

1 David G. Bray (#014346) (david.bray@mwmf.com)
 2 MARISCAL, WEEKS, McINTYRE
 & FRIEDLANDER, P.A.
 2901 North Central Avenue, Suite 200
 3 Phoenix, Arizona 85012-2705
 Phone: (602) 285-5000
 4 Fax: (602) 285-5100

5 Attorneys for Defendants

6 **UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF ARIZONA**

8 JAMES D. MURPHEY and CHRISTINE M.
 MURPHEY, husband and wife,

9 Plaintiffs,

10 v.

11
 12 TPS ENTERPRISES, an Arizona general
 partnership, PATRICK J. SIMERI and PIER
 13 SIMERI, husband and wife; THOMAS L.
 14 SCHOAF and SHIRLEY A. SCHOAF,
 husband and wife; CREATIVE PRODUCTS,
 15 INC., an Arizona corporation; ADAPTO, INC.,
 an Arizona corporation; JOHN DOES 1 – 5;
 16 JANE ROES 6-10; and ABC
 ORGANIZATIONS I-X,

17 Defendants.

No. CV04-002430-PHX-MHM

**DEFENDANTS' MOTION FOR
 ATTORNEYS' FEES AND COSTS**

(Assigned to the
 Hon. Mary H. Murguia)

(Oral Argument Requested)

19 Defendant, TPS Enterprises, Patrick J. Simeri and Pier Simeri, Thomas L. Schoaf and
 20 Shirley A. Schoaf, Creative Products, Inc. and Adapto, Inc. (collectively, "Defendants"), by
 21 and through undersigned counsel (collectively, "Defendants") by and through their
 22 undersigned counsel, pursuant to 54(d), Fed. R. Civ. P., hereby apply for an award of
 23 attorneys' fees incurred herein against plaintiff James Murphey and Christine Murphey
 24 ("Plaintiffs") in the sum of \$33,330, and costs in the sum of \$294.67 pursuant to the
 25 mandatory fee-shifting clause contained in plaintiff James Murphey's License Agreement
 26

1 with defendant TPS. Alternatively, Defendants are also entitled to recover their attorneys'
2 fees pursuant to A.R.S. § 12-341.01(A) and 35 U.S.C. § 285.

3 This Motion is supported by the attached Memorandum of Points and Authorities, the
4 License Agreement attached as Exhibit "A", and the Declaration of David G. Bray attached as
5 Exhibit "B."

6 DATED this 5th day of October, 2007.

7 **MARISCAL, WEEKS, McINTYRE**
8 **& FRIEDLANDER, P.A.**

9 By: /s David G. Bray
10 David G. Bray
11 Attorneys for Defendants

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. Defendants Are Entitled To Recover Their Attorneys' Fees Pursuant To The**
4 **Mandatory Fee-Shifting Clause In The Parties' Contract.**

5 Attached as Exhibit "A" is the November 6, 1998 License Agreement between plaintiff
6 James Murphey ("Murphey") and defendant TPS. Paragraph 14 of the License Agreement
7 provides that in "any subsequent litigation between the parties, the prevailing party in such
8 litigation shall be entitled, in addition to any relief granted, a reasonable sum and as for the
9 prevailing party's reasonable attorneys' fees, expert witness fees and other costs of bringing
10 this action." [License Agreement (Exh. "A"), ¶ 14.]

11 Arizona law provides the "[c]ontract provisions authorizing the payment of attorneys'
12 fees will be enforced in accordance with the terms of the provision." Arizona Attorneys Fees
13 Manual § 3.4 at p. 3-1 (3rd Ed. Rev. 1998); Dorn v. Robinson, 158 Ariz. 279, 287, 762 P.2d
14 566, 579 (Ct. App. 1988); First Fed. Sv. & Loan Ass'n v. Ram, 135 Ariz. 178, 181, 659 P.2d
15 1323, 1326 (Ct. App. 1982); Heritage Heights Home Owners Ass'n v. Eser, 115 Ariz. 330,
16 333-334, 565 P.2d 207, 210-211 (Ct. App. 1977). The Court does not have discretion to
17 refuse to award contractually awarded attorneys' fees. Chase Bank of Ariz. v. Acosta, 179
18 Ariz. 563, 575, 880 P.2d 1109, 1121 (Ct. App. 1994).

19 The controlling fee-shifting clause in this case awards fees to the prevailing party. In
20 its September 21, 2007 Order, the Court granted Defendants summary judgment and
21 dismissed Plaintiffs' patent infringement claim and their Complaint as a whole. In its Order,
22 the Court stated "In the instant case, collateral estoppel applies to the majority of plaintiffs'
23 case as it is essentially a **second bite at the apple regarding Plaintiffs' claim of breach of**
24 **contract asserted in the Superior Court litigation.**" [Sept. 21, 2007 Order, at pp: 10:27-
25 11:1 (emphasis added).] One of the key bases of the Court's ruling was that the parties'
26 License Agreement provided a complete defense to Plaintiffs' claim of patent infringement.

1 Thus, Defendants are clearly the prevailing parties and thus entitled to a mandatory award of
2 fees. The Defendants are requesting that they be awarded attorneys' fees in the amount of
3 \$33,330 and taxable costs in the amount of \$294.67. [Declaration of David G. Bray, (Exh.
4 "B").]

5 **II. Defendants Are Also Entitled To Recover Their Attorneys' Fees Pursuant To**
6 **A.R.S. § 12-341.01(A).**

7 Defendants are also entitled to recover their attorneys' fees under A.R.S. § 12-
8 341.01(A) as the prevailing party in a matter "arising out of contract." "[A]s used in A.R.S. §
9 12-341.01, the words 'arising out of a contract' describe an action in which a contract was a
10 factor causing the dispute." ASH, Inc. v. Mesa Unified Sch. Dist., 138 Ariz. 190, 192, 673
11 P.2d 934, 936 (Ariz. Ct. App. 1983)

12 In this case, plaintiff Murphey admitted in his deposition that this lawsuit was, in fact,
13 driven by his claim that Defendants failed to perform to his expectations under to the License
14 Agreement:

15 Q: You are actually suing for infringement of two specific
16 patents; correct?

16 A: Yes. That's in the license.

17 Q: Describe for me again in your own words what any of the
18 defendants have done to infringe your intellectual property
19 rights.

19 A: They didn't perform anything at all under the license.

20 [Defendants' Statement of Undisputed Facts dated November 30, 2006 ("SOF"), ¶ 41
21 (emphasis added).]

22 In sum, this "patent infringement" lawsuit was nothing more than an attempt by
23 plaintiff Murphey to relitigate the breach of contract case he lost in the State Court Action.
24 Thus the Court may award Defendants their attorneys' fees on this alternate ground as well.

1 **III. Defendants Are Also Entitled To Recover Their Attorneys' Fees Pursuant To**
2 **35 U.S.C. § 283.**

3 In patent cases, attorneys' fees may be awarded to the prevailing party in "exceptional
4 cases." 35 U.S.C. § 285. Exceptional cases have been held to include those involving fraud,
5 calculated recklessness, and bad faith as well as conduct "short of fraud and in excess of
6 simple negligence," Monolith Portland Midwest Co. v. Kaiser Aluminum & Chemical Corp.,
7 407 F.2d 288, 294 (9th Cir. 1969); such conduct either in prosecuting the application in the
8 patent office or vexatiously litigating infringement may justify awarding attorneys' fees. Id.
9 The Ninth Circuit has stated that such an award is justified where there is "bad faith or
10 inequitable conduct on the part of the losing party that would make it grossly unjust for the
11 prevailing party to be left with the burden of his litigation expenses." Carpet Seaming Tape
12 Licensing Corp. v. Best Seam, Inc., 694 F.2d 570, 581 (9th Cir. 1982), cert. denied, 464 U.S.
13 818, 104 S. Ct. 78, 78 L. Ed. 2d 89 (1983). Such awards are within the discretion of the
14 district court. Mayview Corp. v. Rodstein, 620 F.2d 1347, 1357 (9th Cir. 1980).

15 This case clearly is such an exceptional case. Mr. Murphey testified in his deposition
16 that, despite his allegations contained in the Third Amended Complaint, to the best of his
17 knowledge none of the named Defendants actually infringed his patents:

18 Q: My specific question is, to your knowledge, none of the specific
19 defendants identified in the caption on Exhibit I, which is your Third
20 Amended Complaint, actually sold a product embodying the letters patent
and/or the trigger invention?

21 A: To the best of my knowledge, the defendants identified on the front of
22 the Third Amended Complaint did not infringe because they didn't do
anything under the license.

23 [SOF, ¶ 39 (emphasis added).]

24 Mr. Murphey further stated the only factual basis for his patent infringement claim was
25 his belief that Defendants failed to perform under the License Agreement, an issue that he had
26 already litigated, and lost, in the State Court Action:

1 Q: Describe for me again in your own words what any of the
2 defendants have done to infringe your intellectual property
rights.

3 A: They didn't perform anything at all under the license.

4 [SOF, ¶ 41 (emphasis added).]

5 Thus this case was nothing more than a vexatious, bad faith attempt by plaintiff
6 Murphey to relitigate the breach of contract case that he had previously lost in state court.
7 [Sept. 21, 2007 Order, at pp:10:27-11:1 (plaintiffs' case "is essentially a second bite at the
8 apple regarding Plaintiffs' claim of breach of contract asserted in the Superior Court
9 litigation.") (emphasis added).]

10 Under these circumstances it would be grossly unjust for the Defendants to be left with
11 the burden of their litigation expenses.

12 **IV. The Amount Of Fees Sought Is Reasonable.**

13
14 The amount of fees requested (\$33,330) is reasonable and justified for the following
15 reasons, all of which are supported by the Declaration of David G. Bray and its exhibits; and
16 it is also the actual fee paid or to be paid by Defendants.

17 The Arizona Supreme Court has set forth several factors to be considered in
18 determining the reasonable value of an attorney's services. Schwartz v. Schwerin, 85 Ariz.
19 242, 336 P.2d 144, 146 (1959). The Schwartz court also directed "that each of these factors
20 be given consideration by the trier of fact and that no one element should predominate or be
21 given undue weight." 336 P.2d at 146. Application of each factor cited by the court in that
22 case follows.

23 *The qualities of the advocate: his ability, his training, education, experience,*
24 *professional standing and skill.* 336 P.2d at 146. The conduct of this case and the quality of
25 oral advocacy and written work submitted by David G. Bray all reflect the quality of his
26 counsel.

1 *The character of work to be done: its difficulty, its intricacy, its importance, time and*
2 *skill required, the responsibility imposed and the prominence and character of the parties*
3 *where they affect the importance of the litigation.* 336 P.2d at 146. This was a commercial
4 case involving patent and contract issues that required a substantial amount of factual and
5 legal research and preparation on a number of different subjects. The facts of this case dated
6 back over years and involved a number of different participants. The amount of fees sought is
7 consistent with the character of work done.

8 *The work actually performed by the lawyer: the skill, time and attention given to the*
9 *work.* 336 P.2d at 146. The schedule of services appended to the attached Declaration of
10 David G. Bray indicates the services required to prosecute the present case through
11 Defendants' successful summary judgment motion. It is self-evident from an examination of
12 the schedule of services that each of the services provided by Defendants' counsel was
13 necessary to the pursuit of this case, and that each of the services was provided with
14 reasonable efficiency. The schedule indicates that the present case required significant
15 preparation, factual exploration, legal research, drafting, analysis, oral advocacy, and other
16 work by counsel.

17 *The result: whether the attorney was successful and what benefits were derived.* 336
18 P.2d at 146. The Court found for Defendants on the entirety of Plaintiffs' Third Amended
19 Complaint. There is no doubt that the Court's ruling was a total victory for Defendants from
20 which they have received a substantial benefit.

21
22
23
24
25
26

1 **V. Conclusion.**

2 For all the foregoing reasons, Defendants respectfully request that attorneys' fees in the
3 sum of \$33,330 and costs of \$294.67 be awarded.

4 **DATED** this 5th day of October, 2007.

5 **MARISCAL, WEEKS, McINTYRE**
6 **& FRIEDLANDER, P.A.**

7
8 By: /s David G. Bray
9 David G. Bray
Attorneys for Defendants

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 5th day of October, 2007, I electronically transmitted the
3 Defendants' Motion for Attorneys' Fees and Costs on behalf of Defendants to the Clerk's
4 Office using the CM/ECF system for filing and placed the foregoing document in the U.S. Mail,
5 first class:

6
7 James D. Murphey
8 Christine M. Murphey
9 2438 W. Butler
Phoenix, Arizona 85021
Plaintiff *Pro Per*

10 Dated this 5th day of October, 2007.

11 Mariscal, Weeks, McIntyre
12 & Friedlander, P.A.

13 By: s/ Cheryl LoStracco
14
15
16
17

18 U:\ATTORNEYS\Dgb\TPS\Federal Action\TPS Motion for Attorneys Fees.doc
19
20
21
22
23
24
25
26

EXHIBIT A

EXCLUSIVE LICENSE AGREEMENT

This LICENSE AGREEMENT, effective as of November 6th 1998, is made and entered into by and between James D. Murphey, an individual residing at 2438 West Butler, Phoenix, Arizona 85021 (hereinafter referred to as "LICENSOR"), and TPS Enterprises, an Arizona general partnership, with an office at 1300 South Litchfield Road, Bldg. #1, Goodyear, Arizona 85338, together with any and all parent and subsidiary entities (hereinafter referred to as "LICENSEE").

WITNESSETH THAT:

WHEREAS, LICENSOR represents and warrants that he is the owner of the entire right, title and interest in and to United States Letters Patent No. 5,780,842, granted July 14, 1998, for an ITEM DISPENSING CONTROL SYSTEM FOR USE IN VENDING DEVICES, together with any reissues or extensions thereof, and that he has heretofore made certain inventions relating to apparatus comprising a TRIGGER CIRCUIT for which he has made application for Letters Patent of the United States filed 01 October 1998, Parsons & Goltry docket number 3533-A3, and of which invention and application and all rights in and thereto represents that he is the sole owner;

WHEREAS, LICENSOR represents and warrants that he has the sole right to grant the herein contained right and license under the LICENSED PATENTS (as hereinafter defined) covering certain inventions relating to an ITEM DISPENSING CONTROL SYSTEM FOR USE IN VENDING DEVICES and a TRIGGER CIRCUIT, and any reissues and extensions, of the scope hereinafter granted;

WHEREAS, LICENSEE is desirous of acquiring the exclusive right and license in the United States, its territories and possessions and in countries where LICENSES PATENTS are effective, to make, have made, use and sell the ITEM DISPENSING CONTROL SYSTEM FOR USE IN VENDING DEVICES embodying the invention covered by said United states Letters Patent No. 5,780,842, and the TRIGGER CIRCUIT embodying one or more certain inventions covered by said application for Letters Patent of the United States filed 01 October 1998;

WHEREAS, LICENSOR is willing to grant such a license upon the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants, terms and conditions hereinafter expressed, the parties hereto agree as follows:

J. Murphey

Exhibit No. _____

Date: 12-6-02

AMY K. BOWLER
COURT REPORTER

1. DEFINITIONS:

As used in this LICENSE AGREEMENT:

(a) The phrase "LICENSED PATENTS" shall mean and include:

- i. The United States Letters Patent No. 5,780,842 by James D. Murphey, a copy of which is attached hereto and by this reference incorporated herein (hereinafter called U.S. Patent No. 5,780,842), and the application for United States Letters Patent entitled TRIGGER CIRCUIT by James D. Murphey, Docket No. 3533-A3 filed 01 October 1998, a copy of which is attached hereto and by this reference incorporated herein (hereinafter called the Trigger Circuit Patent Application);
- ii. Any United States patent application which shall be based on U.S. Patent No. 5,780,842 and/or the Trigger Circuit Patent Application;
- iii. Any patents which shall issue on any of the above-described patent applications, and any reissues and extensions thereof;
- iv. Any continuation-in-part United States patent application (including divisions, continuations-in-whole or -in-part, and substitutes thereof or therefore) based in part on any of the above-mentioned patent applications which LICENSOR has the right to file (of which, LICENSOR shall notify LICENSEE in a reasonable time) and which LICENSEE shall thereupon elect to have added to the LICENSED PATENTS (of which election LICENSEE shall notify LICENSOR within a reasonable time after receiving notice from LICENSOR), any patent which shall issue on any such application, and any reissues and extensions thereof. Should LICENSEE not elect to have such patent application and patent added to the LICENSED PATENTS, LICENSOR shall be at complete liberty to treat them as he sees fit;

(b) The phrase "VALID CLAIM" shall mean:

- i. In the case of an application for letters patent (during the time such patent is pending as an application), a claim or part which shall not have been finally rejected by an unappealed or unappealable decision of the Patent Office of the country in which such application is filed; and
- ii. In the case of an issued and unexpired Letters Patent, a claim or part which shall not have been held invalid in an unappealed or unappealable decision of a court of competent jurisdiction.

(c) The phrase "GROSS REVENUE" shall be defined as all sales, revenues, receipts, and moneys actually received by LICENSEE on a cash basis, not on an accrual basis, net of all returns or credits, including cash or other benefit, advantage, or concession (in which case the applicable revenue will be the monetary equivalent or value of same), whenever and wherever obtained.

- (d) The phrase "CALENDAR YEAR" shall mean a period of twelve (12) months in the Gregorian calendar beginning on 1st January and ending on 31st December;
- (e) The phrase "FIRST YEAR OF OPERATION" shall be from January 1, 1999 and ending on December 31, 1999;
- (f) The phrase "CALENDAR QUARTER" shall mean a period of three (3) months in the Gregorian calendar ending on the last day of March, June, September, or December;
- (g) The phrase "CALENDAR MONTH" shall mean a period of one month in the Gregorian calendar ending on the last day of each month of each CALENDAR YEAR as defined herein; and
- (h) The phrase "TECHNICAL KNOW-HOW" shall mean all formulae, technical data and information including but not limited to engineering and technical data, manufacturing data, designs, skills, and methods and procedures relating to the production of apparatus covered by a VALID CLAIM of said LICENSED PATENTS, owned or controlled by LICENSOR during the life of this LICENSE AGREEMENT which will enable LICENSEE efficiently to manufacture any apparatus, or make any sub-license, covered by a VALID CLAIM of LICENSED PATENTS.

2. GRANT

LICENSOR hereby grants to LICENSEE the exclusive right and license to make, have made, use, sell, and offer for sale apparatus covered by a VALID CLAIM of said LICENSED PATENTS in the United States, its territories and possessions, and in countries where the LICENSED PATENTS are effective with or without further filings in such countries, which filings LICENSOR shall cooperate with and assist as requested by LICENSEE. LICENSOR agrees that all improvements and modifications made by him relating to any CLAIMS of said LICENSED PATENTS shall be automatically included within the terms of this Agreement and shall be promptly disclosed and specifically included in this LICENSE. It is the intention of the LICENSOR to grant an exclusive worldwide license to LICENSEE.

8. ENFORCEMENT OF LICENSED PATENTS

LICENSOR authorizes and empowers LICENSEE and gives LICENSEE the right, but at LICENSEE's expense, to bring and maintain suites for infringement of any LICENSED PATENTS hereunder in its name or in the name of LICENSOR, or both. LICENSEE agrees to promptly notify LICENSOR in writing of any suit of this sort. LICENSOR agrees to cooperate to the best of its ability in the preparation for and prosecution of any suit, but without expense to LICENSOR. Any amounts realized by LICENSEE from successful prosecution of any infringement suit or suits will be applied first to reimburse LICENSEE for all its costs and expenses in connection therewith, and the balance, if any, will be divided Seventy percent (70%) to LICENSEE, and Thirty percent (30%) to LICENSOR. LICENSEE will notify LICENSOR in writing immediately upon becoming aware of any infringement of LICENSED PATENTS.

9. INFRINGEMENT SUITS AND INVALIDITY PROCEEDINGS

- (a) LICENSOR represents that no claim of infringement or improper use is pending or threatened against LICENSOR concerning the LICENSED PATENTS or any CLAIMS thereof or any TECHNICAL KNOW-HOW. LICENSOR shall, and hereby does, indemnify and agrees to pay, defend, and hold harmless LICENSEE and its successors and assigns, from and against any and all claims, demands, actions, liabilities, obligations, or suits related to the manufacture, use or sale of a product containing a device covered by the LICENSED PATENTS or the SUB-LICENSE thereof, to the extent of all ROYALTY payments paid or due pursuant to this Agreement.
- (b) LICENSEE agrees to promptly notify LICENSOR in writing of any claim of, or action for, infringement against LICENSEE arising from the manufacture, use, sale, or offer for sale of any of said LICENSED PATENTS as defined in this LICENSE AGREEMENT, or of any institution of any action contesting the validity of any of said LICENSED PATENTS. Subject to the indemnity and hold harmless provisions set forth above, LICENSEE shall investigate each such claim or action for infringement, or validity proceeding, the defense of such claim or action for infringement, or validity proceeding, and/or the settlement of such claim or action for infringement. In addition to such indemnity and hold harmless provision, LICENSOR agrees to assist LICENSEE in the defense of such claim or action for infringement, or such validity proceeding, and/or the settlement of such claim or action for infringement, to the extent of providing time and advice as may reasonably be required by LICENSEE. LICENSEE shall, after the commencement of any such claim or action for infringement, or validity proceeding, deposit royalties payable to LICENSOR pursuant to this LICENSE AGREEMENT in a reserve fund until the end of each such claim or action for infringement.
- (c) In the event the patent issues in any such claim or action for infringement, or validity proceeding, are resolved entirely in favor of LICENSEE, LICENSOR

authorizes LICENSEE to deduct from the reserve fund up to one-third (1/3) of the amount therein for all expenses incurred by LICENSEE in the defense of such claim or action for infringement, or validity proceeding. LICENSEE agrees to pay promptly to LICENSOR any sum remaining in the reserve fund.

- (d) In the event a final and unappealable judgment is entered in any such claim or action for infringement, or validity proceeding, against LICENSEE for the manufacture, use, sale, or offer for sale, of any apparatus covered by a VALID CLAIM of said LICENSED PATENTS, LICENSOR authorizes LICENSEE to use up to the entire amount of the reserve fund for payment of any damages assessed against the parties to this LICENSE AGREEMENT or any of them to this LICENSE AGREEMENT, and for legal fees and other expenses incurred by LICENSEE in the defense of such claim or action for infringement, or validity proceeding. LICENSEE agrees to promptly pay to LICENSOR any sum remaining in the reserve fund.
- (e) In the event that any claim or claims of the LICENSED PATENTS is declared to be invalid by a court of last resort, or by a lower court of competent jurisdiction from the decision of which no appeal shall have been taken, LICENSEE shall be relieved from further reports and payments or other activity pursuant to the terms of this LICENSE AGREEMENT with respect to the LICENSED PRODUCTS so covered only by the claim or claims so declared to be invalid.
- (f) If as a result of settlement or judgment of any such claim or action for infringement, LICENSEE is obligated to pay running royalties or other compensation to one or more plaintiffs, commencing with the date of settlement or judgment the royalties to be paid by LICENSEE to LICENSOR as specified in this LICENSE AGREEMENT shall be reduced by the amount of such running royalties or other compensation payable to such one or more plaintiffs.

10. PATENT MARKING

LICENSEE agrees that in all of its publication (including but not limited to advertising, catalogues and brochures) describing apparatus covered by a VALID CLAIM of LICENSED PATENTS will set forth the fact that it is licensed under U.S. Letters Patent No. 5,780,842 and, where appropriate, other patent pending.

11. SUBLICENSES

LICENSEE shall have the right to grant sublicenses hereunder and on terms consistent herewith.

12. ASSIGNMENT

The benefits and obligations of this LICENSE AGREEMENT shall be binding upon and inure to the parties hereto, their successors, assigns and legal representatives; provided that all such transactions shall be done at arms length on commercially reasonable terms.

13. DURATION AND TERMINATION

- (a) This LICENSE AGREEMENT and the license granted under it shall expire simultaneously with the expiration of the longest-lived patent or the rejection or abandonment beyond further appeal of the last remaining patent application comprised within LICENSED PATENTS, whichever occurs later, unless sooner terminated.
- (b) If LICENSEE fails to pay LICENSOR royalties payable under the terms hereof, or if LICENSEE violates or fails to keep or perform any other obligation, term or condition hereof, or if LICENSEE shall be adjudged bankrupt or become insolvent or make an assignment for the benefit of creditors, or be placed in the hands of a receiver or Trustee in bankruptcy, the LICENSOR may, at its option, cancel or terminate this LICENSE AGREEMENT by giving thirty (30) days written notice specifying default complained hereof, provided however, that if LICENSEE shall, within such thirty (30) days cure the default complained of, then the notice shall cease to be operative and this LICENSE AGREEMENT shall continue in full force and effect as though such default had not occurred, and provided further that if LICENSEE shall within such thirty (30) days notify LICENSOR in writing that it disputes the asserted default, the matter shall be submitted to arbitration as hereinafter provided.
- (c) Upon termination of the license granted herein, LICENSEE shall immediately cease exploitation of the subject matter of this LICENSE AGREEMENT, and within thirty (30) days of termination, deliver to LICENSOR all know-how in tangible form relating to the subject matter of this LICENSE AGREEMENT. Termination of the license granted herein shall not relieve LICENSEE of its obligations to pay to LICENSOR monies due and unpaid at the time of termination, to make available its books and records for inspection and/or audit by LICENSOR, and to maintain in confidence all know-how furnished to it by LICENSOR. In the event of termination of the license granted herein, LICENSEE's obligation relating to minimum payment or royalties in lieu thereof shall be prorated in the year in which termination occurs up to the effective date of termination. Termination of the license granted herein shall not impair or prejudice any cause of action or claim that one party may have against the other party for any breach of this LICENSE AGREEMENT.

14. ARBITRATION

All disputes that may arise in connection with this LICENSE AGREEMENT and that are not adjusted by the parties themselves may be submitted to arbitration under the rules and regulations of the American Arbitration Association relating to volunteer arbitration. All costs of arbitration shall be divided equally between the parties. The award shall be binding and conclusive on each of the parties and may be executed on or enforced by the party in whose favor it runs in any court of competent jurisdiction at the option of the successful party.

**Murphey Patents
Exclusive License Agreement**

In any subsequent litigation between the parties, the prevailing party in any such litigation shall be entitled, in addition to any other relief granted, a reasonable sum as and for the prevailing party's reasonable attorneys fees, expert witness fees and other costs of bringing the action.

15. WAIVER

- (a) The failure of either party to enforce at any time any provision of this LICENSE AGREEMENT shall not be construed as a waiver of such provision.
- (b) If either party should at any time waive its rights due to a breach by the other party of any provisions of this LICENSE AGREEMENT, such a waiver shall not be construed as a continuing waiver of other breaches of the same of other provisions of this LICENSE AGREEMENT.

16. APPLICABLE LAW

This LICENSE AGREEMENT shall be construed and enforced, and the legal relations created herein shall be determined, in accordance with the laws of the State of Arizona.

17. NOTICE

- (a) All notices, statements and payments to be delivered to LICENSOR under the terms of this LICENSE AGREEMENT shall be considered as so delivered when sent by registered mail, postage prepaid, and addressed to JAMES D. MURPHEY, 2438 West Butler, Phoenix, Arizona 85021, or to such address in the United States as may be designated by LICENSOR from time to time by ten (10) days' written notice thereof delivered to LICENSEE.
- (b) All notices, statements and payments to be delivered to LICENSEE under the terms of this LICENSE AGREEMENT shall be considered as so delivered when sent by registered mail, postage prepaid, and addressed to TPS Enterprises, 1300 South Litchfield Road, Bldg. #1, Goodyear, Arizona 85338, or to such address in the United States as may be designated by LICENSEE from time to time by ten (10) days' written notice thereof delivered to LICENSOR.

18. WARRANTY

LICENSOR hereby warrants and represents to LICENSEE that to the best of his knowledge and belief the LICENSED PATENTS do not infringe upon any proprietary rights of others or upon any patent or any party.

19. CREATION AND PERFECTION OF A SECURITY INTEREST IN THE TECHNOLOGY LICENSED IN THIS LICENSE AGREEMENT

Contemporaneously with the execution of this LICENSE AGREEMENT, the LICENSOR shall endeavor to create and perfect a security interest in all of the technology defined pursuant to said LICENSED PATENTS as defined in this LICENSED AGREEMENT in order to secure LICENSEE's performance under this LICENSE AGREEMENT, and to attain priority over other secured creditors of LICENSEE, if any, of which LICENSEE shall make LICENSOR aware.

20. RELEASE

Except as otherwise provided herein, LICENSEE hereby expressly releases LICENSOR from any and all claims against LICENSOR that LICENSEE may claim against LICENSOR for the duration of this LICENSE AGREEMENT from any suits that may arise against LICENSEE due to occupational safety and health violations.

21. ENTIRE AGREEMENT

- (a) This LICENSE AGREEMENT sets forth the entire agreement and understanding between the parties hereto relating to the subject matter hereof.
- (b) Neither party shall be bound by any definition, condition, warranty, or representation other than as expressly stated in this LICENSE AGREEMENT.
- (c) The making, execution and delivery of this LICENSE AGREEMENT by LICENSEE has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- (d) Neither this LICENSE AGREEMENT nor any of its provision shall be released, discharged, abandoned, waived, changed or modified in any manner except by an instrument in writing signed by the parties hereto.
- (e) The parties to this Agreement shall execute (with acknowledgment or in affidavit form, if required) any further or additional instruments, and shall perform any acts, which are or may become necessary to effectuate and carry out the purposes of this Agreement.

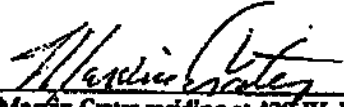
IN WITNESS WHEREOF, the parties hereto have executed this LICENSE AGREEMENT, LICENSOR by affixing his signature in the presence of two witnesses, and LICENSEE by causing its signature to be hereunto affixed and duly attested, on the day and year first written above.

LICENSOR



JAMES D. MURPHY

Murphy Patents
Exclusive License Agreement

Witnesses:



Marvin Crater residing at 420 W. Blackhawk Drive, #3, Phoenix, Arizona 85034
85027



Eugene Walker, 3805 W. Navajo Drive, Glendale, Arizona 85302

LICENSEE

TPS Enterprises, an Arizona general partnership



Thomas L. Schoaf, general partner



Patrick J. Simeri, general partner

EXHIBIT B

1 David G. Bray (#014346) (david.bray@mwmf.com)
2 MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.
3 2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
4 Phone: (602) 285-5000
Fax: (602) 285-5100

5 Attorneys for Defendants

6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 JAMES D. MURPHEY and CHRISTINE M.
9 MURPHEY, husband and wife,

10 Plaintiffs,

11 v.

12 TPS ENTERPRISES, an Arizona general
13 partnership, PATRICK J. SIMERI and PIER
14 SIMERI, husband and wife; THOMAS L.
15 SCHOAF and SHIRLEY A. SCHOAF,
16 husband and wife; CREATIVE PRODUCTS,
17 INC., an Arizona corporation; ADAPTO, INC.,
an Arizona corporation; JOHN DOES 1 – 5;
18 JANE ROES 6-10; and ABC
ORGANIZATIONS I-X,

19 Defendants.

No. CV04-002430-PHX-MHM

**DECLARATION OF DAVID G.
BRAY IN SUPPORT OF
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND COSTS**

(Assigned to the
Hon. Mary H. Murguia)

19 I, DAVID G. BRAY, declare as follows:

20 1. I am the attorney principally responsible for representing Defendants TPS
21 Enterprises, Patrick J. Simeri, Pier Simeri, Thomas L. Schoaf, Sr., Shirley A. Schoaf, and
22 Adopto, Inc. (collectively, "Defendants") in the above-entitled action. I make this Declaration
23 in such capacity with authority to do so and based upon my own personal knowledge.

24 2. I am a shareholder in the law firm of Mariscal, Weeks, McIntyre & Friedlander,
25 P.A. (the "Mariscal Firm"), attorneys for Defendants.
26

1 3. I am the attorney primarily responsible for the representation of Defendants in this
2 matter and, as such, I have either personal knowledge of the matters stated in this Declaration and
3 Defendants' Motion for an Award of Attorneys' Fees and Costs, or such matters are based on
4 records maintained by the Mariscal Firm in the ordinary course of business.

5 4. From approximately May 2, 2005 through the present date, the Mariscal Firm has
6 provided professional services to Defendants in connection with a defense of claims against them
7 filed by plaintiff James D. Murphey, ("Plaintiff").

8 5. In the course of rendering professional services to Defendants in connection with
9 their defense of claims asserted by Plaintiff, the Mariscal Firm worked the hours and billed the
10 amounts set forth in the summary attached hereto as Exhibit "1".

11 6. I have reviewed the billing statements of the Mariscal Firm and I am familiar with
12 the time and effort expended in representing Defendants in the above-referenced proceeding. All
13 the work performed by the attorneys at the Mariscal Firm behalf of Defendants was justified in
14 my judgment.

15 7. I am familiar with the rates charged by other lawyers in Arizona for the same or
16 similar services as those which are the subject of Defendants' Motion for Attorneys' Fees, and
17 it is my opinion that my hourly rate, and those of the other attorneys and paralegals working on
18 the file, as well as the total time expended on this matter, are reasonable. The total amount of
19 attorneys' fees claimed by Defendants is a reasonable sum, in my opinion, based upon the
20 relief sought by Plaintiff and the amount at issue in this lawsuit, the quality of the firm
21 performing the legal work, the character and difficulty of the work to be done, the work
22 actually performed by the Mariscal Firm on behalf of Defendants, the results obtained, as well
23 as those elements which courts and administrative tribunals find appropriate in the awarding of
24 attorneys' fees. Further, based upon the additional factors set forth in Ethical Rule 1.5 of the
25 Rules of Professional Conduct, I believe and avow to the Court that the amount of attorneys'
26 fees and costs requested by Defendants is reasonable, necessary and appropriate.

EXHIBIT 1

Murphey v. TPS et al.
United States District Court Case No. CV04-002430-PHX-MHM

Summary of Attorneys Fees

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
05/02/05	DGB	BEGIN DRAFTING MOTION TO DISMISS FEDERAL COMPLAINT.	1.30	\$250.00	\$325.00
05/20/05	DGB	CONTINUE DRAFTING MOTION TO DISMISS NEW FEDERAL LAWSUIT.	.60	\$250.00	\$150.00
05/25/05	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE FOLLOW UP ON POTENTIAL SETTLEMENT; CONTINUE DRAFTING MOTION TO DISMISS FEDERAL LAWSUIT.	1.80	\$250.00	\$450.00
05/31/05	DGB	CONTINUE DRAFTING MOTION TO DISMISS, SUMMARY JUDGMENT AND ANSWER.	1.30	\$250.00	\$325.00
06/01/05	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT IN FEDERAL COURT; TELEPHONE CONFERENCE WITH OPPOSING COUNSEL.	1.20	\$250.00	\$300.00
06/03/05	DGB	CONTINUE DRAFTING ANSWER TO FEDERAL COMPLAINT.	.50	\$250.00	\$125.00
06/06/05	DGB	CONTINUE DRAFTING ANSWER TO FEDERAL COMPLAINT; BEGIN DRAFTING MOTION TO ADD MRS. MURPHEY AS ADDITIONAL PART-PLAINTIFF.	1.90	\$250.00	\$475.00
06/07/05	DGB	DRAFT, REVISE, FINALIZE AND FILE ANSWER TO MURPHEY'S SECOND AMENDED COMPLAINT IN FEDERAL COURT; DRAFT, REVISE, FINALIZE AND FILE MOTION TO ADD MRS. MURPHEY AS ADDITIONAL PARTY PLAINTIFF IN FEDERAL COURT ACTION; CONTINUE DRAFTING SUMMARY JUDGMENT MOTION.	3.70	\$250.00	\$925.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
06/17/05	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL.	.20	\$250.00	\$50.00
06/21/05	DGB	LEGAL RESEARCH RE COLLATERAL ESTOPPEL.	1.80	\$250.00	\$450.00
06/22/05	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT IN FEDERAL CASE; TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE STATUS AND POSSIBILITIES OF SETTLEMENT TALKS.	2.10	\$250.00	\$525.00
06/29/05	DGB	REVIEW PLAINTIFF'S RESPONSE TO TPS'S MOTION TO ADD MRS. MURPHEY AS A PARTY.	.20	\$250.00	\$50.00
07/18/05	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL; DRAFT REPLY IN SUPPORT OF RULE 19 MOTION TO ADD MRS. MURPHEY AS A PARTY; REVISE AND FILE SAME.	1.70	\$250.00	\$425.00
09/28/05	DGB	DRAFT UPDATE LETTER TO CLIENTS.	.10	\$250.00	\$25.00
10/05/05	TJT	REVIEW CASE STATUS AND FURTHER PLANNING.	.20	\$300.00	\$60.00
10/06/05	DGB	DRAFT PROPOSED SCHEDULING ORDER AND REPORT FOR THE COURT; E-MAIL WITH A. LUDWIG RE SAME.	1.00	\$250.00	\$250.00
10/20/05	DGB	PREPARE FOR SCHEDULING CONFERENCE; REPRESENT CLIENTS AT SCHEDULING CONFERENCE; RELATED TRAVEL.	2.50	\$250.00	\$625.00
10/24/05	DGB	REVIEW SCHEDULING ORDER; DRAFT LETTER TO CLIENT; BEGIN DRAFTING INITIAL DISCLOSURE.	.80	\$250.00	\$200.00
11/02/05	DGB	TELEPHONE CONFERENCE WITH CLIENT RE STATUS UPDATE.	.20	\$250.00	\$50.00
11/02/05	DGB	TELEPHONE CONFERENCE WITH T. SCHOAF RE STATUS REPORT.	.30	\$250.00	\$75.00
11/02/05	DGB	DRAFT DISCLOSURE; CONTINUE PREPARING SUMMARY JUDGMENT MOTION.	.70	\$250.00	\$175.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
01/30/06	DGB	BEGIN DRAFTING MOTION TO AMEND ANSWER TO ADD ADDITIONAL AFFIRMATIVE DEFENSE.	.50	\$250.00	\$125.00
01/31/06	DGB	DRAFT AMENDED ANSWER TO ADD ADDITIONAL AFFIRMATIVE DEFENSES; TELEPHONE AND E-MAIL WITH COUNSEL RE DISCOVERY ISSUES.	1.70	\$250.00	\$425.00
02/01/06	DGB	E-MAIL AND TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE STIPULATION TO AMEND PLEADINGS.	.30	\$250.00	\$75.00
02/14/06	DGB	REVIEW MINUTE ENTRY RE THIRD AMENDED COMPLAINT.	.20	\$250.00	\$50.00
02/28/06	DGB	DRAFT ANSWER TO THIRD AMENDED COMPLAINT.	.50	\$250.00	\$125.00
03/01/06	DGB	RECEIVE AND FINALIZE ANSWER TO COMPLAINT IN PREPARATION FOR FILING.	.30	\$250.00	\$75.00
03/02/06	DGB	FINALIZE AND FILE ANSWER TO THIRD AMENDED COMPLAINT.	1.00	\$250.00	\$250.00
03/02/06	DGB	E-FILE ANSWER TO THIRD AMENDED COMPLAINT; PREPARE PACKAGES TO COURT AND OPPOSING COUNSEL.	.60	\$250.00	\$150.00
03/10/06	DGB	REVIEW SCHEDULING ORDER FROM COURT.	.10	\$250.00	\$25.00
03/16/06	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL; TRAVEL TO AND FROM COURT FOR STATUS CONFERENCE; ATTEND STATUS CONFERENCE.	2.10	\$250.00	\$525.00
04/13/06	DGB	CONTINUE DRAFTING SUMMARY JUDGMENT MOTION.	1.40	\$250.00	\$350.00
04/17/06	DGB	REVIEW SETTLEMENT CONFERENCE ORDER.	.20	\$250.00	\$50.00
04/18/06	DGB	DRAFT LETTER TO CLIENTS.	.20	\$250.00	\$50.00
04/19/06	DGB	DRAFT LETTER TO CLIENTS.	.10	\$250.00	\$25.00
05/10/06	DVB	RESEARCH RE JURISDICTION FOR BREACH OF PATENT LICENSE.	2.00		
06/08/06	DGB	T/C WITH MR. SCHOAF.	.20	\$250.00	\$50.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
06/09/06	DGB	BEGIN DRAFTING SETTLEMENT CONFERENCE STATEMENT; T/Cs WITH COURT, TOME SCHOAF.	.40	\$250.00	\$100.00
06/12/06	DGB	CONTINUE DRAFTING SETTLEMENT CONFERENCE STATEMENT, REVISE AND FINALIZE SAME.	2.10	\$250.00	\$525.00
06/19/06	DGB	E-MAIL AND TELEPHONE CONFERENCES WITH P. SIMERI RE JUNE 20, 2006 SETTLEMENT CONFERENCE; TELEPHONE CONFERENCE WITH CHAMBERS RE SAME.	.60	\$250.00	\$150.00
06/20/06	DGB	TRAVEL TO AND FROM FLAGSTAFF FOR SETTLEMENT CONFERENCE; MEETING WITH P. SIMERI AND PARTICIPATE IN SETTLEMENT CONFERENCE.	8.70	\$250.00	\$2,175.00
06/21/06	DGB	CONTINUE DRAFTING STATEMENT OF UNDISPUTED FACTS FOR SUMMARY JUDGMENT MOTION.	.90	\$250.00	\$225.00
07/06/06	DGB	E-MAIL AND TELEPHONE CONFERENCES WITH OPPOSING COUNSEL RE DISCOVERY ISSUES.	.20	\$250.00	\$50.00
07/17/06	DGB	E-MAILS AND TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE SCHEDULING ISSUES.	.30	\$250.00	\$75.00
07/31/06	DGB	E-MAIL AND TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE SCHEDULING MATTERS.	.20	\$250.00	\$50.00
08/18/06	DGB	REVISE AND FINALIZE FIRST SET OF WRITTEN DISCOVERY TO J. MURPHEY; DRAFT LETTER TO A. LUDWIG; CONTINUE DRAFTING MOTION.	1.60	\$250.00	\$400.00
09/12/06	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL; BEGIN MURPHEY DEPOSITION OUTLINE.	.80	\$250.00	\$200.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
09/14/06	DGB	CONTINUE DRAFTING STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.	.90	\$250.00	\$225.00
09/25/06	DGB	DRAFT DEMAND LETTER TO MURPHEY'S COUNSEL RE DELINQUENT DISCOVERY.	.30	\$250.00	\$75.00
09/26/06	DGB	TELEPHONE CONFERENCE WITH A. LUDWIG RE MURPHEY DEPOSITION; DELINQUENT DISCOVERY RESPONSES; BEGIN DRAFTING STIPULATION RE SAME.	.40	\$250.00	\$100.00
09/29/06	DKB	eFILE STIPULATED MOTION TO EXTEND DISCOVERY CUT-OFF DATE; MAKE COPIES, MAIL AND FILE WITH COURT; SEND COPY TO JUDGE.	.80	\$90.00	\$72.00
10/02/06	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT.	1.60	\$250.00	\$400.00
10/05/06	DGB	REVIEW DISCOVERY RESPONSES; BEGIN PREPARING FOR MURPHEY'S OCTOBER 7 TH DEPOSITION.	1.60	\$250.00	\$400.00
10/06/06	DGB	FINAL PREPARATION FOR MURPHEY; DEPOSITION OF MR. MURPHEY; MEETING WITH OPPOSING COUNSEL.	5.80	\$250.00	\$1,450.00
11/07/06	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT AND SUPPORTING STATEMENT OF FACTS.	3.20	\$250.00	\$800.00
11/17/06	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT AND SUPPORTING STATEMENT OF FACTS.	1.70	\$250.00	\$425.00
11/27/06	DGB	CONTINUE DRAFTING SUMMARY JUDGMENT MOTION AND LEGAL RESEARCH RE SAME.	2.30	\$250.00	\$575.00
11/28/06	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT; LEGAL RESEARCH RE COLLATERAL WITH P. SIMERI.	2.80	\$250.00	\$700.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
11/29/06	DGB	CONTINUE DRAFTING STATEMENT OF FACTS AND MOTION FOR SUMMARY JUDGMENT.	3.70	\$250.00	\$925.00
11/30/06	DGB	CONTINUE DRAFTING MOTION FOR SUMMARY JUDGMENT AND SUPPORTING STATEMENTS OF FACTS; REVISE, FINALIZE AND FILE SAME.	6.10	\$250.00	\$1,525.00
11/30/06	CML	PROOFREAD MOTION FOR SUMMARY JUDGMENT AND MAKE MINOR REVISIONS (.6); FORMAT MOTION AND STATEMENT OF FACTS AND EXHIBITS FOR eFILING AND eFILE MOTION STATEMENT OF FACTS AND EXHIBITS.	2.40	\$100.00	\$240.00
12/21/06	DGB	E-MAIL AND T/C OPPOSING COUNSEL RE PROCEDURAL MATTERS.	.30	\$250.00	\$75.00
01/24/07	DGB	TELEPHONE CALL WITH OPPOSING COUNSEL.	.20	\$250.00	\$50.00
02/01/07	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE PROCEDURAL MATTERS.	.20	\$250.00	\$50.00
02/09/07	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL.	.20	\$250.00	\$50.00
02/13/07	DGB	BEGIN REVIEW OF RESPONSE TO MOTION FOR SUMMARY JUDGMENT.	.80	\$250.00	\$200.00
02/21/07	DGB	CONTINUE DRAFTING SUMMARY JUDGMENT RELY BRIEF.	2.10	\$250.00	\$525.00
02/22/07	DGB	CONTINUE DRAFTING REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; LEGAL RESEARCH RE SAME.	1.40	\$250.00	\$350.00
02/23/07	DGB	CONTINUE DRAFTING REPLY IN SUPPORT OF SUMMARY JUDGMENT MOTION.	1.10	\$250.00	\$275.00
02/26/07	DGB	CONTINUE DRAFTING REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.	2.40	\$250.00	\$600.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
02/27/07	DGB	CONTINUE TO WORK ON REPLY BRIEF.	2.70	\$250.00	\$675.00
02/28/07	DGB	CONTINUE DRAFTING REPLY BRIEF.	2.40	\$250.00	\$600.00
03/01/07	DGB	REVIEW CASE DOCKET; PENDING LIMINE MOTIONS; CONFIRM JULY HEARING DATE.	.50	\$250.00	\$125.00
03/02/07	DGB	E-MAIL WITH OPPOSING COUNSEL RE PROCEDURAL MATTERS; WORK ON SUMMARY JUDGMENT RESPONSE/REPLY.	1.10	\$250.00	\$275.00
03/06/07	DGB	WORK ON SUMMARY JUDGMENT REPLY / RESPONSE AND RELATED LEGAL RESEARCH.	2.60	\$250.00	\$650.00
03/07/07	DGB	CONTINUE LEGAL RESEARCH FOR SUMMARY JUDGMENT REPLY.	.90	\$250.00	\$225.00
03/07/07	DGB	RESEARCH FOR SUMMARY JUDGMENT REPLY / RESPONSE.	1.80	\$250.00	\$450.00
03/09/07	DGB	CONTINUE WORK ON SUMMARY JUDGMENT RESPONSE / REPLY.	1.90	\$250.00	\$475.00
03/12/07	DGB	CONTINUE WORK ON SUMMARY JUDGMENT RESPONSE / REPLY.	1.60	\$250.00	\$400.00
03/12/07	DKB	FINALIZE MOTION AND ELECTRONICALLY FILE STIPULATED MOTION.	.60	\$90.00	\$54.00
03/14/07	DGB	E-MAIL CORRESPONDENCE WITH COURT CLERK RE SUMMARY JUDGMENT PLEADINGS.	.20	\$250.00	\$50.00
03/14/07	DKB	DRAFT ORDER ON STIPULATED MOTION; FINALIZE AND SUBMIT TO COURT.	.50	\$90.00	\$45.00
03/15/07	DGB	CONTINUE WORK ON SUMMARY JUDGMENT RESPONSE / REPLY.	.80	\$250.00	\$200.00
03/26/07	DGB	CONTINUE TO WORK ON SUMMARY JUDGMENT RESPONSE / REPLY BRIEF.	2.40	\$250.00	\$600.00
03/30/07	CML	REFORMAT STIPULATION AND PROPOSED ORDER, eFILE SAME.	.50	\$100.00	\$50.00
04/04/07	DGB	CONTINUE RESEARCH FOR SUMMARY JUDGMENT REPLY; CONTINUE WORK ON REPLY.	.80	\$250.00	\$200.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
04/06/07	DGB	CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT REPLY.	.60	\$250.00	\$150.00
04/09/07	DKB	PREPARE MATERIALS FOR eFILING; FILE AND SUBMIT TO JUDGE'S CHAMBERS.	.60	\$90.00	\$54.00
04/13/07	DGB	CONTINUE WORK ON SUMMARY JUDGMENT REPLY AND MOTION TO STRIKE.	1.90	\$250.00	\$475.00
04/16/07	DGB	CONTINUE DRAFTING REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, CONTROVERTING FACTS AND RELATED LEGAL RESEARCH.	3.10	\$250.00	\$775.00
04/17/07	DGB	CONTINUE WORK ON TPS REPLY TO MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE; RELATED LEGAL RESEARCH.	2.80	\$250.00	\$700.00
04/19/07	CML	FORMAT REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, AND MOTION TO STRIKE, FORMAT CONTROVERTING STATEMENT OF FACTS, eFILE REPLY AND CONTROVERTING STATEMENT.	1.30	\$100.00	\$130.00
04/23/07	CML	E-MAIL AND HAND DELIVER REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, AND MOTION TO STRIKE, AND CONTROVERTING STATEMENT OF FACTS TO JUDGE MURGUIA.	.50	\$100.00	\$50.00
05/08/07	DGB	E-MAIL WITH OPPOSING COUNSEL RE CLOSING OF HIS LAW PRACTICE AND WITHDRAWAL FROM THE CASE; TELEPHONE CONFERENCE WITH CLIENT.	.40	\$250.00	\$100.00
05/23/07	DGB	REVIEW RECENT MINUTE ENTRIES RE SCHEDULING.	.20	\$250.00	\$50.00
06/06/07	DGB	TELEPHONE WITH OPPOSING COUNSEL; REVIEW MOTION TO WITHDRAW AS COUNSEL FOR MURPHEY.	.60	\$250.00	\$150.00

DATE	TIME-KEEPER	DESCRIPTION	TIME	RATE	AMOUNT
06/07/07	DGB	TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE STATUS OF POSSIBLE SUBSTITUTION.	.30	\$250.00	\$75.00
06/13/07	DGB	REVIEW MURPHEY OBJECTION TO WITHDRAWAL OF HIS COUNSEL; PREPARE FOR PRE-TRIAL CONFERENCE; TRAVEL TO AND FROM COURT FOR CONFERENCE; REPRESENT TPS AT CONFERENCE.	2.80	\$250.00	\$700.00
07/11/07	DGB	REVIEW RECENT MURPHEY FILINGS; REVIEW MINUTE ENTRY FROM COURT GRANTING A LIMITED EXTENSION.	.30	\$250.00	\$75.00
07/20/07	DGB	REVIEW NEW MURPHY FILINGS AND AFFIDAVIT.	.60	\$250.00	\$150.00
07/24/07	DGB	REVIEW RECENT PRO SE FILINGS BY MURPHEY; BEGIN PREPARING FOR JULY 30, 2007 ORAL ARGUMENT ON THE SUMMARY JUDGMENT MOTION; BEGIN DRAFTING REPLY IN SUPPORT OF MOTION TO STRIKE CROSS-MOTION.	1.70	\$250.00	\$425.00
07/25/07	DGB	CONTINUE PREPARING FOR ORAL ARGUMENT ON SUMMARY JUDGMENT MOTION; REVIEW MINUTE ENTRY RE SAME.	.60	\$250.00	\$150.00
08/09/07	DGB	REVIEW ANOTHER SUPPLEMENTAL PLEADING BY MURPHEY.	.50	\$250.00	\$125.00
		TOTAL			\$31,830.00

EXHIBIT 2

Murphey v. TPS et al.
United States District Court Case No. CV04-002430-PHX-MHM

Statement of Taxable Costs

October 25, 2006	Griffin & Associates Court Reporters Deposition Transcript James Murphey	\$294.67
------------------	---	----------