EXHIBIT 10

HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MEREDITH CORPORATION, THE E.W. SCRIPPS COMPANY, SCRIPPS MEDIA, INC., HOAK MEDIA, LLC, HOAK MEDIA OF NEBRASKA, LLC, and HOAK MEDIA OF DAKOTA, LLC,	)	
individually and on behalf of all others similarly situated,	)	09 Civ. 9177 (PAE)
Plaintiffs,	)	
v.	)	
SESAC, LLC and JOHN DOES 1-50,	)	
Defendants.	)	

PLAINTIFFS' CLASS CERTIFICATION EXPERT REPORT
RUSSELL L. LAMB

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July 10, 2014

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I. Introduction and Conclusions

Expert Qualifications

1. My name is Russell L. Lamb. I am a Senior Vice President at Nathan Associates Inc. ("Nathan Associates") where I direct the litigation consulting activities in the Arlington, VA office. Nathan Associates is a business and economic consulting firm that provides economic research and analysis to clients in the United States and internationally and maintains offices in Arlington, VA, Irvine, CA, London, England and Chennai, India. I have studied the economics of markets and prices for more than 25 years and have consulted on these issues for more than 20 years. I previously have been asked to opine on a variety of economic issues, including the relevant antitrust product and geographic markets, existence of cartel behavior in various markets, damages arising from anticompetitive conduct, and class-wide impact arising from alleged price-fixing and anticompetitive conduct as well as class-wide injury arising from allegations of consumer fraud or breach of warranty. I have also been retained to offer opinions regarding liability and damages issues in antitrust matters.

2. I graduated from the University of Tennessee, Knoxville in 1987 (summa cum laude, Phi Beta Kappa) as the top graduate in my class. I earned a Master's degree in economics from the University of Maryland in 1989 and received a Ph.D. degree in economics from the University of Pennsylvania in 1994. My economic research has been published in peer-reviewed journals such as the *Journal of Econometrics*, *Journal of Development Economics*, *CATO Journal*, *Regulation* and others. I have also served as a referee for leading economics journals including the *International Economic Review*, *Journal of Business and Economic Statistics*, *American Journal of Agricultural Economics* and *Contemporary Economic Policy*.

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3. Prior to my employment at Nathan Associates, I held a variety of positions in government, academia, and other consulting firms. From 1994 until 1999 I was an Economist (later Senior Economist) with the Federal Reserve System of the United States in Washington, DC and Kansas City, MO. From 1999 until 2004 I taught economics and agricultural economics at North Carolina State University in Raleigh, NC. I have also been hired as an economic consultant to the World Bank and the Government of Peru, in addition to being retained on a wide range of economic consulting projects in a variety of contexts. In addition to my consulting activities, I teach economics at the George Washington University, where I am an adjunct faculty member in the Department of Economics. A copy of my C.V., including a list of the matters in which I have submitted expert testimony in the past four years, is attached to this report as Appendix A.

4. Nathan Associates is being compensated for my work in this matter at my standard hourly rate of $550 per hour. Nathan Associates' compensation in this matter is not contingent upon the content of my testimony or the outcome of this litigation.

Summary of Allegations

5. Defendant SESAC, LLC ("SESAC") is engaged in the business of licensing public performance rights to the copyrighted musical compositions of its affiliated composers and music publishers to music users in various industries.[1] The Plaintiffs in this matter are owners of full-power commercial local television broadcasters ("local stations").[2] I understand that Plaintiffs have alleged that SESAC exercised and "maintained monopoly power in the SESAC

[1] *Meredith Corp., et al., v. SESAC, LLC, et al.*, Case No. 09 Civ. 9177 (NRB) (S.D.N.Y.), First Amended Class Action Complaint, filed March 18, 2010 (hereafter "Complaint"), ¶1.
[2] Complaint, ¶1.

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Repertory Performance Rights Market" through exclusionary acts in violation of Section 2 of the Sherman Act.[3] I further understand that Plaintiffs have alleged that SESAC and its affiliates participated in "agreements to fix, peg, raise, stabilize, effect and tamper with market prices for licenses for copyrighted musical compositions in the SESAC Repertory Performance Rights Market in violation of Section 1 of the Sherman Act."[4] I also understand that Plaintiffs have alleged that these "agreements" constitute a conspiracy to monopolize the SESAC Repertory Performance Rights Market in violation of Section 2 of the Sherman Act.[5] It is my further understanding that the Court, as part of its Summary Judgment ruling, has narrowed the conspiracy claims to an alleged conspiracy between SESAC and its key affiliates that have signed "supplemental" agreements that ensure that these affiliates will not license their performance rights other than through SESAC.[6]

6. I understand that Plaintiffs are bringing this case on behalf of themselves and all members of the following proposed class (collectively, the "Class"):

> All owners of local commercial television stations in the United States and its territories that obtained licenses for music performing rights from SESAC during the period from January 1, 2008 to date (the "Class Period"), excluding the owned and operated affiliated stations of the ABC, CBS, and NBC networks.[7]

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[3] Complaint, ¶86. These exclusionary acts include, among others: "(i) preventing select SESAC-affiliated composers from entering into direct license agreements with music users; (ii) tying together all musical compositions, including both unwanted and desired compositions and both feature and non-feature music, into an all-or-nothing blanket license; (iii) refusing to offer Plaintiffs and members of the Class a viable alternative form of license to its all-or-nothing blanket license; (iv) refusing to offer users fair and reasonable interim licenses pending resolution of negotiations; and (v) refusing to negotiate in good faith, which have restrained and impeded the growth of its existing or potential competitors and competitive licensing arrangements." Complaint, ¶86.
[4] Complaint, ¶79.
[5] Complaint, ¶¶86, 94-95.4-86.
[6] *Meredith Corporation, et al., v. SESAC, LLC, et al.*, Case No. 09 Civ. 9177 (PAE) (S.D.N.Y.), Opinion & Order, dated March 3, 2014 (hereafter "Motion for Summary Judgment Opinion"), pp. 20, 46, 69.
[7] Complaint, ¶68.

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Assignment

7. I have been asked by Counsel for Plaintiffs to analyze the following questions based on the record evidence as well as my training and experience in economics:

a. Whether it is possible to establish, using economic analyses and evidence common to the proposed Class as a whole, that proposed Class members were impacted by the alleged anticompetitive conduct, and more specifically, whether all, or nearly all, proposed Class members have paid license fees for the right to publicly perform the musical compositions in the SESAC repertory that were inflated as a result of the alleged anticompetitive conduct; and

b. Whether a standard and reliable economic methodology exists that would allow me to measure damages suffered by proposed Class members as a result of the alleged anticompetitive conduct on a class-wide basis without resorting to individualized inquiry.

8. For the purposes of analyzing these issues, I have assumed that SESAC exercised and "maintained monopoly power in the SESAC Repertory Performance Rights Market" through exclusionary acts in violation of Section 2 of the Sherman Act.[8] I have also assumed that SESAC and key affiliates engaged in a conspiracy to "fix, peg, raise, stabilize, effect and tamper with market prices for licenses for copyrighted musical compositions in the SESAC Repertory Performance Rights Market."[9] I have also assumed that the trier of fact will determine that the

[8] Complaint, ¶86.
[9] Complaint, ¶79.

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challenged licensing practices represent a violation of the antitrust laws.[10] I have not, however, assumed that all members of the proposed Class were injured, and suffered damages, as a result of the alleged anticompetitive conduct. Rather, the analysis of those issues is the focus of my Expert Report.

Materials Considered

9. In performing my analyses, I have undertaken economic research based on publicly available documents as well as materials produced as part of this litigation, in order to understand the market for licenses for public performance rights for copyrighted musical compositions, as well as the prices paid for these licenses by members of the proposed Class. I have also conducted economic analyses of the license fees paid by proposed Class members using data and materials provided by SESAC, Plaintiffs' merits expert Professor Adam B. Jaffe, Plaintiffs, and other third-party entities connected to this litigation. In addition, I have reviewed documents produced and testimony provided by the various parties in this matter. A complete list of the materials I have considered in forming my opinions is contained in Appendix B.

Summary of Conclusions

10. Based on my economic analyses and research into the market for licenses for public performance rights for copyrighted musical compositions in the SESAC repertory, the documents and data produced and testimony provided by the parties and third parties in this matter that I have reviewed to date, as well as my training and experience in economics, I have concluded that common evidence and methods establish that the alleged anticompetitive conduct

[10] I understand that the District Court has already concluded that "on all three claims, that the record evidence is sufficient to support a verdict in plaintiff's favor." See Motion for Summary Judgment Opinion, p. 20.

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artificially inflated the prices paid by all, or nearly all, proposed Class members for a SESAC license above the level that would have prevailed but for the alleged anticompetitive conduct. That is, there is common evidence available that demonstrates that all, or nearly all, proposed Class members were overcharged as a result of the alleged anticompetitive conduct.

11. My analysis of common impact on proposed Class members proceeded in two steps. I considered (i) whether there is common evidence that demonstrates that the anticompetitive conduct alleged by Plaintiffs resulted in artificially-inflated licensing fees for public performance rights for copyrighted musical works in the SESAC repertory; and (ii) whether there is common evidence that establishes that the artificially-inflated prices resulting from the alleged anticompetitive conduct were paid by all, or nearly all, proposed Class members. My conclusion that (i) the anticompetitive conduct alleged by Plaintiffs resulted in artificially-inflated license fees for public performance rights for copyrighted musical works in the SESAC repertory; and that (ii) the artificially-inflated prices resulting from the alleged anticompetitive conduct were paid by all, or nearly all, proposed Class members is based on available evidence, common to the proposed Class as a whole, which demonstrates that:

a. SESAC possesses monopoly power in the SESAC Repertory Performance Rights Market. As a result, SESAC was able to charge supra-competitive license fees for its blanket license to proposed Class members.

b. SESAC eliminated price competition among SESAC's affiliated composers and music publishers ("SESAC affiliates") by collectively licensing the public performance rights to all of the works in the SESAC repertory via an "all-or-nothing" blanket license at a price fixed by SESAC that does not vary with the extent of a local station's actual need for or use of SESAC repertory music.

c. SESAC's supplemental agreements with key affiliates who owned the rights to a large share of SESAC repertory music embedded in local television programming effectively prevented these rightsholders from entering into direct licensing agreements with the proposed Class members..

d. SESAC's changes to the terms of its per-program license formula effective as of the beginning of the Class Period eliminated the only economically viable alternative to the blanket license offered by SESAC.

e. SESAC's failure to disclose accurately the full contents of its repertory left proposed Class members with no ability to definitively determine which, if any, of the programs and commercial announcements that they air contain SESAC repertory music.

12. Taken together, the evidence summarized in paragraph 11 above, which is common to the Class as a whole, demonstrates that local television stations who are members of the proposed Class have been injured because they paid more for SESAC's blanket license as a result of the alleged anticompetitive conduct than they otherwise would have paid. In the absence of the alleged anticompetitive conduct, prices paid by nearly all Class members for licenses to publicly perform copyrighted musical compositions in the SESAC repertory would have been lower, and thus, the alleged anticompetitive conduct artificially inflated prices paid by proposed Class members.

13. I have also determined that there is a standard, reliable and formulaic method, based upon accepted economic principles, that allows me to measure damages suffered by proposed Class members as a result of the alleged anticompetitive conduct on a class-wide basis without resorting to individualized inquiry. My damages analysis uses the actual experience of the proposed Class members during the 2005-2007 period to approximate the "but-for" world. During that period, a neutral arbitration panel set industry-wide blanket license fees using a "reasonable fee" standard based on, among other things, SESAC music use information from SESAC and the Television Music License Committee ("TMLC").[11] The arbitrators also determined the terms for an economically viable alternative to the blanket license – a per-program license ("PPL"). Accordingly, during this arbitration period, the market for SESAC repertory performance rights was free of some, but not all, of the alleged misconduct.

14. Using the arbitration period as a but-for world, I estimate that the damages suffered by proposed Class members as a result of the artificially elevated blanket license fees paid by all stations for which I have complete license fee information during the period January, 2008 – June, 2014 range from $37.2 million to $39.8 million. I also conservatively estimate that the damages related to the lack of an economically viable per-program license for all the stations for which I have complete license fee data range from $7.3 million to $7.6 million during the same period.

[11] "The Television Music License Committee is a non-profit association that represents all full-power, commercial television stations in the United States and its territories in negotiations for music performing rights licenses that stations sign with the two largest Performing Rights Organizations (PRO's), ASCAP and BMI. Although the third PRO, SESAC, has now elected to negotiate current licenses with individual stations, the TMLC also has negotiated industry licenses with SESAC in the past." See the TMLC website available online at: http://tvmlc.com/.

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II. Industry Background

The Use of Music in Local Television

15. The programs local stations broadcast to their audiences often contain copyright-protected music.[12] It is my understanding that local television station broadcasts of copyrighted musical works are considered "public performances," requiring permission from the copyright owners in the form of a license.[13]

16. Programing by a local station can be produced locally by the station itself ("locally produced programming") or by third parties ("third-party programming").[14] Local stations have a considerable degree of control over the music used in locally-produced programming.[15] In contrast, in the case of third-party programming, the stations have no control over the music content of these programs.[16] In addition, local stations air commercial announcements, many of which also contain copyrighted musical works. As with third-party programming, local stations have no control over the music content in commercials.

17. The majority of local stations are affiliated with television networks such as ABC, NBC, CBS and Fox. These affiliated local stations receive programing provided by the television

[12] Complaint, ¶2. Plaintiffs' Merits Expert Report, Adam B. Jaffe, dated March 4, 2013 (hereafter "Jaffe Merits Report"), pp. 10-11.
[13] Complaint, ¶2. Jaffe Merits Report, p. 10.
[14] Complaint, ¶¶3-4. Jaffe Merits Report, pp. 11-12.
[15] SCRIP00000323-325; HOAK00093205-206; MERE00008144. See also, Deposition of Robbin Holliday, dated November 16, 2012 (hereafter "Holliday Deposition") at 77:7-16; Deposition of Dan Reynolds, dated February 14, 2013 (hereafter "Reynolds Deposition") at 118:6-8; Deposition of Jim Hart, dated October 11, 2012 (hereafter "Hart Deposition") at 50:14-51:16, 108:15-110:16; Deposition of Ulysses Carlini, dated October 26, 2012 (hereafter "Carlini Deposition") at 135:14-22; Deposition of Richard Adams, dated November 6, 2012 (hereafter "Adams Deposition") at 61:12-24; Deposition of Douglas Lowe, dated November 14, 2012 (hereafter "Lowe Deposition") at 158:22-159:22; Deposition of Charley Johnson, dated November 30, 2012 (hereafter "Johnson Deposition") at 57:10-58:10; Deposition of William Slantz, dated January 17, 2013 (hereafter "Slantz Deposition") at 116:16-19; Deposition of Adam Jaffe, dated April 30, 2013 (hereafter "Jaffe Deposition") at 48:9-15.
[16] Third-party programming includes syndicated programming, movies, sporting events, commercial announcements, and public service announcements. See Complaint, ¶¶3, 5-6, 14. Jaffe Merits Report, p. 12.

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network. It is my understanding that the ABC, CBS, NBC, Univision and Telefutura networks obtain music performance rights on behalf of their local station affiliates for network programing.[17] The local affiliates of these networks only need to obtain music performance rights for the non-network programming broadcast by the station.[18] Local stations not affiliated with these networks, such as those affiliated with Fox and the CW Network (and those not affiliated with any network), must procure music performance rights for all of their programming, both network provided programming and non-network provided programming.[19]

18. Local stations face the threat of large monetary penalties of up to $150,000 per infringing work broadcast in the event that they fail to obtain a license to publicly perform any of the copyright-protected musical works embedded in the programs and commercial announcements they air.[20] However, local stations lack control over the music content in much of their programming and in many instances do not know even know the identity of the music that is contained in their programming and commercial announcements.[21] As a result, local stations must obtain music performance rights licenses from each of the three performing rights organizations ("PROs") in the United States.[22] The three PROs in the United States are: the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc.

[17] SESAC-0571832; Complaint, ¶4; Jaffe Merits Report, pp. 9-10.
[18] I understand that the licensing of music performance rights in network programing supplied by the ABC, CBS, NBC, and Univision and Telefutura networks is not at issue in this case.
[19] SESAC-0571832. See also, BMI's Royalty Policy Manual, U.S. Television Royalties, available online at: http://www.bmi.com/creators/Royalty/us_television_royalties/detail.
[20] OZ 00000048168. "A station that broadcasts a copyright-protected performance of a musical work without permission faces the threat of statutory penalties for copyright infringement that can be as high as $150,000 per infringement." See Motion for Summary Judgment Opinion, p. 7. See also, United States Copyright Law, 17 U.S.C. § 504(c).
[21] In 2006, third-party music consultant Donald Jasko wrote a letter to Pat Collins (SESAC's COO), stating "stations have control over music use in only local programming they produce (they have no control over music use in syndicated programming, nor a realistic choice as to whether to continue broadcasting the syndicated product they have already licensed)." See DIGITAL0001525. See also, Jaffe Merits Report, pp. 12-13.
[22] Complaint, ¶10.

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("BMI"); and SESAC. I discuss these PROs in greater detail in the following section. Because the license arrangements entered into between the PROs and composers and music publishers contractually limit a given rightsholder to affiliating with only one PRO at a time, the repertories of each PRO are exclusive of one another.[23] Accordingly, all local television stations, including all of the proposed Class members, must take a license from each of the three PROs to ensure that they have the necessary performance rights for the music embedded in the programming and commercial announcements that they air.

Licensing of Public Performances of Music on Local Television

19. PROs are entities that aggregate and collectively license the copyrights of their affiliated composers and music publishers ("affiliates").[24] PROs provide a number of services to their affiliates, which include: distributing royalties, monitoring public performances, and ensuring that users pay for such performances.[25] The PROs also negotiate, on behalf of their affiliates, license fees with local stations seeking to broadcast copyright-protected musical works.[26]

20. There are several types of music performance rights licenses that local stations have paid for to secure music performance rights for the public performances of copyright-protected musical works:

a. Blanket licenses: A blanket license is an all-or-nothing license that gives local stations the right to perform any of the musical compositions in a given PRO's

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[23] Complaint, ¶11.
[24] Complaint, ¶11.
[25] SESAC-0912954. See also, Deposition of Matt Kupersmith, dated October 2, 2010 (hereafter "Kupersmith Deposition") at 43:7-10.
[26] "The repertories of the three PROs are exclusive of one another but, collectively, represent virtually every copyrighted musical composition in the United States and its territories." See Complaint, ¶11.

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repertory for a fixed fee, which does not vary with the actual number of public performances.[27] The blanket license is the preferred license type of the PROs.

b. Per-program licenses: A PPL is an alternative to the blanket license that is currently offered in a viable form by ASCAP and BMI and was offered in a viable form, for a brief period, by SESAC. The PPL gives local stations the right to perform any musical composition in a given PRO's repertory for a fee that varies to some degree.[28] The PPL fee depends on the number of programs broadcast during the license period by the local station that contain music from a given PRO's repertory for which the local station has not separately procured a license.[29] ASCAP and BMI are required by their consent decrees (discussed below) to offer local stations a PPL that serves as a genuine alternative to the blanket license.[30] SESAC, currently under no similar obligation, does not offer a viable PPL to local stations.[31]

[27] Complaint, ¶12. See also, Deposition of Hunter Williams, dated November 27, 2012 (hereafter "Williams Deposition II") at 16:5-17:9; Deposition of William Robert Lee, dated October 23, 2012 (hereafter "Lee Deposition") at 61:10-19; Carlini Deposition at 44:11-45:2. Jaffe Merits Report, Appendix C.
[28] Adams Deposition at 208:2-21.
[29] Complaint, ¶25. See also, Adams Deposition at 208:2-21.
[30] I also understand that it has recently been judicially determined that ASCAP and BMI must also offer local stations a second alternative to the traditional blanket license – an adjustable-fee blanket license. See Motion for Summary Judgment Opinion, p. 11, Footnote 8.
[31] *Meredith Corporation, et al., v. SESAC, LLC, et al.*, Case No. 09 Civ. 9177 (PAE) (S.D.N.Y.), Plaintiffs' Memorandum of Law in Opposition to Defendant SESAC, LLC's Motion for Summary Judgment, filed August 2, 2013 (hereafter "Plaintiffs' Memorandum"), p. 23.; *United States of America v. American Society of Composers, Authors and Publishers*, Civil Action No. 41-1395 (WCC) (S.D.N.Y.), Second Amended Final Judgment, filed June 11, 2001 (hereafter "ASCAP Consent Decree") at § VIII; *United States of America v. Broadcast Music, Inc., et al.*, Civil No. 64-Civ-3787 (S.D.N.Y.), Final Judgment, filed November 18, 1994 (hereafter "BMI Consent Decree") at § VIII. The PPLs "offered by ASCAP and BMI enable local stations to reduce their license fees by (i) reducing or eliminating the number programs that contain unlicensed performances of the PRO's music and/or (ii) acquiring the license rights needed for particular locally produced programs directly from the copyright owner." See Complaint, ¶25.

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c. Direct licenses: A direct license is not a license from a PRO, but rather, is a license granted by an individual rightsholder directly to a local television station, and gives the local station the right to publicly perform some or all of the rightsholder's musical works during the license period.[32]

d. Source licenses: Like a direct license, a source license is also not a license from a PRO, but is one obtained by the local station from a given program producer that has acquired the necessary performance rights directly from the rightsholder on the station's behalf.[33] A source license grants the local station the right to perform some or all of the musical works embedded in a particular program.[34]

The ASCAP and BMI Consent Decrees

21. ASCAP and BMI's blanket licensing practices have been the subject of civil and criminal antitrust litigation brought by the United States Department of Justice ("DOJ").[35] As the DOJ recognized, by pooling the performance rights of thousands of rightsholders, a blanket license effectively eliminates competition between rightsholders and leaves the PRO with substantial market power. To settle these lawsuits, both ASCAP and BMI entered into Consent Decrees with the DOJ that are intended to mitigate the anticompetitive effects of the PROs' collective licensing practices.[36]

22. The ASCAP and BMI Consent Decrees are administered by a federal court in the Southern District of New York (the "Rate Court").

[32] Deposition of Ron Gertz, dated December 20, 2012 (hereafter "Gertz Deposition") at 52:2-4. Jaffe Merits Report, p. 26.
[33] Gertz Deposition at 51:18-20. Complaint, ¶9. Jaffe Merits Report, pp. 26-27, Appendix C p. 2.
[34] Gertz Deposition at 51:18-20.
[35] Motion for Summary Judgment Opinion, pp. 22-25. See also, Complaint, ¶25.
[36] Plaintiffs' Memorandum, p. 2.

23. The Consent Decrees constrain the ability of ASCAP and BMI to utilize the market power they have amassed through collective licensing by imposing the following requirements (among others):

a. ASCAP and BMI's right to license on behalf of their affiliated rightsholders must be non-exclusive. This allows local stations and program producers to negotiate directly with rightsholders to obtain performance rights licenses outside of the PRO.[37]

b. ASCAP and BMI are required to license similar users similarly, thereby preventing them from engaging in price discrimination within a group of users.[38]

c. ASCAP and BMI must offer licensees (including all proposed Class members) economically viable alternatives to a blanket license, such as a PPL.[39]

d. ASCAP and BMI are obligated to grant a license to any licensee upon request. This includes interim authorization to perform the works in the ASCAP and BMI repertories while negotiations over license fees and terms are ongoing.[40]

e. In the event that the licensee and the PRO cannot agree on license fees and terms, either party can request that the Rate Court resolve the dispute. In those instances, the Rate Court is tasked with setting a "reasonable" license fee.[41]

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[37] See ASCAP Consent Decree at § IV (B); BMI Consent Decree at § VI. See also, Jaffe Merits Report, p. 24; Motion for Summary Judgment Opinion, p. 1.
[38] See ASCAP Consent Decree at § IV (C); BMI Consent Decree at § XIV(C).
[39] See ASCAP Consent Decree at § VIII; BMI Consent Decree at § VIII. See also, Jaffe Merits Report, p. 24. Plaintiffs' Memorandum, p. 2.
[40] See ASCAP Consent Decree at § XI; BMI Consent Decree at § IX. See also, Jaffe Merits Report, p. 24; Motion for Summary Judgment Opinion, p. 1.
[41] See ASCAP Consent Decree at § IX; BMI Consent Decree at § XIV. See also, Jaffe Merits Report, p. 24; Motion for Summary Judgment Opinion, p. 1.

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24. As a matter of economics, the effect of the Consent Decrees is to create an environment that prevents ASCAP or BMI from taking full advantage of their market power. As a result, license fees (either negotiated or those set by the Rate Court) are closer to those that would prevail in a more competitive market.

25. Unlike ASCAP and BMI, SESAC has never been subject to a consent decree and no Rate Court (or other neutral authority) currently exists to resolve disputes between SESAC and local stations in the event of a negotiating impasse.[42]

SESAC Licensing with Local Stations before 2008

26. SESAC was founded by Paul Heinecke in 1932 and currently is the smallest of the three PROs.[43] For many years, SESAC focused on licensing the performance rights of European and religious music composers and publishers.[44] In 1992, SESAC was acquired by a group of investors comprised of Stephen Swid, Allen & Co., Freddie Gershon, and Ira Smith.[45] After the acquisition, SESAC changed its strategy and targeted several of BMI and ASCAP's high-profile rightsholders, including those whose music was embedded in local television programming.[46]

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[42] Jaffe Merits Report, p. 23.
[43] See SESAC, About Us: Our History, available online at: http://www.sesac.com/About/History.aspx (hereafter "History of SESAC").. In 2010, SESAC accounted for an estimated 6 percent of total PRO revenues and 12 percent of local television licensing undiscounted blanket license fees. See Amended Expert Report of David S. Evans, dated April 19, 2013 (hereafter "Evans Report") at ¶40.
[44] History of SESAC. See also, *Affiliated Music Enterprises, Inc., v. SESAC Inc.*, Civil Action No. 99-169, 160 F. Supp. 865, January 30, 1958, p. 3.
[45] History of SESAC. See also, OZ 00000048167.
[46] According to SESAC, "In the new century, SESAC turned its attention to Film and Television, music, affiliating some of Hollywood's top composers. With the establishment of a Los Angeles office in 2000. SESAC began affiliating television composers like Jonathan Wolff (Seinfeld, Will & Grace, Less Thaan Perfect, Reba), Dennis Brown (Still Standing, Two And A Half Men), Danny Lux (Boston Legal, The Bachelor, Medical Investigation), Bruce Miller (Becker, Frasier) Jon Ehrlich (The Guardian), and film composers like John Swihart (Napoleon Dynamite) and Chris Beck (Under The Tuscan Sun, A Cinderellas Story, Taxi)." SESAC also represents high-profile music composers such as "Bob Dylan, Neil Diamond, Robert Johnson, RUSH, Cassandra Wilson, Bryan-Michael Cox, Nate "Danja" Hills, Jack Knight, Jason Perry and Swizz Beatz." See History of SESAC. Currently SESAC represents more than 20,000 rightsholders. See SESAC-0794314.

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27. I understand that before 1995, SESAC negotiated licensing fees directly with local television stations, including members of the proposed Class.[47] In 1995, the TMLC negotiated a five-year blanket license with SESAC for the period October 1, 1995 through December 31, 2000.[48] The TMLC also negotiated industry-wide blanket licensing fees with SESAC for the period 2001-2004.[49] This license agreement contained a clause which stipulated that if a new agreement could not be reached between the parties covering the period 2005-2007, SESAC could elect to have license fees for that period set through binding arbitration.[50] The agreement further stipulated that if SESAC chose to arbitrate, local stations would be entitled to a PPL from SESAC for the period April 1, 2005 through December 31, 2007 under terms set by the arbitrators.[51]

28. SESAC elected to go to arbitration to determine the licensing fees for the period 2005-2007.[52] The arbitrators set the industry-wide blanket license fee at $16 million for 2005 and allowed for a 10 percent annual fee increase for each of the years 2006 and 2007.[53] I understand that SESAC and TMLC agreed that the arbitrators should follow the "reasonable fee" standard used by the ASCAP and BMI Rate Courts.[54] During the arbitration, SESAC presented testimony stating that the local stations use of SESAC's music should be expected to increase by 10 percent

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[47] American Arbitration Association, *SESAC, Inc., v Television Music License Committee*, Television Music License Committee Post-Arbitration Brief, dated February 28, 2006 (hereafter "TMLC Post-Arbitration Brief"), pp. 23-24. See also, SESAC-0571832.
[48] Jaffe Merits Report, pp. 42-43.
[49] SESAC-0303611-631; SESAC-0586635-654; TMLC Post-Arbitration Brief, pp. 26-27.
[50] SESAC-0586644-648.
[51] SESAC-0586644-648.
[52] American Arbitration Association, *SESAC, Inc., v Television Music License Committee*, Case No. 13 133 01583 05, Award, dated June 22, 2006, (hereafter "AAA Award").
[53] AAA Award, p. 3. This resulted in industry-wide blanket license fees of $17.6 million in 2006 and $19.3 million in 2007. Id.
[54] TMLC Post-Arbitration Brief, pp. 28-29.; American Arbitration Association, *SESAC, Inc., v Television Music License Committee*, SESAC Post-Trial Brief, dated February 28, 2006 (hereafter "SESAC Post-Trial Brief"), pp. 4-5.

per year during that period.[55] While the arbitrators did not provide a written decision explaining their rationale, it is reasonable to assume that the arbitration panel relied on SESAC's asserted expected growth rate in music use by local stations when deciding on 10 percent annual fee increases for 2006 and 2007. The arbitration panel also set the terms for a PPL for television stations covering the period from April 1, 2005 through December 1, 2007.[56]

SESAC Exercises its Monopoly Power Over Local Stations Beginning in 2008

29. In 2007, SESAC and the TMLC initiated negotiations in an effort to reach agreement on industry-wide license fees and terms for the period starting January 1, 2008, after the end of the arbitration period.[57] In contrast to the 2005-2007 period, the license fees and terms for this period were not subject to arbitration in the event of a negotiating impasse.[58] The negotiations to determine industry-wide license fees and terms for local stations were unsuccessful. After the negotiations broke down, SESAC announced that it would negotiate licensing fees and terms directly with the stations.[59]

30. On November 27, 2007, SESAC sent offer letters, the substance of which were identical, to all local stations including the proposed Class members describing the fees and terms of the new SESAC license agreements.[60] SESAC's initial license fee offer for 2008 was based on a

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[55] TMLC00000422 (Transcript of Record, *SESAC v. Television Music License Committee Arbitration,* January 13, 2006).
[56] AAA Award, p. 2. I understand that out of approximately 1,100 local stations, 180, 185, and 248 stations chose SESAC's PPL in 2005, 2006 and 2007 respectively. Jaffe Merits Report, p. 47.
[57] Jaffe Merits Report, p. 47.
[58] Motion for Summary Judgment Opinion, pp. 2, 20. Unlike with the prior licenses, there was no clause in the 2005-2007 licenses that allowed either SESAC or the TMLC to elect to have license fees and terms for the period beginning in 2008 set through arbitration.
[59] HOAK00000531-572; HOAK00094500-501; HOAK00094849-870; MERE00007987-988; MERE00022072-081; MERE00022092-093.
[60] See, for example, HOAK00000531.

10% increase from the 2007 blanket fee for each local station.[61] SESAC also offered multi-year licenses for the period 2008-2012 that included fees based on an increase of 6.95% per year for each station.[62] I understand that SESAC set the license fees for 2013 and 2014 at the same level as the 2012 fees.[63] SESAC also offered group discounts to certain station groups, but required those station groups to forego the use of a PPL during the entirety of the license period in exchange for the group discount.[64] Other discounts offered by SESAC included a "programming adjustment" and a "news music adjustment."[65] I understand that these discounts did not reduce the increases in base license rates for later years.[66] I also understand that these discounts were standard and applied in a common way to all local stations.[67]

31. In addition to substantially increasing blanket license fees, SESAC also modified the formula it used to calculate the PPL fees for local stations for the period beginning in 2008.[68] The changes to the calculation of the PPL fee substantially increased the costs of the PPL such that it was no longer a viable economic alternative to the blanket-license. That is, the cost of the

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[61] "We used the 2007 TMLC allocation as the basis and added ten percent increase to that license fee for 2008." Deposition of Steven Counce, dated October 3, 2012 (hereafter "Counce Deposition") at 28:13-15.
[62] "The blanket license fees were established using the fees that the arbitrators ruled – the arbitrators set the base, grew the base by 10 percent a year. The allocation of those fees was done by the Television Music License Committee … SESAC took that same award, used the same 10 percent that the arbitrators ordered, increased the 2008 license fees, and then for subsequent years we lowered the increase to 6.95 using the same allocation method that had been utilized by the TMLC." Deposition of Pat Collins, dated July 31, 2012 (hereafter "Collins Deposition I") at 120:17-121:5. I understand that SESAC also offered one-year renewable license agreements at an annual 10% increase in licensing fees. Counce Deposition at 28:8-29:9; MERE00041787.
[63] Deposition of Stephen Swid, dated February 7, 2013 (hereafter "Swid Deposition") at 57:6-58:9-12. See also, Letter from William R. Lee to Douglas R. Lowe, dated November 30, 2012.
[64] Lee Deposition at 97:18-98:5, 194:3-13.
[65] Lee Deposition at 159:11-24.
[66] The post-arbitration period blanket license for a specific station was determined by adding ten percent to the amount allocated to that station by the TMLC in 2007. Maxine Edwards, Vice President of Broadcast Operations, stated that this base rate was not changed even if a station "dropped news music" or received a group discount. Deposition of Maxine Edwards, dated October 16, 2012 (hereafter "Edwards Deposition") at 50:15-23.
[67] "We also have offered the same group discount schedule to all groups, and are unable to accept a further reduction to that schedule in an effort to license all groups similarly […]. All of the licenses and rates proffered to the industry are calculated in a similar fashion[.]" See SESAC-0496759.
[68] SESAC-0502719 (a SESAC document comparing SESAC's PLL in 2005-2007 and 2008-2012).

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PPL exceeded the amount a station would pay under the blanket license eliminating any incentive for a station to elect to be licensed via the PPL. Some of the changes to the PPL formula included increasing the fee for "Incidental and Ambient" uses of SESAC repertory music, increasing the "Administrative Fee," and increasing the "default percentage multiplier" for programs with some unidentified music.[69] As a result of these modifications, no local station has operated on a PPL.[70] While nearly 250 stations took advantage of the PPL in 2007, no station was able to take the PPL for the period beginning in 2008.[71]

32. Plaintiffs allege that, at least as of the time that SESAC's licensing activities were no longer subject to any oversight from a neutral third party (the arbitration panel), SESAC was completely unrestrained and able to eliminate any potential competition to its blanket license and proceeded to charge proposed Class members license fees that were well in excess of those it would have secured were it not for the alleged anticompetitive conduct.[72] I analyzed the available evidence to determine whether, when taken together, these anticompetitive practices impacted Class members in the following section.

III. Injury to Proposed Class Members

33. I have been asked by Counsel for Plaintiffs to determine whether there is common evidence with which to establish that all, or nearly all, proposed Class members were injured as a result of the Defendants' alleged anticompetitive conduct. As I noted above, for the purposes of

[69] Jaffe Merits Report, pp. 73-76. SESAC-0661213-14; SESAC-0502718.
[70] Deposition of Katie Alphonso, dated October 11, 2012 (hereafter "Alphonso Deposition") at 203:3-21; Edwards Deposition at 102:17-19.
[71] Alphonso Deposition at 203:3-21; Edwards Deposition at 102:17-19.
[72] The Court, in its Motion for Summary Judgment Opinion, found that the evidence in this case "would also comfortably sustain a finding that SESAC, once freed in 2008 from the duty to arbitrate its disputes with the stations, engaged in an overall anti-competitive course of conduct designed to eliminate meaningful competition to its blanket license." Motion for Summary Judgment Opinion, p. 20.

my analysis, I have assumed that the trier of fact will determine that SESAC's challenged licensing practices represent a violation of the antitrust laws. That is, I have assumed that SESAC engaged in a number of exclusionary acts for the purpose of creating and maintaining monopoly power in the "SESAC Repertory Performance Rights Market."[73] I have also assumed that SESAC and its key affiliates engaged in a conspiracy to "fix, peg, raise, stabilize, effect and tamper with market prices for licenses for copyrighted musical compositions in the SESAC Repertory Performance Rights Market."[74] I also assume that these "agreements" constitute a conspiracy to monopolize the SESAC Repertory Performance Rights Market in violation of Section 2 of the Sherman Act. I analyzed whether there is common evidence with which to establish that Class members were injured by the alleged anticompetitive conduct in that they paid higher prices for the one viable form of license offered by SESAC – the blanket license – than they would have paid in the absence of the alleged anticompetitive conduct. Based on my review of the materials and evidence in this matter, including the market for licenses to publicly perform the copyrighted musical works in the SESAC repertory, as well as my training and experience in economics, I have concluded that all or nearly all Class members were injured as a result of the alleged anticompetitive conduct in that they paid higher prices to secure performance rights for the works in the SESAC repertory than they otherwise would have paid in the absence of the anticompetitive conduct.[75] I discuss the bases for these conclusions below.

[73] Complaint, ¶86.
[74] Complaint, ¶79. As noted above, I understand that the Court, as part of its Summary Judgment ruling, has narrowed the conspiracy claims to an alleged conspiracy between SESAC and its key affiliates that have signed "supplemental" agreements that ensure that these affiliates will not license their performance rights other than through SESAC. See Motion for Summary Judgment Opinion, pp. 20, 46, 69.
[75] Local stations were also deprived of the ability to choose an alternative to the blanket license to secure the performance rights for the works in the SESAC repertory.

Relevant Antitrust Product and Geographic Markets

34. In order to establish that SESAC abused its monopoly power, I must first establish that SESAC possessed market power in a relevant antitrust product and geographic market as a matter of economics. I proceeded in two steps. I first determined the relevant antitrust product and geographic markets based on the standard tools applied by economists. I then evaluated the question of whether SESAC has market power in that market. In conducting this analysis I have relied upon certain analyses of the relevant antitrust product and geographic markets conducted by Dr. Adam Jaffe, an economics expert retained by Plaintiffs in this matter. Dr. Jaffe defines the relevant product market as "the market for performance rights of music in the SESAC repertory on local television"[76] (hereafter, the "SESAC Repertory Performance Rights Market"). Dr. Jaffe also defines the relevant geographic market as the United States.[77]

35. An economic analysis of the relevant product market requires identifying "products that are close demand or supply substitutes."[78] Dr. Jaffe determined that there was evidence to conclude that "there are no products that are reasonably interchangeable with performance rights for music in the SESAC repertory."[79] Dr. Jaffe based his conclusion on the following facts about the market for performance rights for the works in the SESAC repertory:

a. With the exception of locally-produced programming, local stations cannot control, and in many cases cannot even identify, the musical works embedded in

[76] Jaffe Merits Report, p.55.
[77] Jaffe Merits Report, p.55.
[78] Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization,* Fourth Edition, Reading, MA: Addison Wesley, 2005 (hereafter "Carlton and Perloff"), p. 646. "Product B is a demand substitute for A if an increase in the price of A causes consumers to user more B instead. Product B is a supply substitute for A if, in response to an increase in the price of A, firms that are producing B switch some of their production facilities to the production of A." Id. See also, U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, issued August 19, 2010 (hereafter "Horizontal Merger Guidelines") at § 4.
[79] Jaffe Merits Report, p.55.

their broadcast programming. As a result, they cannot substitute non-SESAC repertory music for SESAC repertory music.[80]

b. The lack of interchangeability is supported by the fact that all local stations carry a license from both ASCAP and BMI as well as from SESAC.[81] This demonstrates that the ASCAP and BMI licenses are not economic substitutes for a SESAC license.

c. The right to perform music in SESAC's repertory in a media channel other than broadcast television "cannot be substituted for the right to broadcast on television."[82] Therefore, "the relevant product market is the market for performance rights of music in the SESAC repertory on local television."[83]

36. One tool economists rely upon in defining relevant antitrust product and geographic markets is the so-called "SSNIP" test. A SSNIP test is based upon a hypothetical "small but significant and non-transitory increase in price" ("SSNIP") as described in the Horizontal Merger Guidelines issued by the DOJ and the Federal Trade Commission ("FTC") in August, 2010. The SSNIP test is used by the FTC and the DOJ to define relevant economic markets. [84] The SSNIP analysis is intended to ascertain whether a hypothetical monopolist can exercise market power in a relevant product or geographic market. If the hypothetical monopolist (which is sometimes taken to be a group of firms acting in concert, i.e. a cartel) is able to permanently (that is, in a "non-transitory" way) raise price for a product or group of products by a "small but significant"

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[80] Jaffe Merits Report, p.55.
[81] Jaffe Merits Report, p.54.
[82] Jaffe Merits Report, p.55.
[83] Jaffe Merits Report, p.55.
[84] Horizontal Merger Guidelines at § 4.1.1.

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amount, usually assumed to be between five and ten percent, without losing so much in sales volume that the increase in price is unprofitable, then we say that the product or group of products constitutes a relevant antitrust product market. A monopolist who controlled the production and sales in that market would be able to exercise market power.

37. Dr. Jaffe performed a SSNIP test to further support his analysis of market definition in this case.[85] Dr. Jaffe observed that licensing fees for a set of local stations with SESAC licenses[86] increased by 28 percent during the period 2008 through 2012 while the number of public performances of SESAC music did not increase over the same period.[87] All the local stations in the set continued to obtain licenses from SESAC during this period and did not switch to an alternative product. Dr. Jaffe concluded that this SSNIP test confirms his proposed relevant market definition.[88] I would have conducted an analysis of the type used by Dr. Jaffe if it had not been available to me.

38. Since copyrights are national in scope I also agree with Dr. Jaffe's opinion that the relevant antitrust geographic market in this case is the United States.

39. In my opinion, Dr. Jaffe's analyses of the relevant antitrust product and geographic markets in this case are both credible and reliable. I have not seen any evidence which causes me to question his conclusions concerning relevant antitrust product and geographic markets. The

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[85] The SSNIP test is used by the FTC and the DOJ to define relevant economic markets. "[T]he test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') likely would impose at least a small but significant and non-transitory increase in price ('SSNIP') on at least one product in the market, including at least one product sold by one of the merging firms." See Horizontal Merger Guidelines at § 4.1.1.
[86] Dr. Jaffe's analysis excludes certain stations, such as those owned and operated by the ABC, CBS, and NBC television networks, which I understand are not in the proposed Class.
[87] Jaffe Merits Report, p.56.
[88] Jaffe Merits Report, pp. 56-57.

evidence I have seen fully supports Dr. Jaffe's conclusions.[89] Therefore, in the analyses that follow, I adopt Dr. Jaffe's definition of the relevant product and geographic antitrust markets.[90]

40. The analysis of the relevant product and geographic market discussed above applies not only to the named Plaintiff stations, but to all, or nearly all, stations in the proposed Class. That is, the evidence that allows me to define the relevant product and geographic market is common to all members of the proposed Class. This conclusion is further supported by the fact that every Class member continued to take a SESAC blanket license despite the fact that SESAC raised license fees substantially throughout the Class Period.

SESAC's Monopoly Power in the Relevant Antitrust Market

41. I have also reviewed the evidence Dr. Jaffe presented to demonstrate that SESAC has monopoly power in the SESAC Repertory Performance Rights Market. Dr. Jaffe concluded that "local television stations are captive to SESAC and it is crystal clear that SESAC possesses monopoly power over stations in the relevant market."[91] I summarize the evidence identified by Dr. Jaffe below.

42. In general terms, monopoly power means that a firm is able to raise prices above those that would be observed in a competitive market. SESAC's monopoly power in the relevant market derives from the fact that, as a result of SESAC's actions, there are no substitutes for the

[89] In his report, Dr. Evans states that "virtually all significant rights-users enter into licenses with all three PROs." See Evans Report at Footnote 37. Similarly, a summary of SESAC's business prepared by Matt Kupersmith (Och-Ziff Capital Management Group) notes that the "necessity of use of SESAC material has led to virtually 100% renewal rates." See OZ 00000048165, 170.

[90] I have also reviewed the Court's opinion regarding the relevant antitrust market in this case. The Court, in its Motion for Summary Judgment Opinion, defined the relevant market as "that for performance licenses of the music in SESAC's repertory, as plaintiffs propose[d]." The Court also stated that "[t]his market definition has a solid basis in the evidence." Motion for Summary Judgment, p. 20.

[91] Jaffe Merits Report, pp. 54, 59. Dr. Jaffe also concluded that SESAC "has a 100% market share in the relevant market." Jaffe Merits Report, p. 61.

all-or-nothing blanket license offered by SESAC and thus local stations have no ability to switch to other sellers (i.e., the individual SESAC affiliates) or products (such as a PPL) if and when SESAC raises its license fees. Additionally, because local stations are not able to conclusively identify the works in the SESAC repertory and cannot definitively identify all of the musical works embedded in the programming and commercial announcements that they air, local stations cannot simply avoid purchasing the SESAC blanket license.

43. To empirically analyze the question of whether a local station could, if it chose to, acquire the performance rights for music in the relevant market without obtaining a SESAC license, Dr. Jaffe created a database containing all of the programs for a single month of programming (May 2008) for six Plaintiff stations.[92] Dr. Jaffe concluded that these six stations would have required licenses from "12 to 39 distinct composers or 10 to 34 distinct music publishers."[93] He also found that there was no information available as to the music content of between 29 percent and 50 percent of the programs aired by those stations in that month (and this does not even account for commercial announcements for which there is generally no music use information available).[94] This analysis shows that for a given station, it would have been difficult, if not impossible, to operate without obtaining a blanket license from SESAC. This

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[92] Jaffe Merits Report, p. 60. Dr. Jaffe used Music Report's Inc. ("MRI") proprietary music database to identify the music in these program. For purposes of his analysis he also ignored the fact that "SESAC has contracts with some of its rights holders that would effectively preclude them from licensing the music performances needed by the station." Id.

[93] Jaffe Merits Report, p. 60.

[94] Jaffe Merits Report, p. 61. "Cue sheets are the primary means by which performing rights organizations track the use of music in films and TV. Without cue sheets, it would be nearly impossible for such composers and publishers to be compensated for their work. An accurately filled out cue sheet is a log of all the music used in a production. This information includes: Series/Film Title, Episode Title, Air Date, Show Length, Music Length, Production Company Information, Song/Cue Title, Composer, Publisher, Performing rights society, Timing, [and] Usage." See "What is a Cue Sheet?" on BMI's website, available online at: http://www.bmi.com/creators/detail/what_is_a_cue_sheet.

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conclusion is emphatically supported by the fact that, historically, all, or nearly all, local stations have obtained performance rights licenses from SESAC.[95]

44. SESAC's ability to raise license fees significantly without experiencing a loss of sales so great that it offsets the higher revenues arising from higher fees can also be observed in SESAC's actual pricing behavior after 2007. Dr. Jaffe found that SESAC's blanket license fees for a group of local stations "were increased by 28 percent without any increase in the number of public performances of SESAC music in local television over this period."[96]

45. Dr. Jaffe also concluded that there are barriers to entry in the relevant market and that these barriers protect SESAC's monopoly power.[97]

46. SESAC's monopoly power in the relevant market is also supported by SESAC's awareness of the advantages it enjoys as the only PRO not constrained by a Consent Decree:

> SESAC is a unique company. We are neither subject to an anti trust consent decree [nor to] …its significant attendant requirements. By virtue of these decrees and through the use of threat of rate courts, per program and direct licensing, the TMLC has succeeded in significantly reducing the blanket license fees and actual total fees paid to our competitors. We are not obligated to offer per program or per piece licenses or obligated to attend rate courts. These are significant advantages for a for-profit company and distinguishes [sic] us from our competitors.[98]

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[95] "SESAC has historically licensed more than 99% of the commercial television stations operating in the United States." SESAC-0912956. See also, Lee Deposition at 117-118. A summary of SESAC's business prepared by Matt Kupersmith (Och-Ziff Capital Management Group) notes that the "necessity of use of SESAC material has led to virtually 100% renewal rates" and that "[i]t would be impossible for a television or radio station to operate without a SESAC license"; and "[c]ost of infringement is prohibitive." See OZ 00000048165 -70.
[96] Jaffe Merits Report, p. 62.
[97] "SESAC affiliates are contractually committed to SESAC for overlapping durations." Also, a new entrant who managed to switch a subset of SESAC's rightsholders "would still not be able to offer the stations a substitute for the SESAC blanket license. Jaffe Merits Report, pp. 62-63.
[98] SESAC-0925995.

47. Based on my review of the analysis and evidence considered by Dr. Jaffe regarding SESAC's monopoly power in the relevant antitrust market, I have also concluded that SESAC has monopoly power in the SESAC Repertory Performance Rights Market.[99] As a result, SESAC was able to charge supra-competitive license fees for its blanket license to proposed Class members. I have seen nothing that makes me question this conclusion.

48. As with the analysis of the relevant product and geographic market, the evidence of SESAC's market power in the relevant market applies not only to the named Plaintiff stations, but to all, or nearly all, stations in the proposed Class. That is to say the evidence that allows me to conclude that SESAC has market power in the relevant market is common to all members of the proposed Class. This conclusion is further supported by the fact that SESAC was able to significantly increase the fees it charged all, or nearly all, stations in the proposed Class without a single station electing to forego the SESAC blanket license.

Summary of SESAC's Exclusionary Conduct

49. Plaintiffs allege that after 2007, SESAC, in concert with SESAC's key affiliates, engaged in a number of anticompetitive practices including: (i) using a jointly-priced all-or-nothing blanket license; (ii) signing de facto exclusive supplemental agreements with key affiliates with music in local television programming; (iii) making changes to the PPL formula to render it economically unviable; and (iv) failing to disclose accurately the full contents of its repertory in a usable form. These anticompetitive practices have allowed SESAC to create and maintain its

[99] I have also reviewed the Court's opinion in regards to SESAC's monopoly power. In its Motion for Summary Judgment Opinion, the Court states that, "[a]ssuming that the relevant market is found to be that for performance rights to music SESAC's repertory; it is undisputed that SESAC possesses monopoly power in that market." Lee Deposition at 117-118. OZ 00000000121; OZ 00000048170; SESAC-0653216; SESAC-0732416; SESAC-0858606; SESAC-0858571. Moreover, the Court also states that "[i]t also appears undisputed that SESAC has the power to control prices over that market as currently structured." Motion for Summary Judgment Opinion, p. 66.

monopoly power in the market for SESAC repertory-music performance rights and use that market power to extract from proposed Class members license fees that are well in excess of those that would have prevailed in the absence of the anticompetitive conduct. There is evidence, common to the proposed Class as a whole, demonstrating that, taken together, the anticompetitive acts alleged by Plaintiffs, if they are found to have occurred, would have injured all, or nearly all, members of the proposed Class. I summarize each of these practices below and then proceed to analyze their effects on members of the proposed Class.

50. My analysis below relies on the actual experience during the 2005-2007 period as a measure of the price for licenses for the works in the SESAC Repertory Performance Rights Market. That is, in the but-for world, license fees for SESAC repertory performance rights would have been priced during the proposed Class period as they were during the arbitration period. As discussed above, during that period, SESAC's monopoly power in the relevant market was limited by constraints similar, although lesser than those imposed on ASCAP and BMI by the Consent Decrees. In 2006, a neutral arbitration panel set the industry-wide blanket license fees and set the terms for an economically viable PPL. The 2005 industry-wide blanket license fee set by the arbitrators represents the closest approximation to the fees that would have prevailed were it not for SESAC's anticompetitive conduct.

Jointly-Priced Blanket License

51. Following the end of the arbitration period in 2007, SESAC effectively offered all proposed Class members only an all-or-nothing blanket license that aggregated the copyrights of all SESAC affiliates at a jointly-established price, the result of which was to eliminate competition among SESAC's affiliates in the relevant market. No Class member took an

alternative SESAC license (despite the fact that nearly 250 local stations took a PPL in 2007) or attempted to entirely forego a SESAC license.[100]

SESAC's Restrictive Supplemental Agreements with Key Affiliates

52. SESAC entered into supplemental agreements with select SESAC affiliates with music in local television programming that effectively prevented these affiliates from entering into direct licensing agreements with members of the proposed Class. This evidence is common to the Class as a whole as these supplemental agreements effectively prevented these key affiliates from entering into a direct license with any local station – both the named Plaintiffs and the absent Class members.

SESAC's Changes to the Per-Program License

53. After 2007, as discussed in greater detail in the Jaffe Merits Report, SESAC changed the terms of its PPL formula, including increasing the "Incidental and Ambient Use" fee, increasing the "Administrative Fee," and increasing in the "default percentage multiplier" that applied to certain programs with at least one unidentified musical works.[101] This evidence is common to the Class as a whole as all proposed Class members were offered the same per-program license with the same modifications.[102] Not a single proposed Class member station operated on a PPL after these changes were made.[103]

[100] Alphonso Deposition at 203:3-21; Edwards Deposition at 102:17-19.
[101] Jaffe Merits Report, pp. 73-76. SESAC-0661213-14.
[102] SESAC-0375077-220. See also, Deposition of Pat Collins, dated December 18, 2012 (hereafter "Collins Deposition II") at 127:18-130:4.
[103] Alphonso Deposition at 203:3-21; Edwards Deposition at 102:17-19.

SESAC's Failure to Disclose Accurately the Full Contents of Its Repertory

54. SESAC failed to disclose accurately, and in a timely fashion, the full contents of its repertory.[104] As a result, all proposed Class members were left with no ability to definitively determine whether certain musical works were in the SESAC repertory.[105]

55. Taken together, the foregoing anticompetitive conduct by SESAC, each part of which reinforced the other by closing off competition in the SESAC Repertory Performance Rights Market, left all Class members with no choice but to take the SESAC blanket license, on the terms and at the fees dictated by SESAC.

Common evidence demonstrates that proposed Class members were injured because SESAC eliminated price competition by offering a jointly-priced blanket license

56. There is evidence, common to the proposed Class as a whole, demonstrating that proposed Class members suffered injury throughout the proposed Class Period as a result of SESAC aggregating the performance rights of all SESAC affiliates and offering access to that collection of rights for a single fee that does not vary with the use of SESAC repertory music. By aggregating the performance rights of all SESAC affiliates, the blanket license eliminates competition among composers and music publishers affiliated with SESAC. In addition, this blanket licensing, when considered in combination with the other alleged anticompetitive conduct, allowed SESAC to secure fees for the blanket license that were well above those that would have prevailed were it not for the anticompetitive conduct.

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[104] Jaffe Merits Report, pp. 54, 59.
[105] Jaffe Merits Report, pp. 54, 59. See also, Complaint, ¶¶14-15, 29, 32.

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57. In a market in which SESAC affiliates compete with each other, the proposed Class members could secure performance rights to at least some of their performances of SESAC repertory music via direct and source licenses. This is particularly true of locally produced programming, in which stations for years have secured direct licenses from composers under more competitive circumstances. As a result of collectively licensing all of the works in the SESAC repertory for a fee that does not vary, SESAC effectively eliminated any incentive for a local station to secure performance rights to a work in the SESAC repertory, as to do so only would have resulted in the station paying twice for those rights – one directly to the composer and then again to SESAC as part of the blanket license fee.

58. As discussed above, ASCAP and BMI's historic collective licensing practices have been the subject of civil and criminal antitrust lawsuits brought by the DOJ.[106] For example, the complaint filed by the DOJ against ASCAP in 1941 alleged that "ASCAP's blanket license was an illegal restraint of trade under § 1 of the Sherman Act, eliminating competition among ASCAP's member-affiliates and allowing them to fix prices for their music."[107] The cases filed against ASCAP and BMI have resulted in Consent Decrees that mitigate, to some extent, the anticompetitive effects of ASCAP and BMI's blanket licensing practices.

59. The requirements imposed by the Consent Decrees provide alternatives to the blanket license that open the door to at least some degree of competition between the rightsholders affiliated with ASCAP and BMI, respectively.[108] With this freedom from constraints like those imposed on ASCAP and BMI, SESAC has engaged in anticompetitive conduct that has

[106] Motion for Summary Judgment Opinion, pp. 22-25.
[107] Motion for Summary Judgment Opinion, p. 22.
[108] *United States v. ASCAP (In re Application of Buffalo Broad. Co.)*, Civ. No. 13-95 (WCC) (MHD), 1993 WL 60687, at *54 (S.D.N.Y. Mar. 1, 1993).

eliminated all viable economic alternatives to the jointly-priced blanket license and has effectively shut down all competition among SESAC affiliates in the relevant market. As a result, local stations have been required to obtain a blanket license priced at levels that are well above those that would have emerged without the alleged anticompetitive conduct.

Common evidence demonstrates that proposed Class members were injured because SESAC entered into supplemental agreements with key affiliates with music in local television programming

60. There is evidence, common to the proposed Class as a whole, demonstrating that SESAC's supplemental agreements with key affiliates,[109] who owned the rights to a large share of SESAC repertory music embedded in local television programming, effectively prevented these rightsholders from entering into direct licensing agreements with the proposed Class members. The existence of these supplemental agreements together with the other alleged anticompetitive conduct resulted in injury to proposed Class members in that they would have been unable to substitute away from the blanket license which was priced at an inflated level.

61. SESAC acquires the right to license public performances of its affiliates' music through standard affiliation agreements.[110] By themselves, these standard agreements do not restrict an affiliate's ability to enter into direct or source licenses, nor do they dictate the terms of those licenses.[111] In addition to the standard affiliation agreement, SESAC offered several "key affiliates" a large advance or guarantee in exchange for their participation in a supplemental

[109] "Key affiliates" refers to SESAC affiliates who owned a large share of the music contained in local television news and programming.
[110] Motion for Summary Judgment Opinion, p. 14.
[111] Motion for Summary Judgment Opinion, p. 14.

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agreement that imposed more severe restrictions on those affiliates.[112] Together, between 2008 and 2011, the key affiliates that entered into these restrictive supplemental agreements accounted for between 43 and 50 percent of the royalties distributed by SESAC for performances on local television.[113]

62. As discussed in greater detail in the Jaffe Merits Report, there were a variety of means by which SESAC restricted these affiliates from entering into direct licenses, but all had the effect of ensuring that none of these affiliates would license their public performance rights through any means other than through the SESAC blanket license.[114] I have not seen any evidence which causes me to question his conclusions concerning these direct license restrictions.

63. As discussed above, the ASCAP and BMI Consent Decrees prohibit those PROs from entering into exclusive agreements with their affiliates, ensuring that those affiliates can enter into direct and source licenses with local stations and program producers.[115] In contrast, SESAC limits local stations' ability to obtain direct licenses from the key affiliates subject to SESAC's supplemental agreements. The economic effect of SESAC's supplemental agreements on proposed Class members is to limit competition with SESAC's blanket license, allowing SESAC to charge inflated fees for its blanket license.[116]

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[112] "My understanding is that there is a form agreement for all affiliates and a supplemental agreement if the affiliate is one of the more heavy hitters." See SESAC-0795266.
[113] These affiliates were Stephen Arnold, Jeff Beal, Danny Lux, Jonathan Wolff, Michael Egizi, and Robert De Marco. See Jaffe Merits Report, Appendix E.
[114] Jaffe Merits Report, pp. 68-73.
[115] See ASCAP Consent Decree at § IV (B); BMI Consent Decree at § VI. See also, Jaffe Merits Report, p. 24; Motion for Summary Judgment Opinion, p. 1.
[116] In his report, Dr. Jaffe also analyzes the impact of these supplemental agreements and concludes that, "[t]he clear economic intent and effect of these provisions is to fix the price of a direct license with the result of preventing and competition between SESAC and direct licensing." Jaffe Merits Report, p.69.

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64. Evidence produced as part of this litigation demonstrates that SESAC and several of its key affiliates were well aware that these supplemental agreements effectively prevented competition with the SESAC blanket license. For example, in an email to two SESAC employees, Mike Tolleson, the attorney for Stephen Arnold, one of SESAC's key affiliates, writes, "[s]tations are being told that SESAC does not have exclusive rights to works by affiliated composers and that they can seek a license directly from the publisher. However, paragraph 7 of the proposed agreement with S.A. outlines a procedure requiring S.A. to refer the station back to SESAC […] it says if SESAC and the Station cannot agree S.A. may issue a direct license. But, we know that he will not issue a license because of the penalty clauses contained in 7.B."[117]

65. At his deposition, Mike Tolleson stated that Stephen Arnold's supplemental agreement with SESAC included "limitations on being able to direct license to stations," which was something he and Mr. Arnold felt they were "limited, prohibited from doing." When asked to recall a particular agreement Mr. Tolleson testified that "stations were wanting to make various business arrangements and [Stephen Arnold] was restricted from doing that as a result of the terms of the contract."[118]

66. Further evidence I have reviewed, which is common to the proposed Class as a whole, makes clear that key affiliates were aware of the anticompetitive effects of the direct licensing restrictions contained in their supplemental agreements with SESAC. For example, in an email to Stephen Arnold, Bill Smothermon (a CPA at Brosowske Mares Smothermon & Co. PC) writes, "[t]he basic SESAC contract makes it clear that you as a writer and publisher can issue

[117] SESAC-0324250.
[118] Deposition of Mike Tolleson, dated January 15, 2013 at 44:2-6, 44:13-17.

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non-exclusive direct licenses. It is in the supplemental agreement that Dennis [Lord] has attempted to restrict this right by adding provisions and procedures designed to discourage you from doing it. I think Dennis has worked hard to 'artfully' draw this language in a way designed to avoid an anti-trust violation."[119]

67. Stephen Arnold himself acknowledged the implications these supplemental agreements have for proposed Class members seeking alternatives to SESAC's blanket license. In an email to SESAC employee Stephen Swid, Stephen Arnold states, "[i]n my current agreement with SESAC, there is a $500,000 penalty if I execute a Direct License with a client-station. I agreed to that condition and I respect it, knowing it is in everyone's best interest to keep my client-stations on a Blanket License."[120] As a matter of economics, the blanket license could not have been in the best interests of both the local television stations and SESAC and its key affiliates. If they were truly in the "best interest" of all of the parties, there would have been no reason for SESAC and the key affiliates to enter into the supplemental agreements. Rather, the supplemental agreements were in the best interests of SESAC and key affiliates because they allowed them to foreclose meaningful competition to the SESAC blanket license.

68. There is also evidence which makes it clear that SESAC knew that the supplemental agreements with key affiliates created a competitive advantage for SESAC and key affiliates over local television stations such as proposed Class members. In an email to artist Joel Simon discussing a SESAC supplemental agreement, Donald Jasko, who was representing Joel Simon at the time, wrote the following:

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[119] SAM0410.
[120] SAM0241.

> SESAC seems determined to discourage as much as possible its affiliates doing direct or source licenses with broadcasters (thereby cutting SESAC out of the licensing process). As you know, ASCAP and BMI are required by their consent decrees to be absolutely neutral in allowing their members/affiliates to direct- or source-license. But since SESAC is a for-profit company not governed by a consent decree, the same rules do not apply.[121]

69. All of the aforementioned evidence, which is common to the proposed Class as a whole, establishes that SESAC's supplemental agreements with key affiliates eliminated the ability of proposed Class members to obtain a direct license with these affiliates, who collectively account for a large portion of the local television royalties distributed by SESAC.[122] The common evidence discussed in this section demonstrates that SESAC's supplemental agreements with key affiliates, taken together with all the other alleged anticompetitive conduct, injured proposed Class members by allowing SESAC to set its blanket license fees above the level that would have prevailed in the absence of the anticompetitive conduct.[123]

Common evidence demonstrates that proposed Class members were injured as a result of SESAC's modifications to the per-program license

70. There is evidence, common to the proposed Class as a whole, demonstrating that proposed Class members were injured as a result of the changes made to SESAC's PPL after 2007 as proposed Class members were left without an economically viable alternative to the SESAC blanket license during the proposed Class Period. In contrast to the licenses negotiated

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[121] DIGITAL0008864.
[122] Jaffe Merits Report, Appendix E.
[123] I have reviewed the Court's opinion in regards to SESAC's use of supplemental agreements with key affiliates. In its Motion for Summary Judgment Opinion, the Court states that "those agreements effectively eliminated direct licensing as a means by which stations could license these affiliates' music. A finder of fact could reasonably conclude that these affiliates entered into these agreements with SESAC with the intention of insulating SESAC's blanket license product from competition." Motion for Summary Judgment, pp. 20-21.

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during 2005-2007 period,[124] SESAC was not obligated to offer a PPL with terms determined by an arbitration panel for new or renegotiated licenses beginning in 2008, and was free to set the license terms for the PPL arbitrarily so as to push proposed Class members onto its preferred form of license – the blanket license. SESAC's modified PPL terms effectively increased the cost to local stations of entering into per-program licensing agreements and removed the PPL as a viable economic alternative to SESAC's blanket license. As noted above, this ability to effectively eliminate the PPL as a viable alternative to the blanket license stands in stark contrast to the requirements imposed on ASCAP and BMI by their Consent Decrees which require those PROs to offer PPLs that serve as genuine alternatives to the blanket license.[125] These modifications included (among others) increased administrative fees, increased charges for incidental and ambient music, and a higher default percentage multiplier applied for programs containing unidentified music.

71. As noted above, the terms of SESAC's PPLs for the 2005 to 2007 period were set by an arbitration panel that designed those terms to make the PPL an economically viable alternative to the blanket license.[126] Specifically, under the terms set by the arbitrators, local stations could reduce their licensing fees by electing a PPL and then "clearing" programming of SESAC repertory music by either entering into direct or source licenses for the SESAC repertory music embedded in these programs or removing all SESAC repertory music from the programs. Local stations' use of PPLs led to license fee savings of $575,000, nearly $1 million, and

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[124] Prior to the 2005 to 2007 period, SESAC did not offer a PPL. See Collins Deposition II at 13:16-24.
[125] With a viable PPL option, approximately 450 local television stations take advantage of this alternative to the blanket license offered by ASCAP and BMI, resulting in savings of approximately 45- 55% off their blanket license fees. See Jaffe Merits Report, p. 29.
[126] Collins Deposition II at 19:4-9. See also, Jaffe Merits Report, p. 73.

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approximately $2 million in each year from 2005 to 2007, respectively.[127] Record evidence, which is common to the proposed Class as a whole, indicates that SESAC considered these reduced licensing fees as a "revenue shortfall" and that it sought to eliminate that "shortfall" through a series of modifications made to the PPL contract terms beginning in 2008.[128]

72. Record evidence, all of which is common to the proposed Class as a whole, makes plain that the alterations to SESAC's PPL had the effect of eliminating the PPL as an alternative to the blanket license. For example, a 2007 MRI letter addressed to local stations states that "MRI cannot recommend the 2008-2012 SESAC Per Program License Agreement for your station. We have come to this conclusion, in part because of the following critical differences between this [PPL] and the current draft offered for 2005-2007."[129] Among the "critical differences" listed in the letter are the changes to the formula used to calculate the fee, the higher weight percentage applied for programs containing unidentified music, and the increase in the administrative fee.[130] The letter further states that "SESAC will have the right to change the method of calculating the [PPL] [f]ee at any time, which may pose a critical hindrance to a station's ability to enter into the long term license agreements with music providers that are often necessary to make a per program license viable."[131] Additional class-wide evidence of the impact these modifications had on local stations includes:

a. A 2008 email from Doug Lowe (Meredith Corp.) to Bill Lee (SESAC) stating "because you have increased the per program multiplier [...], the per program license would cost

[127] SESAC-0373759 – 61. See also, *Meredith Corporation, et al., v. SESAC, LLC, et al.*, Case No. 09 Civ. 9177 (PAE) (S.D.N.Y), Plaintiffs' Local Rule 56.1 Supplemental Statement of Undisputed Facts, filed August 2, 2013 (hereafter "Plaintiffs' 56.1 Supplemental Statement") at ¶250.
[128] ANALYSIS0001941; Deposition of Dennis Lord, dated July 27, 2012 (hereafter "Lord Deposition I") at 272-273; Deposition of Dennis Lord, dated December 14, 2012 (hereafter "Lord Deposition II") at 16-17.
[129] MRI00000858.
[130] MRI00000858.
[131] MRI00000858.

us more than the blanket license, so it has no value to us. KPHO would be paying more under your proposed per program formula. So yes, you are offering a per program license, but if it doesn't reduce fees for using little SESAC music, it has no value to us."[132]

b. A 2008 letter from William Duhamel (Duhamel Broadcasting Enterprises) to Maxine Edwards (SESAC) stating "[c]urrently we believe that we have only two non-network programs that may have SESAC music which we may not be carrying for the full five years of the proposed SESAC Blanket License Agreement. We would prefer to use a Per Program License Agreement, but the terms imposed by SESAC are both onerous and operationally cumbersome for a small market TV station."[133]

c. A 2008 letter from Dunia Shive (Belo Corp.) to Pat Collins stating "SESAC imposed much of this unreasonable fee increase by eliminating what had been a reasonably viable per program license option, and replacing it with a sham, under which it is virtually impossible to achieve any benefit. [T]hese are unfair agreements that we signed because we had no reasonable alternative."[134]

73. The impact of SESAC's modifications to the terms of its per-program licensing agreements can also be observed through the change in the number of local stations entering into these agreements. In 2007, 248 local stations took advantage of the cost savings afforded by the PPL.[135] In comparison, after the changes were made to the contract terms for these licenses for the 2008 to 2012 period, not a single station entered into a per-program licensing agreement.[136]

74. Evidence from local stations, third-parties, and SESAC itself supports the fact that the modifications made to SESAC's PPLs in 2008 were intended to eliminate the PPL as a viable

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[132] SESAC-0287876.
[133] SESAC-0291542.
[134] SESAC-0302688.
[135] SESAC-0373759 – 61. See also, Plaintiffs' 56.1 Supplemental Statement at ¶250.
[136] Alphonso Deposition at 198:2-203:21; Edwards Deposition at 102:17-22; Reynolds Deposition at 35:19-36:17, 56:10-57:6, 161:14-162:23; MERE00046434; SESAC-0923358 – 438; SESAC-0912944 – 56; MERE00007618 – 619; MERE00046573 – 618; SESAC-0858562; SESAC-0373759 – 61; SESAC-0287870; SESAC-0287876; SESAC-0291542; SESAC-0291587; SESAC-0302688; SESAC-0663151; TMLC00063423; TMLC00053239; SESAC-0287856 – 872. See also, *Meredith Corporation, et al., v. SESAC, LLC, et al.,* Case No. 09 Civ. 9177 (PAE) (S.D.N.Y), Plaintiffs' Response to Defendant's Statement of Facts Pursuant to Local Rule 56.1, filed August 2, 2013 at ¶37; Plaintiffs' 56.1 Supplemental Statement at ¶¶193, 250, 261, 268–69; *Meredith Corporation, et al., v. SESAC, LLC, et al.,* Case No. 09 Civ. 9177 (PAE) (S.D.N.Y), Transcript of October 7, 2013 Oral Argument (Dtk. 138), p. 27; Motion for Summary Judgment Opinion, p. 55; Jaffe Merits Report, pp. 50, 74-79.

economic alternative to the blanket license. Taken together with the other alleged anticompetitive conduct, this means that all, or nearly all, proposed Class members were injured as a result of the alleged anticompetitive conduct in that they paid more for the blanket license to the SESAC repertory performance rights than they would have paid had SESAC not engaged in the alleged anticompetitive conduct.

Common evidence demonstrates that proposed Class members were injured because SESAC failed to disclose accurately the full contents of its repertory

75. Evidence I have reviewed, all of which is common to the proposed Class as a whole, demonstrates that SESAC took deliberate steps to limit local stations' ability to obtain a complete, up-to-date list of all of the compositions in SESAC's repertory. I have reviewed evidence common to the proposed Class as a whole demonstrating that SESAC accomplished this by limiting the number of searches that a station could perform on SESAC's online repertory database. For example, at his deposition, Michael Eck (SESAC's Vice-President and Chief Information Officer) testified that a maximum of 100 searches can be performed in SESAC's online repertory each day.[137] The only way a station could get a list of the complete SESAC repertory was to pay for a paper copy of the repertory.[138] But, as Pat Collins testified, even if a station were willing to pay for the paper copy of the repertory, SESAC's daily updates to its repertory rendered a paper version of the list obsolete almost immediately.[139]

[137] Deposition of Michael Eck, dated July 25, 2012 at 22:18-23.
[138] SESAC-0558007.
[139] Collins Deposition I at 36:10-17.

76. SESAC's failure to accurately disclose the full contents of its repertory left proposed Class members with no way of knowing definitively whether they were performing music in SESAC's repertory.

Common evidence demonstrates that SESAC's anticompetitive conduct enabled SESAC to secure artificially inflated blanket license fees from Class members

77. Based on the evidence discussed in this section, which is common to the Class as a whole, as well as my research and training in economics, I have concluded that, taken together, the following anticompetitive actions allowed SESAC to monopolize and maintain its monopoly in the relevant market: (i) using a jointly-priced blanket license; (ii) signing supplemental agreements with key affiliates with music in local television programming; (iii) making changes to the PPL formula to render it economically unviable; and (iv) failing to disclose accurately the full contents of its repertory. The combined effect of this conduct has been to eliminate all competition to SESAC's blanket license in the SESAC Repertory Performance Rights Market. As a result, proposed Class members have had no choice but to take a SESAC blanket license, have been denied access to economically-viable alternatives to SESAC's blanket license, have been precluded from entering into direct and source licenses with SESAC affiliates, and have paid license fees that are well above the level of fees that would have prevailed in the absence of the alleged anticompetitive conduct.

IV. Damages Suffered by Class Members May Be Measured Using Standard, Formulaic Methods

78. I have been asked by Counsel for Plaintiffs to determine if a standard and reliable economic methodology exists that would allow me to measure damages suffered by proposed Class members as a result of the alleged anticompetitive conduct on a class-wide basis without the need to engage in an individualized inquiry. I have identified a methodology, based on standard and widely-accepted economic tools, which may be used to measure the damages suffered by Class members as a direct result of SESAC's alleged anticompetitive conduct on a class-wide basis without individualized inquiry.

79. As discussed in the previous section, the combined effect of the anticompetitive conduct of SESAC and its key affiliates has been to eliminate competition in the SESAC Repertory Performance Rights Market. As a result, proposed Class members have paid license fee rates above the level of fees that would have prevailed in a but-for world, that is a world absent the anticompetitive conduct.

80. Damages to proposed Class members can be calculated as the difference between the total fees Class members paid for SESAC licenses in the actual world during the Class Period and the total license fees Class members would have paid for those licenses in the but-for world. In the but-for world, Class members would have paid fees for SESAC's blanket license that were priced at a more competitive level and that would have prevailed in the absence of the alleged anticompetitive conduct. Also, in the but-for world, proposed Class members would have had access to a PPL that served as an economically viable alternative to the blanket license. I discuss my proposed methodology for calculating the damages suffered by proposed Class members in

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the form of higher fees paid for SESAC's blanket license and the absence of an economically viable alternative in greater detail below.

Damages arising from the artificially inflated fees for the blanket license

81. The first step to calculating the damages suffered by proposed Class members in the form of artificially inflated fees paid for SESAC's blanket license is to estimate the prices proposed Class members would have paid for the blanket license in the but-for world. In other words, the first step is to estimate the blanket license fees that proposed Class members would have paid in a more competitive market in which the alleged anticompetitive conduct would not have occurred.

82. As discussed above, SESAC elected to have a panel of independent, third-party arbitrators determine the licensing fees for the period 2005-2007.[140] I understand that SESAC and the TMLC agreed that the arbitrators should follow the "reasonable fee" standard used by the ASCAP and BMI Rate Courts.[141] This standard calls for the determination of a license fee that would emerge in a more competitive market.[142] Therefore, the blanket license fees set by the arbitration panel can appropriately be used as a benchmark to determine the fees in the but-for world.

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[140] AAA Award.
[141] TMLC Post-Arbitration Brief, pp. 28-29; SESAC Post-Trial Brief, pp. 4-5.
[142] *ASCAP v. Showtime/The Movie Channel, Inc.*, 912 F.2d 563, 576 (2d Cir. 1990) (the Rate Court's task is to "define a rate or range of rates that approximate the rate that would be set in a competitive market."); *United States v. ASCAP (In re Applications of RealNetworks, Inc., Yahoo! Inc.)*, 627 F.3d 64, 76 (2d Cir. 2010) ("fundamental to the concept of 'reasonableness' is a determination of what an applicant would pay in a competitive market").

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83. The arbitrators set the industry-wide blanket license fees at $16 million for 2005 and allowed for a 10 percent annual fee increase for each of the years 2006 and 2007.[143] The industry-wide fee was allocated to individual local stations using a methodology developed by the TMLC. This methodology included accounting for the use of SESAC music by the stations.[144] The arbitrators approved the use of the TMLC's allocation methodology to determine the fees to be paid by each local station.[145]

84. In the but-for world, I assume that the TMLC would have continued to negotiate an industry-wide blanket license fee on behalf of all local stations. I describe below two scenarios under which the blanket license fee could have been calculated after 2007. To calculate damages to individual local stations, I have relied on the 2007 TMLC allocation formula.[146] This approach takes into account changes in the local stations' use of SESAC music between 2005 and 2007.

85. The arbitration panel determined the industry-wide blanket license fees in 2006 and relied on data that was available only through the end of 2005.[147] As a result, the arbitrators did not have access to information regarding local stations' use of SESAC's music after 2005.[148] To properly take into account changes in local stations' use of SESAC's music from 2005 to 2007, I used the 2005 industry-wide blanket license fees apportioned to each local station using TMLC's

[143] AAA Award, p. 3. This resulted in industry-wide blanket license fees of $17.6 million in 2006 and $19.3 million in 2007.
[144] WEIG00000124.
[145] TMLC00151762.
[146] As discussed above, after 2007 SESAC stopped negotiating industry-wide blanket license fees with the TMLC. As a result, 2007 is the last year for which the TMLC allocation formula is available.
[147] TMLC00151762.
[148] In my calculations, I adopt the measure of public performances used by Dr. Jaffe. The number of public performances corresponding to the music in a particular program is "the product of the total music duration (measured in minutes) times the number of people who viewed the program." This measure can be used to aggregate the total number of public performances for a given PRO and to analyze changes of music usage on local television over time. Jaffe Merits Report, pp.39-41

allocation formula for 2007 as the base value to determine the local stations' blanket license fee in the but-for world during the period from January 2008 to June 2014.

86. It is reasonable to assume that the value of the industry-wide blanket license is proportional to the local stations' use of SESAC's music. Therefore, changes in the industry-wide blanket license fee over time can be thought of in terms of the local stations' use of SESAC music measured by the number of public performances of SESAC's music. One would expect the blanket license fees to increase over time if the number of public performances of SESAC music was increasing. On the contrary, if the local stations' use of SESAC music was declining over time, it would be reasonable to expect a reduction in the blanket license fee over time. The evidence I have reviewed indicates that the number of performances of SESAC music declined from 2005 to 2007.[149]

87. Table 1 below shows ASCAP and BMI's industry-wide blanket license fees negotiated with the TMLC for the period 2004-2013. I understand that the increase in ASCAP's blanket license fees from 2005 to 2009 is the result of a cost-of-living adjustment factor that was part of the 2004 agreement between ASCAP and the TMLC.[150] The cost-of-living adjustment was eliminated as part of the 2010-2016 agreement between ASCAP and the TMLC.[151] The 2013 agreement between BMI and TMLC sets the blanket license fees at $85.6 million for the period

[149] SESAC estimated that its share declined from 10.7% in 2005 to approximately 8.4% in 2007. See SESAC-0661157;
MERE00041787-96; TMLC00146866. Dr. Jaffe also concludes that "Based on the contemporaneous data from the TMLC industry-wide music use study, total performances of SESAC music on local television declined from 2005 to 2007." Jaffe Merits Report, pp. 44.
[150] Letter from Charles Sennet (TMLC Chairman) to John A. LoFrumento (ASCAP Managing Director and COO), Re: ASCAP – Local Television Station Blanket and Per Program Licenses, November 2004.
[151] See ASCAP, ASCAP and TMLC Local Commercial TV Station Agreement, available online at http://www.ascap.com/licensing/types/television.aspx. See also, Letter from TMLC to Local Television Stations, "Settlement with ASCAP for 2010-2016," dated June 7, 2012.

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2005-2012 and $78.7 for the period 2013-17.[152] As shown below, the total industry-wide blanket license fees for ASCAP and BMI in 2013 are slightly lower than the fees in 2007 and significantly lower than the fees in 2004.

Table 1
ASCAP and BMI Industry Wide Fees
2004-2013

	ASCAP	BMI	Total
2004	$97,008,333	$85,000,000	$182,008,333
2005	$85,000,000	$85,558,333	$170,558,333
2006	$87,550,000	$85,558,333	$173,108,333
2007	$90,176,500	$85,558,333	$175,734,833
2008	$91,980,030	$85,558,333	$177,538,363
2009	$94,740,000	$85,558,333	$180,298,333
2010	$94,300,000	$85,558,333	$179,858,333
2011	$94,300,000	$85,558,333	$179,858,333
2012	$91,500,000	$85,558,333	$177,058,333
2013	$91,500,000	$78,650,000	$170,150,000

Source: Jaffe Merits Report, Figure 2.

88. Using the experience of ASCAP and BMI and the resulting industry-wide blanket license fees for the period 2004-2013 shown above, I have calculated damages under two scenarios. The first scenario assumes that the more competitive industry-wide blanket license fee set in 2005 by the arbitration panel would have been constant for the 2008-2014 period. I apportioned this industry-wide blanket license fee for each local station using TMLC's allocation formula for 2007. The second scenario starts with the 2005 blanket license fee apportioned to each station adjusted to reflect the changes in the Consumer Price Index (CPI) for each year after 2005 and

[152] Texas Association of Broadcasters, "TMLC Announces Reduced Performing Rights Fees" dated February 13, 2012), available online at https://www.tab.org/news-and-events/news/tmlc-update.

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the overall proportional change in the number of public performances of SESAC music in local television.[153]

89. The damages arising from the elevation of the blanket license fee for Plaintiff stations can be calculated under these two scenarios by subtracting blanket license fees for these stations in the but-for world from the blanket license fees paid by the Plaintiff stations in the actual world.[154] The estimated damages are reasonable. The resulting damages suffered by the 31 Plaintiff stations due to the artificially inflated SESAC blanket license fee paid during the period from January 2008 to June 2014 range between $1.4 and $1.5 million (See Table 2). The common methodology used to calculate damages related to the artificially inflated fees for the blanket license for the named Plaintiff stations is the same as for the proposed Class members.

Table 2
Named Plaintiff Blanket Damages
2008 through June 2014

	2008	2009	2010	2011	2012	2013	Jan - June 2014	Total
Method 1 Damages	$102,512	$149,080	$197,320	$249,053	$303,505	$303,505	$150,505	$1,455,478
Percent of But-For Blanket Fee	20%	29%	38%	48%	59%	59%	59%	
Method 2 Damages	$115,298	$123,489	$184,074	$240,204	$283,596	$275,530	$132,032	$1,354,222
Percent of But-For Blanket Fee	23%	23%	35%	46%	53%	50%	48%	

90. I have estimated that the damages suffered by proposed Class members as a result of the elevation of the blanket license fee during the period from January 2008 to June 2014 for all the

[153] I have relied on the estimates of the total number of public performances calculated by Dr. Jaffe to make this adjustment. Dr. Jaffe based his calculation on data from TMLC's music use survey. See Jaffe Merits Report, Appendix F.
[154] The blanket license fees in the actual world take into account any discounts received by the local station.

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Class members for which I have complete license fee information range between $37.2 million and $39.8 million (see Table 3).[155]

Table 3
Blanket Damages For Stations With Complete Licensing Information
2008 through June 2014

	2008	2009	2010	2011	2012	2013	Jan - June 2014	Total
Method 1 Damages	$3,234,145	$4,300,254	$5,464,150	$6,715,541	$8,054,807	$8,054,807	$3,994,301	$39,818,004
Percent of But-For Blanket Fee	24%	32%	40%	49%	59%	59%	59%	
Method 2 Damages	$3,569,209	$3,629,670	$5,117,067	$6,483,658	$7,533,112	$7,321,755	$3,510,222	$37,164,694
Percent of But-For Blanket Fee	27%	25%	37%	47%	53%	51%	49%	

Damages arising from the lack of an economically appropriate per-program license

91. As discussed above, 248 local stations took advantage of the cost savings afforded by the PPL in 2007.[156] In contrast, after the above-discussed changes were made to the PPL terms, not a single station entered into a per-program licensing.[157]

92. Out of the 248 local stations that took a PPL in 2007, 21 Plaintiff stations entered into a per-program license with SESAC. As a group, these Plaintiff stations saved 43 percent of their total blanket license fees as a result of taking the PPL. In my analysis, I assume that in the but-for world, proposed Class members would have been able to realize similar savings because an economically viable PPL would have been available to them during the proposed Class Period.

93. To calculate the damages related to the percentage savings that Plaintiff stations would have enjoyed after 2007, I apply the percentage savings in 2007 (43 percent) to the aggregate but-for blanket license fees for these 21 stations. The resulting damages related to the lack of an economically viable per-program license for these 21 Plaintiff stations during the period from

[155] These two approaches can also be applied to the stations for which I do not have complete license fee information if the information becomes available at a later date. As indicated above, this analysis excludes the stations owned by the ABC, CBS, and NBC television networks which are not part of the Class.
[156] SESAC-0373759 – 61. See also, Plaintiffs' 56.1 Supplemental Statement at ¶250.
[157] Alphonso Deposition at 198:2-203:21; Edwards Deposition at 102:17-22.

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January 2008 to June 2014 range between $883,508 and $910,104 (See Table 4). The common methodology used to calculate damages arising from the lack of an economically appropriate PPL for the named Plaintiff stations is the same methodology used to calculate such damages for the proposed Class members.

Table 4
Named Plaintiff But-For Per Program Savings
2008 through June 2014

	2008	2009	2010	2011	2012	2013	Jan - June 2014	Total
Method 1	$136,010	$136,010	$136,010	$136,010	$136,010	$136,010	$67,446	$883,508
Method 2	$132,652	$142,732	$139,489	$138,335	$141,240	$143,358	$72,298	$910,104

94. I have also estimated, conservatively, that the damages related to the lack of an economically viable per-program license and suffered by proposed Class members during the period from January 2008 to June 2014 for all the Class members for which I have complete license fee data range between $7.3 million and $7.6 million (See Table 5).[158] This estimate is conservative as it is likely that additional stations would have switched to a PPL in the period 2008-2014. This is consistent with the observed trend in the number of stations that took SESAC's PPL each year from 2005 to 2007 (180 in 2005, 185 in 2006, and 248 in 2007).

Table 5
But-For Per Program Savings For Stations With Complete Licensing Information
2008 through June 2014

	2008	2009	2010	2011	2012	2013	Jan - June 2014	Total
Method 1	$1,130,608	$1,130,608	$1,130,608	$1,130,608	$1,130,608	$1,130,608	$560,658	$7,344,305
Method 2	$1,102,689	$1,186,484	$1,159,528	$1,149,929	$1,174,078	$1,191,689	$600,993	$7,565,391

[158] These two approaches can also be applied to the stations for which I do not have complete license fee information if the information becomes available at a later date.

95. As described in this section, there is a standard, reliable and formulaic method that allows me to measure damages related to the elevation of the blanket license fees and the absence of an economically viable PPL suffered by proposed Class members as a result of the alleged anticompetitive conduct on a class-wide basis without resorting to individualized inquiry.

V. Conclusions

96. Based on my analyses and research into the market for licenses to publicly perform copyrighted musical works in the SESAC repertory, including the documents and materials I have reviewed to date, as well as my training and experience in economics, I have concluded that class-wide evidence and methods are available to demonstrate that the alleged anticompetitive conduct, taken together, artificially inflated the prices for licenses to publicly perform copyrighted music in the SESAC repertory paid by all, or nearly all, proposed Class members above the level that would have prevailed in the absence of the alleged anticompetitive conduct.

97. I have also determined that there is a standard, reliable and common method that allows me to measure damages suffered by proposed Class members as a result of the alleged anticompetitive conduct on a class-wide basis without resorting to individualized inquiry.

98. I have estimated that the damages suffered by local stations during the period January, 2008 – June, 2014 as a result of the elevation of the blanket license fee for all the stations for which I have complete license fee information range between $37.2 million and $39.8 million. I also conservatively estimated that the damages related to the lack of an economically viable per-program license over the same period for all the stations for which I have complete license fee data range between $7.3 million and $7.6 million.

HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

Russell L Lamb, PhD

Russell L. Lamb, Ph. D.

July 10, 2014

Appendix A

Russell Lamb, Ph.D.

Senior Vice President
Nathan Associates Inc.
Phone: (703) 615-3474
Email: rlamb@nathaninc.com

Professional Summary

Russell Lamb is an expert in antitrust economics and has testified concerning antitrust liability, impact, and damages in U.S. District Court. He has an extensive background in applied econometrics and has developed econometric models to measure damages in a number of matters involving allegations of horizontal price fixing. He has provided expert testimony in State and Federal Courts in the United States and in Canada on a range of issues including class-certification and economic damages in antitrust, RICO and consumer fraud matters. In addition, he has provided expert advice to client attorneys at all levels of the litigation. Dr. Lamb has an extensive background in the analysis of domestic and international agricultural markets, and has authored more than 50 articles in peer-reviewed economics journals, trade press, and major newspapers.

Dr. Lamb's work has been cited by courts in certifying classes in the United States and Canada. For example, in *In re Aftermarket Automotive Lighting Products Antitrust Litigation*, the court held that his analysis provided "a sufficient basis from which to conclude that Plaintiffs would adduce common proof concerning the effect of Defendants' alleged price-fixing conspiracy on prices class members paid." In certifying the Class in *In re: Titanium Dioxide Antitrust Litigation*, the Court said, "This Court finds that Dr. Lamb's regression analysis accurately reflects the characteristics of the titanium dioxide industry, and the facts in this case." In the Canadian LCD Competition Act Class Action, the Court held that Dr. Lamb's analysis provided "evidence of a viable methodology for the determination of loss on a class-wide basis." In *In re: Puerto Rican Cabotage Litigation*, the Court held that "Dr. Lamb [had] set forth a reputable and workable model for determining damages as to individual class members." In certifying the class in *Clarke and Rebecca Wixon, et al. v. Wyndham Resort Development Corp., et al.*, the Court held that "Dr. Lamb [had] presented a plausible class-wide method of proof." In certifying the class in *Eugene Allan, et al., v. Realcomp II, Ltd., et al.*, the Court held that "the Plaintiffs have produced sufficient evidence that common proofs will yield a finding of class-wide damages that predominates over any specific individualized damages. The

Lamb Report and Lamb Reply are sufficient to establish this fact." Furthermore, Dr. Lamb was the Indirect Purchaser Plaintiffs' expert in the *In re: Polyurethane Foam Antitrust Litigation* matter, which was certified by the Court in April 2014.

With regard to agricultural economics, Dr. Lamb has a particular expertise in agricultural markets and has undertaken extensive original research and econometric analysis on markets for agricultural commodities. His articles on agricultural economics have been published in peer-reviewed journals, trade press, and major newspapers. Dr. Lamb regularly presents at conferences on topics including the state of the U.S. Economy and farm policy.

Prior to rejoining Nathan Associates, Dr. Lamb established the Arlington, VA office of Advanced Analytical Consulting Group where he served as a Principal, as well as the Washington, DC office of Econ One where he served as Managing Director and DC Office Head. In these positions, he developed and managed a practice of ten litigation professionals. He earlier served as an Assistant Professor of Agricultural Economics and faculty member of the Graduate Group in Economics at North Carolina State University and as an Economist and Senior Economist in the Federal Reserve System of the United States, at the Federal Reserve Board and the Federal Reserve Bank of Kansas City.

Dr. Lamb received his Ph.D. in Economics from the University of Pennsylvania.

Education

- Ph.D., Economics, University of Pennsylvania, 1994
- M.A., Economics, The University of Maryland, 1989
- B.A., Economics, The University Tennessee, 1987

Expert Testimony Offered

2014 *Janet Skold, et al., v. Intel Corporation, et al.*

- Superior Court of the State of California for the County of Santa Clara
- Case No. 1-05-CV-039231
- Expert Report, June 14, 2007
- Testified at deposition, August 31, 2007
- Testified at deposition, January 10, 2014
- Opinion concerning class certification issues
- Opinion concerning damages issues
- Retailed by Girard Gibbs LLP

2013 *William P. Elliott v. Delhaize America, Inc., d/b/a Food Lion, LLC*

- United States District Court Eastern District of Virginia Alexandria Division
- Civil Action No. 1:12-CV-01426-LO-TRJ
- Expert Report Concerning Damages, July 5, 2013
- Testified at deposition, September 16, 2013
- Opinion concerning damages
- Retained by EvansStarrett PLC

Charles Benson, et al. v. Dean Foods Company, et al.

- United States District Court Eastern District of Tennessee at Greenville
- No. 2:13-CV-00026
- Declaration, June 14, 2013
- Opinion concerning size of commerce at issue
- Retained by Gordon Ball Law Firm

In Re: Polyurethane Foam Antitrust Litigation

- United States District Court Northern District of Ohio Western Division
- MDL No. 2196
- Declaration, June 11, 2013
- Reply Declaration, October 23, 2013
- Trial Declaration, March 18, 2014
- Reply Trial Declaration, June 30, 2014
- Testified at deposition, August 20, 2013
- Testified at deposition, November 20, 2013
- Testified at class certification hearing, January 15, 2014
- Testified at deposition, April 14, 2014
- Opinion concerning class certification issues regarding indirect purchasers
- Retained by Miller Law LLC

Jabo's Pharmacy, Inc., et al. v. King Pharmaceuticals, Inc.

- In the Circuit Court for Cocke County, Tennessee
- No.: 31,973 (Class Action)
- Expert Affidavit, May 10, 2013
- Reply Affidavit, August 22, 2013
- Opinion concerning class certification issues
- Retained by Hausfeld LLP

In Re: Skelaxin (Metaxalone) Antitrust Litigation

- United States District Court Eastern District of Tennessee at Chattanooga
- Lead Case No.: 2:12-cv-4
- MDL Case No.: 1:12-md-2343

- Expert Declaration, May 6, 2013
- Reply Declaration, August 13, 2013
- Opinion concerning class certification issues for indirect purchaser for resale plaintiffs
- Retained by Hausfeld LLP

Amvac Chemical Corporation v. RedEagle International LLC

- Before the American Arbitration Association
- Case No.: 16 171 00285 11
- Testified at trial, April 10, 2013
- Retained by McKenna Long & Aldridge LLP

2012 *Thomas Boland, v. Consolidated Multiple Listing Service, Inc., et al.*

- United States District Court for the District of South Carolina
- Case No.: 3:09-1335-SB
- Expert Report, December 10, 2012
- Affidavit, March 15, 2013
- Testified at deposition, January 10, 2013
- Opinion concerning class certification
- Retained by Goldman Scarlato Karon & Penny, P.C.

David Osmun, et al., v. Cadbury Adams Canada Inc., et al.
Ontario Superior Court of Justice
Court File No.: 08-CV-347263PD2

Jacob Stuart Main, et al., v. Cadbury Schweppes Plc, et al.
In the Supreme Court of British Columbia
S078807 (Vancouver Registry)

Gaetan Roy v. Cadbury Adams Canada Inc., et al.
Canada Superior Court (Province of Quebec, District of Quebec)
No.: 200-06-000094-071

- Expert Report, September 24, 2012
- Opinion concerning pass-through
- Retained by Sutts, Strosberg, LLP

Eugene Allan, et al., v. Realcomp II, Ltd., et al.

- United States District Court for the Eastern District of Michigan Southern Division
- Case No.: 2:10-cv-14046
- Expert Report, August 1, 2012
- Reply Expert Report , October 26, 2012
- Testified at deposition, September 14, 2012
- Opinion concerning class certification and damages issues
- Retained by Goldman Scarlato Karon & Penny, P.C.

Nancy Jean Adams v. Apple, Inc., et al.

- Ontario Superior Court of Justice
- Court File No.: CV-12-17511
- Expert Report, July 12, 2012
- Opinion concerning class certification issues
- Retained by Sutts, Strosberg, LLP

Animal Science Products, Inc., et al., v. China National Metals & Minerals Import & Export Corporation, et al.

- United States District Court District of New Jersey
- Expert Affidavit, May 24, 2012
- Retained by Boies, Schiller & Flexner LLP

In Re: Titanium Dioxide Antitrust Litigation

- United States District Court of Maryland (Northern Division)
- Case No.: 10-cv-00318-RDB
- Expert Declaration, February 22, 2012
- Expert Rebuttal Declaration, July 24, 2012
- Expert Trial Report, October 1, 2012
- Trial Expert Rebuttal Report, February 18, 2013
- Testified at deposition, April 20, 2012
- Testified at deposition, August 6, 2012
- Testified at deposition, November 9, 2012
- Testified at deposition, March 5, 2013
- Opinion concerning class certification issues
- Opinion concerning merits and damages issues
- Retained by Gold Bennett Cera & Sidener LLP

2011 *Brokers' Services Marketing Group, LLC, et al., v. Cellco Partnership*

- United States District Court District of New Jersey
- Expert Report, October 14, 2011
- Retained by Hagens Berman LLP

Westminster Mutual Insurance Company, v. TYC Brother Industrial Co. Ltd., et al.

- Ontario Superior Court of Justice
- Court File No.: 62732
- Expert Report, September 14, 2011
- Opinion concerning class certification issues
- Retained by Siskinds LLP

CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V., v. The Bolivarian Republic of Venezuela

- Before the International Centre for Settlement of Investment Disputes ("ICSID")
- Expert Report, September 6, 2011 (with Dr. Juan F. Riveros, Ph.D.)
- Opinion concerning the value of the operating assets of CEMEX Venezuela
- Retained by Curtis, Mallet-Prevost, Colt & Mosle LLP

Henry Kahwaty, v. LECG, LLC and LECG Corporation

- Before PAX ADR
- Expert Report, August 22, 2011
- Opinion concerning damages arising from a breach of contract dispute
- Retained by Katz, Marshall & Banks, LLP

David Osmun, et al., v. Cadbury Adams Canada Inc., et al.

- Ontario Superior Court of Justice
- Court File No.: 08-CV-347263PD2
- Expert Report, August 12, 2011
- Opinion concerning class certification issues
- Retained by Sutts, Strosberg, LLP

Danny Lynn Electrical & Plumbing, et al., v. Veolia ES Solid Waste Southeast, Inc., et al.

- United States District Court, Middle District of Alabama, Northern Division
- Case No. 2:09cv192-MHT
- Expert Report, July 19, 2011
- Testified at deposition, August 2, 2011
- Retained by McCallum Methvin & Terrell, P.C.

Daesang Corporation against The NutraSweet Company, NutraSweet IP Holdings, Inc. and, Sweeteners Holdings Korea LTD.

- International Court of Arbitration International Chamber of Commerce
- Reference: 15 641 / VRO
- Written Testimony, May 31, 2011
- Testified at Tribunal Hearing, July 21, 2011
- Response to the opinions of Daesang's economic expert
- Retained by NutraSweet

Thomas L. Logue, et al., v. West Penn Multi-List, Inc. et al.

- United States District Court for the Western District of Pennsylvania
- Case No.: 2:10-cv-0451
- Expert Report, January 12, 2011
- Testified at deposition, January 26, 2011
- Opinion concerning class certification issues
- Retained by Goldman Scarlato & Karon, P.C.

2010 *In Re: Puerto Rican Cabotage Antitrust Litigation*

- United States District Court for the District of Puerto Rico
- Master Docket No. 08-md-1960 (DRD)
- Affidavit, October 28, 2010
- Affidavit, January 10, 2011
- Opinion concerning the total monetary value of an option in the settlement agreements with the defendants
- Opinion concerning the monetary value of an option elected by the plaintiffs in the settlement agreements with the defendants
- Retained by Grant & Eisenhofer, P.A.

In Re: Mercedes-Benz Tele Aid Contract Litigation

- United States District Court, District of New Jersey
- MDL No. 1914, Civ. No. 07-2720
- Expert Report, October 1, 2010
- Opinion concerning class-wide damages
- Retained by Lieff Cabraser Heimann & Bernstein, LLP

In Re: Aftermarket Automotive Lighting Products Antitrust Litigation

- United States District Court, Central District of California
- Case No. 09-ML-2007 GW (PJWx)
- Expert Report, September 24, 2010
- Expert Reply Report, June 24, 2011
- Expert Trial Report, March 29, 2013
- Expert Trial Rebuttal Report, June 7, 2013
- Expert Declaration, July 8, 2013
- Testified at deposition, April 19, 2011
- Testified at deposition, April 24, 2013
- Testified at class certification hearing, July 25, 2011
- Opinion concerning class certification issues and class-wide damages
- Retained by Stueve Siegel Hanson, LLP

In Re: Air Cargo Shipping Services Antitrust Litigation

- United States District Court for the Eastern District of New York
- Master File No. 06-MD-1775 (CBA) (VVP)
- Expert Declaration, March 29, 2010
- Opinion concerning the use of multiple regression analysis in antitrust contexts and the sufficiency of defendant's data production
- Retained by Levin, Fishbein, Sedran & Berman

Louise Knowles c.o.b. as Special Events Marketing v. Arctic Glacier Inc., Keith E. Corbin and Reddy Ice Holdings, Inc.

- Ontario Superior Court of Justice
- Court File No. CV 10-14457
- Expert Report, March 19, 2010

- Reply Expert Report, November 30, 2010
- Testified at deposition, December 15, 2010
- Opinion concerning class certification issues
- Retained by Sutts, Strosberg LLP

Nathan Nygren, Stephen Shifflette and Amy Fromkin, on behalf of themselves and all others similarly situated, v. Hewlett-Packard Company

- United States District Court for the Northern District of California (San Jose Division)
- Case No. 07-05793 JW
- Expert Report, February 16, 2010
- Expert Reply Declaration, May 21, 2010
- Testified at deposition, March 12, 2010
- Opinion concerning class certification issues
- Retained by Spector Roseman Kodroff & Willis PC

In Re: General Motors OnStar Litigation

- United States District Court for the Eastern District of Michigan
- Master File No. 07-1867
- Expert Report, January 15, 2010
- Testified at deposition, March 3, 2010
- Opinion concerning class certification issues
- Retained by Spector Roseman Kodroff & Willis PC

BabyAge.com, Inc. and The Baby Club of America, Inc., v. Toys "R" Us, Inc., d/b/a Babies "R" Us, et al.

- United States District Court for the Eastern District of Pennsylvania
- C.A. No. 2:05-06792-AB
- Expert Report, December 15, 2009
- Reply Report, February 4, 2011
- Testified at deposition, May 12-14, 2010
- Testified at deposition, February 23, 2011
- Opinion concerning antitrust liability and damages
- Retained by Berger & Montague, P.C.

Chevron Phillips Chemical Company LP, v. BDP International, Inc.

- District Court of Harris County Texas
- Cause No. 2007-68768
- Expert Report, August 5, 2009
- Testified at deposition, January 21, 2010
- Opinion concerning breach of contract damages
- Retained by Susman Godfrey LLP

Michael Harris, v. LG Philips LCD Co., Ltd., et al.

- Ontario Superior Court of Justice
- Court File No. 54054 CP
- Expert Report, October 17, 2008
- Rebuttal Expert Report, June 19, 2009
- Affidavit, March 7, 2013
- Testified at deposition, December 14, 2010
- Opinion concerning class certification issues
- Retained by Siskinds, LLP

Clarke and Rebecca Wixon, et al., v. Wyndham Resort Development Corp. (F/K/A Trendwest Resorts, Inc.), et al.

- United States District Court for the Northern District of California
- Case No. C 07 2361 JSW
- Expert Report, March 16, 2009
- Expert Rebuttal Report, June 4, 2009
- Expert Report, April 19, 2010
- Expert Rebuttal Report, May 19, 2010
- Testified at deposition, April 29, 2009 and June 15, 2009
- Testified at deposition, June 9, 2010
- Opinion concerning class certification issues
- Opinion concerning class-wide damages arising from breach of contract and unfair business practices
- Retained by Girard Gibbs, LLP

Professional Experience

Economic Consulting Positions

Nathan Associates, Inc., Arlington, VA, *Senior Vice President*, January 2013 – present

Advanced Analytical Consulting Group, Inc., Washington DC area, *Principal*, March 2011 – January 2013

Econ One Research, Inc., Washington, DC, *Managing Director and D.C. Office Head*, July 2006 March 2011

- Opened and staffed the DC office; managed office affairs on a daily basis
- Retained as an expert witness for damages and class certification issues in antitrust, breach of contract, product liability and RICO cases; representative testimony includes determination of liability and damages in a case involving resale price maintenance in consumer products, class certification in a horizontal price-fixing case involving international travel in the airline industry, class certification in a consumer class action involving RICO claims in state court
- Industry pre-litigation analyses for consumer products, chemicals, and other industries

Navigant Consulting, Inc., Washington, DC, *Associate Director*, February 2006 – July 2006

- Case manager for damages analysis in asbestos litigation and personal injury claims

Nathan Associates, Inc., Arlington, VA, *Managing Economist*, July 2004 – February 2006

- Case manager for economic analysis of class certification and damages issues in antitrust and RICO cases involving the chemical, consumer products and tobacco industries
- Retained as expert on damages for direct purchasers of NBR in the Crompton Global Settlement; submitted an Affidavit on damages and appeared before the Special Master for the Crompton Global Settlement (the Hon. Kenneth Feinberg)

Board Membership

- Board of Advisors, American Antitrust Institute, Washington, DC
- Department of Economics Advisory Council, University of Tennessee, Knoxville, *Chairman*, Spring 2006 – April 2011

Teaching Positions

- **The George Washington University**, Washington, DC, *Adjunct Assistant Professor of Economics*, Fall 2004 – present
- **North Carolina State University (NCSU)**, *Assistant Professor* (Department of Agricultural and Resource Economics), Fall 1999 – Spring 2004
- **The University of Pennsylvania**, *Adjunct Instructor*, Summer 1990 – Spring 1994

Additional Teaching Experience

- The Wharton School Evening Division, Philadelphia, PA, summer 1993
- Rutgers University, Camden, NJ, summer 1993
- Philadelphia College of Textiles and Science, Philadelphia, PA, fall 1992
- The Pennsylvania State University, Media, PA, 1991
- St. Mary's College of Maryland, St. Mary's City, MD, summer 1989
- The University of Maryland University College, College Park, MD, 1988-1989

Courses Taught

- Managerial Economics for MBA students (George Washington University)
- Law and Economics (George Washington University)
- Intermediate Microeconomics – graduate level (George Washington University)
- Latin American Economic Development (George Washington University)
- International Trade: Theory and Policy (George Washington University)
- International Finance: Theory and Policy (George Washington University)
- Agricultural Production and Supply – Ph.D. field course (North Carolina State University)

- U.S. Agricultural Policy (North Carolina State University)
- Microfinance: Theory, Practice and Regulation (Superintendencia de Banca y Seguros)
- Statistical Analysis for Economics (University of Pennsylvania)
- Principles of Microeconomics (University of Maryland, St. Mary's College of Maryland)
- Principles of Macroeconomics (University of Pennsylvania, The Wharton School, Penn State University)
- Fundamentals of Micro/Macro Economics (University of Maryland)
- Environmental and Natural Resource Economics (Rutgers)

<u>**Federal Reserve Experience**</u>

Federal Reserve Bank of Kansas City, *Senior Economist* (Jan. 1998 – Aug. 1999), *Economist* (Jan. – Dec. 1997)

- Analysis of regional, macroeconomic developments in agriculture, and energy
- Research on public policy towards agriculture in the U.S., especially the impact of farm policy reform
- Briefings to the Bank president and outside groups on the regional economy, agriculture, agricultural trade

Board of Governors of the Federal Reserve System, *Economist*, June 1994 – Dec. 1996

- Analysis of macroeconomic conditions, commodity markets and prices (CPI, PPI, Core prices)
- Forecasting of agricultural output, prices, and income
- Briefings to the Board of Governors on agriculture and food-price developments

<u>**Other Consulting Experience**</u>

World Perspectives, Inc., 2003 - 2004

- Analysis of trade barriers for U.S. exports of feed ingredients, pet food ingredients, and food ingredients
- Analysis of the impact of a Free Trade Area of the Americas on U.S. soybean producers
- Analysis of the potential for U.S. Halal-certified meat exports to the Middle East

Womble Carlyle Sandridge & Rice, LLP, 2003 - 2004

- Provided expert testimony related to the estimation of business profitability

Smith-Moore, 2002 - 2003

- Provided economic analysis of the U.S. Tobacco Program

Superintendencia de Banca y Seguros (Lima, Peru), 1998 - 2000

- Developed and taught a class on Microfinance issues (in English) to students enrolled in a training program for bank examiners; the program was sponsored by the Inter-American Development Bank.

World Bank, Africa Technical Department, 1992 – 1993

- Summarized and provided an overview of data available on African economic and social indicators

ACG-Afrique, January 1993

- Provided critical review of a study document outlining the impact of structural adjustment on African agriculture

Professional Organizations

- National Association for Business Economics
- American Economic Association

Papers, Publications and Speeches

Papers Published in Refereed Journals

- "Government Regulation and Quality in the U.S. Beef Market," (with Peyton Ferrier) *Food Policy*, 32:1 (2006) pp. 84-97
- "Rent-seeking in U.S.-Mexican Avocado Trade," *Cato Journal*, 26:1 (Winter 2006) pp. 159-177
- "Consolidation in U.S. Agriculture and the Role of Public Policy," *The ICFAI Journal of Agricultural Economics*, 1(2004) pp. 7-16
- "Fertilizer Use, Risk, and Off-farm Labor Markets in the Semi-Arid Tropics of India," *American Journal of Agricultural Economics*, 85(2) (May 2003) pp 359-371
- "Inverse Productivity: Land Quality, Labor Markets, and Measurement Error," *Journal of Development Economics*, 71 (2003) pp. 71-95
- "A Market-Forces Policy for the New Farm Economy?" *Review of Agricultural Economics*, 24 (2002) 15-30
- "Food Crops, Exports, and the Short-run Policy Response of Agriculture in Africa," *Agricultural Economics*, 22 (2000) 271-298
- "FAIR Act Implications for Land Values in the Corn Belt," (with Jason Henderson) *Review of Agricultural Economics*, 22 (2000) 102-119
- "Why are Estimates of Agricultural Supply Response So Variable?" (with Francis X. Diebold) *Journal of Econometrics*, 76 (1997) 367-373

Non-refereed Publications, Articles and Editorials

- "The Predominance Requirement for Antitrust Class Actions – Can Relevant Market Analysis Help?" (with Jeffrey Leitzinger) American Bar Association – Section of Antitrust Law, *Economics Committee Newsletter*, Spring 2007, pp. 17-22
- "Reform of U.S. Farm Policy in an Integrating World Economy," forthcoming in *Developing Countries in the WTO System*, published by Rowman & Littlefield, 2006
- "New Farm Economy," *Regulation*, Winter 2003-2004, Washington, DC: Cato Institute for Public Policy Research (2003)
- "What Road Will U.S. Economy Take in 2003?" *Southeast Farm Press*, February 5, 2003
- "Fast Track for the Tax Cuts," guest editorial, *News and Observer* (Raleigh, NC), January 18, 2003
- "The 2002 Farm Bill," (with Blake Brown and Michele Marra) *NC State Economist*, November/December 2002
- "Economy-minded Tax Cuts: Bush's Reductions Provided the Boost to Lift U.S. From Recession," guest editorial, *News and Observer* (Raleigh, NC), July 2, 2002
- "Policy Only Effective if Farm Economy is Recognized," special report to *Feedstuffs*, June 5, 2000
- "Aid During Crisis of Little Long-term Help to Farmers," guest editorial, *Kansas City Star*, August 23, 1999
- "Survey of Agricultural Credit Conditions," Federal Reserve Bank of Kansas City, *Regional Economic Digest*, various issues, 1997-1999
- "U.S. Agriculture at the Crossroads in 1999," *Economic Review*, Federal Reserve Bank of Kansas City, 84 (1999)
- "Can U.S. Oil Production Survive the 20th Century?" *Economic Review*, Federal Reserve Bank of Kansas City, 84 (1999)
- "Will the Tenth District Catch the Asian Flu?" (with Ricardo Gazel) *Economic Review*, Federal Reserve Bank of Kansas City, 83 (1998)
- "From the Plains to the Plate: Can the Beef Industry Regain Market Share?" (with Michelle Beshear) *Economic Review*, Federal Reserve Bank of Kansas City, 83 (1998)
- "U.S. Agriculture: Another Solid Year in 1998?" (with Mark Drabenstott) *Economic Review*, Federal Reserve Bank of Kansas City, 83 (1998)
- "How Will the 1996 Farm Bill Affect the Outlook for District Farmland Values?" *Economic Review*, Federal Reserve Bank of Kansas City, 82 (1997).
- "Food Prices and the Farm Sector," monthly *Greenbook* (various issues, 1994-1996), Federal Reserve Board of Governors, Washington, DC
- "Hedge to Arrive Contracts," Memo to the Board of Governors, Federal Reserve Board of Governors, Washington, DC, June 5, 1996
- "Prices in the May Greenbook," Federal Reserve Board of Governors, Washington, DC, May 19, 1996

- "Prices in the March Greenbook," Federal Reserve Board of Governors, Washington, DC, March 24, 1996
- "Commodity Price Developments," Weekly memo to the Board of Governors, Federal Reserve Board of Governors, Washington, DC, August 1994 – December 1996

Conference Presentations

- "Damages: Go Big or Go Home," presenter at the 360 Advocacy Institute's Conference, Las Vegas, NV, March 24, 2014
- "Class Action Developments," panelist at the American Antitrust Institute's 6th Annual Private Antitrust Enforcement Conference, Washington, DC, December 4, 2012
- "Consequences for Antitrust Thought and Practice," presented at the American Antitrust Institute Invitational Symposium: Antitrust Challenge of Multi-Channel Distribution in the Internet Age, Washington, DC, June 22, 2011
- "The U.S. Economy in the Year Ahead," presented at the Long Company Annual Conference, Chicago, IL, September 11, 2009 and September 19, 2008
- "The U.S. Economic Outlook," presented at the Industry Outlook Conference, Chicago, IL, October 17, 2006 and October 18, 2005
- "How Will the Economy Impact Your Business?" presented at the Long Company Annual Conference, Las Vegas, NV, August 14, 2004
- "Focus on The Economy" presented at *Milling and Baking News* annual Purchasing Managers' Conference, Kansas City, MO, June 14, 2004, June 10, 2003 and June 11, 2002
- "The U.S. Economic Outlook and Agriculture," presented at the Industry Outlook Conference, Chicago, IL, October, 2003
- "The U.S. Economic Outlook and Agriculture," presented at the Industry Outlook Conference, Breckenridge, CO, April 7, 2002
- "The U.S. Economic Outlook: The Cost of Terror," presented at the Southern Agricultural Outlook Conference, Atlanta, GA, September 24, 2001
- "The Economy in Focus," presented at *Milling and Baking News* annual purchasing managers' conference, Kansas City, MO, June 5, 2001
- "The Great American Growth Machine," presented at the Southern Agricultural Outlook Conference, Atlanta GA, September 27, 2000
- "The Economy in Focus," presented at *Milling and Baking News* annual purchasing managers' conference, Kansas City, MO, June 6, 2000
- "The Outlook for the U.S. Pork Sector," presented to the Industry Outlook Conference, Las Vegas, NV, April 17, 2000
- "The National Economic Outlook: The Road Ahead," presented to the Food Industry Outlook Conference, Breckenridge, CO, April 11, 1999

- "Farm Policy for the New Millennium," presented to Federal Reserve Bank of Kansas City, Division of Bank Supervision and Regulation, Bank Examiners' Annual Training Conference, January 7, 1999
- "The Impact of the 1996 Farm Bill on Farmland Values," (with Jason Henderson) first place poster presentation at the annual meetings of the American Agricultural Economics Association, Salt Lake City, August 4, 1998
- "A Note on the Inverse Productivity Relationship," presented at the annual meetings of the Western Economic Association International, Seattle, July 1997
- "Off-farm Labor Supply and Fertilizer Use in the Semi-Arid Tropics of India," presented at the annual meetings of the American Agricultural Economics Association, August 1995
- "Prices for Food-Away-From-Home and Core Inflation: Some Empirical Relationships," (with James E. Kennedy) presented at the Federal Reserve System Committee on Agriculture, Richmond, VA, October 1995
- "Some Simple Dynamics of Farming," presented at the annual meetings of the American Agricultural Economics Association, Orlando, August 1993
- "Structural Adjustment and Food Security," (with W. Graeme Donovan), presented at the annual meetings of the American Agricultural Economics Association, Orlando, August 1993
- "Structural Adjustment and African Agricultural Supply Response to Exchange Rate and Price Movements," (with W. Graeme Donovan), presented at the annual meetings of the Southern Agricultural Economics Association, Tulsa, January 1993

Other Presentations

- Panelist, "Antitrust Class Actions – Where Are We? A 360 Degree Perspective," NYSBA Annual Antitrust Law Section Meeting," January 30, 2014
- Panelist, Retrospective on the Baby Products Litigation, ABA Section of Antitrust Law: Pricing Conduct Committee, July 31, 2013
- Panelist, Economic Forecasting Summit, Northern Indiana Workforce Investment Board, Inc., March 29, 2007
- "The Welfare Benefits of USDA Beef Quality Certification Programs" (with Peyton Ferrier), presentation memo, 2007
- "Reform of U.S. Farm Policy in an Integrating World Economy," presented to the Cordell Hull Institute, Trade Policy Roundtable on Reform of U.S. Farm Policy and the WTO System, Washington, DC, March 31, 2006
- "The Case for a Market-forces Farm Policy in the U.S." presented at the Cordell Hull Institute Trade Policy Roundtable, Washington DC, May 26, 2005
- "How Will the Economy Impact Your Business?" presented at the Apple Processors Association annual meeting, Homewood Resort, June 20, 2004

- "The U.S. and International Economic Outlook," presented at the AgFirst Loan Officer's Seminar, Atlanta, GA, October 30-31, 2002
- "Will the U.S. Economy Bounce or Crawl?" presented to the Eastern Bankruptcy Institute, North Myrtle Beach, SC, June 1, 2002
- "The U.S. Economic Outlook and Agriculture," presented to the National Pork Producers Pork Action Group, Washington, DC, April 10, 2002
- "The U.S. Economic Outlook" presented to the Risk Management Associates, Raleigh, NC, February 7, 2002
- "The U.S. Economic Outlook: The Cost of Terror," presented at the National Pork Producers Pork Action Group, Marco Island, FL, November 14, 2001
- "Consolidation in Agriculture and the Role of Public Policy," paper presented to the Southern Extension Meetings, Williamsburg, VA, June 13, 2000
- "The New Farm Economy," presented at the annual meetings of the National Association of County Agricultural Agents, Omaha, NE, September 14, 1999
- "Regional Economic Update," presented to bankers in Kansas, Nebraska, Missouri, and Oklahoma as part of the Regulatory Update Seminar, Federal Reserve Bank of Kansas City, April 1999
- "The National Economic Outlook," presented to Oklahoma State University Advanced Cattle Management Seminar, Stillwater, OK, March 11, 1999
- "Regional Economic Update," presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, November 13, 1998
- "Can the Tenth District Survive the Asian Flu?" The Federal Reserve Bank of Kansas City Economic Forums, nine presentations to bankers in Wyoming, Oklahoma, and New Mexico, September 21 - October 21, 1998
- "The Impact of Asian Economic Developments on Tenth District Agriculture," presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, January 30, 1998
- "The Outlook for the Nebraska Economy," The Federal Reserve Bank of Kansas City: Nebraska Economic Forums, six presentations to bankers in Nebraska, October 6 - 15, 1997
- "Update on the Macroeconomy and Special Briefing on Forecast Performance at the Kansas City Fed," presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, August 13, 1997
- "Regional Economic Update," presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, May 14, 1997 and March 21, 1997
- "Producer Prices, Retail Sales, and Agricultural Commodity Markets," presented to the Board of Governors of the Federal Reserve System, July 15, 1996

Referee Experience

Referee for the following academic journals:

- World Development, 1993
- Journal of Development Economics, 1994, 1995
- International Economic Review, 1995
- Journal of Human Resources, 1997
- Journal of Business and Economics Statistics, 1997
- American Journal of Agricultural Economics, 1999, 2001, 2002
- Agricultural Economics, 2000, 2001, 2004
- Agricultural Finance Review, 2000, 2004
- Review of Agricultural Economics, 2000, 2002, 2004
- Journal of Agricultural and Resource Economics, 2000, 2001, 2002
- Emerging Markets Review, 2001
- Contemporary Economic Policy, 2004

Fellowships, Honors and Awards

Fellowships

- Departmental Fellowship, University of Pennsylvania, 1989-1990
- Dean's Fellowship, University of Pennsylvania, 1991-1992
- Graduate School Fellowship, University of Maryland, College Park, 1987-1989

Honor Societies and Professional Organizations

- Phi Eta Sigma National Honor Society
- Mortar Board National Honor Society
- Golden Key National Honor Society
- Vice President for Professional Activities, Delta Sigma Pi

Awards

- Top Graduate in Liberal Arts, University of Tennessee, Knoxville, Spring 1987
- Chancellor's Citation for Extraordinary Professional Promise, University of Tennessee, Knoxville
- Chancellor's Citation for Outstanding Academic Achievement, University of Tennessee, Knoxville
- First place poster presentation, American Agricultural Economics Association annual meetings, August 1998 (with Jason Henderson)
- Honorable mention, American Agricultural Economics Association, Essay for the 21st Century, 2001, "A Market Forces Policy for the New Farm Economy"

- Honorable mention, American Antitrust Institute Antitrust Enforcement Awards, Outstanding Antitrust Litigation Achievement in Economics (for work on In Re Titanium Dioxide Antitrust Litigation matter)

External Funding

- "Unmanufactured Flue-Cured Tobacco Exports and the Export Component of the Quota Formula." $13,890 NC Tobacco Foundation. With Blake Brown 2000/2001.

Professional Activities and Services

Graduate Student Advising

M.A. degree, North Carolina State University

- Joe Weinberg (Political Science)

Master of Economics, North Carolina State University

- William Pole (2000)
- Dwight Wilder (Chairman, 2002)
- Adrian Atkeson (2002)
- Sarah Spivey
- Li Zhang (Chairman, 2003)
- Nia Atmadja (2003)

Doctor of Philosophy, North Carolina State University

- William Deese (2003)
- Peyton Ferrier (Chairman, 2004)
- Yang Wang (2003)
- Bobby Huggett (2003)
- Syed Wadood (Chairman, 2004)
- Henry Kuo

Economic and Statistical Modeling Skills

- Experience with all major statistical software including SAS, STATA, LIMDEP and C++; applied econometric modeling skills in damage analysis of consumer industries, chemicals industries, and agricultural markets, correlation analysis for class certification.

Appendix B

Materials Considered
Pleadings, Case Law, and Legal Correspondence

Affiliated Music Enterprises, Inc. v. SESAC, Inc., 160 F. Supp. 865 (S.D.N.Y. 1958)
Affiliated Music Enterprises, Inc. v. SESAC, Inc., 268 F.2d 13 (2d Cir. 1959)
Alden-Rochelle Inc. v. ASCAP, 80 F. Supp. 888 (S.D.N.Y. 1948)
American Arbitration Association, *SESAC, Inc. v. Television Music License Committee*, Award, June 22, 2006
American Arbitration Association, *SESAC, Inc. v. Television Music License Committee*, Television Music License Committee Post-Arbitration Brief, February 28, 2006
American Arbitration Association, *SESAC, Inc. v. Television Music License Committee*, SESAC Post-Trial Brief, February 28, 2006
ASCAP v. MobiTV Inc., 681 F.3d 76 (2d Cir. 2012)
ASCAP v. Showtime/The Movie Channel, Inc., 912 F.2d 563, 576 (2d Cir. 1990)
Broadcast Music Inc. v. DMX, Inc., 683 F.3d 32 (2d Cir. 2012)
Broadcast Music, Inc. v. DMX, Inc., 726 F. Supp. 2d 355 (S.D.N.Y. 2010)
Broadcast Music, Inc. v. CBS, 441 U.S. 1 (1979)
Buffalo Broadcasting Co. v ASCAP, 744 F.2d 917 (2d Cir. 1984)
In re Application of THP Capstar Acquisition Corp., 756 F. Supp. 2d 516 (S.D.N.Y. 2010)
Letter from William R. Lee to Douglas R. Lowe, November 30, 2012
Letter from Steven A. Reiss to Judge Paul A. Engelmayer, Re: Summary Judgment, *Meredith Corp. et al. v. SESAC, LLC et al.*, 09 Civ. 9177, March 6, 2013
Letter from Susan J. Kohlmann to Judge Paul A. Engelmayer, Re: *Meredith Corporation, et al., v. SESAC, LLC, et al.*, May 22, 2012
Letter from Charles Sennet to John A. LoFrumento, Re: ASCAP – Local Television Station Blanket and Per Program Licenses, November 2004
Meredith Corporation, et al. v. SESAC, LLC, et al., Transcript of Oral Argument, (S.D.N.Y. June 26, 2014)
Meredith Corporation, et al. v. SESAC, LLC, et al., Opinion & Order, (S.D.N.Y. March 3, 2014)
Meredith Corporation, et al. v. SESAC, LLC, et al., Transcript of Oral Argument, (S.D.N.Y. October 7, 2013)
Meredith Corporation, et al, v. SESAC, LLC, et al., Corrected Reply Memorandum of Law in Support of Defendant SESAC, LLC's Motion for Summary Judgment, (S.D.N.Y. September 3, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Defendant SESAC, LLC's Reply Statement to Plaintiffs' Local Rule 56.1 Responses, (S.D.N.Y. August 30, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Defendant SESAC, LLC's Response to Plaintiffs' Local Rule 56.1 Supplemental Statement of Undisputed Facts, (S.D.N.Y. August 30, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Plaintiffs' Local Rule 56.1 Supplemental Statement of Undisputed Facts, (S.D.N.Y. August 2, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Plaintiffs' Response to Defendant's Statement of Facts Pursuant to Local Rule 56.1, (S.D.N.Y. August 2, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Plaintiffs' Memorandum of Law in Opposition to Defendant SESAC, LLC's Motion for Summary Judgment, (S.D.N.Y. August 2, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Defendant SESAC, LLC's Statement of Undisputed Facts Pursuant to Local Rule 56.1, (S.D.N.Y. June 14, 2013)
Meredith Corporation, et al. v. SESAC, LLC, et al., Memorandum of Law in Support of Defendant SESAC, LLC's Motion for Summary Judgment, (S.D.N.Y. June 14, 2013)

Meredith Corporation, et al. v. SESAC, LLC et al., Plaintiffs' Supplemental Objections and Responses to SESAC's First Set of Interrogatories to Plaintiffs, 09 Civ. 9177 (S.D.N.Y. February 1, 2013)

Meredith Corporation, et al. v. SESAC, LLC, et al., 09 Civ. 9177, Memorandum & Order Denying SESAC's Motion to Dismiss (S.D.N.Y. March 9, 2011)

Meredith Corporation, et al. v. SESAC, LLC, et al., First Amended Class Action Complaint, (S.D.N.Y. March 18, 2010)

Meredith Corporation, et al. v. SESAC, LLC, et al., Complaint, No. 09 Civ. 9177 (S.D.N.Y. November 4, 2009)

Radio Music License Committee, Inc. v. SESAC, Inc. et al., Defendants' Motion to Dismiss the Complaint, No. 12 Civ. 05807 (E.D. Pa. December 17, 2012)

United States v. ASCAP (In re Applications of RealNetworks, Inc., Yahoo! Inc.), 627 F.3d 64, 76 (2d Cir. 2010)

United States v. ASCAP (In re Application of Buffalo Broad. Co.), Civ. No. 13-95 (WCC) (MHD), 1993 WL 60687 (S.D.N.Y. March 1, 1993)

WPIX, Inc. v. Broadcast Music, Inc., 09 Civ. 10366, Opinion and Order (S.D.N.Y. April 27, 2012)

Consent Decrees

United States of America v. American Society of Composers, Authors and Publishers, Civil Action No. 41-1395 (WCC), Second Amended Final Judgment, (S.D.N.Y. June 11, 2001)

United States of America v. Broadcast Music, Inc., et al., Civil No. 64-Civ-3787, Final Judgment, (S.D.N.Y. November 18, 1994)

Declarations

Meredith Corporation, et al., v. SESAC, LLC, et al., Declaration of Susan J. Kohlmann in Support of SESAC LLC's Motion for Summary Judgment, 09 Civ. 9177 (PAE), (S.D.N.Y. June 14, 2013), and exhibits thereto.

Meredith Corporation, et al., v. SESAC, LLC, et al., Declaration of Eric S. Hochstadt in Support of Plaintiffs' Opposition to Defendant SESAC LLC's Motion for Summary Judgment, 09 Civ. 9177 (PAE), (S.D.N.Y. August 2, 2013), and exhibits thereto.

Depositions and Exhibits

Deposition of Robbin Holliday, November 16, 2012
Deposition of Dan Reynolds, February 14, 2013
Deposition of Jim Hart, October 11, 2012
Deposition of Ulysses Carlini, October 26, 2012
Deposition of Richard Adams, November 6, 2012
Deposition of Douglas Lowe, November 14, 2012
Deposition of Charley Johnson, November 30, 2012
Deposition of William Slantz, January 17, 2013
Deposition of Adam Jaffe, April 30, 2013
Deposition of Matt Kupersmith, October 2, 2010
Deposition of Hunter Williams, November 27, 2012
Deposition of William R. Lee, October 23, 2012
Deposition of Jason Walker, December 6, 2012
Deposition of Ron Gertz, December 20, 2012
Deposition of Steven Counce, October 3, 2012
Deposition of Stephen Swid, February 7, 2013
Deposition of Katie Alphonso, October 11, 2012
Deposition of Maxine Edwards, October 16, 2012
Deposition of Pat Collins, July 31, 2012
Deposition of Pat Collins, December 18, 2012
Deposition of Mike Tolleson, January 15, 2013
Deposition of Dennis Lord, December 14, 2012
Deposition of Dennis Lord, July 27, 2012
Deposition of Michael Eck, July 25, 2012
Deposition of David Evans, May 9, 2013

Expert Reports

Plaintiffs' Merits Expert Report, Adam B. Jaffe, March 4, 2013
Plaintiffs' Rebuttal Expert Report, Adam B. Jaffe, April 15, 2013
Amended Expert Report of David S. Evans, April 19, 2013

Expert Data and Programs Produced by Adam Jaffe

import_clean_fees.sas
damages.sas
damages_class.sas
Music_Use_Study_Results.xls
Call_Letter_Changes.xls
Duplicates.xls
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SESAC_2008-12_Contract_Summary_Final.xlsx
PRO Fee Summary.xls

Bates-Stamped Materials

Documents

ANALYSIS0001941
DIGITAL0001525
DIGITAL0008864
HOAK00000531 – 572
HOAK00093205 – 206
HOAK00094500 – 501
HOAK00094849 – 870
MERE00046434
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Data Produced by Defendants

SESAC-0373761.xlsx
SESAC-0320969.xls
SESAC-0456195.xls
SESAC-0459294.xls
SESAC-0954965.xls

Third Party Materials

Company and Trade Association Materials

Memo from TMLC to Local Television Stations, "Settlement with ASCAP for 2010-2016," June 7, 2012, http://www.indianabroadcasters.org/docs/ASCAP%20Settlement%20Details_June%207,%202012.pdf

Government Agency Publications

United States Copyright Law, 17 U.S.C. § 504(c)

United States Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, August 19, 2010

Publically Available Data

U.S. Department of Labor Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, All Items

Websites

http://www.ascap.com/licensing/types/television.aspx
http://www.bmi.com/creators/detail/what_is_a_cue_sheet
http://www.bmi.com/creators/Royalty/us_television_royalties/detail
http://www.sesac.com/About/History.aspx
http://www.sesac.com/Licensing/FAQsBroadcast.aspx
https://www.tab.org/news-and-events/news/tmlc-update
http://tvmlc.com/

Academic Literature

Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, Fourth Edition, Reading, MA: Addison Wesley, 2005

Robert Pindyck and Daniel Rubinfeld, *Microeconomics*, Seventh Edition, Pearson Prentice Hall, 2009