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18 Attorneys for Plaintiffs
 19 VIDEO SOFTWARE DEALERS ASSOCIATION
 20 and ENTERTAINMENT SOFTWARE ASSOCIATION

21 UNITED STATES DISTRICT COURT
 22 FOR THE NORTHERN DISTRICT OF CALIFORNIA

23 VIDEO SOFTWARE DEALERS
 24 ASSOCIATION and ENTERTAINMENT
 25 SOFTWARE ASSOCIATION,

26 Plaintiffs,

27 vs.

28 ARNOLD SCHWARZENEGGER, in his official
 capacity as Governor of the State of California;
 BILL LOCKYER, in his official capacity as
 Attorney General of the State of California;
 GEORGE KENNEDY, in his official capacity as
 Santa Clara County District Attorney, RICHARD
 DOYLE, in his official capacity as City Attorney
 for the City of San Jose, and ANN MILLER
 RAVEL, in her official capacity as County
 Counsel for the County of Santa Clara,

Defendants.

CASE NO. C 05-4188 RMW (RS)

**DECLARATION OF ETHAN D.
 DETTMER IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 ATTORNEYS' FEES AND COSTS**

Date: October 19, 2007
 Time 9:00 a.m.

1 I, ETHAN D. DETTMER, declare as follows:

2 I am a partner in the law firm of Gibson, Dunn & Crutcher LLP (“Gibson Dunn” or the
3 “Firm”), and I am an attorney for plaintiffs Video Software Dealers Association and Entertainment
4 Software Association (collectively, the “Plaintiffs”) in this action. I submit this declaration in
5 support of Plaintiffs’ Application for Attorneys’ Fees and Costs, made pursuant to 28 U.S.C. § 1920,
6 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d), and Northern District Civil Local Rule 54-6. The facts
7 stated in this declaration are based on my personal knowledge, and if called to testify, I could and
8 would testify competently thereto.

9 1. Plaintiffs’ counsel allocated litigation responsibility in this case among several
10 different attorneys. Throughout this litigation, the attorneys with the Jenner & Block firm, who have
11 appeared as counsel in numerous cases across the country presenting similar issues, were primarily
12 responsible for Plaintiffs’ briefing and oral argument. Gibson Dunn assisted with substantive
13 comments and advice, drafted certain papers filed with the Court, and took primary responsibility for
14 matters related to local practice.

15 2. Gibson Dunn attorneys have substantial experience with litigation in the United States
16 District Court for the Northern District of California. We were able to draw on this experience to
17 streamline the litigation process in various ways, as well as assisting with, and providing advice
18 regarding, general litigation strategy and the briefing submitted by the Plaintiffs. The Gibson Dunn
19 team that worked on this litigation included myself and partners Theodore J. Boutrous and H. Mark
20 Lyon and associates Katherine A. Fortney, Alexa L. Green, Perlette M. Jura, and Michael G.
21 Cecchini. Each of these attorneys did work matched to their level of experience.

22 **Experience of Gibson, Dunn & Crutcher LLP Attorneys**

23 3. I am a partner in Gibson Dunn, resident in the Firm’s San Francisco office. Prior to
24 January 1, 2007, I was an associate attorney in the same office. I have extensive general litigation
25 and appellate experience, and have appeared frequently in the courts of this District. Prior to joining
26 the Firm, I served as a law clerk to the late Justice James H. Brickley of the Michigan Supreme
27 Court. I received my law degree from the University of Michigan Law School, with honors, in 1997.

1 I received my undergraduate degree from Harvard College with honors. During the relevant time
2 period, my billing rate was between \$460 and \$505 per hour.

3 4. Theodore J. Boutrous is a partner in Gibson Dunn, resident in the Firm's Los Angeles
4 and Washington, D.C. offices. Mr. Boutrous is Co-Chair of the Firm's Appellate and Constitutional
5 Law Group and its Media and Entertainment Group and Vice-Chair of the Firm's Crisis Management
6 Group. Mr. Boutrous has represented media organizations and reporters in a wide array of First
7 Amendment, access, subpoena, libel, privacy, pre-publication review, freedom of information, prior
8 restraint, newsgathering and copyright matters. In 2005 and 2006, the Los Angeles and San
9 Francisco *Daily Journals* named Mr. Boutrous one of the 100 best lawyers in California.
10 *Washingtonian Magazine* recently named him as one of the best First Amendment lawyers. *The*
11 *American Lawyer* magazine has named Mr. Boutrous one of the "45 under 45" rising stars of the
12 private bar and called him a "media law star." He was the 2002 recipient of the ACLU of Southern
13 California's First Amendment Award. Mr. Boutrous received his law degree, *summa cum laude*,
14 from the University of San Diego School of Law in 1987, where he was Valedictorian and Editor-in-
15 Chief of the *San Diego Law Review*. During the relevant time period, Mr. Boutrous' billing rate was
16 \$695 per hour.

17 5. H. Mark Lyon is a partner in Gibson Dunn, resident in the Firm's Palo Alto office.
18 Mr. Lyon has extensive experience in the courts in this District, and has handled patent rights,
19 copyrights, and trade secrets disputes through all phases of litigation at both the trial court and
20 appellate levels. Mr. Lyon received his law degree, *summa cum laude*, from Santa Clara University
21 School of Law in 1992 and his Bachelor of Science degree from Michigan State University in 1985.
22 During the relevant time period, his billing rate was between \$570 and \$625 per hour.

23 6. Perlette M. Jura is an associate of Gibson Dunn, resident in the Firm's Los Angeles
24 office. She practices in the Firm's litigation department. Prior to joining the Firm, Ms. Jura clerked
25 for the Honorable Pamela Ann Rymer of the United States Court of Appeals for the Ninth Circuit.
26 Ms. Jura received her law degree from Stanford Law School, where she was an executive editor of
27 the *Stanford Law Review* and received the Board of Editors Award. She was elected to Order of the
28 Coif. Ms. Jura earned her undergraduate degree from the University of California at Santa Barbara,

1 where she graduated *summa cum laude*. During the relevant time period, Ms. Jura's billing rate was
2 \$275 per hour.

3 7. Michael G. Cecchini is an associate of Gibson Dunn, resident in the Firm's San
4 Francisco office. He currently practices in the Firm's litigation department. Prior to joining the
5 Firm, Mr. Cecchini clerked for the Honorable Patricia D. Steele of the Superior Court of the Virgin
6 Islands. Mr. Cecchini received his law degree, *cum laude*, from the University of Michigan in 2004,
7 where he was a notes editor for the *Journal of Law Reform*. Mr. Cecchini also earned his
8 undergraduate degree from the University of Michigan, where he graduated *summa cum laude*.
9 During the relevant time period, Mr. Cecchini's billing rate was between \$240 and \$290 per hour.

10 8. Katherine A. Fortney is a former associate of Gibson Dunn. She was resident in the
11 Firm's Palo Alto office and practiced in the Firm's litigation department. Ms. Fortney earned her law
12 degree from New York University School of Law in 2004. During the relevant time period, Ms.
13 Fortney's billing rate was \$275 per hour.

14 9. In addition to these attorneys, during periods of intense work including, but not limited
15 to, the time when the Plaintiffs were seeking a preliminary injunction, a number of other attorneys
16 and non-attorney staff assisted in the litigation by performing discrete tasks that were required as the
17 case progressed to support local counsel. We do not seek reimbursement of the fees associated with
18 the work performed by these attorneys and non-attorney staff.

19 10. These hourly rates are the same rates customarily charged clients for services by the
20 listed attorneys and staff at the time when these services were rendered on behalf of Plaintiffs in this
21 case. These are also the same rates the Firm charged to clients in other cases at the time. These
22 hourly rates are commensurate with the rates charged at that time by other comparable law firms in
23 the San Francisco Bay Area for services by attorneys and paralegals with similar levels of experience
24 (*see* ¶ 16 below).

25 **Attorneys' Fees And Costs Incurred By Plaintiffs**

26 11. By this fee application, Plaintiffs are seeking reimbursement of \$72,502.48 in
27 attorneys' fees for services rendered by Gibson Dunn attorneys. I prepared Attachment A to this fee
28 application along with Joseph W. Guzzetta, an associate of the Firm, which includes an itemized list

1 of the time expended and services rendered in this case. Attachment A is comprised of the legal bills
2 for services rendered by Gibson Dunn attorneys in this matter.

3 12. The time entries listed in Attachment A were recorded by the listed attorneys on or
4 near the date on which the services were rendered in this proceeding, and submitted
5 contemporaneously for entry into the Firm's timekeeping system. The time entries have more
6 recently been edited to protect privileged communications with the client, or to protect aspects of
7 litigation strategy or attorney mental impressions that are protected by the attorney work product
8 doctrine and to remove entries for which we are not seeking reimbursement (*see* ¶ 9 above) (note that
9 the figures representing the total billings in Attachment A have not been altered, but the total amount
10 of fees we are seeking, which is less than the amounts shown in Attachment A, is set forth in ¶ 11
11 above). As reflected in Attachment A, after considering a variety of factors specific to this litigation,
12 the Firm reduced the attorneys fees we charged to the Plaintiffs in this matter. Unredacted copies of
13 these bills are available for the Court's *in camera* review pursuant to Civil Local Rule 54-6(b)(2)
14 should the Court desire to review that information.

15 13. I have reviewed the time records summarized above and reprinted in Attachment A,
16 and have excluded additional hours to ensure that compensation is not sought for work that might
17 properly be excluded from a court-ordered fee award. The hours that remain after the attorneys'
18 review of the time records were reasonably expended to accomplish the tasks necessary for this
19 litigation. The following table summarizes the hours spent by each Gibson Dunn attorney on this
20 case:

<u>ATTORNEYS</u>	<u>TOTAL HOURS</u> ¹	<u>2005</u>	<u>2006</u>
Ethan D. Dettmer	88.4	50.9 (\$460)	37.5 (\$505)
Theodore J. Boutrous	5.5	5.5 (\$695)	
H. Mark Lyon	23.1	15.8 (\$570)	7.3 (\$625)
Perlette M. Jura	16.25	16.25 (\$275)	
Michael G. Cecchini	25.2	.8 (\$240)	24.4 (\$290)
Katherine A. Fortney	18.1	18.1 (\$275)	

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27 ¹ Gibson Dunn changes the billing rates for its attorneys on a periodic basis. This chart
28 contains a listing of all hours worked by each attorney on this case, along with a breakdown
of the hours worked by each attorney at each billing rate in the form "hours (billing rate)".

1 14. Attachment A to this fee application also contains all disbursements that Gibson Dunn
2 made in furtherance of this case. The disbursements total \$5,501.91. Mr. Guzzetta and I have
3 reviewed the costs and expenses listed as disbursements in Attachment A, and have verified their
4 accuracy. Attachment B to this fee application contains copies of invoices and other proof of such
5 costs.

6 15. Based on my familiarity with the facts and issues in this litigation, I believe that the
7 hours and expenses itemized in Attachment A were reasonably and necessarily incurred on behalf of
8 the Plaintiffs.

9 16. The rates of Gibson Dunn are reasonable. In 2005 my billing rate was \$460.00 per
10 hour. My 2006 billing rate was \$505.00 per hour. The other associates that worked on this matter
11 had billing rates between \$240.00 and \$290.00 per hour at the time that the services were rendered.
12 The other partners that worked on this matter had billing rates between \$570.00 and \$695.00 per
13 hour. These are the standard rates that the Firm charges for the services of its attorneys at these
14 various levels of experience, and are comparable to rates charged by associates and partners in
15 similar firms in similar markets. Attached hereto as Attachment C is a true and correct copy of an
16 article in The National Law Journal discussing billing rates in 2006. The article discusses how law
17 firms' billing rates rose in 2006, and includes a related chart of billing rates for associates and
18 partners at firms in various geographical areas. The article and related chart does not include Gibson
19 Dunn's billing rates, but does include the rates for the Los Angeles firm Manatt, Phelps & Phillips,
20 which has associate billing rates ranging between \$250.00 and \$460.00 per hour and partner billing
21 rates ranging between \$460.00 and \$750.00 per hour. The San Francisco-based firm Howard, Rice,
22 Nemerovski, Canady, Falk & Rabkin, P.C., is listed as having associate billing rates between \$250.00
23 and \$420.00 per hour and partner billing rates ranging between \$440.00 and \$750.00 per hour. The
24 Palo Alto-based firm Cooley Godward Kronish LLP is listed as having associate billing rates
25 between \$240.00 and \$585.00 per hour and partner billing rates ranging between \$425.00 and
26 \$795.00 per hour. The billing rates charged by Gibson Dunn attorneys generally fall within these
27 ranges and are reasonable considering the complexity and scope of this litigation. Based on my
28 knowledge and experience with other large law firms and their billing rates, the billing rates for these

1 firms as reflected in this article appear to accurately reflect the rates actually charged by like firms.
2 Gibson Dunn's billing rates fall within the range of these rates charged by other large law firms in the
3 area, and are reasonable as required under the Federal Rules of Civil Procedure.

4 17. On August 23, 2007, counsel for the Plaintiffs met and conferred by telephone with
5 counsel for the Defendants for the purposes of resolving any disputes with respect to this motion for
6 attorneys' fees. The parties did not agree to a settlement of the issues presented in this motion.

7 I declare penalty of perjury under the laws of the United States that the foregoing is true and
8 correct. This declaration was executed at San Francisco, California on August 28, 2007.

9 _____
10 /s/
Ethan D. Dettmer

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