

D O N A L D S O N  C A L L I F

April 14, 2016

VIA E-MAIL

Tom McGuire
WME Entertainment
9601 Wilshire Blvd.
Beverly Hills, CA 90210
[TMcGuire@wmeentertainment.com]

RE: AMAZING GRACE, LLC / AMAZING GRACE / CHAIN OF TITLE
OPINION LETTER

Dear Tom,

Enclosed please find the key documents (collectively, “Documents”) establishing a clear Chain of Title with respect to the choir and choir master for the feature length documentary motion picture currently entitled *Amazing Grace* (the “Picture”) about the iconic recording session by Aretha Franklin and the James Cleveland choir (the “Choir”) on January 13, 1972 and January 14, 1972 (the “Amazing Grace Concert”). I have outlined a summary of the contents of the Documents as follows:

I. THE JAMES CLEVELAND CHOIR

Attached as Exhibit 1 are true and correct copies of appearance releases signed by members of the Choir (the “Choir Members”), all such releases dated and effective as of January 13, 1972, allowing Warner Bros., Inc. (“WB”) to take motion picture and still photographs of them and/or sound recordings of their voices (collectively, the “Appearance”) in connection with the production of a motion picture (the “Choir Appearance Releases”). You have represented to me that the twenty-nine (29) Choir Appearance Releases in Exhibit 1 are signed by all Choir Members who appear in the Amazing Grace Concert.

The Supreme Court has held that in order for a plaintiff to obtain an injunctive relief, the plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that considering the balance of hardships

MICHAEL C. DONALDSON

LISA A. CALLIF

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New York, NY www.gksd-law.com 212-996-6700

between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.¹ Courts have extended this rule to apply in copyright cases as well.² Here, enormous time, effort and many hours have been poured into this Picture by the filmmakers, WME Entertainment and various others. If Ms. Franklin can be compensated in dollars, certainly any choir member could be similarly compensated. No injunction could possibly issue in favor of the Choir or any individual Choir Member. Based on my review of the Choir Appearance Releases and the applicable law, it is my opinion that the Choir Members have no right to object to, enjoin, seek to enjoin, or bring any cause of action with respect to the production, distribution, exhibition, or other exploitation of the Picture.

With the exception of the signed appearance release by Jeanette Benford, all the Choir Appearance Releases contain a provision stating that, in the event WB actually releases a motion picture containing recordings of each respective Choir Member's singing voice, WB shall pay each Choir Member who signed such appearance release an amount equal to Screen Actors Guild ("SAG") minimum union scale for singers for the two days of the Amazing Grace Concert. The 1972 Minimum Bargaining Agreement ("MBA") for SAG is the applicable agreement to determine such fees. In the Choir Appearance Releases, the Choir Members expressly consent to be filmed, photographed, and recorded in connection with a motion picture about the Amazing Grace Concert, and the Choir Members expressly consent to the distribution and exhibition of such motion picture.

II. LOCATION AGREEMENT

Attached as Exhibit 2 is a true and correct copy of the location agreement ("Location Permit") dated and effective as of January 13, 1972, between WB and New Temple Missionary Baptist Church ("New Temple Missionary"), whereby New Temple Missionary agreed to allow WB to photograph and record scenes for a motion picture at such church, located at 8734 South Broadway, Los Angeles, California. New Temple Missionary expressly waived any right to sue or bring any action against WB in connection with any photographs or recordings obtained by WB pursuant to the Location Permit. Accordingly, based on my review of the Location Permit, it is my opinion that New Temple Missionary has no right to object to, enjoin, seek to enjoin, or bring any cause of action with respect to the production, distribution, exhibition, or other exploitation of the Picture.

III. CHOIR MASTER

Attached as Exhibit 3 is a true and correct copy of an inter-office memorandum, dated February 1, 1972, from Sydney Pollack to Charlie Greenlaw at WB with respect to the engagement of Alexander Hamilton, the choir master at the Amazing Grace Concert, to work with the editors of the motion picture about the Amazing Grace Concert to help sync the film (the "Hamilton Memorandum"). In the Hamilton Memorandum, Mr. Pollack notifies Mr. Greenlaw that Mr. Hamilton shall be paid a rate of \$200 per week for the aforementioned services. Based on my review of the Hamilton Memorandum, it is my opinion that Alexander Hamilton gave his implied

¹ See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

² See, e.g., *Salinger v. Colting*, 607 F.3d 68 (2d Cir. 2010).

consent to appear in the Picture and that any services provided by Alexander Hamilton in connection with the Picture constitute a work made for hire under the 1909 Act. Accordingly, it is my opinion that Alexander Hamilton has no right to object to, enjoin, seek to enjoin, or bring any cause of action with respect to the production, distribution, exhibition, or other exploitation of the Picture.

IV. SYDNEY POLLACK

Attached as Exhibit 4 is a true and correct copy of an inter-office memorandum from WB, dated March 14, 1972 from Jack E. Freedman to Ken Mancebo with respect to Sydney Pollack's services in producing and directing the Amazing Grace Concert ("Pollack Memorandum"). In the Pollack Memorandum, the subject line is titled in part, "Aretha Franklin Project" and Mr. Freedman notifies Mr. Mancebo that WB has agreed to pay for Mr. Pollack's services in connection with that project. One wishes that there was further documentation with regards to Mr. Pollack's employment, but this is prima facie evidence that he was in fact employed, which is supported under the 1909 Act. Based on my review of the Pollack Memorandum, it is my opinion that the clear language establishes Mr. Pollack's services as work made for hire under the 1909 Act. For that reason, it is my opinion that Mr. Pollack's estate, heirs, assignees and/or representatives do not have any rights in or to the Amazing Grace Concert.

V. JAMES CLEVELAND

Attached as Exhibit 5 is a true and correct copy of a license agreement ("License Agreement"), dated and effective as of January 13, 1972, between WB and James Cleveland, for the motion picture and sound recording rights to the Amazing Grace Concert. It is clear from the License Agreement that WB owns all motion picture and sound recording rights to "all performances and other activities" that took place during the Amazing Grace Concert. Of course, such a grant would not include the performance rights to the underlying composition, which will be licensed separately by you.

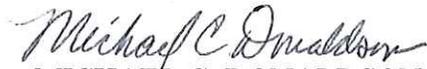
VI. CONCLUSION

In addition to the Documents reference above, I have reviewed, *inter alia*, all documents, agreements and correspondences which were sent to my office on April 8, 2016, including but not limited to a letter from Sydney Pollack to Aretha Franklin wherein he mentioned that he had been engaged by WB to film the Amazing Grace Concert, inter-office memoranda discussing such engagement of Sydney Pollack by WB to film the Amazing Grace Concert, and a license from WB to Alan Elliot for the right to use the Amazing Grace Concert footage shot by Sydney Pollack in connection with the Picture.

I have also spoken with the insurance broker at AON, Steven Carol, who obtained E & O insurance to cover all claims except for those by Aretha Franklin. He represented to me that Lionsgate may be added as an additional insured on the E & O insurance policy for the Picture at no extra cost. The deductible for that insurance is \$25,000 for each and every claim, inclusive of defense costs and damages, with limits of \$3,000,000 on each and every claim, inclusive of defense costs and damages, but a maximum of \$5,000,000 in the aggregate.

Please feel free to contact me if you have any questions or concerns.

Very Truly Yours,


MICHAEL C. DONALDSON

MCD/ejr

Enclosures:

Choir Appearance Releases
Location Permit
Hamilton Memorandum
Pollack Memorandum
License Agreement

EXHIBIT 1

Place 8734 50 BROADWAY
Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

This consent is given to you in order to induce you to make such photographs and/or sound recordings and in consideration therefor.

Yours very truly,

JEANETTE BENFORD
Name 383 CALIFORNIA WR
SAN DIEGO
Address

Witness:

Joseph Capshaw

23

Place _____

Date JANUARY 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

This consent is given to you in order to induce you to make such photographs and/or sound recordings and in consideration therefor.

In the event you shall actually release a motion picture containing recordings of my singing voice (whether as a member of a choir or otherwise), you agree to pay me an amount equal to Screen Actors Guild minimum union scale for singers for the two days, January 13 and January 14, 1972.

Yours very truly,

Christine Adams
Name CHRISTINE ADAMS

1035 So CLOVERDALE AVENUE
Address

Witness:

Janette Thomas

Place _____

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Alonso Atkins
Name

2205 Clevehau
Address

Witness:

Genevieve Thomas

22

Place _____

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Lucy Ayers
Name

15548 San Lorella Ave.
Address

Witness:

Genette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

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Yours very truly,

James A. Brownfield
Name

2942 1/2 S. Brownson, P.A. Calif.
Address
90018

Witness:

Gisette Thomas

Place _____

Date Jan. 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Margaret Bayant
Name

3774 Ruthven
Address L.A. Ca 90018

Witness:

Janette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Sydney Drake
Name

1250 W. 45th St. L.A.
Address

Witness:

Ginette Thomas

Place

New York

Date

1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Name

May Ann Hall

Address

8311 1/2 Howard

Witness:

Genevieve Thomas

3

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Donna J. Hammond
Name

1206 Cloverdale Ave.
Address

Witness:

Joseph J. Howard

④

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Betty Hallins
Name

1560 S. Carson Ave.
Address

Witness:

Quetta Thomas

2

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Josephine Howard
Name

1206 Colverdale Ave
Address

Witness:

Wanna J. Hammons

Place _____

Date 1/13/71

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Sherman James
Name

4218 Degnan L.A. 90008
Address

Witness:

Guanette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Dolores Jones
Name

221 E 53 St
Address

Witness:

Genevieve Thomas

11

Place _____

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Jehanne Pearl Knox
Name

2677 Raymond Ave.
Address

Witness:

Ginette Thomas

Place _____
Date Jan. 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Margorie Lupper
Name
3814 So. Western Ave.
Address
L.A., Calif. 90062

Witness:
Genevieve Thomas

Place _____

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Charles May
Name

4322 8th Avenue
Address

Los Angeles, Calif. 90008

Witness:

Guenette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Diana L. McKeath
Name

170 3/2 S. Alhambra Ave.
Address

Witness:

Genette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Esther Ruth Nelson
Name

1850 W 35th Pl
Address

Los Angeles 90018

Witness:

Genevieve Thomas

(12)

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Stanley B. Miller
Name

2205 So. Cimarron Blvd. L.A.
Address

Witness:

Guanette Thomas

Place _____

Date Jan 13

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Linda Jean Overland
Name

1963 17th Street #4 Santa Monica
Address

Calif.
90404

Witness:

Ginette Thomas

6

Place _____

Date 1-13-73.

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Leslie Park
Name

875 EAST 22nd Street
Address

Witness:

Genevieve Thomas

Place _____

Date 1/13/72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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In the event you shall actually release a motion picture containing recordings of my singing voice (whether as a member of a choir or otherwise), you agree to pay me an amount equal to Screen Actors Guild minimum union scale for singers for the two days, January 13 and January 14, 1972.

Yours very truly,

Linda J. Layton
Name

4014 West Blvd. #B
Address L.A. Ca. 90008

Witness:

Ganette Thomas

Place _____

Date 1-13-72

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Diane M. Catliff
Name

3814 S. Western Ave.
Address

Witness:

Ginette Thomas

Place _____

Date Jan 13 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Gilbert Stanley
Name

8440 Sunset Blvd. #616
Address

Hollywood, Calif. 90069

Witness:

Guanette Thomas

(1)

Place New Temple Bapt. Church
8736 So. Broadway

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Annelle May Thomas
Name

4115 Garthwaite Ave
Address
Los Angeles, Calif. 90008

Witness:

Thurston G. Franjo

11

Place _____

Date 1/13/72

Warner Bros. Inc.
Burbank, California

Gentlemen:

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Yours very truly,

Bobby Washington
Name

2315 Hausser Blvd
Address
L.A. Calif 90016

Witness:

Grenette Thomas

Place _____

Date January 13, 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

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Yours very truly,

Mr. Andrew Lawrence
Name

2076 S. Hurst Blvd #4
Address

Witness:

Ginette Thomas

Place _____

Date Jan 13 1972

Warner Bros. Inc.
Burbank, California

Gentlemen:

This will confirm my consent to your making motion picture and still photographs of me and/or sound recordings of my voice in connection with the production by you of a motion picture, and that you may distribute and exhibit all or any part thereof, by any media, throughout the world, without restriction.

This consent is given to you in order to induce you to make such photographs and/or sound recordings and in consideration therefor.

In the event you shall actually release a motion picture containing recordings of my singing voice (whether as a member of a choir or otherwise), you agree to pay me an amount equal to Screen Actors Guild minimum union scale for singers for the two days, January 13 and January 14, 1972.

Yours very truly,

Mrs Barbara Ann Wilson
Name

4817 Tacana #9 L.A. 90008
Address

Witness:

Genevieve Thomas

EXHIBIT 2

WARNER BROS. INC.

LOCATION PERMIT

Dated January 13, 1972

NEW TEMPLE MISSIONARY BAPTIST CHURCH 8734 South Broadway, Los Angeles, California
(Name) (Business Address) (~~PHONE~~)

hereby grants to WARNER BROS. INC. (herein called "Company"), and its employees, agents, independent producers, contractors and suppliers, permission to enter upon and use the property located at _____

same as above

for the purpose of photographing and recording certain scenes for a motion picture commencing on or about January 13, 1972 (subject to change on account of weather conditions or changes in production schedule) and continuing until completion of all scenes and work required.

Company may place all necessary facilities and equipment, including temporary sets, on the property, and agrees to remove the same after completion of work and leave the property in as good condition as when received, reasonable wear and tear from uses permitted herein excepted. Signs on the property may, but need not, be removed or changed, but, if removed or changed, must be replaced.

Company agrees to use reasonable care to prevent damage to said property, and will indemnify the owner, and all other parties lawfully in possession of said property, and hold each of them harmless from any claims and demands of any person or persons arising out of, or based upon, personal injuries, death or property damage suffered by such person or persons resulting directly from any act of negligence on Company's part in connection with the work hereunder.

All rights of every kind in and to all photographs and sound recordings made hereunder shall be and remain vested in Company, and its successors, assigns and licensees, and neither the owner nor any tenant, or other party now or hereafter having an interest in said property, shall have any right of action against Company or any other party arising out of any use of said photographs and/or sound recordings, whether or not such use is, or may be claimed to be, defamatory, untrue or censorable in nature.

This is the entire agreement. No other authorization is necessary to enable Company to use the property for the purposes herein contemplated.

ACCEPTED:

WARNER BROS. INC.

By _____

Production Manager

NEW TEMPLE MISSIONARY BAPTIST CHURCH

By _____

ITB

EXHIBIT 3

RECEIVED

INTER-OFFICE MEMORANDUM

FEB 8 1972

CFG

TO CHARLIE GREENLAW DATE FEBRUARY 1, 1972
FROM SYDNEY POLLACK SUBJECT ARETHA FRANKLIN PROJECT

Dear Charlie:

I have enlisted the services of Alexander Hamilton, Choir Master on the ARETHA FRANKLIN project. He will be working with the editors to help sync the film.

His work commenced February 2, and I agreed to pay him at the rate of \$200. per week.

Would you please make the necessary arrangements for him to be paid.

Thank you.

/ss
(dictated by phone)



SP.

T 02534

EXHIBIT 4

INTER-OFFICE MEMO
WARNER BROS. INC.

TO: KEN MANCEBO FROM: JACK E. FREEDMAN

SUBJECT: ARETHA FRANKLIN PROJECT - Sanford Productions

DATE: March 14, 1972 COPIES TO: F. Wells B. Wallace
P. Knecht
C. Greenlaw D. Brown
E. Morey S. Kiwitt

We have agreed to pay to Sanford Productions the sum of \$1,500 for Sidney Pollack's services in producing and directing this project. We will be billed later for DGA contributions.

Please prepare the check and send it to me for transmittal with an appropriate letter.

JEF:jf


J.E.F.

EXHIBIT 5

WARNER BROS. INC.

4000 WARNER BLVD. • BURBANK, CALIFORNIA 91505 • (213) 843-6000

CABLE ADDRESS: WARBROS

Dated 1/13/72

Mr. James Cleveland

Dear Sir:

This will confirm our agreement as follows:

1. We understand you are entering into an agreement with Atlantic Records concerning a recording session featuring Aretha Franklin, which will be conducted at the New Temple Missionary Baptist Church located at 8734 South Broadway, Los Angeles, California. In this connection, you hereby grant to us all motion picture rights of every kind and character whatsoever in and to all performances and other activities at said recording session. It is understood that this session will take place on two separate days, i.e., January 13 and January 14, 1972.

2. We agree that in the event we shall actually produce and release, in any media, a motion picture comprised substantially in whole of scenes photographed and recorded hereunder, we will, within 5 days after such release, pay you the sum of \$1500.00, and, in addition thereto, we will pay to each of the members of the Church Choir who participate in the recording sessions and whose voices are on the sound track of such motion picture, an amount equal to Screen Actors Guild minimum union scale for singers for the two days involved. You agree to obtain and deliver to us signed clearances from each of such Choir members before we shall be obligated to make such payments. You also agree to deliver to us, concurrently with the execution of this agreement, a location permit in our usual form executed by said New Temple Missionary Baptist Church, copies of which are provided to you herewith.

3. Without limiting paragraph 1 hereof, to the extent that material recorded hereunder consists of original musical material owned or controlled by you, you hereby grant to us unlimited, but not exclusive, synchronization and performing rights in and to such material.

4. You represent and warrant that you have full power and authority to enter into this agreement, and to permit us to make motion picture and sound recordings of said recording session.

Very truly yours,

WARNER BROS. INC.

By [Signature]
Its

AGREED TO:

[Signature]
JAMES CLEVELAND