

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PLANNED PARENTHOOD
FEDERATION OF AMERICA, INC., et al.,

Plaintiffs,

v.

CENTER FOR MEDICAL PROGRESS, et
al.,

Defendants.

Case No. [16-cv-00236-WHO](#)

**ORDER ON MOTION FOR
ATTORNEY FEES AND COSTS**

Re: Dkt. No. 1131

Plaintiffs move for an award of attorney fees and non-statutory costs after winning a significant verdict and securing injunctive relief under claims that provide for an award of attorney fees. There is no dispute that they are entitled to fees and costs—the issue is, how much?

Plaintiffs’ request represents a substantial reduction from their lodestar. That said, it remains indisputably large— \$14,816.034.70, including costs. The amount is not surprising in light of more than four years of very active litigation that led to a six-week trial. I know how hotly contested each phase—discovery, motion practice, hearings, trial, and post-trial proceedings—of the litigation was. The numerous attorneys on both sides represented their clients with tenacity and skill. Plaintiffs have exhibited good billing judgment in this application for fees, although in this Order I will reduce the amount further. With the reductions I describe below, plaintiffs’ motion for attorney fees and non-statutory costs is GRANTED.

DISCUSSION

More than 130 attorneys worked on the case for plaintiffs and 22 of them billed more than 250 hours each. Declaration of Amy L. Bomse (Dkt. No. 1131-1), ¶ 10. Plaintiffs seek an award of fees covering the time billed by only twelve of those attorneys as well as two paralegals. Those individuals seek compensation for a total of 21,200.25 hours; at current rates, that represents

1 \$18,373,755 in attorney fees. Reply Declaration of Diana K. Sterk (Dkt. No. 1148-2, Ex. A). To
2 account for potential inefficiency or duplication of efforts, plaintiffs reduced that amount by 25%
3 and seek an award of \$13,780,317.00 in attorney fees. *Id.*; *see also* Bomse Decl. ¶12. Plaintiffs
4 also seek \$1,035,717.68 in non-statutory costs. Reply Declaration of Meghan C. Martin (Dkt. No.
5 1148-1).

6 In support of their motion, plaintiffs did not submit their underlying contemporaneous
7 timesheets. Instead, each billing attorney provided a detailed declaration breaking down the tasks
8 that attorney completed in each of the nine specifically identified phases of this litigation. *See*
9 Declaration Amy Bomse (Dkt. No. 1131-1); Declaration Steven Mayer (Dkt. No. 1131-2);
10 Declaration Meghan Martin (Dkt. No. 1131-3); Declaration Matthew Diton (Dkt. No. 1131-4);
11 Declaration Arielle Feldshon (Dkt. No. 1131-5); Declaration Jeremy Kamras (Dkt. No. 1131-6);
12 Declaration Sharon Mayo (Dkt. No. 1131-7); Declaration Beth Parker (Dkt. No. 1131-8);
13 Declaration Oscar Ramallo (Dkt. No. 1131-9); Declaration Maithreyi Ratakonda (Dkt. No. 1131-
14 10); Declaration Diana Sterk (Dkt. No. 1131-11); Declaration Rhonda Trotter (Dkt. No. 1131-
15 12).¹ Plaintiffs then identified the precise hours for which they seek compensation for each biller
16 in each of the nine phases in one chart. Dkt. Nos. 1131-1, Ex. A. & 1148-2, Ex. A (revised,
17 collectively “Chart”).

18 Defendants object to the rates charged by the billing attorneys and paralegals, to the
19 amount of attorney fees sought as compared to their view of the limited success of plaintiffs, to the
20 availability of fees for in-house counsel, to the reasonableness of the hours claimed by plaintiffs
21 (as unsubstantiated by actual timesheets), and to the costs sought (as unsupported by evidence that
22 these costs are typically reimbursed in this District and given plaintiffs’ failure to provide invoices
23 of the expenses). I will analyze those objections below.

24 **I. DEFENDANTS’ EXPERT DECLARATION**

25 As an initial matter, I address defendants’ submission of an “expert report” by Andre E.
26

27 ¹ The two billing paralegals have not submitted declarations, but the scope and extent of their
28 work is detailed in the Martin Declaration (Dkt. No. 1131-3,) and their hours for each phase
detailed in the Chart. Dkt. Nos. 1131-1, Ex. A & 1148-2, Ex. A; *see also* Bomse Decl. ¶ 91.

1 Jardini in support of their opposition. Jardini’s declaration was attached as an exhibit to the
 2 Declaration of Jeffrey M. Trissell, but is not discussed in substance *anywhere* in defendants’
 3 opposition. The only mention of Jardini’s declaration is on the last page of defendants’ 23-page
 4 brief where, in 17 lines of text and bullet points, defendants simply identify the topics Jardini
 5 addresses in his declaration. That is improper. While declarations regarding prevailing rates are
 6 routinely considered in connection with attorney fee motions, those declarations should be
 7 discussed as part of the motion or opposition. That was not done here.

8 Moreover, the Jardini declaration goes beyond the question of prevailing rates in this
 9 district for similarly complex litigation and raises arguments never discussed in defendants’
 10 opposition. For example, Jardini’s conjecture regarding review and transmission of invoices (or
 11 the lack thereof) in cases of *pro bono* representation was never mentioned, let alone supported by
 12 any case citation or authority, in defendants’ opposition. Similarly, Jardini purports to contest the
 13 reasonableness of time charged and hours spent by specific billers identified in plaintiffs’ billing
 14 summaries, but those challenges were not identified in the opposition brief or otherwise discussed
 15 by defense counsel.²

16 Defendants’ failure to discuss the contents or theoretical support Jardini’s declaration
 17 might provide for the arguments they do make in their opposition brief was not for lack of space.
 18 Given the size of plaintiffs’ fee and cost request as well as the many stages and long duration of
 19 this case, I granted the parties’ mutual request for longer briefs to address all of the issues. I gave
 20 defendants 30 pages to oppose plaintiffs’ motion. Dkt. No. 1144. They chose not to use the extra
 21 pages they requested and submitted a 23-page opposition.

22 Jardini’s declaration suffers from numerous other deficiencies. It contains unsupported
 23 and inadmissible legal opinions and miscalculations. Given defendants’ failure to incorporate
 24 Jardini’s opinions in their opposition, his impermissible legal conclusions, and the errors in his

25

26 ² For example, Jardini argues for reductions because the summaries provided by the billing
 27 paralegals are not supported by a declaration, the paralegals may have billed for overhead and
 28 administrative tasks, and that Feldshon was never admitted to practice in California nor admitted
pro hac vice and therefore her time should be compensated at a “non-attorney rate.” Dkt. No.
 1146-2 ¶¶ 28, 37, 38. These are legal arguments improperly raised in Jardini’s declaration and/or
 never mentioned in the opposition or otherwise by defense counsel.

1 analysis, it would be appropriate to strike Jardini’s declaration.³ I will nonetheless consider
 2 Jardini’s opinions in connection with the arguments actually made by defendants in their
 3 opposition.

4 **II. RATES**

5 Defendants first challenge the rates sought for the 12 billing attorneys (partners and
 6 associates) and the two billing paralegals, arguing that the rates sought are “inflated.”⁴ I find that
 7 the rates are reasonable given the scope and complexity of this case, as well as in light of rates
 8 approved in this District for partners, associates, and paralegals for similarly experienced counsel
 9 and staff at similar firms. The rates, while high, are supported by the authority cited by plaintiffs
 10 in their Motion. Dkt. No. 1131 at 20-21. They are rates paid by the clients of the billing attorneys
 11 in other matters.

12 Defendants do not challenge the use of current as opposed to historical rates, except for
 13 two attorneys; associates Feldshon and Diton whose rates increased from 2016 to 2020 by 50%
 14 and 60% respectively. Opposition (Dkt. No. 1146) at 4. Defendants contend that these two
 15 attorneys should not be awarded such unexplained “rapidly-increasing” rates. Plaintiffs do not
 16 address or otherwise provide a justification for such large increases in Feldshon or Diton’s rates in
 17 their motion, reply, or supporting declarations. Therefore, Feldshon and Diton’s time will only be
 18 awarded at the rate they initially billed plus 25%, which is a rate of increase consistent with other
 19 plaintiff counsel.

20 Otherwise, plaintiffs have justified the rates sought by the other attorneys and paralegals

21
 22 ³ See, e.g., *Stathakos v. Columbia Sportswear Co.*, 15-CV-04543-YGR, 2018 WL 1710075, at *5
 23 (N.D. Cal. Apr. 9, 2018) (striking multiple paragraphs of Jardini’s declaration “on the ground that
 24 these paragraphs contain improper legal opinions which either interpret or merely quote case law,
 25 the American Bar Associate Code of Professional Responsibility, the State Bar of California
 Professional Code, and the U.S. Attorney Offices’ Attorney Fee Matrix”); *Lira v. Cate*, C00-0905
 SI, 2010 WL 727979, at *4 & n.5 (N.D. Cal. Feb. 26, 2010) (striking two-thirds of Jardini’s
 declaration as improper legal opinion).

26 ⁴ Plaintiffs seek an award based upon the current (not historical) rates for the following billers:
 27 Mayer (\$1,280/hour); Trotter (\$1,150/hour); Parker (\$1,115/hour); Mayo (\$1,085/hour); Kamras
 28 (\$1,015/hour); Bomse (\$925/hour); Ratakonda (\$910/hour); Ramallo (\$910/hour); Sterk (\$910);
 Diton (\$815/hour); Feldshon (\$675); Martin (\$545/hour), and the two paralegals Ferrer (\$405) and
 Yee (\$390/hour).

1 sought here.⁵

2 **III. DEGREE OF SUCCESS**

3 Plaintiffs claim they are entitled to fees given their success on: (i) their RICO claims; (ii)
4 the federal, Florida, and Maryland recording claims; and (iii) the PPCG NDA claim under Texas
5 law. Mot. at 14-15. Defendants do not dispute that under these statutes attorney fees may be
6 awarded, and for the RICO claims must be awarded. Instead, defendants argue that plaintiffs'
7 limited success requires rejection of plaintiffs' fee request as not proportional to plaintiffs'
8 success.

9 Defendants contend that plaintiffs recovered only 3% of the damages they originally
10 sought,⁶ that their request for injunctive relief was significantly narrowed, that they were forced to
11 drop claims in light of adverse rulings, and that some plaintiffs did not recover any damages.
12 None of these arguments counsels reducing plaintiffs' requested fees.

13 Numerous courts have recognized that the "fee shifting provisions serve the [] purpose of
14 encouraging private citizens to enforce the objectives of the RICO statute" and held that Congress
15 did not intend "that attorneys' fees should be awarded only in some proportion to the plaintiff's
16 damages." *N.E. Women's Ctr. v. McMonagle*, 889 F.2d 466, 474 (3d Cir. 1989); *see also Rosario*
17 *v. Livaditis*, 963 F.2d 1013, 1019 (7th Cir. 1992) ("we do not believe that *Hensley* nor our own
18 opinions following *Hensley* require a trial court to grant attorney's fees to a prevailing plaintiff in
19 direct proportion to the overall relief obtained."). Plaintiffs were successful on their RICO claims,

21 _____
22 ⁵ Jardini characterizes the rates sought as at the "upper end of those that would be typically
23 charged by firms in cases of this size and complexity." Dkt. No. 1146-2, ¶ 30. Jardini does not
24 say the rates are beyond or in excess of rates charged and approved in this District, nor do
25 defendants offer any opinions from this or similar districts rejecting these rates for similarly sized
26 firms and similarly experienced billers. Instead, Jardini suggests rates that are more "reasonable"
27 in his view based on his firm's audit of "comparable firms," that are not, in fact, comparable to
28 similarly sized firms billing in the Bay Area. In the end, Jardini suggests reductions only for the
rates of Kamras, Diton, Sterk, and the two paralegals. Jardini's proposed "Rate Adjustment" to
those five billers is not justified. In their opposition brief, defendants primarily attack the partner
rates (Oppo. at 2-3), but opinions from this District and evidence (including the Valeo database,
the 2017 NLJ Survey, and Jardini's own opinion) supports awarding the partner rates sought.

⁶ Oppo. at 11-12. Defendants' calculation is based on plaintiffs' recovery of \$366,000 in
compensatory damages and ignores plaintiffs' award of treble RICO damages, statutory damages,
and punitive damages.

1 even if the amount of damages at stake was significantly reduced during the course of the
2 litigation. If I were required to address proportionality, it would not change my analysis because
3 plaintiffs were likewise successful on their federal, Florida, and Maryland recording claims and
4 the Texas breach claim, further supporting a robust fee award. Finally, the injunctive relief,
5 secured in part under the federal and Florida recording statutes, also weighs in favor of the fee
6 award even though the scope of injunctive relief awarded was narrower than requested by
7 plaintiffs.

8 The claims that plaintiffs successfully pursued through trial – especially but not limited to
9 their substantive and conspiracy RICO claims and the recording claims – were broad. All or very
10 nearly all of the discovery sought and defended against was relevant to those claims, considering
11 the elements of and defenses to those particular claims. The legal theories and evidence relevant
12 to the claims providing for attorney fees broadly overlapped with the legal theories and evidence
13 relevant to the claims on which plaintiffs were successful but do not independently provide for
14 fees.⁷

15 Plaintiffs were arguably forced to drop a significant portion of their compensatory damage
16 request, either because discovery did not establish a direct-enough connection between events and
17 these defendants (*e.g.*, no evidence that defendants participated in or incited others to hack
18 plaintiffs’ system or vandalize plaintiffs’ clinics) or because of adverse rulings from me (*e.g.*,
19 cutting out publication damages). That does not mean that the time and effort to secure that
20 discovery or brief those issues on summary judgment or *in limine* should be uncompensated. The
21 disputed evidence about defendants’ intent, conduct and the impact of that conduct on plaintiffs
22 constituted the majority of the evidence introduced at trial. That “common core” of evidence and
23 the related legal theories were directly relevant to the successful RICO and recording claims, as
24

25
26 ⁷ Defendants make a number of arguments as to why plaintiffs should not recover for time
27 researching, briefing, or arguing claims that do not independently provide a right to attorney fees.
28 *See e.g.*, *Oppo*, 9-10 & fns.10, 12 (arguing plaintiffs are not entitled to fees for work on UCL and
trespass claims or the California Penal Code § 633.5 defense). But those legal claims significantly
overlap with the legal theories (and facts) underlying the RICO and recording claims generally.

1 well as the scope of injunctive relief awarded.⁸ *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 435
 2 (1983) (where “plaintiff’s claims for relief will involve a common core of facts or will be based on
 3 related legal theories” . . . “[m]uch of counsel’s time will be devoted generally to the litigation as a
 4 whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit
 5 cannot be viewed as a series of discrete claims. Instead the district court should focus on the
 6 significance of the overall relief obtained by the plaintiff in relation to the hours reasonably
 7 expended on the litigation.”); *see also Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir.
 8 1986) (“Thus, the test is whether relief sought on the unsuccessful claim ‘is intended to remedy a
 9 course of conduct entirely distinct and separate from the course of conduct that gave rise to the
 10 injury on which the relief granted is premised.’” (quoting *Mary Beth G. v. City of Chicago*, 723
 11 F.2d 1263, 1279 (7th Cir.1983)).

12 Defendants do not attempt to argue, much less show, that the facts supporting any
 13 particular claim that plaintiffs dropped were unrelated to the facts underlying the claims on which
 14 plaintiffs were successful. *Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1052 (9th Cir.
 15 1991) (“We read *Hensley* as establishing the general rule that plaintiffs are to be compensated for
 16 attorney’s fees incurred for services that contribute to the ultimate victory in the lawsuit. Thus,
 17 even if a specific claim fails, the time spent on that claim may be compensable, in full or in part, if
 18 it contributes to the success of other claims.”). Accordingly, I will make no deductions because
 19 plaintiffs were unsuccessful on discrete claims or because some claims do not independently
 20 provide for attorney fees.

21 **IV. IN-HOUSE COUNSEL**

22 Defendants object to plaintiffs’ request for \$1,432,659 in fees for 1,329.15 hours of work
 23

24 ⁸ Relatedly, defendants argue that plaintiffs should not be compensated for time spent on tasks that
 25 were only necessitated because of – in defendants’ views – plaintiffs’ unreasonable positions taken
 26 in the litigation. In particular, defendants identify time spent negotiating and making arguments to
 27 Judge Ryu and myself regarding the Protective Order and the use of Doe identifiers. *Oppo.* at 6-7
 28 & fns. 6, 8. Plaintiffs retort that it was defendants’ unreasonable litigation conduct that drove up
 their hours. In particular, defendants filed dozens of motions to compel discovery, the vast
 majority of which were appealed to me and affirmed. All of these arguments simply evidence
 how hard fought this uniquely contentious case was. In the end, the negotiated Protective Order
 and use of Doe identifiers were approved by Judge Ryu and myself.

1 performed by in-house counsel Beth Parker and Maithreyi Ratakonda. Defendants contend that
2 plaintiffs cannot recover for this time because the declarations of counsel show that they were
3 either: (i) performing work typically performed by in-house counsel that is not compensable (*e.g.*,
4 acting as a client liaison, providing client direction or general strategy oversight); or (ii)
5 performing work that was duplicative of outside counsel that should not be compensated. *See*,
6 *e.g.*, *BladeRoom Group Ltd. v. Emerson Electric Co.*, 5:15-CV-01370-EJD, 2020 WL 1677328, at
7 *6 (N.D. Cal. Apr. 6, 2020) (reducing in-house counsel’s fees by 55% “because his work was
8 primarily that of a traditional in-house counsel, and in other respects, appears to have been
9 duplicative of work performed by the Farella attorneys”); *see also Milgard Tempering, Inc. v.*
10 *Selas Corp. of Am.*, 761 F.2d 553, 558 (9th Cir. 1985) (“Of course, if in-house counsel are not
11 actively participating (*e.g.*, acting only as liaison), fees should not be awarded.”); *Scripps Clinic*
12 *and Research Found., Inc. v. Baxter Travenol Laboratories, Inc.*, CIV. A. 87-140-CMW, 1990
13 WL 146385, at *1 (D. Del. July 31, 1990 (“time spent by in-house counsel in the role of a client,
14 such as time spent keeping abreast of the progress of the litigation and advising outside counsel of
15 the client’s views as to litigation strategy, is not compensable in a fee award.”)).

16 I agree in large part with defendants. Reviewing the Parker declaration, it appears that a
17 significant portion of the time she spent was advising affiliates about the status and strategy of the
18 litigation, seeking guidance for and making strategic decisions for her clients, performing initial
19 factual investigation, and then reviewing and revising pleadings and motions. *See, e.g.*, Dkt. No.
20 1131-8, ¶¶ 12-14, 17. Those are typical in-house counsel tasks: acting as the point person for
21 client communication, supervising outside counsel and revising their work, and making strategic
22 decisions. That time is not compensable.

23 However, Parker also spent significant time performing actual litigation tasks including
24 coordinating document collection and production, reviewing document productions to make
25 redactions, gathering documents in advance of depositions, drafting fact declarations, and
26 performing legal research in areas where Parker has particular expertise. *Id.* ¶¶ 14, 15, 16. That
27 work would otherwise have been performed by outside counsel and is compensable. That said, it
28 is unclear how much of that core litigation work was conducted solely or primarily by Parker

1 (some clearly was) and how much was duplicative of the work also being conducted by outside
 2 counsel (some apparently was). In light of these facts, I will reduce the time sought by Parker by
 3 70% to capture only the time she performed litigation tasks that were not duplicative of efforts of
 4 outside counsel.

5 Turning to Ratakonda, her “review” of the PFFA document production and redactions
 6 (Dkt. No. 1131-10, ¶ 9), “contributing” to and “helping” with witness preparation and outlines for
 7 deposition (*id.* ¶¶ 10, 13), reviewing briefs (*id.* ¶ 11) and participating in strategy sessions (*id.* ¶
 8 12), appear to be duplicative of the work of outside counsel or work typically expected of in-house
 9 counsel. That work is not compensable. However, Ratakonda’s work locating documents for
 10 production in advance of depositions (*id.* ¶ 10) and preparing PFFA-specific witnesses for
 11 depositions or trials on PFFA-specific topics (*id.* ¶¶ 10, 13) is compensable. This non-duplicative
 12 litigation time appears to be a small fraction of the work Ratakonda billed. I will reduce the time
 13 she seeks by 90% to account for the more significant traditional in-house counsel tasks and tasks
 14 that were duplicative of outside counsel that she performed.⁹

15 **V. REASONABLENESS OF HOURS**

16 Defendants argue that plaintiffs cannot meet their burden of demonstrating the
 17 reasonableness of the hours billed or exercise of billing judgment because they failed to produce
 18 underlying timesheets. They contend that plaintiffs’ summary attestations regarding tasks
 19 performed and hours billed are inconsistent and unreliable, and that the tasks performed are
 20 themselves insufficiently detailed.

21 I addressed the issue of production of timesheets in denying defendants’ motion to compel
 22 the production of plaintiffs’ timesheets. Dkt. No. 1139. As noted there, plaintiffs objected to
 23 producing contemporaneous timesheets because of the undue burden of having to redact hundreds
 24 of pages of timesheets for privileged and otherwise protected information (*e.g.*, references to
 25 individuals whose identities had not been disclosed at trial and work product/attorney client

26
 27 ⁹ The primacy of Parker and Ratakonda’s performance of typical in-house counsel functions is
 28 confirmed by the Bomse declaration which states that Parker and Ratakonda were “instrumental in
 securing outside counsel and interfacing between outside counsel and the California affiliates.”
 Bomse Decl. ¶ 9. Those are typical in-house counsel tasks.

1 information). Plaintiffs also argued that production of timesheets with those necessary redactions
2 would undermine their utility to defendants.

3 In rejecting defendants' motion to compel, I noted that plaintiffs supported their fee and
4 cost motion with their detailed declarations and Chart. Dkt. No. 1131-1, Ex. A, and as revised,
5 Dkt. No. 1148-2, Ex. A. After reviewing each side's caselaw, I concluded that plaintiffs' highly
6 detailed declarations and Chart provided sufficient information to allow me to determine and
7 defendants to contest the reasonableness of plaintiffs' fee request. I explained:

8 Given the very detailed nature of the declarations and chart, there is
9 only limited potential utility in providing the defendants access to the
10 underlying time sheets. That limited potential utility does not merit
11 requiring plaintiffs to undertake the time-intensive effort to redact
12 attorney-client information from their over 700 pages of time sheets.
13 I do not preclude defendants from identifying particular tasks (or parts
14 of the phases as broken down by plaintiffs) about which they believe
15 they or the Court do not have sufficiently detailed information when
16 they oppose the motion for fees. They may explain at that time why
17 there is insufficient information to test the reasonableness of the fees
18 claimed by plaintiffs for those tasks. If necessary, I can then continue
19 the hearing on the motion for fees and require plaintiffs to produce
20 some subset of redacted time sheets. But given my inclination at this
21 juncture, I advise defendants to also make their best arguments based
22 on the information provided.

23 Dkt. No. 1139 at 2.

24 Defendants did not take my advice to heart. Their opposition mainly repeats the rejected
25 argument that due process requires the production of the underlying timesheets despite the highly
26 detailed declarations and the Chart. **Defendants submitted no evidence from their counsel to
27 support an argument that plaintiffs engaged in unnecessary duplication of effort at any stage
28 of this litigation for which plaintiffs seek compensation—not on any particular motion, in
any deposition, in any hearing or case management conference, or during trial.** Numerous
defense counsel were present at every step of this case, yet defense counsel did not identify from
their readily available personal knowledge any reason why plaintiffs' hours should be cut as
unreasonable or duplicative. Nor did they identify (as I suggested) any particular phase or
segment of this litigation for which they could not make those sorts of targeted challenges to

1 plaintiffs' hours without underlying billing records.¹⁰ Defendants instead apparently rest on the
 2 Jardini declaration. But there is no evidence that the Jardini declaration was informed by a
 3 comparison to defense counsels' hours billed or the personal knowledge of defense counsel.¹¹

4 Viewing the ample evidence plaintiffs submit regarding the time they spent on the
 5 categories of tasks in each phase of this highly contested litigation, and relying on my own
 6 knowledge and understanding of the unusually significant time required to develop and try this
 7 case, I have a sufficient basis to conclude that the hours plaintiffs seek are reasonable. I note that
 8 general concerns regarding duplication of effort among the significant number of attorneys who
 9 billed on this case has been addressed in the first instance by two measures. First, plaintiffs only
 10 seek compensation for hours of the twelve attorneys identified, despite the fact that more than 130
 11 attorneys worked on the case and 22 attorneys spent more than 250 hours on the case. Bomse
 12 Decl. ¶ 10. Second, from that subset of still-significant time, plaintiffs take a 25% deduction to
 13 account for potential duplication of effort and inefficiencies. *Id.* ¶ 12.¹²

14 _____
 15 ¹⁰ Had defense counsel attested that there was serious duplication of effort or unnecessary hours
 16 spent by plaintiffs' counsel in specific phases, as I indicated in my October Order, I could have
 17 ordered plaintiffs to produce timesheets for that specific phase or part of a phase. For example,
 18 defense counsel could have argued that in specifically identified meet and confers regarding
 19 identified discovery, plaintiffs' staffing was unreasonable. They could have argued, based on that
 20 personal knowledge, that similar over-staffing or otherwise unreasonable staffing extended to an
 21 identified percentage of discovery disputes. That sort of evidence-based showing has not been
 22 attempted much less made. *But see Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1160 (9th
 23 Cir. 2018) ("In a contested case, a district court ordinarily can rely on the losing party to aid the
 24 court in its duty by vigorously disputing any seemingly excessive fee requests.").

25 ¹¹ In his declaration, Jardini proposes a reduced number of hours that he believes is more
 26 reasonable for various tasks; specifically the work on the complaints in Phase 1, the summary
 27 judgment motions in Phase 5, and the post-trial work in Phase 8. *See, e.g.,* Jardini Decl., ¶¶60-67.
 28 Similar to the conclusions of other district court judges, I find that Jardini's assertions are wholly
 unsupported, do not account for all of the research and pleadings actually drafted by plaintiffs
 during the phases he purports to address, and do not support a particularized deduction in hours for
 any specific task or phase. *See, e.g., Stathakos v. Columbia Sportswear Co.*, 15-CV-04543-YGR,
 2018 WL 1710075, at *5 (N.D. Cal. Apr. 9, 2018) ("Mr. Jardini fails to offer any factual support
 for or articulate the principles or methods used to derive his opinions regarding the "reasonable"
 amount of time spent on these projects. Accordingly, plaintiffs' motion to strike paragraphs 42–
 44, 52–57, 62–64, 78–80, and the Outline of Services Performed of Mr. Jardini's declaration
 pursuant to Fed. R. Evid. 702(b)–(d) is GRANTED and these paragraphs are hereby
 STRICKEN.").

¹² Both of these deductions adequately address Jardini's allegation that the litigation of this case
 was "top heavy" and that plaintiffs did not staff this case in a reasonable manner. *See* Jardini
 Decl. ¶ 47. In addition, given the complexity of the legal issues raised as well as the highly

1 Defendants argue that they cannot test the separate “billing judgment” determinations –
 2 where counsel voluntarily did not charge time for various phases or tasks before totaling the time
 3 they seek in the Chart (Ex. A and revised Ex. A) – without being able to see the underlying
 4 timesheets. *Oppo*. at 18. That may be true for billing judgment determinations made prior to
 5 totaling the time sought in plaintiffs’ Chart. However, the 25% cut taken *after* the time had been
 6 totaled is transparent. That significant reduction – given the descriptions of the tasks undertaken
 7 by each biller, my informed view of the amount of work that was required by both sides to litigate
 8 and defend this case, and defense counsels’ failure to identify any significant duplications of effort
 9 or unnecessary time based on their own personal knowledge – adequately accounts for potential
 10 duplication and inefficiencies.

11 It bears emphasis that I am not simply taking “at face value” the word of the plaintiffs
 12 regarding the number of hours expended on this case and the reasonableness of those hours. *See*
 13 *Gates v. Deukmejian*, 987 F.2d 1392, 1398–99 (9th Cir. 1993). I have looked closely at the
 14 detailed declarations and the Chart. A review of the docket in this case and my intimate
 15 knowledge of the complexity of the issues raised to Magistrate Judge Ryu and me in the different
 16 stages of litigation further support my conclusion that the hours sought – after the 25% discount –
 17 were reasonably incurred. Absent *any* evidence from defendants identifying specific
 18 unreasonableness in terms of subject matter or duplication of effort, I have an ample basis to
 19 conclude the hours sought are reasonable without requiring plaintiffs to produce underlying
 20 timesheets.¹³

21 The hours sought for the tasks identified in the phases outlined by plaintiffs, after the 25%
 22 reduction, are reasonable and should be compensated.

23
 24 _____
 25 sensitive nature of much of the information sought and used by defendants regarding plaintiffs’
 26 operations, the presence of actively involved senior counsel on *both* sides was eminently
 27 reasonable. If there was a practice by plaintiffs of having senior counsel handle low-level issues,
 28 defendants could have relied on their personal knowledge to point that out. That have not.

27 ¹³ Defendants identify a few discrepancies between the Chart and the declarations submitted.
 28 *Oppo*. at 19. Those discrepancies are explained and accounted for in the Reply and supporting
 declarations, and resulted from rounding or discounting, discrete errors, or errors in defendants’
 expert’s own calculations. *See* Reply at 15; *see also* Dkt. Nos. 1148-1 through 1148-4.

VI. COSTS

1 Plaintiffs seek recovery of \$1,035,717.68 in non-compensatory costs. Declaration of
 2 Martin Decl. ¶ 7; Martin Reply Decl. ¶ 8. They seek reimbursement for: a court reporter to
 3 transcribe video clips for use at trial (\$18,921.60); attorney travel for depositions, hearings, and
 4 trial (\$85,200.37); deposition costs not included in the Bill of Costs (\$49,792); E-discovery costs
 5 from plaintiffs' E-discovery vendor not included in the Bill of Costs (\$223,543.56); contract
 6 attorney costs for document review and redaction during written discovery (\$18,101.25)¹⁴; trial
 7 technical services and support from On the Record (\$168,632.08); jury consulting services from
 8 JuryScope (\$54,000); travel costs for plaintiffs' witnesses for trial and depositions (\$28,488.36);
 9 hotel costs for out-of-town trial team and witnesses during the trial (\$176,609.10); executive
 10 protection services for witnesses to, from, and at the courthouse during trial (\$37,598.51); and
 11 expert witness fees and travel expenses (\$174,830.85). Martin Reply Decl. ¶ 8.¹⁵

12 Defendants do not dispute that non-statutory costs could be awarded in connection with
 13 the award of attorney fees. They argue generally that plaintiffs are not entitled to the non-statutory
 14 costs they seek because plaintiffs failed to submit evidence showing that each category of non-
 15 statutory costs they seek here are the types of costs counsel in this District typically seek from
 16 clients separate from their attorney fees and because plaintiffs do not provide the underlying
 17 invoices.

18 Martin declares that all of these costs were "billed to this case, all of which was passed
 19 along to PFFA for payment, along with all supporting invoices and documentation." Martin Decl.
 20 ¶ 7. In her Reply declaration, Trotter declares that the majority of these costs (attorney travel-
 21 related costs, consultant and expert fees, document review and document production related fees,
 22 and trial technical consultant costs) are typically passed onto and billed to clients in California
 23

24
 25 ¹⁴ Jardini complains that he did not know how many hours the contract attorneys billed (Jardini
 26 Decl. ¶¶ 55, 83), but plaintiffs disclose that the contract attorneys billed over 412 hours at the
 document review and redaction stage. Bomse Decl. ¶ 41; Martin Decl. ¶ 6.

27 ¹⁵ Defendants point out a discrepancy between the amount of costs stated in plaintiffs' motion and
 28 the amount itemized in the Martin Declaration. Oppo. at 22. Martin explains the discrepancy and
 clarifies the total amount sought in her Reply declaration. Martin Reply Decl. ¶ 8.

1 generally and San Francisco specifically. Dkt. No. 1148-3 ¶¶ 2-4; *see also Trustees of Const.*
 2 *Indus. and Laborers Health and Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir.
 3 2006) (noting “reasonable attorney’s fees” include litigation expenses when it is the “prevailing
 4 practice” in the community for lawyers to bill those costs separately from their hourly rates). That
 5 evidence is sufficient to support an award of the non-statutory costs to plaintiffs.

6 Defendants made one specific challenge to the costs plaintiffs seek. They objected to the
 7 personal security costs plaintiffs incurred to provide security to testifying witnesses travelling to
 8 and from court. The issue of witness security was raised with me during trial after a disturbing
 9 incident. I concluded there was insufficient evidence of witness intimidation or harassment to
 10 justify assigning a United States Marshal to provide witness escorts to the courtroom. Trial Tr.
 11 1397:20-24. There was no evidence that defendants themselves had been responsible for the
 12 incident. Because there is no evidence that these sorts of security costs are typically incurred and
 13 compensated in this District, even in a highly charged case, it is not appropriate to require
 14 defendants to foot the security bill.¹⁶

15 As to the exact costs themselves, plaintiffs did not submit the underlying invoices and
 16 instead submitted a description of the 11 categories of costs they seek with a total for each. Martin
 17 Reply Decl. ¶ 8. While not particularly fulsome, the declarations provide a sufficient description
 18 of the costs. The major costs (not surprisingly) are for e-discovery, trial technical support, hotel
 19 rooms, and expert witnesses. *Id.*¹⁷ Those costs are typically billed separately from attorney time
 20 and charged to clients in this District. Trotter Reply Decl. ¶¶ 2-4. No category of costs – other
 21

22 ¹⁶ Defendants identify only this particular cost as objectionable, and argue the costs seem
 23 unreasonably high given the number of hours involved. *Oppo*. at 22. That particularized
 24 objection is well-taken and not addressed in plaintiffs’ Reply or declarations. Plaintiffs’ failure to
 25 address it, for example by identifying the number of hours of security provided and for how many
 26 witnesses, further supports excluding this one category of non-statutory costs from the award.

27 ¹⁷ Defendants’ reliance on *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326 (N.D. Cal. 2014) is
 28 misplaced. There, the only information provided by counsel seeking recovery of expenses was the
 “dollar amount spent by each class counsel firm. For example, Morgan & Morgan Complex
 Litigation Group’s only documentation for costs is as follows: ‘Expenses \$46,309.84.’” *Id.* at 334
 n.3. That was clearly inadequate and different from the detailed list of each type of cost sought
 here.

United States District Court
Northern District of California

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than the personal security costs – is specifically challenged by defendants.¹⁸

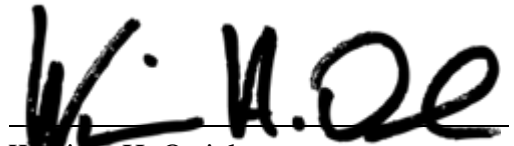
Plaintiffs are awarded the non-statutory costs they seek, except for the \$37,598.51 in “executive security” costs.

CONCLUSION

Within fourteen days of the date of this order, plaintiffs’ counsel shall submit a revised Proposed Order Awarding Fees and Costs, along with a declaration explaining the deductions and recalculations required by this Order. Any objection to that revised Proposed Order shall be submitted no later than five days thereafter.

IT IS SO ORDERED.

Dated: December 22, 2020



William H. Orrick
United States District Judge

¹⁸ Jardini asserts – without any explanation or evidence – that the hotel, contract attorney, and some of the e-discovery expenses are “high” and may “possibly” be inappropriate. He does not explain the basis for his assertions. Jardini Decl. ¶¶ 83-84. For example, Jardini does not analyze the typical cost of a hotel room in San Francisco along with an estimate of the number of trial days/nights to support his assertion that the hotel expenses are “possibly” inappropriate. Without any evidentiary basis in support, Jardini’s assertions are rejected.