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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHITRUST, ET AL.,
Defendants.

Case No. 11 Civ. 6351 (HB)

**DECLARATION OF JOSEPH PETERSEN IN SUPPORT OF DEFENDANTS'
MOTION FOR COSTS AND ATTORNEYS' FEES**

I, Joseph Petersen, make the following Declaration:

1. I am a member of the Bar of this Court and am a partner at the law firm of Kilpatrick Townsend & LLP (“Kilpatrick Townsend”), attorneys for the Defendants in the above-captioned action (the “Libraries”). I submit this Declaration in support of the Libraries’ motion for costs and attorneys’ fees. Unless otherwise noted, I make this declaration based upon my own personal knowledge.

2. Throughout this case, counsel for the Libraries efficiently represented all five of the Libraries and sought to avoid unnecessary discovery costs where possible. Although Southern District of New York rules limit the number and subject matter for interrogatories, in an effort to minimize the expenses of discovery, the Libraries proposed at the status conference broader and more extensive use of interrogatories, thereafter secured a stipulation from the Plaintiffs, and the Court thereafter approved such use. *See* Nov. 18, 2011 Stipulation, “So Ordered” by the Court on November 22, 2011 (Dkt. No. 19). Utilizing the broader scope of interrogatories permitted by the Court, the Libraries served three sets of interrogatories and took only four depositions, even though they were sued by twenty Plaintiffs.

3. In addition, while other attorneys and several paralegals at Kilpatrick Townsend were involved at various levels in the case, the Libraries seek an award of fees based only on the reasonable hours charged by myself, partner and co-lead Joseph M. Beck, and associates Robert N. Potter, W. Andrew Pequignot, and Allison Scott Roach.

4. Attached hereto as Exhibit A are true and correct copies of the attorney biographies for the attorneys listed above, as printed from Kilpatrick Townsend’s website at www.kilpatricktownsend.com at my direction on October 23, 2012.

5. The current hourly rates charged for each attorney’s time are as follows:

| Attorney | Billed Rate |
|---------------------|--------------------|
| Joseph M. Beck | \$656.25 |
| Joseph Petersen | \$481.25 |
| Robert N. Potter | \$393.75 |
| W. Andrew Pequignot | \$345.63 |
| Allison Scott Roach | \$328.13 |

Exact billing rates varied over the course of the case, but the overall blended rate for each attorney did not exceed the rates identified above, and indeed, for time billed in 2011, each attorney’s rate was lower. In addition, these rates include a discount on each attorney’s standard

billable rate, which was provided by Kilpatrick Townsend because of the Libraries' nonprofit status, and which resulted in fee amounts that were lower than would otherwise have been charged for the same services.

6. Attached hereto as Exhibit B are true and correct copies of the first page and pages I-34 and I-52 from Appendix A of the American Intellectual Property Law Association's 2011 Report of the Economic Survey, which provides survey information regarding the prevailing rates charged by Intellectual Property counsel. The relevant information from the attached pages is also reproduced below.

From the 2011 AIPLA Report of the Economic Survey

Private Firm, Partner

| | Average hourly billing rate in 2010 | | | | |
|--------------------|-------------------------------------|----------------|--------------------|------------------|--------------------|
| | Number of individuals | Mean (Average) | First Quartile 25% | Media (Midpoint) | Third Quartile 75% |
| Location: NYC CMSA | 43 | \$557 | \$400 | \$590 | \$675 |

Private Firm, Associate

| | Average hourly billing rate in 2010 | | | | |
|--------------------|-------------------------------------|----------------|--------------------|------------------|--------------------|
| | Number of individuals | Mean (Average) | First Quartile 25% | Media (Midpoint) | Third Quartile 75% |
| Location: NYC CMSA | 31 | \$433 | \$300 | \$410 | \$545 |

This information shows that my rate and Mr. Beck's rate are both within the range of private firm partners' billing rates in New York City (Consolidated Metropolitan Statistical Area), and that Mr. Potter's, Mr. Pequignot, and Ms. Roach's rates are within the range of private firm associates' billing rates in New York City (Consolidated Metropolitan Statistical Area), and indeed, are below the mean (average) rate for such associates.

7. Attached hereto as Exhibit C are true and correct copies of invoices which, based on Kilpatrick Townsend's policies regarding time entries, I understand are derived from

contemporaneous time records. The invoices itemize fees and other related charges from October 3, 2011 through the date of oral argument on the parties' summary judgment motions on August 6, 2012. To reduce the length of the exhibit, the invoices included in Exhibit C are the invoices sent to the University of Michigan, and I understand them to be substantially similar to the invoices prepared for and sent to Cornell University, the University of California, Indiana University, and the University of Wisconsin for the same billing periods. (The remittance pages of the invoices sent to these other schools are also included in Exhibit C.) These invoices have been billed and paid, or are expected to be paid, by Defendants. Based on an agreement among the Libraries, each was charged a certain percentage of the total invoice each month, with some adjustment based on projects that were completed at the specific request of one or more Libraries.

8. The invoices upon which the Libraries base their request for attorneys' fees do not represent all of the work performed by the Libraries' counsel in this case, as Kilpatrick Townsend has exercised its discretion in several instances not to charge the Libraries for certain time worked on the case.

9. We have redacted the invoices included in Exhibit C to preserve attorney-client confidential privileged information and attorney work product confidential privileged information. At the Court's request, we would be pleased to submit unredacted copies of our invoices for the Court's *in camera* inspection.

10. As discussed above, the Libraries are only seeking a portion of the attorneys' fees incurred in defending against Plaintiffs' claims. The chart below summarizes the rates charged and hours billed for each of the attorneys for which the Libraries are seeking fees.

October 2011 – November 2011

| Attorney | Billed Rate | Hours Billed | Invoiced Total |
|------------------------------------|--------------------|---------------------|-----------------------|
| Joseph M. Beck | \$652.50 | 144.5 | \$94,286.25 |
| Joseph Petersen | \$472.50 | 84 | \$39,690.00 |
| Robert N. Potter | \$382.50 | 79.6 | \$30,447.00 |
| Andrew Pequignot | \$337.50 | 128 | \$43,200.00 |
| Allison Scott Roach | \$297.00 | 187.4 | \$55,657.80 |
| Oct. 2011 – Nov. 2011 TOTAL | | 623.5 | \$263,281.05 |

December 2011

| Attorney | Billed Rate | Hours Billed | Invoiced Total |
|------------------------|--------------------|---------------------|-----------------------|
| Joseph M. Beck | \$634.38 | 61.5 | \$39,014.37 |
| Joseph Petersen | \$459.38 | 29.1 | \$13,367.96 |
| Robert N. Potter | \$371.88 | 8.3 | \$3,086.60 |
| Andrew Pequignot | \$328.13 | 24.4 | \$8,006.37 |
| Allison Scott Roach | \$288.75 | 81.7 | \$23,590.88 |
| Dec. 2011 TOTAL | | 205 | \$87,066.18 |

January 2012 – August 6, 2012

| Attorney | Billed Rate | Hours Billed | Subtotal | Invoiced Total (With Further Discounts) |
|---|--------------------|---------------------|-----------------|--|
| Joseph M. Beck | \$656.25 | 565.9 | \$371,371.88 | \$370,590.63 |
| Joseph Petersen | \$481.25 | 658 | \$316,662.50 | \$316,662.50 |
| Robert N. Potter | \$393.75 | 533.2 | \$209,947.50 | \$207,601.87 |
| Andrew Pequignot | \$345.63 | 620.4 | \$214,428.85 | \$214,428.85 |
| Allison Scott Roach | \$328.13 | 781.2 | \$256,335.16 | \$256,335.16 |
| Jan. 2012 – Aug. 6, 2012 TOTAL | | 3,158.7 | \$1,368,745.88 | \$1,365,619.00 |

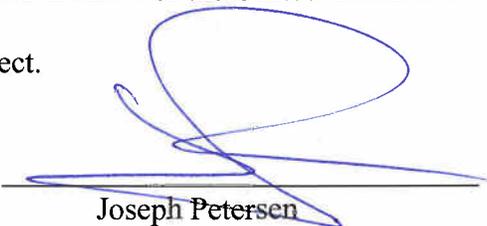
TOTAL: \$1,715,966.23

11. The Libraries also seek costs, but only the costs of document reproduction, PACER online document retrieval services, Federal Express and courier services, court reporting services and deposition transcripts, as shown below and itemized in the invoices included in Exhibit C. The Libraries do not seek recovery of travel expenses or expenses of online legal research.

| Costs Sought by the Libraries | |
|---|--------------------|
| Document reproduction | \$2,021.99 |
| PACER online document retrieval | \$191.44 |
| Courier services | \$104.50 |
| Federal Express services | \$170.61 |
| Court reporting services and deposition transcripts | \$11,807.43 |
| TOTAL | \$14,295.97 |

I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct.

Dated: October 26, 2012



Joseph Petersen