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9 JENNER & BLOCK LLP
10 PAUL M. SMITH (*pro hac vice*)
11 KATHERINE A. FALLOW (*pro hac vice*)
12 MATTHEW S. HELLMAN (*pro hac vice*)
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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 KATHERINE A.
FALLOW IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND
COSTS

DECLARATION OF KATHERINE A. FALLOW

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I, Katherine A. Fallow, declare as follows:

1. I am a partner in the Washington, DC office of Jenner & Block, and counsel for Plaintiffs in the above-captioned case. I am thoroughly familiar with the facts, legal issues, and proceedings in this case, and have knowledge of and am competent to testify concerning the matters set forth herein. I submit this supplemental declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Costs, made pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d), and Local Rule 54-6.

2. As explained in the August 27, 2007 Declaration of Paul M. Smith submitted in support of this motion, I have extensive experience representing video game companies and associations in their challenges to government restrictions on video games. In particular, I have been counsel on behalf of Plaintiffs in litigation challenging video game restrictions in Washington, Illinois, Michigan, Louisiana, Minnesota, and Oklahoma.

3. This litigation challenging the California Act involved a number of issues and tasks not present in other cases I have litigated involving challenges to video game restrictions. In particular, there are significant differences between this litigation and the litigation in Michigan cited by the State Defendants. In this case, unlike in Michigan, Plaintiffs submitted new and updated expert declarations in support of summary judgment, and were forced to review and file a successful motion to strike amicus briefs, which involved a further analysis of additional expert testimony. Moreover, although the Michigan case raised many similar legal issues, the Plaintiffs’ Complaint, briefs, and legal strategy had to be tailored to the unique language of the California Act and to Ninth Circuit law.

4. The State Defendants dispute the hourly rate for one paralegal, Cheryl Olson, who billed a total of 17.75 hours. In this case, Ms. Olson’s experience and expertise justify her hourly rate. Ms. Olson has 15 years of experience as a paralegal and 10 years of experience as a paralegal coordinator working for Jenner & Block. Her job responsibilities include substantive cite-checking of briefs, including briefs filed with the United States Supreme Court, and I believe that she performs

1 these tasks with greater efficiency than paralegals with less experience and expertise. I am informed
 2 and believe that Gibson, Dunn, & Crutcher, which regularly litigates in this judicial district, bills
 3 paralegal time at rates ranging from \$160 to \$320.

4 5. Plaintiffs seek a total of \$10,583.38 in attorneys' fees and costs incurred by Plaintiffs
 5 for the services of Jenner & Block in preparing the motion for attorneys' fees and supporting
 6 documentation in this case. This total includes \$10,343.75 in attorney time billed and \$239.63 in
 7 expenses. Along with Duane C. Pozza, I prepared Attachment A to this fee application, which
 8 includes an itemized list of the time expended, services rendered, and expenses incurred in
 9 preparation of the motion for attorneys' fees and supporting documentation in this case. Attachment
 10 A is derived from the Accounting Department records of Jenner & Block. The time entries listed in
 11 Attachment A were recorded by the listed attorneys on or near the date on which the services were
 12 rendered in this proceeding, and submitted contemporaneously for entry into Jenner & Block's
 13 timekeeping systems.

14 6. Jenner & Block charges for the services of its attorneys on the basis of hourly rates
 15 which reflect, among other things, their years of practice and experience. The hourly rates as of
 16 August 2007 for the relevant attorneys are as follows:

<u>ATTORNEY</u>	<u>RATE (2007)</u>
Paul M. Smith	\$675
Katherine A. Fallow	\$500
Duane C. Pozza	\$375

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 23 7. These hourly rates are the same rates customarily charged clients for services by the
 24 listed attorneys at the time when these services were rendered on behalf of Plaintiffs in this case.
 25 These are also the same rates Jenner & Block charges Plaintiffs in other cases.

26 8. I have reviewed the time records summarized above and reprinted in Attachment A,
 27 and have excluded additional hours to ensure that compensation is not sought for work that might
 28 properly be excluded from a court-ordered fee award. For example, we do not request compensation

1 for activity that, although necessary for client relations, did not directly contribute to the litigation
 2 itself, and we do not seek fees for the work of in-house counsel for the ESA. Additionally, we do not
 3 request compensation for work related to preparation of the reply brief in support of the motion for
 4 attorneys' fees and its supporting documentation by either Jenner & Block or Gibson, Dunn &
 5 Crutcher LLP. The hours that remain after the attorneys' review of the time records were reasonably
 6 expended to accomplish the tasks necessary for this litigation. The following table summarizes the
 7 hours spent by each Jenner & Block attorney on this motion:

<u>ATTORNEY</u>	<u>HOURS (2007)</u>
Paul M. Smith	2.5
Katherine A. Fallow	1.0
Duane C. Pozza	21.75

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 14 9. Multiplying the time worked by each attorney by the hourly rates for each year yields
 15 the following calculation:

<u>ATTORNEY</u>	<u>TOTAL</u>
Paul M. Smith	\$1687.50
Katherine A. Fallow	\$500.00
Duane C. Pozza	\$8,156.25

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 22 10. Based on my prior experience with attorneys' fee petitions in civil rights cases
 23 (including First Amendment and other constitutional law cases) and my familiarity with the facts and
 24 issues in this litigation, I believe that the hours and expenses itemized in Attachment A were
 25 reasonably and necessarily incurred on behalf of Plaintiffs.
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I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 5th day of October, 2007



Katherine A. Fallow

ATTACHMENT A

LAW OFFICES
JENNER & BLOCK LLP
 330 N. WABASH AVENUE
 CHICAGO, ILLINOIS 60611
 (312) 222-9350

ENTERTAINMENT SOFTWARE ASSOCIATION
 317 MADISON AVENUE
 22ND FLOOR
 NEW YORK, NY 10017

INVOICE # 9076729

ATTN: GAIL MARKELS

SEPTEMBER 19, 2007

CLIENT NUMBER - 40507-000

FOR PROFESSIONAL SERVICES RENDERED
 THROUGH AUGUST 31, 2007

CALIFORNIA LAWSUIT

MATTER NUMBER - 10099

8/17/07	DP	.25	Call and email to J. Guzzetta re fee petition and declaration; reviewed prior fee declarations.
8/20/07	KAF	.25	Conferred with D. Pozza, P. Smith re fee petition.
8/20/07	DP	.25	Call with J. Guzzetta re fee petition; reviewed local rules for same.
8/21/07	DP	4.25	Drafted motion for attorneys' fees and costs; legal research for same; reviewed bills for same.
8/22/07	DP	6.50	Drafted fee petition; reviewed and edited invoices for same; legal research re Ninth Circuit attorneys' fees law for same; conferred with J. Guzzetta re Gibson fees for same; coordinated meet-and-confer re same.
8/23/07	KAF	.75	Reviewed and revised draft fee application; conferred with D. Pozza re same.
8/23/07	DP	1.75	Conference call with opposing counsel re meet and confer on fees; reviewed past fee award information for same; call with E. Dettmer and J. Guzzetta re meet and confer; reviewed legal research re Ninth Circuit law on fee petition.
8/24/07	PMS	1.00	Edited fee petition and reviewed my declaration.
8/24/07	DP	2.00	Revised and edited fee petition draft and forwarded to G. Markels and D. Buyer; reviewed Gibson declaration; drafted Smith declaration;

LAW OFFICES
JENNER & BLOCK LLP
 330 N. WABASH AVENUE
 CHICAGO, ILLINOIS 60611
 (312) 222-9350

8/27/07	PMS	1.25	Worked on revisions to fee declaration.	
8/27/07	DP	3.50	Revised and edited fee petition and Smith declaration; reviewed Gibson declaration; emails with J. Guzzetta re coordinating filing and exhibits; reviewed invoices for exhibit attachment; emails with opposing counsel re hearing date.	
8/28/07	PMS	.25	Gave a final review to the fee motion.	
8/28/07	DP	3.25	Final review and edits of fee petition and exhibits; coordinated filing of same with J. Guzzetta.	
		25.25	PROFESSIONAL SERVICES	10,343.75

DISBURSEMENTS

Network Printing	4.84
Telephone(ID: 2931642)	0.05
Telephone(ID: 2954973)	0.10
Telephone(ID: 2959247)	0.35
Telephone(ID: 2968252)	0.15
Telephone(ID: 2976026)	0.35
Telephone(ID: 2976027)	0.05
Westlaw Research	233.74
TOTAL DISBURSEMENTS	239.63

INVOICE TOTAL \$ 10,583.38