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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

19 NORTHLAND FAMILY PLANNING
20 CLINIC, INC.,

21 Plaintiff,

22 vs.

23 CENTER FOR BIO-ETHICAL
24 REFORM, *et al.*,

25 Defendants.

Case No.: 8:11-cv-00731-JVS-AN

**DEFENDANTS' MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES & COSTS**

Date: August 20, 2012

Time: 1:30 p.m.

Courtroom: 10C

Hon. James V. Selna

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1 *Mattel, Inc. v. Walking Mountain Prods.*,
2 CV 99-8543 RSWL (RZx),
3 2004 U.S. Dist. LEXIS 12469 (C.D. Cal. June 21, 2004)*passim*

4 *Missouri v. Jenkins*,
5 491 U.S. 274 (1989) 12

6 *Schwarz v. Sec’y of Health & Human Servs.*,
7 73 F.3d 895 (9th Cir. 1995) 4

8 **Statutes**

9 17 U.S.C. § 107 6

10 17 U.S.C. § 505 2

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1 **INTRODUCTION**

2 As this court found in its order on the cross-motions for summary
3 judgment, Defendants’ transformative and parodic use of Plaintiff’s video was
4 “fair use” and not a copyright infringement as a matter of law. (Order at 34 [Doc.
5 No. 91]). Indeed, this was a conclusion compelled by *Mattel, Inc. v. Walking*
6 *Mountain Prods.*, 353 F.3d 792 (9th Cir. 2003), and other controlling precedent,
7 which demonstrate that Plaintiff’s copyright claims were objectively
8 unreasonable, frivolous, and brought in bad faith.¹ *See Mattel, Inc. v. Walking*
9 *Mt. Prods.*, CV 99-8543 RSWL (RZx), 2004 U.S. Dist. LEXIS 12469 (C.D. Cal.
10 June 21, 2004) (awarding fees and costs for defense of a copyright infringement
11 claim on the basis of fair use, finding that the plaintiff’s claim was objectively
12 unreasonable).

13 Indeed, upon remand, the district court in *Mattel, Inc.* awarded the
14 defendant \$1,584,089 in attorney’s fees and \$241,797.09 in costs as
15 compensation and deterrence for having to defend against an objectively
16 unreasonable and frivolous copyright claim in light of the fair use exception. *Id.*
17 at *11.

18 Consequently, if the district court found the “Barbie doll” case to be
19 unreasonable and frivolous without the plaintiff having the benefit of the *Mattel,*
20 *Inc.* precedent from the Ninth Circuit, then *a fortiori* and as a matter of law this
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23 ¹ In response to Plaintiff’s threatening demand letter that was sent well prior to
24 the onset of this litigation, Defendants Center for Bio-Ethical Reform (“CBR”)
25 and Gregg Cunningham, through counsel, advised Plaintiff that its claim of
copyright infringement was objectively unreasonable and frivolous and that
Defendants would seek attorneys’ fees and costs in this matter if Plaintiff pursued
the claim. (*See* Defs.’ Resp. to Pl.’s Demand Ltr. [Doc. No. 47-2]).

1 case, post-*Mattel, Inc.*, is beyond frivolous to the point of vexatious, warranting
2 the award of attorneys’ fees and costs to Defendants.

3 Nonetheless, Defendants’ meritorious “fair use” defense in this case
4 unquestionably promoted the purposes of the Copyright Act, thereby justifying an
5 award of attorneys’ fees and costs independent of the culpability of Plaintiff. *See*
6 *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 555 (9th Cir. 1996) (affirming an award of
7 attorney’s fees in the amount of \$1,347,519.15 and holding that “an award of
8 attorney’s fees to a prevailing defendant that furthers the underlying purposes of
9 the Copyright Act is reposed in the sound discretion of the district courts, and that
10 such discretion is not cabined by a requirement of culpability on the part of the
11 losing party”) (emphasis added); *see also Mattel, Inc. v. Walking Mountain*
12 *Prods.*, 353 F.3d at 816 (reversing the denial of attorney’s fees and stating that
13 “[u]nder the Copyright Act, the question is whether a successful *defense* of the
14 action furthered the purposes of the Act, not whether a *fee award* would do so”).

15 In sum, an award of attorneys’ fees and costs to Defendants is warranted in
16 this case regardless of whether this court finds any “culpability on the part of the
17 losing party” because Defendants’ meritorious and successful “fair use” defense
18 served the high purposes of the Copyright Act.

19 ARGUMENT

20 **I. The Court Should Exercise Its Discretion to Award Defendants Their** 21 **Attorneys’ Fees and Costs in this Case.**

22 Under the Copyright Act, a district court may exercise its discretion to
23 “award a reasonable attorney’s fee to the prevailing party.” 17 U.S.C. § 505. In
24 doing so, “[c]ourts may look to the nonexclusive *Lieb* factors as guides and may
25 apply them so long as they are consistent with the purposes of the Copyright Act

1 and are applied evenly to prevailing plaintiffs and defendants; a finding of bad
2 faith, frivolous or vexatious conduct is no longer required; and awarding
3 attorney's fees to a prevailing defendant is within the sound discretion of the
4 district court informed by the policies of the Copyright Act.” *Fantasy, Inc. v.*
5 *Fogerty*, 94 F.3d 553, 560 (9th Cir. 1996) (emphasis added); *Fogerty v. Fantasy,*
6 *Inc.* 510 U.S. 517, 535 n.19 (1994) (agreeing that the *Lieb* “factors may be used
7 to guide courts’ discretion, so long as such factors are faithful to the purposes of
8 the Copyright Act and are applied to prevailing plaintiffs and defendants in an
9 evenhanded manner”); *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 156 (3d Cir.
10 1996) (describing the nonexclusive factors as “[f]rivolousness, motivation,
11 objective unreasonableness (both in the factual and in the legal components of the
12 case) and the need in particular circumstances to advance considerations of
13 compensation and deterrence”).

14 As stated by the Ninth Circuit, “In considering whether to exercise that
15 discretion, the court might consider (1) the degree of success obtained; (2)
16 frivolousness; (3) motivation; (4) the objective unreasonableness of the losing
17 party’s factual and legal arguments; and (5) the need, in particular circumstances,
18 to advance considerations of compensation and deterrence.” *Love v. Assoc.*
19 *Newspapers, Ltd.*, 611 F.3d 601, 614 (9th Cir. 2010) (awarding fees in favor of
20 the defendant in a copyright infringement case). The touchstone, however, for
21 this court’s consideration of any of the relevant factors is “[f]aithfulness to the
22 purposes of the Copyright Act.” *Fantasy, Inc.*, 94 F.3d at 558.

23 Thus, “[t]here is no precise rule or formula for making these
24 determinations,’ but instead equitable discretion should be exercised ‘in light of
25 the considerations we have identified.’” *Fogerty*, 510 U.S. 534 (quoting *Hensley*

1 *v. Eckerhart*, 461 U.S. 424, 436-437 (1983)).

2 In light of these considerations and the purposes of the Copyright Act, it is
3 within the sound discretion of this court to award Defendants their attorneys' fees
4 and costs in this action. *See Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d
5 895, 900 (9th Cir. 1995) ("A district court's fee award does not constitute an
6 abuse of discretion unless it is based on an inaccurate view of the law or a clearly
7 erroneous finding of fact.").

8 **A. Defendants' Fair Use Defense Served the Purposes of the**
9 **Copyright Act.**

10 Defendants' defense of this action unquestionably furthered the purposes of
11 the Copyright Act. "Because copyright law ultimately serves the purpose of
12 enriching the general public through access to creative work, it is peculiarly
13 important that the boundaries of copyright law be demarcated as clearly as
14 possible. . . . Thus a successful defense of a copyright infringement action may
15 further the policies of the Copyright Act every bit as much as a successful
16 prosecution of an infringement claim by the holder of a copyright." *Fogerty*, 510
17 U.S. at 527.

18 In this case, Defendants' fair use defense was meritorious and thus served
19 the purposes of the Copyright Act in that it demarcated more clearly the
20 boundaries of copyright law, particularly with regard to critical parodies and the
21 fair use defense; it publicized Defendants' critical parody, possibly leading to
22 further socially-valuable creative pieces; and it advanced the high-purposes of the
23 First Amendment. *See Fogerty*, 510 U.S. at 526-27; *Mattel, Inc.*, 353 F.3d at 801
24 (noting that "because parody is a form of social and literary criticism, it has
25 socially significant value as free speech under the First Amendment"). As this

1 court stated in its order, “Parody promotes the creativity copyright law is
2 designed to foster whether the parodied work is a household name or completely
3 unknown. The benefit of social commentary and criticism is not confined to
4 works indicting the former.” (Order at 21 [Doc. No. 91]).

5 In sum, the purposes of the Copyright Act have been well served by
6 Defendants’ success on the merits in this case, warranting an award of their
7 attorneys’ fees and costs.

8 **B. Defendants Obtained an Excellent Result.**

9 A significant factor for this court’s consideration is the degree of success
10 obtained by Defendants in light of the purposes served by the Copyright Act, as
11 noted above. *See generally Hensley*, 461 U.S. at 435 (“Where a [party] has
12 obtained excellent results, his attorney should recover a fully compensatory fee. .
13 . . . The result is what matters.”). There is no question that Defendants’ counsel
14 “obtained excellent results” and should therefore “recover a fully compensatory
15 fee.” Here, *every* Defendant prevailed on the merits of *every* claim in this case,
16 thereby furthering the purposes of the Copyright Act. *Fantasy, Inc.*, 94 F.3d at
17 555 (awarding attorney’s fees to the prevailing defendant and stating that the
18 defendant’s “victory on the merits furthered the purposes of the Copyright Act”).

19 In sum, the success achieved by Defendants in the “fair use” defense of
20 their socially-valuable, critical parody furthered the purposes of the Copyright
21 Act as a matter of fact and law. *Mattel, Inc.*, 353 F.3d at 803 (finding that the
22 defendant “created the sort of social criticism and parodic speech protected by the
23 First Amendment and promoted by the Copyright Act”). For this reason, the
24 court would be justified in awarding Defendants their reasonable attorneys’ fees
25 and costs. *See id.*

1 Nonetheless, as argued further below, the additional factors set forth in
2 *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 156 (3d Cir. 1996), militate in favor
3 of this court awarding the requested fees and costs.

4 **C. Plaintiff’s Claims Were Objectively Unreasonable.**

5 The fair use exception excludes from copyright protection works that
6 criticize and comment on another work, including critical parodies that *ridicule*
7 such work. 17 U.S.C. § 107; *see Campbell v. Acuff-Rose Music, Inc.*, 510 U.S.
8 569, 577 (1994) (describing parody as a “literary or artistic work that imitates the
9 characteristic style of an author or a work for comic effect *or ridicule*”)
10 (emphasis added); *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, 109
11 F.3d 1394, 1399 (9th Cir. 1997) (stating that a parody is the use of some portion
12 of a copyrighted work to “hold[] it up to ridicule”); *Mattel, Inc.*, 353 F.3d at 801
13 (same).

14 To determine whether an allegedly infringing work falls within this
15 exception, courts, on a case by case basis and in light of the purposes of the
16 Copyright Act, consider four factors: “(1) the purpose and character of the use,
17 including whether such use is of a commercial nature or is for nonprofit
18 educational purposes; (2) the nature of the copyrighted work; (3) the amount and
19 substantiality of the portion used in relation to the copy-righted work as a whole;
20 and (4) the effect of the use upon the potential market for or value of the
21 copyrighted work.” *Mattel, Inc.*, 353 F.3d at 800 (citing *Dr. Seuss Enterprises,*
22 *L.P.* 109 F.3d at 1399-1404).

23 When determining the purpose and character of use when “fair use” is
24 raised in defense of parody, “[t]he threshold question . . . is whether a parodic
25 character may reasonably be perceived.” *Campbell*, 510 U.S. at 582. Here, the

1 critical, parodic character of Defendants’ videos was clear, especially in light of
2 *Mattel, Inc.* and other controlling law and the dearth of legal authority Plaintiff
3 proffered to support any argument to the contrary.

4 Indeed, in *Mattel, Inc.*, the Ninth Circuit concluded, “It is not difficult to
5 see the commentary that [the defendant] intended or the harm that he perceived in
6 Barbie’s influence on gender roles and the position of women in society.
7 However one may feel about his message—whether he is wrong or right, whether
8 his methods are powerful or banal—his photographs parody Barbie and
9 everything Mattel’s doll has come to signify.” *Mattel, Inc.*, 353 F.3d at 802. The
10 same is true here.

11 As this court stated, Defendants’ videos “are parodies of the Northland
12 Video because they use segments of the Northland Video in alternation with
13 macabre images of abortion procedures to deride the original work’s message that
14 abortion is ‘normal’ and that good woman choose to terminate their pregnancy.
15 Akin to Barbie’s metamorphosis in *Mattel* as commentary on gender roles, here,
16 Defendants turn the Northland Video’s message ‘on its head’ (Order at 13-
17 14 [Doc No. 91]). This court further emphasized, “*Of course*, Defendants’
18 *abundantly clear* message is that deciding to have an abortion is anything but a
19 ‘normal decision’ made by ‘good women.’” (Order at 14 [Doc. No. 91]
20 [emphasis added]; *see also* Order at 17-18, n.7 [observing that “the accused
21 Videos are undoubtedly aimed at ridiculing the Northland Video”]). Finally, the
22 court stated, “Here, the accused Videos *fall squarely within* the *Campbell*
23 definition of parody because *there is no doubt* that a viewer could, and most
24 likely would, *reasonably perceive* the accused Videos to be highly critical
25 commentary on the original, aimed at ridiculing it.” (Order at 18 [Doc. No. 91]).

1 Thus, as acknowledged by this court, Plaintiff’s argument that Defendants’
2 videos were not critical parodies (and therefore not protected by the fair use
3 defense) was objectively unreasonable in light of the controlling law. (*See also*
4 Order at 16 [Doc. No. 91]) (“In sum, there is no question of fact that the accused
5 Videos use the original to comment on and criticize the work specifically, and in
6 the process, create a new work.”) (emphasis added).

7 In the final analysis, the parodic character of Defendants’ videos is
8 reasonably perceived, and Plaintiff was objectively unreasonable to argue
9 otherwise. *See Mattel, Inc.*, 2004 U.S. Dist. LEXIS 12469 at *5 (“Thus, the
10 parodic character of Defendant’s work is reasonably perceived and Plaintiff was
11 objectively unreasonable to make any other claim.”). And this is true particularly
12 in light of the fact that Plaintiff had the advantage of the *Mattel, Inc.* ruling prior
13 to filing this lawsuit.²

14 As to the nature of Plaintiff’s video, it is true that creative works are
15 “closer to the core of intended copyright protection” than informational and
16 functional works. *Campbell*, 510 U.S. at 586. However, as the Ninth Circuit has
17 “recognized in the past, ‘this nature of the copyrighted work factor typically has
18 not been terribly significant in the overall fair use balancing,’” *Mattel, Inc.*, 353
19 F.3d at 803 (quoting *Dr. Seuss Enters., L.P.*, 109 F.3d at 1402),” particularly in
20 the parody context, *see Campbell*, 510 U.S. at 586. Thus, Plaintiff would have

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22 ² Furthermore, as this court noted, controlling case law makes it clear that “the
23 commercial aspects of the accused work are less important when the work is
24 significantly transformative,” as in this case. (Order at 27 [Doc. No. 91]).
25 Consequently, it was objectively unreasonable to conclude that any “profit”
gained from Defendants’ use of the Northland Video would play any more than
“a minor part [in] the analysis in light of the transformative use of the material.”
(Order at 27 [Doc. No. 91]).

1 been objectively unreasonable to rely upon it. *See Mattel, Inc.*, 2004 U.S. Dist.
2 LEXIS 12469 at *5 (same).

3 Plaintiff also asserted that the amount and substantiality of the portion of its
4 video that Defendants used was more than required to convey their message—an
5 argument that was similarly made by the plaintiff in *Mattel, Inc.* But the Ninth
6 Circuit rejected the plaintiff’s argument there, as this court rejected it here,
7 finding that the plaintiff’s claim in *Mattel, Inc.* was “completely without merit
8 and would lead to absurd results.” *Mattel, Inc.*, 353 F.3d at 804. Consequently, it
9 was objectively unreasonable for Plaintiff to argue similarly in this case. (*See*
10 Order at 30 [Doc. No. 91]) (finding that the *Fisher [v. Dees]*, 794 F.2d 432 (9th
11 Cir. 1986)] factors militate in favor of Defendants”).

12 As to the factor regarding the effect of the use on the potential market,
13 Plaintiff’s argument that Defendants’ videos would impair Plaintiff’s ability to
14 license its video for derivative use was also objectively unreasonable. *See Mattel,*
15 *Inc.*, 353 at 805 (rejecting a similar argument). At the time Plaintiff filed suit, the
16 Supreme Court had established that “[t]he fact that a parody may impair the
17 market for derivative uses by the very effectiveness of its critical commentary is
18 no more relevant under copyright than the like threat to the original market”
19 *Campbell*, 510 U.S. at 593. As this court noted, “In this case, the harm Northland
20 claims to suffer is not cognizable because it stems from an ‘aim at garroting the
21 original,’ not a usurpation of the original’s market.” (Order at 32 [Doc. No. 91])
22 (quoting *Campbell*, 510 U.S. at 592). The court further stated that “it is
23 unfathomable to think that the accused Videos are a market substitute for the
24 Northland video. The purposes and messages of the two are diametrically
25 opposite.” (Order at 33 [Doc. No. 91]) (emphasis added). Consequently, the

1 court concluded that “the accused Videos cause no cognizable market harm to the
2 Northland video.” (Order at 33 [Doc. No. 91]).

3 In sum and similar to *Mattel, Inc.*, 2004 U.S. Dist. LEXIS 12469 at *6,
4 most, if not all, “of Plaintiff’s arguments lack factual or legal support, making
5 Plaintiff’s copyright claims objectively unreasonable and frivolous in light of the
6 fair use exception.”

7 **D. Plaintiff’s Claims Were Frivolous.**

8 A claim or defense is not frivolous if it is brought in good faith, in an
9 unsettled area of law, or with a reasonable likelihood of success. *See Lotus Dev.*
10 *Corp. v. Borland Int’l*, 140 F.3d 70, 74 (1st Cir. 1998). Here, Plaintiff is a for-
11 profit corporation with access to top legal representation. Indeed, Plaintiff hired
12 one of the largest (if not *the* largest) intellectual property law firms in the country:
13 Simpson Thacher & Bartlett, LLP. Plaintiff’s copyright claims were objectively
14 unreasonable, they were *not* in an unsettled area of law, and they had little
15 likelihood of success, as evidenced by the fact that Defendants prevailed on
16 summary judgment. In short, Plaintiff’s copyright claims were frivolous.

17 The frivolous nature of Plaintiff’s claims is further highlighted by the fact
18 that it sought to present Ruth Arick as an expert in this case—an effort that
19 caused Defendants to incur the cost of preparing for her deposition and then
20 traveling to Florida to take it. Ms. Arick had no recognizable expertise. And at
21 the close of her deposition, it was painfully evident that Plaintiff had no basis
22 whatsoever for offering her as an expert in any matter, let alone as an expert in
23 the area of market harm that Plaintiff was pursuing—the very type of harm that is
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1 *not* cognizable under the Copyright Act.³ See *Campbell*, 510 U.S. at 593.

2 **E. Plaintiff’s Motivation.**

3 Plaintiff’s conduct was not motivated by the protection of a valid interest.
4 Indeed, as the case law makes plain, the harm Plaintiff complained of is not
5 cognizable under the Copyright Act. *Campbell*, 510 U.S. at 593. Plaintiff had
6 access to sophisticated counsel who could have—and should have—determined
7 that such a suit was objectively unreasonable and frivolous. Instead, Plaintiff
8 forced Defendants into costly litigation to discourage them from using its video to
9 effectively target, mock, and ridicule the very message that Plaintiff was
10 attempting to convey. The fact that Plaintiff continues to post its video on
11 YouTube and on its own website and continues to use it during counseling
12 sessions with prospective abortion clients even *after* Defendants produced their
13 videos coupled with *no* evidence of any cognizable market harm whatsoever
14 illustrate that Plaintiff’s main purpose in this litigation was to silence Defendants’
15 speech, which is an illicit purpose that is directly at odds with the purpose of the
16 Copyright Act. *Mattel, Inc.*, 353 F.3d at 803 (finding that the defendant “created
17 the sort of social criticism and parodic speech protected by the First Amendment
18 and promoted by the Copyright Act”).

19 In sum, Plaintiff sought to misuse these judicial proceedings to immunize
20 its patently false message regarding the abortion services it provides from
21 criticism and commentary. This court properly rejected Plaintiff’s illicit attempt
22 to silence critical speech that was plainly protected by the fair use doctrine.

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25 ³ Indeed, Arick testified that she knew of not a single instance where a similar video was licensed to another abortion provider or anyone else for that matter. (Arick Dep. at 110:1-11 at Ex. 2) (Doc. No. 73-3).

1 **F. Compensation and Deterrence Warrant the Award of Fees and**
2 **Costs.**

3 As to the factors of compensation and deterrence, Plaintiff (a for-profit
4 abortion provider with multiple clinics) hired a large corporate law firm to bring
5 objectively unreasonable copyright claims against two nonprofit organizations,
6 whose primary purposes involve free speech activities, and several individuals
7 who work for these organizations. This is just the sort of situation in which this
8 court should award attorneys' fees to deter this type of litigation, which
9 contravenes the intent of the Copyright Act and undermines fundamental
10 principles of the First Amendment. *See Mattel, Inc.*, 2004 U.S. Dist. LEXIS
11 12469 at *7.

12 **II. Defendants' Fees and Costs Are Reasonable.**

13 Defendants' attorneys' fees, costs, and expenses are reasonable and fully
14 justifiable. "Reasonable fees" under a fee-shifting statute are typically
15 "calculated according to the prevailing market rates in the relevant community."
16 *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see, e.g., Missouri v. Jenkins*, 491
17 U.S. 274, 286 (1989) ("A reasonable attorney's fee under § 1988 is one calculated
18 on the basis of rates and practices prevailing in the relevant market, *i.e.*, 'in line
19 with those [rates] prevailing in the community for similar services by lawyers of
20 reasonably comparable skill, experience, and reputation,' and one that grants the
21 successful civil rights plaintiff a 'fully compensatory fee,' comparable to what 'is
22 traditional with attorneys compensated by a fee-paying client.'") (citations
23 omitted). "The initial estimate of a reasonable attorney's fee is properly
24 calculated by multiplying the number of hours reasonably expended on the
25 litigation times a reasonable hourly rate." *Blum*, 465 U.S. at 888.

1 Here, the hourly rates for Defendants' counsel, based on their skill,
2 experience, and reputation, are as follows: \$500 per hour for co-lead counsel
3 David Yerushalmi; \$450 per hour for co-lead counsel Robert J. Muise; and \$350
4 per hour for co-counsel Erin Mersino. The number of hours reasonably expended
5 are set forth in the exhibits attached to each respective attorney's declaration.
6 Accordingly, David Yerushalmi expended 256.86 hours for a total fee of
7 \$128,430.00 (Yerushalmi Decl. at ¶ 10 at Ex. 1); Robert Muise expended 377.32
8 hours for a total fee of \$169,794.00 (Muise Decl. at ¶ 13 at Ex. 2); and Erin
9 Mersino expended 96.2 hours for a total fee of \$33,670.00 (Mersino Decl. at ¶ 11
10 at Ex. 3). Consequently, the total fee award requested is \$331,894.00.

11 In addition to the attorneys' fees, Defendants have incurred recoverable
12 costs and expenses. These costs and expenses include, *inter alia*, the cost for
13 airfare, rental cars, transportation to and from the airport, hotels, and meals.
14 These costs and expenses were directly related to the necessary and reasonable
15 costs incurred in this litigation and are costs and expenses that would normally be
16 billed to a paying client.

17 In this motion, Defendants request that the court award them costs and
18 expenses in the amount of \$14,493.96, (Muise Decl. at ¶¶ 13-14, Ex. A, at Ex. 1),
19 which excludes the \$2,350.67 in costs that Defendants are requesting the Clerk of
20 Court to tax as part of their Bill of Costs, which was previously filed in this action
21 (*see* Doc. No. 93). Thus, the total amount of attorneys' fees, costs, and expenses
22 requested in this motion is \$346,387.96 (\$331,894.00 in fees plus \$14,493.96 in
23 costs and expenses).

1 **CONCLUSION**

2 Based on the foregoing, Defendants respectfully request that the court
3 award them their reasonable attorneys' fees and costs in the amount of
4 \$346,387.96.

5 Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2012, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record. Parties not on ECF system and requiring postal service: none.

Respectfully submitted,
/s/ Robert J. Muise
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