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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE
 EXPRESSION, et al.**

Plaintiffs,

v.

**JOHN BURNS, in his official capacity as ATTORNEY
 GENERAL OF THE STATE OF ALASKA,**

Defendant.

Civil No. 3:10-cv-00193-RRB

DECLARATION OF MICHAEL A. BAMBERGER

MICHAEL A. BAMBERGER declares:

1. I am a member of the law firm of SNR Denton US LLP (“SNR Denton,” which was known as Sonnenschein Nath & Rosenthal LLP when this case commenced),. Our firm has served as counsel to Plaintiffs from the inception of this action.

Declaration of Michael A. Bamberger in Support of
 Plaintiffs’ Application for Attorneys’ Fees and Expenses
American Booksellers et al. v. John Burns,
 Case 3:10-cv-00193-RRB

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2. I have personal knowledge of the facts set forth in this declaration, which I make in support of Plaintiffs' fee application.

3. Plaintiffs seek an award of \$157,833 in fees and \$5,576.29 in expenses, for an aggregate award of \$163,409 for services rendered by SNR Denton. Separate declarations for additional amounts are being submitted for services rendered by our co-counsel, D. John McKay and Thomas Stenson.

4. This affidavit is divided hereafter into three parts: (i) time expended; (ii) the qualifications of the attorneys who rendered services, and the hourly rates requested; and (iii) expenses. I attach the following exhibits to this declaration:

Exhibit	Description
A	Docket Entries (from PACER)
B	Itemized list of services rendered by SNR Denton and time expended
C	Itemized list of expenses incurred by SNR Denton
D	List of First Amendment cases litigated by Michael Bamberger
E	Orders granting fee applications, and approving hourly rate of Michael Bamberger

I. TIME EXPENDED

5. I have had principal responsibility for this matter since its inception. At SNR Denton, I was assisted by two of my law partners—Devereux Chatillon and Richard M. Zuckerman—and by one associate, Joshua Kroot.

6. It is my practice and the practice of my firm, and it has been our practice throughout this litigation, to maintain contemporaneous daily time records on which all billable time is recorded.

7. Based on such contemporaneous daily time records through July 22, 2011, the firm expended 504.6 hours of time on this action for which we seek compensation. In compiling this application, I used my billing judgment and eliminated time entries that I believed were not appropriate to be included in this request to the Court.

8. Below is a table indicating the attorney or other personnel, the total amount of hours spent, and the billing rate requested for the particular timekeeper.

Fee Request for Services of SNR Denton US LLP				
Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	65.4	\$600	\$39,240
Devereux Chatillon	Partner	67.6	\$500	\$33,800
Richard M. Zuckerman	Partner	52.7	\$550	\$28,985
Joshua Kroot	Associate	318.9	\$175	\$55,808
Total Fees Requested		504.6		\$157,833

The blended average hourly billing rate for the four SNR Denton attorneys is \$313.

9. I will review the principal services rendered during each phase of this case. The divisions between the phases are based on the calendar and, of course, there was some overlap between the different phases.

A. April 2010 – August 2010: Preparation of the Complaint, Motion for Preliminary Injunction, Memorandum of Law, 10 Factual Declarations and One Expert Declaration

10. When Senate Bill 222 was being considered by the Alaska Legislature, Plaintiffs American Booksellers Foundation for Free Expression, Association of American Publishers, Inc., Comic Book Legal Defense Fund, Entertainment Merchants Association, and Freedom to

Read Foundation, through an association of which they are members, Media Coalition, Inc., pointed out the constitutional defects in the Bill, and urged the Legislature to re-draft the Bill so that it would protect children without violating the First Amendment. These efforts were unsuccessful. The Legislature passed SB 222 without remedying the constitutional defects. While our firm participated in these efforts, we do not seek any fees relating thereto.

11. In April 2010, our firm began work on this litigation. Between that date and August 31, 2010, when we commenced this action, we conducted legal research, and drafted and filed the Complaint (Docket 1), a Motion for a Preliminary Injunction (Docket 5), a Memorandum of Law (Docket 7), declarations of 10 fact witnesses (Docket 10, 11, 12, 13, 14, 15, 16, 17, 18, 26-1), and a declaration of an expert witness (Docket 20).¹ Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	30.9	\$600	\$18,540
Devereux Chatillon	Partner	42	\$500	\$21,000
Richard M. Zuckerman	Partner	15.6	\$550	\$8,580
Joshua Kroot	Associate	100.4	\$175	\$17,570
Subtotal		188.9		\$65,690

¹ As reflected in our time records, an additional declaration was prepared but not filed.

B. September 2010 – October 20, 2010: Preparation of Proposed Order on Preliminary Injunction; Receipt and Review of Defendants’ Opposition to Motion for Preliminary Injunction; Preparation of Reply Brief on Motion for Preliminary Injunction; and Receipt and Review of Court’s Decision Granting Preliminary Injunction

12. On September 22, 2010, Defendants filed their Opposition to our Motion for a Preliminary Injunction (Docket 33) and, on September 29, 2010, Defendants filed their Answer to the Complaint (Docket 43). We reviewed Defendants’ papers, and prepared a Reply Memorandum (Docket 45) and a Reply Declaration (Docket 46) in further support of our Motion for a Preliminary Injunction, which we filed on October 8, 2010.

13. On October 20, 2010, this Court granted our Motion for a Preliminary Injunction (Docket 47).

14. Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	4.1	\$600	\$2,460
Devereux Chatillon	Partner	13.0	\$500	\$6,500
Richard M. Zuckerman	Partner	0.1	\$550	\$55
Joshua Kroot	Associate	77.7	\$175	\$13,598
Subtotal		94.9		\$22,613

C. October 21, 2010 – December 2010: Preparation of Response to Defendants’ First Motion to Clarify; and Preparation of Motion for Summary Judgment, Including Motion and Memorandum of Law

15. On October 26, 2010, Defendants filed a Motion to Clarify this Court’s Order granting the Preliminary Injunction (Docket 48), to which we prepared a Response (Docket 49). On November 17, 2010, this Court entered an Order thereon (Docket 50).

16. In November and December 2010, we prepared a Motion for Summary Judgment (Docket 51) and supporting Memorandum (Docket 52), which we filed on December 27, 2010.

17. Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	6.3	\$600	\$3,780
Devereux Chatillon	Partner	10.1	\$500	\$5,050
Richard M. Zuckerman	Partner	1.5	\$550	\$825
Joshua Kroot	Associate	69.9	\$175	\$12,233
Subtotal		87.8		\$21,888

D. January 2011 – March 2011: Preparation of Response to Defendants’ Second Motion to Clarify; Receipt and Review of Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment, Defendants’ Cross-Motion for Summary Judgment, and Defendants’ Motion to Certify; Preparation of Reply on Plaintiffs’ Motion for Summary Judgment, Opposition to Defendants’ Cross-Motion for Summary Judgment, and Response to Defendants’ Motion to Certify

18. On January 5, 2011, Defendants filed a Second Motion to Clarify this Court’s Order granting a Preliminary Injunction (Docket 54), to which we prepared and filed a Response on January 6, 2011 (Docket 57). This Court issued its Order thereon on February 8, 2011 (Docket 67).

19. On January 18, 2011, Defendants filed their Opposition to Plaintiffs’ Motion for Summary Judgment (Docket 58), Defendants’ Cross-Motion for Summary Judgment (Docket 59), and Defendants’ Motion to Certify to the Alaska Supreme Court (Docket 60).

20. We prepared a Combined Memorandum as a Reply on Plaintiffs' Motion for Summary Judgment, Opposition to Defendants' Cross-Motion for Summary Judgment, and Response to Defendants' Motion to Certify, which we filed on March 24, 2011 (Docket 70).

21. Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	12.4	\$600	\$7,440
Devereux Chatillon	Partner	2.5	\$500	\$1,250
Richard M. Zuckerman	Partner	8.6	\$550	\$4,730
Joshua Kroot	Associate	67.8	\$175	\$11,865
Subtotal		91.3		\$25,285

E. April 2011 – May 2011: Receipt and Review of Defendants' Reply on Defendants' Cross-Motion for Summary Judgment and Defendants' Motion to Certify; Receipt and Review of this Court's Order Granting Motion to Certify; Joint Drafting with Attorney General's Office of Certified Questions; Filing of Certified Questions with Alaska Supreme Court

22. Defendants filed their Reply papers on their Motion to Certify (Docket 72) and Cross-Motion for Summary Judgment (Docket 73) on April 7, 2011, which we reviewed.

23. On April 19, 2011, this Court entered an Order (Docket 74) granting Defendants' Motion to Certify questions to the Alaska Supreme Court, and dismissing the Motion and Cross-Motion for Summary Judgment without prejudice to renewal after proceedings in the Alaska Supreme Court.

24. We reviewed the Order, drafted proposed questions to be certified, negotiated the language of the proposed questions with the Attorney General's Office, and, with the cooperation of the Attorney General's Office, were able to prepare and file a Stipulated Proposed

Order of Certification, including the specific questions, on April 29, 2011 (Docket 75). That same day, this Court approved the Stipulation, and entered it as a Stipulated Order of Certification (Docket 76).

25. The Clerk of this Court transmitted the Stipulated Order of Certification to the Alaska Supreme Court, which sent this Court notice that it had opened the case (Docket 77).

26. Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	7.7	\$600	\$4,620
Richard M. Zuckerman	Partner	8.3	\$550	\$4,565
Joshua Kroot	Associate	3.1	\$175	\$543
Subtotal		19.1		\$9,728

F. June 2011: Receipt and Review of Decision of Alaska Supreme Court Declining to Answer Certified Questions; Preparation and Filing of Plaintiffs' Renewed Motion for Summary Judgment; Receipt and Review of Defendants' Renewed Cross-Motion for Summary Judgment; Initial Preparation of Reply Papers on Plaintiffs' Renewed Motion; Receipt and Review of this Court's Decision Granting Summary Judgment

27. On June 8, 2011, this Court received notice that the Alaska Supreme Court declined to answer the certified questions (Docket 79).

28. We prepared papers to renew Plaintiffs' Motion for Summary Judgment, which we filed on June 16, 2011 (Docket 80, 81). Defendants filed a Response (Docket 82) and renewed their Cross-Motion for Summary Judgment (Docket 83). We began to prepare a Reply, which was not filed..

29. On June 30, 2011, this Court entered its Order granting Plaintiffs' Motion for Summary Judgment, and denying Defendants' Cross-Motion for Summary Judgment (Docket 84).

30. Our time during this period was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Richard M. Zuckerman	Partner	5.6	\$550	\$3,080
Subtotal		5.6		\$3,080

G. July 2011: Proceedings Relating to Judgment

31. In July 2011, we received the Judgment entered by the Court, reviewed the Judgment, conferred with the Attorney General's Office regarding possible modifications to the Judgment (so that the Judgment would reflect the issuance of a permanent injunction) and submitted a motion to alter or amend the Judgment

32. Our time during this period relating to the Judgment was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	2.2	\$600	\$1,320
Richard M. Zuckerman	Partner	1	\$550	\$550
Subtotal		3.2		\$1,870

H. July 2011: This Fee Application

33. In July 2011, we also prepared this fee application

34. Our time during this period relating to the fee application was as follows:

Name	Position	Total Hours	Billing Rate Requested	Fees Requested
Michael Bamberger	Partner	1.8	\$600	\$1,080
Richard M. Zuckerman.	Partner	12	\$550	\$6,600
Subtotal		13.8		\$7,680

35. The 504.6 hours which my firm expended on this action and for which we are seeking compensation is time which was reasonably and necessarily expended for plaintiffs to prevail in this action.

II. QUALIFICATIONS OF ATTORNEYS, AND HOURLY RATES

36. I will now review the qualifications and experience of each of the attorneys who devoted time to this matter, the regular hourly rates charged by my firm for their services, and the rates sought in this case (which are significantly below the regular hourly rates).

37. Based on my experience (as described below), I am familiar with the hourly rates charged by law firms in New York, where my office is located, and am also familiar with the hourly rates charged by law firms in many metropolitan areas across the United States. (Our firm has offices in 14 medium-size and large cities across the United States, including New York, San Francisco, Los Angeles, Phoenix, Dallas, St. Louis, Kansas City, and Chicago.) The regular rates charged by my firm are within the range of rates charged by law firms in New York for litigation of this nature. We recognize that New York rates are higher than those in other metropolitan areas, and therefore do not seek our full regular hourly rates. The reduced rates we seek are within the range of rates charged by law firms in medium-size and large cities across the United States. We respectfully submit that these rates are reasonable.

38. We recognize that these reduced rates are at the high end of the range of reasonable rates within Alaska. For that reason, we do not ask for a multiplier—which otherwise would be appropriate in this case. However, we respectfully request that, if the Court determines that it should use rates below the reduced rates that we request, the Court consider an appropriate multiplier to bring the award to within the range that we request.

A. Michael A. Bamberger

39. The firm seeks compensation for my services at a billing rate of \$600 per hour. My usual rate charged to clients of my firm at this time ranged from \$815 to \$860 in 2010, and from \$840 to \$895 in 2011.

40. I respectfully refer the Court to the accompanying Declaration of Jonathan Bloom, which addresses the reasonableness of my hourly rate.

41. For over twenty-five years, I have represented members of the Media Coalition, a coalition of media-related entities organized to protect First Amendment rights, in First Amendment litigation. As noted above, several of the Plaintiffs in this action are members of Media Coalition. In connection therewith, I have litigated many of the major cases throughout the country involving the First Amendment and regulation of access by minors to sexually explicit material. I brought to this case extensive specific relevant experience. Not only am I a leading First Amendment attorney, but I am considered the nation's leading expert on laws concerning restrictions on juvenile access to sexually frank material ("harmful to minors" material), the subject of this lawsuit.

42. For over 30 years I have litigated issues regarding “harmful to minors” materials in the U.S. Supreme Court, in seven of the United States Courts of Appeals, in 13 United States District Courts, and seven state Supreme Courts. (Exhibit D).

43. I graduated *magna cum laude* from Harvard Law School in 1960. For the period 1958 through 1960 I was an editor of the Harvard Law Review. I have been interested in First Amendment issues for many years. My honors thesis at Harvard College dealt with the legal and administrative problems posed by the U.S. Customs Bureau regulation of motion pictures imported into the United States. My honors thesis at Harvard Law School concerned the constitutional and administrative problems associated with FCC content regulation of radio and television shows. From 1967 through 1973, I was a member of the American Bar Association Subcommittee on Obscenity and Censorship. From 1979 to 1985, I was a member of the ABA Subcommittee on Freedom of the Press. I was Chairman of the Committee on Civil Rights of the Association of the Bar of the City of New York from July 1983 to June 1986.

44. I have represented various clients concerned with First Amendment issues for many years and, since 1978, have been General Counsel to Media Coalition. I have participated in over sixty First Amendment cases in the last thirty years. I am considered the nation’s leading expert on laws concerning restrictions on juvenile access to sexual frank (“harmful to minors”) materials, having litigated most of the significant cases in the area.

45. In addition, I was lead counsel in the District Court, Court of Appeals and U.S. Supreme Court in *Hudnut v. American Booksellers*, 771 F.2d 323 (7th Cir. 1985), *aff’d*, 475 U.S. 1001 (1986).

46. I have also filed many *amicus* briefs on related issues, including the following cases: *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002); *U.S. v. X-Citement Video*, 115 S.Ct. 464 (1994); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Ft. Wayne Books v. Indiana*, 489 U.S. 46 (1989); *Pope v. Illinois*, 481 U.S. 497 (1987); *Renton v. Playtime Theatres*, 89 L.Ed.2d 29 (1986); *Maryland v. Macon*, 472 U.S. 463 (1985); *Brockett v. Spokane Arcades*, 472 U.S. 491 (1985); *New York v. Ferber*, 458 U.S. 747 (1982); *Vance v. Universal Amusement Co., Inc.*, 445 U.S. 308 (1980); *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979); *Jenkins v. Georgia*, 418 U.S. 153 (1974); *Video Software Dealers Ass'n v. Webster*, 968 F.2d 684 (8th Cir. 1992); *Upper Midwest Booksellers Ass'n v. Minneapolis*, 780 F.2d 1389 (8th Cir. 1985); *Penthouse International v. McAuliffe*, 610 F.2d 1354 (5th Cir. 1980); *United States v. The Progressive Inc.*, No. 79-1664 (7th Cir. 1979); *Playboy Entertainment Group, Inc. v. U.S.*, No. 96-94/96-107-JJF (D.Ct. Del. 1996); *Village Books v. Bellingham*, C88-1470 (W.D. Wash. Feb. 9, 1989). I filed an *amicus* brief in *Knox v. U.S.*, 114 S.Ct. 375 (1993), and on remand, at the request of the court argued orally before the Third Circuit in *Knox v. U.S.*, 32 F.3d 733 (3d Cir. 1994). Without being immodest, I have thus been in the forefront of much of the major litigation in the United States over the last thirty years relating to the interplay of the First Amendment and sexually frank material.

47. Simply put, there was no one in Alaska with such a depth of experience and knowledge as I brought to the case. Both the District of South Carolina and Southern District of Indiana have recognized the reasonableness of a \$600 hourly rate for my services. These decisions were based on my experience and expertise in litigating First amendment cases. (Exhibit D).

B. Devereux Chatillon

48. We seek compensation for the services of Ms. Chatillon, who was a partner in our litigation department during the period of time she worked on this matter, at a billing rate of \$500 per hour. The usual rate charged by my firm for Ms. Chatillon's services during the time of this litigation, ranged from \$625 to \$665 in 2010, and from \$645 to \$685 in 2011.

49. I respectfully refer the Court to the accompanying Declaration of Ms. Chatillon,

C. Richard M. Zuckerman.

50. We seek compensation for the services of Mr. Zuckerman, who is a partner in SNR Denton's litigation department, at a billing rate of \$550 per hour. The usual rate charged by my firm for Mr. Zuckerman's services during the time of this litigation, ranged from \$730 to \$770 in 2010, and from \$750 to \$810 in 2011.

51. I respectfully refer the Court to the accompanying Declaration of Mr. Zuckerman. In further support of Mr. Zuckerman's requested rate, Plaintiffs request that this Court take into account the accompanying declaration of Stephen E. Jenkins.

D. Joshua Kroot.

52. We seek compensation for the services of Mr. Kroot, who is an associate in SNR Denton's litigation department, at a billing rate of \$175 per hour. The usual rate charged by my firm for Mr. Kroot's services during the time of this litigation, ranged from \$290 to \$305 in 2010, and from \$330 to \$350 in 2011.

53. Mr. Kroot has been a member of the Bar of the State of New York since 2010. He graduated from the University of Michigan with a B.A. in 2002, graduated from the University of Southern California School of Law with his J.D. degree in 2009, and graduated from the

London School of Economics and Political Science with his LL.M. degree, also in 2009. He became an associate with our firm in 2010.

III. EXPENSES

54. As detailed in Exhibit C, expenses were reasonably incurred in connection with my firm's role in this action. Full compensation of these expenses in the amount of \$5,576.29 is requested. All of these expenses are of the sort that are normally billed by my firm to clients, since they are not included as overhead in our attorney fee billing structure.

CONCLUSION

55. For the foregoing reasons, I submit that the hours billed in this matter were reasonably expended; and that the billing rates requested are reasonable. The expenses for which reimbursement is sought was reasonably necessary for the Plaintiffs to prevail in this matter. The total award sought for attorney's fees and expenses based on services rendered by my firm through July 22, 2011 is **\$163,409.29**. I reserve the right to seek an additional fee award for time after that date, including time expended in negotiating and/or litigating this entitlement to fees, for expenses incurred but not yet posted, and for time expended on any other proceedings in this matter.

56. I declare under penalty of perjury under the laws of the United States that the facts set forth in this Declaration are true and correct.

Dated: July 25, 2011

s/ Michael A. Bamberger
Michael A. Bamberger