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HAROLD BAER  
U.S. DISTRICT JUDGE  
S.D.N.Y.

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May 10, 2012

VIA FACSIMILE

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The Honorable Harold Baer, Jr.  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: The Authors Guild, et al. v. HathiTrust, et al.,  
Civil No. 11 CV 6351 (HB) (JLC)

Your Honor:

We represent the universities and university presidents on behalf of their libraries ("Libraries") in the above-referenced action. We write in advance of the May 17 hearing scheduled in this matter to raise a discovery dispute with the court and to request direction from the Court on scheduling as it relates to the parties' filing of summary judgment motions (which, under the Court's current scheduling order, are due to be fully briefed by July 20).

**Discovery Dispute – Scheduling of Plaintiffs' Depositions**

For at least the past few weeks we have been in discussions with plaintiffs' counsel concerning scheduling of depositions pursuant to our previously served deposition notices. Our efforts to finalize a schedule for taking the depositions have unfortunately been met with resistance from plaintiffs. They have claimed that plaintiff J.R. Salamanca is in ill health and cannot be deposed regardless of location (even in his home in Maryland). They have also claimed that other noticed plaintiffs residing outside of New York (three witnesses in total) are too busy to appear for a deposition in New York notwithstanding the general and longstanding rule that a plaintiff who brings suit in a particular forum may not avoid appearing for examination in that forum.

<sup>1</sup> See, e.g., *A.I.A. Holdings, S.A. v. Lehman Bros., Inc.*, 97 Civ. 4978, 2002 WL 1041356, at \*1 (S.D.N.Y. May 23, 2002) ("[I]t is well settled that a plaintiff is ordinarily required to make him or herself available for a deposition in the jurisdiction in which the action is brought."); *Grotirian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway and Sons*, 54 F.R.D. 280, 281 (S.D.N.Y. 1971) ("Since plaintiff has chosen this forum, it cannot impose upon defendant the extraordinary expense and burden of traveling to a foreign country to conduct a deposition except on a showing of burden and hardship to the plaintiff.").



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Robert J. Bernstein, Esq., Dan Goldstein, Esq. (counsel for Intervenors)

05/10/12

Endorsement:

This problem should have been brought to my attention earlier and certainly not on the eve of the discovery cutoff and I trust it will not happen again. (1) I'd like a list of all depositions - name and role and schedule, (2) the three who are "too busy" will appear in NY within the next ten (10) days at their convenience and I'd like a note from Mr. Salamanca's doctor as to his ability or lack thereof to participate at his bedside or wherever in an hour (1) of questions and answers.