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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Prison Legal News,

10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,

13 Defendants.
14

No. CV-15-02245-PHX-ROS

ORDER

15 Pending before the Court is Plaintiff’s Motion for Attorneys’ Fees and Expenses
16 (Doc. 365, “Mot.”) seeking over \$2,500,000 in fees and expenses spanning the more than
17 eight-year life of this case pursuant 42 U.S.C. § 1988. The Court will grant in part and
18 deny in part Plaintiff’s motion and award \$2,370,881.67 in attorneys’ fees and expenses
19 and \$8,426.25 in costs.

20 **BACKGROUND**

21 Plaintiff Prison Legal News filed this suit challenging Arizona Department of
22 Corrections Order 914, under which the Defendants could prohibit inmates receiving mail
23 containing “sexually explicit material.” (Doc. 1). The Court granted partial summary
24 judgment for Plaintiff, (Doc. 260), and entered a permanent injunction requiring
25 Defendants to amend their order and permit distribution of the censored issues, (Doc. 305).
26 The Ninth Circuit concluded certain language in Defendants’ policy was unconstitutional
27 and affirmed Plaintiff’s victory on one as-applied challenge and remanded another of
28 Plaintiff’s as-applied challenges but otherwise reversed in part and remanded for further

1 proceedings. (Doc. 341-1). Defendants then revised Order 914 and distributed two
2 editions of Plaintiff's publication, (Doc. 343), and the Court entered judgment in favor of
3 Defendants after the Court concluded there was nothing left to adjudicate, (Docs. 362 and
4 363). But the Court noted entering judgment in favor of Defendants "should not be
5 construed as any ruling regarding Plaintiff's success for purposes of an application for
6 attorneys' fees." (Doc. 362).

7 Plaintiff then filed a Motion for Attorneys' Fees and Expenses (Doc. 365) requesting
8 \$2,255,497.65 in fees for merits work and \$250,037.55 for work on the fees petition itself.
9 Defendants argue this amount is excessive and requests the Court reduce the award by 70%
10 to account for Plaintiff's "limited success obtained" and further reduce the award by
11 \$657,423.00 for specific challenged billing entries. (Doc. 376, "Resp." at 30).

12 FEES MOTION AND LODESTAR CALCULATION

13 Courts "employ the 'lodestar' method to determine a reasonable attorney's fees
14 award." *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) (citing *Fischer v. SJB-P.D.*
15 *Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000)). Courts calculate "the lodestar figure by
16 multiplying the number of hours reasonably expended on a case by a reasonable hourly
17 rate." *Id.* The Court has "considerable discretion" in determining the reasonableness of
18 attorney's fees. *Webb v. Ada County Idaho*, 195 F.3d 524, 527 (9th Cir. 1999). After
19 calculating the lodestar amount, a Court may reduce or multiply the award based on a
20 variety of factors. Those factors include: (1) the time and labor required, (2) the novelty
21 and difficulty of the legal questions involved, (3) the skill required to perform the legal
22 service properly, (4) other employment precluded due to acceptance of the case, (5) the
23 customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by
24 the client or the circumstances, (8) the amount involved and the results obtained, (9) the
25 experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case,
26 (11) the nature and length of the professional relationship with the client, and (12) awards
27 in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) ("*Kerr*
28

1 factors”).¹ Some of these factors are normally subsumed in the lodestar calculation such
2 that they need not be considered again after the lodestar is determined. *See Gonzalez v.*
3 *City of Maywood*, 729 F.3d 1196, 1209 (9th Cir. 2013) (identifying factors often considered
4 when calculating lodestar).

5 **A. Hourly Rates**

6 The first question is whether Plaintiff’s asserted rate is reasonable. “A reasonable
7 hourly rate is ordinarily the prevailing market rate in the relevant community.” *Sw. Fair*
8 *Hous. Council v. WG Scottsdale LLC*, No. 19-00180, 2022 WL 16715613 at *3 (D. Ariz.
9 Nov. 4, 2022) (citing *Kelly*, 822 F.3d at 1099). And “the burden is on the fee applicant to
10 produce satisfactory evidence—in addition to the attorney’s own affidavits—that the
11 requested rates are in line with those prevailing in the community for similar services by
12 lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465
13 U.S. 886, 895 n.11 (1984).

14 Plaintiff correctly asserts courts may apply current market rates in calculating the
15 lodestar to account for the delay in payment over the eight-year lifespan of this case. *Mot.*
16 *at 8*; *see also Missouri v. Jenkins*, 491 U.S. 274, 284 (1989) (“[A]n appropriate adjustment
17 for delay in payment—whether by the application of current rather than historic hourly
18 rates or otherwise—is within the contemplation of the statute.”). Defendants argue
19 Plaintiff cannot claim its historical rates would be unreasonable because they “far exceed[]
20 Phoenix market rates.” *Resp. at 22*. But whether Plaintiff’s claimed rates exceed Phoenix
21 market rates is inapplicable to determining an adjustment to historical rates to account for
22 delay. The Court finds an adjustment to 2023 market rates appropriate.

23 Plaintiff also asserts San Francisco rates should apply instead of Arizona rates
24 because Plaintiff “was unable to secure a law firm in Arizona willing or able to take on the
25 lead counsel role for this case,” as the Ninth Circuit Commissioner found for Plaintiff’s
26 appellate fee award. *Mot. at 8–9* (citing *Case. No. 19-17449, Doc. 78 at 3–4*). Plaintiff

27
28 ¹ Local Rule 54.2 also lists factors the Court must address when determining the
reasonableness of the requested award. These factors are largely duplicative of the *Kerr*
factors.

1 argues the Ninth Circuit’s finding constitutes the “law of the case” and is binding on this
2 Court in this subsequent proceeding. *Id.* at 8. Defendants argue Ballard Spahr and Perkins
3 Coie are “well equipped to litigate high-stakes civil rights cases.” *Resp.* at 22. And though
4 Defendants acknowledge those firms could not “sign on as lead counsel for this particular
5 case,” they argue “this does not warrant the State and its taxpayers being required to pay”
6 San Francisco rates. *Id.* Defendants further argue the Ninth Circuit’s findings in its fee
7 award are limited to the appellate context and do not apply here. *Id.* at 21–22. While the
8 Ninth’s Circuit’s finding San Francisco rates apply might not be the “law of the case” as
9 Plaintiff suggests, it is certainly persuasive where Plaintiff asserts and Defendants do not
10 meaningfully challenge that no Arizona firms were able to serve as lead counsel in this
11 case. The Court finds San Francisco rates are appropriate in calculating the lodestar.

12 In further support of its argument its claimed fees are reasonable, Plaintiff states the
13 lawyers at Rosen Bien Galvan & Grunfeld LLP (“RBGG”) have a longstanding
14 relationship with Plaintiff and have “unquestionable expertise in prison and First
15 Amendment law and cases, including cases specifically addressing First Amendment
16 access to prisons.” Defendants do not respond specifically to these assertions.

17 The Court finds that RBGG’s 2023 San Francisco rates apply, and the experience,
18 reputation, and ability of Plaintiff’s counsel generally support the hourly fees requested in
19 this case. Accordingly, the Court finds Plaintiff’s rate schedule above is reasonable.

20 **B. Hours Expended**

21 Under the lodestar method, the prevailing party may recover fees for “every item of
22 service which, at the time rendered, would have been undertaken by a reasonable and
23 prudent lawyer to advance or protect his client’s interest.” *Gary v. Carbon Cycle Ariz.*
24 *LLC*, 398 F. Supp. 3d 468, 486 (D. Ariz. 2019) (quoting *Twin City Sportservice v. Charles*
25 *O. Finley & Co.*, 676 F.2d 1291, 1313 (9th Cir. 1982)). Courts may “exclude from this
26 initial fee calculation hours that were not reasonably expended.” *Hensley v. Eckerhart*,
27 461 U.S. 424, 433-34 (1983) (internal quotations removed); *see also McKown v. City of*
28 *Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (“In determining the appropriate number of

1 hours to be included in a lodestar calculation, the district court should exclude hours that
2 are excessive, redundant, or otherwise unnecessary.”).

3 **i. Limited Success**

4 Defendants argue Plaintiff should not recover its requested fees because it achieved
5 only limited success. Resp. at 9–12. The “extent of a plaintiff’s success is a crucial factor
6 in determining the proper amount of an award of attorney’s fees.” *Hensley v. Eckerhart*,
7 461 U.S. 424, 440 (1983). Where a plaintiff achieves only limited success, courts should
8 award only fees reasonably related to the results achieved. *See id.* at 435 (“The
9 congressional intent to limit awards to prevailing parties requires that these unrelated
10 claims be treated as if they had been raised in separate lawsuits, and therefore no fee may
11 be awarded for services on the unsuccessful claim.”). In some cases, distinguishing
12 between work expended on different claims is relatively straightforward. This is not one
13 of those cases. This case involves “a common core of facts” and it is “difficult to divide
14 the hours expended on a claim-by-claim basis.” *Id.* In such cases, “the district court should
15 focus on the significance of the overall relief obtained by the plaintiff in relation to the
16 hours reasonably expended on the litigation.” *Id.*

17 Defendants argue Plaintiff’s limited success in this case justifies a 70% across-the-
18 board reduction to Plaintiff’s requested fees. Resp. at 12. Defendants’ Response asserts
19 “Plaintiff ultimately lost the main impetus behind the lawsuit: its claim that Defendants’
20 publication policy was unconstitutional on its face and must be revamped.” *Id.* But this
21 ignores that Plaintiff achieved many of its litigation goals by prevailing on one of its two
22 facial First Amendment challenges and two of its four as-applied challenges, that
23 Defendants permanently revised its policy, that Defendants uncensored five issues of its
24 magazine, and paid Plaintiff \$10,000 in damages. (*See* Doc. 377, “Reply” at 4–5).

25 Plaintiff applied a 10% across-the-board reduction to its requested fees to account
26 for any limitations on its success on top of significant discrete reductions to “remove time
27 clearly identifiable as devoted to issues on which it did not prevail.” Reply at 5; *see also*
28 Mot. at 2, 12. The Court finds these reductions, taken together, adequately account for

1 Plaintiff's limited—but still substantial—success in this matter.

2 **ii. Vague and Ambiguous Billing Entries**

3 Defendants ask the Court to reduce Plaintiff's fee request by at least \$54,399.00 to
4 account for vague and ambiguous billing entries. Resp. at 13. A party requesting fees must
5 “maintain billing time records in a manner that will enable a reviewing court to identify
6 distinct claims.” *Hensley*, 461 U.S. at 437. Local Rule 54(e)(2) permits the Court to reduce
7 fee awards where time entries “fail to adequately describe the service rendered.” The Local
8 Rules require parties seeking fees to “adequately describe the service rendered” by, for
9 example, identifying participants and the reason for telephone conferences, identify
10 specific legal issues and (if applicable) the relevant pleading or document for legal
11 research, and identifying the activities associated with preparation of pleading and other
12 papers. *Id.*

13 Defendants argue a sampling of Plaintiff's billing entries “lack sufficient specificity
14 to determine what the attorney was actually working on,” and are “untethered to any
15 described factual issues or even the First or Fourteenth Amendment claims alleged in the
16 case.” Resp. at 13. Plaintiff's Reply asserts its billing records “are not vague, especially
17 when viewed in context with surrounding entries, and include the level of detail that
18 [Plaintiff's] attorneys provide to clients when engaging in fee for services work.” Reply
19 at 9.

20 The Court has reviewed the billing entries Defendants identified as vague, *see* Resp.
21 Ex. 6, and Plaintiff's annotated version of Defendants' table, *see* Reply Ex. C. These
22 billing entries provide the necessary information to determine the time worked is
23 reasonable and appropriate. While many of these entries include general statements about
24 the content of the work, the context of the entries provides sufficient detail. These are far
25 from the bare entries the Local Rules contemplate as insufficient. Entries related to
26 correspondence identify all participants and the subject matter of the correspondence and
27 entries related to legal research identify the specific legal issues researched. *See generally*
28 Resp. Ex. 6, Reply Ex. C. The Court finds reducing the fees award due to the billing

1 entries' purported vagueness or ambiguity is not appropriate.

2 **iii. Block Billing**

3 Defendants assert they identified \$167,090.00 in billing entries constituting
4 inappropriate block billing and ask the Court to reduce this amount by at least 50% to 70%.
5 Resp. at 14–15. Courts reducing a fees award based on improper block billing may not
6 apply an across-the-board reduction to the total fee request but may apply a percentage
7 reduction to block-billed hours. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th
8 Cir. 2007).

9 Plaintiff argues block billing “refers to a single time entry for an entire days’ tasks.”
10 Reply at 8. While this is the definition the Ninth Circuit put forth in *Welch*, *see* 480 F.3d
11 at 945 n.2, this is a particularly narrow view of block billing. Courts within the Ninth
12 Circuit have applied a broader definition of block billing encompassing entries that contain
13 multiple discrete and unrelated tasks preventing courts from distinguishing between the
14 time claimed for the various tasks. *See, e.g., Moshir v. Automobili Lamborghini Am. LLC*,
15 927 F. Supp. 2d 789, 799 (D. Ariz. 2013); *Deocampo v. Potts*, 2014 WL 788429, at *5
16 (E.D. Cal. Feb. 25, 2014).

17 The Court has reviewed the table of purported block-billed entries Defendants
18 compiled and Plaintiff’s annotated version of this table providing context for the
19 challenged entries. *See* Resp. Ex. 4, Reply Ex. B. Many of the challenged entries involve
20 entries of less than one hour and in some cases as low as 0.3 hours. *See id.* Others involve
21 plainly related tasks with reasonable time spent—e.g. “Revise & file stipulated EOT and
22 PO; email opposing regarding same” for 1.1 hours; “Emails with AS re prep for call with
23 HRDC re various strategy issues, conduct call, and follow up conf with AS re next steps”
24 for 1.0 hour. Reply Ex. B at 6. While they include discrete tasks, these entries are not the
25 sort of block billing courts are concerned about.

26 But there are some entries in the sampling Defendants compiled that constitute
27 improper block billing. For example, one entry for 6.0 hours includes “[d]oc review, and
28 M&C, emails with Gottfried and LAE.” Reply Ex. B at 5. While, as Plaintiff’s suggest,

1 these tasks may well have been related to the same topic, they are sufficiently distinct that
2 the Court cannot properly assess the reasonableness of the time spent on each task,
3 particularly when the total time spent comprises six hours. If, say, this attorney spent five
4 hours of this billing entry on emails, while spending only one hour between document
5 review and a meet and confer, the time spent on emails would be unreasonable. But the
6 combined nature of this billing entry does not allow the Court to make such a
7 determination. Such entries are not common in Defendants' compilation, but they are
8 present and constitute improper block billing.

9 Defendants ask the Court to apply a reduction of at least 50% and up to 70% to
10 Plaintiff's block-billed time entries. Resp. at 15. The Court is unsure how Defendants
11 arrived at these figures. Defendants fail to cite any cases involving such a staggering
12 reduction figure, nor do the facts support it. Instead, the cases they cite involved reductions
13 of no more than 30% to block-billed hours. See *Lahiri v. Universal Music & Video*
14 *Distribution Corp.*, 606 F.3d 1216, 1222–23 (9th Cir. 2010) (upholding 30% reduction);
15 *Deocampo v. Potts*, 2014 WL 788429 at *5 (applying 20% reduction).

16 Because most of the entries in Defendants' compilation of purported block billing
17 are permissible, the Court will apply a 10% reduction to the \$167,090.00 of billing entries
18 Defendants challenge to account for impermissible block billing, yielding a reduction of
19 **\$16,709.00.**

20 **iv. Excessive or Duplicative Billing**

21 Defendants assert Plaintiff's fee requests for preparing the complaint, responding to
22 Defendants' motion for summary judgment, and preparing the reply for Plaintiff's motion
23 for summary judgment are excessive and the Court should deny them. District courts may
24 reduce requested hours that are excessive or duplicative. See *Vargas v. Howell*, 949 F.3d
25 1188, 1199 (9th Cir. 2020).

26 Defendants claim Plaintiff's billing entries of \$28,322.50 for preparing the
27 complaint and \$115,630.00 to draft Plaintiff's motion for summary judgment are excessive.
28 Resp. at 16. Defendants also assert RBGG's billing \$95,975.00 to respond to Defendants'

1 motion for summary judgment and \$42,410.00 for Plaintiff’s reply regarding its own
2 motion for summary judgment should preclude an award for “fees billed by HRDC and
3 Ballard Spahr for arguable duplicative work.” *Id.*

4 Plaintiff argues the “complaint was carefully tailored to the facts” and involved
5 consultations with an expert on correctional mail policies and practices, and that the
6 summary judgment motion “involved complicated issues of law and fact, extensive
7 oversize briefs, a record spanning thousands of pages, and later, multiple related motions
8 to strike and evidentiary objections.” Reply at 8. Plaintiff also notes Defendants did not
9 propose a reduction amount. *Id.* While this is true, it does not preclude the Court from
10 reducing these fees based on independent evaluation.

11 The Court finds Plaintiff’s billing related to preparing the complaint and Plaintiff’s
12 motion for summary judgment to be excessive. While the Court acknowledges that
13 drafting these documents likely involved significant factual and legal work, this work
14 builds on itself. Taken together, \$143,952.50 for preparing these filings is too high. The
15 Court will apply a 20% reduction to these entries, yielding a reduction of **\$28,790.50**.

16 While the Court may have found that billing entries by HRDC and Ballard Spahr
17 related to the response and reply to the cross-motions for summary judgment would be
18 excessive and duplicative given the fees RBGG billed for this work, Defendants do not
19 identify the amount of those fees charged by the other firms nor argue that RBGG’s billing
20 was excessive in itself. Thus, the Court will not reduce the fees requested for this work.

21 **v. Clerical Tasks**

22 Defendants assert they have identified \$29,776.00 in billing entries for clerical
23 tasks. Resp. at 17–21. In assessing a fees motion, courts may reduce the award for time
24 spent performing clerical work. *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 288 n.10
25 (1989); *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009); *Davis v. City & Cnty. of*
26 *San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992), *vacated in part on other grounds on*
27 *denial of reh’g*, 984 F.2d 345 (9th Cir. 1993).

28 Plaintiff’s Reply argues many of the challenge time entries “describe substantive

1 legal work done by attorneys, including finalizing pleadings and other litigation
2 documents,” substantive conferences and emails, and legal research. Reply at 6.

3 The Court has reviewed Defendants’ table of time entries comprising purportedly
4 clerical work. *See* Resp. Ex. 2. Most of these entries reflect purely clerical tasks, e.g. 1.5
5 hours for “[e]lectronically filing documents” and 0.3 hours to “[c]alendar deadline per
6 court order.” *Id.* at 6, 12. But, as Plaintiff suggests, some of these entries involve
7 substantive legal work, e.g. 1.6 hours to “[r]evise, finalize, and file joint motion for
8 extension of case management deadline and associated proposed orders.” *Id.* at 5.

9 While Defendants request the Court to eliminate entries for clerical work—a
10 position which has some support in the caselaw, *see Topness v. Cascadia Behav.*
11 *Healthcare*, No. 16-CV-2026, 2017 WL 8895626, at *6 (D. Or. Oct. 17, 2017)—this work
12 is not necessarily unrecoverable but may not be recoverable at the high billing rate of an
13 attorney or even a paralegal, *see Missouri v. Jenkins*, 491 U.S. at 288 n.10 (“Of course,
14 purely clerical or secretarial tasks should not be billed at a paralegal rate Such non-
15 legal work may command a lesser rate. Its dollar value is not enhanced just because a
16 lawyer does it.”) (internal quotations omitted).

17 To properly account for clerical work, but acknowledging some of the identified
18 entries include substantive legal work or clerical work recoverable at a lower rate, the Court
19 will reduce the purportedly clerical hours identified by Defendants by 70%, yielding a
20 reduction of **\$20,843.20**.

21 **vi. Work Unrelated to the Merits**

22 Defendants assert they have identified \$74,052.00 in billing entries reflecting work
23 appearing unrelated to this litigation and \$49,760.50 in entries reflecting internal
24 communications that “cannot be connected to any claims for which Plaintiff ultimately
25 received relief and furthermore constitute unreasonably duplicative interoffice
26 communication.” Resp. at 20–21. A party seeking fees must make “a good faith effort to
27 exclude from a fee request hours that are excessive, redundant or otherwise unnecessary.”
28 *Hensley*, 461 U.S. at 434.

1 Defendants take issue with \$74,052.00 in billing entries including (i) “unspecified
2 communications with the press or about communicating with the press;” (ii) research on
3 “potential copyright claims and conferencing with the ACLU regarding PLN materials;”
4 (iii) internal communications about “unspecified inmate communications or inmate
5 subscriber communications;” (iv) communications about “related cases,” including
6 *Parsons v. Ryan, Amtel, and Romero*; and (v) “activities related to building a database of
7 inmate subscribers to assess subscriber numbers,” providing “litigation updates” to
8 inmates, sending out “unspecified mass mailing to inmate subscribers,” apparently
9 recruiting “inmate subscribership,” and performing “inmate custody checks.” Resp. at 20
10 (internal quotations omitted).

11 Defendants also challenge regular billing “for what appear to be internal emails or
12 conferences regarding local counsel, or unspecified strategy, or next steps, status, logistics,
13 case management, upcoming projects, staffing, or division of labor,” identifying entries
14 totaling \$49,760.50. Resp at 20–21 (internal quotations omitted).

15 Plaintiff correctly asserts the purportedly “unrelated cases” are seminal related
16 cases, including one later cited in the Ninth Circuit’s decision in this matter. Reply at 7.
17 Plaintiff then argues time spent communicating with incarcerated subscribers about
18 censorship was related to the merits—HRDC relied on these communications to learn if
19 Defendants were delivering publications and ultimately amended its complaint to add new
20 claims based on information obtained through this outreach. *Id.* Seemingly responding to
21 Defendants’ claims regarding entries related to a potential copyright claim, Plaintiff argues
22 Defendants acknowledge “development of theories of the case and drafting initial
23 pleadings is generally compensable.” Finally, Plaintiff argues press coverage can be
24 integral to identify witnesses and evidence and to advance investigations. *Id.* (citing *Davis*,
25 976 F.2d at 1545 (“Where the giving of press conferences and performance of other
26 lobbying and public relations work is directly and intimately related to the successful
27 representation of a client, private attorneys do such work and bill their clients. Prevailing
28 civil rights plaintiffs may do the same.”)).

1 While the Court agrees that much of the research on related cases is sufficiently
2 related to the merits of the case, Defendants otherwise present valid arguments for
3 reductions to the fees request. While communications with inmates may have implications
4 for the merits of the case, the legal relevance would be with the database or information
5 gathered from the communications—not the time spent on the communications
6 themselves. And while Plaintiff is correct that development of case theories is
7 compensable, development of a copyright theory that Plaintiff did not bring, let alone
8 successfully pursue, is not compensable. Further, Plaintiff has not articulated how press
9 and media relations are so “directly and intimately related to the successful representation”
10 in this case to justify recovering fees for such time. Finally, most of the \$49,760.50 in
11 billing entries for internal communications that Defendants challenge largely appear not
12 sufficiently related to the merits and instead reflect time spent on administrative tasks.

13 Thus, the Court will apply a 70% reduction to both the entries totaling \$74,052.00
14 and the entries totaling \$49,760.50 to account for work not reasonably connected to the
15 merits of a claim for which Plaintiff ultimately received relief, yielding a reduction of
16 **\$86,668.75**.

17 **vii. Fees Application**

18 Finally, Defendants further argue Plaintiff’s requested \$301,017.15 in fees for
19 preparing the present fees application are unreasonable and excessive. Resp. at 28–30.
20 Defendants ask the Court to reduce these fees by 70%. *Id.* at 29–30. It is “well established
21 that time spent in preparing fee applications under 42 U.S.C. § 1988 is compensable.”
22 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1210 (9th Cir. 2013) (quoting *Anderson v.*
23 *Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir.1996)).

24 Defendants’ argument focuses on comparing Plaintiff’s request to the fees Plaintiff
25 sought for the entirety of the appellate process. Resp. at 29. Plaintiff sought \$278,487.50
26 for its appellate work (including merits and fee application work) and the Ninth Circuit
27 ultimately awarded \$208,865.62. *Id.* But this comparison is inapposite. As Plaintiff points
28 out, the appellate process spanned two years and involved only one substantive brief.

1 Reply at 10–11. The present fees application encompasses work spanning more than eight
2 years of extensive litigation and includes the work of three law firms. *Id.*

3 Defendants’ remaining argument for reducing the fees award for time spent
4 preparing the fees application is an undeveloped and unsupported assertion that “Plaintiff’s
5 billing for preparation of the fees application suffers from the same fatal flaws as does the
6 request for fees for merits work”—the entries are “similarly vague and ambiguous,
7 excessive, duplicative, and contain billing for clerical work,” and “should be reduced in
8 proportion to the limited success achieved in this case.” Resp. at 29–30. Plaintiff responds
9 detailing the work that went into preparing the fees application and the \$38,501.05 in
10 discrete reductions, HRDC and Ballard Spahr not claiming fees for work after May 26,
11 2023, a 10% across-the-board reduction of fees work time, a 20% reduction of fees from
12 June 24 to August 29, 2023, and a waiver of fees related to work to complete and file the
13 Reply estimated to be at least \$20,000. Reply at 11.

14 The Court finds these reductions sufficient. As Defendants will know from
15 reviewing the fees application and its supporting documents, preparing these papers
16 required painstaking review of nearly a decade of billing entries across multiple firms. The
17 Court will not reduce the requested fees award for preparing the fees application.

18 **viii. Expenses and Costs**

19 Defendants take issue with Plaintiff’s requested reimbursement for \$18,378.80 in
20 costs. Resp. at 24. Defendants argue (i) the Court should deny these costs because they
21 do not comply with Local Rule 54.2(e)(3); (ii) costs of three deposition transcripts are
22 duplicative; (iii) costs for legal research are not recoverable or were not reasonably
23 incurred; and (iv) costs for postage, long-distance telephone calls, courier fees,
24 photocopying, and travel were not established as reasonably incurred. *Id.* at 24–28.

25 Local Rule 54.2(e)(3) provides a party seeking costs must “identify each related
26 non-taxable expense with particularity,” attaching “copies of applicable invoices, receipts
27 and/or disbursement instruments.” Defendants argue Plaintiff failed to comply with this
28 rule by not identifying each non-taxable cost with particularity and did not “itemize or

1 parse any of these costs into categories and identify the total cost incurred per category.”
2 Resp. at 24. Plaintiff responds stating their “expense records are organized and provide
3 the necessary detail” in that they “submitted an itemized statement of all expenses and
4 attached supporting documentation (i.e., receipts) based on the expense category. Reply at
5 10. The Court agrees. Plaintiff attached an itemized statement of all expenses and included
6 applicable supporting documentation. *See* Mot. Ex. F at 247–266. Plaintiff’s expense
7 request complies with Local Rule 54.2(e)(3), and it is unclear what more Defendants could
8 ask Plaintiff to provide to document these expenses.

9 Defendants claim Plaintiff includes the costs for three deposition transcripts in both
10 its bill of costs (Doc. 366) and its expense request here and are thus duplicative. Resp. at
11 25. Plaintiff explains its itemized expense report specifically omits court reporter charges
12 claimed on the bill of costs. Reply at 10 (citing Doc. 365-1 at 265). Plaintiff is correct.
13 The Court will not reduce Plaintiff’s requested expenses because Plaintiff’s request does
14 not seek duplicative recovery of these expenses.

15 Defendants argue legal research expenses are not recoverable, and even if the Court
16 decides they are recoverable, the Court should deny them because Plaintiff’s invoices are
17 insufficient to establish the expenses were reasonable and connected to this litigation.
18 Resp. at 25–26. Defendants cite to decisions from the Seventh Circuit and district courts
19 in California and Oregon to assert legal research expenses are not recoverable. *Id.* But
20 this ignores cases from the District of Arizona holding legal research expenses are
21 recoverable costs. *See, e.g., Agster v. Maricopa Cnty.*, 486 F. Supp. 2d 1005, 1018 (D.
22 Ariz. 2007) (awarding Plaintiff electronic legal research expenses under § 1988). The
23 Court finds legal research expenses are recoverable. Further, Plaintiff has complied with
24 Local Rule 54.2(e)(3) in presenting adequately detailed accounts of its legal research
25 expenses. Legal research expense reports need not identify the legal issues researched.
26 *Agster*, 486 F. Supp. 2d at 1018. The Court will not reduce or deny Plaintiff’s legal
27 research expense request.

28 Finally, Defendants argue the Court should deny costs for postage, long-distance

1 telephone calls, courier fees, photocopying, and travel because Plaintiff's submitted
2 invoices do not establish the costs were reasonable. Resp. at 26–28. Plaintiff asserts its
3 itemized statement of expenses and attached supporting documentation satisfy its burden
4 on this issue. See Reply at 10. As the Court found above with respect to Plaintiff's fee
5 request generally, its requests for these expenses are sufficient under Local Rule 54(e)(3).
6 There is one slight exception—Defendants identify an entry for \$20.88 for the postage
7 costs of sending “[d]iabetes books” to prisoners. Resp. at 27, (Doc. 365-4 at 187). It is
8 unclear how this charge relates to this litigation and the Court will deny it, yielding a total
9 reduction of Plaintiff's non-taxable expenses of **\$20.88**.

10 **ix. Lodestar Calculation**

11 Accordingly, the Court will reduce the lodestar amount by **\$153,032.33** to account
12 for improper block billing, excessive hours, clerical tasks, work not reasonably connected
13 to the merits of a claim for which Plaintiff received relief, and unrecoverable expenses as
14 outlined above. The Court calculates the lodestar amount to be **\$2,370,881.67**.

15 **C. Lodestar Adjustment**

16 Despite a “strong assumption that the ‘lodestar’ method represents a reasonable
17 fee,” *Corrales-Gonzalez v. Speed Auto Wholesalers LLC*, 2023 WL 3981139, at *7 (D.
18 Ariz. June 13, 2023), the Court “has discretion to adjust the lodestar upward or downward”
19 based on the *Kerr* factors not subsumed in the lodestar calculation, *Stetson v. Grissom*, 821
20 F.3d 1157, 1166-67 (9th Cir. 2016). Courts must assess these factors and must articulate
21 “with sufficient clarity the manner in which it makes its determination.” *Carter v. Caleb*
22 *Brett LLC*, 757 F.3d 866, 869 (9th Cir. 2014). The above lodestar analysis subsumes
23 several of these factors, including the time and labor required by counsel, skill required to
24 perform the legal service properly, customary fees in similar matters, and the experience
25 and reputation of counsel. Defendants do not challenge any of these lodestar factors aside
26 from their general arguments against the fee award detailed above. The Court considers
27 the remaining factors here and finds none justify adjusting the lodestar figure.

28

1 **i. Time Limitations**

2 Given the time required to litigate this matter, Plaintiff asserts that on occasion, its
3 lawyers needed to delay other matters. Mot. at 15. This factor weighs in favor of awarding
4 the full lodestar amount.

5 **ii. Results Obtained**

6 The Supreme Court has instructed the “most critical factor in determining the
7 reasonableness of a fee award ‘is the degree of success obtained.’” *Farrar v. Hobby*, 506
8 U.S. 103, 114 (1992) (quoting *Hensley*, 461 U.S. at 436). *See also Rudebusch v. Arizona*,
9 No. 95-CV-1313, 2007 WL 2774482, at *5 (D. Ariz. Sept. 21, 2007) (quoting *Hensley*, 461
10 U.S. at 436). If a “plaintiff has achieved only partial or limited success, the product of
11 hours reasonably expended on the litigation as a whole times a reasonable hourly rate may
12 be an excessive amount.” *Farrar*, 506 U.S. at 114 (quoting *Hensley*, 461 U.S. at 436).

13 The Court analyzed the results obtained in addressing Defendants’ assertion that the
14 Court should reduce Plaintiff’s requested fees to account for Plaintiff’s limited success.
15 Having found the fees request appropriately accounted for Plaintiff’s limited success, the
16 Court weighs this factor in favor of awarding the full amount of the lodestar as calculated.

17 **iii. Novelty and Difficulty of the Issues**

18 Plaintiff asserts the “legal and factual issues in this case were complex.” Mot. at 14.
19 The Court agrees and finds this factor weighs in favor of awarding the full lodestar amount.

20 **iv. Undesirability of the Case**

21 Plaintiff argues litigation on behalf of non-profit publishers focused on the rights of
22 incarcerated people is “often unattractive to the bar,” and that it is unlikely another firm
23 could have served as lead counsel in this case. Mot. at 16. Further, Plaintiff argues the
24 contingent fee arrangement involved a considerable assumption of financial burden on the
25 firms’ behalf, making it even more undesirable. The Court finds this factor weighs in favor
26 of awarding the full lodestar amount.

27 **v. Nature and Length of Client Relationship**

28 Plaintiff asserts RBGG and its lawyers have extensive experience representing

1 Plaintiff since 2005. Mot. at 16. The Court finds this factor weighs in favor of awarding
2 the full lodestar amount.

3 **vi. Awards in Similar Cases**

4 Plaintiff asserts its requested fees award is “consistent with other fee awards in
5 similar litigation,” including other cases where courts outside San Francisco and the
6 Northern District of California awarded RBGG its San Francisco rates. Mot. at 16–17.
7 The Court finds this factor weighs in favor of awarding the full lodestar amount.

8 **vii. Lodestar Reduction**

9 Having considered all the *Kerr* factors, the Court determines no reduction to the
10 lodestar amount is appropriate in this case.

11 **D. Conclusion**

12 Plaintiff requested \$2,523,914.00 in fees and expenses. The Court reduced this
13 amount by \$153,032.33 to account for improper block billing, excessive hours, clerical
14 tasks, work not reasonably connected to the merits of a claim for which Plaintiff received
15 relief, and unrecoverable expenses. The Court then determined the Kerr factors do not
16 justify a reduction of this amount. Thus, the Court will award Plaintiff **\$2,370,881.67** in
17 fees and expenses.

18 **BILL OF COSTS**

19 Plaintiff’s bill of costs (Doc. 366) claims \$8,426.25 in taxable costs. Defendants
20 filed a response (Doc. 372) arguing the Court should reduce Plaintiff’s taxable costs by
21 50% to 70% to account for Plaintiff’s limited success in litigating the case. As explained
22 in detail above, the Court finds Plaintiff’s requested fees and costs adequately account for
23 its limited but substantial success in this matter. The Court finds no reduction to the bill
24 of costs is appropriate.

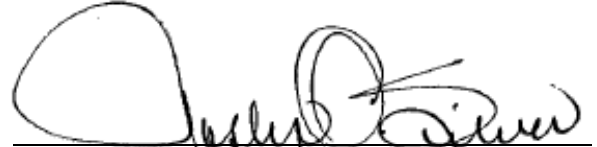
25 **Accordingly,**

26 **IT IS ORDERED** Plaintiff’s Motion for an Award of Attorneys’ Fees is
27 **GRANTED IN PART** and **DENIED IN PART**. Defendants shall pay Plaintiff
28 **\$2,370,881.67** in attorneys’ fees and expenses.

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IT IS FURTHER ORDERED Defendants shall pay Plaintiff **\$8,426.25** for costs as outlined in Plaintiff's Bill of Costs (Doc. 366).

Dated this 19th day of March, 2024.



Honorable Roslyn O. Silver
Senior United States District Judge