aff, ¶14). Furthermore, the parties cannot even waive disqualification required by 28 U.S.C. § 455(b)(1) and Plaintiffs respectfully believe that this Court must recuse itself from all three Actions in accordance with 28 U.S.C. § 455(a) and/or 28 U.S.C. § 455(b)(1). 28 U.S.C. § 455(a); 28 U.S.C. § 455(b)(1).

In *Fifty-Six Hope Road.,* this Court addressed the issue of recusal in connection with its prior representation of UMG Recordings, Inc. *Fifty-Six Hope Road Music Ltd v. UMG Recordings, Inc.,* 2011 WL 6153708 (S.D.N.Y. December 7, 2011). Although the Court denied the motion for disqualification or recusal in that action, it is Plaintiffs' understanding that the action settled soon thereafter so there could not have been and/or was no appeal. (Baiul Aff, ¶15). While Plaintiffs also believe that this Court's relationship with UMG Recordings, Inc. requires disqualification or recusal in these three Actions, in *Fifty-Six Hope Road,* this Court differentiated her relationship with UMG Recordings, Inc. from her relationship with Time Warner, Inc. *Id.* at 6. This Court stated "I was lead counsel on numerous matters of significance for Time Warner over a substantial period of time; I have current, personal friendship with Time Warner's General Counsel; and I have relationships -- both personal and professional -- with a number of individuals throughout Time Warner." *Id.* at 6. This Court also noted that "...Time Warner does not own a record company. Time Warner sold the Warner Music Group ("WMG") approximately eight years ago. I performed substantial work for WMG subsequent to that sale and would recuse myself from matters involving WMG pursuant to the ethical rules. *Id.* at

Footnote 8.

Additionally, until May 2010, the Court had represented UMG Recordings, Inc. aka Universal Music Group, an affiliate of both Defendant NBCUniversal, Media, LLC and unnamed Disson Skating, LLC (PA) until January 26, 2011. (Ex. J, p. 1; Ex. A, Question 17, p. 22). These representations coupled with the representations of Time Warner Cable, Inc., Turner Broadcasting Systems, Inc., The Cartoon Networks LP, LLLP, Time Warner, Inc., Time Warner Entertainment Company, L.P. and Warner Music Group over the approximately 10 years prior to October 2010 mean that the last representation by the Court ended approximately only 30 months prior to the commencement of the NBC Action and the Disson Action. (Ex. A, Question 17, p. 19-32; Ex. K; Ex. L).

The relatively short period of time since this Court's representation of Time Warner Cable, Inc. and Time Warner, Inc.[21] is especially relevant here because all of these parties were and/or are studios ("Studios"). (See Section II.B. above). The Court was advocating the Studios rights and not the rights of performers (such as Plaintiff in these three Actions). While certainly not an adequate comparison, it is interesting to note that the Stockholm Syndrome has been evidenced to appear after only 131 hours of captivity. (Ex. V). Of course the Studios did not hold the Court in captivity but the Court did spend many years, countless hours and considerable

[21] Co-defendants with NBC Universal, Inc. (successor and/or predecessor in interest to Defendant NBCUniversal Media, LLC - Ex. G), Comcast Corporation (current parent of Defendant NBCUniversal Media, LLC - Ex. D, p. 1) and Comcast Cable Communications (affiliate of Defendant NBCUniversal Media, LLC - Ex. D, p. 3), The Cartoon Networks LP, LLLP (owned and controlled by Time Warner, Inc. (Ex. H, p. 1) and co-defendants with Universal City Studios Productions LLP (a subsidiary of Defendant NBCUniversal Media, LLC - Ex. I, p. 1) and NBC Studios Inc (predecessor in interest to and/or subsidiary of Defendant NBCUniversal Media, LLC - Ex. G) and UMG Recordings, Inc. aka Universal Music Group (A subsidiary of Universal Studios (predecessor in interest to Defendant NBCUniversal Media, LLC) from 1996-2006 and an affiliate of Defendant NBCUniversal Media, LLC until January 26, 2011)(Ex. J, p. 1).

effort fighting the Studios' battles. (Ex. A, Question 17, p. 19-32). An attorney's ethical duty of loyalty alone, when viewed in conjunction with the approximately 10 years of continual representation of the Studios by the Court, would surely cause a reasonable person to question this Court's impartiality and the potential for bias against the opponents of the Studios (such as Plaintiffs) for quite some time.

In *Brantley,* the Court was lead counsel from September 2007 to October 2010 representing Time Warner Cable, Inc.[22] and Turner Broadcasting Systems, Inc.[23] On February 13, 2014, Time Warner Cable, Inc. and Comcast Corporation, the current parent of Defendant NBCUniversal Media, LLC and also a parent of Disson Skating, LLC (PA) (a related party but not a named defendant in the NBC Action or the Disson Action) announced a merger. (Ex. E; Ex. D, p. 9 and Ex. F).

The issue of damages necessarily links all three Actions to each other and to some or all of the Court's prior representations. In the NBC Action and Disson Action, Plaintiffs' calculations of lost future profits necessarily have to be based upon, and Plaintiffs have based them upon, Plaintiffs' actual and unrealized (or earned and due but unpaid) historical earnings. (Ex. K; Ex. L; Ex. M; Ex. U; Ex. Y). Damages for Plaintiffs' lost future profits were claimed over the course of 10 years much like the Court's own disclosed Deferred Income/Future Benefits from her former employer, Cravath, Swaine & Moore are being paid over the course of 10 years. (Ex. U and Ex. A, Questions 20, p. 32-33).

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[22] Time Warner Cable, Inc. was owned by Time Warner, Inc. until March 2009. (Ex. B).

[23] Owned by Time Warner, Inc. - (Ex. C, p. 1), co-defendants with NBC Universal, Inc. (successor and/or predecessor in interest to Defendant NBCUniversal Media, LLC - Ex. G), Comcast Corporation (current parent of Defendant NBCUniversal Media, LLC - Ex. D, p. 1) and Comcast Cable Communications (affiliate of Defendant NBCUniversal Media, LLC - Ex. D, p. 3).

Plaintiffs' actual and unrealized (or earned and due but unpaid) historical earnings are central to the allegations and evidence already provided by Plaintiff in the NBC Action, the Disson Action and the WME action. (Ex. M; Ex. Y). In the WME Action, Plaintiff claims millions of dollars in damages in royalties and/or other compensation due from copyrighted audiovisual works and/or other work. (Farina Aff, ¶7; Ex. M; Ex. Y). While Plaintiff's claims in the WME action are against agents, business managers, representatives and/or third parties, the studios should have paid a substantial portion of the monies at issue to Plaintiff. (Farina Aff, ¶8). One of the studios that Plaintiff alleges should have paid Plaintiff (for the Nutcracker 1 and the Nutcracker 2) is Defendant NBCUniversal Media, LLC. (Farina Aff, ¶9). Another copyrighted audiovisual work at issue concerning damages in all three Actions is "The Wizard of Oz On Ice" which is owned by Turner Entertainment Networks, Inc., A Time Warner Company. (Farina Aff, ¶10; Ex. X). Damages link the NBC Action, the Disson Action and the WME Action and thus damages and Defendant NBCUniversal Media, LLC ties all three Actions before this Court together. (Ex. K; Ex. L; Ex. M; Ex. U; Ex. Y). As noted prior, the NBC Action and the Disson Action were linked together by the Court since on or about the time of removal of both Actions by the defendants. (Baiul Aff, ¶16; Ex. K; Ex. L). The Court, perhaps because of the common damages issue, has chosen to cross-reference or link the three Actions in its Opinions and Orders. (Ex. P, p. 2; Ex. Q, p. 2; Ex. T, p. 9).

The Court's representation in *Chambers* involved a Lanham Act claim, not identical but similar to the one brought by Plaintiff in the NBC action but the Court was representing Time Warner, Inc.[24] defending a Lanham Act claim much like Defendant NBCUniversal Media, LLC

[24] With Universal Music Group, Inc. (a subsidiary of Universal Studios (predecessor in interest to Defendant NBCUniversal Media, LLC) from 1996-2006 and an affiliate of Defendant NBCUniversal Media, LLC until January 26, 2011) as a co-defendant.

has been defending Plaintiff's Lanham Act claim in the NBC action. *Chambers v. Time Warner, Inc.,* 282 F.3d 147 (2d Cir. 2002). (Ex. K).

In *Brantley,* the Court represented the Studios[25] in what was an antitrust action. *Brantley v. NBC Universal, Inc.,* 675 F.3d 1192 (9th Cir. 2012). But the allegations in *Brantley* are related by analogy to the royalties and/or profit participations paid to performers (like Plaintiff) because packaging also helps the weaker channels or copyrighted audiovisual works at the expense of the more valuable channels or copyrighted audiovisual works. (Farina Aff, ¶11). The Supreme Court in *U.S. v. Paramount Pictures* addressed the analogous issue of "block-booking" with Universal Pictures Co.[26] and Warner Bros. Pictures, Inc.[27] as co-defendants and held it to be illegal to refuse "to license one or more copyrights unless another copyright is accepted." *U.S. v. Paramount Pictures,* 334 U.S. 131, 158 (1948). The ultimate victims of packaging are (1) the consumers, (2) the channels with more valuable audiovisual works and (3) the performers (like Plaintiff) who have had extremely successful audiovisual works. (Farina Aff, ¶12; Ex. U). In packaging or "block booking", the Studios, for their own benefit, are taking from more valuable audiovisual works or channels to help weaker audiovisual works or channels. (Farina Aff, ¶13). If the court in *Brantley* had followed the logic of *U.S. v. Paramount Pictures*, this Court, representing the Studios, should not have prevailed in *Brantley*. Packaging channels, each of which is really nothing more than an entity holding rights to numerous copyrighted audiovisual works, is "block booking" which was prohibited by *U.S. v. Paramount Pictures. U.S. v. Paramount Pictures,* 334 U.S. 131, 158 (1948). Nevertheless, somehow the Court prevailed in

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[25] Time Warner, Inc. and Time Warner Cable Inc., co-defendants with NBC Universal, Inc., Comcast Corporation and Comcast Cable Communications (affiliate of Defendant NBCUniversal Media, LLC).

[26] Predecessor in interest to and now subsidiary of Defendant NBCUniversal Media, LLC. (Ex. G).

[27] Predecessor in interest to Time Warner, Inc. and Time Warner Cable, Inc. (Ex. W).

Brantley but this Court's defense of packaging by the Studios in the context of cable channels is effectively an analogous attack on performers (like Plaintiff) in the context of "block booking" or packaging of copyrighted audiovisual works. The Court was thus defending an analogous practice that continues to negatively affect Plaintiffs and her royalties and/or profit participations from copyrighted audiovisual works. (Farina Aff, ¶14; Ex. U).

In *The Cartoon Networks*, the Court again represented the Studios,[28] co-defendants with Universal City Studios Productions LLP and NBC Studios Inc. with an amici curiae brief in support from Screen Actors Guild, Inc. (either the same entity or an affiliate of Defendant The Screen Actors Guild - American Federation Of Television And Radio Artists). *The Cartoon Networks LP, LLLP v. CSC Holdings, Inc.,* 536 F.3d 121 (2d Cir. 2008). The issue in this case was copyright that is essentially the rights of the Studios to collect monies for copyrighted works and that is akin to what Plaintiffs are trying to assert in all three Actions before this Court because of Plaintiffs' damages calculations being based primarily upon copyrighted audiovisual works for which Plaintiffs are due monies. (Baiul Aff, ¶17; Ex. K; Ex. L; Ex. M; Ex. U).

In cases where recusal or disqualification is denied on the basis of prior representation of a party, the time lapse between representation and denial of recusal or disqualification is normally quite long. See, e.g., *Chittimacha Tribe of Louisiana v. Harry L. Laws Company, Inc.,* 690 F.2d 1157, 1166 (5th Cir. 1982) (judge had represented the defendant at least six years earlier); *Gravenmier v. United States,* 469 F.2d 66, 67 (9th Cir. 1972) (judge prosecuted defendant six years earlier); *Royal Air Maroc v. Servair, Inc.,* 603 F.Supp. 836 (S.D.N.Y. 1985) (judge represented defendant's parent corporation twelve years earlier).

In light of the foregoing, “a reasonable person, knowing all the facts,” would question the

[28] The Cartoon Networks LP, LLLP is owned and/or controlled by Time Warner, Inc. (Ex. E).

Court's impartiality. *United States v. Lovaglia,* 954 F.2d 811, 815 (2d Cir.1992). "[T]he appearance of impropriety must be viewed from the perspective of the objective, reasonable layperson...." *In re Kensington Intern. Ltd.,* at 303. Any reasonable person, knowing all the facts would question the Court's impartiality when the Court has been often lead counsel, skillfully representing the Studios. (Ex. A, Question 17, p. 19-32). Moreover, this is not a circumstance in which it was the Court's prior law firm or former partner who represented the Studios. Rather, this Court was the lead counsel in all or most of the relevant matters.

Based upon the Court's Memorandum and Order dated November 16, 2011 in *Fifty-Six Hope Road Music LTD. v. UMG Recordings, Inc.,* 08-cv-06143-KBF, the Court might try to rely upon *National Auto Brokers Corp. v. General Motors,* 572 F.2d 953 (2nd Cir. 1978) to conclude that the Court's prior representation of the Studios does not require recusal but *National Auto Brokers* is readily distinguishable. In *National Auto Brokers*, the plaintiffs did not seek recusal until four years after the judge was assigned to the case and a full five weeks into the trial. *Id.* at 957-958. As a result, the appellate court properly concluded that the recusal request was untimely. *Id.* at 958. Here the Plaintiffs have requested recusal immediately after learning of the Court's prior representations of Time Warner, Inc., Time Warner Cable, Inc. and UMG Recordings, Inc. and the relevance and materiality of such representations to these three Actions before the Court. In addition, the judge in *National Auto Brokers* had not personally represented the defendants in any substantial matters. Instead, the plaintiffs were trying to disqualify the judge based on the fact that his prior law firm had represented the defendant, General Motors. In fact, the judge had never personally been involved in representing General Motors except for work on a single opinion letter. *Id*. Moreover, the matters handled by the judge's prior law firm were "wholly unrelated" to the plaintiffs' case. *Id*. Here, this Court has personally represented

the Studios (including, but not limited to, Time Warner, Inc., Time Warner Cable, Inc. and UMG Recordings, Inc.) in substantial litigation involving issues that are related to some of the issues in these three Actions. Accordingly, *National Auto Brokers* does not justify the Court's refusal to recuse itself in these three Actions.

The Court might also try to rely upon *Lovaglia*, to conclude that recusal is not required. *United States v. Lovaglia,* 954 F.2d 811 (2d Cir.1992). However, *Lovaglia* did not involve a situation where the judge had previously represented a party to the action. Rather, the allegation in *Lovaglia* was that the judge or his law firm had previously represented a family that owned businesses victimized by the defendant. *Id.* at 815. The judge's relationship with that family had ended seven or eight years prior to the case at issue and the work done for the family was totally unrelated to the defendant's crimes. *Id.* at 816-817. These facts stand in sharp contrast to the present three Actions where this Court has personally represented the Studios (including, but not limited to, Time Warner, Inc., Time Warner Cable, Inc. and UMG Recordings, Inc.) in substantial litigation involving issues that are related and/or similar to some of the issues in these three Actions.

The Court indicated in its Senate Questionnaire that matters involving the Court's former client, Time Warner, Inc., would present a conflict and would likely require recusal. (Ex. A, Question 24, p. 33). The Court's disclosed Deferred Income/Future Benefits from Cravath, Swaine & Moore is $95,715 quarterly for a period of ten years. (Ex. A, Questions 20, p. 32-33). It appears that the Court is being compensated in Deferred Income/Future Benefits for work done for the Studios (including Time Warner, Inc., Time Warner Cable, Inc. and UMG Recordings, Inc.) and/or the effect of such work on the value of the Court's interest as a former partner in Cravath, Swaine & Moore. *Id.* The period of time for recusal should thus be 10 years. *Id.* This

Court subsequently stated "I was lead counsel on numerous matters of significance for Time Warner over a substantial period of time; I have current, personal friendship with Time Warner's General Counsel; and I have relationships -- both personal and professional -- with a number of individuals throughout Time Warner." *Fifty-Six Hope Road Music Ltd v. UMG Recordings, Inc.,* 2011 WL 6153708 at 6 (S.D.N.Y. December 7, 2011). This Court also noted that "...Time Warner does not own a record company. Time Warner sold the Warner Music Group ("WMG") approximately eight years ago. I performed substantial work for WMG subsequent to that sale and would recuse myself from matters involving WMG pursuant to the ethical rules. *Id.* at Footnote 8. Given that Time Warner Cable, Inc. was also a client of the Court's and was owned by Time Warner, Inc. until 2009, matters involving Time Warner Cable, Inc., Comcast Corporation and its subsidiaries and affiliates including Defendant NBCUniversal Media, LLC and unnamed Disson Skating, LLC (PA) should be treated in a similar manner and require recusal from all three Actions since it is less than 10 years since this Court's representations of Time Warner, Inc., Time Warner Cable, Inc. and UMG Recordings, Inc. (Ex. A, Question 24, p. 20-33).

No reasonable person could have spent so much time and effort, often as lead counsel, litigating for and on behalf of the Studios (as the Court has) and of which Defendant NBCUniversal Media, LLC is a studio, and not obtained a bias in favor of the Studios (specifically Defendant NBCUniversal Media, LLC) which requires disqualification under 28 U.S.C. § 455(b)(1) or at least the appearance to a reasonable person that this Court's impartiality might reasonably be questioned which requires disqualification under 28 U.S.C. § 455(a).

C. VACATING OF ALL ORDERS AND JUDGMENTS

In light of the disqualifications (recusals) required in these three Actions by 28 U.S.C. § 455(a) and/or 28 U.S.C. § 455(b)(1) and the authorities cited above, Plaintiffs believe that this Court, in accordance with Federal Rules of Civil Procedure 60(b)(1) and 60(b)(6), must issue orders vacating all orders and judgments of the Court entered to date in the WME Action and in accordance with Federal Rule of Civil Procedure 60(b)(6), must issue orders vacating all orders and judgments of the Court entered to date in both the NBC Action and the Disson Action.

It is clear that this Court made serious and material errors or "mistakes" in reading Plaintiff's Second Amended Complaint in the WME Action and such errors or "mistakes" require, under Federal Rule of Civil Procedure 60(b)(1), that this Court immediately vacate her judgment entered on May 6, 2014. (Ex. Q). The Court erroneously stated "[d]uring the period that WMEE represented her (1994-2000), Baiul alleges that WMEE sent her at least twenty earnings history reports ("EHR's") that she now believes to be fraudulent. (Id. ¶¶287, 289, 330, 368, 392, 425, 442.)". (Ex. Q, p. 8). However, none of the paragraphs cited by the Court state what the Court asserts. (Ex. M, ¶¶287, 289, 330, 368, 392, 425, 442). For instance, ¶287 states "[u]pon information and belief, since WME began representing Plaintiff on May 9, 1994, WME would have sent Plaintiff by mail and/or wire at least 20 fraudulent earnings history reports over the period from May 9, 1994 through June 2000 ("20+ Reports")." (Ex. M, ¶287). Plaintiff states "[u]pon information and belief" because she never received personally any reports and ¶289 is likewise "[u]pon information and belief" because she never received personally any reports which is explicitly stated in ¶291 where Plaintiff says "[p]laintiff never personally received any of the fraudulent 20+ Reports but instead was forced to rely upon the misrepresentations and/or concealment carried out by WSB and/or the CPA acting on behalf of WME and/or one or more other persons associated with Promises Broken." (Ex. M, ¶¶287, 289, 291). But somehow this

Court cited paragraphs that do not support what the Court decided and furthermore this Court disregarded the paragraph (¶291) that is in direct contradiction to what the Court chose to decide. (Ex. M, ¶¶ 287, 289, 330, 368, 392, 425, 442 (cited by this Court) versus ¶291 (not cited by this Court)).

Another serious and material error or "mistake" that this Court made is where this Court states "Prior to 2000, she had been involved in numerous performances and endorsements and had signed numerous agreements, yet she alleges that she received no payments for certain undertakings (A Promise Kept, the Nutcracker on Ice shows, the Wizard of Oz on Ice show, the Sony Signatures agreement, or the Health Rider infomercial) and no payments from defendants of any kind after 1998." (Ex. Q, p. 14). This is not what is alleged in Plaintiff's Second Amended Complaint. (Ex. M). There are no circumstances that should have put the Plaintiff on inquiry notice prior to November 19, 2011 especially not when Plaintiff had two fiduciaries protecting her in all areas of her business. (Ex. M, ¶239). The fact that Plaintiff's films appeared to be successful does not mean that Plaintiff was necessarily owed any monies for such films and prior to the period between November 19, 2011 and September 2013, Plaintiff did not believe that she was owed anything. Plaintiff had received $1,379,598 in 1997 and 1998 for the period of 1993-1997 that is when the films were produced. (Ex. M, ¶250). Plaintiff reasonably believed that her gross income was actually almost $2,800,000 because she understood taxes to be around 50%. (Ex. M, ¶251). As concerns the Wizard of Oz[29], the Nutcracker 1, the Nutcracker 2, A Promise Kept, the Sony Agreement and Health Rider, Plaintiff reasonably believed that she was compensated for all of them in 1997 and 1998 since they were part of the almost $2,800,000 in gross income and $1,379,598 net income that Plaintiff actually received for 1993-1997. Plaintiff

[29] Owned by Turner Entertainment Networks, Inc., A Time Warner Company, a former client of this Court (Farina Aff, ¶10; Ex. X; Ex. A, Question 17, p. 20-32).

believed at the time that she had actually been well compensated for 1993-1997 and had no reason to believe that anything was wrong or that any crimes had been committed against her. (Ex. M, ¶252). "Plaintiff knew what she got paid on new deals after 1997 and nothing seemed inconsistent with her gross income of almost $2,800,000 for 1993-1997." (Ex. M, ¶ 254). So in direct contradiction to what the this Court wrote, Plaintiff was paid on new deals after 1997 and had no reason to believe at the time that she was owed anything on the prior deals from 1993-97. (Ex. M, ¶¶252, 254). Since this Court's Judgment, Opinion and Order in the WME Action were based upon this Court's material errors or "mistakes" in reading Plaintiff's Second Amended Complaint, Federal Rule of Civil Procedure 60(b)(1) requires that this Court immediately vacate such Judgment, Opinion and Order. (Ex. Q, p. 13-19; Ex. M, ¶¶239, 250, 251, 252, 254, 287, 289, 291, 330, 368, 392, 425, 442)[30].

Under Federal Rule of Civil Procedure 60(b)(6), all other orders and judgments of the Court entered to date in the WME Action should be likewise vacated based upon the potential conflicts of interest requiring disqualification (recusal) under 28 U.S.C. § 455(a) and/or bias in favor of the Studios (specifically Defendant NBCUniversal Media, LLC) under 28 U.S.C. § 455(b)(1) and this Court's own linkage of the three Actions requiring disqualification (recusal). *Liljeberg v. Health Service Acquisition Corp.,* 486 U.S. 847, 863-870 (1988). As concerns all three Actions, Plaintiffs believe that disqualification (recusal) and the vacating of all orders and judgments is the only equitable remedy in light of the circumstances. Plaintiffs did not choose

[30] It should be noted that Plaintiffs, in New York County Supreme Court in *Oksana Baiul, et al. v. NBCUniversal Media, LLC et. al.,* (Index No. 654420/2013), recently prevailed on motion(s) to dismiss by defendant(s). (Baiul Aff, ¶18). This action involves monies due to Plaintiffs for "A Promise Kept: The Oksana Baiul Story" and the two "Nutcracker On Ice" films but statute of limitations arguments by the defendants were unsuccessful in this action. *Oksana Baiul, et al. v. NBCUniversal Media, LLC et. al.,* (Index No. 654420/2013). (Baiul Aff, ¶19). Since Plaintiffs prevailed concerning statute of limitations arguments in this action, Plaintiff's allegations in the WME Action can surely not be frivolous.

this Court. Plaintiff had millions of dollars stolen from her (most of it when she was a non-English speaking minor) by one or more of the defendants in the WME Action. This Court made serious and material errors and "mistakes" in reading Plaintiff's Second Amended Complaint in the WME Action. This Court made numerous errors in the NBC Action and the Disson Action including, but not limited to, amazingly, a finding that the NBC press release for an NBC broadcast is not "in commerce" under the Lanham Act and that Pennsylvania law did not apply to Plaintiffs' defamation action. This Court should have known that it had potential conflict of interest issues that should have been disclosed to the parties but this Court chose not to disclose. The only appropriate remedy now is the vacating of all orders and judgments in all of these three Actions because this Court chose to link them. In none of the three Actions would the defendants be subject to undue prejudice. Certainly, the appearance of potential impropriety greatly outweighs any burden placed upon the defendants in these three Actions.

IV. CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully submit that, viewed objectively, the Court's prior representations could raise legitimate doubts as to the Court's impartiality and/or bias in these three above-captioned Actions, and therefore the Court should disqualify (recuse) itself from these three above-captioned Actions, in accordance with 28 U.S.C. §455(a) and/or 28 U.S.C. §455(b)(1), and issue the necessary orders to effectuate such disqualifications (recusals) and furthermore that the Court, in accordance with Federal Rules of Civil Procedure 60(b)(1) and 60(b)(6) as concerns the WME Action and Federal Rule of Civil Procedure 60(b)(6) as concerns the NBC Action and the Disson Action, should issue orders vacating all orders and judgments of the Court entered to date in these three above-captioned Actions.

Dated: West Hollywood, California
July 31, 2014

Respectfully submitted,

/s/ Raymond J. Markovich

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CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff Oksana Baiul hereby certifies that on July 31, 2014, a copy of the foregoing Memorandum of Law in Support of Plaintiffs' Motions For Judicial Disqualification (Recusal) And The Vacating Of All Orders And Judgments, the Declaration of Raymond J. Markovich with accompanying Exhibits, the Affidavit of Oksana Baiul-Farina, the Affidavit of Carlo J. Farina and the Notice Of Plaintiffs' Motions For Judicial Disqualification (Recusal) And The Vacating Of All Orders And Judgments were served by electronic means through Case Management/Electronic Filing System (CM/ECF) for the Southern District of New York.

/s/ Raymond J. Markovich
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