

NATIONAL FEDERATION OF THE BLIND

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June 13, 2012

ACCOUNT NO: 1120-336M

INVOICE NO: 32504

HATHITRUST

		Rate	Hours
LA	Telephone calls with Bob Bernstein, Joe Beck, Joe Petersen, and Daniel F. Goldstein re: timing of summary judgment motion and communications with Judge Baer re: same	250.00	1.90
DFG	Conference call with Peter Jaszi, Robert J. Bernstein, Denise M. Altobelli, Laura G. Abelson and M. Sidhu	475.00	1.50
DFG	E-mail to George Kerscher re: his publication	475.00	0.10
DFG	E-mail to J. Fruchterman re: his publications	475.00	0.20
DFG	E-mail to J. Beck and J. Peterson re: Motion for Summary Judgment timing	475.00	0.10
DFG	Telephone call Laura G. Abelson and Robert Bernstein re: next steps	475.00	0.60
DFG	Conference call with co-counsel re: scheduling with Judge Baer	475.00	1.30
05/05/2012			
LA	Respond to e-mail from Daniel F. Goldstein re: protective order for discovery materials	250.00	0.10
05/06/2012			
DFG	Review and respond re: draft letter to Judge Baer	475.00	0.10
05/07/2012			
DMA	Prepare notebook of pleadings for Daniel F. Goldstein for oral argument on Plaintiffs' Motion for Partial Summary Judgment on the Pleadings; conference with Anna G. Reid re: pulling cases from pleadings (.2)	155.00	0.60
AGR	Confer with Denise M. Altobelli re: preparing binder of cases	140.00	0.10
AGR	Create binder for cases and print cases for pleadings relating to Plaintiffs' Motion for Partial Judgment	140.00	1.90
LA	E-mail Rob Potter re: responses to publisher subpoenas	250.00	0.10
DFG	E-mail from/to Robert Bernstein re: protective order and call with CCC	475.00	0.10
05/08/2012			
LA	Review federal rules re: production of materials received in response to third party subpoenas	250.00	0.20
AGR	Work on compiling binder of authorities	140.00	5.50
LA	Meet with George Kerscher, Daniel F. Goldstein, Peter Jaszi, and Bob Bernstein (4.0); travel to and from meeting (2.0)	250.00	5.00
DFG	George Kerscher for expert report	475.00	5.00
05/09/2012			
AGR	Download article for hearing binder; confer with Laura G. Abelson re: locating remaining authorities	140.00	0.30
05/10/2012			
LA	Telephone call to R. Potter re: publisher subpoenas; confer with Denise M. Altobelli re: same; confer with Daniel F. Goldstein re: same	250.00	0.20
LA	E-mail Daniel F. Goldstein, Peter Jaszi, and Bob Bernstein re: possible AAP subpoena	250.00	0.10

HATHITRUST

		Rate	Hours
	DMA Conference with Laura G. Abelson and e-mail copies of subpoenas to publishers	155.00	0.20
05/11/2012			
	DMA Compile other authorities for Daniel F. Goldstein notebooks for argument	155.00	0.30
	LA Review briefs on Defendants' motion for judgment on the pleadings	250.00	2.80
	DFG Review Reply	475.00	0.30
05/14/2012			
	LA E-mail Jim Fruchterman re: follow up questions for declaration	250.00	0.10
	DMA Review Reply and print out; compile remaining citations for Daniel F. Goldstein argument	155.00	1.20
	LA Review Plaintiffs' reply in support of motion for judgment on the pleadings	250.00	0.50
	DMA Obtaining authorities for Motion for Judgment on Pleadings	155.00	1.50
	LA Review Georgia State decision in preparation for oral argument on motion for judgment on the pleadings	250.00	1.30
	LA Review Georgia State fair use decision	250.00	2.20
	LA Telephone call with J. Beck, J. Bernard, Daniel F. Goldstein, P. Jaszi, and B. Bernstein re: preparation for oral argument on motion for judgment on the pleadings	250.00	0.50
	DFG Review article on Ga. State Opinion	475.00	0.10
	DFG Telephone call co-counsel re: hearing	475.00	0.50
	DFG E-mail to R. Bernstein re: Baer discovery order	475.00	0.10
	DFG Begin reviewing pleadings for hearing	475.00	1.40
05/15/2012			
	DMA Finalize research for Daniel F. Goldstein argument in Opposition to Motion for Judgment on the Pleadings	155.00	1.20
	LA Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	1.00
	LA Return telephone call from Jeremy Goldman re: CCC deposition schedule	250.00	0.10
	DMA E-mail from Laura G. Abelson; print motion to intervene and memo; reply to e-mail	155.00	0.10
	LA Moot Daniel F. Goldstein for oral argument on motion for judgment on the pleadings	250.00	1.20
	LA Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.20
	LA Telephone call with Daniel F. Goldstein and Bob Bernstein re: preparation for oral argument on motion for judgment on the pleadings	250.00	0.60
	LA E-mail Rob Potter re: CCC deposition and subpoena responses	250.00	0.10
	LA Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.60
	LA Telephone call with Jim Fruchterman, Bob Bernstein, and Peter Jaszi re: details for declaration in support of Motion for Summary Judgment	250.00	0.60
	DFG Telephone call R. Bernstein re: hearing and re: CCC Subpoena	475.00	0.50

HATHITRUST

		Rate	Hours
DFG	Moot with J. Astrachan for hearing	475.00	1.30
DFG	Review e-mails between counsel for CCC and R. Bernstein and approve responses	475.00	0.30
05/16/2012			
LA	Research Judge Baer's previous ADA decisions	250.00	2.10
LA	Read emails re: CCC deposition	250.00	0.10
DMA	Update Daniel F. Goldstein notebook for argument on Motion for Judgment on the Pleadings;	155.00	0.20
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.20
DMA	Update Daniel F. Goldstein notebook re: House Report	155.00	0.10
LA	Confer with Daniel F. Goldstein re: logistics for argument on motion for judgment on the pleadings	250.00	0.20
DMA	Update Daniel F. Goldstein argument notebook	155.00	0.10
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	1.50
LA	Telephone call with Jim Fruchterman re: declaration for Motion for Summary Judgment	250.00	0.20
DFG	Prepared for hearing	475.00	8.30
05/17/2012			
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	1.70
LA	[Not Subject of Fee Application]	250.00	3.80
LA	[Not Subject of Fee Application]	250.00	1.70
LA	[Not Subject of Fee Application]	250.00	1.50
05/18/2012			
LA	Review CCC's motion to quash subpoena	250.00	0.40
AL	Separate Defendant produced documents from Cornell University and half documents from Indiana University	140.00	1.00
DFG	Travel to/from NYC and prepared for hearing in transit	475.00	6.00
DFG	Prepared for hearing and travel to Courthouse	475.00	1.70
DFG	Hearing on Motion for Judgment on the Pleadings	475.00	1.50
DFG	E-mail to J. Beck re: accessibility concerns with HathiTrust Schools	475.00	0.10
05/21/2012			
DFG	R. Bernstein telephone call re: CCC Deposition	475.00	0.30
05/22/2012			
LA	Read e-mails concerning CCC subpoena and deposition	250.00	0.10
LA	Prepare affidavit for pro hac vice motion in District of Massachusetts for CCC motion to quash subpoena	250.00	0.40
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.20
05/23/2012			
LA	Finalize pro hac vice application for D. Mass. for CCC motion to quash	250.00	0.30
LA	Telephone calls to/from Christine Netski re: CCC motion to		

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		Rate	Hours
	quash; telephone call and e-mail Bob Bernstein re: same	250.00	0.50
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.90
05/24/2012			
LA	Draft George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.50
LA	Confer with Daniel F. Goldstein re: George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.10
LA	Telephone call to George Kerscher re: edits to declaration	250.00	0.10
LA	Confer with Daniel F. Goldstein re: topics for Dr. Maurer's declaration in support of Motion for Summary Judgment;		
	e-mail Mehgan Sidhu re: same	250.00	0.20
LA	Telephone call to Joe Petersen re: Motion for Summary Judgment schedule	250.00	0.20
DFG	Conferred with Laura G. Abelson re: George Kerscher declaration	475.00	0.10
DFG	Conferred with J. Petersen and Laura G. Abelson	475.00	0.20
05/25/2012			
LA	Telephone call with George Kerscher re: additional questions concerning declaration in support of Motion for Summary Judgment	250.00	1.60
DFG	E-mails from/to Peter Jaszi, etc. re: CCC Subpoena	475.00	0.10
DFG	Multiple e-mails re: Motion for Summary Judgment scheduling	475.00	0.20
DFG	E-mails with team re: CCC Subpoena	475.00	0.20
05/29/2012			
LA	Review materials from George Kerscher (.5); edit declaration in support of Motion for Summary Judgment	250.00	1.30
AL	Continue separating produced documents from U. of Michigan for loading into Summation	140.00	0.80
LA	Edit George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.90
LA	Find definitions of "blindness" and "print-disabled" for Bob Bernstein	250.00	0.20
DFG	Review CCC documents and e-mail R. Bernstein re: same	475.00	0.30
05/30/2012			
LA	Edit George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.20
LA	Telephone call with MEHGAN SIDHU re: Dr. Maurer's declaration in support of Motion for Summary Judgment	250.00	0.20
LA	Edit George Kerscher declaration in support of Motion for Summary Judgment	250.00	0.60
LA	Telephone call with Daniel F. Goldstein and Peter Jaszi re: strategy for CCC deposition	250.00	0.80
LA	Prepare for CCC deposition	250.00	0.30
LA	Read and respond to e-mail from Rob Potter re: inclusion of journals in HathiTrust database; e-mail team re: same	250.00	0.20
AL	Separate Defendant-produced documents from U. of Michigan into separate documents (through UM004029) for loading into Summation	140.00	1.70

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		Rate	Hours	
LA	Confer with Daniel F. Goldstein re: strategy for CCC deposition; e-mail Rob Potter re: call with John Wilkin	250.00	0.30	
LA	Review Peter Jaszi's explanation of non-consumptive research	250.00	0.10	
DFG	Conferred with Peter Jaszi and Laura G. Abelson	475.00	0.80	
DFG	Conferred with G. Hanley	475.00	0.20	
DFG	Conferred with R. Bernstein re: CCC deposition	475.00	0.10	
DFG	R. Potter telephone call re: CCC	475.00	0.30	
DFG	E-mail to R. Potter re: telephone call with J. Wilken	475.00	0.10	
05/31/2012				
LA	Telephone call with Daniel F. Goldstein, Peter Jaszi, Rob Potter, and John Wilkin re: HathiTrust journal collection in preparation for CCC deposition	250.00	0.50	
LA	Read and respond to e-mails from Bob Bernstein re: preparation for CCC deposition	250.00	0.10	
LA	Telephone call with Daniel F. Goldstein, Peter Jaszi, and Bob Bernstein re: preparation for CCC deposition	250.00	1.10	
LA	Telephone call with George Kerscher re: TIGAR and CCC; e-mail team re: same	250.00	0.80	
DFG	J. Wilken, R. Potter, Laura G. Abelson re: CCC	475.00	0.50	
DFG	E-mail to Robert Bernstein re: CCC deposition and definition of accessibility	475.00	0.10	
DFG	Respond to Robert Bernstein inquiries re: market definition and other CCC questions	475.00	0.20	
DFG	Conference call with Peter Jaszi, Robert Bernstein, and Laura G. Abelson	475.00	1.10	
	FOR CURRENT SERVICES RENDERED		107.60	33,080.00
	LESS COURTESY DISCOUNT			-4,962.00
	NET FEES AFTER DISCOUNT			28,118.00

TIMEKEEPER SUMMARY

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
DANIEL F. GOLDSTEIN	36.50	\$475.00	\$17,337.50
DENISE M. ALTOBELLI	7.70	155.00	1,193.50
BARBARA G. THOMPSON	0.20	155.00	31.00
LAURA G. ABELSON	51.60	250.00	12,900.00
JANET L HENRY	0.30	120.00	36.00
ANGELA LIMA	3.50	140.00	490.00
ANNA G. REID	7.80	140.00	1,092.00

EXPENSES

Research	44.77
Teleconference	396.84
Postage	4.50
Meals	38.32
Transportation Fare	390.25
Copying	8.55
Other Expense	4.44
TOTAL EXPENSES	887.67

NATIONAL FEDERATION OF THE BLIND

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HATHITRUST

ADVANCES

06/05/2012	Local Counsel THE LAW OFFICE OF ROBERT J. BERNSTEIN (5/1/12 - 5/31/12)	27,703.99
	Local Counsel	<u>27,703.99</u>
	TOTAL ADVANCES	27,703.99
	TOTAL CURRENT WORK	56,709.66
	BALANCE DUE	<u>\$56,709.66</u>

Your Trust Account #4 balance is

	OPENING BALANCE	\$0.00
05/23/2012	CK#043326	77,718.21
05/29/2012	INVOICE # 1204462	
	PAYEE: ITS YOUR SERVE	-95.00
05/29/2012	INVOICE # 92313	
	PAYEE: LEGAL IMAGES OF BALTIMORE, LLC	-527.88
05/29/2012	SERVICES RENDERED FROM 03/01/2012 THRU 04/30/2012	
	PAYEE: BROWN, GOLDSTEIN & LEVY, LLP	-77,095.33
	CLOSING BALANCE	<u>\$0.00</u>

THIS BILL COVERS THE PERIOD THROUGH 05/31/2012
 WE ACCEPT VISA/MASTERCARD/AMERICAN EXPRESS/DISCOVER
 Federal Tax I.D. # 52-1322243

**The Law Office of
Robert J. Bernstein**

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June 1, 2012

Via Email (dfg@browngold.com)

NATIONAL FEDERATION OF THE BLIND (NFB)
c/o Daniel F. Goldstein
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202

Re: The Authors Guild, Inc. v. HathiTrust, 11 Civ. 6351 (HB) (SDNY)

All legal services set forth in this statement were rendered by Robert J. Bernstein (“RJB”) at his regular rate of \$500/hour. This invoice covers all legal services rendered for National Federation of the Blind, Blair Seidlitz and Courtney Wheeler (collectively, “NFB”) from May 1 to 31, 2012 in connection with the above matter.

LEGAL FEES (for the period May 1 to 31, 2012):

<u>Date:</u>	<u>Description</u>	<u>Time</u> (hrs.)
May 1:	emails (EM) with Peter Jaszi (PJ) and Dan Goldstein re Jim Fruchterman (JF); review CCC subpoena and deposition notice as served; EM to DG re same; review EM from PJ re same; review letter from Edward Rosenthal (ER) to Judge Harold Baer (HB)	0.5
May 4:	conference call with DG, PJ, Laura Abelson (LA) and Meghan Sidhu (MS) re planning strategy for summary judgment motion and for experts; review “Google Print” article by JF; conference call with Joe Petersen (JP), Joe Beck (JB), Alex Fonoroff (AF) and DG re litigation strategy, summary judgment motion and experts; telephone conference (TC) with Judge Baer’s law clerk re his availability in July and EM to HathiTrust (HT) and NFB lawyers re same; TC with DG and LA re follow-up to conference call with HT lawyers; TC with Ariane Newell (AN) of Weil Gotschal & Manges (WGM) re CCC subpoena; EM to DG, LA and PJ (collectively, “NFB Team”) re same; multiple EMs with NFB team re various issues; review Authors Guild (AG) objections and responses to HT interrogatories and document requests; review selected articles by JF; EM to WGM re CCC	

<u>Date:</u>	<u>Description</u>	<u>Time</u> (hrs.)
May 4 (cont'd):	objections to deposition notice and document requests	5.6
May 7:	TC with PJ re CCC subpoena; review deposition notice and document requests in preparation for TC with AN of WGM to discuss subpoena; conference call with AN and PJ re CCC subpoena; follow-up TC with PJ; review JP draft letter to HB re scheduling; EMs with DG re Protective Order; EMs with LA re same; review JF presentation on accessibility available on YouTube; EM to DG and review PJ EM re same; further EMs with DG and PJ re negotiations with WGM over CCC subpoena; review EM from George Kersher (GK) re his publications and references to websites; begin reviewing same	4.3
May 8:	travel ¹ to Washington, D.C. for meeting with GK, DG, LA and PJ re consultation with GK and possible declaration in support of motion for summary judgment (MSJ) and/or trial testimony; review of GK articles and background materials GK referred to in preparation for meeting with GK; attend meeting	6.2
May 9:	review AG's objections and responses to NFB's interrogatories and document requests; EMs with PJ and DG re same; EM to ER requesting clarification of responses and further production; TC with AN of WGM re CCC discovery; EMs with NFB Team and AN re same;	1.4
May 10:	EMs with NFB team re various; review JP letter to HB re discovery dispute with AG	0.2
May 11:	review AG reply brief in support of its motion for partial judgment on the pleadings; EMs to HT and NFB teams re same	1.2
May 14:	EMs with NFB Team re AG reply brief, re JF, and re strategy for oral argument on AG motion; conference call with HT and NFB teams re strategy on oral argument and re scheduling issues;	0.7
May 15:	TCs with JP re CCC deposition; EMs with NFB Team re same; review letter from Bruce Rich (BR) of WGM objecting to CCC subpoena; TC with DG and PJ re same; draft letter to BR responding; further EMs with BR re same; EM to AN of WGM re same; EMs to Jeremy Goldman (JG), an for AG, regarding insufficiency of AG responses to NFB interrogatories and document requests; EMS to HT and NFB Teams re same	2.8

¹ Travel time not billed except to the extent that it was used to review materials in preparation for meeting with GK.

<u>Date:</u>	<u>Description</u>	<u>Time</u> (hrs.)
May 16:	EMs with ER re CCC deposition; prepare letter to HB re extending discovery cutoff date for CCC deposition in light of CCC's threatened motion to quash; EMs with Randi Singer (RS) of WGM and with HT and NFB Teams re same; EMs with DG re section 109 "first sale" doctrine and re AG "fruit of the poisonous tree" argument; further EMs with RS negotiating possible withdrawal of motion to quash and TC with RS re same; EMs with DG re amendment to section 107 neutralizing the presumption against fair use of unpublished works	3.2
May 17:	review RS letter to HB re CCC deposition; prepare letter to HB responding to same; EMs to HT and NFB Teams re same; confer with DG re oral argument on AG motion for partial judgment on pleadings; attend oral argument; post-argument conferences with HT and NFB Teams including MS; negotiating with RS before and after oral argument for possible narrowing of subpoena and avoidance of motion to quash; review of CCC emergency motion for protective order (MPO) and supporting memorandum and declaration seeking to quash subpoena	5.5
May 18:	EMs with Christine Netski (CN) and William Boesch (WB) of Sugarman Rogers firm (SRBC) re filing motion for pro hac vice (PHV) admission and re obtaining information from clerk's office for opposition to CCC's MPO; prepare and send SRBC completed PHV form; review of relevant D. Mass. local rules and Judge Tauro's individual rules; review Judge Tauro order denying MPO; EM to RS re rescheduling deposition; and review CCC's emergency motion for reconsideration of order denying MPO (MPO-2); consider possible narrowing of subpoena; EMs to RS and to HT and NFB Teams with suggestions for same;	3.7
May 21:	review Judge Tauro's Order setting hearing June 11 hearing date on MPO-2; TC's with CN re best procedure to follow with Judge Tauro to obtain an earlier hearing date than June 11 on MPO-2; further TCs and EMs with CN re same in light of her TCs with Judge Tauro's courtroom deputy; EMs and TCs with RS re same; EMs with HT and NFB Teams re same; EMs with RS re setting tentative new deposition date pending resolution of MPO-2; research CCC website for possible use in opposition papers to MPO-2; TC with PJ re CCC deposition; EMs with RS re further proposals for narrowing subpoena and withdrawing MPO-2	3.2
May 22:	multiple EMs with CN re hearing date on MPO-2 and strategy for advancing it to before June 8 cutoff; EMs and TCs with RS continuing negotiations over narrowing subpoena and withdrawal of MPO-2; EMs with HT and NFB Teams re same; EM and TC with JB re CCC deposition	1.8

<u>Date:</u>	<u>Description</u>	<u>Time</u> (hrs.)
May 23:	multiple EMs with RS, HT and NFB Teams re RS proposed revisions to my language narrowing subpoena; further counterproposals to RS re same	1.2
May 24:	EMs with ER re CCC deposition; TC with DG re briefing schedule on MSJ's and need for reply brief; EM to JP re same	0.3
May 25:	review draft letter from ER to HB re proposed briefing schedule on MSJ's; further EM to HT and NFB teams suggesting revisions to same to allow for reply briefs; multiple EMs with DG, PJ and JP re HT having separate representation at CCC deposition; EMs to all re CCC withdrawal of MPO-2 and rescheduling of deposition to May 31	0.6
May 29:	begin review of additional documents produced by CCC; EMs to all re CCC document production; EMs with PJ and DG re certain CCC documents and investigating related facts; start organizing possible deposition exhibits; EMs with RS re adjourning deposition in light of volume of documents just produced	2.8
May 30:	TC and EMs with RS re adjourning deposition to June 4; EMs to all re same; EM to PJ re CCC documents relating to TIGAR; review PJ EM re Non-Consumptive Research; EMs with NFB Team re CCC documents; review CCC website	1.5
May 31:	Preparation for CCC deposition, including conference call with NFB Team, continued review of CCC documents and website, multiple EMs with NFB Team, review TIGAR website, and preparing questions and points to establish; consideration of market definition; consideration of overall goals and specific strategies for deposition; TC with JP re NFB strategy and HT participation; review of Judge Chin's decision on class certification and associational standing motions in AG v. Google; review LA notes of GH meeting and JF telephone conference	5.2
Total RJB time for May 2012:		51.9 hrs.
<u>Total Amount Due for Legal Fees in May</u> (51.9. hrs. x \$500/hr):		<u>\$25,950</u>

DISBURSEMENTS:²

Jacob Singer & Associates (for rush service of subpoenas on 8 publishers):	\$670.00
Amtrak (for round trip ticket to Washington, D.C. to meet with expert witness on 5/8):	\$444.00

² Supporting invoices for each disbursement are attached.

Amtrak (round trip ticket purchased on 5/30 re CCC deposition in Boston on 6/4):	\$233.00
Onyx Hotel (1 night stay purchased on 5/30 re CCC deposition in Boston on 6/4):	\$307.87
Photocopies	\$99.12
<u>Total Disbursements:</u>	<u>\$1,753.99</u>
<u>TOTAL AMOUNT DUE</u> (fees and disbursements):	<u>\$27,703.99</u>