

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

IN RE LITERARY WORKS IN ELECTRONIC)
DATABASES COPYRIGHT LITIGATION)

) Master Docket No. M-21-90 (GBD)
) (MDL # 1379)
)

**DECLARATION OF MICHAEL J. BONI ON BEHALF OF BONI & ZACK LLC
IN SUPPORT OF CLASS COUNSEL’S APPLICATION FOR
ATTORNEYS’ FEES AND DISBURSEMENTS**

I, Michael J. Boni, being duly sworn, state as follows:

1. I am a partner of the law firm of Boni & Zack LLC. I submit this declaration in support of my firm’s application for an award of attorneys’ fees and reimbursement of expenses.

The time period covered by this Declaration is April 1, 2007 through February 28, 2014.

2. My firm is one of Plaintiffs’ Co-Lead Counsel in this class action, having succeeded the firm Kohn, Swift & Graf, P.C. in that position when I formed this firm in April 2007. From the time of our founding to the present, Boni & Zack has been extensively involved in all aspects of the litigation and settlement of this case.

3. The matters on which Boni & Zack LLC worked can be summarized as follows: Extensive client and class member communications; review and analyze initial Second Circuit opinion denying settlement approval on jurisdictional grounds; laboring oar on all appellate briefing, including researching and drafting two petitions for rehearing en banc before the Second Circuit Court of Appeals, a writ of certiorari to the U.S. Supreme Court, and Supreme Court opening and reply briefs, a supplemental brief to the Second Circuit (also review the objectors’ and defendants’ supplemental briefs) and a second supplemental brief in response to the objectors’ brief re supplemental authority; reports to the Second Circuit regarding claims

information; travel to Washington D.C. to meet with the Solicitor General re that office's Supreme Court amicus brief; review amici and defendants' Supreme Court briefs; assist defense counsel in preparing for oral argument; travel to Washington D.C. to attend Supreme Court oral argument; review Supreme Court decision; keeping abreast of Canadian class action (Robertson litigation); keeping abreast of Cengage bankruptcy; correspondence and conferences with associational plaintiffs the Authors Guild and the American Society of Journalists and Authors; participate in settlement negotiations with the objectors' counsel prior to the Second Circuit's merits decision, and respond to the objectors' information requests in connection with same; review and analyze Second Circuit decision denying final settlement approval on the merits; participate in mediation with Ken Feinberg in New York City; participate in all levels of the highly contentious, two-year negotiation of the Revised Settlement Agreement, which involved almost daily communications with co-counsel, defense counsel, the mediator and the objectors' counsel, and which involved exploration, research and analysis of many legal and factual issues pertaining to the settlement, including value for syndicated works, notice, sub-classing, foreign works; issue to the Court numerous status updates on the settlement negotiations; assisted in the drafting of and revisions to the Revised Settlement Agreement and Exhibits thereto; assisted in the drafting of and revisions to plaintiffs' motion for preliminary settlement approval, including finalizing and filing the motion and brief in support thereof; prepare for and argue on behalf of the A/B Plaintiffs at the preliminary settlement approval hearing; work with the claims administrator on claims issues, the website, revised claims data, the claims administrator's audit of its claims data, and all other aspects of the claims administration in this matter; monitor and manage the \$5 million Settlement Fund, including paying taxes on the fund each year; handling

class member inquiries concerning the Revised Settlement. In addition, this firm expects to incur hundreds of additional hours in this matter seeing the settlement through to finality and working with the claims administrator, co-counsel and defense counsel to resolve claim disputes, and, ultimately, see to it that claim awards are made to the claimants.

4. The schedule attached hereto as Exhibit 1 is a summary of the amount of time spent by the partners, associates and professional support staff of my firm who were involved in this litigation. The lodestar calculation is based on using current hourly rates for persons still employed by our firm, and hourly rates in effect at the year of departure of all others. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rate for the partners, associates and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other complex class action litigation.

6. From March 1, 2007 through February 28, 2014, the total number of hours expended by Boni & Zack LLC is 1,670.25 hours. The total lodestar for my firm during this time period is \$1,158,618.75, consisting of \$1,155,643.75 for attorneys' time and \$2,975.00 for professional support staff time.

7. As detailed in Exhibit 2, from March 1, 2007 through February 28, 2014, my firm has incurred a total of \$12,265.03 in un-reimbursed expenses in connection with the prosecution of this litigation.

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

9. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of my firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on April 4, 2014, in Bala Cynwyd, Pennsylvania.


Michael J. Boni

EXHIBIT 1**In re Literary Works In Electronic Databases Copyright Litigation, MDL No. 1379****BONI & ZACK LLC****TIME REPORT – March 1, 2007 through February 28, 2014**

Name	Total Hours	Hourly Rate	Total Lodestar
PARTNERS			
Michael J. Boni	1134.75	\$725.00	\$822,693.75
Joanne Zack	334.50	\$700.00	234,150.00
Joshua D. Snyder	146.50	\$550.00	80,575.00
John Sindoni	8.50	\$475.00	4,037.50
ASSOCIATES:			
Theresa Henson	16.50	\$500.00	\$8,250.00
CONTRACT ATTORNEY:			
Joanne Noble	12.50	\$475.00	\$5,937.50
PARALEGALS:			
Michelle Wimberly	17.00	\$175.00	\$2,975.00
TOTAL LODESTAR:	1670.25		\$1,158,618.75

EXHIBIT 2

In re Literary Works In Electronic Databases Copyright Litigation, MDL No. 1379

BONI & ZACK LLC

EXPENSE REPORT – March 1, 2007 through February 28, 2014

<u>CATEGORIES:</u>	<u>AMOUNT:</u>
Internal Reproduction (copies)	\$1,646.00
Commercial Reproduction (outside copies)	2,968.47
Court Fees (filing costs, etc.)	675.00
Court Reporters and Transcripts	30.00
Computer Research (Lexis/Westlaw/Pacer)	1,687.95
Long Distance Telephone/Fax/Mobile Phone/Conference Call	258.02
Postage/Express Delivery/Messenger	212.44
Professional Fees (expert, investigator, accountant, etc.)	4,289.00
Travel (meals, lodging, transportation, etc.)	498.15
TOTAL EXPENSES:	\$12,265.03

EXHIBIT 3

BONI & ZACK LLC

Firm Resume

Boni & Zack LLC is a law firm in Bala Cynwyd, Pennsylvania, founded in March 2007. Boni & Zack focuses on class action and complex litigation under antitrust, consumer protection, intellectual property, and securities laws. In addition, the firm represents victims of childhood sexual abuse from Jerry Sandusky, as well as priests in the Philadelphia Archdiocese.

Our attorneys have experience in litigating and settling antitrust cases alleging price fixing, monopolization, and other restraints of trade, and consumer cases involving product defects, fraudulent billing practices, negative option billing practices and other deceptive and unfair business practices.

We have also represented plaintiffs and defendants in a variety of cases, including copyright, securities, ERISA, and breach of contract. In all matters, we serve our clients with zeal, intelligence, and integrity. We are committed to obtaining the best litigation outcome for each client, whether by motion, trial, or settlement.

Boni & Zack currently serves as lead counsel or on plaintiffs' Executive Committee in the following cases: *The Authors Guild, et al. v. Google Inc.*, No. 05-CV-8136 (S.D.N.Y.), *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720, *In re Freelance Works in Literary Databases Copyright Litig.*, MDL No. 1379 (S.D.N.Y.); and recently served as co-lead counsel in *In re Yahoo! Litig.*, CV06-2737-CAS (C.D. Cal.), No. 11-CV-1758-EJD (N.D. Cal.).

In addition, Boni & Zack represents plaintiffs in the following actions, among others: *In re: Domestic Drywall Antitrust Litigation*, MDL No. 2437, 13-MD-2437 (E.D. Pa.); *In re: Foreign Exchange Benchmark Rates Antitrust Litigation* No. 1:13-cv-07789-LGS (S.D.N.Y.); *In re: Lithium Batteries Antitrust Litigation*, MDL No.: 2420, Case No.: 13-MD-02420 (YGR) (N.D. Cal.); *Garber, et al. v. Office of the Commissioner of Baseball, et al.*, No. 12-cv-3704 (SAS) (S.D.N.Y.); *Laumann, et al. v. National Hockey League, et al.*, No. 12-cv-1817 (SAS) (S.D.N.Y.); *In re LIBOR -Based Financial Instruments Antitrust Litigation*, No. 11-MD-2262 (NRB) (S.D.N.Y.); *In re: Transitions Lenses Antitrust Litig.*, MDL No. 2173 (M.D. Fla.); *In re Optical Disk Drive Products Antitrust Litig.*, MDL No. 2143; *In re Blood Reagents Antitrust Litig.*, MDL No. 2081; *In re Refrigerant Compressors Antitrust Litig.*, MDL No. 2042 (E.D. Mich.); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, MDL No. 1869 (D.D.C.); *In re Urethane Antitrust Litig. (Polyether Polyols)*, MDL No. 1616 (D. Kan.); *In re Chocolate Confectionary Antitrust Litig.*, MDL No. 1935 (M.D. Pa.); *Standard Iron Works v. Arcelormittal, et al.*, 08-CV-5214 (N.D. Ill.); *In re Wellbutrin XL Antitrust Litig.*, 08-CV-2433 (E.D. Pa.).

Some of the firm's notable clients include the City of Philadelphia, Sealy Mattress Co. (now Tepur-Sealy), Parkway Corporation, RosettaBooks, Open Road Integrated Media, Inc., noted

authors Jim Bouton and Joseph Goulden, and the Authors Guild, Inc.

Michael J. Boni founded Boni & Zack LLC in March 2007 after practicing complex commercial litigation for nearly 20 years. He specializes in antitrust, copyright, consumer, shareholder and class action litigation.

Mr. Boni graduated from the University of Pennsylvania School of Law, received an M.A. degree in psychology from the University of Connecticut, and received an A.B. degree from Albright College. Mr. Boni is admitted to practice in Pennsylvania, the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Sixth and Ninth Circuits, and the United States District Courts for the Eastern District of Pennsylvania, Northern District of California, and Eastern District of Michigan.

Mr. Boni has served as lead counsel in a number of complex matters, including *Authors Guild, et al. v. Google Inc.*, No. 05-CV-8136 (S.D.N.Y.) (copyright class action challenging Google's digitization of books); *In re Literary Works in Electronic Databases Copyright Litig.*, MDL No. 1379 (S.D.N.Y.) (copyright class action settlement pending); *Random House, Inc. v. Rosetta Books, LLC, et al.*, No. 01-Civ-1728 (S.D.N.Y.) (successful defense against copyright infringement claims brought by Random House against e-book publisher Rosetta Books); *In re Pillar Point Partners Antitrust and Patent Litig.*, MDL No. 1202 (D. Ariz.) (\$50 million antitrust class action settlement); *In re Western States Wholesale Natural Gas Antitrust Litig.*, MDL No. 1566 (D. Nev.) (antitrust class action settlement); *Mikhail, et al. v. Toshiba America Information Systems, Inc.*, No. BC 278163 (Superior Ct. Cal.) (consumer class action settlement); *Anderson v. Toshiba America Information Systems, Inc.*, BC 299977 (Cal. Sup. Ct., L.A. County) (consumer class action settled); *In re Yahoo! Litig.*, CV06-2737-CAS (C.D. Cal.) (class action settlement approved on behalf of Yahoo's advertising customers for alleged unfair business practices); *Next Proteins International v. Radonsky, et al.*, No. BC 304799 (Superior Ct. Cal.) (consumer class action settled); *In re RF Tags Antitrust Litig.*, No. 02-CV-3730 (D.N.J.) (antitrust class action settlement); *Pilkington, et al. v. U.S.Search.com*, No. BC 234858 (Superior Ct. Cal.) (consumer class action settlement); *True Communication, Inc., d/b/a Metrodate.com v. The Gator Corporation*, No. CIV 430620 (Superior Ct. Cal.) (unfair competition class action settled); *Miller v. Pep Boys, Inc., et al.*, No. 0201-41489 (C.C.P. Phila.) (consumer class action settled); *Kleeman v. Verizon Communications Inc., et al.* (consumer class action settled); *In re Rio Hair Naturalizer Products Liability Litig.*, MDL No. 1055 (E.D. Mich.) (product liability class action settlement); *In re AMC Shareholder Derivative Litig.*, No. 12855 (Del. Chancery) (settlement); *Winigrad v. Franklin Electronics*, (Superior Ct. N.J.) (consumer class action settled); *Pacillo v. Philips Electronics*, (Superior Ct. N.J.) (consumer class action settled).

In its opinion granting final settlement approval in *In re Rio Hair Naturalizer Products Liability Litigation*, the court stated that "the work of [lead counsel] and the manner in which they conducted themselves exhibited the very highest level of professionalism and competence in our legal system." 1996 U.S. Dist. LEXIS 20440, *57 (E.D. Mich. December 20, 1996).

Mr. Boni recently served on the Executive Committee in *In re OSB Antitrust Litig.*, Master File No. 06-CV-00826 (E.D. Pa.) (antitrust class action settlement), and on Plaintiff's Executive

Committee in *In re Sovereign Bancorp, Inc. Shareholders Litig.*, Nov. Term 2008, Case 2587 (Phila. C.C.P.) (shareholder class and derivative action settlement). He presently serves on the Executive Committee of *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. (E.D.N.Y.) (\$7 billion settlement pending appeal).

In addition, Mr. Boni has played an integral role in the presentation of other complex matters, including: *In re Relafen Antitrust Litig.*, Master File No. 01-12239 (D. Mass.) (antitrust class action settlement); *In re Disposable Contact Lens Antitrust Litig.*, MDL Docket No. 1030 (M.D. Fla.) (antitrust class action settlement); *Schwab v. America Online, Inc.*, No. 96 CH 13732 (Cook County, Ill.) (consumer class action settlement); *In re Intelligent Electronics, Inc. Securities Litig.*, Master File No. 92-CV-1905 (E.D. Pa.) (securities class action settlement); *In re Lockheed Securities Litig.*, Master File No. CV89-6745-TJH (Bx) (C.D. Ca.) (securities class action settlement); *In re Orion Securities Litig.*, Civil Action No. 91-3304 DT (JRx) (E.D.N.Y.); *In re Budd Pension Plan Litig.*, Master File No. 91-4082 (E.D. Pa.) (ERISA class action settled); *In re Toys "R" Us Antitrust Litig.*, MDL Docket No. 1211 (E.D.N.Y.) (antitrust class action settlement); *First Eastern Corporation, et al. v. Mainwaring, et al.*, Civil Action No. 92-CV-1176 (RLB) (E.D. Pa.).

Mr. Boni was named one of Pennsylvania's "Super Lawyers" from 2005 to and including 2014.

Mr. Boni is President of the Jewish National Fund, Eastern Pennsylvania Region, was a past Chair of the Board of Directors of the Anti-Defamation League (Metropolitan Philadelphia Board), and is a member of the Board of Directors of Community Legal Services in Philadelphia and serves on that Board's Leadership Council.

Joanne Zack sadly passed away in October 2012. In her illustrious career, Ms. Zack represented clients in complex litigation in a variety of areas, including antitrust, copyright, ERISA, securities, breach of contract, and breach of fiduciary duty. She has tried cases and argued appeals in both federal and state court.

Ms. Zack was a shareholder at Kohn, Swift and Graf from 1988 to 2004, and was associated with Cleary, Gottlieb, Steen and Hamilton in New York from 1981 to 1986. She also served as Law Clerk to the Honorable Charles L. Brieant of the United States District Court for the Southern District of New York. She graduated from Carleton College and N.Y.U. Law School, where she was elected to Order of the Coif and served as Research Editor of the Law Review.

Ms. Zack was admitted to practice in the courts of Pennsylvania and New York, the Second, Third and Federal Circuit Courts of Appeals, the Eastern District of Pennsylvania, and the Southern and Eastern Districts of New York. She has served on the boards and executive committees of Community Legal Services of Philadelphia and Philadelphia VIP, and as a sponsor in Philadelphia Futures Sponsor a Scholar program. In 2001, she received the Champion of Justice Award from CLS.

Representative cases include: *The Authors Guild, et al. v. Google, Inc.* (S.D.N.Y.) (copyright class action challenging Google's digitization of books); *In re OSB Antitrust Litig.*, 2007 U.S.

Dist. LEXIS 56584 (E.D. Pa. 2007)(price-fixing class action in the paper industry); *In re Linerboard Antitrust*, 305 F.3d 145 (3d Cir. 2002) and 203 F.R.D. 199 (E.D. Pa. 2001)(output restriction class action involving corrugated containers); *Rossi v. Standard Roofing, Inc.*, 156 F.3d 452 (3d Cir. 1998)(refusal to deal in the roofing industry); *Tabas v. Tabas*, 47 F.3d 1280 (3d Cir. 1995)(alleged civil RICO); *Alvord-Polk, Inc. v. F. Schumacher & Co.*, 37 F.3d 996 (3d Cir. 1994)(refusal to deal in the wallpaper industry); *Parkway Garage, Inc. v. City of Philadelphia*, 5 F.3d 685 (3d Cir. 1993)(City's violation of civil rights through abuse of police power); *Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414 and 425 (3d Cir. 1993) (price fixing in the business jet industry); *Breard v. Sachnoff & Weaver, Ltd.*, 941 F.2d 142 (2d Cir. 1991)(securities fraud tax shelter); *Ellis National Bank of Jacksonville v. Irving Trust Co.*, 786 F.2d 466 (2d Cir. 1986)(ERISA action); *In re Assicurazioni Generali S.P.A. Holocaust Insurance Litig.*, 228 F. Supp. 2d 348 (S.D.N.Y. 2002)(class action against life insurers for breach of contract); *Random House, Inc. v. Rosetta Books, LLC*, 150 F. Supp. 2d 613 (S.D.N.Y. 2001), *aff'd*, 283 F.3d 490 (2d Cir. 2002) (alleged copyright violation); *Milandco Ltd., Inc. v. Washington Capital Corp.*, 2001 U.S. Dist. LEXIS (E.D. Pa. 2001)(alleged breach of contract for real estate); *Borkon v. Saidel*, 1995 U.S. Dist. LEXIS 11707 (E.D. Pa. 1995)(alleged securities fraud); *Goldberg v. Hankin*, 835 F. Supp. 815 (E.D. Pa. 1993)(alleged securities fraud); *Schutte v. Maleski, et al.*, 1993 U.S. Dist. Lexis 8332 (E.D. Pa. 1993) and 1993 U.S. Dist. Lexis 6980 (E.D. Pa. 1993) (ERISA class action); *Bloch v. SmithKline Beckman Corp.*, 1988 U.S. Dist. LEXIS 12397 (E.D. Pa. 1988)(monopolization in the pharmaceutical industry); *Rosefelde v. Falcon Jet Corp.*, 701 F. Supp. 1053 (D. N.J. 1988)(price fixing in the business jet industry); *EGW Partners, L.P. v. Prudential Insurance Co.*, 2003 Phila. Ct. Com. Pl. Lexis 29 (Commerce 2003)(breach of contract and misrepresentation); *Desert Equities v. Morgan Stanley Leveraged Equity Fund*, 624 A.2d 1199 (Del. Supreme 1993)(breach of contract).

Joshua D. Snyder has been with Boni & Zack LLC since it opened in March 2007 and became a partner in 2008. His practice focuses on complex litigation, including antitrust, consumer protection, copyright, ERISA, and securities class actions.

Mr. Snyder is participating or has participated in the following cases, among others: *In re Apple In-App Purchase Litig.*, No. 11-CV-1758-EJD (N.D. Cal.); *The Authors Guild, et al. v. Google Inc.*, No. 05-CV-8136 (S.D.N.Y.); *In re Automotive Refinishing Paint Antitrust Litig.*, MDL Docket No. 1426 (E.D. Pa.); *In re Freelance Works in Literary Databases Copyright Litig.*, MDL No. 1379 (S.D.N.Y.); *In re OSB Antitrust Litig.*, Civ. A. No. 06-0826 (E.D. Pa.); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, No. 05-md-1720 (E.D.N.Y.); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, MDL No. 1869 (D.D.C.); *In re Sovereign Bancorp Inc. Shareholders Litig.*, Nov. Term, 2008, No. 2587 (Phila. Cty. Ct. Common Pleas); *In re Urethane Antitrust Litig. (Polyether Polyols)*, MDL No. 1616 (D. Kan.); *Webster v. Hercules, Inc.*, Civ. A. No. 05-6404 (E.D. Pa.); *In re Western States Wholesale Natural Gas Antitrust Litig.*, MDL No. 1566 (D. Nev.); and *In re Yahoo! Litig.*, No. 06-2737 (C.D. Cal).

Prior to joining Boni & Zack, Mr. Snyder was an associate with Kohn, Swift & Graf, P.C., where his practice also focused on complex litigation. Following law school, he served as a law clerk to the Honorable Berle M. Schiller of the United States District Court for the Eastern District of

Pennsylvania and to the Honorable Thomas L. Ambro of the United States Court of Appeals for the Third Circuit.

Mr. Snyder is a graduate of the Pennsylvania State University (B.A., History, B.A. Philosophy 1998) and the Harvard Law School (J.D. 2001), where he was a member of the Harvard Legal Aid Bureau. He has handled a variety of pro bono matters.

Mr. Snyder was named one of Pennsylvania's "Super Lawyers Rising Stars" in 2008, and 2010 through 2012.

John E. Sindoni joined the firm as counsel in 2012. He has extensive experience in commercial litigation, including cases involving the antitrust laws, breach of contract, business torts, and intellectual property. He has also advised clients on compliance with antitrust and trade regulation laws.

Mr. Sindoni is a graduate of the University of Pennsylvania Law School (J.D., cum laude 2003), where served as Executive Editor of the Law Review and a member of the Moot Court Board, and a graduate of the University of Pennsylvania School of Arts and Sciences (B.A., cum laude 2000). Mr. Sindoni is participating or has participated in the following cases, among others: *American Express Travel Related Services, Inc. v. Visa U.S.A., Inc.*, No. 04-CV-08967-BSJ-DFE (S.D.N.Y.); *The Authors Guild, et al. v. Google Inc.*, No. 05-CV-8136 (S.D.N.Y.); *In re Electrical Carbon Products Antitrust Litig.*, MDL No. 1514 (D.N.J.); *In re Hydrogen Peroxide Antitrust Litig.*, MDL No. 1682 (E.D. Pa.); and *In re Urethane Antitrust Litig. (Polyether Polyols)*, MDL No. 1616 (D. Kan.).

Prior to joining Boni & Zack, Mr. Sindoni was an associate at Duane Morris LLP and served as a Staff Attorney for the United States Court of Appeals for the Third Circuit.