

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND
TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(PHONORECORDS III)

Docket No. 16–CRB–0003–PR
(2018–2022)

**WITNESS STATEMENT OF
LEE THOMAS MILLER**

PUBLIC VERSION

Before the
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Docket No. 16–CRB–0003–PR
(2018–2022)

WITNESS STATEMENT OF LEE THOMAS MILLER

1. My name is Lee Thomas Miller. I am a professional songwriter. I respectfully submit this statement to the Copyright Royalty Judges on behalf of the National Music Publishers' Association ("NMPA") and Nashville Songwriters Association International ("NSAI") to obtain an increase in mechanical license rates which have a major impact on the American songwriter. A copy of my bio is attached. (CO Ex. 2.1.)

2. I grew up in Kentucky where I started playing piano when I was 12 years old. I was fascinated by music. By the time I was 16 I was also playing guitar and violin as well as singing and writing songs. My parents could not afford the music lessons I begged for but somehow found a way to get them for me anyway.

3. I went to Eastern Kentucky University where I earned a Bachelor's degree in Music Theory/Composition. I graduated as a classically trained composer, vocalist, violinist and pianist. As a teenager I chose this path in hopes of giving myself a better chance at succeeding in the world of commercial music. I am proud to say that today I am included in Eastern Kentucky University's Hall of Distinguished Alumni based on its perception of my career achievements.

4. I moved to Nashville in 1991 in time to see the glory days of the music business beginning. I was new so I was on the outside looking in. I did odd jobs to pay the bills while working as a musician anytime and anywhere I could. I spent every waking moment listening to the music being made by those who had come before me. There is an art but also a craft to song writing. We have to learn how to say things simple but profound, poetic but conversational and informative but brief.

5. This is very much a relationship-based business. I didn't just walk into writing appointments with veteran hit song makers. I had to earn that. I had to prove myself. This takes time. This takes years. There is no guarantee one will ever get to that level. And most don't.

6. My 'big break' came in 1996 when a Music Row publisher signed me to a publishing deal. I was paid \$18,000 a year to write songs. This was not a salary. It was an advance. It was to be recouped from my mechanical royalties. In the 1990s and early 2000s record sales were good so mechanical royalties were – although pale when considering the penny rate in relation to the price of the album – enough to stay afloat. If I could get enough songs cut then I could at least keep my deal without even having radio singles. This was how publishers developed us young writers. This practice has been greatly diminished in the current climate of the music business. Publishers can simply not afford to 'develop' as many writers as they once did.

7. Today the one thing keeping us working is the performance royalty from terrestrial radio. However, the radio singles are difficult to get. There will typically only be 3 or 4 singles from an album that contains 10-12 songs. If I am lucky enough for my song to be chosen as a single I am then subject to the absurdly antiquated 1941 consent decrees that tie me to ridiculous federal regulations regarding these performance royalties. It is because of these so-

called ‘anti-trust’ decrees that we are now being forced to accept a micro-penny rate when our songs are played on a non-interactive streaming service such as Pandora. Similarly, it is because of the compulsory mechanical license – born of the government’s fear in 1909 of the increasing power of piano roll companies – that we are also forced to accept these micro-pennies when our song is played on interactive streaming services run by Amazon and Apple and Google and Spotify. A micro-penny. This means that I get 10s of dollars for millions of plays.

8. I am not a recording artist. A recording artist affiliates with a record company and together they create a sound recording. The sound recording functions, for the most part, in the free market allowing the artist and the label to help create their own destiny. The maddening truth is the sound recording contains my song (my copyright). And *my* destiny was decided in 1909.

9. Much of what makes it to the radio is written by non-performing songwriters without the help of the artist who is singing it. Even the songs written by the artists are usually co-written with us – the professional songwriters. We learn and develop our craft as if we were electricians or farmers or blacksmiths or NFL quarterbacks. It takes talent and time and sweat and perseverance.

10. So why does the federal government insist on controlling our business to such an extreme level, including through the consent decrees and the compulsory mechanical license that is the subject of this proceeding? We create music. Music drives and defines our culture. Virtually everyone loves music. How is it that the sale of our songs is handcuffed to not only a compulsory license, but one derived from 1909?

11. Many of the hit songwriters I have known over the last 20 years are no longer in the business. They were forced to find a job for which they had no education or ability. They put

in the time and paid the dues and wrote songs that major artists recorded but were no longer able to make a living because they were told their songs have no value – even if they are recorded. Meanwhile technology is allowed to thrive by taking advantage of grossly outdated law.

12. Even as our profession is being decimated, consumers are enjoying and obtaining music more than they ever have. It is played at their weddings and funerals and graduations. They are making home movies with it, and adding it to video clips that they send to friends on social media. They are partying to it and cleaning their apartments to it and falling in and out of love to it. They know the words and the melodies. These are my words and my melodies. They should have never been offered to them for free. I should've been able to say no to the streaming services such as Spotify whose business model was to sell advertising then give the music away. But the compulsory license demands that I must say yes to their license request and, in return, I am given a micro-penny as decreed by my government. I wrote those songs. I made them up based on a lifetime of experiences and emotions and countless hours of playing piano scales and Bach and Mozart. I made them up in the style of my favorite lyricists and poets. They are a mashup of what I feel when I hear The Beatles and Frank Sinatra and Merle Haggard and Shakespeare. My songs are the results of growing up in a lower middle class, tobacco-farming, God-fearing humble home with wonderful parents who allowed me to dream and sacrificed to provide me with the opportunity to attempt something that sounded impossible. I burned the bridges to any other career path when I was a child because I wanted to make music. I could not do this with a plan B. I only had a plan A.

13. The competition is overwhelming. I am not the best musician or singer or poet. I have not succeeded because I was simply undeniable. To be honest, I don't know why I have succeeded. Perhaps it has been luck or divine intervention or my sheer determination and lack of

being smart enough to realize I'm in over my head. I suspect I owe my success to a combination of all of these things. But I do know that what I do matters. It has value. It touches people's lives. I also know that somebody is making a lot of money off of what I do because there is a massive business out there that would not exist without songs.

14. We can accept failure because of competition from our peers. We can accept the fact that writing a hit song is hard. However, we do not accept the premise that the delivery system of the music is more valuable than the music. We do not accept that music should be free to the population when clearly it is of overwhelming value to them based on their staggering usage of it and the fact that they were previously buying it at a substantially more generous rate prior to our current unfortunate situation.

15. I plead with the court to begin the process of re-valuing our product. If there ever was an example of the "little guy" or the "small business" needing some relief it is us. American songwriters have been devastated and we need your help.

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I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016



Lee Thomas Miller



BIOGRAPHY

LEE THOMAS MILLER

Hometown: Nicholasville, Kentucky

Bachelor degree in Music Theory/Composition

(Eastern Kentucky University 1990)

CURRENT PRESIDENT OF THE NASHVILLE SONGWRITER'S ASSOCIATION (NSAI)

3 Time Grammy Award Nominee:

2003 Grammy nomination :

“The Impossible” (Joe Nichols) Country Song of the Year:

2009 Double Grammy nomination :

“You’re Gonna Miss This”(Trace Adkins)- Country Song of the Year

“In Color” (Jamey Johnson)- Country Song of the Year

Music Row Magazine: Breakthrough Songwriter of the year 2003

Awarded one of NSAI's 'Ten Songs I Wish I Had Written' 2003: "The Impossible"

Awarded one of NSAI's 'Ten Songs I Wish I Had Written' 2008: "You're Gonna Miss This"

Won **Song of the Year** at the 2008 NSAI awards for "You're Gonna Miss This"

Nominated for Song of the Year at 2008 CMA awards for "You're Gonna Miss This"

2009 Double ACM Nominee: "You're Gonna Miss This" and "In Color" for Song of the Year

Won **Song of the Year** at the 2009 ACM awards for "In Color"

Won Music Row Magazine's 2009 **Song of the Year** for "In Color"

Awarded one of NSAI's 'Ten Songs I Wish I Had Written' 2009: "In Color"

Won **Song of the Year** at the 2009 CMA awards for "In Color"

#1 Country Singles:

"The Impossible" (Joe Nichols)**

"I Just Wanna Be Mad" (Terri Clark)**

"The World" (Brad Paisley)**

"You're Gonna Miss This" (Trace Adkins)*

"I'm Still A Guy" (Brad Paisley)

"Southern Girl" (Tim McGraw)

"Perfect Storm" (Brad Paisley)

(*received BMI Million Play Award)

(**received BMI 2 Million Play Award)

.

Other top 10 singles:

"Crushin' It" (Brad Paisley) #7

"In Color" (Jamey Johnson) #7

"Nothing To Die For" (Tim McGraw) #5

"Jesus In Disguise" (Brandon Heath) #8

"Just A Girl" (Brandon Heath) #8

.

Other top 20 singles:

~~///@thomasmiller~~
“**Something To Do With My Hands**” (Thomas Rhett) #15

“**Crying On A Suitcase**” (Casey James) #14

“**Leaving Eden**” (Brandon Heath) #17

Cuts include: Tim McGraw, Rascal Flatts, Dierks Bentley, Josh Turner, Brad Paisley, Joe Nichols, Terri Clark, John Michael Montgomery, Sammy Kershaw, Andy Griggs, Tracy Byrd, Tracy Lawrence, Randy Travis, Rhett Akins, Blue County, Billy Currington, Craig Morgan, The Wreckers, Chris Young, Blackhawk, Mark Wills

Production credits include Curb recording artist Steve Holy including the 2006 #1 single: “Brand New Girlfriend” and 2010 top 20 single “Love Don't Run”

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**WITNESS STATEMENT OF
LIZ ROSE**

PUBLIC VERSION

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WITNESS STATEMENT OF LIZ ROSE

1. My name is Liz Rose and I live in Nashville, Tennessee. I am a songwriter for Liz Rose Music and Warner/Chappell Music. I write this statement to explain that everybody deserves to be fairly compensated for the value of their work. Songwriters are no different. However, unlike virtually everybody else, the songwriting profession is heavily regulated by the federal government and songwriters and their music publishers are forced by a hundred-year-old compulsory mechanical license to license their music to anyone who wants it at below-market rates that do not reflect the value of the product we create. Some of the largest companies in the world, like Apple, Google, and Amazon, are paying us micro-pennies to stream our music while using our music to draw in more customers to buy more of their smartphones and speaker systems. Spotify, which is worth billions of dollars, is still *giving away our music for free to 60 or 70 million users*.

2. While more consumers are listening to more music than ever before, the songwriters who create the music are struggling to earn a decent living on the miniscule amounts the services pay on an enormous volume of streams. The situation is getting progressively worse as interactive streaming is also cannibalizing sales of albums and permanent digital downloads on which songwriters earn higher mechanical royalty rates. Music publishers are suffering, as well.

As an independent music publisher as well as a songwriter, I can attest that publishers can no longer afford to sign as many songwriters because, with the mechanical rates that are being paid by the streaming services, we are at greater risk than ever of not recouping the advances we pay to songwriters. I used to keep songwriters on for a few years so they could develop their craft before I had any expectation of their getting hits. Now, I have no choice but to drop writers who fail to get a hit in a year. There are Hall of Fame songwriters who can no longer get publishing deals. Under the current mechanical rate structure, interactive streaming services pay songwriters very little on a very high volume of plays. With few exceptions, songwriters cannot sustain themselves on the mechanical revenues they earn from interactive streaming.

3. At the moment, I am one of the lucky ones still earning decent mechanical revenues because I have co-written songs with huge recording artists that are being streamed hundreds of millions of times. However, I expect that the older those songs become, the less they will be streamed, and the less mechanical income I will earn. For example, I have co-written 13 songs with Taylor Swift (among other top artists) and, while even Taylor is selling less albums since streaming has grown, several of the songs still are streamed enough—and I mean hundreds of millions of times—that the micro-pennies per stream paid by the services produce good income. Unfortunately, this requires several hundred millions of streams per song per accounting period, a level which is unattainable for all but the vast majority of songs. Additionally, that mechanical income (shared between three, and sometimes four, co-writers) is far less than what those songs would have earned from sales of albums and permanent digital downloads. Our songs are no less valuable if they are streamed or sold on albums or as permanent downloads. Therefore, the interactive streaming services must start compensating songwriters fairly for the value of their work to save the songwriting industry from extinction.

4. Let me start by saying that, while I can write melodies and strum an acoustic guitar well enough to play the melodies I come up with, I am not a professional singer or guitar player. I consider myself a lyricist.

5. Over the last fifteen years, 59 of the songs I have written have been recorded by renowned country artists, including Billy Gilman, Tim McGraw, Gary Allan, Miranda Lambert, Little Big Town, Bonnie Raitt, Tricia Yearwood, Lori McKenna, Jewel, Martina McBride, Blake Shelton, Alison Krauss, BlackHawk, Kellie Pickler, LeAnn Rimes, Lee Ann Womack, Hunter Hayes, Jill Johnson, Colbie Caillat, Carrie Underwood, Mockingbird Sun, and the Zac Brown Band. Last, but not least, I have co-written a total of 13 songs with Taylor Swift, including “White Horse,” “Tim McGraw,” “Teardrops On My Guitar,” “You Belong With Me,” and “All Too Well.” These songs appeared on Taylor’s first, second and fourth albums.

6. In 2007, I was named Songwriter of the Year by SESAC. In 2010, I won a Grammy Award with Taylor for Best Country Song for “White Horse.” Taylor and I were nominated for a Grammy Award for Best Country Song for “You Belong With Me.”

7. I won an Academy of Country Music Award in 2011 for Song of the Year, for co-writing “Crazy Girl” with Lee Brice (and recorded by Eli Young Band). And most recently, in 2016, I won a Grammy for Best Country Song with Lori McKenna and Hillary Lindsey for “Girl Crush,” which was recorded by the band Little Big Town. “Girl Crush” was also nominated for a Grammy for Song of the Year, won for CMA Song of the Year, and was nominated for Academy of Country Music’s Song of the Year.

8. Several of the songs I have written have gone platinum, including “You Belong With Me” (7x platinum), “Teardrops On My Guitar” (3x platinum), “Picture To Burn” (3x platinum), “White Horse” (2x platinum), and “Girl Crush” (2x platinum).

9. My path to becoming a professional songwriter was a bit unorthodox. I was born and raised in the Dallas, Texas area. I loved music, but never dreamed of writing songs as a career. I married when I was 19 years old and I had the first of my three children by the time I was 20. I was a divorced single mom by the time I was 21. When I was 29 years old, I married a man named Johnny Rose, who was a singer-songwriter and a music buyer. In 1994, we moved to Nashville. Johnny got a job working at a record label, and I stayed home raising the kids.

10. When the children started school, I started looking for a job. I found part-time work performing management services for country duo Brooks & Dunn. I enjoyed working as an artist manager and thought that I wanted to manage artists for a living. I took an internship with an artist-management company. A little while later, I met Ken Bidy, a very successful music publisher, at a party. Ken saw something in me and the next week he offered me a job as a song-plugger, something I had never done before, and which I knew nothing about. But I thought “Why not? I want to work.” Whatever it was that Ken Bidy saw in me at that time, I guess he was right. I turned out to have a knack for plugging songs, and I felt a kinship with the writers who created them.

11. Soon after, Johnny and I divorced and I found myself a single mother again. By then I had grown to love the publishing business and in 1996, I started a small independent publishing house called King Lizard Music. I started sitting in the room with some of the songwriters I had signed and that was my entry into writing songs.

12. In 2001, I closed King Lizard Music. One of my writers caught the attention of publishing veteran, Jody Williams, who was thinking about signing her. Jody called me to let me know he was considering signing my writer and said that she had given him a list of her songs. Jody told me that some of his favorite songs on the list were songs that I wrote with her. He asked

me if I had ever considered writing professionally. And although I had co-written a few songs that were recorded by top country artists, I was not bold enough to call myself a songwriter. Jody encouraged me and eventually convinced me to write for him. I was 37 years old—a late start by most standards.

13. Jody Williams bought the King Lizard catalog. He signed me as a new writer and also hired me to pitch the catalog. After about a year of writing and pitching, Jody told me that I should focus on my writing full time. From then on, I have written every day, all day. Sometimes I wrote twice a day, even three times a day, with different writers. I wrote with anyone who wanted to write. I wrote a lot and I learned a lot. I worked very hard to hone my craft. The stakes were high: I had three children to support. I simply could not afford to fail. It took me five or six years before I felt I could call myself a songwriter. During my years with Jody, my songs were recorded by Tim McGraw, Billy Gillman, Trisha Yearwood, Bonnie Raitt, and Gary Allan.

14. In 2006, I met Taylor Swift. She was barely 14 years old and had a development deal with RCA Records. At the time, RCA was running what it referred to as “RLG Café” where songwriters could perform some of their songs and, because the Café was located in the basement of RCA’s building, it was frequented by up-and-coming recording artists as well as seasoned artists, label executives, and the like. I happened to go there one day to perform a couple of my songs, which is not something I did very often because I don’t sing or play any instruments beyond strumming or picking one of my melodies on a guitar. The song that I performed that day was one that I had written with Mark Narmore called “Nothing Will,” and Taylor came up to me afterwards, introduced herself, and told me that she loved the song. She asked me if I would write with her some time. As I said, I wrote with anyone who wanted to write, so I told Taylor that I would write with her. The first song we wrote together was a song called “Never Mind.”

15. That same year, 2006, Taylor released her self-titled debut album. Seven of the songs on the album were songs that we co-wrote, including the first two singles that were released: “Tim McGraw” and “Teardrops on my Guitar.”

16. I continued to write with Taylor on her second album, “Fearless,” which was released in 2008. I shared co-writer credit with Taylor on six of the songs on the album, including the singles “White Horse” and “You Belong With Me.”

17. Instead of buying my dream home with the money I had earned on the songs I wrote with Taylor, in 2010, I used the money to start a new publishing company with my son, Liz Rose Music, to give songwriters an opportunity and a platform to get their songs recorded. As a songwriter and a publisher, I think I have a unique perspective on how interactive streaming affected the songwriting industry.

18. As the music industry trends towards the digital distribution of music through interactive streaming, publishing companies are not as profitable as they once were. As a result, not only are we signing fewer songwriters, but we are also less likely to renew a songwriter’s contract unless he or she has multiple cuts in one year (which is not easy). This is a big change from the way music publishers worked.

19. One of my first big cuts was a song I wrote for Tim McGraw in 2002 called “All We Ever Find.” The money I earned from that song (an album cut, not a single) was, by itself, enough to have my publishing deal renewed for the next year. These days, however, publishers are unlikely to renew contracts for songwriters who only have one of their songs recorded within a year.

20. In fact, I have had to drop two of my songwriters in the past two years. These songwriters were incredibly talented, not to mention they were two of my best friends, but I could

not afford to keep them. We used to be able to sign more songwriters and give them five or six years to hone their craft and get their songs cut, but we can't afford to do that anymore because we no longer believe that even a very talented songwriter who gets a few songs recorded will earn enough mechanicals for us to recoup three or four years' draw. Now, unless a songwriter produces two or three hits a year, publishers are unwilling to renew his or her publishing deal. While this may sound like an easy task, it's not. Even the most successful songwriter can write 200 songs to get one hit. Talented songwriters can go years without having a hit, especially if a songwriter does not have a relationship with a recording artist. We also cannot afford to pay songwriters the kind of advances we used to pay.

21. This new publishing business model makes it immensely challenging for songwriters. The fate of songwriters is uncertain, especially for songwriters like me who are pure lyricists.

22. Over the last few years, successful songwriters are being driven out of the industry because they cannot maintain a living under the current mechanical rate structure. Not to mention songwriters live on a draw which is recoupable and must be paid back before they see any mechanicals. All songwriters, including those who are still able to earn a living—at least for now—believe that they deserve to be compensated fairly for their contributions to the music industry and the interactive streaming industry, and they will not continue to write songs if the compulsory mechanical royalty rate is not substantially increased.

23. My work is consumed and enjoyed by people across the world, and I should be compensated for performing my job well. We compensate athletes for performing well on the field and drawing fans to the stadiums, thereby sustaining the sports industries. We compensate television and movie stars for good acting on television and in movies. We also compensate

recording artists for singing the songs that songwriters write—very few, if any, singer-songwriters write without the help of professional songwriters. How is it that songwriters are not being paid fairly for the value of their songs? And how is it that songwriters are not being paid fairly for the value of their songs by giant companies like Apple, Google, and Amazon, whose music services are based on the songs we write and that use our songs to lure customers to buy other expensive products that they make? And what about the billion-dollar company Spotify, which is giving our music away for free to tens of millions of users? It's the compulsory mechanical license that prevents songwriters from negotiating their pay rates in the free market, resulting in below-market rates.

24. Our songs generate an incredible amount of money for the music industry and for the businesses that exploit our music. No song, no musician; no song, no studio; no song, no artist; no song, no record labels; no song, no music industry. So why not pay for the song?

25. The value of music cannot be fully quantified in economic terms. Songs are part of our everyday lives. How would we live without songs? In fact, it's hard to imagine a day that does not include music. But if there was no music, what would we dance to? What would we hear when we eat in restaurants? What would we listen to in order to power through our workouts? Nightlife as we know it would not exist. Live music would not exist. Picture a wedding with no music, a funeral with no music, a movie with no music, driving with no music, etc. In this world where music is everywhere, the silence would be deafening without music.

26. Music entertains us, but its power goes far beyond entertainment value. Songs touch people's emotions at life's most important moments. People fall in love to our songs. Songs help us through difficult times, and remind us of happy times. Our songs uplift people. Without our

songs, how would a father dance with his daughter at her wedding? How would a mother sing her baby to sleep?

27. I want to share a personal story that shows the power of songs in our lives. When my niece, Elisabeth, was 2 years old, she was diagnosed with neurofibromatosis. At 19, we learned that Elisabeth had a malignant brain tumor. The family was devastated when we got the news. I channeled my heartbreak into writing a namesake song for Elisabeth. “Elisabeth” (which I co-wrote with Kim Patton-Johnston) was recorded by Billy Gilman. Billy also released a music video of him performing the song.

28. While Elisabeth was having one of her chemotherapy treatments, her mom started crying. Elisabeth asked what was wrong. Her mom said she was sad because Elisabeth should be in college and spending time with her friends, not suffering through chemo and fighting to live. Elisabeth responded, “Mom, my friends don’t have a song and video about them.” Elisabeth eventually passed away at the age of 22. That song was played at her funeral attended by hundreds of people. I will never forget her best friend standing at the podium talking about Elisabeth and saying, “If you didn’t know Elisabeth well, then listen to this song and you will.” During the worst year of Elisabeth’s life, I was able to give her one of the best things in her life.

29. It used to be that a successful non-performing songwriter could make a comfortable living through mechanical and public performance royalties. Now, streaming has become the most popular way to consume music and is quickly becoming the primary source of mechanical revenues for songwriters, if it is not already. But under the current rate structure, the interactive streaming services pay miniscule amounts on an enormous number of streams, while they are replacing sales of digital downloads and albums on which songwriters earn much more mechanical income.

30. Although I am one of the few non-performing songwriters still earning a good income, it's mostly from the songs I wrote with Taylor Swift because she is one of the biggest, if not the biggest, recording artist in the world. Taylor still sells albums, so I earn decent mechanical income on album sales on the albums on which I have cuts. Her songs are still downloaded, so I earn decent mechanical income on downloads. Taylor's songs are on heavy rotation at radio stations. And the songs we co-wrote are still being streamed hundreds of millions, if not billions, of times. Album sales, downloads, and streams of those songs will slow over the next few years.

31. The essential purpose of copyright is to provide an economic incentive for individuals with creative talent to spend their time creating, on the notion that society is the ultimate beneficiary of that creativity. Copyright promises a creator the chance to earn a return on her or his investment of time spent learning and perfecting the craft, his or her financial sacrifice, and the emotional investment of baring his or her soul and possibly being rejected.

32. Despite the misconceptions some people may have, writing songs that artists want to record and that people want to hear is incredibly labor-intensive. It's a full-time job. I write every single day whether I feel like it or not. I spend countless hours in the studio. And, while I enjoy the creative process of songwriting, my end goal is to write songs that become hits so that I can continue to earn a living and take care of my family.

33. If established songwriters leave the industry because they can no longer support themselves and their families, there will be no one left to mentor young, talented songwriters. These up-and-coming songwriters will not pursue songwriting as a profession if they cannot support themselves doing it. Without either the old talent or the young talent, songwriters will become extinct.

34. In considering the fair mechanical rate to pay songwriters for interactive streaming, I respectfully ask you, the Judges, for the next two days, to pay attention to how much music you hear throughout your day. It's everywhere. Songwriters should be protected as a national treasure. Songwriter Bob Dylan was just awarded a Nobel Prize in Literature. Songwriters don't want it all, we just want to be paid fairly for our work. We have to save the songwriters.

35. As explained above, opportunities for songwriters are declining. The streaming services include some of the world's largest companies. These companies devalue our songs by charging minimal subscription prices, or none at all, for users to stream as much music as they want whenever they want. Some of them are using our songs to sell more phones and other expensive electronic devices. Songwriters do not share in that revenue. These services are able to pay increased royalties to the songwriters. Their ability to pay increased royalties is further evidenced by the generous compensation paid to their executives and for free gourmet food and snacks, fitness classes and gyms, massage rooms, nap pods, haircuts and onsite doctors offered to their employees. They even have playrooms set up around their offices. And, to top it off, their revenues are soaring.

36. The streaming services do not need to be subsidized. If anyone deserves special treatment, it is the songwriters, who cannot negotiate the value of their work and are forced to accept the offensively low royalty payments owed to them under an antiquated law.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016


Liz Rose

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(2018–2022)

WITNESS STATEMENT OF STEVE BOGARD

1. My name is Steve Bogard and I live in Nashville, Tennessee. I am a non-performing songwriter, or “pure songwriter,” signed to an exclusive contract with Magic Mustang Music, a division of Broken Bow Records. I am also the longest-serving (seven years) former President of the Nashville Songwriters Association International (“NSAI”), the world’s largest not-for-profit songwriter trade association. I respectfully make this statement in support of the proposal of the National Music Publishers’ Association (“NMPA”) and NSAI (collectively, the “Copyright Owners”) for the statutory rate for mechanical licenses for interactive streaming. Under the current mechanical rate structure for interactive streaming, the songwriters who create our music are struggling more than ever to earn a decent living.

2. The purpose of the Copyright Act is to incentivize creators to create works of value by giving them exclusive control over their creations for a limited period of time. However, the federal government regulates two of the three major income streams available to songwriters: mechanical (compulsory license) and public performance income (outdated consent decrees). The playing field is stacked against songwriters and music publishers in a way that is almost impossible to conceive of in any other line of work. Imagine a profession in which you have no

ability to negotiate the value of your own work, and no ability to refuse to license the fruits of your work to anyone who wants it, even though you know they are only paying a fraction of what it's worth. Incredibly, that is precisely the position that American songwriters are in when it comes to streaming and limited downloads. Therefore, if I wanted to tell Spotify that it cannot have any Steve Bogard songs because what they pay is insulting, I can't do it, even if I control 100% of the songs. Thus, songwriters cannot protect the value of their music and must sit and watch while their music continues to be devalued, particularly by the interactive streaming services.

3. Since mechanical rights are compulsory, the only way songwriters can be fairly compensated is for regulators to set rates that compensate them fairly regardless of how their songs are distributed to the public. As I explain below, songwriters are not being fairly compensated under the current compulsory mechanical rates for interactive streaming and limited downloads. I'm a career songwriter who has seen my mechanical royalties drop like a nickel rolling off a table. I know my songs are still being played on terrestrial radio because my performance royalties continue to be significant, even on older copyrights. And I'm one of the lucky ones who are still out there generating activity and getting cuts. Many of my contemporaries, some of them Hall of Famers, have had to give up full-time songwriting because they cannot earn enough money to support their families.

4. The demand for music has never been higher. The streaming platforms are showing unprecedented growth, and are rapidly replacing sales of physical product and permanent downloads. And, while I am not an economist, common sense tells me that when more people want to listen to more music, the value of music increases. Songwriters should not be penalized financially if music fans wish to stream their music instead of purchasing albums or

permanent downloads. But under the existing rate structure for interactive streaming and limited downloads, songwriters are only minimally compensated when their songs are streamed or played as limited downloads compared to when their songs are purchased on albums or permanently downloaded; it's the difference between micro-pennies per stream and 9.1 cents per album track or permanent download. There is no logical reason for the disparate mechanical rates. Music fans do not enjoy our music less when they stream it than when they listen to it on an album or CD, or a permanent download. Music fans who enjoy our songs by streaming them anytime, anywhere, as many times as they want, on multiple devices, no less "own" our songs than music fans who buy albums or downloads.

5. Soon, interactive streaming will be the primary source of mechanical income. If the statutory mechanical rate structure for interactive streaming is not substantially increased to provide songwriters fair compensation for their contributions, successful professional songwriters who can no longer support themselves and their families will continue leaving the business at a faster rate. Talented young songwriters will not choose the songwriting profession if they can't earn enough to support themselves and their families. They will choose another career path where they can make a decent living. Without songwriters, there will be no songs that mark the memories and the moments of our lives. And the world will be so much the worse for it.

My Background

6. In determining statutory rates for interactive streaming, I think it is important for the Judges to understand the personal investments and sacrifices songwriters make; the risks they take when they choose to pursue songwriting as a career; the way the music industry has changed over the last decade; and how these changes have impacted songwriters.

7. I have been a professional songwriter for 47 years and have achieved a level of success that I am both proud of and grateful for. Over 125 of my songs have been recorded by some of the best-known, top-selling recording artists in country and pop music. They include Waylon Jennings, Conway Twitty, George Strait, Dierks Bentley, Tanya Tucker, Etta James, The Four Tops, Tim McGraw, Reba McEntire, Kenny Chesney, Trace Adkins, Brad Paisley, Restless Heart, Oak Ridge Boys, Rascal Flatts, and Dustin Lynch, among many others.

8. Nine of my songs reached Number 1 on the Country charts: (1) Dierks Bentley, “Every Mile A Memory”; (2) Jack Ingram, “Wherever You Are”; (3) George Strait, “Carrying Your Love With Me”; (4) George Strait, “Carried Away”; (5) Reba McEntire, “New Fool At An Old Game”; (6) Eddie Raven, “Til You Cry”; (7) Tanya Tucker, “Hangin’ In”; (8) Lee Greenwood, “Mornin’ Ride”; and (9) Rascal Flatts, “Prayin’ For Daylight.”

9. Eight other songs I have written hit the top ten on the Country charts, three hit the top twenty, and another thirteen of my songs hit the top one hundred. I currently have a cut, “Seein’ Red,” on Dustin Lynch’s upcoming third studio album. His prior three albums (two of which were studio albums that contained several of my songs) reached Number 1 on the Country charts. “Seein’ Red,” was released as the lead single this past June. The single is currently at Number 29 on Country Air Check and climbing.

10. My songs have been sold on over one hundred million albums, according to RIAA gold and platinum certifications. Two of my songs were nominated for Grammy Awards for Best Country Song. And I have multiple one, two, and three million radio performance awards from BMI.

11. I have been advocating on behalf of songwriters for well over a decade. In 2006, I was elected to the first of seven terms as the President of the Board of NSAI, the longest

consecutive service in that role in the organization's more than 40-year history. For several years before that, I served as a member of the Board. Under my watch, we bought our own building, Nashville's historic Music Mill, and acquired the nation's premier acoustic venue, the legendary Bluebird Café. As President, I worked closely with our Executive Director on the policies and direction of the organization. During my tenure, we helped change the U.S Tax Code for songwriters with the Songwriters Tax Equity Act. Through countless visits to Congress, during which I spent many hours with members of the House and Senate Judiciary Committees, I advocated for the ill-fated Stop Online Piracy Act. I advocated for songwriters in the Phonorecords I rate proceeding in 2006. I remain a dedicated advocate for songwriters.

The Work of a Professional Songwriter

12. The pursuit of a career as a professional songwriter involves sacrifices and risk. As I stated above, I have been a songwriter for 47 years. Music has been a part of my life for as long as I can remember. In fact, I started my own band, The Paragons, when I was 13 years old. We played school dances, community centers, and country clubs, and we opened concerts for local and national acts throughout the Tampa Bay area. In 1968, we recorded a few of my original songs with a producer in Memphis that were picked up by Scepter Records. The label released two of the cuts as singles and we went on the road. Music was my passion, and though I loved performing, I soon realized my gift was writing songs.

13. After the band broke up in 1969, I moved to Memphis. Bill Black Music gave me the tremendous opportunity to write with and learn from professional songwriters, including legendary songwriters like Dan Penn, Chips Moman, and Wayne Carson. A song that I co-wrote, "Freedom Train," was recorded by R&B artist James Carr and became a top twenty hit on Billboard Rhythm & Blues Singles. "Freedom Train" became something of a Civil Rights

anthem for the time. I learned the lesson from these folks that generosity, paying it forward to young up-and-coming writers, is an important tenet of the songwriting community that I carry with me to this day.

14. A short while later, I landed a staff songwriting deal with Atlantic Records' publishing company at the famed Criteria Studios in Miami. At the age of 20, I was working with legendary producers Tom Down and Jerry Wexler, writing for their artists Delaney & Bonnie, Dee Dee Warwick, and Rita Coolidge, and sitting in on sessions with Aretha Franklin and Eric Clapton.

15. My family and I moved to Nashville in 1982 after a song I had written in Memphis in 1970, "Touch Me With Magic," was picked up and recorded by Marty Robbins. It became a top fifteen Billboard Country hit and won a BMI Performance Award. The move to Nashville was risky. I had my wife and two young children to support, a \$5,000 loan, and no job. I played small gigs for very little pay until I found a publishing deal as a full-time songwriter for The Welk Music Group and was paid a draw of \$50 per month.

16. My wife, Beverly, a stay-at-home mom who had never worked outside the home, supported our family with a job waiting tables at Red Lobster. We faced the challenges of juggling work and child care, just as any two working parents would. Though my draw was nominal, I was soon writing with mentors like Rory Bourke and Charlie Black, now Hall of Fame songwriters.

17. In 1984, I signed an exclusive songwriter agreement with Chappell & Co., which later merged with Warner Bros. and became Warner/Chappell Music. The day I signed this contract, I had \$12 in the bank, rent due, and a \$200 tuition bill to pay for my two young children's Catholic school. That first \$300-a-week draw seemed like a small fortune. Soon I had

my first Number 1 Country song. I spent over twenty years writing for Warner/Chappell during which time I wrote many platinum-selling and chart-topping songs.

18. In 2005, I signed a multi-year co-publishing agreement with Famous Music where I had two Grammy nominated songs, including a multi-week Number 1 hit for Dierks Bentley. In 2008, Sony/ATV Music Publishing purchased Famous Music and, although I could have remained with Sony/ATV, I decided instead to start my own publishing/production/management company. Investing my own money during this difficult time in the music business with no corporate partner, and running the day-to-day business while writing full time, proved to be a big financial mistake for me.

19. I then spent two years looking for a new publishing home, and even with all my previous success, and many friends in the music community, there seemed to be no place for an experienced, non-performing songwriter. Then, in late 2011, I signed a co-publishing deal with Magic Mustang Music, a division of Broken Bow Records. Magic Mustang / Broken Bow saw the value of having a veteran songwriter to co-write with and mentor their growing stable of young artists and songwriters.

20. It took many years of hard work to become a successful songwriter. As I learned during my ill-fated independent venture, it is a full-time job, requiring long hours and writing seven days a week. Songwriters also must listen for trends in music and constantly search for “hooks,” phrases, titles, and ideas. Our ultimate goal is to make people feel something, to touch their hearts. One thing is for certain, talent will only get you so far. A strong work ethic and persistence are necessary to master the craft. And no matter how talented you are or how hard you work, there are no guarantees of success. A song can be pitched dozens of times before it

finds a home on a recording and most never do. I recently had a song recorded by Ronnie Dunn (formerly of Brooks & Dunn) that he put on “hold” to record SEVENTEEN years ago.

Songs Are Inherently And Economically Valuable

21. I believe that a critical factor in considering compulsory mechanical rates and terms for interactive streaming include the economic, emotional, and cultural significance of songs and the songwriters who create them. Starting with the economics, songwriters are the backbone of the music industry and the many businesses and professions that rely on music. Without songwriters, there are no songs. Without songwriters, there are no record companies, recording artists, recording studios, session musicians, background singers, record producers, recording engineers, studio employees, recording technology manufacturers, concert tours, sound and light designers, or concert t-shirts and merchandise. Without songs, there would be no publishing companies or performing rights organizations. Terrestrial and satellite radio stations would be all talk. Without songs, there would be no soundtracks to major motion pictures. There would be no music on YouTube. Without songs, there would be no interactive streaming services. When songwriters create a great song, they create great economic value.

22. Beyond driving the music industry, the songs we write touch people in ways that are unquantifiable. “The song” that was playing is often the most vivid detail we remember about our childhoods, our families, our first dates, our first loves, our weddings, our heartaches, and our losses. There is compelling research on Alzheimer’s patients that songs can sometimes be the only way to reach their lost memories. People have told me how my songs touched their lives and helped them get through difficult times.

23. For example, friends of my wife Beverly and me invited us to their daughter’s wedding when my song, “Carrying Your Love With Me,” was a hit for George Strait. Before the

wedding, the father of the bride told me that he could not wait for me to see the bride and groom's first dance. They danced to "Carrying Your Love With Me." The couple had gone through a difficult engagement. The groom was in the military, stationed nearby, but deployed to the Middle East twice. His service caused a serious strain on their relationship. The father of the bride told me that my song had been "their song," important to their staying together through the hardships. To add another layer of meaning to "their song," the bride was, in fact, several months pregnant and "carrying their love."

24. On another occasion, after I finished a performance at the Bluebird Café in Nashville, a young man approached me to shake my hand. He showed me his wrist, which had a unique design around the words, "Every Mile A Memory," a Number 1 hit I wrote with Dierks Bentley. This young man went on to tell me how he and his best friend had enlisted in the military together and decided to get these identical tattoos before they were deployed to Iraq, and how they vowed to stick together. Tragically, his friend did not return home. This young man wanted me to know how much my song meant to him and reminded him of his dear friend.

25. Close friend and NSAI board member, Philip White, co-wrote the Song of the Year in 2001, "I'm Movin' On," for Rascal Flatts. Over the last year, Philip has gone through a difficult divorce and filed for bankruptcy. Broke and alone, another friend recommended he see a therapist. At the end of Philip's first therapy session, his therapist handed him a folded sheet of paper and said, "I want you to go listen to this song." Philip unfolded the paper to see his song, "I'm Movin' On," written there. The therapist was shocked to learn that Philip had written that song and told him that, over the years, he had recommended the song to hundreds of patients, and that it had helped many of them move through crises in their lives.

26. Songwriting is an art that touches people’s lives in so many ways. This is, in part, what makes songwriters and their songs so valuable. While there are other art forms that perform the same function—novels and films—songs are by far the most accessible form of art to all people. They impact our American culture and society in a way that no other form of art does. America’s music has influenced music throughout the world.

27. The songwriter’s integral economic and cultural role has not changed as the distribution of music has shifted from physical sales to digital sales to interactive streaming. Why, then, have we been struggling harder and harder to make a decent living as the popularity of interactive streaming has steadily grown to the point that it is cannibalizing physical sales and permanent downloads? There are several reasons.

Rates Are Depressed By Government Regulation

28. Since 1909, songwriters have been prohibited from negotiating mechanical rates in the free market. Rates set by the federal regulators are significantly lower than rates that would be negotiated in the free market. And the below market statutory rates for mechanical licenses have not evolved with changes in the music industry, including changes in the way music is distributed. As a result, our songs have been, and continue to be, devalued. In the one major income stream that songwriters and publishers negotiate in the free market, synchronization, the “song” copyright is typically paid the *same* rate as the sound recording copyright. This is a very telling model.

29. There is no other American business that is forced to license or sell its product to anyone who wants to use it at the price the government sets. In fact, songwriting is the most heavily regulated sector of the music industry and, while most of the heavily regulated industries in this country have been deregulated, the federal government continues to control an alarming

two-thirds of songwriters' income streams. Therefore, songwriters cannot protect the value of their music.

30. If there is any question that government regulation has depressed mechanical rates, consider that record labels and recording artists using my songs are paid significantly higher mechanical rates than I am paid by the interactive streaming services. Sound recordings are not inherently more valuable than the underlying song. Unlike the songwriters and their music publishers, the recording artists and their labels are permitted to negotiate their rates in the free market.

31. Recording artists, and songwriters who are recording artists, have additional sources of revenue that are not available to pure songwriters or their publishers, including advances from their record labels; royalties from record sales (physical sales, permanent downloads, and digital streaming); sound recording performance royalties; tour revenue; and revenue from the sale of merchandise at concerts. In current "360" record deals, the labels also participate in some or all of these income streams, dramatically reducing the risk that they will be unable to recoup their expenditures. Publishers, on the other hand, recoup their expenses from compulsory mechanical royalty rates, government-regulated performance royalties, and synchronization royalties, and have a higher risk that their songwriters will not earn enough for their publishers to recoup.

32. Even though I had received a full academic scholarship to attend the University of Chicago and several other full rides from state schools in Florida, my passion for music led me instead to pursue songwriting as a profession. When I chose a songwriting career, I relied on being able to make a living if I created songs that became hits. I have written many songs that have become hits and continue to do so. However, over the past few years, my income has not

reflected my continued success because the interactive streaming services are paying a fraction of what I earn from physical sales and permanent downloads.

Songwriters Must Be Compensated Fairly For The Value of Their Contribution

33. Streaming music anytime, any place, on any device is the way today's music fans want to enjoy their music. Notwithstanding that the inherent value of a song is the same whether the consumer chooses to buy an album, permanently download an album or a single, or stream music on demand, the mechanical royalties I receive from streaming are insulting. The streaming services continue to reap the benefits of our work at our expense—the devaluation of our songs. They are able to do this because of outdated laws, which have not evolved with the changing music industry. The streaming services are metaphorically eating the goose that lays the golden eggs.

34. We must bring the compensation for musical works in line with current market realities. Rather than seeing value from the historic level of demand for music, successful professional songwriters are abandoning their long careers in the industry to do what? I am not suggesting that we believe we should be guaranteed a certain lifestyle. Songwriters who don't write hits have never made a great living in this industry. A lower income when you don't write hits is to be expected. That is the risk we all take. When we write hits, however, we deserve to be fairly paid based on the value of our songs and value is best measured based by what would happen in a free market.

35. Songwriters have been subsidizing the services' business models built upon the devaluation of music. Traditionally, the services have fought against mechanical rate increases, claiming they are not profitable. Ten years ago, streaming services were new and their prospects were uncertain. Now if they are not profitable, it is because they have adopted business models

that prioritize market share over profitability. The paid-subscription services have been in a steady race to the bottom, suppressing subscription prices to compete for subscribers. In the process, the services have conditioned listeners to pay little or nothing for unlimited access to music.

36. The interactive streaming services now include some of the world's largest companies: Apple, Google, and Amazon, which use our music to sell more products, smartphones, and smart speakers. Spotify, valued at over \$8 billion, has 100 million active users worldwide, between 60 to 70 million of which are ad-supported and free to the customer. Spotify is telling consumers that music should be free, further devaluing the Copyright Owners' songs.

The Plight of Songwriters Is Grave

37. I am fortunate to have a career as a songwriter that supports my family and myself while I do something I love. Our lifestyle has been comfortable, but never extravagant. We were able to buy a nice house in Nashville that we love. I was able to send one of my kids to college through her Master's degree and help the other with his career in the fly-fishing/recreation business. We were usually able to take one nice family vacation a year, often renting a funky beach house for a couple of weeks, with the kids and their friends along, bonding together and relaxing. We could eat out, enjoy entertainment, and live a "normal" middle class life.

38. I'm still writing hits. Music fans still listen to music I wrote years ago recorded by revered country artists. But since interactive streaming has become the primary way that people listen to music, my family's lifestyle is no longer safe or comfortable. I had to borrow money against my home in Nashville to cover our basic living expenses. The house we love has fallen into some disrepair. My wife and I have not been on vacation in five years, other than songwriter events where I'm working. Not only do I feel the stress of my career, but my family does as well.

39. I'm not looking for pity. I am asking that the compulsory mechanical rate be changed for the sake of all songwriters, especially the pure songwriters. Unless the compulsory mechanical rate structure is changed to take into account changes in technology, the pure, non-performing songwriting profession will no longer exist. Without pure songwriters, some of the greatest music of all time would not exist. Elvis Presley, Frank Sinatra, Aretha Franklin, Sam Cooke, Diana Ross, Marvin Gaye, Elton John, and Whitney Houston did not write the songs that made them beloved recording artists.

40. If the profession of non-performing songwriter ceases to exist because we can't make a living, there will be no next generation of George Straits or Harry Connick Jr.'s because there will be no one to write the timeless songs they perform. Even today's great young pop artists, many of whom are great songwriters like Taylor Swift, Bruno Mars, Pink, and Lady Gaga, often depend on "pro" songwriters to co-write their biggest hits.

41. The availability of publishing deals has significantly decreased. It is alarming that in Nashville there are so many fewer songwriters than there were just a few years ago. Most estimates say that there are less than one-quarter of the number of professional songwriters than there were just 10 years ago. Many songwriters in Nashville who earned a full-time living from royalty payments are no longer signed to publishing deals.

42. Publishers cannot afford to sign as many songwriters as they did in the past. Music publishers typically invested in younger writers who might not produce immediate results and then recouped their money when those writers started earning royalties on album cuts. Now, when they do sign writers, music publishers increasingly turn to recording artist and producer writers, so they can hedge their bets with a better chance of recordings being released.

43. I have always said that I would never trade one moment of my songwriting journey for a safer, more secure path. However, I don't know if I could say that in earnest anymore. I am working twice as hard for half the money. Many contemporaries faced with this challenge have been forced to quit the full-time songwriting profession because they are not able or willing to adapt to what a songwriter needs to do to make a living in today's market.

44. When I first arrived in Nashville, experienced and established songwriters would invite young, talented songwriters to write with them. This was a very illuminating experience for the young songwriters and helped them grow into better professionals. It also gave the established writer new ideas and influences. Today, a professional non-performing songwriter cannot simply try to write a great song alone or with co-writers who are also professional songwriters, then hope that an artist records it.

45. Now, an established songwriter cannot mentor young songwriters if he or she wants to maintain his living. Veteran songwriters, such as myself, simply do not have time. Instead, I spend three to four days a week with young recording artists who already have record deals and need help writing their songs. These recording artists are sometimes very talented songwriters, but it often takes the craft and art of the professional writer to turn their thoughts into commercial songs.

46. If statutory mechanical rates are not changed to fairly compensate songwriters, there is little doubt that I will have to find different work to support my family. There is no way I could come home from another job—exhausted and distracted—and write songs in the evening. Inspiration is difficult to come by after a long day of work at Home Depot. Songwriting is not a part-time job. It's all or nothing. Songwriting requires a clear mind and all my time and energy. With other jobs, songwriters will not have time to live the creative life required to write great

songs. We capture small personal moments and events and make them universal. We jot down phrases and hum melodies and make notes on iPhones constantly. You can't write deeply about life unless you *have* a life, with time to love and hate and reflect on yourself and the world around you.

47. The interactive streaming services are not only drumming me out of the professional songwriting business, they are jeopardizing the future of American music itself. Unless the services compensate creators fairly, I fear for that twenty-year-old songwriter looking forward to a career as a songwriter. First, he will find it very difficult to find a publisher to sign him. Publishers cannot afford to pay pure songwriters large enough advances to support themselves while they focus on learning the craft and writing good songs. There will be no professional songwriters to mentor him to hone the craft. And he won't have time to make the business and creative contacts that are the heart of this business. He'll be too busy delivering pizza.

48. Unsustainable rates will also prevent the best singers (who may not write songs) from making recordings from the work of the best songwriters. The world will never have great American music from artists like Aretha Franklin, Ray Charles, Elvis, and Frank Sinatra again. If the mechanical rate structure does not change, it will be devastating to the American songbook.

49. I understand that there are those who doubt music will stop if songwriters are not paid fairly for their works. I can tell you that that is not the case. Few people can afford to be professional artists if they are not paid for their work. If I were not paid fair compensation for the songs that I have written, I would not be a professional songwriter. I would not have devoted a lifetime to full-time songwriting over the course of a long career. It is possible I would have occasionally written some music for fun, but I would not have had the creative fulfillment of

writing full time. I would have had to make my living doing something else. I humbly believe that would have meant a very different musical world. I sincerely believe we would all be poorer for it.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016


Steve Bogard