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Attorney for Defendant American Buddha

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PENGUIN GROUP (USA) INC.,

Plaintiff,

Case No. 09 CIV 00528 JGK

-against-

AMERICAN BUDDHA,

Defendant.

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**AMERICAN BUDDHA'S APPLICATION FOR LEAVE**  
**TO ATTEND PRETRIAL CONFERENCE TELEPHONICALLY**

Defendant American Buddha respectfully requests leave to attend the pretrial conference set for Monday, August 1, 2011 at 4:30 p.m. in front of the Hon. John G. Koeltl via telephone, for the reasons set forth in the attached Declaration of Charles Carreon.

Dated: July 22, 2011  
Respectfully submitted:

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Charles Carreon (California Bar # 127139)  
Admitted *Pro Hac Vice*  
2165 S. Avenida Planeta  
Tucson, Arizona 85710  
Tel: 520-841-0835  
Fax: 520-843-2083  
Email: chas@charlescarreon.com  
Attorney for Defendant American Buddha

## DECLARATION OF CHARLES CARREON

Charles Carreon states and declares as follows:

1. I am the pro bono attorney for American Buddha, and make this declaration on personal knowledge, and if called as a witness I could and would so competently testify.
2. Since January 20, 2009, when Penguin commenced this action in the Southern District of New York, I have represented respondent American Buddha *pro bono publico* in order to provide effective representation to a non-profit organization incorporated in Oregon, with its office in Arizona, in a case that presents important issues of intellectual property law.
3. Thus far I have paid all costs of defending the litigation, including: the fee for my *pro hac vice* admission to the Southern District of New York; the fee for my admission to the Second Circuit Court of Appeals; flight and lodging expenses for oral argument before the Second Circuit Court of Appeals; the airfare to have Michael Page from the Public Citizen Litigation Group (that filed an amicus brief in support of American Buddha's position) fly from Washington D.C. to Albany to present oral argument on the certified question before the New York Court of Appeals; and, all word processing, printing and Federal Express/mailing costs of producing and delivering the respondent's briefs to the Second Circuit and to the New York Court of Appeals, amounting in total to considerably over \$1,000.00. I have now invested approximately 12 hours preparing the briefs for the motion to dismiss for lack of personal jurisdiction since the case was remanded. When all costs are added in, this case has cost me over \$1,800.00 in out-of-pocket costs, and in excess of 82 hours of attorney time, that I customarily bill at \$250 per hour as an intellectual property attorney.
4. As set forth in the attached declaration of Tara Carreon, the Director of respondent American Buddha, the client-company has no funds whatsoever to contribute to my appearance.

5. If I were required to attend the scheduled pretrial conference on August 1, 2011 at 4:30 p.m. in person, I would have to pay the out-of-pocket costs of appearing at the hearing personally, totaling over \$1,000, based on the \$856 round trip for flight, and lodging, plus incidentals. Attached hereto as **Exhibit 1** is a copy of the Expedia Itinerary showing the cost for a round trip flight from Tucson to New York, departing at 12:30 p.m. Sunday July 31<sup>st</sup>, and returning with an ETA in Tucson on Tuesday at 8:45 p.m. The cost in lost time would be even more painful to bear, a total of fifty-seven (57) hours away from my home, with additional time lost due to simple fatigue.

6. At the present time, as the Court may be aware, the practice of law in the private sector has become considerably less remunerative than in prior eras. Further, I have a very short client list consisting primarily of technology entrepreneurs whose expectations of prompt service and responsiveness to emails and other communications make every absence from the office that is not directly related to handling their legal matters a distinctly stressful and difficult time.

7. Thus, attending the hearing personally would reduce my monthly income from work for other clients by a substantial amount, which could pose a genuine risk to my financial well-being, potentially causing severe negative consequences to my ability to pay creditors and continuing expenses necessary to the maintenance of my profession and livelihood.

8. Opposing counsel's position on this matter was as set forth in the email exchange attached as **Exhibit 2**.

I declare and affirm pursuant to 28 U.S.C. § 1746(2) that the foregoing is true and correct under the laws of the United States of America, and that this declaration was executed at Tucson, Arizona on this 22<sup>nd</sup> day of July, 2011.

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Charles Carreon

**DECLARATION OF TARA LYN CARREON**

Tara Lynn Carreon states and declares:

1. I am the sole director and President of American Buddha, and make the following statements of personal knowledge, and if called as a witness could and would so competently testify.

2. American Buddha has no sources of revenue whatsoever. I provide all of the labor that is reflected in the operation of the neederlibrary.com web site that gave rise to the herein litigation, and perform that work in my function as the librarian for the American Buddha Online Library, a charitable project of American Buddha, an Oregon nonprofit corporation.

3. At no time has American Buddha contributed any funds to the defense of the litigation initiated by Penguin against American Buddha.

4. American Buddha has no funds whatsoever to pay for travel, lodging, board and other transportation expenses of American Buddha's advocate.

I declare and affirm pursuant to 28 U.S.C. § 1746(2) that the foregoing is true and correct under the laws of the United States of America, and that this declaration was executed at Tucson, Arizona on this 22<sup>nd</sup> day of July, 2011.

  
Tara Lyn Carreon

# EXHIBIT 1

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## Trip details

**Package price** [Price details](#)

If booked separately:

\$957.45

Included:

■ Items selected, taxes, &amp; service fees.

**Expedia discount for booking together:****-\$101.10****Total:****\$856.35**

Only 2 trips left at this price!

**1-800-342-9354**

✈ - Indicates flight is operated by another airline. Move your mouse over the icon for details.

Customer Support

[Frequently Asked Questions \(FAQs\)](#)**Get up to \$100 off\***Save with the card [SmartMoney Magazine](#) calls "The Best Card for Travel Rewards."

Trip price: \$856

- Credit: \$100

**\$756**[Apply now](#)[\\*see details](#)

### Flight: 1 roundtrip ticket

#### Traveling to New York

Sun 31-Jul-11

**Tucson** (TUS) to **Atlanta** (ATL) 1,539 mi (2,477 km)  
Depart 12:42 pm Arrive 7:20 pm  
Terminal S Duration: 3hr 38mn

**Flight: 1240****Economy/Coach Class**, Food For Purchase, Boeing 737-800, 50% on time

**Atlanta** (ATL) to **New York** (JFK) 756 mi (1,217 km)  
Depart 9:50 pm Arrive 12:23 am  
Terminal S [+1 day](#) Duration: 2hr 33mn  
Terminal 3

**Flight: 1750****Economy/Coach Class**, Refreshments For Purchase, BOEING 737-800 (WINGLETS) PASSENGER, 60% on time

Total distance: 2,295 mi (3,693 km)

Total duration: 6hr 11mn (8hr 41mn with connections)

#### Traveling to Tucson

Tue 2-Aug-11

**New York** (JFK) to **Washington** (DCA) 215 mi (346 km)  
Depart 1:20 pm Arrive 3:02 pm  
Terminal 3 Terminal B Duration: 1hr 42mn

**Flight: 2566**

Operated by: MESABA DBA DELTA CONNECTION

**Economy/Coach Class**, CR9, 80% on time

**Washington** (DCA) to **Atlanta** (ATL) 541 mi (871 km)  
Depart 5:00 pm Arrive 6:56 pm  
Terminal B Terminal S Duration: 1hr 56mn

**Flight: 221****Economy/Coach Class**, Boeing 757, 30% on time

**Atlanta** (ATL) to **Tucson** (TUS) 1,539 mi (2,477 km)  
Depart 7:55 pm Arrive 8:45 pm  
Terminal S Duration: 3hr 50mn

**Flight: 1027****Economy/Coach Class**, Food For Purchase, Boeing 737-800, 70% on time

Total distance: 2,295 mi (3,693 km)

Total duration: 7hr 28mn (10hr 25mn with connections)

[Additional airline fees may apply at check-in](#)

Fees may be charged by airlines for services such as preferred seat selection and baggage handling. Please note that fees are determined by the airline you check in with and may change at anytime.

[See fees.](#)[Choose a different flight for this package.](#)

### Hotel: 1 room for 2 nights

**YOTEL New York at Times Square**

★★★★½ New York, NY

This Manhattan hotel is in the Midtown West neighborhood, 0.8 mile of Times Square and within one-half mile of the New Amsterdam Theater and Madame Tussauds ...

[More lodging info](#)

Check-in: Sun **31-Jul-11** Check-out: Tue **2-Aug-11**

#### Room options

Premium cabin queen **Sale!**  
Includes: Continental Breakfast, Free Wireless Internet

**Price**  
Included

Only 2 trips left at this price!

[Choose a different hotel for this package.](#)

#### Car: 2-day rental



##### Economy Car

- Air conditioning, automatic transmission, unlimited mileage.
- Hyundai Accent *or similar*, 5 adults, 1 large suitcase, 1 small carry-on, 4 doors.

[Need a different car?](#)

**Pick-up:**  
Mon **1-Aug-11** 12:01 AM

**Location:** , New York, NY (JFK)

**Drop-off:**  
Tue **2-Aug-11** 1:00 PM

#### Car class

- ☒ No Car Selected  
☐ Economy Car

#### Price

+ \$96.33 per day

[Choose a different car class or vendor for this package.](#)

#### Packages price [Price details](#)

If booked separately:

\$957.45

Included:

- Items selected, taxes, & service fees.

**Expedia discount for booking together:**

**-\$101.10**

**Total:**

**\$856.35**

Only 2 trips left at this price!

**Reprice**

Made changes? Calculate the new price with selected upgrades.

[Review full rules and restrictions](#)

#### Continue to checkout

Continue

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# EXHIBIT 2





Charles Carreon &lt;chascarreon@gmail.com&gt;

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## Penguin v. American Buddha

3 messages

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**Charles Carreon <chascarreon@gmail.com>****Fri, Jul 15, 2011 at 11:23 AM**

To: "Dannay, Richard" &lt;RXD@cll.com&gt;

Dear Richard:

American Buddha would like its attorney to attend the hearing set for August 1st via telephone. The reason is a complete lack of funding to attend in person. Please advise of Penguin's position.

Thank you,  
Charles

--

Charles Carreon, Esq.  
2165 S. Avenida Planeta  
Tucson, AZ 85710  
Tel 1: [520-841-0835](tel:520-841-0835)  
Tel 2: [520-762-7314](tel:520-762-7314)  
Fax: [520-843-2083](tel:520-843-2083)

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**Dannay, Richard <RXD@cll.com>****Fri, Jul 15, 2011 at 12:44 PM**

To: Charles Carreon &lt;chascarreon@gmail.com&gt;

Charles: This is your (American Buddha's) application to make to the court. Penguin's position is, and will be, that we believe it important for counsel to be present at the first conference after remand, but that we recognize that it is the Court's discretion to allow a telephone conference. -- rd

Richard Dannay  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, N.Y. 10036-6799  
Phone: [212-790-9256](tel:212-790-9256)  
Fax: [212-575-0671](tel:212-575-0671)  
Email: [rxd@cll.com](mailto:rxd@cll.com)  
<http://www.cll.com/>

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**From:** Charles Carreon [mailto:[chascarreon@gmail.com](mailto:chascarreon@gmail.com)]**Sent:** Friday, July 15, 2011 2:23 PM**To:** Dannay, Richard**Subject:** Penguin v. American Buddha

[Quoted text hidden]

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**Charles Carreon <[chascarreon@gmail.com](mailto:chascarreon@gmail.com)>**

**Fri, Jul 15, 2011 at 12:46 PM**

To: "Dannay, Richard" <[RXD@cll.com](mailto:RXD@cll.com)>

Richard,

Thank you for your prompt response.

Charles

[Quoted text hidden]

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