

1 GIBSON, DUNN & CRUTCHER LLP
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 4 ETHAN D. DETTMER, SBN 196046
 5 1881 Page Mill Road
 6 Palo Alto, California 94304
 7 Telephone: (650) 849-5300
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9 JENNER & BLOCK LLP
 10 PAUL M. SMITH (*pro hac vice*)
 11 KATHERINE A. FALLOW (*pro hac vice*)
 12 AMY L. TENNEY (*pro hac vice*)
 13 MATTHEW S. HELLMAN (*pro hac vice*)
 14 601 13th Street, N.W., Suite 1200
 15 Washington, D.C. 20005
 16 Telephone: (202) 639-6000
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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)

**SUPPLEMENTAL 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 supplemental
5 declaration in further support of Plaintiffs’ Application for Attorneys’ Fees and Costs, made pursuant
6 to 28 U.S.C. § 1920, 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d), and Northern District Civil Local Rule
7 54-6. The facts stated in this declaration are based on my personal knowledge, and if called to testify,
8 I could and would testify competently thereto.

9 1. Since filing the Motion for Attorneys’ Fees and Costs in August 2007, the Plaintiffs
10 have incurred additional costs and attorneys’ fees in this action. These fees and costs relate to the
11 bringing of the Motion for Attorneys’ Fees and Costs.

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

13 2. Joseph W. Guzzetta is an associate of Gibson Dunn, resident in the Firm’s Palo Alto
14 office. He currently practices in the Firm’s litigation department. Prior to joining the Firm, Mr.
15 Guzzetta was an associate of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP resident in
16 that Firm’s the Palo Alto office. Mr. Guzzetta received his law degree from New York University
17 School of Law in 2004. Mr. Guzzetta earned his undergraduate degree with highest honors from the
18 University of California at Santa Cruz. During the relevant time period, Mr. Guzzetta’s billing rate
19 was \$410 per hour.

20 3. Additionally, as reflected below, I expended additional time in the month of August
21 2007. As noted in my previous declaration, the billing rates that Gibson, Dunn charges its clients
22 change periodically. During the relevant time period, my billing rate was \$555 per hour.

23 4. These hourly rates are the same rates customarily charged clients for services by the
24 listed attorneys and staff at the time when these services were rendered on behalf of Plaintiffs in this
25 case. These are also the same rates the Firm charged to clients in other cases at the time. These
26 hourly rates are commensurate with the rates charged at that time by other comparable law firms in
27 the San Francisco Bay Area for services by attorneys with similar levels of experience. See

28

1 Declaration of Ethan D. Dettmer in Support of Motion for Attorneys’ Fees and Costs ¶ 16;
 2 Attachment C.

3 **Attorneys’ Fees And Costs Incurred By Plaintiffs**

4 5. Since the filing of the fee application, the plaintiffs have incurred additional attorneys’
 5 fees in the amount of \$9,897.35 for services rendered by Gibson Dunn attorneys. I prepared
 6 Attachment A to this fee application along with Mr. Guzzetta, which includes an itemized list of the
 7 time expended and services rendered in this case in the month of August 2007. Attachment A is
 8 comprised of the legal bills for services rendered by Gibson Dunn attorneys in this matter.

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

21 7. I have reviewed the time records summarized above and reprinted in Attachment A.
 22 The hours were reasonably expended to accomplish the tasks necessary for this litigation. The
 23 following table summarizes the hours spent by each Gibson Dunn attorney on this case since the
 24 Motion for Attorneys’ Fees and Costs was submitted:

ATTORNEYS	TOTAL HOURS
Ethan D. Dettmer	4.1 (\$555)
Joseph W. Guzzetta	20.1 (\$410)

ATTACHMENT A

GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Federal Taxpayer ID #95-1611234

September 10, 2007

Invoice No. 2007091084

Gail Markels
 Entertainment Software Association
 317 Madison Avenue
 22nd Floor
 New York, NY 10017

For Services Rendered and Costs/Charges Advanced Through August 31, 2007

	Services Rendered	Costs/ Charges	Totals
43206-00009 AB1179 Litigation	\$ 12,383.00	\$ 154.76	\$ 12,537.76
Totals	\$ 12,383.00	\$ 154.76	\$ 12,537.76
Premium/Discount			-619.15
Current Balance Due			\$ 11,918.61

Remit By Wire To:
 Wells Fargo Bank
 333 South Grand Avenue
 Los Angeles, CA. 90071-1515
 Name of account: Gibson, Dunn & Crutcher LLP

Remit By Mail To:
 Gibson, Dunn & Crutcher LLP
 Department 0723
 Los Angeles, CA 90084-0723

Attn: Raquel Ramirez, Telephone: (213) 253-6206, Fax: (213) 626-1415
 Please include the client number and the proper attorney to notify in the wire instructions.

Please enclose the remittance copy of this invoice with your payment in the enclosed Reply Envelope to ensure proper credit.

Please note that payments received after the invoice date are not reflected.
 If you have any questions, please call Terri Bono, GD&C at 213-229-7528.

Invoice Date: September 10, 2007

Invoice No. 2007091084

Due and Payable Upon Receipt

GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Federal Taxpayer ID #95-1611234

September 10, 2007

Invoice No. 2007091084

REMITTANCE COPY

To ensure proper crediting, please send this copy in the enclosed envelope.

Gail Markels
 Entertainment Software Association
 317 Madison Avenue
 22nd Floor
 New York, NY 10017

For Services Rendered and Costs/Charges Advanced Through August 31, 2007

	Services Rendered	Costs/ Charges	Totals
43206-00009 AB1179 Litigation	\$ 12,383.00	\$ 154.76	\$ 12,537.76
Totals	\$ 12,383.00	\$ 154.76	\$ 12,537.76
Premium/Discount			-619.15
Current Balance Due			\$ 11,918.61

Remit By Wire To:
 Wells Fargo Bank
 333 South Grand Avenue
 Los Angeles, CA. 90071-1515
 Name of account: Gibson, Dunn & Crutcher LLP

Attn: Raquel Ramirez, Telephone: (213) 255-0200, Fax: (213) 621-1455
 Please include the client number and the proper attorney to notify in the wire instructions.

Remit By Mail To:
 Gibson, Dunn & Crutcher LLP
 Department 0723
 Los Angeles, CA 90084-0723

Please enclose the remittance copy of this invoice with your payment in the enclosed Reply Envelope to ensure proper credit.

Please note that payments received after the invoice date are not reflected.
 If you have any questions, please call Terri Bono, GD&C at 213-229-7528.

Invoice Date: September 10, 2007

Invoice No. 2007091084

Due and Payable Upon Receipt

Gail Markels
 Entertainment Software Association
 317 Madison Avenue
 22nd Floor
 New York, NY 10017

AB1179 LITIGATION
 43206-00009

For Services Rendered Through August 31, 2007

<u>NAME</u>	REDACTED	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
ETHAN D. DETTMER		4.90	555.00	2,719.50
JOSEPH W. GUZZETTA		21.10	410.00	<u>8,651.00</u>
				12,383.00
Discount				<u>-619.15</u>
Total Services				\$ 11,763.85
 <u>COSTS/CHARGES</u>			<u>TOTAL</u>	
FREIGHT AND SHIPPING			\$ 33.06	
IN HOUSE DUPLICATION			105.70	
TELEPHONE CHARGES			<u>16.00</u>	
Total Costs/Charges				<u>154.76</u>
Total Services, Costs/Charges				11,918.61
BALANCE DUE				<u>\$ 11,918.61</u>

Invoice Date: September 10, 2007

Invoice No. 2007091084

Due and Payable Upon Receipt

AB1179 LITIGATION
43206-00009

Detail Services:

REDACTED

0.60 GUZZETTA, JOSEPH W

CALL WITH M. LYON REGARDING FEE PETITION; LEGAL RESEARCH REGARDING REQUESTS FOR ATTORNEYS' FEES IN FEDERAL COURT; EMAILS WITH M. LYON; CALL TO M. HELLMAN REGARDING SAME.

08/10/07

REDACTED

0.90 GUZZETTA, JOSEPH W

LEGAL RESEARCH REGARDING PROCEDURAL REQUIREMENTS FOR PETITIONS FOR ATTORNEYS FEES; CALL WITH M. HELLMAN REGARDING FEE PETITION; RESEARCH **REDACTED**, EMAIL TO M. LYON REGARDING SAME; EMAIL TO CALIFORNIA ATTORNEYS REGARDING SECTION 1983 FEE PETITIONS.

08/12/07

0.50 GUZZETTA, JOSEPH W

REVIEW SAMPLE FEE PETITIONS RECEIVED FROM LA ATTORNEYS; REVIEW CASE LAW CITED THEREIN.

Invoice Date: September 10, 2007

Due and Payable Upon Receipt

Invoice No. 2007091084

08/14/07
0.80 GUZZETTA, JOSEPH W

EMAILS WITH M. HELLMAN REGARDING
SAMPLE FEE PETITIONS; REVIEW AND SEND
JUDGMENT TO JENNER ATTORNEYS; EMAILS
WITH M. LYON REGARDING NOTICE OF
ENTRY OF JUDGMENT; PROCEDURAL
RESEARCH REGARDING SAME.

REDACTED

08/17/07
0.50 GUZZETTA, JOSEPH W

VOICE MAIL FROM D. POZZA REGARDING FEE
PETITION; CALL WITH M. LYON AND EMAILS
WITH M. LYON AND E. DETTMER REGARDING
MEET AND CONFER ISSUE; REVIEW SAMPLE
DECLARATIONS RECEIVED FROM JENNER.

08/20/07
0.70 GUZZETTA, JOSEPH W

CALL WITH D. POZZA REGARDING FEE
PETITION STRATEGY AND LOGISTICS;
REVIEW LOCAL RULES AND STANDING
ORDERS REGARDING FEE REQUESTS AND
NOTICE OF MOTIONS; EMAIL TO D. POZZA
REGARDING SAME.

08/22/07
0.80 DETTMER, ETHAN D

CONFERENCE WITH J. GUZZETTA
REGARDING COSTS AND FEES MOTION;
REVIEW AND REVISE DRAFT DECLARATION
AND EMAILS REGARDING SAME.

Invoice Date: September 10, 2007

Due and Payable Upon Receipt

Invoice No. 2007091084

3.70 GUZZETTA, JOSEPH W

CALLS WITH D. POZZA REGARDING FEE PETITION STRATEGY AND LOGISTICS; EMAILS TO D. POZZA REGARDING SAME AND REGARDING FEES; CALL WITH E. DETTMER REGARDING DECLARATION, APPROPRIATE FEES AND LOGISTICS; DRAFT AND REVISE DECLARATION OF E. DETTMER; REVIEW LEGAL BILLS RELATING TO SAME; RETRIEVE VOICE-MAIL FROM E. DETTMER
REDACTED ; RECEIVE AND REVIEW COMMENTS FROM E. DETTMER ON DECLARATION; INCORPORATE CHANGES INTO DECLARATION AND REVISE SAME; EMAIL SAME TO E. DETTMER; LEGAL RESEARCH REGARDING FEE PETITION PROCEDURE.

08/23/07
1.30 DETTMER, ETHAN D

FURTHER REVIEW AND REVISE COSTS AND FEES DECLARATION AND EMAILS REGARDING SAME AND CONFERENCE REGARDING SAME; PREPARE FOR AND PARTICIPATE IN MEET AND CONFER CALL WITH OTHER PARTIES REGARDING SAME.

Invoice Date: September 10, 2007

Due and Payable Upon Receipt

Invoice No. 2007091084

5.80 GUZZETTA, JOSEPH W

EMAILS WITH E. DETTMER AND D. POZZA REGARDING MEET AND CONFER CALL WITH PLAINTIFFS' COUNSEL AND FEE PETITION GENERALLY. CALL WITH E. DETTMER

REDACTED

RECEIVE, REVIEW AND INCORPORATE COMMENTS OF E. DETTMER AND T. BOUTROUS INTO DECLARATION; DISCUSSIONS WITH E. DETTMER AND S. PATEL REGARDING PREVAILING FEES ISSUE AND EMAILS TO ALL ATTORNEYS REGARDING SAME; REVIEW CHART, PLEADINGS AND ARTICLES RECEIVED IN RESPONSE TO INQUIRIES; EMAILS WITH E. DETTMER REGARDING SAME; EMAIL DRAFT DECLARATION TO D. POZZA; CALL WITH D. POZZA AND E. DETTMER IN PREPARATION FOR MEET AND CONFER CALL WITH PLAINTIFFS' COUNSEL; PARTICIPATE IN MEET AND CONFER CALL; CALL WITH D. POZZA REGARDING SUBMISSION OF LEGAL BILLS TO COURT; REVIEW RULES REGARDING SAME; REDACTIONS TO LEGAL BILLS.

08/24/07

0.80 DETTMER, ETHAN D

REVIEW REDACTED BILLS FOR FILING WITH MOTION FOR FEES AND COSTS; EMAILS REGARDING SAME AND CONFERENCE WITH J. GUZZETTA REGARDING SAME.

1.70 GUZZETTA, JOSEPH W

ATTENTION TO REDACTION OF LEGAL BILLS; REVIEW SAME AND EMAIL SAME TO E. DETTMER; RECEIVE AND REVIEW ATTORNEYS' FEES BRIEF FROM D. POZZA; RESEARCH REGARDING COMPARABLE LAW FIRM RATES FOR DECLARATION; EMAILS TO E. DETTMER REGARDING SAME; EMAIL ARTICLE AND SUMMARY OF ARGUMENT TO D. POZZA;

08/27/07

1.20 DETTMER, ETHAN D

REVIEW, ANALYZE AND REVISE DECLARATION IN SUPPORT OF COSTS MOTION AND EMAILS IN CONNECTION WITH SAME; EMAILS REGARDING COSTS MOTION AND RELATED MATTERS.

Invoice Date: September 10, 2007

Invoice No. 2007091084

Due and Payable Upon Receipt

2.50 GUZZETTA, JOSEPH W

REVIEW LEGAL BILLS; ATTENTION TO ISSUE OF RETRIEVING COSTS INVOICES FOR SUBMISSION TO THE COURT; REVIEW DETTMER DECLARATION; CALL WITH E. DETTMER REGARDING DECLARATION, INVOICES AND FILING LOGISTICS; CALL WITH D. POZZA REGARDING COSTS ISSUE; REVIEW PRACTICE GUIDE REGARDING COSTS; REVIEW LOCAL RULES REGARDING SIGNATURES IN RESPONSE TO QUESTION FROM D. POZZA; EMAILS WITH M. LYON REGARDING FILING.

08/28/07

2.40 GUZZETTA, JOSEPH W

EMAILS FROM AND CALLS WITH D. POZZA REGARDING FILING ISSUES; EMAILS WITH E. DETTMER REGARDING CHANGES TO DECLARATION; REVIEW LOCAL RULES; DRAFT AND REVISE PROPOSED ORDER; CALL WITH M. LYON REGARDING SAME; ATTENTION TO FILING ISSUES REGARDING SAME.

Invoice Date: September 10, 2007

Due and Payable Upon Receipt

Invoice No. 2007091084

AB1179 LITIGATION
43206-00009

Detail Costs/Charges:

FREIGHT AND SHIPPING

08/15/07	16.53	FEDERAL EXPRESS FX0824 INVOICE 222363786 SHIP DATE 08/15/2007 AIRBILL NO: 792540755871 FROM: KAREN LEONARD, GIBSON DUNN & CRUTCHER, LLP, PALO ALTO, CA TO: JUDGE WHYTE (COURTSEY COPY), USDC NORTHERN DISTRICT, SAN JOSE, CA
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08/28/07	16.53	FEDERAL EXPRESS FX0831 INVOICE 223598318 SHIP DATE 08/28/2007 AIRBILL NO: 799703531830 FROM: KAREN LEONARD, GIBSON DUNN & CRUTCHER, LLP, PALO ALTO, CA TO: JUDGE WHYTE (COURTSEY COPY), USDC NORTHERN DISTRICT, SAN JOSE, CA
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IN HOUSE DUPLICATION

08/08/07	3.40	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/08/07
08/15/07	12.40	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/15/07
08/23/07	10.80	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/23/07
08/24/07	10.80	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/24/07
08/27/07	4.70	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/27/07
08/28/07	0.10	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/28/07
08/29/07	29.50	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/29/07
08/30/07	34.00	IN HOUSE DUPLICATION CHARGE VIA EQUITRAC - 08/30/07

TELEPHONE CHARGES

08/09/07	2.74	202-639-6861 08/09/07 WASHINGTON	DISTRICT OF COLUMBIA
08/10/07	3.50	202-639-6861 08/10/07 WASHINGTON	DISTRICT OF COLUMBIA

Invoice Date: September 10, 2007

Invoice No. 2007091084

Due and Payable Upon Receipt

08/23/07	2.66	202-639-6027 08/23/07 WASHINGTON	DISTRICT OF COLUMBIA
08/24/07	1.71	202-639-6027 08/24/07 WASHINGTON	DISTRICT OF COLUMBIA
08/27/07	3.95	202-639-6027 08/27/07 WASHINGTON	DISTRICT OF COLUMBIA
08/28/07	1.44	202-639-6027 08/28/07 WASHINGTON	DISTRICT OF COLUMBIA

Invoice Date: September 10, 2007

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Invoice No. 2007091084

ATTACHMENT B

Leonard, Karen

From: TrackingUpdates@fedex.com
Sent: Wednesday, August 29, 2007 10:00 AM
To: Leonard, Karen
Subject: FedEx Shipment 799703531830 Delivered

This tracking update has been requested by:

Company Name: Gibson Dunn & Crutcher, LLP

Name: Karen Leonard

E-mail: kleonard@gibsondunn.com

Our records indicate that the following shipment has been delivered:

Tracking number: 799703531830
Reference: 43206-00009
Ship (P/U) date: Aug 29, 2007
Delivery date: Aug 29, 2007 9:55 AM
Sign for by: T.HARWELL
Delivered to: Receptionist/Front Desk
Service type: FedEx Priority Overnight
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.

Shipper Information
Karen Leonard
Gibson Dunn & Crutcher, LLP
1881 Page Mill Road
Palo Alto
CA
US
94304

Recipient Information
Judge Whyte (Courtsey Copy)
USDC Northern District
280 S. First Street
San Jose
CA
US
95113

Special handling/Services:
Deliver Weekday

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:00 PM CDT on 08/29/2007.

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All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com.

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Thank you for your business.

Leonard, Karen

From: TrackingUpdates@fedex.com
Sent: Thursday, August 16, 2007 10:08 AM
To: Leonard, Karen
Subject: FedEx Shipment 792540755871 Delivered

This tracking update has been requested by:

Company Name: Gibson Dunn & Crutcher, LLP

Name: Karen Leonard

E-mail: kleonard@gibsondunn.com

Our records indicate that the following shipment has been delivered:

Tracking number:	792540755871
Reference:	43206-00009
Ship (P/U) date:	Aug 16, 2007
Delivery date:	Aug 16, 2007 10:05 AM
Sign for by:	S.MORRIS
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information
Karen Leonard
Gibson Dunn & Crutcher, LLP
1881 Page Mill Road
Palo Alto
CA
US
94304

Recipient Information
Judge Whyte (Courtsey Copy)
USDC Northern District
280 S. First Street
San Jose
CA
US
95113

Special handling/Services:
Deliver Weekday

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To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com.

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10/2/2007

