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Lahna Turner	v.	Michael Bloom and Solaris Entertainment
CLAIMANT		RESPONDENT

REQUEST FOR REGISTER'S REVIEW – 37 C.F.R. §§ 231.2 and 231.6

I. INTRODUCTION

Claimant Lahna Turner initiated this proceeding claiming that Respondents have infringed her copyrights in an audiovisual work entitled "Just Correct" (the Work). Dkt. 1. The Work is a solo, stand-up comedy performance by comedian, Ralphie May. Ms. Turner is Ralphie May's widow and the mother of his two children.

After the parties submitted their party statements, witness statements, and supporting materials, the Copyright Claims Board (the "Board") *sua sponte* issued an Order asserting that Respondent Bloom could be a joint author of the Work because he is identified as its director. *See* Order (Dkt. 53). The Board authorized the parties to submit "documentary evidence" and "agreement[s]" regarding Respondent Bloom's services on the Work but precluded the parties from submitting further party or witness statements to address the issue. *Id*. Ms. Turner submitted supplemental evidence. Dkt. 54. Respondents did not respond to the Order.

On January 6, 2025, the Board issued a Final Determination ("Determination") finding that Respondent Bloom is a joint author of the Work. Dkt. 55. Ms. Turner timely filed a Request for Reconsideration ("Request") (Dkt. 57). The Board issued its Order Denying Request for Reconsideration ("Denial") (Dkt. 63) on August 5, 2025.

Pursuant to 37 C.F.R. § 231.2, Ms. Turner now asks the Register of Copyrights to review the Board's Final Determination and the Board's Denial for the following reasons:

- The Board abused its discretion in declining to reconsider the Determination and declining to allow witness and party statements on the determinative issue of co-authorship, which the Board raised on its own after party submissions had closed.

- The Board abused its discretion by declining to reconsider the Determination's requirement that Ms. Turner demonstrate (and only via "documentary evidence" and "agreement[s]") that Bloom was not a co-author when applicable caselaw places the burden of proof of co-authorship on Respondents.

- The Board abused its discretion in declining the Request's to reconsider the Determination and apply the judicial test for co-authorship rather than focus solely on statutory language and legislative history.

If left uncorrected, the Determination will always contain material errors of fact and law. Accordingly, for the reasons set forth below, and in Ms. Turner's Request and prior submissions, Ms. Turner asks the Register to remand the proceeding to the Board for reconsideration and for issuance of an amended final determination concluding that Respondent Bloom is not a co-author of Just Correct and that Ms. Turner is entitled to the relief requested. Alternatively, Ms. Turner asks the Register to direct the Board to withdraw its Determination and to allow the parties to submit further evidence, including party and witness statements and a copy of Just Correct, so that the Board may thoroughly examine the issue of co-authorship under applicable judicial precedent.

II. ARGUMENT

A. The Board Abused Its Discretion In Declining To Reconsider The Determination And To Allow Witness And Party Statements On The Determinative Issue Of Co-Authorship, Which The Board Raised On Its Own After Party Submissions Had Closed.

It was clear error, and a violation of due process, for the Board to raise a dispositive issue on Bloom's behalf and then prohibit Ms. Turner from arguing that issue through party statements, witness statements, and other non-documentary evidence. Ms. Turner respectfully submits that denying the Request to correct this error was an abuse of discretion. Bloom never asserted that he was a co-author of the Work. He only asserted that owned all rights in the Work by virtue of two written agreements with Melee Entertainment, L.L.C. ("Melee"), which Bloom never produced. It was clear error for the Determination to rule against Ms. Turner on an issue that the Board raised on its own where the Board only allowed supplemental "documentary evidence" and

"agreement[s]" and expressly forbid Ms. Turner from presenting party and/or witness statements addressing the applicable test, refuting Bloom's claims, and offering additional evidence. *See* Dkt. 53. The Determination claimed its finding was based on a "preponderance of the evidence" (Dkt. 55 at 7), but because the decision turned on an issue that Respondents never raised, Ms. Turner had had had no reason to submit countervailing evidence or arguments. Turner was not on notice of the co-authorship issue until the Order (Dkt. 53) raised it, yet the Order precluded her from submitting party and witness statements to controvert a possible conclusion that Bloom was a co-author. It was an abuse of discretion to deny the request for reconsideration to correct this material error.[1]

As discussed below, judicial precedent holds that determining co-authorship requires a "nuanced inquiry" into the facts surrounding the creation of a work. Thomson *v. Larson*, 147 F.2d 195, 201 (2d Cir. 1998) (citing *Childress v. Taylor*, 945 F.2d 500, 508–09 (2d Cir. 1991)). "In the absence of a contract, the inquiry must of necessity focus on the facts." *Aalmuhammed v. Lee*, 202 F.3d 1227, 1235 (9th Cir. 2000). Precluding Turner from submitting party and witness statements after the Board *sua sponte* raised the issue of joint authorship was clear error because it foreclosed the required inquiry. Declining to reconsider this error was an abuse of discretion.

Ms. Turner respectfully submits that the Denial further constitutes an abuse of discretion because it conflates arguments of "ownership" with arguments of "authorship." While Ms. Turner acknowledges that Respondents claimed that they "owned" the Work, Respondents never claimed that Respondent Bloom was an "author" of Just Correct. Rather, Respondents' arguments as to ownership all stemmed entirely from alleged written agreements with Melee, which Respondents claimed transferred ownership in the Work to Respondents after some period of time. Respondents'

[1] The Request (Dkt. 57 at 3 and n.1) sets forth examples of material evidence that Ms. Turner could have and would have submitted had she been on notice of the co-authorship claim in the first instance or if the Order (Dkt. 53) had allowed the submission of party or witness statements.

ownership arguments consistently claimed that Respondents had full ownership of the Work. Such arguments are inconsistent with a claim of co-authorship because, at most, a co-authorship argument would only give rise to a 50% ownership interest in the Work. As such, Respondents' ownership arguments were insufficient to put Turner on notice that co-authorship was at issue. When Respondents' stated arguments were premised entirely on contracts they could not produce, saying that "inherent in Bloom's theory of reversion was the premise that he had an ownership interest at the outset as an original author, as he repeatedly indicated" is not constitutionally sufficient to apprise Ms. Turner of the argument that the Board raised and ultimately applied against her. Due process requires more, and it was an abuse of discretion to forbid anything other than "documentary evidence" and "agreement[s]" after the Board raised the issue.[2]

B. The Board Abused Its Discretion By Declining To Reconsider The Determination's Placement of the Burden of Negating Co-Authorship on Ms. Turner When Applicable Caselaw Places The Burden Of Proving Co-Authorship On Respondents.

Ms. Turner holds the copyright registration for the Work. *See* Dkt. 29, Ex. E. The registration identifies Melee Entertainment, L.L.C. as the sole author pursuant to a work-for-hire arrangement. *See* Dkt. 29, Ex. C. A party claiming to be a co-author bears the burden of proving co-authorship. *See Thomson v. Larson*, 147 F.2d 195, 200 (2d Cir. 1998). The Board's Order, Determination, and Denial however, all presumed that Bloom was a co-author because he is listed as the "director," and then shifted the burden to Ms. Turner to prove the negative, *i.e.*, that Bloom was not a co-author. *See, e.g.,* Dkt. 63 at 2 (stating, "Turner never produced an agreement that Bloom signed giving up his rights."). Worse still, the Order only allowed Ms. Turner to try and

[2] The denial notes that "one of the central purposes of the Board" is "to have an even and level playing field between represented and unrepresented parties…by appointing Officers with significant copyright expertise so that the parties can present the facts and the Board can apply the law regardless of whether a party is inartful in their presentation of how the law applies to those facts." Dkt. 63 at 2. The Board should address the arguments presented. Parties should not have to anticipate the Board making legal arguments on the opponents' behalf.

prove this negative with "documentary evidence" and "agreement[s]." Dkt. 53. This was a clear error of law and denying the request to reconsider this error was an abuse of discretion.

C. The Board Abused Its Discretion In Declining The Request To Reconsider And To Apply The Judicial Test For Co-Authorship Instead Of Focusing Solely On Statutory Language And Legislative History.

The Determination's conclusion that Bloom was a co-author relies most heavily on the Copyright Act's definition of "joint work" and the related legislative history. *See* Dkt. 55 at 7 (focusing on party collaboration and the intention that contributions would be merged). Claimant respectfully submits that it was a clear material error to limit the analysis to the statute and legislative history rather than applying the federal courts' test for co-authorship. The Board must render its determinations, *inter alia*, "on the basis of…judicial precedent." 17 U.S.C. § 1503(b)(1). Judicial precedent on co-authorship holds that "[i]n the absence of a contract, the inquiry must of necessity focus on the facts." *Aalmuhammed v. Lee*, 202 F.3d 1227, 1235 (9th Cir. 2000). Determining co-authorship requires a "nuanced inquiry" into the facts surrounding the creation of a work. *Thomson*, 147 F.3d at 201 (citing *Childress v. Taylor*, 945 F.2d 500, 508–09 (2d Cir. 1991)). Analysis of co-authorship requires "a more stringent inquiry than the statutory language would seem to suggest." *Thomson*, 147 F.3d at 200.

> [A]n inquiry so limited would extend joint author status to many persons who are not likely to have been within the contemplation of Congress. For example, a writer frequently works with an editor who makes numerous useful revisions to the first draft, some of which will consist of additions of copyrightable expression. Both intend their contributions to be merged into inseparable parts of a unitary whole, yet very few editors and even fewer writers would expect the editor to be accorded the status of joint author, enjoying an undivided half interest in the copyright in the published work.

Id. (quoting *Childress*, 945 F.2d at 507 (rejecting claim of co-authorship)).

> The potential danger of allowing anyone who makes even a minimal contribution to the writing of a work to be deemed a statutory co-author—as long as the two parties intended the contributions to merge—motivated the [*Childress*] court to set forth a two-pronged test. A co-authorship claimant bears the burden of establishing that each of the putative co-authors (1) made independently copyrightable contributions to the

work; and (2) fully intended to be co-authors.

Thomson, 147 F.3d at 200 (citing *Childress*, 945 F.2d at 507-08).[3]

In evaluating whether a putative co-author made independently copyrightable contributions to a joint work, a majority of courts, including the Second and Ninth Circuits, adopt the "copyrightable subject matter test" formulated by Professor Paul Goldstein. *See M.G.B. Homes, Inc. v. Ameron Homes, Inc.*, 903 F.2d 1486, 1493 (11th Cir. 1990); *see also Childress*, 945 F.2d at 507; *Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 520–21 (9th Cir. 1990). According to Professor Goldstein, "A collaborative contribution will not produce a joint work, and a contributor will not obtain a co-ownership interest, unless the contribution represents original expression that could stand on its own as the subject matter of copyright." *Erickson v. Trinity Theatre, Inc.*, 13 F.3d 1061, 1070 (7th Cir. 1994). The Determination cites *Erickson* but does not address whether Bloom's contribution was independently copyrightable. This was a material error and denying the request to reconsider it was an abuse of discretion.[4]

Second, under *Childress* and *Thompson,* "each putative co-author must intend <u>*to be a co-author*</u> in order to give rise to a co-author relationship." *Thompson*, 147 F.3d at n. 20 (citing *Childress*, 945 F.2d at 508) (emphasis added). Even a significant contribution "does not automatically suffice to confer co-author status on the contributor. Under *Childress,* a specific finding of mutual intent remains necessary." *Thompson*, 147 F.3d at 202 (citing *Childress*, 945 F.2d at 508). The Determination made a material error of law by ignoring the question of mutual intent. Denying reconsideration of this error constituted an abuse of discretion.

The Ninth Circuit applies a similar test to claims of joint authorship of an audiovisual work.

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[3] *Thomson* and *Aalmuhammed* were governing law when the Work was created and provided the framework that the parties could have reasonably expected would apply to the work.

[4] Denying the request to reconsider the refusal to allow party and witness statements on whether Bloom's contribution was copyrightable constituted a further abuse of discretion.

See Aalmuhammed, 202 F.3d 1227 (affirming summary judgment that plaintiff was not a co-author). Citing the Second and Seventh Circuits, the Ninth Circuit has set forth three factors to be weighed when determining joint authorship under 17 U.S.C. § 101 in the context of an audiovisual work where there is no contract on the issue: "First, an author superintends the work by exercising control." *Aalmuhammed*, 202 F.3d at 1234. This may likely be "the inventive or master mind who creates, or gives effect to the idea." *Id.* "Second, putative coauthors make *objective manifestations of a shared intent to be coauthors*." *Id*. (emphasis added). "Third, the audience appeal of the work turns on both contributions and the share of each in its success cannot be appraised." *Id.* "Control in many cases will be the most important factor." *Id.* Although the Final Determination cites *Aalmuhammed*, the Final Determination does not apply its test. The Order precluded Claimant from arguing this test and from submitting party and witness statements on this issue.[5]

Additionally, in the Ninth Circuit, a contributor claiming to be a co-author must demonstrate "authorship," namely that she is an "author" *of the joint work* within the meaning of 17 U.S.C. § 101. *Aalmuhammed*, 202 F.3d at 1232. Demonstrating "authorship of the joint work" requires *more than* demonstrating that the contributor made a valuable and copyrightable contribution to the work. *Id*. (granting summary judgment of no joint authorship even though plaintiff demonstrated genuine issues of fact regarding a copyrightable contribution and an intent to merge his contributions into the work). The Ninth Circuit specifically stated that "[a] creative contribution does not suffice to establish authorship of the movie." *Id*. at 1233. The Determination did not apply the federal courts' test, limiting inquiry instead (contrary to judicial precedent) to the statutory language and legislative history. It was an abuse of discretion not to reconsider these

[5] As discussed below, however, the record contained ample evidence that Bloom did not exercise control over the creation of the Work and that neither he nor May and/or Melee intended that Bloom would be a co-author. The record and Respondents' arguments even show that Bloom, himself, did not intend to be a co-author of the Work.

material errors in the legal framework in the Determination.[6]

In denying the request to reconsider the Determination on this issue, the Denial states that "[n]o evidence or argument in Turner's written testimony undermined the evidence that supports Bloom's underlying claim to original authorship." Dkt. 63 at 2. The Board's conclusion on this point is materially incorrect, both legally and factually. Denying reconsideration based on this assertion was a further abuse of discretion. Respondents' own statements—even without allowing countervailing statements from Ms. Turner and her witnesses—show that it was a clear error of fact to conclude that Bloom was the author or "master mind" behind Just Correct. *See Burrow–Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 61 (1883) (using that term). It was clear error for the Board to conclude Bloom maintained "artistic control" over the Work (*see Aalmuhammed*, 202 F.3d at 1233), and denying reconsideration of this error in light of the evidence presented in the Request (Dkt. 57) was an abuse of discretion.

Specifically, the Board identified no evidence that Bloom made an independently copyrightable contribution to Work or that he was an author of the Work as a whole within the meaning of 17 U.S.C. § 101. *See* Dkt. 57 at 7. The contributions identified by the Board were not independently copyrightable contributions to the Work and, as a result, declining to correct this material error of law and fact constitutes an abuse of discretion.

> We hold that authorship is required under the statutory definition of a joint work, and that authorship is not the same thing as making a valuable and copyrightable contribution….The issue we deal with is a different and larger one: is the contributor an author of the joint work within the meaning of 17 U.S.C. § 101.

Aalmuhammed, 202 F.3d at 1232.

The Board further materially erred by ignoring the required question of whether Bloom,

[6] And even if the Determination were to have applied the *Aalmuhammed* test—or if the Board were to do so now and find in Bloom's favor—such application would only be proper if the parties had an opportunity to present evidence beyond document, including witness and party statements, on the question of whether Bloom was a co-author of Just Correct.

May, and Melee intended Bloom to be a co-author. The Board abused its discretion by declining to reconsider the Determination based on this issue. Reconsideration would reveal that the parties did not intend Bloom to be a co-author. As noted above, to determine whether this mutual intent requirement is satisfied, courts conduct a "nuanced inquiry into factual indicia of ownership and authorship, such as how a collaborator regarded herself in relation to the work in terms of billing and credit, decisionmaking, and the right to enter into contracts." *Thomson*, 147 F.3d at 201 (citing *Childress*, 945 F.2d at 508–09). *Thomson* and *Childress*

> mandate[] that the parties "entertain in their minds the concept of joint authorship." This requirement of mutual intent recognizes that, since coauthors are afforded equal rights in the co-authored work, the "equal sharing of rights should be reserved for relationships in which all participants fully intend to be joint authors."

Id. (quoting *Childress*, 945 F.2d at 509). The record shows that neither side, let alone both, intended that Bloom would be a co-author. *See* Dkt. 57 at 8-11 (citing evidence from the record). It was a material error to ignore this inquiry in reaching the Determination and an abuse of discretion to deny reconsideration of the Determination in order to apply the full test for co-authorship.

Movies "generally limit authorship to someone at the top of the screen credits, sometimes the producer, sometimes the director, possibly the star, or the screenwriter—someone who has artistic control." *See Aalmuhammed*, 202 F.3d at 1233. May's "starring" credit appears first. May also has the only "written by" credit, and that credit appears before Bloom's director credit. Dkt. 54, Ex. AA. Having only one "written by" credit show that the parties anticipated that there would only be a single "author." May also has an executive producer credit, above Bloom's credit. *Id.* Bloom did not dispute any of May's credits, or the placement of his own in comparison thereto.

Melee and May's agreement (Exhibit C (Dkt. 29)) shows that May and Melee's intent was not to be co-authors with Bloom. Instead, May and Melee intended that Melee would hold all rights in Just Correct and all related masters exclusively. *See* Ex. C at 8. Melee and May controlled the

recording procedure, not Bloom. *Id.* at 6. May was also responsible for the recording process, not Bloom. *See id.* May could not conduct filming sessions for the Work without Melee's approval (*id.* at 6), which meant that Bloom could not do any filming without Melee's approval. May (with Melee's approval)—not Bloom—decided when and where to film the Work, and May, by deciding what to perform, determined what would be filmed. While Bloom claims that he "ensured it met all industry broadcast standard requirements" (Determination at 3), Melee actually set those standards and requirements, and May was required to ensure that Bloom satisfied them. *See* Ex. C at 2. "The final mix/cut of each LP/DVD shall be subject to [May's] and Melee's mutual approval" (*id*. at 7), not Bloom's. The fact that Bloom and May knew the Work would be delivered to Melee before the project started and that both knew Melee's rights and May's obligations with respect thereto shows that Bloom did not control the project or its requirements.

"Just as the parties' written agreements with each other can constitute evidence of whether the parties considered themselves to be co-authors…so the parties' agreements with outsiders also can provide insight into co-authorship intent." *Thomson*, 147 F.3d at 204. On this point, *Aalmuhammed* is particularly instructive:

> Warner Brothers required Spike Lee to sign a "work for hire" agreement, so that even Lee would not be a co-author and co-owner with Warner Brothers. It would be illogical to conclude that Warner Brothers, while not wanting to permit Lee to own the copyright, intended to share ownership with individuals like Aalmuhammed who worked under Lee's control, especially ones who at the time had made known no claim to the role of co-author. No one, including Aalmuhammed, made any indication to anyone prior to litigation that Aalmuhammed was intended to be a co-author and co-owner.

Aalmuhammed, 202 F.3d at 1235. The relationship above is directly analogous to the one with Melee, May, and Bloom. Melee's and May's execution of the work-for-hire agreement shows that there was no intention by either of them to be co-authors with Bloom. The witness statement by Melee's general counsel, Jonathan Freund, also sets forth Melee's intent <u>not</u> to share rights in the Work with anyone, including Bloom, as co-author, co-owner, or otherwise. Doc. 50, ¶ 9.

> [T]he *Childress* court emphasized that the requirement of intent is particularly important where "one person...is indisputably the dominant author of the work and the only issue is whether that person is the sole author or she and another...are joint authors." "Care must be taken...to guard against the risk that a sole author is denied exclusive authorship status simply because another person render[s] some form of assistance."

Thompson, 147 F.3d at 202 (quoting *Childress*, 945 F.2d at 508, 504, alterations in original).

"In cases in which none of the multiple-author scenarios specifically identified by the Copyright Act applies, but multiple individuals lay claim to the copyright in a single work, the dispositive inquiry is which of the putative authors is the dominant author." *16 Casa Duse, LLC v. Merkin*, 791 F.3d 247, 260 (2d Cir. 2015). Such is the case here. As between Bloom and May, May is undeniably the dominant author. The credits support this conclusion, giving May "written by," "starring," and "executive producer" credits. Ex. AA. Bloom admits that May wrote all of the content in the Work. Bloom's copyright application (Doc. 38, which did not mature to registration) describes Bloom's "authorship" only as "production, direction." The application lists Bloom's only new material as "producer and Director of the video recording of a comedy performance" and specifically excludes "Jokes written by Ralphie May." *Id*. Bloom refers to May's performance as "his [May's] show." Respondent's Party Statement at 1; Determination at 3. May's contributions, admitted by Bloom, undeniably dominate over Bloom's technical recording of May's performances (at May's direction, as approved by Melee in advance) and Bloom's editing the raw footage into a broadcast production (subject to May and Melee acceptance and approval).

The Board materially erred by not considering whether the parties intended Bloom to be a co-author. Moreover, the evidence in the record does not allow a finding that Bloom and May and/or Melee shared a mutual intent for Bloom to be a co-author, or that Bloom was an author of the work as a whole. The Determination's conclusion that Bloom is a co-author constitutes clear and material error and the Board abused its discretion by not reconsidering the Determination

based on the facts and jurisprudence outlined above and in the Request (Dkt. 57).

III. CONCLUSION

Based on the foregoing, Ms. Turner asks the Register to remand the proceeding to the Board for reconsideration and for issuance of an amended final determination concluding that Respondent Bloom is not a co-author of the Work and that Claimant is entitled to the relief she requested. Alternatively, Claimant asks the Register to direct the Board to withdraw the Determination and to allow the parties to submit further evidence, including party and witness statements and a copy of Just Correct, so that the Board may thoroughly examine the issue of co-authorship under applicable judicial precedent.

Finally ,from a review of the history of proceedings before the Board, the undersigned has been unable to identify any instance where the Board granted a request for reconsideration. Thus, the Register offers the only practical, unbiased, substantive review of a Board determination. Congress entrusted the Register with supervisory authority to ensure that the Board exercises sound discretion in its decisions, which discretion requires fidelity to judicial decisions. By remanding this proceeding for reconsideration and an amended Determination now, the Register will not undermine the Board's legitimacy—the Register would reinforce it. A transparent course correction at this stage will protect both the credibility of the Board and the stability of creative industries that depend on predictable authorship rules.

Dated: August 29, 2025

/s/ T. Earl LeVere
T. Earl LeVere, *Attorney for Claimant*

Proof of Delivery

I hereby certify that on Friday, August 29, 2025, I provided a true and correct copy of the Claimant's Request for Review by the Register of Copyrights to the following:

Michael Bloom, represented by Michael A Bloom, sr, served via ESERVICE at solaris.em@me.com

Signed: /s/ T. Earl LeVere