

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
FAIRHOLME FUNDS, INC., et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 13-465C
)	(Judge Sweeney)
THE UNITED STATES,)	
)	
<i>Defendant.</i>)	
_____)	

**PLAINTIFFS' RESPONSE IN SUPPORT OF THE
APPORTIONMENT OF EXPENSES PURSUANT TO RCFC 37(a)(5)**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	2
ARGUMENT	7
I. RULE 37(a)'s TWIN GOALS OF DETERRENCE AND COMPENSATION BOTH CALL FOR THE APPORTIONMENT OF THE EXPENSES PLAINTIFFS INCURRED IN LITIGATING THE MOTION TO COMPEL.....	7
II. DEFENDANT WAS NOT SUBSTANTIALLY JUSTIFIED IN WITHHOLDING ANY OF THE DOCUMENTS COVERED BY PLAINTIFFS' MOTION TO COMPEL OTHER THAN THE EIGHT DOCUMENTS THAT THE FEDERAL CIRCUIT ULTIMATELY SHIELDED FROM PRODUCTION.	11
III. THE COURT SHOULD AWARD PLAINTIFFS THEIR REASONABLE FEES, ADJUSTED BY THE PROPORTION OF DOCUMENTS THAT THEIR MOTION SUCCESSFULLY PROMPTED THE GOVERNMENT TO PRODUCE.	18
CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Algonquin Heights v. United States</i> , 2008 WL 2019110 (Fed. Cl. Feb. 29, 2008).....	7
<i>Boca Investorings P’ship v. United States</i> , 1998 WL 647214 (D.D.C. Sept. 1, 1998).....	12, 13, 14
<i>Chevron U.S.A., Inc. v. United States</i> , 116 Fed. Cl. 202 (2014).....	19, 20, 22
<i>Coleman v. Schwarzenegger</i> , 2008 WL 4415324 (E.D. & N.D. Cal. Sept. 25, 2008)	14
<i>Council for Tribal Emp’t Rights v. United States</i> , 110 Fed. Cl. 244 (2013).....	11
<i>DL v. District of Columbia</i> , 251 F.R.D. 38 (D.D.C. 2008).....	10
<i>Embassy of Fed. Republic of Nigeria v. Ugwuonye</i> , 292 F.R.D. 53 (D.D.C. 2013).....	9
<i>Enterasys Networks, Inc. v. DNPG, LLC</i> , 2006 WL 1644598 (D.N.H. June 12, 2006).....	20
<i>Flame S.A. v. Industrial Carriers, Inc.</i> , 2014 WL 7185199 (E.D. Va. Dec. 16, 2014)	1, 11, 19, 22, 23
<i>Grant v. Sullivan</i> , 134 F.R.D. 107 (M.D. Pa. 1990)	15
<i>In re Subpoena</i> , 967 F.2d 630 (D.C. Cir. 1992).....	15
<i>In re United States</i> , 2017 WL 406243 (Fed. Cir. Jan. 30, 2017)	5, 13, 14, 16, 17, 22
<i>Johnson Int’l Co. v. Jackson Nat’l Life Ins. Co.</i> , 19 F.3d 431 (8th Cir. 1994).....	8
<i>Jumpp v. Jerkins</i> , 2011 WL 5325616 (D.N.J. Nov. 3, 2011)	7, 8
<i>M.A. Mortenson Co. v. United States</i> , 996 F.2d 1177 (Fed. Cir. 1993).....	18
<i>Mudron v. Brown & Brown, Inc.</i> , 2005 WL 645927 (N.D. Ill. Mar. 17, 2005)	20
<i>National Hockey League v. Metropolitan Hockey Club, Inc.</i> , 427 U.S. 639 (1976)	8
<i>Pierce v. Underwood</i> , 487 U.S. 552 (1988).....	12
<i>Poole ex rel. Elliott v. Textron, Inc.</i> , 192 F.R.D. 494 (D. Md. 2000).....	19, 23
<i>Precision Pine & Timber, Inc. v. United States</i> , 2001 WL 1819224 (Fed. Cl. Mar. 6, 2001)	7, 18, 19, 20, 21
<i>Pugach v. M & T Mortg. Corp.</i> , 564 F. Supp. 2d 153 (E.D.N.Y. 2008)	21
<i>Rich Prods. Corp. v. Bluemke</i> , 2014 WL 860364 (W.D.N.Y. Mar. 5, 2014).....	19, 23
<i>Rickels v. City of S. Bend</i> , 33 F.3d 785 (7th Cir. 1994)	20
<i>Romeo & Juliette Laser Hair Removal, Inc. v. Assara I, LLC</i> , 2013 WL 3322249 (S.D.N.Y. July 2, 2013)	7
<i>Ross-Hime Designs, Inc. v. United States</i> , 124 Fed. Cl. 69 (2015)	18
<i>SEC v. Yorkville Advisors, LLC</i> , 2015 WL 855796 (S.D.N.Y. Feb. 27, 2015)	18, 21
<i>Spirit Realty, LP v. GH&H Mableton, LLC</i> , 2017 WL 36364 (S.D.N.Y. Jan. 2, 2017).....	1, 2, 7
<i>Walker v. THI of New Mexico at Hobbs Ctr.</i> , 275 F.R.D. 332 (D.N.M. 2011)	19, 23

Rules

RCFC 37(a)(5)(C).....1, 7
RCFC 37(a)(5)(A)(ii).....1

INTRODUCTION

After a nearly two-year discovery period marked, for the Government's part, by chronic delays, and haphazard, conflicting privilege claims, Plaintiffs on November 23, 2015, filed a motion to compel. By the Government's own description, that motion covered "fifty-eight documents," and the Government, after a year's worth of briefing and argument in this Court and the Federal Circuit, prevented production only "with respect to eight" of them. Defendant's Response to the Court's September 20, 2016 Order Regarding Payment of Plaintiffs' Expenses at 3 n.1, 5 (Feb. 21, 2017), Doc. 356 ("Def.'s Fee Brief"). The Government has now been obliged to produce the other 50. What is more, under this Court's March 7 Order, the Government must now undertake a comprehensive second-look at the *entirety* of its privilege claims, producing any documents to which Plaintiffs are entitled in light of the disposition of Plaintiffs' motion to compel. Order at 2 (Mar. 7, 2017), Doc. 360 ("March 7 Order"). Based on our past experience in this case, the number of such documents is likely to be substantial.

In these circumstances, this Court's rules grant it authority to "apportion the reasonable expenses for the motion [to compel]," RCFC 37(a)(5)(C), unless the opposing party was "substantially justified" in withholding the documents that were ultimately produced or such an award would otherwise be unjust or inappropriate, *see* RCFC 37(a)(5)(A)(ii); *Flame S.A. v. Industrial Carriers, Inc.*, 2014 WL 7185199, at *3 (E.D. Va. Dec. 16, 2014) ("[FED. R. CIV. P.] 37(a)(5)(C) effectively incorporates the substantive standards of Rule 37(a)(5)(A)"). The Government should have produced these 50 documents, and many more like them, *years* ago, and it had no substantial justification for failing to do so—as it has essentially conceded with respect to most of them. And far from being unjust or "counter-productive," as the Government suggests, Def.'s Fee Brief 6, a fee award here would plainly further the two fundamental purposes of Rule 37(a): "to deter discovery abuses" and "to compensate the prevailing party for

expenses it would not have incurred had the sanctioned party conducted itself properly.” *Spirit Realty, LP v. GH&H Mableton, LLC*, 2017 WL 36364, at *1 (S.D.N.Y. Jan. 2, 2017). This Court should apportion the fees Plaintiffs incurred in securing the production of 50 documents that the Government ought to have willingly and properly handed over in 2014 or, at the latest, in 2015.

BACKGROUND

Plaintiffs brought this action to challenge the Government’s August 17, 2012, amendment to the Preferred Stock Purchase Agreements it had reached in 2008 with Fannie Mae and Freddie Mac, which had the effect of appropriating to Treasury *all* of Fannie’s and Freddie’s retained capital and future profits on a quarterly basis, effectively making the Government these companies’ sole equity holder. This “Net Worth Sweep,” Plaintiffs allege, entitles them to just compensation under the Fifth Amendment to the U.S. Constitution because it amounted to an uncompensated taking of the economic interests Plaintiffs had in Fannie and Freddie by virtue of their stock ownership. The Government moved to dismiss, but on February 26, 2014, this Court stayed briefing on that motion and ordered discovery into several topics, including: whether FHFA had acted as the United States and independently from Treasury when it entered the Net Worth Sweep; the Companies’ future profitability and whether Plaintiffs would be allowed to participate in it; and whether Plaintiffs had a reasonable investment-backed expectation in their stock. Order at 4 (Feb. 26, 2014), Doc. 32.

The Government waited almost five months after this Court’s February 26 Order before producing even a single document. And when the Government finally did begin producing documents, the great bulk of its productions were comprised of lengthy news compilations, public SEC filings, and other publicly available materials, much of which the Government produced in duplicate, in some instances dozens of times. In the months that followed, this Court

was forced to repeatedly extend the discovery deadlines on the basis of the Government's representations that it needed more time. And when Plaintiffs attempted to tee up the parties' disagreements over a number of privilege issues for the Court's resolution in February 2015—a *full year after discovery had begun*—the Government took the position that it was premature for the Court to consider virtually all of the disputed issues.

At last, in July 2015, the Government said that its document production was substantially complete, and it sent Plaintiffs privilege logs identifying approximately 12,000 documents it had withheld for privilege—roughly 20% of all documents the Government deemed responsive to Plaintiffs' requests. This submission triggered a four-month sequence in which the Government repeatedly confessed, upon further scrutiny, that a significant number of very important documents had been erroneously logged and in fact were not privileged. For instance, after Plaintiffs informed the Government that they intended to file a motion to compel, using a sample of 170 documents identified on the Government's privilege logs to frame the parties' broader discovery disputes, the Government promptly withdrew its privilege claims over 41 of those documents—and further stated that many of the remaining items were preliminary drafts of the documents over which it was no longer claiming privilege. Plaintiffs then sent the Government a second proposed sample of 88 documents identified on its privilege logs. Once again, the Government responded by confessing error with respect to 19 of these documents. Finally, on November 23, 2015, Plaintiffs filed their motion to compel, which focused on 58 supposedly privileged documents, selected by Plaintiffs to facilitate the broader resolution of the Government's privilege claims. But even this list of documents turned out to be a moving target: the Government yet again conceded that two of the 58 documents were not privileged and produced them to Plaintiffs *after the motion to compel had been filed*.

Most of the documents the Government turned over—under threat of a motion to compel—during this four-month back-and-forth were plainly not privileged. Among other materials, the Government belatedly produced the text of a publicly delivered speech and email correspondence about the Net Worth Sweep between a White House official and third parties not affiliated with the federal government.

Even more troubling, some of these materials are also among the most significant and probative documents the Government has produced to date. These documents include:

- A document revealing that on May 29, 2012, three months *before* announcing the Net Worth Sweep, Treasury and its consultants discussed “[r]eturning the deferred tax asset to the GSE balance sheets,” UST00405880—a step that caused the Companies to report tens of billions of dollars in profits that were promptly swept to Treasury under the Net Worth Sweep.
- A memo that lists specific subjects on which Treasury staff sought detailed information from Fannie’s and Freddie’s highest ranking executives days before the Net Worth Sweep was announced. At the top of that list was “how quickly [the Companies] forecast releasing credit reserves,” UST00556835, which would lead Fannie and Freddie to report substantial profits that would dramatically improve their safety and soundness.
- A “Q&A” document, which was prepared with input from senior Treasury officials to help Treasury staff answer difficult questions about the Third Amendment. This document reveals that Treasury anticipated that the change would generate “near-term earnings to exceed the 10% dividend,” i.e., additional revenue for the Government, thus debunking the Government’s explanations for the Net Worth Sweep. UST00554581, UST00554590.

On September 20, 2016, this Court granted Plaintiffs’ motion in its entirety. Opinion & Order at 80 (Sept. 20, 2016), reissued as Doc. 340 (“September 20 Opinion”). While Plaintiffs’ motion put forward multiple alternative grounds for requiring the production of the disputed documents—including categorical legal arguments against the Government’s privilege claims—the Court largely concluded that it was unnecessary to reach these issues because Plaintiffs had made a sufficient showing of need to overcome the qualified deliberative process, presidential communications, and bank examination privileges that the Government asserted. On March 7,

2017, the Court clarified that it was also granting another important form of relief requested by Plaintiffs: an order requiring the Government to comprehensively review its privilege logs, in light of this Court's and the Federal Circuit's rulings, and produce any documents that it concludes, based on this second look, are not privileged. March 7 Order at 2.

The Government sought appellate review of the Court's September 20 opinion, filing a petition for a writ of mandamus in the U.S. Court of Appeals for the Federal Circuit. On January 30, that court refused to disturb this Court's decision with respect to the bulk of the documents in question. The Federal Circuit began by noting that the Government did not specifically challenge this Court's rulings with respect to many of the documents in question: "the government fails to offer specific objections to the Claims Court's findings on most of the documents at issue." *In re United States*, --F. App'x--, 2017 WL 406243, at *4 (Fed. Cir. Jan. 30, 2017). Indeed, the Government "only offer[ed] specific arguments as to a handful of the documents that were the subject of the discovery order"—16 of the 58, to be precise. *Id.* Because "mandamus relief cannot be ordered in the absence of arguments to support it," the appellate court thus declined to even address the remaining 40 documents that were apparently no longer in dispute. *Id.*

With respect to the sixteen documents that the Government *did* specifically address, the Federal Circuit ultimately vacated this Court's opinion only as to eight of them—about 14% of the total 58 documents presented for judicial resolution by Plaintiffs' motion to compel—including all four of the documents Treasury claimed were sheltered by the presidential communications privilege. With respect to the other eight documents, which the Government argued were protected by the deliberative process privilege and the bank examination privilege, the appellate court agreed with this Court that the documents in question either were not actually deliberative (three documents: UST00492699, UST00478535, and UST00384501) or that any

privilege was overcome by Plaintiffs' evidentiary need (five documents: FHFA00096631, FHFA00096634, FHFA00096636, FHFA00096638, and UST00389662).

Before the mandamus proceedings, this Court, in its September 20 Opinion, had ordered the Government to explain why it should not be required to pay Plaintiffs' expenses under Rule 37(a)(5)(A)—that portion of Rule 37(a)(5) that applies where a party's motion to compel has been granted in its entirety. September 20 Opinion at 80. After the conclusion of those proceedings, Treasury filed a brief in this Court arguing that an award of fees was no longer appropriate under Rule 37(a)(5)(A), given the Federal Circuit's ruling. Def.'s Fee Brief 1. The Government further argued that the Court should not apportion Plaintiffs' fees under Rule 37(a)(5)(C)—the subsection governing the shifting of fees where a motion to compel has been "granted in part and denied in part"—because an award of fees here would "not advance the resolution of the case" and because its privilege claims were in any event "substantially justified." Def.'s Fee Brief 6, 8.

Because the Federal Circuit's January 30 Order directed this Court to vacate its earlier order with respect to eight documents, Plaintiffs agree that a fee award for those specific documents is no longer appropriate. But this Court should nonetheless grant such an award pursuant to Subsection (a)(5)(C).¹ An award would plainly further the goals behind Rule 37(a)'s "loser pays" mandate; and Defendant's vague, shifting assertions of privilege throughout this litigation have been anything but substantially justified.

¹ While Plaintiffs have not moved for such relief because of this case's unique procedural posture, should this Court conclude that an affirmative motion is required, Plaintiffs respectfully request that this brief be deemed a motion for fees pursuant to Rule 37(a)(5)(C).

ARGUMENT

I. RULE 37(a)'S TWIN GOALS OF DETERRENCE AND COMPENSATION BOTH CALL FOR THE APPORTIONMENT OF THE EXPENSES PLAINTIFFS INCURRED IN LITIGATING THE MOTION TO COMPEL.

RCFC 37(a)(5)(C) provides that where a motion to compel discovery “is granted in part and denied in part, the court may . . . apportion the reasonable expenses for the motion.” “The great operative principle of Rule 37 is that the loser pays the expenses incurred in making or opposing a motion to compel.” *Romeo & Juliette Laser Hair Removal, Inc. v. Assara I, LLC*, 2013 WL 3322249, at *3 (S.D.N.Y. July 2, 2013), *aff’d*, 2017 WL 627494 (2d Cir. Feb. 14, 2017) (brackets and quotation marks omitted).² As this Court has previously recognized, this fee-shifting directive was designed to further two goals: “(1) to deter the Defendant from engaging in dilatory conduct in responding to discovery requests in the future, and (2) to compensate the Plaintiff for the additional expenses that it incurred in securing the Defendant’s full response to its discovery requests.” *Precision Pine & Timber, Inc. v. United States*, 2001 WL 1819224, at *9 (Fed. Cl. Mar. 6, 2001); *accord Spirit Realty, LP v. GH&H Mableton, LLC*, 2017 WL 36364, at *1 (S.D.N.Y. Jan. 2, 2017).

Here, both of Rule 37(a)’s goals would be furthered by the apportionment of Plaintiffs’ expenses related to their motion to compel. Most obviously, a fee award would serve to make Plaintiffs whole for the costs they were forced to incur in order to obtain at least fifty responsive (and in some cases, very important) documents that the Government *should have voluntarily produced years ago*. See *Jumpp v. Jerkins*, 2011 WL 5325616, at *4 (D.N.J. Nov. 3, 2011) (one

² In this brief we occasionally rely upon persuasive authority from the federal courts interpreting Federal Rule of Civil Procedure 37, since RCFC 37 “is virtually identical to Rule 37 of the Federal Rules of Civil Procedure” and decisions interpreting that federal rule are thus “persuasive in interpreting RCFC 37.” *Algonquin Heights v. United States*, 2008 WL 2019110, at *1 (Fed. Cl. Feb. 29, 2008).

purpose of Rule 37(a) is to “compensate for the collateral damage that, by a party’s actions, is levied on a party that must move to enforce the rule”). As detailed above, after this Court ordered discovery on February 26, 2014, the Government embarked on a campaign of attrition. In the ensuing years and months it resorted to delaying tactics, massive dumps of publicly-available, duplicative documents, and a flurry of shifting, overbroad privilege claims. Nearly 37 months later, Plaintiffs have finally obtained rulings from both this Court and the Federal Circuit that with respect to at least 50 documents—and potentially many thousands more, under this Court’s March 7 order directing the Government to comprehensively reconsider its privilege logs—the Government’s assertions of privilege have been unfounded and inappropriate from the beginning. Plaintiffs ought not be forced to bear the expenses (described in detail below) that “would not have been sustained had the [Government] conducted itself properly.” *Johnson Int’l Co. v. Jackson Nat’l Life Ins. Co.*, 19 F.3d 431, 439 n.10 (8th Cir. 1994) (quotation marks omitted).

A fee award here would also have the deterrent effect that the drafters of Rule 37(a) intended. *See National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (discovery sanctions designed “to deter those who might be tempted to such conduct in the absence of such a deterrent”). If the Government were forced to bear the costs it imposed on Plaintiffs by improperly withholding the documents in question, it would likely begin to approach its discovery obligations—and in particular its privilege claims, which to-date have been haphazard, inconsistent, and vague at best—with a bit more circumspection. That deterrent effect would have specific value in this case, since, as noted above, the Government has now been ordered to undertake a comprehensive second-look at its existing privilege log, under this Court’s March 7 Order. And of course the apportionment of fees under Rule 37(a) *always* serves

the goal of *general* deterrence: “to deter similar misconduct in the future.” *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 292 F.R.D. 53, 57 (D.D.C. 2013).

The Government resists these conclusions on two grounds. Neither is persuasive. First, it argues that “apportioning expenses would be counter-productive to the Court’s resolution of plaintiffs’ claims” because “discovery has been ongoing for nearly three years, and, given that the Government produced the documents for which the Federal Circuit declined to grant mandamus, the Government anticipates no further proceedings regarding plaintiffs’ motion to compel.” Def.’s Fee Brief 6. But this argument is based on a mistaken factual premise: that the Government’s discovery obligations have essentially concluded. To the contrary, as this Court clarified in its March 7 Order, while the resolution of the motion to compel may have ended the parties’ controversy over the 58 specific documents listed in that motion, those documents were merely “a sample of the approximately 12,000 documents that defendant claimed were privileged,” and the Government must now undertake a comprehensive “review [of] its privilege log,” as required by that Order. March 7 Order 1–2. What is more, while the limited discovery authorized by this Court’s February 26, 2014, Order is now drawing to a close, should this Court deny the Government’s motion to dismiss, the parties will then proceed to plenary discovery, including factual and expert discovery. That discovery is likely to be substantial—and is likely to raise many privilege issues similar to those just resolved in the context of Plaintiffs’ motion to compel. It is thus simply not true that the deterrent effect created by a fee award “would not advance the resolution of the case.” Def.’s Fee Brief 6. And in any event, as noted above, such an award would indisputably serve the general deterrent effect of curbing similar discovery abuses by *future* parties. Finally, it is difficult to take seriously the Government’s complaint that the apportionment of fees would “[p]rotract” a process of “discovery [which] has been ongoing

for nearly three years,” *id.*, given that the slow pace of discovery in this case is solely attributable to *the Government’s* tactics.

Second, Treasury advances a grab-bag of reasons why, it says, “apportioning expenses in this case would be unjust.” *Id.* at 11. The train of the Government’s reasoning is rather convoluted, on this point, but the gist seems to be that (1) a fee award “would not advance the judicial-economy rationale behind Rule 37(a)(5),” *id.*, (2) such an award “would be especially unjust” because some of our document requests threatened to “interfere with the decision-making process of the President and executive agencies,” *id.* at 12, and (3) the Government in any event acted properly to advance its side of “a reasonable disagreement . . . concerning the scope of these privileges” and to “narrow[] the universe of specific documents as to which there were genuine disputes,” *id.* The first of these points is merely a rehash of the Government’s argument that a fee award “would not serve the . . . purpose of deterring unwarranted discovery objections,” *id.*, and it fails for the reasons cited above. The third point, similarly, is nothing more than a re-framed argument that the Government’s privilege claims were “substantially justified”—a point we address in the next section.

That leaves the second assertion: that the Government is somehow exempt from Rule 37(a)’s mandate, here, because its claims of privilege were based on the presidential communications and deliberative process privileges. That is not the law, obviously. *See, e.g., DL v. District of Columbia*, 251 F.R.D. 38, 45, 50 (D.D.C. 2008) (awarding fees after rejecting invocation of the deliberative process privilege). And in any event, this argument dramatically misunderstands the nature of the Court’s inquiry in the present context. As further described below, Plaintiffs do not seek to recover whatever share of fees the Court apportions to the documents that the Federal Circuit ultimately *protected* from disclosure based on these

privileges, and so the fact that the Government’s privilege claims to this limited extent “merited mandamus relief,” Def.’s Fee Brief 12, is utterly irrelevant. Instead, we seek only that share of expenses incurred in obtaining the 50 documents that this Court (undisturbed by the Federal Circuit) has concluded are *not* properly shielded by these privileges. With respect to these 50 documents, the Court has already held that to the extent the privileges in question apply at all, any “interfere[nce] with the decision-making process of . . . executive agencies,” *id.*, is clearly justified by the Plaintiffs’ need for the documents. Any “threat” posed by their production thus cannot possibly be given weight in Rule 37(a)’s calculus.

Far from being “unjust” or “counter-productive,” then, *id.* at 6, the apportionment of Plaintiffs’ fees under Rule 37(a)(5)(C) would plainly serve both of that provision’s important purposes.

II. DEFENDANT WAS NOT SUBSTANTIALLY JUSTIFIED IN WITHHOLDING ANY OF THE DOCUMENTS COVERED BY PLAINTIFFS’ MOTION TO COMPEL OTHER THAN THE EIGHT DOCUMENTS THAT THE FEDERAL CIRCUIT ULTIMATELY SHIELDED FROM PRODUCTION.

Defendant also argues that the Court should not apportion fees under Rule 37(a)(5)(A) because its decision to withhold the 50 documents it ultimately was compelled to produce was “substantially justified.” Def.’s Fee Brief 8; *see also Flame S.A. v. Industrial Carriers, Inc.*, 2014 WL 7185199, at *3 (E.D. Va. Dec. 16, 2014) (noting that “[FED. R. CIV. P.] 37(a)(5)(C) effectively incorporates the substantive standards of Rule 37(a)(5)(A)” including that expenses should not be imposed upon a party who’s “nondisclosure or objection was substantially justified”). A position “is substantially justified if there is a genuine dispute as to proper resolution or if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact.” *Council for Tribal Emp’t Rights v. United States*, 110 Fed. Cl. 244, 250 (2013) (quotation marks omitted). While this standard does not mean “justified to a high degree,” *id.*,

neither is the bar so low that a party's conduct is substantially justified so long as it is "merely undeserving of sanctions for frivolousness," since "that is assuredly not the standard for Government litigation of which a reasonable person would approve." *Pierce v. Underwood*, 487 U.S. 552, 566 (1988). And importantly, "a party's position is not substantially justified . . . if the party concedes the validity of his opponent's position after causing everyone time and money." *Boca Investering P'ship v. United States*, 1998 WL 647214, at *2 (D.D.C. Sept. 1, 1998). Here, the Government had no "substantial justification" for its efforts to shield from production the 50 documents that were ultimately produced only after Plaintiffs forced its hand by filing the motion to compel.

A. As an initial matter, it must again be repeated that Plaintiffs were in a position to *file* their motion to compel only after enduring nearly two years of unnecessary delay. The Government's tactics included: (1) the production of hundreds of thousands of pages of barely relevant, publicly available materials, many of which were produced in duplicate, in some instances a dozen or more times, and (2) the submission of multiple, inconsistent, chronically vague privilege logs that were at the same time both obviously over-inclusive (listing many documents that were not plausibly privileged) and obviously incomplete (failing, in one instance, to include over 2,700 documents that the Government had nonetheless withheld as privileged. *See* E-mail from Vincent Colatriano to Elizabeth Hosford at A043 (July 30, 2015, 10:20 AM EST) (attached to Plaintiff's Motion to Compel as Ex. 7, Doc. 270-1)).

Most troublingly, when Plaintiffs were endeavoring to reach agreement with the Government over a sample of disputed documents that could be submitted to this Court to tee up the resolution of the parties' privilege disputes, each time an inquiry by Plaintiffs prompted the Government to re-examine some portion of its privilege log, it responded by *producing large*

numbers of logged documents that were not even plausibly privileged, several of which were highly significant. Of course, the discovery process often involves some give-and-take, as the parties reevaluate their positions around the margins in response to each other's arguments. But the *volume* of non-privileged documents the Government *repeatedly* produced under threat of a motion to compel is different in kind, not simply in degree, from this ordinary process of good-faith reevaluation. Discovery is not a shell-game in which the plaintiff is left to guess which portion of the defendant's several-hundred-page privilege log hides the highest number of non-privileged, damaging documents. Defendant's three-year-long campaign to frustrate Plaintiffs' discovery efforts was not "substantially justified."

B. Moving specifically to the 50 documents that the Government produced only after Plaintiffs moved to compel, the Government's resistance was plainly not "substantially justified" concerning at least 42 of those documents, because it *ultimately forfeited*, either explicitly or implicitly, any argument that there was a basis for refusing to produce those documents. The Government confessed error with respect to two of the 58 documents right out of the starting block, noting in its Response Brief that they were improperly withheld, *see* Defendant's Response in Opposition to Plaintiffs' Motion to Compel Production at 21 n.8 (Jan. 21, 2016), Doc. 284, and producing them before this Court ruled on the motion, *see* March 7 Order at 1. And it implicitly conceded that it had no compelling reason for withholding 40 more of the documents in question when it declined to offer *any argument* concerning those documents in its mandamus petition to the Federal Circuit: for as that court itself noted, "[o]bviously, mandamus relief cannot be ordered in the absence of arguments to support it." *In re United States*, 2017 WL 406243, at *4. Because "a party's position is not substantially justified . . . if the party concedes the validity of his opponent's position after causing everyone time and money," *Boca*

Investerings, 1998 WL 647214, at *2, Plaintiffs are clearly entitled to receive an award of the expenses they incurred in securing these 42 documents.

C. Nor was Defendant's position substantially justified regarding the eight documents that it tried—but failed—to persuade the Federal Circuit to shield from discovery. With respect to three of those documents—UST00492699, UST00478535, and UST00384501—the Federal Circuit left in place this Court's determination that they were wholly outside the scope of the deliberative process privilege because they were not even deliberative. One document, for instance, is “a draft speech to be delivered by the Counselor to the Treasury Secretary for Housing Finance Policy” which did “not contain any subjective recommendations or the like about agency policy.” *In re United States*, 2017 WL 406243, at *9. The other two documents do not discuss “substantive policy decisions” at all, but rather “concern[] how best to publicly announce the PSPA amendment news”—hardly the type of discussion “the [deliberative process] privilege was intended to enhance through frank discussion.” *Id.* The Government had no substantial justification for refusing to produce documents so far outside the scope of the deliberative process privilege as these. *See Coleman v. Schwarzenegger*, 2008 WL 4415324, at *3, *4 (E.D. & N.D. Cal. Sept. 25, 2008) (awarding expenses under Rule 37(a)(5) where *in camera* review indicated withheld documents were outside the scope of the deliberative process privilege).

So too for the remaining five documents. As to these documents, this Court (and the Federal Circuit) determined that while they may fall within the scope of either the bank examination or deliberative process privilege, either privilege is overcome in this instance by Plaintiffs' evidentiary need. These documents, the Court held, directly relate to the disputed issues that are at the heart of the discovery it authorized in 2014, September 20 Opinion at 37,

62. Moreover, “there is no other source of evidence available to plaintiffs that would similarly inform their understanding” of the issues in question. *Id.* at 37; *see also id.* at 63. And “neither party disputes the importance of [this] case.” *Id.* at 37; *see also id.* at 63. Accordingly, the Court concluded, “plaintiffs’ evidentiary need for the information outweighs defendant’s interest in preventing the documents’ disclosure.” *Id.* at 37; *see also id.* at 63. The deliberative process and bank examination privileges, even where they apply, are qualified privileges. *In re Subpoena*, 967 F.2d 630, 634 (D.C. Cir. 1992). The Government had no substantial justification for disregarding those qualifications and withholding these documents notwithstanding Plaintiffs’ acute evidentiary need. *See Grant v. Sullivan*, 134 F.R.D. 107, 110, 114, 115 (M.D. Pa. 1990) (awarding expenses where Defendants’ refusal to produce documents protected by the deliberative process privilege “was not substantially justified” because the plaintiff’s need outweighed “the harm to the Defendant of producing the documents”).

D. The Government offers a number of arguments in support of its suggestion that its efforts to resist Plaintiffs’ motion to compel were “substantially justified,” but none withstands scrutiny.

The Government begins by noting that it “prevailed . . . as to all documents protected by the presidential communications privilege,” when “the Federal Circuit . . . ordered mandamus relief with respect to all documents over which [the Government] asserted that privilege.” Def.’s Fee Brief 8, 9. True but irrelevant. It is because “the Federal Circuit confirmed that the Government’s position regarding the presidential communications privilege was legally and factually correct,” *id.* at 9, that Plaintiffs seek to recover only a *portion* of their fees, under Rule 37(a)(5)(C), rather than the *entirety* of their fees, under 37(a)(5)(A). Indeed, as noted below, Plaintiffs’ proposal regarding how to account for the Federal Circuit’s ruling on the presidential

communications privilege is deliberately conservative. Accordingly, while the Government's victory with respect to the four documents protected by the presidential communications privilege should be taken into account in determining the appropriate *apportionment* of fees, as described below, it does not *also* count against the recovery of that share of the expenses related to the part of the dispute that the Government *lost*. The Government cannot cancel out its losses by double-counting its wins.

The Government next contends that either this Court or the Federal Circuit “largely accepted” its “legal arguments,” even though both courts ultimately concluded that 50 of the documents in question should be produced. Def.’s Fee Brief 8. Thus, it emphasizes that “the Federal Circuit affirmed this Court’s ruling that FHFA may invoke the deliberative process privilege,” that this court “rejected plaintiffs’ argument that documents containing financial information” are unprotected, and that it further “acknowledged that documents dated after the decision in question may be protected by the deliberative process privilege” in some circumstances. *Id.* at 9, 10. What the Government cannot say, however, is that it *actually prevailed in preventing the discovery of these documents*. Indeed, with respect to the great bulk of the documents in question—42 of the 50—the Government itself either acknowledged that its “legal arguments” were insufficient to prevent disclosure or forfeited any argument to the contrary. That is dispositive.

To successfully shield the documents in question from discovery based on its claimed privileges, the Government had to prevail on two separate issues: (1) “that the invoked privilege applies” and (2) that “the benefits of disclosure will [not], on balance, outweigh the harms.” *In re United States*, 2017 WL 406243, at *4. With respect to 42 of the documents in question, the Government did not succeed on *either* of these fronts because it ultimately *forfeited*—either

before or in the midst of the mandamus proceeding—any argument that those 42 documents could be withheld. *See supra*, pp. 13–14. But even with regard to the eight documents that it unsuccessfully sought to protect from discovery before both this Court and the Federal Circuit, the fact that the Government, in some cases, was able to satisfy the *first* of these prongs does not somehow negate its loss on the *second*, for to show that it was “justified” in withholding these eight documents it needed to prevail with respect to *both*. Just as a tort plaintiff cannot make up for his failure to prove negligence by adducing overwhelming evidence that the defendant owed him a duty and that he suffered damages, the fact that the Government won a few skirmishes over the scope of the privileges it asserted is irrelevant, given that it ultimately lost the war and was forced to produce the documents in question.

Finally, the Government argues that a fee award “is also unwarranted because the declarations we submitted in support of our privilege assertions were consistent with declarations this Court has previously accepted in support of assertions of governmental privileges, and we believed we satisfied the requirements for invoking these privileges.” Def.’s Fee Brief 10. Both parts of this argument fail.

To begin, the fact that other cases have upheld privilege claims based on “declarations that resemble the declarations provided in this case,” *id.* at 11, has no bearing on whether the Government was substantially justified in withholding the documents at issue in *this* case. As the Federal Circuit noted, the qualified privileges claimed by Defendant are highly “case-specific”—and indeed, they depend on a balancing analysis that must be conducted “on a document-by-document basis.” *In re United States*, 2017 WL 406243, at *4. Just because the declarations the Government filed in this case parroted declarations that this Court has found sufficient in *other* cases—asserting privilege against the production of different documents requested by different

plaintiffs in relation to different claims—does not somehow indicate that the scales must tip the same way in *this* case. Nor, finally, is there any merit to the Government’s assertion that “we *believed* we satisfied the requirements for invoking these privileges.” Def.’s Fee Brief 10 (emphasis added). For “[s]ubstantial justification for refusing discovery is determined according to an objective standard of reasonableness,” and it is thus utterly irrelevant whether the defendant “had a subjective good faith belief that its response was substantially justified.” *SEC v. Yorkville Advisors, LLC*, 2015 WL 855796, at *7, *8 (S.D.N.Y. Feb. 27, 2015) (quotation marks omitted).

III. THE COURT SHOULD AWARD PLAINTIFFS THEIR REASONABLE FEES, ADJUSTED BY THE PROPORTION OF DOCUMENTS THAT THEIR MOTION SUCCESSFULLY PROMPTED THE GOVERNMENT TO PRODUCE.

For the above reasons, this Court should award Plaintiffs the fees they incurred in securing discovery of the 50 documents the Government was ultimately forced to produce because of the filing of the motion to compel. Because some share of the total fees Plaintiffs expended in relation to that motion are attributable to the eight documents that the Federal Circuit ultimately shielded from production, however, Rule 37 requires the Court to “apportion” those total expenses, awarding only the amount it deems related that part of the motion on which Plaintiffs prevailed.

While determining the correct apportionment is somewhat subjective and ultimately left to this Court’s “broad discretion,” *Ross-Hime Designs, Inc. v. United States*, 124 Fed. Cl. 69, 79 (2015), most courts approach the inquiry in essentially two steps: First, they determine the “lodestar” amount—the total amount of fees that the prevailing party reasonably expended in relation to the motion to compel and that “would not have been incurred but for [the sanctioned conduct].” *M.A. Mortenson Co. v. United States*, 996 F.2d 1177, 1179 (Fed. Cir. 1993); *see also Precision Pine & Timber, Inc. v. United States*, 2001 WL 1819224, at *10 (Fed. Cl. Mar. 6, 2001). Second, they determine the party’s “win ratio”—the percentage of specific documents (or

other discoverable information) with respect to which the party ultimately prevailed. *See Chevron U.S.A., Inc. v. United States*, 116 Fed. Cl. 202, 232–33 (2014) (awarding “[f]orty-two percent of [Plaintiff]’s legal costs” because “the court has determined that at least 42% of the folders analyzed contained an improper assertion of privilege”); *see also Flame S.A. v. Industrial Carriers, Inc.*, 2014 WL 7185199, at *9–*10 (E.D. Va. Dec. 16, 2014); *Rich Prods. Corp. v. Bluemke*, 2014 WL 860364, at *4 (W.D.N.Y. Mar. 5, 2014); *Walker v. THI of New Mexico at Hobbs Ctr.*, 275 F.R.D. 332, 338 (D.N.M. 2011); *Poole ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 499 (D. Md. 2000).³ That percentage, multiplied by the lodestar, results in the total amount of expenses properly awarded under Rule 37(a)(5)(C).

Here, as briefly described below and documented in detail in the accompanying declaration and exhibits, Plaintiffs submit that the “lodestar” amount is \$245,995.50 and their win ratio is 86%. Accordingly, we respectfully request an award of \$211,556.13.

A. As this Court has previously explained, the “lodestar” is determined by “tak[ing] the number of hours reasonably expended as a result of the sanctioned conduct multiplied by a reasonable hourly rate.” *Precision Pine & Timber*, 2001 WL 1819224, at *10. As detailed in the accompanying declaration and the exhibits appended to it, Plaintiffs’ attorneys and other professionals have to-date collectively spent 487.00 hours litigating the motion to compel and the

³ Where the party opposing discovery was “substantially justified” in withholding some documents that it nonetheless was ultimately compelled to produce, a third step is necessary: adjusting the “win ratio” downward by subtracting from the numerator those documents that the defendant was substantially justified in withholding until ordered to produce. As argued above, we do not believe the Government was substantially justified in withholding any of the 50 documents at issue, *see supra* pp. 11–18; accordingly, this third step is unnecessary in this case. Should the Court disagree, however, and conclude that the Government’s conduct was substantially justified with respect to one or more of these 50 documents, rather than denying the apportionment of fees outright, it should merely factor those documents into its determination of the appropriate apportionment. *See Walker*, 275 F.R.D. at 338.

other ensuing motions and petitions. Declaration of David H. Thompson (Mar. 17, 2017) (“Thompson Decl.”), Exhibit A at 1. That includes the hours we spent performing necessary legal research and drafting the motion and reply brief. We have excluded from this total, however, any billing entries that were expressly related to the presidential communications privilege, to account for the adverse ruling on that specific issue before the Federal Circuit.

This tally of hours does include the time we spent briefing the Government’s mandamus petition. This Court and numerous others have consistently held that such costs are compensable under Rule 37(a), *see Chevron*, 116 Fed. Cl. at 232 (awarding expenses incurred through “the date of the United States Court of Appeals for the Federal Circuit’s decision [on mandamus]”), since part of the rationale of Rule 37(a) is “that the victor should be made whole—should be as well off as if the opponent had respected his legal rights in the first place,” and “[t]his cannot be accomplished if the victor must pay for the appeal out of his own pocket,” *Rickels v. City of S. Bend*, 33 F.3d 785, 787 (7th Cir. 1994); *accord Mudron v. Brown & Brown, Inc.*, 2005 WL 645927, at *3 (N.D. Ill. Mar. 17, 2005); *see also Enterasys Networks, Inc. v. DNPGL, LLC*, 2006 WL 1644598, at *2 (D.N.H. June 12, 2006).

For similar reasons, this tally also includes expenses Plaintiffs have incurred litigating the instant dispute about whether they should receive a fee award under Rule 37(a)—so-called “fees on fees.” *See Precision Pine & Timber*, 2001 WL 1819224, at *10 (“[I]t is right and just for the Defendant to pay for the fees and expenses of the motion for sanctions which likely never would have been filed had the Defendant conducted discovery in a responsible manner.”). If a fee award is granted, Plaintiffs respectfully request the opportunity to file a supplemental declaration documenting the additional expenses incurred in securing the fee award.

The accompanying declaration also sets forth the hourly rates the attorneys and support staff who worked on this matter received for their work. Thompson Decl. ¶¶ 9(a)–(f), Exhibit A at 1. While “[t]he determination of a reasonable rate in calculating a reasonable fee is made by reference to the marketplace,” the appropriate “starting point for calculating fees is the attorney’s customary billing rate.” *Precision Pine & Timber*, 2001 WL 1819224, at *12; *see also SEC v. Yorkville Advisors, LLC*, 2015 WL 855796, at *16 (S.D.N.Y. Feb. 27, 2015) (“The hourly rates used in making a fee award should be what a reasonable, paying client would be willing to pay.” (quotation marks omitted)); *Pugach v. M & T Mortg. Corp.*, 564 F. Supp. 2d 153, 157 (E.D.N.Y. 2008) (“[T]he actual fee arrangement between a party and its counsel is relevant evidence of what constitutes a ‘reasonable’ fee,” since “negotiation and payment of fees by sophisticated clients are solid evidence of their reasonableness in the market.”). As also detailed in the attached declaration, the rates we billed in this matter are well within the range of rates customarily billed—and customarily paid by “a reasonable, paying client,” *Yorkville Advisors*, 2015 WL 855796, at *16—for work of this nature and complexity.

As shown in the enclosed declaration, the time incurred multiplied by each respective attorney’s reasonable rate results in a total “lodestar” figure of \$245,995.50. *See* Thompson Decl. ¶ 15. While that sum is certainly substantial, it represents the reasonable amount of time our legal team spent researching multiple complex privilege issues, and drafting nearly 60 pages of briefing in this court, which discussed 50 cases. It also includes the time we spent defending this Court’s thorough, 80-page opinion during the Government’s two simultaneous emergency appeals to the Federal Circuit.

B. Plaintiffs' win ratio in this case is straightforward: our motion to compel sought the production of 58 documents, and as a direct result of that motion we ultimately received 50 of them: 86%.

This ratio in fact significantly *undervalues* the degree of Plaintiffs' success, for two reasons. First, this Court's March 7 Order additionally grants one of the principal forms of relief we sought in our motion: an order directing the Government to comprehensively review its privilege log and produce any documents that, based on this second look, it concludes are not privileged. Based on Plaintiffs' past experience in this case, the number of documents yielded by this relief will likely be substantial—in each instance in which we have prompted the Government to reexamine some portion of its privilege logs, it has responded by withdrawing its privilege claims with respect to a large number of documents. Given the difficulty of quantifying the significance of this relief, however, we have left it out of the equation. Second, because we have already stricken from our request any entries plainly related to the principal issue on which the Government prevailed in the Federal Circuit—the presidential communications privilege—discounting that already-reduced total by 86% effectively accounts *twice* for the Federal Circuit's ruling that the Government is not required to produce eight specific documents. An 86% win ratio is thus highly conservative.

Accordingly, this Court should award Plaintiffs 86% of the total fees they have incurred, or \$211,556.13.⁴ See *Chevron*, 116 Fed. Cl. at 232–33; see also *Industrial Carriers*, 2014 WL

⁴ The Government suggests, in a footnote, that our total award should be offset by the reasonable expenses *it* incurred in *opposing* the production of the documents ultimately deemed privileged by the Federal Circuit. Def.'s Fee Brief 8 n.3. But while the Federal Circuit ultimately concluded that, on balance, “the relevance of” these documents is “too remote from the central issues in the case and [their] probative value too weak to warrant disclosure,” *In re United States*, 2017 WL 406243, at *7, Plaintiffs' belief that the scales tipped in the other direction was at the

7185199, at *9–*10 (collecting cases); *Rich Products Corp.*, 2014 WL 860364, at *4; *Walker*, 275 F.R.D. at 338; *Textron*, 192 F.R.D. at 499.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an award of \$211,556.13, and Plaintiffs further request leave to submit a supplemental declaration, upon the Court’s resolution of this issue, establishing the additional fees and expenses incurred in securing the fee award.

Date: March 20, 2017

Respectfully submitted,

Of counsel:

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least “substantially justified.” That conclusion finds strong support in the fact that this Court initially ordered the documents in question to be produced. Defendant does not offer any argument to the contrary. Accordingly apportionment of Defendant’s expenses would be inappropriate.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No. 13-465C
v.)	(Judge Sweeney)
)	
THE UNITED STATES,)	
)	
Defendant.)	

DECLARATION OF DAVID H. THOMPSON

I, David H. Thompson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a citizen of the United States and a resident and citizen of Virginia. I am the Managing Partner of Cooper & Kirk, PLLC (“Cooper & Kirk” or “the Firm”), the law firm representing the Plaintiffs in this case, and I submit this declaration in support of Plaintiffs’ Response in Support of the Apportionment of Expenses Pursuant to RCFC 37(a)(5)(C).

2. I joined the Firm at its founding in 1996. I have extensive trial and appellate experience in a wide range of matters. I am a member of the bars of the United States Supreme Court; the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Federal, and District of Columbia Circuits; the United States District Court for the District of Columbia; the United States Court of Federal Claims; and Courts of the State of New York and the District of Columbia. I am a *cum laude* graduate of the Harvard Law School and a *magna cum laude* graduate of Harvard College.

3. In my experience as Managing Partner of Cooper & Kirk, I have become familiar with the economics of law practice, billing rates, billing practices, and the settling and collection of legal fees in cases akin to the instant case in factual and legal complexity, in risk and expense levels, and in the degree of professional demands placed upon myself, my partners, my

associates, and my staff. I have derived this knowledge from a variety of sources, including my personal experience negotiating fee arrangements with sophisticated consumers of legal services and regularly representing clients on an hourly rate basis. Moreover, I have significant experience related to billing practices for constitutional litigation in cases before all levels of the federal and state judicial systems, including the United States Supreme Court. In the past, I have been retained as an expert by a major law firm to opine on the reasonableness of its fees in a dispute with a former client. I have also served as an Adjunct Faculty Member at Georgetown Law Center and a visiting professor at the University of Georgia Law School, where I taught a class entitled Lawyering in Public. One of the topics addressed in this class was the economics of litigating a constitutional case.

4. I am familiar with the Firm's policies, practices, and procedures governing the recording and maintenance of time and expense reports. I am also familiar with Cooper & Kirk's standard hourly rates customarily charged for professional services delivered to clients who (a) hire the Firm for a particular case or matter purely on an hourly basis and generally pay their bills within 30 to 60 days, (b) assume responsibility for paying for all expenses, and (c) agree to pay the Firm's hourly rates without regard to the outcome of the case.

5. In staffing the litigation of Plaintiffs' December 7, 2015, Motion to Compel and the ensuing briefs, petitions, and motions, I have endeavored to keep the number of personnel assigned to the matter to the minimum necessary to represent Plaintiffs in an effective manner. Given the complexity and importance of the issues presented in this motion, the quantity of time devoted by Cooper & Kirk professionals to it, as detailed below, has been reasonable, necessary, and fully deserving of compensation.

6. Attached as Exhibit A is a true and correct copy of the summary of professional hours incurred by Cooper & Kirk on this matter through February 2017. These entries are derived from the actual charges billed by the firm for its work on this case and paid by the Plaintiffs. The entries were derived from the Firm's Timeslips database which is maintained in the ordinary course of the Firm's business. The database entries are recorded at or about the time of the events recorded. Because February 2017 is the most recent month for which we have submitted bills in this case, that is also the most recent month reflected in Exhibit A. We plan, with the Court's permission, to submit additional time reasonably incurred in securing the requested fees after February 2017 in a supplemental filing.

7. I have reviewed all of the time entries and expenditures for this matter and in the exercise of billing judgment reduced or eliminated any hours that I believe were potentially unproductive or that were otherwise not the proper subject of a fee request. For example, where our entries represented "block billing" for a group of activities, only some of which were related to our motion to compel, I have stricken the unrelated portion and reduced the number of hours listed for the item accordingly—endeavoring, in each case, to err on the side of underestimating the number of responsive hours. I have also stricken all entries plainly related to the presidential communications privilege, given the Government's success on that issue in the Federal Circuit.

8. The hourly rates sought by Cooper & Kirk reflect the rate actually paid to the Firm in this case. Thus, the hourly rates sought here reflect the rates actually paid to the Firm in typical arm's-length, market-rate transactions.

9. From the inception of the Firm's involvement in this case, I have had personal familiarity with the work performed by the attorneys assigned to this case. The following Cooper & Kirk attorneys have worked on the motion to compel and related filings:

a. Charles J. Cooper

Charles J. Cooper is a founding member and the chairman of Cooper & Kirk. He has made multiple appearances before the United States Supreme Court and was named by *The National Law Journal* as one of the 10 best civil litigators in Washington. Mr. Cooper's practice is national in scope and is concentrated in the areas of constitutional and civil rights litigation.

In 1985, President Reagan appointed Mr. Cooper to the position of Assistant Attorney General for the Office of Legal Counsel. Mr. Cooper reentered private practice in 1988, as a partner in the Washington, D.C. office of McGuire Woods. From 1990 until the founding of Cooper & Kirk in 1996, he was a partner at Shaw, Pittman, Potts & Trowbridge, where he headed the firm's Constitutional and Government Litigation Group.

Mr. Cooper is especially experienced in challenges to legislation on constitutional grounds. He litigated the 1998 case *Clinton v. City of New York*, 524 U.S. 417 (1998), to its conclusion in the Supreme Court, where the Line-Item Veto Act was struck down as unconstitutional. Mr. Cooper also oversaw litigation in the landmark case of *McConnell v. FEC*, 540 U.S. 93 (2003), a predecessor to the recent case *Citizens United v. FEC*, 558 U.S. 310 (2010), where diverse groups including the California Democratic Party and the NRA challenged the constitutionality of the McCain-Feingold Act. Mr. Cooper has also developed a special competency in litigating complex cases against the Government in the Court of Federal Claims—including *United States v. Winstar Corp.*, 518 U.S. 839 (1996), and a large number of subsequent *Winstar*-related cases.

Mr. Cooper has argued in all but one of the federal courts of appeals. The Firm charged \$1,050 per hour for Mr. Cooper's work in this litigation in 2015, \$1,145 per hour in 2016, and \$1,200 in 2017.

A full *curriculum vitae* for Charles J. Cooper is attached as Exhibit B.

b. David H. Thompson

I have considerable experience in constitutional matters, having litigated numerous cases involving the right to keep and bear arms, freedom of speech, civil rights, voting rights, takings of property, and separation of powers issues. I have represented numerous clients before a majority of the federal courts of appeals, numerous district courts, and the Supreme Court.

I have also served as an adjunct faculty member at Georgetown University Law Center and as a visiting professor at the University of Georgia Law School's campus in the District of Columbia. The class I taught most recently is Lawyering in Public, a course focusing on how to litigate high profile cases. I have also spoken frequently on trial tactics. The Firm charged \$850 per hour for my work in this litigation in 2015, \$895 per hour in 2016, and \$975 in 2017.

My full *curriculum vitae* is attached as Exhibit C.

c. Vincent J. Colatriano

Vincent J. Colatriano has extensive civil litigation experience representing a wide range of clients before a number of administrative agencies and federal and state trial and appellate courts on a variety of constitutional, statutory, administrative, contractual, tort, intellectual property, and commercial matters.

Mr. Colatriano has appeared regularly in cases brought against the federal government and federal agencies in both federal district court and the U.S. Court of Federal Claims. For example, he has represented numerous financial institutions and other companies in *Winstar* cases against the United States. *See Winstar*, 518 U.S. 839. Mr. Colatriano has also regularly represented property owners in litigation brought against the United States under the Fifth Amendment's takings clause. Mr. Colatriano's work in connection with such takings matters has

involved the litigation of complex claims alleging both physical takings of property by the federal government and regulatory takings of real and personal property.

Mr. Colatriano was awarded his B.A. degree in Political Science, *summa cum laude*, from George Washington University in 1987, and he received his J.D. degree from the National Law Center, George Washington University, with highest honors. Mr. Colatriano is a member of the bars of the State of Maryland, the District of Columbia, the Supreme Court of the United States, the United States Courts of Appeals for the Federal, First, and District of Columbia Circuits, the United States District Courts for the District of Maryland and the District of Columbia, and the United States Court of Federal Claims. The Firm charged \$745 per hour for Mr. Colatriano's work in this litigation in 2015, \$795 per hour in 2016, and \$815 in 2017.

d. Howard C. Nielson, Jr.

Mr. Nielson has extensive litigation, government, and academic experience in the field of constitutional law. He has also litigated numerous cases in a variety of other areas, including government contracts, antitrust, and administrative law. In addition to his practice at Cooper and Kirk, Mr. Nielson has taught classes on constitutional, national security, and foreign affairs law as a Distinguished Lecturer at the J. Reuben Clark Law School at Brigham Young University.

Before joining Cooper and Kirk, Mr. Nielson served from 2001 to 2005 at the U.S. Department of Justice. From 2001 to 2003 he was Counsel to the Attorney General, in which capacity he advised the Attorney General on a variety of legal matters and supervised high profile litigation relating to national security and other departmental priorities. In 2003 he was appointed Deputy Assistant Attorney General for the Office of Legal Counsel. Prior to his work at the Justice Department, Mr. Nielson practiced law from 1999 to 2001 as an associate in the

Issues and Appeals Practice Group at Jones, Day, Reavis & Pogue (now Jones Day) in Washington, D.C. Before that time he served as a law clerk to Judge J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit, and to Justice Anthony M. Kennedy. The Firm charged \$715 per hour for Mr. Nielson's work in this litigation in 2015, and \$775 per hour in 2016.

A full *curriculum vitae* for Howard C. Nielson, Jr. is attached as Exhibit D.

e. Peter A. Patterson

Mr. Patterson joined Cooper & Kirk as an associate in 2009 after serving as Associate Counsel to the President in the White House Counsel's office, and he is now a partner at the Firm. Since joining the Firm he has litigated numerous cases implicating constitutional issues, including cases involving the right to keep and bear arms, freedom of speech, takings of property, equal protection, and due process. For three years he also taught an appellate litigation clinic at the University of Cincinnati College of Law.

Mr. Patterson is admitted to practice before the United States Supreme Court; the United States Courts of Appeals for the Second, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Federal, and District of Columbia Circuits; the United States District Courts for the Southern District of Ohio and the District of Columbia; the United States Court of Federal Claims; and courts of the State of Ohio and the District of Columbia. The Firm charged \$595 per hour for Mr. Patterson's work in this litigation in 2015, \$675 per hour in 2016, and \$695 in 2017.

A full *curriculum vitae* for Peter A. Patterson is attached as Exhibit E.

f. Brian W. Barnes

Brian Barnes rejoined Cooper & Kirk in 2013 after clerking for Justice Samuel Alito during the October 2012 term. Before coming to the firm, Mr. Barnes clerked for Judge Thomas

Griffith of the United States Court of Appeals for the District of Columbia Circuit. Mr. Barnes graduated from Yale College, *magna cum laude*, in 2006 and graduated from Yale Law School in 2010, where he was an Articles Editor for the Yale Law Journal, a moot court semifinalist, and a member of the Yale Supreme Court Clinic. The Firm charged \$475 per hour for Mr. Barnes's work in this litigation in 2015, \$515 per hour in 2016, and \$545 in 2017.

10. Additional Cooper & Kirk staff, including legal assistants and law clerks, have spent time on this litigation, and their reasonable hours and billing rates are also reflected in Exhibit A. Again, the rates reflected in Exhibit A are the rates Cooper & Kirk charged in this litigation.

11. The hourly rates we have charged in this matter are reasonable. A "reasonable hourly rate is determined by looking to the prevailing market rates in the relevant community for similar services by lawyers of comparable skill, experience, and reputation." *Morris v. Sec'y of Dep't of Health & Human Servs.*, 20 Cl. Ct. 14, 27 (1990) (quotation marks omitted).

Accordingly, one valuable measure of the reasonableness of our rates in this case is the *National Law Journal's* survey of the rates charged by D.C. area firms, as D.C. is both where the Firm is located and includes many other firms that litigate complex, constitutional matters. *See Town of Grantwood Vill. v. United States*, 55 Fed. Cl. 481, 487 (2003) (looking to the *National Law Journal* survey as evidence of reasonableness of attorney's rates).

12. Those surveys demonstrate that the rates charged by Cooper & Kirk are well within the market norm. According to *National Law Journal's* 2014 survey—a portion of which is attached as exhibit F—senior partners at Wilmer Hale charged as much as \$1,250 an hour that year, Pillsbury Winthrop's senior partners billed at \$1,070 an hour, and the senior partners at Gibson Dunn charged as much as \$1,800. As noted above, Mr. Cooper's rate in 2015—a year

later—was \$1,050 an hour, and mine was \$895. Similarly, while Pillsbury’s junior partners, for instance, charged \$615 an hour in 2014, Mr. Patterson’s billable rate was \$595. And while Gibson, for example, charged between \$175 and \$930 an hour for the work of its associates in 2014, we billed Mr. Barnes’s work, a year later in 2015, at \$495 an hour.

13. Another source of evidence bearing on the rates typically charged in the relevant market is the Legal Services Index (“LSI”)-updated “*Laffey*” matrix. *See Salazar ex rel. Salazar v. D.C.*, 809 F.3d 58, 62, 63–65 (D.C. Cir. 2015) (describing the LSI-*Laffey* matrix and upholding reliance upon it in determining reasonable rates in complex federal litigation in the District of Columbia). That matrix—attached as exhibit G—also supports the reasonableness of our rates. For instance, the 2017 rate listed in that matrix for a first- through third-year associate is \$421, and the rate for an attorney eight to ten years out of law school is \$608. Our current rate for Mr. Barnes—who has seven years of experience—is \$545, well within this range. Similarly, the LSI-*Laffey* rate for an attorney with 20 or more years of experience is \$826—roughly commensurate with Mr. Colatriano’s current rate of \$815. And while Mr. Cooper and my own rates are somewhat higher than the top bracket in this index, we both have more than 20 years of experience; and as the District Court for the District of Columbia has found, the *Laffey* index is in any event “a *conservative* estimate of the actual cost of legal services in this area,” given that “Washington, D.C. is among the most expensive legal services markets in the country.” *Salazar v. D.C.*, 991 F. Supp. 2d 39, 48 (D.D.C. 2014), *aff’d*, *Salazar*, 809 F.3d 58.

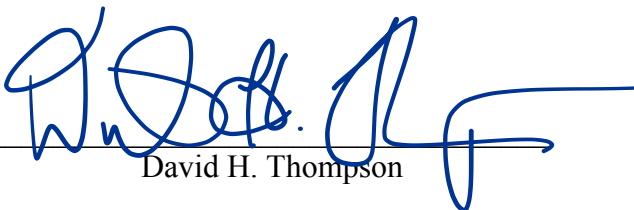
14. The reasonableness of our rates is also supported by fee awards entered in courts in other districts for complex federal trial and appellate litigation done by lawyers of similar skill, experience, and reputation. For example, in *NRA v. Village of Oak Park*, 871 F. Supp. 2d 781 (N.D. Ill. 2012), the U.S. District Court for the Northern District of Illinois granted a fee

award pursuant to 42 U.S.C. § 1988 to attorneys representing the National Rifle Association—including, *inter alia*, Paul Clement, then of the D.C. firm Bancroft PLLC, and Stephen Poss, of Goodwin Procter—based on a successful Second-Amendment challenge. That court calculated Mr. Clement’s fees based on his 2011 hourly rate of \$1,020 per hour—which it expressly concluded was reasonable. *Oak Park*, 871 F. Supp. 2d at 788. It also awarded fees to Mr. Poss at the rate of \$880 an hour. *Id.* By comparison, Mr. Cooper’s rate in 2011 was \$865 an hour, and mine was \$565.

15. As explained above, Exhibit A sets forth both the reasonable time spent by Cooper & Kirk attorneys in this case and the amount Cooper & Kirk charged for that time. The total amount charged is \$245,995.50. Exhibit A at 1. As described in the accompanying brief, we seek to recover 86% of that amount, or \$211,556.13, the share that represents the number of documents we ultimately succeeded in compelling the Government to produce.

16. I declare, under penalty of perjury, that the foregoing is true and correct.

3/17/17
Date


David H. Thompson

Executed in Washington, D.C.

EXHIBIT A

SUMMARY OF FEES

Attorney/Staff Member	Rate	Hours	Total
Brian W. Barnes	2015: \$475.00	52.90	\$25,127.50
	2016: \$515.00	159.40	\$82,091.00
	2017: \$545.00	8.40	\$4,578.00
Erin P. Brainard	2015: \$145.00	24.50	\$3,552.50
	2016: \$175.00	24.00	\$4,200.00
Vincent J. Colatrisano	2015: \$745.00	2.90	\$2,160.50
	2016: \$795.00	26.20	\$20,829.00
	2017: \$815.00	2.00	\$1,630.00
Charles J. Cooper	2015: \$1,050.00	4.40	\$4,620.00
	2016: \$1,145.00	19.60	\$22,442.00
	2017: \$1,200.00	2.00	\$2,400.00
Howard C. Nielson, Jr.	2015: \$715.00	1.90	\$1,358.50
	2016: \$775.00	19.70	\$15,267.50
Peter A. Patterson	2015: \$595.00	3.90	\$2,320.50
	2016: \$675.00	11.90	\$8,032.50
	2017: \$695.00	1.10	\$764.50
Natalie L. Sagara	2015: \$145.00	32.90	\$4,770.50
	2016: \$175.00	41.10	\$7,192.50
	2017: \$185.00	0.30	\$55.50
Howard Slugh	2016: \$275.00	17.60	\$4,840.00
David H. Thompson	2015: \$850.00	4.40	\$3,740.00
	2016: \$895.00	23.90	\$21,390.50
	2017: \$975.00	2.70	\$2,632.50
TOTAL:			\$245,995.50

DETAILED FEE RECORDS

Date	Attorney	Description	Hours
11/02/15	BWB	Draft motion to compel on disputed privilege issues.	4.80
11/03/15	BWB	Continue to draft motion to compel on disputed privilege issues.	1.80
11/04/15	BWB	Continue to draft motion to compel on disputed privilege issues.	6.50
11/05/15	BWB	Continue to draft motion to compel on disputed privilege issues.	2.70
	DHT	Further work on motion to compel.	0.70
	EPB	Prepare materials for motion to compel.	4.60
	HN	Review draft privilege motion and co-counsel's comments on same.	0.20
	NLS	Cite check Motion to Compel for B. Barnes.	6.40
11/06/15	BWB	Implement P. Patterson's suggested changes to motion to compel.	1.20
	EPB	Cite check Motion to Compel for B. Barnes.	5.80
	HN	Review co-counsel's proposed revisions to and comments on draft privilege motion and co-counsel's implementation of same.	0.30
	NLS	Cite check Motion to Compel for B. Barnes.	5.70
	PP	Review draft motion to compel.	2.60
	VJC	Review of and revisions to draft motion to compel.	0.20
11/09/15	BWB	Oversee cite check of motion to compel on disputed privilege issues.	0.50
	HN	Review revisions to draft privilege motion.	0.10
	NLS	Cite check of Motion to Compel for B. Barnes, transfer edits.	3.80
	PP	Review edits to motion to compel.	0.30
	VJC	Further work relating to timing of filing of motion to compel.	0.20
11/10/15	BWB	Review cite check changes to motion to compel; draft email to opposing counsel at DOJ re timing of motion to compel filing.	0.30
	EPB	Cite check Motion to Compel for B. Barnes.	0.20
	NLS	Resolve outstanding cite check edits of Motion to Compel for B. Barnes, implement global edits, create cover, edit tables.	2.20
11/16/15	BWB	Review Government's letter on privilege issues and documents identified for motion to compel, and begin revising motion to compel in light of Government's position.	4.70

	VJC	Further work on various matters relating to proceedings and discovery in CFC action, including matters relating to motion to compel; further review and analysis of DOJ letter responding to our privilege challenges, and work on strategy in light of same.	0.80
11/17/15	BWB	Continue to revise CFC motion to compel in light of Government's revised position on disputed privilege issues.	4.30
11/18/15	BWB	Continue to revise CFC motion to compel and conduct legal research for same regarding whether financial models are subject to deliberative process privilege.	1.40
	EPB	Further work on motion to compel.	0.80
11/19/15	BWB	Complete revisions to CFC motion to compel and circulate revised draft to team; review documents produced by Government previously withheld for privilege and incorporate information in documents into motion to compel.	7.30
	DHT	Further work on motion to compel.	1.20
	PP	Research re executive compensation issue; review edits to motion to compel.	0.70
11/20/15	BWB	Oversee preparation of list of documents that are subject of motion to compel; implement D. Thompson's suggested changes to motion to compel; draft proposed questions presented for motion to compel; revise motion to compel to add discussion of recently produced documents; review cite check changes to motion to compel.	4.60
	DHT	Review and revise motion to compel.	1.50
	EPB	Cite check Mot. to Compel; prepare exhibits for same.	7.60
	NLS	Cite check additional edits to Motion to Compel for B. Barnes; prepare exhibits.	6.50
	PP	Review draft motion to compel.	0.10
	VJC	Further review of draft motion to compel.	0.80
11/21/15	BWB	Ensure that documents discussed in motion to compel correspond to documents listed in exhibit for court identifying documents being challenged; ensure accuracy of other technical aspects of draft motion to compel.	2.30
11/22/15	BWB	Implement edits to motion to compel from C. Cooper.	0.80
	CJC	Review and revise draft motion to compel discovery.	2.40

	VJC	Further work on various matters relating to draft motion to compel.	0.30
11/23/15	BWB	Implement additional edits to motion to compel from C. Cooper and make other final edits to brief; draft emails to team re waiver of deliberative process privilege; oversee preparation of appendix and ensure accuracy of brief's citations to appendix; proofread final version of motion to compel and oversee filing.	9.50
	CJC	Further work on motion to compel; conferences re same; review DC Circuit case re deliberative process privilege.	2.00
	DHT	Further work on motion to compel.	1.00
	EPB	Finalize motion to compel.	5.50
	HN	Analyze issue for motion to compel and discuss with co-counsel; review draft motion to compel and co-counsel's revisions to same; provide comments on same and discuss with co-counsel.	1.30
	NLS	Finalize motion to compel.	8.30
	PP	Review edits to motion to compel; conferences re same.	0.20
	VJC	Further review of draft motion to compel and public version of same.	0.50
12/02/15	BWB	Draft email to opposing counsel re Government's request for additional month to respond to motion to compel in Court of Federal Claims.	0.10
	VJC	Further work on response to DOJ request for extension of briefing schedule on motion to compel.	0.10
12/28/15	BWB	Draft email to D. Thompson re deadline for reply brief on motion to compel in Court of Federal Claims case.	0.10
01/18/16	PP	Review research re motion to compel.	0.10
01/19/16	HS	Research re deliberative process privilege	2.50
01/21/16	HN	Read response to motion to compel.	0.60
01/22/16	BWB	Review response to motion to compel production of additional documents in Court of Federal Claims and begin preparing reply brief in support of motion.	3.00
	DHT	Review government's opposition to the motion to compel.	0.40
	PP	Review response to motion to compel in CFC.	0.60
01/24/16	BWB	Research various legal issues raised in Government's response to motion to compel.	1.00

01/25/16	BWB	Draft reply brief in support of motion to compel.	6.70
01/26/16	BWB	Continue to draft reply brief in support of motion to compel.	6.10
	VJC	Review DOJ response to motion to compel.	0.80
01/27/16	BWB	Continue to draft reply brief in support of motion to compel.	7.00
01/28/16	BWB	Continue to draft reply brief in support of motion to compel.	5.30
	CJC	Review draft motion to compel; conference with D. Thompson re case strategy issues.	1.00
	DHT	Further work on reply brief in support of motion to compel; conference with C. Cooper re strategy.	2.50
01/29/16	BWB	Make revisions to motion to compel reply brief in light of comments from V. Colatriano and P. Patterson; oversee cite check of same.	3.10
	NLS	Cite check Reply in Support of Motion to Compel for B. Barnes, combine edits re same.	4.00
	PP	Review motion to compel reply.	1.00
	VJC	Review reply brief.	0.40
01/30/16	BWB	Make further revisions to motion to compel reply brief in light of additional comments from D. Thompson.	1.10
	CJC	Review draft motion to compel and related papers; review edits/comments re same.	3.90
	PP	Review motion to compel reply.	0.20
	VJC	Further review of draft reply in support of motion to compel.	0.70
01/31/16	BWB	Review further cite check changes to motion to compel reply brief.	0.40
	CJC	Further work on motion to compel.	0.80
02/01/16	BWB	Oversee cite check, preparation of appendix, and other filing mechanics for motion to compel reply brief; make final edits and carefully proofread same.	3.80
	EPB	Create appendix for reply in support of motion to compel.; create Exhibit 5; cite check reply; file reply for B. Barnes.	5.60
	NLS	Cite check further attorney edits to Motion to Compel Reply for B. Barnes, create and edit components re same, paginate brief, file.	2.60
	VJC	Further work on matters relating to draft reply in support of motion to compel.	0.20
09/20/16	BWB	Review ruling on motion to compel and discuss same with C. Cooper and D. Thompson; research issues related to potential sanctions	8.30

		against government and standard of review if the Government seeks mandamus; discuss ruling on motion to compel with D. Schmerin.	
	CJC	Review Judge Sweeney's sealed order granting MTC; conference with D. Thompson, B. Barnes re same.	1.60
	DHT	Review CFC opinion; calls re next steps in discovery.	2.70
09/21/16	BWB	Draft email to team regarding deadline for filing mandamus petition; update document identifying what we know about documents that were the subject of motion to compel.	4.00
	PP	Research re order on motion to compel.	0.30
	CJC	Review Judge Sweeney's sealed order granting MTC.	0.70
	DHT	Analyze ruling of motion to compel.	1.00
09/22/16	CJC	Further review of CFC opinion.	0.50
	VJC	Further work on matters pertaining to analysis of implications of CFC decision on motion to compel and strategy pertaining to same.	0.70
09/26/16	VJC	Email exchanges with legal team re US response to motion to compel decision and related strategy issues.	0.20
09/27/16	VJC	Work on matters relating to preparation for US response to motion to compel decision.	0.20
09/28/16	VJC	Work on matters relating to discussions with DOJ re US response to motion to compel decision.	0.10
09/29/16	VJC	Further work on matters relating to discussions with DOJ re US response to motion to compel decision.	0.40
10/01/16	DHT	Analyze Judge Sweeney's opinion, underlying motion, and related correspondence.	0.50
10/03/16	VJC	Further work on matters relating to response to motion to compel decision.	0.30
10/25/16	HN	Review CFC filing re ruling on motion to compel.	0.70
10/26/16	BWB	Review Government's Federal Circuit mandamus petition; research and draft email concerning probable briefing schedule and timeframe for decision in Federal Circuit mandamus case; draft email to D. Thompson concerning recent mandamus cases in Federal Circuit involving the United States.	4.40
	DHT	Review mandamus authorities; sketch outline of brief.	2.30

	HN	Mandamus: Read mandamus petition; research and analyze issues raised by same; analyze issues raised by notice of appeal; discuss mandamus/notice of appeal issues with co-counsel.	2.10
10/27/16	BWB	Strategy call with team to discuss mandamus petition; call with B. Berkowitz, D. Schmerin, and D. Thompson to discuss mandamus petition and personal emails issue; discuss mandamus petition with D. Jakus; research standard of review for mandamus petition and develop arguments regarding same.	7.30
	DHT	Conference calls relating to mandamus petition; analyze authorities relating to mandamus petition.	2.80
	HN	Mandamus: Research and analyze issues raised by mandamus petition and discuss with co-counsel; discuss issues raised by notice of appeal with co-counsel.	7.10
	NLS	Prepare entries of appearance and certificate of interest in CAFC mandamus appeal for B. Barnes; circulate mandamus filings and register attorneys for ECF notifications.	0.80
	PP	Conferences re mandamus petition.	0.50
10/28/16	BWB	Begin to draft section of response to mandamus petition concerning standard of review; oversee preparation and filing of entries of appearance and other preliminary documents for Federal Circuit mandamus case.	9.00
	DHT	Analyze mandamus opposition.	1.70
	NLS	Research service procedures in mandamus petitions for B. Barnes; file entries of appearance and certificate of interest in CAFC mandamus matter.	1.90
	PP	Review mandamus petition; research re same.	0.80
10/29/16	BWB	Complete first draft of standard of review section for response to mandamus petition.	7.10
	HN	Mandamus: Research and analyze issues raised by mandamus petition.	4.10
	VJC	Mandamus: work on response to bank examination section of mandamus petition; related research.	1.90
10/30/16	BWB	Draft fact section of response to mandamus petition.	3.70

	CJC	Mandamus: further work on response to bank examination section of mandamus petition; related research.	2.90
10/31/16	BWB	Continue to draft fact section of mandamus response and draft deliberative process privilege section of mandamus response.	11.70
	DHT	Calls with clients; further work on mandamus opposition.	1.40
	HS	Research re bank examiners privilege; Review documents produced by the government for response to mandamus petition.	6.00
	NLS	Miscellaneous projects for B. Barnes related to Mandamus.	2.60
	PP	Research re mandamus response.	0.20
	VJC	Mandamus: further work on response to bank examination section of mandamus petition; related research.	6.00
11/01/16	BWB	Continue to draft deliberative process privilege section of mandamus response; respond to opposing counsel's request for additional time to file mandamus reply; review and respond to edits to mandamus opposition from D. Thompson; review bank examination section of mandamus opposition prepared by V. Colatriano.	12.9
	CJC	Review and revise draft opposition to government's mandamus petition.	2.30
	DHT	Further work on mandamus.	0.80
	EPB	Cite check Part I, and Part II.A. of Response to Writ of Mandamus for B. Barnes.	2.40
	HS	Research re bank examination privilege for the mandamus response.	4.90
	NLS	Cite check Response to Mandamus Petition for B. Barnes.	2.20
	PP	Review and edit draft mandamus response.	1.90
	VJC	Mandamus: further work on response to bank examination section of mandamus petition; related research; review other sections of draft response.	6.40
11/02/16	CJC	Further work on opposition to mandamus; conference with D. Thompson re same.	3.10
	DHT	Review comments on brief; conferences re same; conference with C. Cooper re opposition to mandamus.	2.00
	NLS	Cite check Response to Mandamus Petition; create cover and certificate of service for	9.60

		Response; and research CAFC Rules for B. Barnes.	
	PP	Review and edit draft mandamus petition;; review government motion to extend time to file mandamus reply.	3.40
11/03/16	BWB	Oversee implementation of final edits to mandamus opposition; prepare cover motion for mandamus opposition requesting additional pages and cover motion requesting leave to file appendix; oversee preparation of supplemental appendix.	9.40
	DHT	Finalize mandamus.	0.20
	EPB	Create Appendix for Response to Petition for Mandamus; correspond with B. Barnes about same; paginate tables; cite check cover motion for appendix and Response; file cover motions, Response, and appendix.	9.90
	HN	Mandamus: Read co-counsel's proposed revisions to draft mandamus response and discuss with co-counsel; analyze outstanding issues in draft mandamus response and discuss with co-counsel; read motion for extra pages and government's response to same; read client's comments on mandamus response.	1.50
	NLS	Review Response to Petition for Mandamus for internal consistency, implement global edits, proof ancillary motions, edit tables, create certificates of service for filings, compile PDFs, file, print, and ship service copies for B. Barnes.	11.90
	PP	Review and edit mandamus petition.	0.40
	VJC	Mandamus: Further work on response to bank exam mandamus petition.	2.00
11/04/16	BWB	Draft reply brief in support of motion for additional pages for mandamus opposition.	0.90
	NLS	Proof Reply in Support of Motion to Exceed Page Limits for B. Barnes	0.20
	VJC	Mandamus: further work on various matters relating to mandamus petition, including review of motion to exceed page limits and response and court order granting motion; research re issues relating to bank exam privilege.	1.10
11/05/16	DHT	Analyze possible motion to dismiss in the Federal Circuit.	0.50
11/06/16	HS	Research re mandamus stays.	4.20

11/08/16	BWB	Draft email to team regarding timing of motion to dismiss appeal that Government filed on same day as mandamus petition.	1.00
	PP	Research re mandamus strategy options.	0.20
11/09/16	BWB	Oversee preparation and filing of entries of appearance for appeal Government filed in Federal Circuit on same day as mandamus petition; review Government's mandamus reply brief.	0.90
	DHT	Analyze government reply brief on mandamus; calls with clients.	1.40
	EPB	Review Certificate of Interest and Entries of Appearance for N. Sagara; file Certificate and Entries of Appearance for B. Barnes.	0.40
	NLS	Prepare and file certificate of interest and entries of appearance in 17-1122 for B. Barnes.	1.30
	PP	Review entries of appearance for discovery appeal; review mandamus reply.	0.40
	VJC	Mandamus: Review and analysis of DOJ reply brief in support of mandamus petition.	0.90
11/10/16	CJC	Review DOJ reply brief in CAFC.	1.50
	HN	Mandamus: Read mandamus reply brief and analyze issues raised by same; analyze issues re potential motion to dismiss appeal and discuss with co-counsel.	0.80
11/11/16	BWB	Begin preparing motion to dismiss motion to compel appeal for lack of appellate jurisdiction.	2.10
11/14/16	BWB	Research collateral order doctrine and begin drafting motion to dismiss Federal Circuit appeal from motion to compel ruling.	6.20
11/15/16	BWB	Continue to research issues relating to collateral order doctrine and to draft motion to dismiss Federal Circuit appeal from motion to compel ruling.	7.00
11/16/16	BWB	Continue to research issues relating to collateral order doctrine and to draft motion to dismiss Federal Circuit appeal from motion to compel ruling.	2.10
11/17/16	BWB	Continue to draft motion to dismiss Federal Circuit appeal from motion to compel ruling.	5.40
	HN	Mandamus: Read co-counsel's analysis of CAFC mandamus decision.	0.20
	VJC	Review and analysis of recent mandamus decision from Federal Circuit; email exchanges with legal team re same.	0.70

11/18/16	BWB	Complete first draft for motion to dismiss Federal Circuit appeal from motion to compel ruling.	6.90
	CJC	Review draft brief to CAFC in support of motion to dismiss appeal.	1.30
	DHT	Review and revise motion to dismiss in Federal Circuit.	0.70
	HN	Mandamus: Read draft motion to dismiss appeal and provide comments on same; read co-counsel's proposed revisions to same.	0.50
	PP	Review federal circuit mandamus decision; review draft motion to dismiss appeal.	0.30
	VJC	Mandamus: review and comment on draft motion to dismiss appeal from order on motion to compel; email exchanges with legal team re same.	0.70
11/19/16	BWB	Implement suggested edits to Federal Circuit motion to dismiss from H. Nielson and V. Colatriano.	0.50
	PP	Review edits to appellate brief.	0.20
	VJC	Mandamus: review and comment on draft motion to dismiss appeal from order on motion to compel; email exchanges with legal team re same.	0.50
11/21/16	BWB	Make final changes to motion to dismiss appeal in Federal Circuit privilege case and oversee filing of same.	2.20
	EPB	Cite check Motion to Dismiss Appeal for B. Barnes; cite check redlines; file Motion for B. Barnes.	2.80
	NLS	Cite check Motion to Dismiss, prepare certificates of interest and service, and file for B. Barnes.	3.00
11/23/16	BWB	Prepare docketing statement for Federal Circuit privilege appeal.	0.40
	DHT	Conference with P. Patterson re appeal.	0.30
	EPB	Correspond with B. Barnes about Docketing statement.	0.40
	PAP	Conference with D. Thompson re appeal.	0.30
11/28/16	EPB	Prepare docketing statement for B. Barnes; perform additional edits to docketing statement; file docketing statement for B. Barnes.	1.50
	PP	Review Federal Circuit docketing statement.	0.10
12/01/16	BWB	Review Government's response to motion to dismiss Federal Circuit appeal on privilege issues and draft email to D. Schmerin re same.	0.80

	HN	Mandamus: Review Government's response to motion to dismiss appeal and analyze issues raised by same.	0.30
	PP	Review response to motion to dismiss CFC appeal.	0.20
	VJC	Mandamus: review US response to motion to dismiss appeal; related research.	0.40
12/02/16	BWB	Draft reply brief in support of motion to dismiss Federal Circuit appeal on privilege issues.	6.30
	DHT	Calls with clients; review Federal Circuit brief.	1.60
	PAP	Review reply in support of motion to dismiss CFC appeal.	0.30
	VJC	Mandamus: further review and analysis of US response to motion to dismiss appeal.	0.30
12/04/16	BWB	Implement edits to Federal Circuit reply brief on privilege issues at suggestion of D. Thompson and P. Patterson.	0.40
	DHT	Further work on reply brief.	0.40
	HN	Mandamus: discuss issue raised by Government's response to motion to dismiss appeal with co-counsel; read co-counsel's comments re draft brief.	0.30
	VJC	Mandamus: review draft reply in support of motion to dismiss appeal; email exchanges with legal team re same.	0.60
12/05/16	EPB	17-1122: Cite check Reply to MTD for B. Barnes.	1.00
	HN	Mandamus: review draft reply in support of motion to dismiss appeal and provide comments on same.	0.30
	NLS	CAFC: Cite check Reply in Support of MTD for B. Barnes.	1.00
	PP	Review edits to reply in support of motion to dismiss CFC appeal.	0.20
	VJC	Mandamus: further review and analysis of the draft of reply in support of motion to dismiss appeal; email exchanges with legal team re same.	0.30
12/06/16	DHT	Calls with clients; review Federal Circuit reply brief.	0.70
12/07/16	BWB	Proofread and oversee filing of Federal Circuit reply brief in support of dismissal of privilege appeal.	1.00
	PP	Review draft reply in support of motion to dismiss CAFC appeal.	0.20

	VJC	Mandamus: review final version of reply in support of motion to dismiss appeal.	0.20
12/13/16	HN	Read Government filing and CFC order.	0.20
	PP	Review motion for extension of time in CFC on fee issue.	0.10
12/14/16	VJC	Mandamus: Review US motion for extension of deadline to file brief relating to recovery of attorney fees in connection with motion to compel proceeding; review CFC order re same.	0.20
01/30/17	BWB	Review Federal Circuit privilege opinion and discuss same with D. Schmerin, C. Cooper, D. Thompson, and P. Patterson; prepare document summarizing what is known about documents to be produced; draft email summarizing Federal Circuit decision for clients.	8.40
	CJC	Review Federal Circuit decision re government's privilege claims; conferences with D. Schmerin, P. Patterson, B. Barnes re same.	2.00
	DHT	Review Federal Circuit decision; calls with clients re same.	2.70
	HN	Read mandamus decision and analyze issues raised by same; read co-counsel's comments on same; look at filing.	0.80
	NLS	Read CAFC mandamus order.	0.30
	PP	Review order on mandamus petition; conference with client re same; conference re same.	1.00
	VJC	Review and analyze Federal Circuit's mandamus decision.	1.70
01/31/17	HN	Read CFC orders.	0.20
	PP	Review Judge Sweeney's order responding to mandamus ruling.	0.10
	VJC	Review of CFC's orders implementing mandate re motion to compel decision.	0.30

EXHIBIT B

CHARLES J. COOPER
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Washington, D.C. 20036
(202) 220-9600

PROFESSIONAL EXPERIENCE

- Present** Partner, Cooper & Kirk, PLLC, Washington, D.C.
Civil litigation and federal administrative law practice.
- 1990-1996** Partner, Shaw, Pittman, Potts & Trowbridge, Washington, D.C.
Civil litigation and federal administrative law practice.
- 1988-1990** Partner, McGuire, Woods, Battle & Boothe, Washington, D.C.
Civil litigation and federal administrative law practice.
- 1985-1988** Assistant Attorney General, Office of Legal Counsel. Headed office responsible for providing formal legal opinions and informal legal advice to the President and executive branch departments and agencies, including other components of the Department of Justice.
- 1986-1988 Chairman, Domestic Policy Council's Working Group on Federalism (subcabinet level interagency working group responsible for advising the President and Cabinet members on issues relating to federal-state relations; principal author of the working group's 1986 "Report on the Status of Federalism in America" and Executive Order No. 12612 on Federalism).
- 1987-1988 Member, Policy Review Group for the National Security Council (subcabinet level interagency working group responsible for reviewing and advising the National Security Council on certain classified matters).
- 1987-1988 Member, Planning and Coordinating Group for the National Security Council (subcabinet level interagency working group responsible for reviewing and advising the National Security Council on certain classified matters).

- 1982-1985** Deputy Assistant Attorney General, Civil Rights Division. Supervised all of the Division's appellate litigation (including personally briefing and arguing selected cases) and the Division's trial litigation in the areas of public education, housing, and institutionalized persons.
- 1981-1982** Special Assistant to the Assistant Attorney General, Civil Rights Division. Assisted the Assistant Attorney General in the supervision of all facets of the Division's work, including trial and appellate litigation.
- 1979-1981** Associate, Long, Aldridge & Norman, Atlanta, Georgia. General corporate litigation practice in state and federal courts.
- 1978-1979** Law Clerk to Justice (later, Chief Justice) William H. Rehnquist, United States Supreme Court, Washington, D. C.
- 1977-1978** Law Clerk to Judge Paul H. Roney, United States Court of Appeals for the Fifth (now Eleventh) Circuit, St. Petersburg, Florida.

COMMISSIONS AND ASSOCIATIONS

- 2003-Present** Member, Academe and Policy Research Senior Advisory Committee to the Department of Homeland Security
- 1998-2005** Member, Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States
- 1996-Present** Member, American Academy of Appellate Lawyers
- 1994-Present** Member, The Federalist Society (Steering Committee, Washington Lawyers Chapter); Former Chairman, Civil Rights Practice Group
- 1993-Present** Member, The American Law Institute.
- 1994-1996** Co-Chairman, Advisory Council on Self-Determination and Federalism to Governor George Allen of Virginia.
- 1991-1994** Public Member, Administrative Conference of the United States.
- 1991-1993** Commission Member, National Commission on Judicial Discipline and Removal (appointed by President Bush).
- 1990-1992** Commission Member, National Commission on Responsibilities

for Financing Postsecondary Education (appointed by President Reagan).

BAR MEMBERSHIPS

Admitted to practice before the U.S. Supreme Court; U.S. Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, District of Columbia, and Federal Circuits; Courts of the States of Alabama and Georgia, and the District of Columbia; and the United States Court of Federal Claims.

EDUCATIONAL BACKGROUND

Legal J.D., University of Alabama School of Law (May 1977)

Academic Performance: 2.72/3.00 (first in class)

Alabama Law Review

Editor-in-Chief (1976-1977)

Editorial Board Member (1975-1976)

Awards and Honors

John B. Knox Award (for graduate with highest academic average in section)

Order of the Coif

Dean M. Leigh Harrison Award for Scholarship

Hugo Black Scholar

Dean's Award for Service to Law School

Henderson M. Sommerville Award for Legal Writing

Omicron Delta Kappa (honorary society)

Jasons (senior honorary society)

Prelegal B.S., Finance, University of Alabama
School of Commerce & Business Administration (May 1974)
Grade Point Average: 2.26/3.00 (Finance Honors Student)

PUBLICATIONS

The Constitutional Legacy of William H. Rehnquist, edited by Bradford P. Wilson (West Academic Publishing, 2015)

“Complete Diversity and the Closing of the Federal Courts,” *Harvard Journal of Law & Public Policy* (Winter 2014) (with Howard C. Nielson, Jr.)

“Tribute to Judge Mark R. Kravitz,” *Lewis & Clark Law Review* (2014)

“An Attack on Separation of Powers and Federal Judicial Power? An Analysis of the Constitutionality of Section 18 of the America Invents Act,” *Engage: The Journal of the Federalist Society Practice Groups* (July 30, 2012) (with Vincent Colatriano).

“The Regulatory Authority of the Treasury Department to Index Capital Gains for Inflation: A Sequel,” *Harvard Journal of Law & Public Policy* (Spring 2012) (with Vincent Colatriano).

“The Constitution in One Sentence: Understanding the Tenth Amendment,” *First Principles Series* (Published by the Heritage Foundation) (Jan. 10, 2011)

“Federalism and the Telephone: The Case for Preemptive Federal Deregulation in the New World of Intermodal Competition,” *6 Journal on Telecommunications & High Technology Law* 293 (2008) (with Brian Stuart Koukoutchos).

“Debate on Radicals in Robes,” *Originalism: A Quarter-Century of Debate* (2007) (with Prof. Cass Sunstein)

“The State of the Judiciary: A Corporate Perspective,” *95 The Georgetown Law Journal* 1107 (April 2007) (with Larry D. Thompson).

“A Perjurer in the White House?: The Constitutional Case for Perjury and Obstruction of Justice as High Crimes and Misdemeanors,” *Harvard Journal of Law & Public Policy*, (Spring 1999).

“The Geography of Race in Elections: Color-Blindness and Redistricting,” *The Journal of Law and Politics* (Winter 1998).

“Term Limits for Judges?,” *10 The Journal of Law and Politics*, 669 (1997).

"Race, Law and Justice: The Rehnquist Court and the American Dilemma," *The American University Law Review* (Feb. 1996)

"Constitutional Constraints on the Government," published in *Litigating Against The Government: Leveling The Playing Field* (National Legal Center for the Public Interest (1996)).

"The Republican Congress and the Constitution in Foreign and Military Affairs," 2 *Common Sense* 75 (1995) (with Prof. John McGinnis).

"The Federal Judiciary, Life Tenure, and Self-Government," 4 *Cornell Journal of Law and Public Policy* 500 (1995).

"The Fifth Annual Robert C. Byrd Conference on the Administrative Process: The First Year of Clinton/Gore: Reinventing Government or Refining Reagan/Bush Initiatives?" *The Administrative Law Journal of the American University* (1994)

"The Price of 'Political Independence': The Unconstitutional Status of the Legal Services Corporation," 4 *Boston University Public Interest Law Journal* 13 (1994) (with Michael A. Carvin).

"Harry Jaffa's Bad Originalism," 1994 *Public Interest Law Review* 189.

"The Legal Authority of the Department of the Treasury to Promulgate a Regulation Providing for Indexation of Capital Gains," 12 *Virginia Tax Review* 631 (Spring 1993) (with Michael A. Carvin and Vincent J. Colatriano).

"Independent of Heaven Itself: Differing Federalist and Anti-Federalist Perspectives on the Centralizing Tendency of the Federal Judiciary," 16 *Harvard Journal of Law & Public Policy* 119 (Winter 1993).

"A Note on Justice Marshall and *Stare Decisis*," 1992 *The Public Interest Law Review* 95.

"*Wards Cove Packing Co. v. Atonio*: A Step Toward Eliminating Quotas in the American Workplace," 14 *Oklahoma City University Law Review* 265 (Summer 1991).

"Executive Power Over Foreign and Military Policy: Some Remarks on the Founders' Perspective," 16 *Oklahoma City University Law Review* 265 (Summer 1991).

"How Separation of Powers Protects Individual Liberties," 41 *Rutgers Law Review* 789 (Spring 1989).

"A Slow Return To Constitutional Colorblindness," 47 *Legal Times* 27 (May 1, 1989).

"The Constitutionality of Drug Testing," *Federal Bar News & Journal* (October 1988).

"Presidential Powers in the Area of Foreign Affairs," 43 *University of Miami Law Review* 165 (September 1988).

"The Demise of Federalism," 20 *The Urban Lawyer* 239 (Spring 1988).

"Stare Decisis: Precedent and Principle in Constitutional Adjudication," 73 *Cornell Law Review* 801 (January 1988).

"The Line-Item Veto: The Framers' Intentions," published in *Revitalizing the Presidential Veto* (National Legal Center for the Public Interest (1988)).

"Comment on Arthur Schlesinger's 'After the Imperial Presidency,'" 47 *Maryland Law Review* 84 (Fall 1988).

"Raoul Berger, Constitutionalist," 4 *Benchmark* 183 (July-October 1987).

"The Collateral Attack Doctrine and the Rules of Intervention: A Judicial Pincer Movement on Due Process," 1987 *University of Chicago Legal Forum* 155.

"Limited Government and Individual Liberty: The Ninth Amendment's Forgotten Lesson," 4 *Journal of Law & Politics* 63 (University of Virginia) (Summer 1987).

"Constitutional Adjudication and the Intentions of the Framers," 119 *Federal Rules Decisions* 553 (address before the judicial conference of the U.S. Court of Appeals for the District of Columbia Circuit, May 29, 1987).

"Landmarks of Constitutional Interpretation," 40 *Policy Review* 10 (Spring 1987) (with Nelson Lund).

"Application of Section 504 of the Rehabilitation Act of 1973 to persons with AIDS," published in *Aids and the Law* (Wiley Law Publications 1987).

“Survey of Legal Issues Related to Acquired Immune Deficiency Syndrome (AIDS),” published in *The Medical and Legal Implications of AIDS* (Virginia Bar Association, 1987).

“The First Amendment, Original Intent and The Political Process,” 10 *Harvard Journal of Law & Public Policy* 15 (Winter 1987).

“The Tenth Amendment Under Fire,” 73 *ABA Journal* 42 (May 1987).

“The Coercive Remedies Paradox,” 9 *Harvard Journal of Law and Public Policy* 77 (Winter 1986).

Book Review, 24 *The Atlanta Lawyer* 17 (April-May 1980) (reviewing B. Woodward and S. Armstrong, *The Brethren*).

“The Attorney-Client Privilege in Alabama,” 28 *Alabama Law Review* 641 (1977).

CONGRESSIONAL TESTIMONY

- 02/12/13 Testimony before the Subcommittee on the Constitution, Civil Rights, and Human Rights, of the Senate Committee on the Judiciary on “Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment.”
- 02/15/12 Testimony before the House Committee on the Judiciary on “Executive Overreach: The President’s Unprecedented ‘Recess’ Appointments.”
- 02/07/12 Testimony before the House Committee on Education and the Workforce on “The NLRB Recess Appointments: Implications for America’s Workers and Employers.”
- 05/26/10 Testimony before the Subcommittee on the Constitution of the Senate Committee on the Judiciary on “The Legality and Efficacy of Line-Item Veto Proposals.”
- 05/13/09 Testimony before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee on “What Went Wrong: Torture and the Office of Legal Counsel in the Bush Administration.”
- 09/16/08 Testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee on “Restoring the Rule of Law.”

- 06/08/06 Testimony before the Committee on the Budget of the United States House of Representatives on H.R. 4890 - "The Legislative Line Item Veto Act of 2006."
- 05/02/06 Testimony before the Senate Budget Committee on S. 2381 -- "The Legislative Line Item Veto Act of 2006."
- 04/27/06 Testimony before the Subcommittee on the Constitution of the Committee on the Judiciary of the House of Representatives on "The Constitution and the Line Item Veto."
- 02/09/00 Testimony before the Subcommittee on the Constitution of the House Committee on the Judiciary on "The Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites."
- 11/09/98 Testimony before the Subcommittee on the Constitution of the House Committee of the Judiciary on the Background and History of Impeachment.
- 07/14/98 Testimony before the Committee on Energy and Natural Resources of the U. S. Senate on behalf of the Popular Democratic Party of Puerto Rico Concerning S. 472 and H.R. 856, the "United States-Puerto Rico Political Status Act."
- 02/27/96 Testimony before the Committee on the Judiciary of the U. S. Senate on behalf of The Pharmaceutical Research and Manufacturers of America Concerning S. 1277, The "Prescription Drug Equity Act."
- 03/24/95 Testimony before the Subcommittee on the Constitution, Federalism, and Property Rights of the Senate Committee on the Judiciary on The Tenth Amendment and the "Conference of the States."
- 01/23/95 Testimony before the Joint Economic Committee of the Congress of the United States on H.J. Res. 1, The Balanced Budget Constitutional Amendment.
- 06/15/94 Testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee on "The President's Inherent Constitutional Authority to Exercise a Line-Item Veto."
- 05/25/94 Participant in voting rights roundtable discussion sponsored by Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary.

- 03/18/93 Testimony before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary on H.R. 174, The "Voting Rights Extension Act of 1993."
- 03/24/92 Testimony before the Subcommittee on Judiciary and Education of the House Committee on the District of Columbia regarding the constitutionality of H.R. 2482, The District of Columbia Statehood Bill.
- 06/19/90 Testimony before the Senate Judiciary Committee on S. 34, The Judicial Prohibition Act, designed to reverse the Supreme Court's decision upholding judicial taxation in *Missouri v. Jenkins*, 495 U.S. 33 (1990).
- 08/01/89 Testimony before the Senate Judiciary Committee on legislation designed to reverse the Supreme Court's "flag burning" decision, *Texas v. Johnson*, 491 U.S. 397 (1989).
- 12/23/87 Testimony before the Senate Intelligence Committee on S. 1721 regarding Congressional Oversight of Intelligence Activities and proposed repeal of Hughes-Ryan Amendment.

SPEECHES AND DEBATES

Mr. Cooper has spoken on a wide variety of constitutional and legal policy topics, including issues relating to constitutional interpretation, federalism, separation of powers, presidential authority, religious liberty, voting rights, school desegregation, and banking regulation. A specific listing of lectures, speeches, debates, and symposia is available on request.

EXHIBIT C

DAVID H. THOMPSON
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9659
dthompson@cooperkirk.com

PROFESSIONAL EXPERIENCE

2000-Present Cooper & Kirk, PLLC, Washington, D.C., Managing Partner
Civil litigation and federal administrative law practice.

Relevant Experience:

- Represent the National Rifle Association in constitutional litigation throughout the United States
- Represented Attorney General John Ashcroft before Congress
- Represented Proponents of California's Proposition 8
- Represented 38 of the falsely accused Duke lacrosse players
- Extensive trial and appellate experience in large commercial disputes

Fall 2013 University of Georgia School of Law, Visiting Professor

Spring 2011 Georgetown Law Center, Adjunct Faculty Member

1996-1999 Cooper & Kirk, PLLC, Washington, D.C., Associate
Civil litigation and federal administrative law practice.

1995-1996 Shaw Pittman, Washington, D.C., Associate

1994-1995 White & Case, New York, NY, Associate

EDUCATIONAL BACKGROUND

Harvard Law School, *cum laude* (1994)

Harvard College, *magna cum laude*, Phi Beta Kappa (1991)

BAR MEMBERSHIPS

Admitted to practice before the U.S. Supreme Court; U.S. Courts of Appeals for the Second, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh, and Federal Circuits; Courts of the State of New York and the District of Columbia; and the United States Court of Federal Claims.

EXHIBIT D

HOWARD C. NIELSON, JR.

1515 E. 800 S., Provo, UT 84606 • 202-220-9650 • hnielson@cooperkirk.com

LEGAL EXPERIENCE

COOPER & KIRK, PLLC

- *Partner*, 2010 to present
- *Of Counsel*, 2005 to 2010

Provo, UT/
Washington, DC

Litigation, including appeals, brief writing, and strategic planning—primarily in the areas of constitutional, administrative, and government contracts law

J. REUBEN CLARK LAW SCHOOL, BRIGHAM YOUNG UNIVERSITY

- *Distinguished Lecturer*, 2009 to 2014
- *Lecturer*, 2007 to 2009

Provo, UT

Classes and seminars on current issues in constitutional litigation, national security law, foreign relations law, and federal courts

OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE

- *Deputy Assistant Attorney General*, 2003 to 2005

Washington, DC

Legal opinions and advice for the White House, Attorney General, and Executive Branch Departments and Agencies—primarily in the areas of constitutional, national security, and foreign relations law

OFFICE OF THE ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

- *Counsel to the Attorney General*, 2001 to 2003

Washington, DC

Legal advice to the Attorney General and supervision of high-profile litigation relating to national security and other departmental priorities

JONES, DAY, REAVIS & POGUE (now JONES DAY)

- *Associate, Issues and Appeals Practice Group*, 1999 to 2001

Washington, DC

SUPREME COURT OF THE UNITED STATES

- *Law Clerk to the Honorable Anthony M. Kennedy*, 1998 to 1999

Washington, DC

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

- *Law Clerk to the Honorable J. Michael Luttig*, 1997 to 1998

Washington, DC

EDUCATION

UNIVERSITY OF CHICAGO LAW SCHOOL

- *J.D. with high honors*, 1997

Chicago, IL

Articles Editor, University of Chicago Law Review; John M. Olin Student Fellow in Law and Economics; Order of the Coif

UNIVERSITY OF KOBE GRADUATE SCHOOL OF LAW

- *Japan Government (Mombusho) Scholar*, 1992 to 1994

Kobe, Japan

BRIGHAM YOUNG UNIVERSITY

- *B.A., university honors and summa cum laude*, 1992

Provo, UT

Commencement speaker (benediction); Karl G. Maeser Achievement Award; Edwin S. Hinkley Scholar; Phi Kappa Phi Outstanding Senior Paper from the College of Humanities; First Place, David H. Yarn Philosophical Essay Contest

SERVICE

ETHICS AND DISCIPLINE COMMITTEE OF THE UTAH SUPREME COURT • <i>Member</i> , 2008 to 2014 Disciplinary hearings and decisions on ethics complaints against attorneys	Salt Lake City, UT
FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES • <i>Programs Vice Chair, Litigation Practice Group</i> 2000 to 2001	Washington, DC
UNITED STATES HOUSE OF REPRESENTATIVES • <i>Lyndon B. Johnson Intern for Representative James V. Hansen</i> , 1990	Washington, DC
JAPAN TOKYO NORTH MISSION, CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS • <i>Volunteer Full-time Missionary</i> , 1987 to 1989	Tokyo, Japan
UNITED STATES SENATE • <i>Page</i> , 1985	Washington, DC
BOY SCOUTS OF AMERICA • <i>Eagle Scout</i> , 1984	

SELECTED REPRESENTATIONS

- *Schuetz v. Coalition To Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary*, 134 S. Ct. 1623 (2014) (Counsel for Eric Russell)
- *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (Counsel for Dennis Hollingsworth, *et al.*)
- *General Dynamics Corp. v. United States*, 131 S. Ct. 1900 (2011) (Counsel for The Boeing Company)
- *Novell, Inc. v. Microsoft Corp.*, 429 F. App'x 254 (4th Cir. 2011), 505 F.3d 302 (4th Cir. 2007) (Counsel for Novell, Inc.)
- *Matter of The Boeing Company*, No. B-311344 *et al.*, 2008 CPD ¶ 114, 2008 WL 2514171 (GAO June 18, 2008) (Counsel for The Boeing Company)

SELECTED ARTICLES AND OPINIONS

- *Complete Diversity and the Closing of the Federal Courts*, 37 HARV. J.L. & PUB. POL'Y 295 (2014)
- *Constitutional First Principles and the Greenhouse Gas Cases*, SCOTUSBLOG (Feb. 10, 2014), www.scotusblog.com/2014/02/symposium-constitutional-first-principles-and-the-greenhouse-gas-cases/
- *Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It*, 29 O.L.C. 97 (July 7, 2005), available at www.justice.gov/sites/default/files/olc/opinions/attachments/2015/05/28/op-olc-v029-p0097.pdf
- *Whether the Second Amendment Secures an Individual Right*, 28 O.L.C. 126 (Aug. 24, 2004), available at www.justice.gov/sites/default/files/olc/opinions/2004/08/31/op-olc-v028-p0126_0.pdf
- *Recklessly False Statements in the Public-Employment Context*, 63 U. CHI. L. REV. 1277 (1996)

BAR ADMISSIONS

United States Supreme Court • Utah Supreme Court • District of Columbia Court of Appeals • United States Courts of Appeals for the Fourth, Fifth, Sixth, Ninth, Tenth, District of Columbia, and Federal Circuits • United States District Courts for the District of Utah and the District of Columbia • United States Court of Federal Claims

EXHIBIT E

Peter A. Patterson

1523 New Hampshire Ave., NW • Washington, D.C. 20036 • 202.220.9670 •
ppatterson@cooperkirk.com

EXPERIENCE

COOPER & KIRK, PLLC, Washington, DC, Cincinnati, OH

Partner, 2013—present

Associate, 2009—2013

- Litigate cases at all levels of the federal court system, from the district courts to the Supreme Court of the United States
- Practice areas include constitutional litigation, commercial litigation, government contracts litigation, and state representation

UNIVERSITY OF CINCINNATI COLLEGE OF LAW, Cincinnati, OH

Adjunct Faculty Member, Sixth Circuit Clinic, 2012—present

WHITE HOUSE COUNSEL'S OFFICE, Washington, DC

Associate Counsel to the President, 2008—2009

Deputy Associate Counsel, 2007—2008

- Managed portfolio including Executive Order process
- Worked on issues related to presidential appointments, litigation involving the Executive Branch, congressional investigations, and national security, among others

THE HONORABLE JEFFREY S. SUTTON, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Columbus, OH

Law Clerk, 2006—2007

EDUCATION

STANFORD LAW SCHOOL, Stanford, CA

Juris Doctor, 2006

Honors: Order of the Coif (top 10% of class); Law Review Special Service Award

CARNEGIE MELLON UNIVERSITY, Pittsburgh, PA

Bachelor of Science in Information & Decision Systems, 2000

Honors: University Honors Graduate; Dean's List (all semesters)

ADMISSIONS

State: Ohio, District of Columbia

Federal: Southern District of Ohio; District of the District of Columbia; Court of Federal Claims; Second, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, District of Columbia, and Federal Circuits; Supreme Court of the United States

EXHIBIT F

By the Numbers: The Firms Report Their Billing Rates

Firm	Largest U.S. Office	Total FTE Attorneys	Partner High	Partner Average	Partner Low	Associate High	Associate Average	Associate Low
Debevoise & Plimpton	New York	615	\$1,075	\$1,055	\$955	\$760	\$490	\$120
Paul Weiss	New York	803	\$1,120	\$1,040	\$760	\$760	\$600	\$250
Skadden, Arps	New York	1,735	\$1,150	\$1,035	\$845	\$845	\$620	\$340
Fried Frank	New York	476	\$1,100	\$1,000	\$930	\$760	\$595	\$375
Latham & Watkins	New York	2,033	\$1,110	\$990	\$895	\$725	\$605	\$465
Gibson Dunn	New York	1,086	\$1,800	\$980	\$765	\$930	\$590	\$175
Davis Polk	New York	787	\$985	\$975	\$850	\$975	\$615	\$130
Willkie Farr	New York	540	\$1,090	\$950	\$790	\$790	\$580	\$350
Cadwalader	New York	435	\$1,050	\$930	\$800	\$750	\$605	\$395
Weil Gotshal	New York	1,201	\$1,075	\$930	\$625	\$790	\$600	\$300
Quinn Emanuel	New York	697	\$1,075	\$915	\$810	\$675	\$410	\$320
Wilmer	Washington	961	\$1,250	\$905	\$735	\$695	\$290	\$75
Dechert	New York	803	\$1,095	\$900	\$670	\$735	\$530	\$395
Andrews Kurth	Houston	348	\$1,090	\$890	\$745	\$1,090	\$670	\$265
Hughes Hubbard	New York	344	\$995	\$890	\$725	\$675	\$555	\$365
Irell & Manella	Los Angeles	164	\$975	\$890	\$800	\$750	\$535	\$395
Proskauer Rose	New York	746	\$950	\$880	\$725	\$675	\$465	\$295
White & Case	New York	1,900	\$1,050	\$875	\$700	\$1,050	\$525	\$220
Morrison & Foerster	San Francisco	1,010	\$1,195	\$865	\$595	\$725	\$525	\$230
Pillsbury Winthrop	Washington	609	\$1,070	\$865	\$615	\$860	\$520	\$375
Kaye Scholer	New York	414	\$1,080	\$860	\$715	\$680	\$510	\$320
Kramer Levin	New York	320	\$1,025	\$845	\$740	\$750	\$590	\$400
Hogan Lovells	Washington	2,280	\$1,000	\$835	\$705			
Kasowitz Benson	New York	365	\$1,195	\$835	\$600	\$625	\$340	\$200
Kirkland & Ellis	Chicago	1,517	\$995	\$825	\$590	\$715	\$540	\$235
Cooley	Palo Alto, Calif.	632	\$990	\$820	\$660	\$630	\$525	\$160
Arnold & Porter	Washington	748	\$950	\$815	\$670	\$610	\$500	\$345
Paul Hastings	New York	899	\$900	\$815	\$750	\$755	\$540	\$335
Curtis, Mallet-Prevost	New York	322	\$860	\$800	\$730	\$785	\$480	\$345
Winston & Strawn	Chicago	842	\$995	\$800	\$650	\$590	\$520	\$425
Bingham McCutchen	Boston	900	\$1,080	\$795	\$220	\$605	\$450	\$185
Akin Gump	Washington	806	\$1,220	\$785	\$615	\$660	\$525	\$365
Covington & Burling	Washington	738	\$890	\$780	\$605	\$565	\$415	\$320
King & Spalding	Atlanta	838	\$995	\$775	\$545	\$735	\$460	\$125
Norton Rose	N/A**		\$900	\$775	\$525	\$515	\$400	\$300
DLA Piper	New York	4,036	\$1,025	\$765	\$450	\$750	\$510	\$250
Bracewell & Giuliani	Houston	432	\$1,125	\$760	\$575	\$700	\$440	\$275
Baker & McKenzie	Chicago	4,004	\$1,130	\$755	\$260	\$925	\$395	\$100
Dickstein Shapiro	Washington	308	\$1,250	\$750	\$590	\$585	\$475	\$310
Jenner & Block	Chicago	432	\$925	\$745	\$565	\$550	\$465	\$380
Jones Day	New York	2,363	\$975	\$745	\$445	\$775	\$435	\$205
Manatt Phelps	Los Angeles	325	\$795	\$740	\$640			
Seward & Kissel	New York	152	\$850	\$735	\$625	\$600	\$400	\$290
O'Melveny & Myers	Los Angeles	738	\$950	\$715	\$615			

By the Numbers: The Firms Report Their Billing Rates

Firm	Largest U.S. Office	Total FTE Attorneys	Partner High	Partner Average	Partner Low	Associate High	Associate Average	Associate Low
McDermott Will	Chicago	1,024	\$835	\$710	\$525			
Reed Smith	Pittsburgh	1,468	\$945	\$710	\$545	\$530	\$420	\$295
Dentons	N/A**		\$1,050	\$700	\$345	\$685	\$425	\$210
Jeffer Mangels	Los Angeles	126	\$875	\$690	\$560			
Sheppard Mullin	Los Angeles	521	\$875	\$685	\$490	\$535	\$415	\$275
Alston & Bird	Atlanta	805	\$875	\$675	\$495	\$575	\$425	\$280
Foley Hoag	Boston	223	\$775	\$670	\$590	\$385	\$325	\$290
Haynes and Boone	Dallas	489	\$1,020	\$670	\$450	\$580	\$405	\$310
Patton Boggs	Washington	485	\$780	\$665	\$490	\$475	\$405	\$325
Wiley Rein	Washington	272	\$950	\$665	\$550	\$535	\$445	\$320
Richards Layton	Wilmington, Del.	138	\$850	\$660	\$475	\$450	\$350	\$250
Venable	Washington	501	\$1,075	\$660	\$470	\$575	\$430	\$295
Greenberg Traurig	New York	1,699	\$955	\$655	\$360	\$595	\$390	\$200
Squire Sanders	Cleveland	1,257	\$950	\$655	\$350	\$530	\$355	\$250
Arent Fox	Washington	323	\$860	\$650	\$500	\$595	\$395	\$275
Blank Rome	Philadelphia	471	\$940	\$640	\$445	\$565	\$350	\$175
Kelley Drye	New York	298	\$815	\$640	\$435	\$600	\$430	\$305
Gardere Wynne	Dallas	223	\$775	\$635	\$430	\$445	\$310	\$235
Pepper Hamilton	Philadelphia	493	\$850	\$630	\$475	\$460	\$360	\$245
Orrick Herrington	San Francisco	977	\$945	\$625	\$305	\$675	\$310	\$170
Stevens & Lee	Reading, Pa.	167	\$800	\$625	\$525			
Duane Morris	Philadelphia	613	\$710	\$620	\$430	\$490	\$370	\$295
Morgan Lewis	Philadelphia	1,334	\$765	\$620	\$430	\$585	\$390	\$270
Troutman Sanders	Atlanta	575	\$975	\$620	\$400	\$570	\$340	\$245
Allen Matkins	Los Angeles	187	\$680	\$615	\$525			
Katten Muchin	Chicago	586	\$745	\$615	\$500	\$595	\$455	\$340
Lowenstein Sandler	Roseland, N.J.	254	\$755	\$615	\$510	\$650	\$360	\$260
Seyfarth Shaw	Chicago	753	\$860	\$610	\$375	\$505	\$365	\$225
Buchalter Nemer	Los Angeles	134	\$695	\$605	\$475	\$375	\$365	\$350
Carlton Fields	Tampa, Fla.	276	\$840	\$600	\$455			
Foley & Lardner	Milwaukee	872	\$860	\$600	\$405	\$470	\$335	\$210
Perkins Coie	Seattle	823	\$940	\$600	\$320	\$595	\$405	\$215
Vinson & Elkins	Houston	677	\$770	\$600	\$475	\$565	\$390	\$275
Holland & Knight	Washington	926	\$1,035	\$595	\$335	\$575	\$325	\$210
McGuireWoods	Richmond, Va.	941	\$725	\$595	\$450	\$525	\$360	\$285
Bryan Cave	St. Louis	990	\$860	\$590	\$405	\$570	\$405	\$210
Nutter McClennen	Boston	135	\$715	\$575	\$470	\$460	\$375	\$295
Gibbons	Newark, N.J.	210	\$865	\$560	\$440	\$475	\$360	\$295
Cozen O'Connor	Philadelphia	509	\$1,050	\$555	\$300	\$590	\$345	\$235
Knobbe Martens	Irvine, Calif.	268	\$785	\$555	\$440	\$535	\$345	\$295
Kilpatrick Townsend	Atlanta	552	\$775	\$550	\$400	\$475	\$385	\$315
Littler Mendelson	San Francisco	909	\$615	\$550	\$395	\$420	\$290	\$245
Edwards Wildman	Boston	572	\$765	\$535	\$210	\$415	\$325	\$245
Thompson & Knight	Dallas	281	\$740	\$535	\$425	\$610	\$370	\$240

By the Numbers: The Firms Report Their Billing Rates

Firm	Largest U.S. Office	Total FTE Attorneys	Partner High	Partner Average	Partner Low	Associate High	Associate Average	Associate Low
Fox Rothschild	Philadelphia	490	\$750	\$530	\$335	\$500	\$310	\$245
McCarter & English	Newark, N.J.	373	\$625	\$530	\$450	\$370	\$300	\$220
McKenna Long	Atlanta	509	\$650	\$530	\$480	\$425	\$395	\$375
Saul Ewing	Philadelphia	226	\$850	\$530	\$365	\$575	\$340	\$225
Brownstein Hyatt	Denver	216	\$700	\$520	\$310	\$345	\$305	\$265
Lindquist & Vennum	Minneapolis	181	\$600	\$520	\$460	\$470	\$365	\$275
Nixon Peabody	Boston	612	\$850	\$520	\$295	\$550	\$300	\$180
Cox Smith	San Antonio	117	\$595	\$505	\$395	\$485	\$320	\$230
Lewis Roca	N/A**		\$695	\$505	\$380	\$525	\$400	\$205
Jackson Walker	Dallas	328	\$550	\$500	\$450	\$385	\$335	\$255
Snell & Wilmer	Phoenix	422	\$695	\$495	\$295	\$420	\$280	\$185
Arnall Golden	Atlanta	139	\$520	\$490	\$430			
Rutan & Tucker	Costa Mesa, Calif.	139	\$675	\$490	\$345	\$500	\$320	\$230
Akerman Senterfitt	Miami	502	\$610	\$480	\$350	\$425	\$300	\$175
Barnes & Thornburg	Indianapolis	487	\$580	\$480	\$330	\$370	\$320	\$260
Morris Manning	Atlanta	142	\$575	\$480	\$400			
Ballard Spahr	Philadelphia	479	\$650	\$475	\$395	\$495	\$315	\$235
Stinson Morrison	Kansas City, Mo.	280	\$695	\$475	\$290	\$650	\$280	\$185
Stoel Rives	Portland, Ore.	371	\$690	\$475	\$320	\$425	\$280	\$190
Miles & Stockbridge	Baltimore	207	\$725	\$470	\$330	\$375	\$285	\$230
Quarles & Brady	Milwaukee	413	\$600	\$470	\$350	\$600	\$335	\$210
Arnstein & Lehr	Chicago	141	\$595	\$465	\$350	\$350	\$250	\$175
Waller Lansden	Nashville, Tenn.	165	\$600	\$460	\$350	\$335	\$245	\$190
Benesch Friedlander	Cleveland	150	\$635	\$455	\$360	\$475	\$280	\$155
Best Best	Riverside, Calif.	175	\$655	\$455	\$340	\$385	\$280	\$235
Faegre Baker	Minneapolis	683	\$580	\$455	\$355	\$315	\$260	\$110
Riker Danzig	Morristown, N.J.	151	\$495	\$455	\$430	\$295	\$250	\$210
Baker & Hostetler	Cleveland	810	\$685	\$450	\$250	\$455	\$260	\$120
Ice Miller	Indianapolis	301	\$530	\$450	\$335	\$305	\$270	\$245
Parker Poe	Charlotte, N.C.	178	\$500	\$450	\$425			
Michael Best	Milwaukee	198	\$650	\$445	\$260	\$350	\$275	\$190
Butzel Long	Bloomfield Hills, Mich.	125	\$535	\$440	\$350	\$415	\$305	\$215
McElroy Deutsch	Morristown, N.J.	288	\$505	\$440	\$325	\$325	\$295	\$200
Thompson Coburn	St. Louis	305	\$510	\$440	\$330	\$350	\$270	\$220
Davis Graham	Denver	146	\$595	\$435	\$350	\$340	\$245	\$150
Dorsey & Whitney	Minneapolis	517	\$585	\$435	\$340	\$510	\$315	\$215
Holland & Hart	Denver	409	\$725	\$435	\$295	\$415	\$275	\$165
Bradley Arant	Birmingham, Ala.	396	\$605	\$430	\$325	\$340	\$260	\$200
Husch Blackwell	St. Louis	514	\$925	\$430	\$235	\$465	\$260	\$190
Lane Powell	Seattle	172	\$465	\$430	\$365	\$330	\$265	\$225
Shutts & Bowen	Miami	221	\$660	\$430	\$250	\$345	\$260	\$195
Connell Foley	Roseland, N.J.	121	\$575	\$425	\$275	\$325	\$265	\$200
Sedgwick	San Francisco	347	\$615	\$425	\$305	\$475	\$325	\$250
Gordon & Rees	San Francisco	457	\$475	\$420	\$375	\$325	\$300	\$285

By the Numbers: The Firms Report Their Billing Rates

Firm	Largest U.S. Office	Total FTE Attorneys	Partner High	Partner Average	Partner Low	Associate High	Associate Average	Associate Low
Lathrop & Gage	Kansas City, Mo.	286	\$700	\$420	\$285	\$375	\$250	\$195
Strasburger & Price	Dallas	208	\$770	\$420	\$225	\$450	\$260	\$215
Wyatt Tarrant	Louisville, Ky.	165	\$500	\$418	\$280			
Taft Stettinius	Cincinnati	303	\$535	\$415	\$285	\$475	\$285	\$200
Polsinelli	Kansas City, Mo.	573	\$750	\$410	\$320	\$340	\$265	\$220
Robinson & Cole	Hartford, Conn.	209	\$490	\$410	\$285			
Leonard Street	Minneapolis	184	\$490	\$405	\$295	\$305	\$285	\$265
Shumaker Loop	Toledo, Ohio	226	\$585	\$405	\$295	\$335	\$260	\$175
Archer & Greiner	Haddonfield, N.J.	208	\$460	\$400	\$330	\$295	\$245	\$200
Baker Donelson	Memphis, Tenn.	587	\$495	\$400	\$340	\$465	\$295	\$245
Dinsmore & Shohl	Cincinnati	422	\$850	\$400	\$250	\$350	\$235	\$140
Wolff & Samson	West Orange, N.J.	129	\$450	\$400	\$325	\$450	\$340	\$225
Adams and Reese	New Orleans	277	\$650	\$390	\$275	\$320	\$260	\$200
Honigman Miller	Detroit	227	\$560	\$390	\$290	\$225	\$220	\$205
Varnum	Grand Rapids, Mich.	134	\$465	\$390	\$290			
Harris Beach	Rochester, N.Y.	204	\$600	\$385	\$295	\$285	\$260	\$175
Harter Secrest	Rochester, N.Y.	136	\$465	\$385	\$300	\$290	\$250	\$195
Jones Walker	New Orleans	361	\$425	\$385	\$275	\$240	\$225	\$200
Miller & Martin	Chattanooga, Tenn.	133	\$585	\$385	\$245	\$270	\$215	\$180
Williams Mullen	Richmond, Va.	231	\$410	\$385	\$360	\$350	\$295	\$260
Broad and Cassel	Orlando, Fla.	160	\$465	\$380	\$295			
Jackson Lewis	Los Angeles	690	\$440	\$380	\$310	\$315	\$290	\$275
Ulmer & Berne	Cleveland	178	\$415	\$380	\$315			
Bond Schoeneck	Syracuse, N.Y.	194	\$520	\$355	\$240	\$285	\$225	\$160
Burr & Forman	Birmingham, Ala.	249	\$525	\$355	\$240	\$350	\$245	\$200
Jackson Kelly	Charleston, W.Va.	200	\$370	\$280	\$175	\$265	\$195	\$145
Bowles Rice	Charleston, W.Va.	128	\$285	\$230	\$165	\$180	\$135	\$115

EXHIBIT G

Adjustments to the 1988-1989 *Laffey* Matrix Rates Using the Legal Services Index¹

Years Out of Law School	06/01/88-05/31/89 ²	06/01/89-05/31/90	06/01/90-05/31/91	06/01/91-05/31/92	06/01/92-05/31/93	06/01/93-05/31/94	06/01/94-05/31/95	06/01/95-05/31/96	06/01/96-05/31/97	06/01/97-05/31/98
20th+	\$265	\$284	\$306	\$320	\$336	\$355	\$363	\$375	\$389	\$406
11th - 19th	\$220	\$235	\$254	\$265	\$279	\$294	\$301	\$311	\$323	\$337
8th - 10th	\$195	\$209	\$225	\$235	\$247	\$261	\$267	\$276	\$287	\$299
4th - 7th	\$135	\$144	\$156	\$163	\$171	\$181	\$185	\$191	\$198	\$207
1st - 3rd	\$110	\$118	\$127	\$133	\$139	\$147	\$151	\$155	\$162	\$168
Paralegal/Law Clerk	\$60	\$64	\$69	\$72	\$76	\$80	\$82	\$85	\$88	\$92
Adjustment Factor ³		1.070028	1.079406	1.044462	1.051083	1.055228	1.023726	1.032038	1.039630	1.041931

¹ *Laffey* refers to *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), affirmed in part and reversed in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), overruled in part on other grounds, *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988)(en banc).

² The rates in this column represent the 1989 update to the *Laffey* matrix rates for Washington, D.C. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904 (D.D.C. 1993).

³ The Adjustment Factor refers to the legal services component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor. Each Adjustment Factor is calculated by dividing the legal services component for June of the current year by the component for June of the previous year.

<i>Years Out of Law School</i>	<i>06/01/97-05/31/98⁴</i>	<i>06/01/98-05/31/99</i>	<i>06/01/99-05/31/00</i>	<i>06/01/00-05/31/01</i>	<i>06/01/01-05/31/02</i>	<i>06/01/02-05/31/03</i>	<i>06/01/03-05/31/04</i>	<i>06/01/04-05/31/05</i>	<i>06/01/05-05/31/06</i>	<i>06/01/06-05/31/07</i>
20th+	\$406	\$424	\$445	\$468	\$487	\$523	\$549	\$574	\$599	\$614
11th - 19th	\$337	\$352	\$369	\$389	\$404	\$434	\$456	\$477	\$497	\$510
8th - 10th	\$299	\$312	\$327	\$345	\$359	\$385	\$404	\$423	\$441	\$452
4th - 7th	\$207	\$216	\$227	\$239	\$248	\$266	\$280	\$293	\$305	\$313
1st - 3rd	\$168	\$175	\$184	\$194	\$202	\$216	\$227	\$238	\$248	\$254
Paralegal/Law Clerk	\$92	\$96	\$101	\$106	\$110	\$118	\$124	\$130	\$136	\$139
Adjustment Factor ³		1.043902	1.049065	1.052895	1.040719	1.072663	1.050687	1.045537	1.042691	1.025641

⁴Column repeated from previous page.

<i>Years Out of Law School</i>	<i>06/01/06-05/31/07⁵</i>	<i>06/01/07-05/31/08</i>	<i>06/01/08-05/31/09</i>	<i>06/01/09-05/31/10</i>	<i>06/01/10-05/31/11</i>	<i>06/01/11-05/31/12</i>	<i>06/01/12-05/31/13</i>	<i>06/01/13-05/31/14</i>	<i>06/01/14-05/31/15</i>	<i>06/01/15-05/31/16</i>
20th+	\$614	\$646	\$672	\$686	\$709	\$734	\$753	\$772	\$790	\$797
11th - 19th	\$510	\$536	\$558	\$570	\$589	\$610	\$626	\$641	\$656	\$662
8th - 10th	\$452	\$475	\$494	\$505	\$522	\$541	\$554	\$568	\$581	\$586
4th - 7th	\$313	\$329	\$342	\$350	\$362	\$374	\$384	\$393	\$403	\$406
1st - 3rd	\$254	\$267	\$278	\$284	\$293	\$304	\$312	\$319	\$327	\$330
Paralegal/Law Clerk	\$139	\$146	\$152	\$155	\$161	\$166	\$171	\$175	\$179	\$180
Adjustment Factor ³		1.051500	1.040127	1.021848	1.033724	1.035168	1.025790	1.024383	1.023459	1.008873

⁵Column repeated from previous page.

<i>Years Out of Law School</i>	<i>06/01/15-05/31/16 ⁶</i>	<i>06/01/16-05/31/17</i>	<i>06/01/17-05/31/18</i>	<i>06/01/18-05/31/19</i>	<i>06/01/19-05/31/20</i>	<i>06/01/20-05/31/21</i>	<i>06/01/21-05/31/22</i>	<i>06/01/22-05/31/23</i>	<i>06/01/23-05/31/24</i>	<i>06/01/24-05/31/25</i>
20th+	\$797	\$826	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
11th - 19th	\$662	\$686	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8th - 10th	\$586	\$608	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4th - 7th	\$406	\$421	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1st - 3rd	\$330	\$342	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paralegal/Law Clerk	\$180	\$187	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Adjustment Factor ³		1.036943	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000

⁶Column repeated from previous page.