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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THEME PROMOTIONS, INC,  
a California Corporation, d/b/a  
THEME CO-OP PROMOTIONS,

No C 97-4617 VRW

ORDER

Plaintiff and  
Counterdefendant,

v

NEWS AMERICA MARKETING FSI, INC,  
a Delaware Corporation,

Defendant and  
Counterclaimant.

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Plaintiff Theme Promotions, Inc ("Theme") seeks attorney fees, costs and interest following entry of judgment entered on June 1, 2006. Doc #506. The Ninth Circuit affirmed the judgment of the court and transferred Theme's fee application on appeal to the undersigned for resolution. The parties have submitted supplemental briefing on Theme's fee motion. Doc ##558, 574. For the reasons set forth below, the court GRANTS Theme's motion and awards attorney fees, court costs and postjudgment interest in the

1 amount of \$3,080,840.48 plus daily interest of \$386.12 from and  
2 including June 14, 2010 to the date of payment.

3           The factual background and procedural history of this  
4 litigation is summarized in the October 10, 2008 amended opinion of  
5 the Ninth Circuit Court of Appeals. *Theme Promotions Inc v News*  
6 *America Marketing FSI*, 546 F3d 991 (9th Cir 2008). Of primary  
7 relevance to the pending attorney fees motion, Theme filed suit  
8 alleging antitrust and other violations against News America  
9 Marketing FSI, Inc ("News America") on December 18, 1997.  
10 Following remand from the Ninth Circuit on Theme's appeal from the  
11 court's dismissal of Theme's antitrust claims and award of summary  
12 judgment against Theme, the court commenced a jury trial on August  
13 8, 2005 resulting in a verdict for Theme on its claims for  
14 restraint of trade in violation of the Cartwright Act, unfair  
15 competition, and negligent and intentional interference with  
16 prospective economic relations. Declaration of Theodore Herhold in  
17 Support of Pl's Mot for Atty Fees (doc #505) Ex 9 (Jury Verdict  
18 Form dated August 30, 2005). After ruling on post-trial motions  
19 and setting aside the jury verdict on the intentional interference  
20 claims and one count of negligent interference, the court entered  
21 judgment on June 1, 2006 for Theme and against News America for  
22 damages in the amount of \$3,496,024. Doc #502.

23           Following entry of judgment, Theme filed its original  
24 motion for attorney fees and bill of costs on June 22, 2006. Doc  
25 ##506, 510. On August 15, 2006 the court granted News America's  
26 motion to defer Theme's fee motion until completion of the parties'  
27 appeals. Doc #541. The Court of Appeals affirmed the judgment by

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1 opinion dated August 20, 2008, as amended October 10, 2008. Doc  
2 ##551, 553. By order dated November 14, 2008 the Court of Appeals  
3 granted Theme's motion to transfer to this court Theme's  
4 application for attorney fees on appeal. Doc #554.

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6 I

7 As the prevailing party on its claim under the Cartwright  
8 Act, Bus & Prof Code § 16720 et seq, Theme may recover its  
9 reasonable attorney fees and costs of suit. *Carver v Chevron USA,*  
10 *Inc*, 97 Cal App 4th 132, 144 (2002) (citing Bus & Prof Code  
11 § 16750). News America does not dispute that the Cartwright Act  
12 provides for fee-shifting to a prevailing plaintiff, but contends  
13 that the statute must be applied strictly to limit fee recovery to  
14 claims under the Cartwright Act. News America argues that because  
15 Theme prevailed on only one of its twelve original claims against  
16 News America, Theme should recover only one-twelfth of its  
17 requested fees. Doc #564 at 11.

18 California law governs the method of calculating the  
19 fees. *Mangold v Cal Pub Util Com'n*, 67 F3d 1470, 1478 (9th Cir  
20 1995). California courts apply the lodestar method for calculating  
21 reasonable attorney fees, which is based on the reasonableness of  
22 the time spent and reasonableness of the hourly rate. See *Graham v*  
23 *DaimlerChrysler Corp*, 34 Cal 4th 553, 579 (2004). The court may  
24 adjust the lodestar for factors such as the novelty and difficulty  
25 of the questions involved; the skill displayed in presenting them;  
26 the extent to which the nature of the litigation precluded other  
27 employment by the attorneys; and the contingent nature of the fee  
28 award. *Id* (citations omitted). Theme has decided to forego any

1 request for an upward multiplier on its motion for fees. Renfrew  
2 Decl (Doc #508) ¶18.

3           The relevant statute provides "Any person who is injured  
4 in his or her business or property by reason of anything forbidden  
5 or declared unlawful by this chapter \* \* \* shall be awarded a  
6 reasonable attorneys' fee together with the costs of the suit."  
7 Cal Bus & Prof Code § 16750(a). News America contends that Theme's  
8 fee recovery should be limited to work related only to the  
9 Cartwright Act. California courts have not addressed the specific  
10 question whether a plaintiff who was successful under the  
11 Cartwright Act may recover fees associated with other claims that  
12 were based on the same set of facts or course of conduct.  
13 California courts do, however, recognize federal court decisions  
14 interpreting the Sherman Antitrust Act or the Clayton Act as  
15 persuasive authority as to the meaning of the Cartwright Act to the  
16 extent the Cartwright Act incorporates the substance of those  
17 federal statutes. *Classen v Weller*, 145 Cal App 3d 27, 36 n5  
18 (1983). See *Theme Promotions*, 546 F3d at 1001 n3 ("Because  
19 California's Cartwright Act is patterned after federal antitrust  
20 acts like the Sherman Antitrust Act, California courts often cite  
21 federal antitrust cases when interpreting the Cartwright Act.").

22           On awarding fees in federal antitrust actions, the Ninth  
23 Circuit has held that "a prevailing antitrust plaintiff is entitled  
24 to recover a reasonable attorney's fee for every item of service  
25 which, at the time rendered, would have been undertaken by a  
26 reasonable and prudent lawyer to advance or protect his client's  
27 interest in the pursuit of a successful recovery of anti-trust

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1 damages." *Twin City Sportservice, Inc v Charles O Finley & Co,*  
2 *Inc*, 676 F2d 1291, 1313 (9th Cir 1982).

3 Applying California law to a fee award in a non-antitrust  
4 action, the Ninth Circuit has recognized that under California law,

5 "It is only when a plaintiff has achieved limited  
6 success or has failed with respect to distinct and  
7 unrelated claims, that a reduction from the  
8 lodestar is appropriate." *Hogar v Community Dev*  
9 *Com of Escondido*, 157 Cal App 4th 1358, 1369  
10 (2007) (citation omitted). "However, where a  
11 lawsuit consists of related claims, a plaintiff  
12 who has won substantial relief should not have his  
13 [or her] attorney's fee reduced simply because the  
14 [trial] court did not adopt each contention  
15 raised." *Id* (citations omitted). The party  
16 seeking fees is not required to show the  
17 reasonableness of every failed claim.

18 *Winterrowd v American General Annuity Ins Co*, 556 F3d 815, 827-28  
19 (9th Cir 2009). Applying the principles expressed by state courts  
20 and by the Ninth Circuit, the court rejects News America's  
21 contention that Theme be awarded one twelfth of its requested fees.  
22 See *McCown v City of Fontana*, 565 F3d 1097, 1104-05 (9th Cir 2009)  
23 (disallowing strictly proportional reduction of fees for civil  
24 rights plaintiff who had limited success).

25 A

26 Proceeding with the lodestar calculation, the court first  
27 determines the number of hours reasonably expended on the  
28 litigation. Theme has summarized its fee request by dividing its  
fees into four time periods of the litigation as follows: (a)  
September 12, 1997 through April 10, 2002, the period identified as  
"Phase I" covering commencement of the action through the first  
appeal; (b) May 7, 2002 through April 30, 2006, the period  
identified as "Phase II" following remand through post-trial

1 proceedings; (c) May 3, 2006 through October 20, 2008, herein  
2 referred to as "Phase III" covering the appeal from judgment; and  
3 (d) October 21, 2008 to March 3, 2010, herein referred to as "Phase  
4 IV" covering the fee determination.

5           As a prevailing antitrust plaintiff, Theme is entitled to  
6 an award of fees for services that "would have been undertaken by a  
7 reasonable and prudent lawyer to advance or protect his client's  
8 interest in the pursuit of a successful recovery of anti-trust  
9 damages." *Twin City*, 676 F2d at 1313. Although Theme did not  
10 prevail on all of its claims, Theme has demonstrated that the  
11 underlying conduct that formed the basis of its successful claims  
12 was News America's unlawful enforcement of its exclusive dealing,  
13 or "right of first refusal" contracts, with the purpose and effect  
14 of restraining trade in the free standing insert market. By  
15 prevailing on its Cartwright Act claim for unreasonable restraint  
16 of trade, Theme established that News America had engaged in some  
17 "independently wrongful act," a necessary element of Theme's claims  
18 for intentional or negligent interference with prospective economic  
19 relations. Herhold Decl Ex 15 (Aug 29, 2005 Jury Instructions) at  
20 33. Similarly, a finding that News America violated the Cartwright  
21 Act satisfied the unlawful business act or practice element of  
22 Theme's unfair competition claim. *Id* at 28.

23           The Ninth Circuit recognized that the issues and evidence  
24 related to the unlawful restraint of trade claim overlapped with  
25 the unfair competition and tortious interference claims. Herhold  
26 Decl Ex 4 (*Theme Promotions v News America*, No 01-16329, slip op  
27 (9th Cir May 3, 2002)) at 8, 10. In the order remanding the action  
28 to permit discovery to proceed on the remaining claims, the Ninth

1 Circuit held that "because Theme's claim of unlawfulness of News's  
2 actions is tied to Theme's antitrust claims, we reverse so that the  
3 district court can resolve all of the claims at once." Id at 10.  
4 Theme may recover, therefore, fees for time spent on pursuing its  
5 successful antitrust claim and the related unfair competition and  
6 tortious interference claims, even though Theme prevailed on the  
7 unfair competition claim and only two of its negligent interference  
8 claims and did not prevail on any of its intentional interference  
9 claims. *Twin City*, 676 F2d at 1313 (although time devoted  
10 exclusively to unsuccessful claims is not compensable, antitrust  
11 plaintiff may recover fees for work related to the pursuit of both  
12 successful and unsuccessful claims).

13 Theme has deducted time associated with strictly non-  
14 antitrust matters; miscellaneous and unclear time entries; and time  
15 spent by attorneys and legal assistants who made insubstantial  
16 contributions to the case. Herhold Decl ¶ 27. Theme has further  
17 discounted its requested fees by deducting twenty percent of the  
18 adjusted hours for each attorney during Phases I and II (September  
19 1997 - April 2006) to account for uncertainties over the potential  
20 for work pertaining only to the non-antitrust claims or News  
21 America's counterclaims. Herhold Decl ¶¶ 73-74. These deductions  
22 make suitable adjustment for these factors and are reasonable; the  
23 court is therefore satisfied that Theme adequately has deducted  
24 time billed by its attorneys that was devoted exclusively to  
25 prosecuting unsuccessful claims.

26 Theme seeks attorney fees for hours spent by fifteen  
27 different attorneys for the September 1997 to April 2006 time

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1 period.<sup>1</sup> Third Suppl Herhold Decl (Doc #576) Exs A, B. Given the  
2 length of the litigation, it is reasonable to expect that some  
3 level of duplication was necessary to litigate and try this case,  
4 through no fault of the attorneys. The court determines that  
5 Theme's attorneys performed at all times as effective advocates and  
6 displayed a high degree of professionalism. No reduction of hours  
7 for inefficient or duplicative work is necessary.

8 The court notes that Theme originally stated that the  
9 number of attorney and paralegal hours for Phases I and II totaled  
10 9,865.22 hours, but that does not seem to account for the  
11 additional 20% reduction that Theme applied to its own fee request.  
12 Compare Herhold Decl ¶31 and Renfrew Decl ¶12 (claiming 9,865.22  
13 total hours) with Herhold Decl ¶74 ("I further reduced the fees by  
14 20% to account for any potential remaining uncertainties as to  
15 whether the work performed pertained exclusively to Theme's non-  
16 antitrust claims.") The most recent billing summary submitted by  
17 Theme more accurately reflects its adjusted total request of  
18 7892.18 hours, comprising 5204 attorney hours and 2688.18 legal  
19 assistant hours. Third Suppl Herhold Decl (Doc #576) Exs A and B.  
20 The court determines that Theme's adjusted number of attorney hours  
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23 <sup>1</sup> Theme was represented at trial principally by five attorneys  
24 from the Townsend firm: partners Eugene Crew, Theodore Herhold and  
25 Leigh Kirmsee, and associates Holly Gaudreau and Raffi Zerounian.  
26 Herhold Decl ¶34. Other Townsend attorneys also represented Theme  
27 during the litigation, including partners Daniel Furniss and Paul  
28 Kirsch, and associates Rebecca Perez-Platt, Bryon Cooper and Angus  
MacDonald. Id ¶¶41-47. Attorney David Bunim of the Haas & Najarian  
firm also represented Theme. Id ¶49. The Townsend legal assistants  
who assisted counsel included Rhondda Ashby, Rhett Thomas and Louis  
Ferrari, Jr. Id ¶50. Theme additionally seeks reimbursement for work  
performed by attorneys C Leffler, J Talbot, M Smith, and T Ahearn.  
Third Suppl Herhold Decl Exs A, B.



1 through April 30, 2006, as detailed in Table A of the appendix to  
2 this order, is reasonable.

3 Theme further seeks reimbursement for 539.22 hours in  
4 Phase I and 2,148.96 hours in Phase II spent by the legal  
5 assistants and staff to assist the attorneys. Theme adjusted these  
6 hours downward to exclude time spent exclusively on non-antitrust  
7 matters. Third Herhold Decl Exs A, B. The court determines that  
8 the requested 2688.18 hours for the September 1997 to April 2006  
9 period is reasonable and that no reduction is warranted for  
10 inefficient or duplicative work by the legal assistants.

11 The court thus determines that the total number of  
12 attorney and legal assistant hours to be used to calculate the  
13 lodestar for the September 1997 to April 2006 period is 7892.18  
14 hours.

15 For Phase III (May 3, 2006 to October 20, 2008) Theme  
16 seeks fees for work spent on the appeal and its request for  
17 attorney fees before the Ninth Circuit. Theme deducts thirty  
18 percent of its adjusted hours to account for work pertaining to  
19 Theme's unsuccessful cross-appeal. Suppl Herhold Decl ¶ 10. On  
20 Theme's bill of costs on appeal for \$1035.40, however, the Ninth  
21 Circuit taxed only \$495. Doc #566 at 7 n 12. In awarding costs,  
22 the court of appeals held, "Plaintiff is only eligible for costs as  
23 to the portion of the appeal where the plaintiff prevailed,"  
24 suggesting a determination that Theme prevailed only forty-eight  
25 percent or about half on appeal. See Malone Decl Ex W (May 6, 2009  
26 slip op). With this limited guidance from the Ninth Circuit, the  
27 court adjusts Theme's hours to deduct half, rather than thirty  
28 percent, of the hours spent during Phase III to calculate the

1 lodestar. Because the court finds it reasonable that five  
2 attorneys, with the assistance of two legal assistants, would work  
3 on the appeal after judgment, the court determines that no further  
4 deduction for inefficient or duplicative work is necessary. The  
5 reasonable number of hours spent by attorneys on the second appeal  
6 is 415.8. See Appendix Table B.

7 Theme seeks reimbursement for time spent by legal  
8 assistants to assist counsel during the second appeal, deducted by  
9 thirty percent. Following the Ninth Circuit's decision to deduct  
10 half of the costs on appeal, the court reduces by half the number  
11 of hours billed by Theme's legal assistants, resulting in 114.85  
12 compensable paralegal hours for the May 2006 to October 20, 2008  
13 period. See Appendix Table B.

14 For Phase IV (April 16, 2009 to March 3, 2010) Theme  
15 seeks reimbursement for 117.40 hours spent by three attorneys and  
16 59.80 paralegal hours for work directly associated with Theme's  
17 supplemental briefing on its attorney fees motion and efforts to  
18 collect on the judgment. Doc #576 ¶6 and Ex D. News America  
19 contends that Theme is not entitled to fees for work performed on  
20 its unsuccessful argument that the lien for judgment entered in the  
21 District of Connecticut was invalid, and that the fees claimed for  
22 the period following the second appeal should be substantially  
23 reduced. Doc #577 at 3-4. News America further contends that  
24 Theme has failed to submit sufficient documentation to support the  
25 claimed hours of work as required under federal law. Id at 3. As  
26 the Ninth Circuit has noted, however, "[i]n California, an attorney  
27 need not submit contemporaneous time records in order to recover  
28 attorney fees." *Winterrowd*, 556 F3d at 827 (citing *Martino v*

1 *Denevi*, 182 Cal App 3d 553, 559 (1986)). Applying California law  
2 for the showing required on Theme's fee motion, Mr Herhold's  
3 declaration as to the number of hours worked on the case is  
4 "sufficient evidence to support an award of attorney fees, even in  
5 the absence of detailed time records." *Id.* The court determines  
6 that 117.40 attorney hours and 59.80 paralegal hours spent on the  
7 present motion for fees and costs is reasonable and that no  
8 deduction is warranted. See Appendix Table C.

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10 B

11 The court must determine a reasonable rate to calculate  
12 the lodestar. As the Ninth Circuit has recognized, the California  
13 Supreme Court has repeatedly confirmed the discretion of the trial  
14 court in determining appropriate fee awards:

15 "The 'experienced trial judge is the best judge of  
16 the value of professional services rendered in his  
17 court, and while his judgment is of course subject  
18 to review, it will not be disturbed unless the  
appellate court is convinced that it is clearly  
wrong' — meaning that it abused its discretion."

19 *Winterrowd*, 556 F3d at 826 (quoting *PLCM Grp v Drexler*, 22 Cal 4th  
20 1084, 1095 (2000)).

21 Theme requests that its fees be calculated at the billing  
22 rates of each individual attorney and paralegal for whom Theme  
23 seeks reimbursement. News America contends that Theme's attorney  
24 time should be compensated at a blended hourly rate based on rates  
25 charged in the local legal community as a whole, using the method  
26 employed in *Albion Pacific Property Resources, LLC v Seligman*, 329  
27 F Supp 2d 1163, 1176-78 (ND Cal 2004) (citing *Allen v BART*, 2003 WL  
28 23333580 (ND Cal, June 31, 2003)). As the court has noted in other

1 cases, "such blended rates typically depend on the overall billing  
2 mix including substantial time expended in discovery by junior  
3 attorneys with relatively low billings rates." *Young v Polo*  
4 *Retail, LLC*, 2007 WL 951821 at \*7 (ND Cal, March 28, 2007).

5 In the present case, Theme was represented through post-  
6 trial motions by at least fifteen different attorneys. Three  
7 partners and two associates of the Townsend firm served as primary  
8 trial counsel, but Theme requests fees for ten other attorneys who  
9 represented Theme during the litigation. The Townsend partners  
10 charged rates during the litigation ranging from \$230 to \$650 per  
11 hour. Herhold Decl ¶¶ 35-37, 41-42. The hourly rates for their  
12 associates ranged from \$150 to \$335. Id ¶¶ 38-39, 44-47. For  
13 Townsend legal assistants, the hourly rates ranged from \$50 to  
14 \$210. Id ¶¶ 51-54. Of the Haas & Najarian firm, attorney David  
15 Bunim charged an hourly rate from \$225 to \$350 between 1997 and  
16 2006, id ¶ 49; paralegal "PW" charged a rate of \$60 per hour. Doc  
17 #576-1 at 3.

18 To determine a reasonable hourly rate, the court  
19 disfavors reliance on claimed billing rates. See *Yahoo! Inc v Net*  
20 *Games, Inc*, 329 F Supp 2d 1179, 1192 (ND Cal 2004). Where  
21 appropriate, the court calculates an average market rate in the  
22 local legal community as a whole using public data from the United  
23 States Census Bureau and Bureau of Labor Statistics ("BLS"). Id at  
24 1189-90 citing *Gilliam v Sonoma City*, 2003 WL 23341211 (ND Cal Dec  
25 22, 2003). See also *Albion Pacific Property Resources*, 329 F Supp  
26 2d at 1176-78; *Allen v BART*, 2003 WL 23333580 (ND Cal July 31,  
27 2003). News America cited these and other decisions of the court  
28 applying this method of calculating the prevailing market rate, but

1 Theme did not discuss the method employed in these decisions or  
2 propose an alternative method for determining a reasonable hourly  
3 rate, other than its actual billing rates. See Doc #566 at 11.

4 Having considered the method of fee calculation adopted  
5 in *Yahoo! Inc* and the other cases cited by News America in support  
6 of its contention that the court should calculate Theme's attorney  
7 fee at a blended, average hourly rate, the court determines that  
8 the better approach to fee calculation here would be to apply  
9 individual hourly rates to each attorney's time, based on his or  
10 her level of experience. The court reaches this conclusion because  
11 this litigation spanned twelve years and involved the work of  
12 attorneys with various levels of experience, including highly  
13 specialized knowledge and competence. Attorneys with such  
14 capabilities are required to litigate an antitrust action of this  
15 nature and most certainly is this so when such an action is taken  
16 to trial. The court concludes that the method employed in *In re*  
17 *HPL Technologies, Inc Securities Litigation*, 366 F Supp 2d 912 (ND  
18 Cal 2005) of applying a variety of rates to account for various  
19 levels of experience to calculate the lodestar amount would produce  
20 a more reasonable fee award. Nonetheless, in order to compare the  
21 results obtained under both the blended hourly rate approach and  
22 the individual hourly rate approach, the court works through both  
23 scenarios.

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26 When employing the blended hourly rate method proposed by  
27 News America and noted in *Yahoo! Inc*, supra, the court first  
28 determines the ratio of net receipts to gross receipts from Census

1 Bureau data to approximate overhead costs that would be  
2 incorporated in the hourly rates billed to clients. The BLS data  
3 on hourly wages earned by attorneys and legal assistants (*w*) will  
4 then be divided by this ratio of net receipts (*nr*) to gross  
5 receipts (*gr*) to determine an estimated average market rate (*r*), as  
6 formulated in the following equation:  $r = w \div (nr/gr)$ .

7           Since as early as 2001, the US Census Bureau has  
8 published the net income and gross business receipts for legal  
9 services businesses, reporting data collected and published by the  
10 Internal Revenue Service. See United States Census Bureau,  
11 *Statistical Abstract of the United States: 2001*, Appx III at 914-  
12 15, available at [www.census.gov/compendia/statab](http://www.census.gov/compendia/statab). The most current  
13 census data on gross and net receipts by law partnerships is  
14 published in the 2010 Statistical Abstract, which contains data for  
15 the year 2006. See United States Census Bureau, *Statistical*  
16 *Abstract of the United States: 2010*, tbl 730. The 2001 to 2010  
17 editions of the *Statistical Abstract* report business receipts and  
18 net income for law partnerships from 1998 to 2006 are shown in  
19 Table D of the Appendix.

20           The most current occupational employment statistics  
21 published by the BLS estimates as of May 2008 that lawyers in the  
22 San Francisco area earned a median hourly wage of \$69.34 and mean  
23 hourly wage of \$72.47; for legal assistants, the median wage is  
24 \$28.07 and the mean wage is \$29.13. See United States Dept of  
25 Labor, Bureau of Labor Statistics, *May 2008 Metropolitan and*  
26 *Nonmetropolitan Area Occupational Employment and Wage Estimates for*  
27 *San Francisco-Oakland-Fremont, CA, Legal Occupations*, available at  
28 [www.bls.gov/oes](http://www.bls.gov/oes). Adopting the method employed in *Yahoo! Inc* and

1 Albion, the court selects the higher mean hourly wage which is more  
2 favorable to Theme.<sup>2</sup> 329 F Supp 2d at 1177. The estimated hourly  
3 mean wages for the years 1997-2008 are set forth in the table  
4 below.

5 To determine the estimated average market hourly rate ( $r$ )  
6 for attorneys and legal assistants, the hourly mean wage ( $w$ ) is  
7 divided by the ratio of net to gross receipts ( $nr/gr$ ) for each  
8 year, as shown in Table 4. For the year 1997, for which the US  
9 Census Bureau did not publish relevant data for law partnerships,  
10 the court applies the net to gross receipt ratio for the year 1998.  
11 For the years 2007 and 2008, the court applies the net to gross  
12 receipt ratio determined for the year 2006, 0.363, noting that the  
13 ratio of net to gross receipts for law partnerships varied within a  
14 very narrow range of 0.003 between 2004 and 2006.

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26 <sup>2</sup> In the years 2002 to 2008, the estimated mean wage was  
27 higher than the median wage for both lawyers and legal assistants.  
28 In 1997 to 2001 the median wage was higher than the mean wage for  
lawyers, though not for legal assistants; to maintain consistency, the  
court applies the mean wage for each year.

Table 1: Estimated Mean Hourly Wages  
and Adjusted Market Wages

BLS Data Year	Ratio (nr/gr)	Attorneys		Legal Assistants	
		Mean hourly wage (w)	Market hourly rate (r)	Mean hourly wage (w)	Market hourly rate (r)
1997	0.394	\$36.27	\$92.06	\$20.41	\$51.80
1998	0.394	\$41.93	\$106.42	\$20.77	\$52.72
1999	0.375	\$58.55	\$156.13	\$19.45	\$51.87
2000	0.367	\$50.30	\$137.06	\$24.16	\$65.83
2001	0.352	\$54.01	\$153.44	\$25.42	\$72.22
2002	0.351	\$70.23	\$200.09	\$25.64	\$73.05
2003	0.356	\$70.45	\$197.89	\$26.74	\$75.11
2004	0.362	\$65.91	\$182.07	\$25.59	\$70.69
2005	0.365	\$62.78	\$172.00	\$26.76	\$73.32
2006	0.363	\$65.61	\$180.74	\$27.73	\$76.39
2007	0.363	\$68.73	\$189.34	\$28.72	\$79.12
2008	0.363	\$72.47	\$199.64	\$29.13	\$80.25

For Phases I and II the court applies the average hourly rate of each period to calculate the lodestar under the blended rate method. News America suggests that the court apply the hourly rate from one single year, 2001, because "that year falls about half-way between the start-date of 1997 and the end date of 2006." Doc #564 at 18 n10. The court declines to use the hourly wage of a single year, noting that the hourly wage for attorneys in the median years of the 1997 to 2006 period increased from \$153.44 in 2001 to \$200.09 in 2002. To mitigate the fluctuations in wages from year to year over a nine-year period, and to be able to compare this hourly blended rate against the blended rate implied



1 by Theme's requested fee award for each period, the court averages  
2 the blended hourly rates for the years in each period. Using the  
3 BLS data, the average hourly market rate for attorneys in the San  
4 Francisco metropolitan area from 1997 to 2002 is \$140.87; the  
5 average rate for attorneys from 2002 to 2006 is \$186.56. For legal  
6 assistants, the average market rate for the 1997 to 2002 period is  
7 \$61.25; for the 2002 to 2006 period the average rate for legal  
8 assistants is \$73.71.

9 To test the reasonableness of applying an average blended  
10 hourly rate based on BLS data, the court considers the blended rate  
11 for each time period implied from the billing records submitted by  
12 Theme. By dividing the total requested fee amount by the number of  
13 hours stated in Theme's revised billing summaries for each time  
14 period, the blended hourly rates based on Theme's request are  
15 calculated as follows: for attorneys, the blended rates for Phase  
16 I is \$268.21, and \$406.02 for Phase II. See Third Herhold Decl Exs  
17 A (seeking \$350,071.60 for 1305.2 attorney hours in Phase I), B  
18 (seeking \$1,582,976.72 for 3898.80 attorney hours in Phase II).  
19 For legal assistants, the blended rates based on Theme's request  
20 for Phase I is \$100.24, and \$167.73 for Phase II. Id Exs A  
21 (seeking \$54,052 for 539.22 legal assistant hours in Phase I), B  
22 (seeking \$360,445.60 for 2,148.96 legal assistant hours in Phase  
23 II).

24 The blended rates based on Theme's request for Phase II  
25 are more than twice the blended rates determined with the BLS data:  
26 Theme's requested attorney rate is 2.18 times the BLS blended  
27 attorney rate ( $\$406.02/\$186.56$ ), and the requested rate for legal  
28 assistants is 2.28 higher than the BLS blended rate

1 (\$167.73/\$73.71). The difference between Theme's requested fees  
2 compared to the BLS data for Phase I is not as high, but is also  
3 significant: Theme's requested hourly rate for attorneys is 1.9  
4 times higher than the BLS blended rate (\$268.21/140.87), and the  
5 requested rate for legal assistants is 1.64 higher than the BLS  
6 blended rate (\$100.24/\$61.25).

7 The blended rate approach is a suitable approach to  
8 determining reasonable hourly rates in many cases and the court has  
9 employed the approach in such cases. This, however, is not a case  
10 in which that approach is appropriate. As noted, this case  
11 necessitated inputs from attorneys and paralegals having a wide  
12 range of experience levels and professional attainments. Indeed,  
13 litigation of this kind is far from the rather more routine,  
14 relatively low value litigation in which the blended rate approach  
15 has been found useful. By contrast, this litigation simply could  
16 not have been concluded successfully by lawyers lacking the highest  
17 calibre of skills, diligence and capabilities. Lawyers engaged in  
18 such litigation are entitled to reasonable compensation  
19 commensurate with services of that calibre and the blended rate  
20 approach does not provide that level of compensation.

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23 The court determines that the method of determining fees  
24 used in *In re HPL Technologies* is better suited for complex  
25 antitrust litigation such as this. In this litigation, senior  
26 Townsend attorneys worked on matters such as taking and defending  
27 most of the depositions, arguing before this court and the court of  
28 appeals, making efforts at settlement and preparing for trial.

1 Several associates as well had substantial roles in the litigation  
2 such as discovery, legal research, drafting of briefs and trial  
3 preparation. Herhold Decl ¶¶35-47. In order to reflect the wide  
4 range of hourly rates for attorneys who worked on the case, and the  
5 range of responsibilities for discovery, trial and appeal among the  
6 attorneys over the course of twelve years, the court turns to the  
7 *Laffey* matrix, a widely recognized compilation of attorney and  
8 paralegal rates based on various levels of experience. See *Laffey*  
9 *v Northwest Airlines, Inc*, 572 F Supp 354 (DDC 1983), aff'd in  
10 part, rev'd in part on other grounds, 746 F2d 4 (DC Cir 1984).

11 As in the case of using census data in the blended hourly  
12 approach to determine reasonable hourly rates in routine, non-  
13 complex litigation, using *Laffey* data in a complex case affords the  
14 advantage of measurements that have been consistently tabulated  
15 over a long period of time. The *Laffey* matrix has been regularly  
16 prepared and updated by the Civil Division of the United States  
17 Attorney's Office for the District of Columbia and used in fee  
18 shifting cases, among others. See [http://www.justice.gov/usao/dc/](http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_8.html)  
19 [Divisions/Civil\\_Division/Laffey\\_Matrix\\_8.html](http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_8.html), visited June 2,  
20 2010. The *Laffey* matrix is especially useful when the work to be  
21 evaluated was performed by a mix of senior, junior and mid-level  
22 attorneys, as well as legal assistants, as is typically the case in  
23 antitrust and other complex litigation.

24 The rates posted in the *Laffey* matrix are tailored for  
25 the District of Columbia, which has a different cost of living  
26 index from the San Francisco, California Bay area, where Theme's  
27 attorneys work and where the suit was litigated. To adjust the  
28 rates for the relevant legal market, the court will use the federal

1 locality pay differentials based on federally compiled cost of  
2 living data. See *In re HPL*, 366 F Supp 2d at 921 (adjusting  
3 locality pay differentials based on the geographical region in  
4 which lead counsel's firm operated).

5 To compensate plaintiffs' attorneys for the delay in  
6 payment of the attorney fees, district courts have the discretion  
7 to either apply the attorneys' current rates to all hours billed  
8 during the course of the litigation or use the attorneys'  
9 historical rates to which is added a prime rate enhancement. *Welch*  
10 *v Metropolitan Life Ins Co*, 480 F3d 942, 947 (9th Cir 2007) (citing  
11 *In re Wash Pub Power Supply Sys Sec Litig*, 19 F3d 1291, 1305 (9th  
12 Cir 1994)). Theme's attorneys seek payment for work performed up  
13 to twelve years ago. Having compared current billing rates to  
14 historical billing rates for each year of this litigation enhanced  
15 by the prime rate applicable at the end of each one-year period,  
16 the court determines that the current billing rate approach  
17 undercompensates for the time value of money where, as here, the  
18 delay in payment spanned a significant number of years. See  
19 Appendix Table E (estimation of historical *Laffey* rates each year  
20 from 1997 with prime rate enhancement up to 2010). For example,  
21 the 1997-98 *Laffey* rate for the most senior lawyer with simple  
22 interest calculated at the prime rate of 8.5% for 12 years is about  
23 \$687 as opposed to the current *Laffey* rate of about \$507.

24 Because Theme provided billing summaries aggregating the  
25 hours billed by each attorney in groups of years or phases of the  
26 litigation, the court is unable to make adjustments for interest  
27 annually. Had Theme furnished that information, it is possible the  
28 fee award here would be larger, perhaps significantly so. The

1 court, however, proceeds with the fee calculation using historical  
2 rates for the year ending Phases I and II then applies a prime rate  
3 enhancement to compensate for the delay in payment of Phase I fees  
4 up to the date of entry of judgment, June 1, 2006. From that date  
5 the court applies postjudgment interest pursuant to 28 USC  
6 § 1961(a).

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9 For fees earned during Phase I (September 1997 to April  
10 2002) the court turns to the *Laffey* matrix rates effective April  
11 2002 and adjusts for the Bay area market based on the locality-  
12 based pay schedule for 2002. In 2002, the Washington-Baltimore  
13 area had a +11.48 percent locality pay differential; the San  
14 Francisco area ("SF") had a +19.04 percent locality pay  
15 differential. 5 USCA § 5332 Schedule 9 (West 2000 & Supp I 2001).  
16 A comparison of the pay differentials for the Washington and San  
17 Francisco localities yields a 7 percent upward adjustment to the  
18 2001-02 *Laffey* matrix rates for the San Francisco Bay area market:  
19  $(1.1904 - 1.1148) / 1.1148 = 0.06781$ , rounded up to 7 percent.

20 Applying these adjustments to the *Laffey* matrix the court  
21 obtains the rates shown in Table 2 below for the relevant  
22 community:

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Table 2: 2002 *Laffey* Matrix Hourly Rates, Adjusted for Locality

Experience	<i>Laffey</i> matrix rate for 2001-02	2001-02 <i>Laffey</i> rates adjusted +7% for San Francisco area
20+ years	\$360.00	\$385.20
11-19 years	\$315.00	\$337.05
8-10 years	\$260.00	\$278.20
4-7 years	\$210.00	\$224.70
1-3 years	\$170.00	\$181.90
Paralegals & Law Clerks	\$95.00	\$101.65

2

For fees earned during Phase II (May 2002 to April 2006), the court applies the *Laffey* matrix rates for April 2006, adjusted for locality based on the +17.50 percent adjustment in 2006 for the Washington-Baltimore locality pay area and the +28.68 percent adjustment for the San Francisco area:  $(1.2868-1.1750)/1.1750 = 0.09515$ , rounded up to 10 percent. 5 USCA § 5332 Schedule 9 (West 2000 & Supp V 2005). See Table 3 below.

Table 3: 2006 *Laffey* Matrix Hourly Rates, Adjusted for Locality

Experience	<i>Laffey</i> matrix rate for 2005-06	2005-06 <i>Laffey</i> rates adjusted +10% for San Francisco area
20+ years	\$405.00	\$445.50
11-19 years	\$360.00	\$396.00
8-10 years	\$290.00	\$319.00
4-7 years	\$235.00	\$258.50
1-3 years	\$195.00	\$214.50
Paralegals & Law Clerks	\$115.00	\$126.50

3

For fees earned during Phase III (May 2006 to October 2008) the *Laffey* matrix rates in effect for October 2008 are adjusted upward by 10 percent for the 2008 locality pay differential between Washington (+20.89%) and San Francisco (+32.53%):  $(1.3253-1.2089)/1.2089 = 0.09629$ . 5 USCA § 5332 Schedule 9 (West 2006 & Supp I 2007). See Table 4 below.

Table 4: 2008 *Laffey* Matrix Hourly Rates, Adjusted for Locality

Experience	<i>Laffey</i> matrix rate for 2008-09	2008-09 <i>Laffey</i> rates adjusted +10% for San Francisco area
20+ years	\$465.00	\$511.50
11-19 years	\$410.00	\$451.00
8-10 years	\$330.00	\$363.00
4-7 years	\$270.00	\$297.00
1-3 years	\$225.00	\$247.50
Paralegals & Law Clerks	\$130.00	\$143.00

4

For fees earned during Phase IV (October 2008 to March 2010) the current *Laffey* matrix rates are adjusted upward by 9 percent based on the comparison of current locality-based pay differentials between the Washington-Baltimore area (+24.22%) and the San Francisco area (+35.15%):  $(1.3515-1.2422)/1.2422 = 0.08798$ , rounded up to 9%. 5 USCA § 5332 Schedule 9 (West 2007 & Supp 2010). See Table 5 below.

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Table 5: 2010 *Laffey* Matrix Hourly Rates, Adjusted for Locality

Experience	<i>Laffey</i> matrix rate for 2009-10	2009-10 rates adjusted +9% for San Francisco area
20+ years	\$465.00	\$506.85
11-19 years	\$410.00	\$446.90
8-10 years	\$330.00	\$359.70
4-7 years	\$270.00	\$294.30
1-3 years	\$225.00	\$245.25
Paralegals & Law Clerks	\$130.00	\$141.70

C

Applying these locality-adjusted *Laffey* matrix rates to the number of hours reasonably spent by each of the fifteen attorneys who represented Theme throughout this litigation, the court computes the lodestar amount for each time period. For Phase I the level of experience of each attorney is determined by that individual's number of years of practice as of 2002 as stated in Mr Herhold's June 22, 2006 declaration (Doc #505) and the billing summaries filed in support of Theme's motion for attorney fees (Doc #504). For Phase II the experience level is determined as of 2006. For the attorneys whose experience level was not identified in the supporting documents, the court based the attorney's level of experience on the year that the individual was admitted to the California bar according to state bar records.

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2           Having determined the reasonable number of hours and the  
3 reasonable hourly rates for each attorney based on years of  
4 experience and their legal assistants, the base fee award for  
5 Phases I and II covering the September 1997 to April 2006 period is  
6 calculated as \$2,090,855.64, subject to interest. See Appendix  
7 Table F. The lodestar amount is \$444,610.57 for Phase I and  
8 \$1,646,245.07 for Phase II.

9           Table G of the Appendix provides a side by side  
10 comparison of the fees for Phases I and II requested by Theme  
11 against the lodestar amount by individual attorney and by legal  
12 assistants in aggregate using the *Laffey* matrix as the guide to  
13 reasonable hourly rates. Doc ##576-1 and 576-2. Compared to the  
14 fee amount that Theme requests for Phases I and II, \$2,347,545.92,  
15 the lodestar calculated by the court is \$256,690.28 or 11% less  
16 than Theme's original requested fee for Phases I and II. Doc #558  
17 at 19.

18           The difference of about 11% between the lodestar amount  
19 and the slightly higher amount billed by Theme's attorneys is  
20 significant but not large. Note that forty percent of the  
21 difference is attributable to the difference between the hourly  
22 rate for one Theme lawyer, Eugene Crew, and the *Laffey* rate for an  
23 attorney of twenty years experience or more. The difference for  
24 other Theme attorneys is of a lesser magnitude and in a few  
25 instances, the *Laffey* rates are higher than posted hourly rates for  
26 Theme attorneys. This is not surprising. Eugene Crew is a  
27 preeminent antitrust litigator, a lawyer truly at the top of the  
28 professional ladder. He can command an hourly rate well in excess

1 of *Laffey* rates. Using *Laffey* rates does, to some extent, create a  
2 disincentive for a lawyer of Mr Crew's eminence to undertake fee-  
3 shifting work of the kind involved in this litigation. The court  
4 recognizes this and, in no sense, devalues Mr Crew's contribution  
5 to the ultimate success of this litigation. But another factor is  
6 at work here.

7           The purpose of the fee shifting provisions of the  
8 Cartwright Act, like all fee shifting provisions, is to enlist  
9 private attorneys in law enforcement. Law enforcement comes with a  
10 risk both of under-enforcement and over-enforcement. It is  
11 important, therefore, for courts awarding fees pursuant to fee  
12 shifting statutes to use lodestar hourly rates that are adequate  
13 but that also scale the incentives for private enforcement to the  
14 public purposes of such enforcement. Use of *Laffey* rates, in the  
15 court's view, strikes that appropriate balance.

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18           To compensate Theme's attorneys for the delay in  
19 receiving its fees, the court enhances the fees calculated at  
20 historical rates by a prime rate interest factor. *Welch*, 480 F3d  
21 at 947. As stated previously, this method of addressing delay in  
22 payment in this case is preferable to the alternative approach of  
23 applying current billing rates to all hours billed during the  
24 course of litigation because a prime rate enhancement more  
25 accurately accounts for the time value of money over a long period  
26 of delay.

27           To compensate Theme for the time value of money lost  
28 between 2002 and 2006 by the delay in payment for fees incurred

1 during Phase I, the court applies a prime rate enhancement for that  
2 period. As of April 10, 2002, Theme incurred reasonable attorney  
3 fees totaling \$444,610.57. See Appendix Table F. Applying the US  
4 prime rate of 4.75% in effect on April 10, 2002 as published by the  
5 Wall Street Journal, compounded annually through June 1, 2006, the  
6 fee award for Phase I is adjusted upward to \$527,418.43 to account  
7 for the lost time value of money. See Appendix Table H.

8 The court further awards postjudgment interest on fees  
9 accruing from June 1, 2006 which is the date of the judgment that  
10 secured Theme's entitlement to fees as the prevailing party. See  
11 *Friend v Kolodziejczak*, 72 F3d 1386, 1391-92 (9th Cir 1995). The  
12 court awards postjudgment interest accruing as of June 1, 2006 on  
13 the adjusted fee for Phase I, \$527,418.43, and the fee for Phase  
14 II, \$1,646,245.07, totaling \$2,173,663.50.

15 The rate of postjudgment interest is governed by federal  
16 law and is calculated at a rate equal to the weekly average one-  
17 year constant maturity Treasury yield for the calendar week  
18 preceding the date of the judgment. 28 USC § 1961(a). See *AT & T*  
19 *v United Computer*, 98 F3d at 1209. Based on the one-year constant  
20 maturity rate for the week ending May 26, 2006 published by the  
21 Board of Governors at [www.federalreserve.gov](http://www.federalreserve.gov), the postjudgment  
22 interest rate is 4.99%. Applying that interest rate compounded  
23 annually from the date of judgment, June 1, 2006, to the  
24 \$2,173,663.50 in fees incurred during Phases I and II, the court  
25 awards Theme fees for Phases I and II with postjudgment interest in  
26 the amount of \$2,645,789.11 as of June 14, 2010. See Appendix  
27 Table I. As of June 1, 2010 the daily interest on the fees  
28 incurred through the date of judgment is \$361.07.

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For Phase III covering the May 2006 to October 20, 2008 period Theme requests attorney fees in the amount of \$310,782.85. Doc #576-5 at 4. By multiplying the number of hours that each attorney reasonably spent by the current hourly billing rate for each attorney's level of experience, based on the 2008 *Laffey* matrix rate as adjusted for locality, the court awards fees for Phase III in the amount of \$192,231.07. See Appendix Table J.

4

For Phase IV covering the period from October 21, 2008 to March 3, 2010, Theme requests fees on fees in the amount of \$88,371.00 for the work performed by attorneys and a legal assistant. Doc #576-4 at 2. By applying the 2010 adjusted *Laffey* matrix hourly rates the court calculates the lodestar amount for this period as \$64,577.05. See Appendix Table K.

5

Having calculated a reasonable fee for each time period for which Theme seeks compensation, the court GRANTS Theme's motion for attorney fees and postjudgment interest on fees in the amount of \$2,902,597.23.

II

Theme has billed costs in this court in the amount of \$184,970.77. Doc #510. The following expenses may be taxed as costs pursuant to 28 USC section 1920:

- (1) Fees of the clerk and marshal;

- 1 (2) Fees for printed or electronically recorded  
2 transcripts necessarily obtained for use in the  
3 case;
- 3 (3) Fees and disbursements for printing and witnesses;
- 4 (4) Fees for exemplification and the costs of making  
5 copies of any materials where the copies are  
6 necessarily obtained for use in the case;
- 6 (5) Docket fees under section 1923;
- 7 (6) Compensation of court appointed experts,  
8 compensation of interpreters, and salaries, fees,  
9 expenses, and costs of special interpretation  
10 services under section 1828.

10 The following costs billed by Theme in the amount of  
11 \$136,776.37 are allowable under Section 1920 and Civil Local Rule  
12 54-2:

Filing fees	\$150.00
Court reporter fees:	
Deposition transcripts	\$65,804.28
Hearing transcripts	\$12,291.07
Witness fees	\$155.00
Reproduction and exemplification:	
Discovery production	\$23,895.80
Reproduce trial exhibits	\$27,705.42
Demonstratives for jury	\$646.76
Prepare deposition videos for trial	\$433.50
Equipment rental fees	\$5,472.74
Docket fee on trial	\$47.50
Costs on appeal (7/3/2001 filing fee and transcript)	\$174.30
<b>TOTAL TAXABLE COSTS</b>	<b>\$136,776.37</b>

1           Theme also billed costs in the amount of \$48,194.40 for  
2 retaining a trial consultant for electronic presentation of trial  
3 exhibits; these costs include consulting fees and travel expenses.  
4 Under Civil Local Rule 54-2(d)(5), the costs of preparing charts,  
5 diagrams, videotapes and other visual aids to be used as exhibits  
6 if such exhibits are reasonably necessary to assist the jury in  
7 understanding the issues at trial. The expense of hiring an  
8 outside trial consultant for electronic presentation of trial  
9 exhibits was not reasonably necessary to assist the jury in the  
10 trial of this case, particularly in light of the significant  
11 expense that was incurred to reproduce paper copies of trial  
12 exhibits and prepare enlarged, mounted jury demonstratives.  
13 Therefore the court will not tax Theme's costs for retaining a  
14 trial consultant against News America.

15           Theme is awarded \$136,776.37 in costs incurred in the  
16 district court proceedings, plus \$495.00 taxed by the Court of  
17 Appeals for costs on appeal, for total costs of suit of  
18 \$137,271.37.

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20                           III

21                                   A

22           Theme contends that it is owed additional interest on the  
23 judgment of \$12,644.16 incurred between January 19, 2009, when News  
24 America first offered to pay the judgment, and February 12, 2009,  
25 when News America wired payment to Theme of the judgment plus  
26 interest through January 19, 2009. Theme explains that the parties  
27 disputed whether News America should withhold the amount of a lien  
28 entered in a separate action against Theme in the amount of

1 \$95,298.92. Suppl Herhold Decl (Doc #559) ¶¶ 5-9. On February 10,  
2 2009, Theme filed a motion in the District of Connecticut to quash  
3 the writ of execution, which the district court denied by order  
4 entered on July 27, 2009. The district court issued an updated  
5 writ of execution, filed June 16, 2009, in the amount of \$96,679.30  
6 to include an additional \$1380.48 in interest against Theme. Suppl  
7 Malone Decl ¶¶ 6, 7 and Ex A (Doc #568). On August 4, 2009 News  
8 America paid off the updated amount of the lien which was \$1,380.48  
9 higher than the lien amount that it had deducted from the payment  
10 of the judgment to Theme on February 12, 2009. Second Suppl Malone  
11 Decl ¶¶ 8-10 (Doc #572); Pl's Resp to Def's Second Mot to Update  
12 Record at 2 (Doc #574).

13           Although News America properly withheld the amount of the  
14 lien, it delayed in tendering the amount of judgment plus interest  
15 before February 12, 2009 to stop further accrual of interest. The  
16 purpose of awarding postjudgment interest pursuant to section 1961  
17 is to "ensure that the plaintiff is further compensated for being  
18 deprived of the monetary value of the loss from the date of  
19 ascertainment of damages until payment by defendant." See *AT & T*  
20 *v United Computer Systems, Inc*, 98 F3d 1206, 1209 (9th Cir 1996)  
21 (quoting *Northrop Corp v Triad Int'l Marketing, SA*, 842 F2d 1154,  
22 1155 (9th Cir 1988) (per curiam)). News America is therefore  
23 ordered to pay the amount of interest owed for the period January  
24 19, 2009 to February 12, 2009, minus the amount that News America  
25 paid the judgment creditor on the updated writ of execution above  
26 the amount of the previous lien against Theme, for a total award to  
27 Theme of \$11,263.68 for interest remaining due on the judgment  
28 (\$12,644.16 - \$1,380.48 = \$11,263.68).

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B

Theme seeks postjudgment interest on its award of costs in the district court proceedings and contends that interest should be awarded as of the entry of judgment on June 1, 2006. Doc #566 at 14 n14. The court awards postjudgment interest on costs accruing from the date of the judgment, June 1, 2006. See *Friend v Kolodziejczak*, 72 F3d 1386, 1391-92 (9th Cir 1995). Applying the one-year constant maturity rate of 4.99% to the award of costs, compounded annually from June 1, 2006 to June 14, 2010, the amount of costs with postjudgment interest due as of June 14, 2010 is \$166,484.57. See Appendix Table L. As of June 1, 2010 the daily interest on costs incurred through the date of judgment is \$22.72.

The court further awards interest on the fees and costs incurred on appeal during Phase III and the fees incurred on the fee motion during Phase IV totaling \$257,303.12. Interest on those fees accrues from and including the date of this order at the weekly average 1-year constant maturity Treasury yield rate of 0.33 percent, published by the Federal Reserve for the week ending June 11, 2010. See [www.federalreserve.gov](http://www.federalreserve.gov). The daily rate of interest on the fees and costs for Phases III and IV will accrue at a daily rate of interest of \$2.33.

IV

The court GRANTS Theme's motion for reasonable attorney fees, court costs and postjudgment interest on fees and costs up to June 14, 2010 in the amount of \$3,069,081.80. The court GRANTS interest remaining due on the judgment in the amount of \$11,263.68. Including the \$495 in costs awarded by the court of appeals, News



1 America owes Theme the total amount of \$3,080,840.48 plus daily  
2 interest of \$386.12 from and including June 14, 2010 to the date of  
3 payment.

4 The clerk of court is directed to terminate all pending  
5 motions and close the file.

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7 IT IS SO ORDERED.

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11 VAUGHN R WALKER  
12 United States District Chief Judge  
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Appendix

Table A: Attorney Hours during Phases I and II  
September 1997 to April 2006

Attorney	Hours requested Phase I (9/12/97- 4/10/02)	Hours requested Phase II (5/7/02- 4/30/06)	Total hours requested 9/12/97- 4/30/06
B Cooper	89.92		89.92
C Leffler	8.4		8.4
D Furniss	56.72	6.48	63.2
E Crew	37.44	568.44	605.88
J Talbot	70.48		70.48
M Smith	3.84		3.84
P Kirsch	293.28	2.4	295.68
R Platt	238.08		238.08
T Herhold	402	993.12	1395.12
A MacDonald		78	78
H Gaudreau		542.84	542.84
L Kirmsse		670	670
R Zerounian		595.04	595.04
T Ahearn		404.56	404.56
D Bunim	105.04	37.92	142.96
<b>TOTAL HOURS</b>	<b>1305.2</b>	<b>3898.8</b>	<b>5204</b>

Source: Doc ##576-1, 576-2.

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Table B: Attorney hours during Phase III  
May 2006 to October 20, 2008

Attorney	Billed hours 5/3/2006 - 10/20/2008	50% Deduction for lodestar
B Wong	209.0	104.5
E Crew	53.50	26.75
H Gaudreau	104.60	52.3
N Tompkins	45.30	22.65
T Herhold	419.20	209.6
Legal Assistants	229.70	114.85
TOTAL HOURS	1061.3	530.65

Source: Doc #576-3.

Table C: Attorney hours during Phase IV  
October 21, 2008 to March 3, 2010

	Hours
B Wong	13.0
E Crew	3.0
T Herhold	101.4
Legal Assistant	59.8
TOTAL HOURS	177.20

Source: Doc #576-4.

1      Table D: Gross and Net Receipts of Law Partnerships, 1998-2006

2 <i>Statistical</i>	3 <i>Data</i>	4 <i>Gross</i>	5 <i>Net</i>	6 <i>Ratio</i>
7 <i>Abstract</i>	8 <i>Year</i>	9 <i>Business</i>	10 <i>receipts</i>	11 <i>(nr/gr)</i>
12 <i>publication year</i>		13 <i>receipts</i>	14 <i>(billion \$)</i>	
15 <i>and table number</i>		16 <i>(billion \$)</i>	17 <i>(nr)</i>	
		18 <i>(gr)</i>		
19      2001, no 712	20      1998	21      66	22      26	23      0.394
24      2002, no 701	25      1999	26      72	27      27	28      0.375
29      2003, no 733	30      2000	31      79	32      29	33      0.367
34      2004-05, no 718	35      2001	36      91	37      32	38      0.352
39      2006, no 727	40      2002	41      94	42      33	43      0.351
44      2007, no 726	45      2003	46      101	47      36	48      0.356
49      2008, no 723	50      2004	51      105	52      38	53      0.362
54      2009, no 724	55      2005	56      115	57      42	58      0.365
59      2010, no 730	60      2006	61      124	62      45	63      0.363

64      Source: United States Census Bureau, *Statistical Abstract of the*  
65      *United States: 2001-2010*, available at  
66      [www.census.gov/compendia/statab](http://www.census.gov/compendia/statab).

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**Table E: 1997-2010 San Francisco Bay Area Laffey Rates with Prime Rate Enhancement Through 2010**

Years Exper- ience	1997- 98	1998- 99	1999- 00	2000- 01	2001- 02	2002- 03	2003- 04	2004- 05	2005- 06	2006- 07	2007- 08	2008- 09	2009- 10
20 +	\$687	\$665	\$696	\$588	\$546	\$507	\$516	\$558	\$587	\$583	\$532	\$523	\$507
11-19	\$593	\$575	\$604	\$512	\$478	\$445	\$455	\$494	\$522	\$515	\$472	\$461	\$447
8-10	\$489	\$476	\$502	\$420	\$395	\$363	\$367	\$401	\$420	\$419	\$381	\$371	\$360
4-7	\$406	\$387	\$410	\$344	\$319	\$294	\$299	\$322	\$341	\$336	\$309	\$304	\$294
1-3	\$322	\$307	\$328	\$277	\$258	\$240	\$245	\$265	\$283	\$281	\$260	\$253	\$245
Para- legal	\$177	\$169	\$184	\$151	\$144	\$137	\$143	\$157	\$167	\$165	\$151	\$146	\$142
Prime rate	8.5%	8.25%	9.5%	6.5%	4.75%	4.0%	4.5%	6.5%	8.25%	8.25%	5.0%	3.25%	n/a

Based on prime rates in effect on September 12 at the end of each yearly period posted on [http://www.wsjprimerate.us/wall\\_street\\_journal\\_prime\\_rate\\_history.htm](http://www.wsjprimerate.us/wall_street_journal_prime_rate_history.htm)

1 **Table F: Lodestar Calculation Based on Individual Rates and Hours**  
 2 **for Phases I and II**

3	Attorney	Hours in Phase I	Hourly Billing Rate for 2002	Attorney Fee for Phase I only	Hours in Phase II	Hourly Billing Rate for 2006	Total Attorney Fee for Phases I and II combined
6	B Cooper (until 2000)	89.92	\$224.70	\$20,205.02			\$20,205.02
7	C Leffler (until 2002)	8.4	\$181.90	\$1,527.96			\$1,527.96
9	D Furniss	56.72	\$385.20	\$21,848.54	6.48	\$445.50	\$24,735.38
9	E Crew	37.44	\$385.20	\$14,421.89	568.44	\$445.50	\$267,661.91
10	J Talbot (until 2000)	70.48	\$181.90	\$12,820.31			\$12,820.31
11	M Smith	3.84	\$224.70	\$862.85			\$862.85
12	P Kirsch	293.28	\$337.05	\$98,850.02	2.4	\$385.20	\$99,774.50
13	R Platt (until 2000)	238.08	\$181.90	\$43,306.75			\$43,306.75
15	T Herhold	402	\$337.05	\$135,494.10	993.12	\$445.50	\$577,929.06
16	A MacDonald			\$0.00	78	\$258.50	\$20,163.00
17	H Gaudreau			\$0.00	542.84	\$258.50	\$140,324.14
17	L Kirmsse			\$0.00	670	\$396.00	\$265,320.00
18	R Zerounian			\$0.00	595.04	\$214.50	\$127,636.08
19	T Ahearn			\$0.00	404.56	\$258.50	\$104,578.76
20	D Bunim	105.04	\$385.20	\$40,461.41	37.92	\$445.50	\$57,354.77
21	Legal Assistants	539.22	\$101.65	\$54,811.71	2148.96	\$126.50	\$326,655.15
22	<b>TOTAL FEE</b>			<b>\$444,610.57</b>			<b>\$2,090,855.64</b>

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**Table G: Comparison of Theme's Fee Request with Fee Award for Phases I and II**

Attorney	Hours in Phase I	Fees Sought for Phase I	Hours in Phase II	Fees Sought for Phase II	Fee Request for Phases I and II	Reasonable Fee Award
Cooper	89.92	\$22,163.20			\$22,163.20	\$20,205.02
Leffler	8.40	\$2,142.00			\$2,142.00	\$1,527.96
Furniss	56.72	\$22,826.40	6.48	\$3,274.00	\$26,100.40	\$24,735.38
Crew	37.44	\$14,951.60	568.44	\$356,293.00	\$371,244.60	\$267,661.91
Talbot	70.48	\$8,664.40			\$8,664.40	\$12,820.31
Smith	3.84	\$1,075.20			\$1,075.20	\$862.85
Kirsch	293.28	\$104,418.00	2.4	\$960.00	\$105,378.00	\$99,774.50
Platt	238.08	\$40,132.80			\$40,132.80	\$43,306.75
Herhold	402.00	\$107,581.20	993.12	\$483,426.00	\$591,007.20	\$577,929.06
MacDonald			78	\$26,114.00	\$26,114.00	\$20,163.00
Gaudreau			542.84	\$160,839.40	\$160,839.40	\$140,324.14
Kirmsse			670	\$284,750.00	\$284,750.00	\$265,320.00
Zerounian			595.04	\$156,761.92	\$156,761.92	\$127,636.08
Ahearn			404.56	\$98,105.60	\$98,105.60	\$104,578.76
Bunim	105.04	\$26,116.80	37.92	\$12,452.80	\$38,569.60	\$57,354.77
Legal Assistant	539.22	\$54,052.00	2148.96	\$360,445.60	\$414,497.60	\$326,655.15
<b>TOTAL FEE</b>					<b>\$2,347,545.92</b>	<b>\$2,090,855.64</b>

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**Table H: 2002-2006 Prime Rate Enhancement on Phase I Fees**

Date of interest accrual	Principal amount of fees and costs	Interest earned at 4.75%	Year-end total
4/10/02 to 4/09/03	\$444,610.57	\$21,119.00	\$465,729.57
4/10/03 to 4/09/04	\$465,729.57	\$18,629.18	\$484,358.76
4/10/04 to 4/09/05	\$484,358.76	\$19,374.35	\$503,733.11
4/10/05 to 4/09/06	\$503,733.11	\$20,149.32	\$523,882.43
4/10/06 to 6/01/06 (52 days at \$68 per day)	\$523,882.43	\$3,536.00	\$527,418.43

**Table I: Postjudgment Interest on Phases I & II Fees as of June 1, 2006**

Date of interest accrual	Principal amount of fees	Interest earned at 4.99%	Year-end total
6/1/06 to 5/31/07	\$2,173,663.50	\$108,465.81	\$2,282,129.31
6/1/07 to 5/31/08	\$2,282,129.31	\$113,878.25	\$2,396,007.56
6/1/08 to 5/31/09	\$2,396,007.56	\$119,560.78	\$2,515,568.34
6/1/09 to 5/31/10	\$2,515,568.34	\$125,526.86	\$2,641,095.20
6/1/10 to 6/14/10 (13 days at \$361.07 per day)	\$2,641,095.20	\$4,693.91	\$2,645,789.11



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Table J: Lodestar Calculation for May 2006 to  
October 20, 2008

Attorney or Legal Assistants	Years of Experience as of 2008	Hourly Billing Rate	Adjusted Hours in Phase III	Phase III Fee
B Wong	1	\$247.50	104.5	\$25,863.75
E Crew	40+	\$511.50	26.75	\$13,682.63
H Gaudreau	8	\$363.00	52.3	\$18,984.90
N Tompkins	12	\$451.00	22.65	\$10,215.15
T Herhold	22	\$511.50	209.6	\$107,210.40
Legal Assistants	n/a	\$141.70	114.85	\$16,274.25
<b>TOTAL FOR PERIOD:</b>				<b>\$192,231.07</b>

Table K: Lodestar Calculation for  
October 21, 2008 to March 3, 2010

	Hours	Hourly Rate	Phase IV Fee
T Herhold	101.4	\$506.85	\$51,394.59
B Wong	13.0	\$245.25	\$3,188.25
E Crew	3.0	\$506.85	\$1,520.55
Legal Assistant	59.8	\$141.70	\$8,473.66
<b>TOTAL FOR PERIOD:</b>			<b>\$64,577.05</b>

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Table L: Postjudgment Interest on Phases I & II Costs

Date of interest accrual	Principal amount of costs incurred through 6/1/06	Interest earned at 4.99%	Year-end total
6/1/06 to 5/31/07	\$136,776.37	\$6,825.14	\$143,601.51
6/1/07 to 5/31/08	\$143,601.51	\$7,165.72	\$150,767.23
6/1/08 to 5/31/09	\$150,767.23	\$7,523.28	\$158,290.51
6/1/09 to 5/31/10	\$158,290.51	\$7,898.70	\$166,189.21
6/1/10 to 6/14/10 (13 days at \$22.72 per day)	\$166,189.21	\$295.36	\$166,484.57