

1 Thomas R. Burke (CA State Bar No. 141930)
DAVIS WRIGHT TREMAINE LLP
2 505 Montgomery Street, Suite 800
San Francisco, California 94111
3 Telephone: (415) 276-6500
Facsimile: (415) 276-6599
4 Email: thomasburke@dwt.com

5 Matt Zimmerman (CA State Bar No. 212423)
ELECTRONIC FRONTIER FOUNDATION
6 454 Shotwell Street
San Francisco, California 94110
7 Telephone: (415) 436-9333
Facsimile: (415) 436-9993
8 Email: mattz@eff.org

9 Attorneys for Defendants
COUNCIL ON AMERICAN-ISLAMIC
10 RELATIONS, INC., COUNCIL ON AMERICAN
ISLAMIC RELATIONS ACTION NETWORK, INC.,
11 AND COUNCIL ON AMERICAN ISLAMIC
RELATIONS OF SANTA CLARA, INC.

DAVIS WRIGHT TREMAINE LLP

12
13 IN THE UNITED STATES DISTRICT COURT
14 THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

17 MICHAEL SAVAGE,

18 Plaintiff,

19 v.

20 COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, INC., COUNCIL ON
21 AMERICAN ISLAMIC RELATIONS
ACTION NETWORK, INC., COUNCIL ON
22 AMERICAN ISLAMIC RELATIONS OF
SANTA CLARA, INC., and DOES 3-100,

23 Defendants.
24
25

) Case No. CV07-06076 SI

) **SUPPLEMENTAL DECLARATION OF**
) **MATTHEW ZIMMERMAN IN**
) **SUPPORT OF CAIR'S MOTION FOR**
) **ATTORNEYS' FEES AND COSTS**

) Date: November 14, 2008

) Time: 9:00 a.m.

) Judge: The Honorable Susan Illston

DAVIS WRIGHT TREMAINE LLP

1 I, Matthew Zimmerman, declare as follows:

2 1. I am an attorney of record for the Defendants in this matter and a member in good
3 standing of the California State Bar, and I am admitted to practice before this Court. I have
4 personal knowledge of the matters stated in this declaration. If called upon to do so, I am
5 competent to testify to all matters set forth herein.

6 2. I am a Senior Staff Attorney at the Electronic Frontier Foundation (“EFF”), which
7 is a nonprofit corporation organized and existing under the laws of the Commonwealth of
8 Massachusetts with its principal place of business in San Francisco, California. I have been a
9 Senior Staff Attorney at EFF since January of 2008 and was a Staff Attorney before that beginning
10 in 2004.

11 3. On August 26, 2008, I spoke by phone with both Daniel Horowitz and Ian Boyd,
12 counsel for Savage, regarding CAIR’s forthcoming motion for fees in this case. I first phoned
13 Daniel Horowitz, Savage’s counsel throughout this litigation, who suggested that I instead contact
14 Ian Boyd. When I spoke with Mr. Boyd later that day, he communicated to me in general terms
15 what any settlement proposal would have to include for his client to seriously consider it. These
16 terms were not acceptable to CAIR, and I communicated to Mr. Boyd that CAIR was entitled to
17 full compensation for all of its costs and fees incurred in the course of defending this action. As a
18 result of this conversation, I informed Mr. Boyd that there did not appear to be any likely basis for
19 settlement. Mr. Boyd subsequently asked if I could deliver to him the exact dollar figure that
20 CAIR would be seeking in its fee motion. I informed him that I would attempt to do so, although
21 counsel for CAIR was in the process of calculating that figure and it was therefore not
22 immediately available. While I had hoped to be able to communicate this figure to Mr. Boyd
23 within the next day or two as a courtesy, three days passed until CAIR’s fee motion and
24 corresponding documentation (including the total calculation of CAIR’s fees and costs) was
25 finalized.

26 4. On August 29, 2008, CAIR filed its fee motion with the Court. That day, I again
27 called Mr. Boyd at his office but he was not available. I left Mr. Boyd a voicemail message
28 informing him that CAIR had filed its fee motion (which of course included the calculation of

DAVIS WRIGHT TREMAINE LLP

1 CAIR’s costs and fees) and that if he wanted to discuss the matter any further he should feel free
 2 to contact me. Mr. Boyd never returned my call.

3 5. I billed 24.4 hours in connection with reviewing Savage’s Opposition to CAIR’s
 4 fee motion, the voluminous supporting exhibits, and drafting CAIR’s reply and supporting
 5 declarations.

24-Oct-08	Review opposition to motion for fees and accompanying voluminous exhibits.	3.6
27- Oct -08	Draft reply in support of motion for fees.	3.4
28- Oct -08	Draft and edit reply in support of motion for fees.	5.2
29- Oct -08	Draft and edit reply in support of motion for fees.	4.2
30- Oct -08	Draft and edit reply in support of motion for fees.	6.0
31- Oct -08	Finalize motion for fees along with accompanying declarations.	2.0

=====
 =====

Total supplemental hours: 24.4

6. At my 2007 hourly rate (\$400 per hour, which is the hourly rate for purposes of this
 matter), my fees for this additional time amounts to \$9,760. The fees for my co-counsel Thomas
 Burke for his additional time spent related to CAIR’s reply brief amounts to \$5,400. Collectively,
 our fees for this additional time spent related to CAIR’s reply brief amounts to \$15,160.

7. Added to the fees accounted for in its moving papers, CAIR’s total costs and fees
 come to \$205,058.10.

8. Attached hereto as Exhibit 1 is a true and correct copy of a screen capture of
<http://michaelsavage.wnd.com/?pageId=1748> taken on March 7, 2008.

9. Attached hereto as Exhibit 2 is a true and correct copy of the complaint filed in
Brave New Films v. Savage et. al, No. CV08-04703 JL (N.D. Cal. filed Oct. 10, 2008).

10. Attached hereto as Exhibit 3 is a true and correct copy of the DMCA takedown
 notice issued from counsel for Savage’s radio program syndicator, “Original Talk Radio Network”

1 (“OTRN”), to YouTube on September 29, 2008, demanding that YouTube remove from its site
2 videos critical of Savage’s radio program, including videos that criticized the same copyrighted
3 material at issue in this case.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct. Executed in San Francisco, California, on October 31, 2008.

6
7 /s/ Matthew Zimmerman
8 Matthew Zimmerman
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DAVIS WRIGHT TREMAINE LLP