

1 J. Noah Hagey, Esq. (SBN: 262331)
2 hagey@braunhagey.com
3 Matthew Borden, Esq. (SBN: 214323)
4 borden@braunhagey.com
5 Jeffrey M. Theodore, Esq. (SBN: 324823)
6 theodore@braunhagey.com
7 Ronald J. Fisher, Esq. (SBN: 324823)
8 fisher@braunhagey.com
9 BRAUNHAGEY & BORDEN LLP
10 351 California Street, 10th Floor
11 San Francisco, CA 94104
12 Telephone: (415) 599-0210
13 Facsimile: (415) 276-1808
14 ATTORNEYS FOR PLAINTIFF
15 OPTRONIC TECHNOLOGIES, INC.
16

17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPTRONIC TECHNOLOGIES, INC., d/b/a
Orion Telescopes & Binoculars ®, a California
corporation,

Plaintiff,

v.

NINGBO SUNNY ELECTRONIC CO., LTD.,
SUNNY OPTICS, INC., MEADE
INSTRUMENTS CORP., and DOES 1 - 25,

Defendant.

Case No: 5:16-cv-06370-EJD-VKD

**PLAINTIFF OPTRONIC
TECHNOLOGIES, INC.'S MOTION
FOR ATTORNEYS' FEES AND COSTS
PURSUANT TO 15 U.S.C. § 15(a)**

Date: February 20, 2020
Time: 9:00 A.M.
Judge: Hon. Edward J. Davila
Location: Courtroom 4 – 5th Fl.

Compl. Filed: Nov. 1, 2016
First Am. Compl.: Nov. 3, 2017
Final Pretrial Conf.: Oct. 10, 2019
Trial Date: Oct. 15, 2019

Verdict: Nov. 26, 2019

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on February 20, 2020, at 9:00 a.m., in Courtroom 4, 5th
4 Floor, 280 South 1st Street, San Jose, California, before the Honorable Edward J. Davila, Plaintiff
5 Optronic Technologies, Inc. (“Orion”) will and hereby does respectfully bring this Motion for an
6 award of Orion’s reasonable attorneys’ fees and costs under 15 U.S.C. § 15(a), Fed. R. Civ. P.
7 54(d), and Civil Local Rules 54-1 and 54-5.

8 On December 5, 2019, the Court entered partial judgment on the jury’s verdict (Dkt. No.
9 501) (the “Verdict”) in favor of Orion and against defendant Ningbo Sunny Electronic Co. Ltd.
10 (“Ningbo Sunny”) as to Orion’s claims for damages under the Sherman and Clayton Acts and the
11 California Cartwright Act (the “Judgment,” Dkt. No. 518). The Court entered the Judgment in the
12 amount of \$50,400,000, in accordance with the Verdict’s award of \$16,800,000 in damages as
13 trebled pursuant to 15 U.S.C. § 15(a). Further, as required by 15 U.S.C. § 15(a), the Court awarded
14 Orion “its costs of suit and reasonable attorney’s fees[.]” (Dkt. No. 515 at 1-2.) As discussed in
15 the accompanying Memorandum of Points and Authorities, and as established in the accompanying
16 Declaration of J. Noah Hagey (the “Hagey Decl.”), the amounts owed to Orion’s counsel, the law
17 firm BraunHagey & Borden, LLP (“BHB”) are:

18 **Attorneys' Fees: \$4,204,664.80.** This figure is net of approximately **\$122,000** in write-offs
19 and items excluded from the fee application, as well as an additional five percent reduction of
20 **\$221,298.15**, for a total reduction of over **\$343,000**.

Clayton Act Recoverable Costs: \$778,117.02

Total Attorneys' Fees and Costs: \$4,982,781.87.

23 Orion also respectfully requests that its counsel at BHB be paid the reasonable fees and
24 expenses incurred in preparing and litigating this Motion. *See Camacho v. Bridgeport Fin'l, Inc.*,

1 523 F.3d 973, 981 (9th Cir. 2008) (attorney fee awards appropriately include the time spent
2 preparing and litigating the motion to obtain a fee award (“fees on fees”)).¹

3 This Motion is based upon this Notice of Motion and Motion, the points and authorities in
4 the accompanying Memorandum of Points and Authorities, the Hagey Decl., the complete files and
5 records in this action, oral argument of counsel, authorities that may be presented at or before the
6 hearing, and such other and further matters as this Court may consider.

7
8
9 Dated: January 16, 2020

Respectfully Submitted,

10 BRAUNHAGEY & BORDEN LLP

11 By: /s/ J. Noah Hagey
12 J. Noah Hagey

13 Attorneys for Plaintiff OPTRONIC
14 TECHNOLOGIES, INC. d/b/a Orion
Telescopes & Binoculars ®

15
16
17
18
19
20
21
22
23
24
25
26

27 ¹ While some of those hours and expenses have already been incurred and are thus part of this
28 Motion, Orion cannot ascertain the total additional amounts until the parties conclude litigation of
this Motion. Orion will itemize those amounts at that time.

1 Plaintiff Optronic Technologies, Inc. (“Orion”) respectfully submits this Memorandum of
 2 Points and Authorities in Support of its Motion for Attorneys’ Fees and Costs under 15 U.S.C. §
 3 15(a), Fed. R. Civ. P. 54(d), and Civil Local Rules 54-1 and 54-5.

4 **INTRODUCTION**

5 After four years of litigation and six weeks of trial, the sun finally set on this litigation when
 6 the jury rendered a verdict in Orion’s favor on all counts and awarded \$50,400,000 in damages
 7 after mandatory trebling. As expressly recognized in the partial judgment entered on Orion’s
 8 damages claims, Orion is entitled to recover its cost of suit including reasonable attorney’s fees
 9 pursuant 15 U.S.C. § 15(a). As set forth below, Orion’s attorneys’ fees and costs incurred in this
 10 matter total \$5,204,080.02. Given the complexity of this antitrust case, the way Defendants elected
 11 to defend the case, and Orion’s counsel’s lean staffing and efficient legal services, the fees Orion
 12 requests here are reasonable and should be awarded in full. Indeed, as revealed in Meade’s recent
 13 bankruptcy filings, Defendants incurred over \$9,000,000 in fees and costs in this litigation from
 14 just one of the two big firms they employed, alone—nearly double what Orion seeks here.

15 This litigation served not only Orion’s own interest, but also the interest of the public and of
 16 all persons who wish to gaze at the stars through a telescope. If Orion had not brought this suit and
 17 persisted through years of contentious litigation, Defendants would be continuing to dominate the
 18 market and overcharge consumers, and would have destroyed Orion, leaving consumers with no
 19 choice but to purchase telescopes from the colluders at monopoly prices.

20 To prevail in this case, Orion and its counsel, BraunHagey & Borden LLP (“BHB”), faced
 21 the Herculean task of proving that Defendants engaged in a complex antitrust conspiracy with their
 22 competitors that sprawled over multiple continents. This undertaking involved extensive pre-suit
 23 and post-suit investigation, review and analysis of over 6.5 million pages of documents, many of
 24 which were in Mandarin, and numerous depositions and experts. Further, Defendants created
 25 unnecessary expenses by violating Court Orders and engaging in other discovery misconduct,
 26 which resulted in Judge DeMarchi re-opening the depositions of three defense witnesses and
 27 sanctioning Defendants – a sanction Defendants still have not paid. This course of conduct
 28 increased expenses, prolonged discovery and derailed the Court-Ordered case management dates.

In the end, Orion not only prevailed at trial, but did so while spending *nearly half* of what Defendants spent in attorney’s fees and costs. As detailed in the accompanying Declaration of J. Noah Hagey (“Hagey Decl.”), BHB maintained a lean litigation team and actively worked to minimize costs throughout two rounds of motions to dismiss, countless discovery disputes, working with experts, making and opposing summary judgment motions, and preparing for and conducting a trial that lasted six weeks. In addition to the billing judgment exercised in the course of the representation, in preparing this motion, BHB has further written off substantial time to account for any inefficiencies. Accordingly, Orion respectfully submits that the Court should grant the full amount of costs and attorneys’ fees requested in the Motion.

ARGUMENT

I. THE CLAYTON ACT MANDATES AN AWARD OF COSTS, INCLUDING REASONABLE ATTORNEY'S FEES

Section 4 of the Clayton Act provides that a person injured by an antitrust violation *shall* recover, in addition to treble damages, “the cost of suit, including a reasonable attorney’s fee.” 15 U.S.C. § 15(a). This award is mandatory. *Image Tech. Serv., Inc. v. Eastman Kodak Co.*, 136 F.3d 1354, 1357 (9th Cir. 1998). The purpose of the award is: “1) to encourage private enforcement of the antitrust laws, 2) to insulate the treble damages award from the costs of obtaining recovery, and 3) to deter violations of the antitrust laws by requiring the payment of that fee by a losing defendant as part of his penalty for having violated the antitrust laws.” *Id.* (citing *Perkins v. Standard Oil*, 474 F.2d 549, 554 (9th Cir. 1973)). Accordingly, it is beyond dispute that BHB is entitled to an award of fees and costs.

II. BHB'S REQUESTED FEES AND COSTS ARE REASONABLE

The Supreme Court has emphasized that, with respect to the fee-shifting provision under 42 U.S.C. § 1988, “counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, ‘*for all time reasonably expended on a matter.*’” *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (citation omitted) (emphasis original). The same is true in antitrust cases. See, e.g., *Twin City Sportservice, Inc. v. Charles O. Finley & Co., Inc.*, 676 F.2d 1291, 1313 (9th Cir. 1982) (reasonable fees and costs include “every item of service which, at

1 the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or
 2 protect his client's interest...."); *In re TFT-LCD (Flat Panel) Antitr. Litig.*, N. M:07-cv-1827-si,
 3 2014 WL 12635766, *5 (N.D. Cal. Feb. 3, 2014).

4 Courts often use the "lodestar" method to determine the reasonableness of attorney fees.
 5 *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). "The 'lodestar' is calculated
 6 by multiplying the number of hours the prevailing party reasonably expended on the litigation by a
 7 reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). The
 8 prevailing party must submit evidence of the appropriate hours expended on the litigation and
 9 establish that its requested hourly rates are in line with those prevailing in the community for
 10 similar services by lawyers of reasonably comparable skill, experience, and reputation. *Masimo*
 11 *Corp. v. Tyco Health Care Group, L.P.*, No. CV 02-4770 MRP (AJWx), 2007 WL 5279897, *2
 12 (C.D. Cal. Nov. 5, 2007) (citations omitted). In analyzing the hourly rates, a court can also
 13 consider: (1) the novelty and complexity of the issues; (2) the special skill and experience of
 14 counsel; (3) the quality of representation; and (4) the results obtained. See *Caplan v. CNA Fin.*
 15 *Corp.*, 573 F.Supp.2d 1244, 1249 (N.D. Cal. 2008). There is a "strong presumption" that the
 16 lodestar figure represents a reasonable attorneys' fee. *Masimo*, 2007 WL 5279897 at *1.²

17 In keeping with these principles, the Hagey Declaration and the exhibits thereto set forth the
 18 hours expended on this litigation by BHB; the names of the attorneys, paralegals, and other support
 19 staff performing the services; the hourly rates for those individuals; and the lodestar amounts. An
 20 examination of that data confirms that the requested fees are reasonable.

21 **A. BHB's Hourly Rates Are Reasonable**

22 BHB is a twenty-lawyer boutique litigation firm based in San Francisco and New York that
 23 routinely handles high-profile, complex litigation involving antitrust, unfair competition, and other
 24 commercial matters. (Hagey Decl. ¶ 4.) BHB regularly appears before federal and state courts

25 ² Given the magnitude and complexity of this case, Defendants' numerous discovery failures, the
 26 vigorous defense asserted by Defendants, and the amount recovered (more than \$16,000,000 before
 27 trebling), Orion would be well within its rights to seek a *multiplier* of the lodestar under the factors
 28 set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (abrogated on other
 grounds by *City of Burlington v. Dague*, 505 U.S. 557 (1992)) and *Twentieth Century Fox Film*
Corp. v. Goldwyn, 328 F.2d 190, 221 (9th Cir. 1964). Orion has not, however, elected to do so.

1 throughout the country to prosecute and defend claims involving a variety of business issues. (*Id.*)
 2 BHB's clients run from Fortune 500 Companies to small businesses and encompass many different
 3 types of industries. (*Id.* ¶ 5.)

4 BHB has successfully litigated and arbitrated disputes exceeding many billions of dollars,
 5 often involving disputes closely watched by industry observers and media. (*Id.*) Our litigators
 6 learned their craft at some of the most respected law firms in the world, including Quinn Emanuel
 7 Urquhart & Sullivan LLP, Keker & Van Nest LLP, Morrison & Foerster LLP, Latham & Watkins
 8 LLP, and Steptoe & Johnson LLP, and many of our lawyers are former federal district or appellate
 9 court clerks. (*Id.* ¶ 6.) And BHB partners have been called on by judges of this District to serve as
 10 special masters. (*Id.*)

11 BHB's rates are reasonable and consistent with the prevailing hourly rates charged by
 12 lawyers of reasonably comparable skill, experience and reputation in the relevant community.
 13 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Generally, when determining
 14 a reasonable hourly rate, the relevant community is the forum in which the district court sits. *Id.*
 15 Accordingly, the relevant community in the present case is the Northern District of California.

16 As shown in the Hagey Declaration, the rates requested here range from \$795 per hour for
 17 BHB's most senior and experienced partners, to \$425 per hour for the firm's more junior lawyers.
 18 (Hagey Decl. ¶ 8.) Each attorney's rate reflects his or her standard billing rate, which is derived
 19 from his or her level of seniority and experience, and which is what clients actually pay BHB for
 20 their services. (*Id.*) BHB's paralegal rates are likewise within a reasonable range reflecting
 21 seniority and experience.

22 Numerous courts, including the Ninth Circuit, and courts in the Northern District of
 23 California, have already considered BHB's hourly rates in other matters and found them
 24 reasonable. *See, e.g., Walker v. B&G Foods, Inc., et al.*, Case No. 16-15349 (ECF No. 26) (9th
 25 Cir., Jul. 20, 2017). (Hagey Decl. ¶ 8.)

26 Comparing BHB's hourly rates to those charged by other law firms in the Northern District
 27 also establishes that BHB's rates are in line with, or lower than, those charged by other firms in the
 28 community. Nearly all of Orion's BHB lawyers were previously affiliated with large, national law

1 firms, all of which charged higher rates than BHB is seeking here. (*Id.*, ¶¶ 9, 15, 18, 21, 24, 27, 33,
 2 36.)

3 Other courts in this District have granted similar fee requests to lawyers in antitrust cases.
 4 For example, in an April 1, 2013 Order in *Flat Panel*, Judge Illston evaluated and approved a fee
 5 petition from more than 100 law firms. Although that decision is nearly six years old (and thus
 6 would likely reflect higher rates if decided today) the hourly attorney rates approved in that case
 7 ranged from \$350 to \$1,000. *Flat Panel*, MDL 07-1827 (N.D. Cal.), Dkt. 7688 at 14. That
 8 decision confirms that BHB’s requested rates of between \$425 and \$795 are reasonable and
 9 consistent with the prevailing hourly rates charged by lawyers in complex antitrust disputes in the
 10 Northern District of California.

11 **B. BHB’s Total Expended Hours Are Reasonable**

12 In contrast to Defendants, who were represented by a large firm with dozens of lawyers at
 13 their disposal, Orion was represented by BHB, a firm with a total of twenty lawyers who, as
 14 explained above, staffed the case as leanly as possible. As shown in the Hagey Declaration, the
 15 time requested herein for the work BHB performed was reasonably and necessarily expended in
 16 prosecuting this case.

17 Lead counsel for Orion has carefully reviewed the detailed description of all work
 18 performed by its lawyers and paralegals in this case, and he has exercised billing judgment to
 19 ensure that none of the time for which Orion seeks reimbursement is excessive or redundant.
 20 (Hagey Decl., ¶ 57.) In specific, BHB wrote off over **\$122,000** in billings to Orion. (*Id.*)
 21 Moreover, BHB is writing off a further five percent of its total billing in connection with this
 22 motion, totaling an additional **\$221,298.15**. Thus, in total, BHB has written off over **\$343,000** in
 23 fees to ensure that there are no redundancies in the fees sought by this motion. (*Id.*)

24 This was a hard-fought, highly complex antitrust litigation. To prevail in this action, Orion
 25 had to: conduct a lengthy investigation prior to filing the Complaint; prepare and file initial and
 26 amended pleadings; oppose two motions to dismiss; take and defend numerous depositions,
 27 including of non-English speakers (including taking many of those depositions a second time as a
 28 result of the Court’s orders sanctioning Defendants); bring review and organize nearly 6.5 million

1 pages of documents, many of which were written Mandarin and required translation; meet and
 2 confer and file twelve discovery dispute letters to obtain Judge DeMarchi's assistance to obtain
 3 relief from Defendants' misconduct in discovery; oversee Orion's experts preparing reports on
 4 complex economic concepts and telescope manufacturing; analyze and challenge the work of
 5 Defendants' experts (including by successfully moving to exclude one of Defendants' experts);
 6 move for summary judgment and oppose Defendants' motion for summary judgment; prepare and
 7 file *Daubert* motions (one of which prevailed), prepare for and conduct a six-week jury trial; and
 8 brief post-trial motions, including this motion for fees and costs. (*Id.* ¶ 61.)

9 Unlike many antitrust cases in which private plaintiffs 'piggyback' on prior litigation or
 10 investigations brought by the Department of Justice, Orion developed and prosecuted this case
 11 entirely on its own. The fees and expenses presented here are the fees and expenses that Orion
 12 actually incurred in the prosecution of this case, a three year-plus legal struggle against a well-
 13 funded adversary who employed a firm that has more than 800 lawyers around the world.
 14 Defendants here—as well-funded Defendants tend to do—repeatedly sought to delay and frustrate
 15 the efficient resolution of this litigation. Orion's perseverance resulted in total victory and a
 16 significant benefit to the telescope market and telescope consumers.

17 In short, BHB performed the work that "a reasonable and prudent lawyer" would have
 18 performed "to advance or protect his client's interest" in preparing this complex antitrust case for
 19 trial. *Twin City*, 676 F.2d at 1313. Further, the complete and total success that BHB achieved in
 20 this case – wherein the jury found in Orion's favor on every single claim before it and awarded
 21 damages that amount to over \$50 million after trebling – further establishes that BHB conducted a
 22 reasonable and prudent litigation. Accordingly, the hours BHB expended are fully compensable.

23 **C. Orion's Costs Are Reasonable**

24 Orion's costs are also reasonable. As numerous courts have acknowledged, fee-paying
 25 clients typically bear the costs of computerized legal research; attorney travel; photocopying;
 26 printing; overnight mail and messengers; and document database hosting, among other charges.
 27 *Trs. of the Constr. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253,
 28

1 1259 (9th Cir. 2006); *Blackwell v. Foley*, 724 F.Supp.2d 1068, 1080 (N.D. Cal. 2010).³
 2 Accordingly, and as detailed in the **Exhibit 1** to the Hagey Declaration, Orion seeks **\$778,117.02** in
 3 costs relating to experts, jury consultants, translation services, court reporters and videographers,
 4 transportation, lodging, meals, and other expenses ordinarily incurred and paid by clients in
 5 litigation to further their interests—all of which are compensable under the Clayton Act. (Hagey
 6 Decl. Ex. 1.)

7 **D. Defendants Cannot Be Heard to Complain that Orion’s Fees and Expenses are**
 Unreasonable Because They Are *Nearly Half* Defendants’ Fees and Expenses

8 As the Court is aware, Ningbo Sunny’s co-defendant, Meade Instruments Corp. (“Meade”),
 9 recently filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Central
 10 District of California (the “Meade Bankruptcy”). A recent filing Meade made in those proceedings
 11 shows that in the second big law firm representing Ningbo Sunny in this action, Sheppard, Mullin,
 12 Richter & Hampton LLP (“Sheppard Mullin”), **billed over \$9,000,000 in fees and costs** in this
 13 litigation—nearly **\$4,000,000 more than Orion’s total fees and costs**. (Hagey Decl., ¶ 63 and Ex.
 14 2 at 3:11-12.)⁴

15 The fact that Orion’s sum total of requested fees and costs is at least *nearly half* the amount
 16 Defendants’ own lawyers charged Defendants to defend this action establishes beyond a doubt that
 17 BHB’s fee request is reasonable. Orion’s relatively low fees and costs reflect BHB’s efforts to
 18 staff leanly and avoid duplicative or unnecessary tasks. Ningbo Sunny cannot plausibly argue that
 19 Orion’s bills in successfully litigating this case were unreasonable when its own fees were nearly
 20 *twice* that amount.

21 **E. Orion’s Fees Are All the More Reasonable Given Defendants’ Litigation**
 Conduct, Which Forced Orion to Repeatedly Seek Relief From This Court

22 Defendants especially should not be heard to object to Orion’s fees given that Defendants’
 23 own dilatory tactics increased the cost of litigating this matter. Defendants’ consistent efforts to

24
 25 ³ Because Orion is entitled to all of its costs under the Clayton Act’s fee shifting provision, Orion is
 26 not filing a separate Bill of Costs as would be required to obtain the limited categories of
 27 compensable costs in a normal case. Orion is happy to prepare and file a separate Bill of Costs if
 the Court prefers.

28 ⁴ Prior to Sheppard Mullin, Ningbo Sunny was represented by Mayer Brown. Orion does not know
 how much Mayer Brown billed in addition to what Sheppard Mullin charged.

1 thwart discovery required extensive motion practice and hearings (including Orion's successful
 2 motion for sanctions⁵), as well as multiple extensions of the Court's case schedule that greatly
 3 delayed resolution , and increased expenses, of this case. To list just a few examples, Defendants
 4 caused Orion to incur additional costs and fees by:

- 5 • Refusing to produce documents responsive to Orion's discovery requests while their
 Motions to Dismiss were pending, despite having no justification or legal basis to
 engage in such self-help;
- 6 • Repeatedly representing to Orion and the Court that they had completed their
 document production, only to repeatedly supplement their production weeks later
 with tens or hundreds of thousands of additional pages of responsive materials, after
 the deadlines for initial and supplemental productions had passed;
- 7 • Falsely representing that their production was complete before they had even
 searched the files of Ningbo Sunny's CEO, Peter Ni;
- 8 • Repeatedly withholding crucial documents and information that were damaging to
 their case without justification, including *direct evidence of collusion* (an email in
 which an executive of Meade admitted that Defendants were planning to cooperate
 with their purported competitors for the benefit of the entire group);
- 9 • Withholding highly relevant and damaging documents until after key depositions of
 witnesses named in those documents and refusing to allow Orion to further depose
 those witnesses about the late-produced documents;
- 10 • Withholding documents on privilege grounds when there was not even a colorable
 argument for doing so; and
- 11 • Providing misleading and evasive responses to written discovery.

12 (Hagey Decl. ¶ 64.) In stark contrast, not a single motion to compel was filed against Orion during
 13 this entire case. (*Id.*)

14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27 ⁵ Judge DeMarchi's Order required Defendants to re-produce their witnesses for deposition to pay
 Orion's costs and fees associated with those depositions. Despite Orion's repeated demands,
 Defendants have still not paid Orion.

1 The Court has already noted that Defendants' sharp tactics forced Orion to expend
 2 considerable extra time and money to obtain discovery to which it was entitled. At the October 23,
 3 2018 hearing on Orion's motion for discovery sanctions, Judge DeMarchi stated:

4 [O]ne reading of this whole scenario is that the people managing the
 5 discovery [for Defendants] were making decisions about how to get
 6 it done in a way that log[s] privileged things that weren't privileged,
 7 didn't investigate the relevant sources for material, and *but for the
 efforts of the Plaintiff in plowing through documents and raising
 these things*, there would have been a very inadequate – there was a
 very inadequate discovery effort on the part of the Defendants."

8 (*Id.* at 68:1-8 (emphasis added).)

9 At the same hearing, the Court also admonished Defendants for serving misleading and
 10 evasive written discovery regarding the key fact that David Shen's sister-in-law owns a substantial
 11 interest in Ningbo Sunny: "[T]he initial responses to the requests for admissions do appear to be
 12 misleading and evasive and incomplete at the very least." (*Id.* at 73:12-20.)

13 In sum, Orion's fees and costs are reasonable given that Defendants' own misconduct
 14 greatly increased the cost of litigating this case.

15 **F. Per the Court's Instruction, Orion Has Specific Billings Available Should the
 16 Court Wish to Inspect Them**

17 After the jury issued its verdict on November 26, 2019, the Court provided guidance as to
 18 how Orion should proceed with respect to documentation of its billings. The Court stated:

19 It could be that you're going to supply, either in some sealed fashion,
 20 the billings that you have that have the appropriate documentation
 21 for the Court to review. You could – you should at a minimum have
 22 those available should the Court wish to inspect them, or if the Court
 23 decides that it's appropriate, the Court could appoint a special master
 24 to review the billings to see accommodations and those types of
 25 things."

26 (11/26/2019 Trial Tr. at 2830:15-22.) Orion's actual time entries contain significant amounts of
 27 attorney work product and potentially privileged materials. Orion is willing to provide its actual
 28 billings to the Court in a manner that protects those privileges should the Court determine that is
 necessary.

CONCLUSION

For the foregoing reasons, Orion respectfully requests that the Court grant this Motion and award Orion its requested costs and attorneys' fees in full.

Dated: January 16, 2020

BRAUNHAGEY & BORDEN LLP

By: /s/ J. Noah Hagey
J. NOAH HAGEY

Attorneys for Plaintiff OPTRONIC
TECHNOLOGIES, INC. d/b/a Orion
Telescopes & Binoculars