

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC)
DATABASES COPYRIGHT LITIGATION)
_____)

MDL No. 1379

**DECLARATION OF GARY S. FERGUS IN SUPPORT OF CLASS COUNSEL'S
APPLICATION FOR ATTORNEY'S FEES AND DISBURSEMENTS**

I, Gary S. Fergus, declare as follows:

1. I submit this declaration in support of my application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred in connection with this litigation, from August 2000 through March 28, 2014. At the time this action was commenced in August 2000, I was a partner in the firm of Brobeck Phleger & Harrison, LLP ("Brobeck") and I was one of the co-lead counsel in this class action. Working closely with then Hosie Frost Large & McArthur LLP, I investigated, researched and filed the original class action on behalf of Gerald Posner, Michael Castleman, Jay Feldman, Paula McDonald, P/K Associates, Inc., Miriam Raftery, Mary Sherman, Robin Vaughan, the Robert E. Treuhaft and Jessica L. Treuhaft (Jessica Mitford) Trust, and the National Writers Union, an associational plaintiff (the "Posner Plaintiffs"), which was then assigned to this court by the multi-district panel. I left Brobeck at the end of 2001 and started my own practice and continued to represent the same clients along with Brobeck until its demise in February 2003. Since the beginning of 2002, I have served as a member of the plaintiffs' executive committee on behalf of the class and more recently as A/B class counsel.

2. Since January 1, 2002, I have represented the class as well as the Posner Plaintiffs and have worked closely with the co-lead counsel for the class on all aspects of the case. Co-lead counsel were careful to allocate work to be done so as to minimize the duplication of effort and to ensure that all the work that needed to be done in connection with representation of the class was done promptly and efficiently. A brief summary of the work I did is set forth below.

3. I worked with class counsel's expert to develop damage model, coordinated discovery of data from defendants as part of mediation effort, drafted portions of mediation brief, prepared presentation to defendants on damage model, negotiated with defendants regarding data and information for mediation, participated in mediation negotiations, along with Diane Rice coordinated participation of National Writers Union in mediation, conducted legal research on key issues during negotiations, responded to questions from named class members throughout the process and negotiated with defense counsel on a variety of specific issues. During the period of time leading to the original settlement, this work included participation in weekly conference calls with co-lead counsel where assignments and strategy were discussed and determined, and assignments were made.

4. I worked with co-lead counsel on the pleadings and documentation of the settlement agreement and the claims administration memorandum for preliminary approval, the negotiations that led to the amended preliminary approval and the final approval hearing. I responded to questions from class members, as well as named class representatives when contacted. To the best of my information and belief, throughout the entire fourteen year period, I responded to all such enquiries whether by phone, mail or email.

5. For the next five years, I worked with co-lead counsel on the record on appeal, briefing, and preparation for the hearing before the Second Circuit Court of Appeals. I worked with the claims administrator, when requested, with respect to data issues. I also reviewed and commented on the petition for certiorari to the United States Supreme Court, provided comments on Supreme Court briefing, reviewed the brief from *amici* and from the Stanford Project, provided suggestions, comments and legal research regarding those briefs, and advised class representatives regarding the Supreme Court's decision.

6. After remand, for the next four years, I worked with co-lead counsel on mediation proposals from objectors, reviewed Garden City Group quality control and worked through issues raised by audit, reviewed the decision of the Second Circuit on remand, analyzed settlement options, consulted with lead counsel on numerous mediation proposals and responses,

discussed options with Kenneth Feinberg, worked with Garden City Group to obtain relevant data to facilitate mediated result, conducted direct negotiations with objectors on behalf of lead counsel, work through revised cost budget and proposals for implementing a revised settlement with lead counsel and counsel for category "C" claimants, and reviewed and edited final revised settlement agreement, expense allocation agreement and claims administration memorandum, as well as preliminary approval motion for revised settlement agreement.

7. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time spent by me, my associate and my paralegals. For the period January 1, 2002 through June 10, 2005, the lodestar calculation is based on hourly rates as of June 2005 for persons still employed by me at that time, and hourly rates in effect at the year of departure of all others. These are the same rates used in my prior declaration for the same period. For the period June 11, 2005 through March 28, 2014, the lodestar calculation is based on current hourly rates for me and hourly rates in effect at the time of departure for all others. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained in the course of my business and which are available at the request for the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

8. The hourly rate for the attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters at the time and which have either been approved by federal district courts in the Northern and Central Districts of California or reported to those courts and paid without objection.

9. From January 1, 2002 through June 10, 2005 the total number of hours expended by me and my staff was 533.20. The lodestar for this period is \$315,280. This is the same amount requested in my original declaration supporting an attorney's fee award. From June 11, 2005 through March 28, 2014, the total number of hours expended by me and my staff was 490.80 hours. The lodestar for this period is \$387,197. For the entire twelve year period January 1, 2002 through March 28, 2014, the total number of hours expended by me and my staff was 1,024.00 hours and a total lodestar of \$702,477.

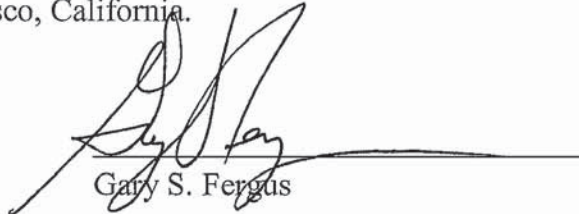
10. As detailed in Exhibit 2, from January 1, 2002 through March 28, 2014, I have incurred a total of \$39,128.41 in un-reimbursed expenses in connection with the prosecution of this litigation. This includes the \$28,041.95 requested in my original declaration in support of an award of attorneys' fees and expenses for the period January 1, 2002 through June 10, 2005 and an additional \$11,086.46 for unreimbursed expenses for the period June 11, 2005 through March 28, 2014.

11. The expenses incurred in this action are reflected on my books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

12. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is my current *curriculum vitae*.

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

Executed April 7, 2014 at San Francisco, California.



Gary S. Fergus

EXHIBIT 1

In re Literary Works In Electronic Databases Copyright Litigation, MDL No. 1379**FERGUS, A LAW OFFICE****TIME SUMMARY - January 1, 2002 through June 10, 2005**

Name	Total Hours	Billing Rate	Fees
PARTNERS:			
Gary S. Fergus	523.80	\$595.00	\$311,661.00
ATTORNEYS:			
Laura van Hoff	9.40	\$385.00	\$3,619.00
TOTAL FEES (1/1/2002 through 6/10/2005):			\$315,280.00

TIME SUMMARY - June 11, 2005 through March 28, 2014

Name	Total Hours	Billing Rate	Fees
PARTNERS:			
Gary S. Fergus	464.40	\$825.00	\$383,130.00
PARALEGALS:			
Gerard Arellano	17.30	\$155.00	\$2,681.50
Gerard Arellano	6.20	\$165.00	\$1,023.00
CASE CLERKS:			
Susan Ozawa	2.90	\$125.00	\$362.50
TOTAL FEES (6/11/2005 - 3/28/2014):			\$387,197.00

TIME SUMMARY - January 1, 2002 through March 28, 2014

Name	Total Hours	Average Billing Rate	Fees
PARTNERS:			
Gary S. Fergus	988.20	\$703.09	\$694,791.00
ATTORNEYS:			
Laura van Hoff	9.40	\$385.00	\$3,619.00
PARALEGALS:			
Gerard Arellano	17.30	\$155.00	\$2,681.50
Gerard Arellano	6.20	\$165.00	\$1,023.00
CASE CLERKS:			
Susan Ozawa	2.90	\$125.00	\$362.50
TOTAL FEES (1/1/2002 - 3/28/2014):			\$702,477.00

Exhibit 2
Expenses by Category
January 1, 2002 through March 28, 2014

<u>CATEGORIES:</u>	<u>AMOUNT:</u>
Internal Reproduction (copies)	\$1,709.50
Commercial Reproduction (outside copies)	\$1,830.48
Court Fees (filing costs, etc.)	\$0.00
Court Reporters and Transcripts	\$0.00
Computer Research (Lexis/Westlaw/Pacer)	\$4.95
Long Distance Telephone/Fax/Mobile Phone/Conference Call	\$775.56
Postage/Express Delivery/Messenger	\$354.50
Professional Fees (expert, investigator, accountant, etc.)	\$2,507.14
Travel (meals, lodging, transportation, etc.)	\$31,946.28
TOTAL EXPENSES:	\$39,128.41



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Gary Fergus is an experienced civil trial lawyer in both federal and state courts throughout the United States.

Mr. Fergus' experience includes high profile complex data intense complex trials in energy, mass tort, intellectual property and bankruptcy.

Mr. Fergus has been appointed by four federal bankruptcy courts to represent the interests of the fiduciaries responsible for over 30,000 unidentified individuals who over the next 30 years will have significant personal injury claims. *In re Western Asbestos*, 313 B.R. 456 (Bkrptcy N.D. Cal. 2004)(settled after trial for \$1.2 billion); *In re J.T. Thorpe*, Case No. LA02-14216BB (Bkrptcy. C.D. Cal. 2006)(settled after trial for \$250 million); *In re Thorpe Insulation*, U.S. Bankruptcy Court, Central District of California, Case No. LA07-19271BB (settled after trial for \$750 million); *In re Plant Insulation Company*, U.S. Bankruptcy Court Northern District of California, Case No. 09-31347 (\$135 million in settlements to date – case is still pending).

Mr. Fergus was appointed by the bankruptcy court in the Southern District of New York to represent the Enron bankruptcy estate as the primary trial lawyer in the California and Pacific Northwest Wholesale Electricity litigation involving over \$3.0 billion dollars in electricity trades that were challenged by federal, state and local governments as well as consumers.

Mr. Fergus represents inventors, copyright owners, trademark owners, patent holders in litigation in federal infringement actions throughout the United States as well as in licensing intellectual property. Mr. Fergus has national trial experience in product liability trials involving medical devices, pharmaceutical products, clinical trials of new biotechnology products, pesticides, product recall litigation as well as commercial disputes such as the value of over 2,500 miles of fiber optic cable.

Since 2008, Mr. Fergus has been selected each year in the bar Register of Preeminent Lawyers and has had an AV Peer Rating (Martindale-Hubbell's highest peer recognition for ethical standards and legal ability) for over 20 years.

Mr. Fergus started his career at Brobeck Phleger & Harrison in 1980 as an associate. He became a partner in 1986 and the Managing Partner, Products Liability, Insurance Coverage, Environmental and Anti-trust practice group from 1996-2000. In 2002, he started his own practice Fergus, a law office where he continues to practice.

Mr. Fergus graduated in 1976 with honors from Stanford University. He graduated from the University of Wisconsin Law School with honors in 1979 where he was a Moot Court Champion. He graduated from New York University School of Law with an LL.M *cum laude* in 1981.