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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Greg Jarman,

10 Plaintiff,

11 v.

12 American Family Insurance Company,

13 Defendant.
14

No. CV-18-00526-PHX-SMB

ORDER

15 Pending before the Court is Plaintiff Greg Jarman’s Motion for Attorneys’ Fees,
16 Non-Taxable Expenses, and Pre- and Post-Judgment Interest. (Doc. 219.) Defendant,
17 American Family Insurance Company (“American Family”), responded, (Doc. 224), and
18 Plaintiff replied. (Doc. 227.) The Court has considered the pleadings and attached exhibits
19 and now issues this order granting in part and denying in part Plaintiff’s motion.

20 **I. BACKGROUND**

21 Plaintiff files this motion after obtaining a \$4.5 million jury verdict against
22 American Family for insurance bad faith on September 4, 2020 after a seven-day trial. The
23 verdict consisted of a \$300,000 award for Plaintiff’s future medical needs and \$4.2 million
24 for Plaintiff’s pain and suffering. (Doc. 207.) The Court has since remitted the jury’s pain
25 and suffering verdict to \$2.5 million.¹ (Doc. 240.) Plaintiff accepted the remitter on April
26 23, 2021. (Doc. 243.) Plaintiff has now brought this motion seeking \$1,042,535 in
27 attorneys’ fees and \$74,008.24 in costs and expenses. (Doc. 219 at 14.) The motion seeks

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¹ The total verdict, after remittitur, is \$2.8 million.

1 attorneys' fees on behalf of Mr. Chami, Mr. Shah, and Ms. Gerardy all of whom
2 represented the Plaintiff during this litigation and at trial. (*Id.* at 4.)

3 **II. LEGAL STANDARD**

4 **A. A.R.S. § 12-341.01**

5 A federal court sitting in diversity applies state law in deciding whether to allow
6 attorneys' fees because state laws regarding attorneys' fees are generally considered
7 substantive law. *Northon v. Rule*, 637 F.3d 937, 938 (9th Cir. 2011). A.R.S. § 12-341.01(A)
8 allows courts to award the successful party its reasonable attorneys' fees in any action
9 arising out of breach of contract. An action alleging insurance bad faith is one "arising out
10 of contract" within the meaning of A.R.S. § 12-341.01(A). *Sparks v. Republic Nat. Life*
11 *Ins. Co.*, 647 P.2d 1127, 1142 (Ariz. 1982); *Lange v. Penn Mut. Life Ins. Co.*, 843 F.2d
12 1175, 1183-84 (9th Cir. 1988) (recognizing that the Arizona Supreme Court has upheld fee
13 awards under A.R.S. § 12-341.01). Such an award "may not exceed the amount paid or
14 agreed to be paid" from the client to the attorney in the applicable fee agreement.
15 *Associated Indem. Corp. v. Warner*, 694 P.2d 1181, 1184 (Ariz. 1985) (citing A.R.S. § 12-
16 341.01(B)). Useful factors to assist the trial judge in determining whether attorneys' fees
17 should be granted under the statute are:

- 18 1. The merits of the claim or defense presented by the unsuccessful party.
- 19 2. The litigation could have been avoided or settled and the successful party's
20 efforts were completely superfluous in achieving the result.
- 21 3. Assessing fees against the unsuccessful party would cause an extreme
22 hardship.
- 23 4. The successful party did not prevail with respect to all of the relief sought.
- 24 5. The novelty of the legal question presented, and whether such claim or
25 defense had previously been adjudicated in this jurisdiction.
- 26 6. Whether the award in any particular case would discourage other parties
with tenable claims or defenses from litigating or defending legitimate
contract issues for fear of incurring liability for substantial amounts of
attorney's fees.

27 *Associated Indem.*, 694 P.2d at 1184.

28 **B. Lodestar Method**

1 A district court must calculate awards for attorneys' fees using the "lodestar"
2 method. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n. 4 (9th Cir. 2001);
3 *Defenbaugh v. JBC & Assocs. PC*, No. 04-16866, 2006 U.S. App. LEXIS 19930, at *2-*3
4 (9th Cir. Aug. 3, 2006). "The 'lodestar' is calculated by multiplying the number of hours
5 the prevailing party *reasonably expended* on the litigation by a reasonable hourly rate."
6 *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996) (emphasis added). "A
7 district court should exclude from the lodestar amount hours that are not reasonably
8 expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen*
9 *v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v.*
10 *Eckerhart*, 461 U.S. 424, 434 (1983)).

11 "Although in most cases, the lodestar figure is presumptively a reasonable fee
12 award, the district court may, if circumstances warrant, adjust the lodestar to account for
13 other factors which are not subsumed within it." *Ferland*, 244 F.3d at 1149, n. 4. Thus, the
14 district court may adjust the "lodestar" figure upward or downward taking into
15 consideration twelve "reasonableness" factors:

16
17 (1) the time and labor required, (2) the novelty and difficulty of the questions
18 involved, (3) the skill requisite to perform the legal service properly, (4) the
19 preclusion of other employment by the attorney due to acceptance of the case,
20 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
21 limitations imposed by the client or the circumstances, (8) the amount
22 involved and the results obtained, (9) the experience, reputation, and ability
of the attorneys, (10) the "undesirability" of the case, (11) the nature and
length of the professional relationship with the client, and (12) awards in
similar cases.

23 *Evon*, 688 F.3d at 1033 (quoting *Morales*, 96 F.3d at 363 n. 8). Because the lodestar amount
24 is presumptively reasonable, an adjustment of the amount upward or downward should
25 only occur in "'rare' and 'exceptional' cases, supported by both 'specific evidence' on the
26 record and detailed findings'...that the lodestar amount is unreasonably low or
27 unreasonably high." *Van Gerwen*, 214 F.3d at 1045 (citing *Pennsylvania v. Delaware*
28 *Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986) (quoting *Blum v. Stenson*,

1 465 U.S. 886 (1984)); *Blum*, 465 U.S. at 897; *D'Emanuele v. Montgomery Ward & Co.*,
2 904 F.2d 1379, 1384, 1386 (9th Cir. 1990); *Cunningham v. County of Los Angeles*, 879
3 F.2d 481, 487 (9th Cir. 1989)). When calculating fee award, the Court has an obligation
4 “to articulate...the reasons for its findings regarding the propriety of the hours claimed or
5 for any adjustments it makes either to the prevailing party's claimed hours or to the
6 lodestar.” *Ferland*, 244 F.3d at 1148 (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1398
7 (9th Cir. 1992)).

8 **III. DISCUSSION**

9 American Family argues that the Court should deny Plaintiff’s Motion for
10 Attorneys’ Fees for three reasons: “(1) this Court’s Rule 54.2 bars the hearing of his
11 motion, as he filed it without first attempting to confer about the reasonableness of his fees;
12 (2) Mr. Jarman should not be entitled to fees in the first place; and (3) the amount of fees
13 he seeks is excessive.” (Doc. 224 at 1.) The Court will address each of these arguments in
14 turn.

15 **A. Failure to Comply with LRCiv 54.2**

16 American Family first argues that the Court should deny Plaintiff’s fee application
17 because Plaintiff failed to comply with LRCiv 54.2. Rule 54.2(d)(1), LRCiv, provides that
18 “No motion for award of attorneys’ fees will be considered unless a separate statement of
19 the moving counsel is attached to the supporting memorandum certifying that, after
20 personal consultation and good faith efforts to do so, the parties have been unable to
21 satisfactorily resolve all disputed issues relating to attorneys’ fees...” American Family
22 urges the Court to deny Plaintiff’s motion, arguing, “Mr. Jarman’s counsel did not attempt
23 to confer with American Family’s counsel at any time before filing the Application, nor
24 does the Application claim that they did.” (Doc. 224 at 2.) In his reply, Plaintiff argues that
25 he can “cure the inadvertent defect” and attaches an email conversation between himself
26 and American Family’s in-house counsel, Chuck Ledbetter, where Plaintiff offered
27 American Family a post-verdict settlement of \$5.15 million, inclusive of attorneys’ fees.
28 (Doc. 227 at 1, Ex. 1.)

1 While American Family cites cases where courts have denied motions for attorneys’
2 fees due to the lack of compliance with LRCiv 54.2(d)(1), Plaintiff cites cases where courts
3 have overlooked the offense. The requirements of LRCiv 54.2 “are not advisory, but
4 mandatory.” *Societe Civile Succession Richard Guino v. Beseder Inc.*, No. CV 0301310-
5 PHX-MHM, 2007 WL 3238703, at *7 (D. Ariz. Oct. 31, 2007). However, “[c]ourts in this
6 district may overlook such procedural shortcomings at their discretion, especially when
7 doing so would not prejudice a defendant.” *Skydive Arizona, Inc. v. Quattrocchi*, No. CV
8 05-2656-PHX-MHM, 2011 WL 1004945, at *1 (D. Ariz. Mar. 22, 2011) (citing *Hoskins*
9 *v. Metro. Life Ins. Co.*, No. CV-06-1475-PHX-FJM, 2008 WL 2328741, at *2 (D. Ariz.
10 June 4, 2008)); *In re Arb. Proceeding Between: Scottsdale Ins. Co. v. John Deere Ins. Co.*,
11 No. CV-15-00671-PHX-PGR, 2016 WL 3951740, at *1 (D. Ariz. July 22, 2016) (“the
12 Court concludes that an appropriate sanction for John Deere's failure to comply with Rule
13 54.2(d)(1) is to deny its request for \$2,002.00 in attorneys' fees it incurred in filing its fee
14 application.”).

15 Here, there is no question that Plaintiff failed to comply with the requirements of
16 Rule 54.2(d)(1). Plaintiff’s counsel attempted to remedy this failure by attaching emails to
17 his reply in which Plaintiff’s counsel discussed settlement with American Family’s in-
18 house counsel. (Doc. 227-1.) The emails do not satisfy the requirements of LRCiv
19 54.2(d)(1). First, the rule requires *personal* consultation. LRCiv 54.2(d)(1) (emphasis
20 added). “Personal consultation means personal contact, such as occurs in person, face-to-
21 face, or on the telephone, not communication by letters, faxes or emails.” *Shupe v. Kroger*
22 *Co.*, No. CV-17-00496-TUC-DCB, 2018 WL 9708467, at *1 (D. Ariz. Mar. 6, 2018); *see*
23 *also Sandpiper Resorts Dev. Corp. v. Glob. Realty Invs., LLC*, No. 2:08-CV-01360 JWS,
24 2012 WL 2009965, at *1 (D. Ariz. June 5, 2012) (finding emails do not satisfy the
25 requirement of personal consultation); *Bustamante v. Graco, Inc.*, No. CV03-
26 182TUCJMR, 2005 WL 5976149, at *1 (D. Ariz. Dec. 1, 2005) (“[P]ersonal consultation
27 and sincere efforts’ require more than written correspondence; it requires in-person or
28 telephonic consultation.” (citing *Hunter v. Moran*, 128 F.R.D. 115, 116 (D. Nev. 1989))).

1 Second, the rule requires the parties to discuss issues surrounding attorney’s fees, not
2 settlement generally. Accordingly, the Court finds that Plaintiff failed to comply with
3 LRCiv 54.2(d)(1). While the Court will suspend the rule in this instance,² it will subtract
4 Plaintiff’s proposed fee award for his preparation of the fee application as consequence of
5 this failure (16.3 hours billed by Mr. Chami) and will decline to award any future fees for
6 Plaintiff’s reply.

7 American Family also points out that Plaintiff failed to attach his fee agreement to
8 his fee application. (Doc. 224 at 3.) However, Plaintiff cured that defect when he produced
9 the fee agreement in response to an order from this Court. (Doc. 241 (order); Doc. 242
10 (notice and fee agreement).)

11 **B. Plaintiff’s Entitlement to Fees Under A.R.S. § 12-341.01**

12 American Family argues that Plaintiff is not entitled to fees under A.R.S. § 12-
13 341.01 for several reasons. First, American Family points out that, under A.R.S. § 12-
14 341.01, an attorney’s fee award “may not exceed the amount paid or agreed to be paid” by
15 the client. However, because Plaintiff failed to attach the fee agreement to his motion,
16 American Family contends that the Court cannot determine this amount.³ (Doc. 224 at 4.)
17 Second, American Family argues that Plaintiff waived any argument that his case merits
18 an award of attorneys’ fees under A.R.S. § 341.01 by failing to argue or even cite the
19 *Associated Indemnity* factors. *See Associated Indem. Corp. v. Warner*, 694 P.2d 1181, 1184
20 (1985). Third, American Family argues that the factors under *Associated Indemnity* do not

22 ² The Court, under LRCiv 83.6, may exercise discretion to suspend the Local Rules of Civil
23 Procedure in this district when appropriate. *See In re Arb. Proceeding Between: Scottsdale*
24 *Ins. Co. v. John Deere Ins. Co.*, No. CV-15-00671-PHX-PGR, 2016 WL 3951740, at *1
25 (D. Ariz. July 22, 2016) (awarding attorneys’ fees despite non-compliance with LRCiv
26 54.2(d) pursuant to LRCiv 83.6 and deciding that an appropriate sanction was denying
27 request for attorneys’ fees incurred from preparing the application for attorneys’ fees); *see*
28 *also Skydive Arizona, Inc. v. Quattrocchi*, No. CV 05-2656-PHX-MHM, 2011 WL
1004945 (D. Ariz. Mar. 22, 2011) (calling the failure to comply with LRCiv 54.2(d)
“regrettable and sloppy” but nonetheless awarding attorneys’ fees).

³ As the Court states above, this defect was cured by the production of the fee agreement
in response to this Court’s order.

1 weigh in Plaintiff's favor. (Doc. 224 at 5.)

2 **1. The Amount Agreed to be Paid by Plaintiff**

3 Plaintiff agreed to a contingency fee of forty percent (40%) of “the gross amount
4 collected or recovered (‘gross amount collected’ means the amount collected before any
5 subtraction of expenses and disbursements).” (Doc. 242-1.) Forty percent of the \$2.8
6 million remitted verdict is \$1,020,000. Thus, Plaintiff’s fee award cannot exceed this
7 amount.

8 **2. Plaintiff’s Failure to Argue Associated Indemnity Factors**

9 American Family next argue that Plaintiff “waived any argument that he deserves
10 the fees under *Associated Indemnity* and its factors by failing to cite the case or the factors
11 and failing to argue the point.” (Doc. 224 at 5.) A district court need not consider arguments
12 not raised in a movant’s motion and raised for the first time in a reply brief. *Zamani v.*
13 *Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). Nonetheless, the Court, in its discretion, will
14 consider the *Associated Indemnity* factors relying on the facts of this case and on American
15 Family’s arguments.

16 **3. Associated Indemnity Analysis**

17 American Family argues that even if the Court does consider the *Associated*
18 *Indemnity* factors, the factors weigh in favor of denying Plaintiff’s fee application.
19 Specifically, American Family argues that factors 1, 4, 5, and 6 weigh against granting
20 attorneys’ fees.

21 As to the first factor of the analysis, whether the merits of the unsuccessful party’s
22 claim was meritorious, American Family argues that its defense had merit. *See Tucson*
23 *Ests. Prop. Owners Ass’n v. McGovern*, 366 P.3d 111, 115 (Ariz. Ct. App. 2016)
24 (upholding the trial court’s denial of attorney’s fees because the merits of the case were
25 “equally balanced”). American Family further points out that it successfully defended
26 against Plaintiff’s punitive damages claim. While American Family’s defense did have
27 some merit, as explained in the Court’s order denying American Family’s Renewed Motion
28 for Judgment as a matter of law, the evidence properly supported the jury’s verdict that

1 American Family engaged in insurance bad faith. (Doc. 240.) The Court finds this factor
2 neither weighs for or against awarding fees in this case.

3 American Family does not address the second factor, whether the litigation could
4 have been avoided or settled and the successful party's efforts were completely superfluous
5 in achieving the result. As Plaintiff mentions in his reply, Plaintiff's fee application
6 highlights that the parties participated in mediation and that the parties could not come to
7 terms. (Doc. 219 at 7.) The Court is not familiar with the reasonableness of each parties'
8 position during settlement and will not speculate whether the claim could have been settled
9 for a reasonable amount.

10 American Family also does not submit an argument on the third factor, whether
11 assessing fees against the unsuccessful party would cause an extreme hardship. The Court
12 can reasonably assume that assessing fees against American Family would not be a
13 hardship.

14 As to the fourth claim, whether the successful party did or did not prevail with
15 respect to all of the relief sought, American Family argues that Mr. Jarman's claims for
16 intentional infliction of emotion distress and punitive damages failed. In addition,
17 American Family highlights the fact that Plaintiff asked the jury for \$11,200,000 in
18 damages but only was awarded \$4,500,000. While these are true statements, this seems to
19 be a case where Plaintiff aimed for the moon and landed among the stars with the ultimate
20 damages award. While he did not receive everything he asked for in the verdict, the jury's
21 award nonetheless was exceptionally high. Further, the verdict was based solely on
22 Plaintiff's bad faith claim which was the claim that sounded in contract.

23 The fifth *Associated Indemnity* factor asks whether the legal questions presented
24 were novel and whether such claim or defense had previously been adjudicated in this
25 jurisdiction. American Family argues that bad faith in the delay or denial of medical
26 authorization causing injury is "widely" litigated in Arizona. This is true. Bad faith
27 insurance claims are often litigated in Arizona.

28 Lastly, as to the sixth factor, whether the award in any particular case would

1 discourage other parties with tenable claims or defenses from litigating or defending
2 legitimate contract issues for fear of incurring liability for substantial amounts of attorney's
3 fees, American Family argues that this case would negatively impact bad faith litigation if
4 fees were awarded. The Court does not accept American Family's argument. The evidence
5 at trial was sufficient for a jury to find that the insurer engaged in bad faith. (Doc. 240.)
6 Accordingly, while it will have some deterrent effect for insurers, it is not because the
7 evidence did not support liability on the claim.

8 On the balance, the Court finds that the *Associated Indemnity* factors weigh in favor
9 of awarding attorneys' fees in this case. Accordingly, the Court will, in its discretion, award
10 fees.

11 **C. The Amount of Fees under the Lodestar Method**

12 American Family argues that even if the Court decides to award fees, "it should
13 deny fees anyway because "the Application seeks a manifestly unreasonable amount of
14 fees in a manifestly unreasonable way." (Doc. 224 at 8.) American Family accuses Plaintiff
15 of dumping a mound of paperwork on the Court for it to determine what is reasonable. The
16 Court agrees that Plaintiff has engaged in a paper dump. Nonetheless, the Court will
17 attempt to wade through the documents.

18 **1. Block Billing**

19 American Family first takes exception with Plaintiff's counsel's practice of block
20 billing. The practice of block billing violates Local Rule 54.2(e). *Lexington Ins. Co. v. Scott*
21 *Homes Multifamily Inc.*, No. CV-12-02119-PHX-JAT, 2016 WL 5118316, at *18 (D. Ariz.
22 Sept. 21, 2016) (reducing the fee awarded for a block billed entry by 20%). "While not
23 forbidden by caselaw, block-billing makes it nearly impossible for the Court to determine
24 the reasonableness of the hours spent on each task." *Med. Protective Co. v. Pang*, 25 F.
25 Supp. 3d 1232, 1247 (D. Ariz. 2014) (stating the court would reduce the award accordingly
26 where it could not distinguish between the times claimed for various tasks and subtracting
27 33.7 hours from the lodestar calculation).

28 Here, worse block billing practices can hardly be imagined. In a single entry titled

1 “trial prep” which includes at least three tasks, Mr. Shah records 201 hours from August
2 12, 2020 to August 24, 2020, requesting a total of \$100,500 in fees for this single entry.
3 (Doc. 219-4 at 8.) On the next line, Mr. Shah includes an entry simply labeled “Trial –
4 includes after trial review of daily transcripts/preparing.” (*Id.*) For this single entry, Mr.
5 Shah records 151 hours. (*Id.*) This is clearly an egregious example of block billing, leaving
6 the Court unable to determine how much time was spent on specific tasks subsumed within
7 each entry. Mr. Shah has essentially credited himself with an average of 15.5 hours per day
8 for 13 straight days for “trial prep.” For trial, Mr. Shah credits himself with an average of
9 13.7 hours per day billed for eleven straight days. These entries clearly run afoul of Rule
10 54.2(e) of the local rules. This kind of egregious block billing is simply unacceptable.
11 Therefore, the Court will reduce both entries. For Mr. Shah’s entry related to trial prep, the
12 Court will reduce the entry to give Mr. Shah credit for 8 hours billed per day, which totals
13 104 hours when multiplied by 13 days. For the 11 days of trial, the Court will give Mr.
14 Shah credit for 11 hours per day, which reduces the total time spent at trial to 121 hours.
15 This will reduce the total hours included in Mr. Shah’s fee award to 569.⁴

16 **2. Reasonableness of Time Spent for Support Staff**

17 American Family next takes exception with Plaintiff’s failure to attach an affidavit
18 for fees requested for Florence Lirato, James Dey, and Mallory Kay Crow. Local Rule
19 54.2(d)(4) requires a fee application to be accompanied by an “affidavit of moving
20 counsel” which sets forth (A) the background of each attorney for whom fees are claimed,
21 (B) the reasonableness of the rate, and (C) the reasonableness of time spent and expenses
22 incurred. LRCiv 54.2(d)(4). American Family points out that while Plaintiff attached such
23 an affidavit for each of the three attorneys who worked on Plaintiff’s case, he failed to do
24 so for each of the three support staff. Plaintiff states for the first time in his reply what the
25 roles of the three individuals are. (Doc. 227 at 8.) Apparently two are paralegals and one is
26 a law clerk, facts that are not listed anywhere else in Plaintiff’s pleadings or supporting
27

28 ⁴ Although American Family takes exception with several earlier entries from Mr. Shah
and Mr. Chami, the Court does not find the cited entries problematic enough to address.

1 documents. Plaintiff argues that an affidavit is only required for attorneys under this rule.

2 American Family also argues that some of the tasks listed in Plaintiff's fee
3 application for the support staff are clerical in nature. Tasks which are clerical in nature are
4 not recoverable. *Pearson v. Nat'l Credit Sys., Inc.*, No. CV10-526-PHX-MHM, 2010 WL
5 5146805, at *3 (D. Ariz. Dec. 13, 2010) (citing *Missouri v. Jenkins*, 491 U.S. 274, 288, n.
6 10 (1989)); *Schrum v. Burlington N. Santa Fe Ry. Co.*, No. CIV 04-0619-PHX-RCB, 2008
7 WL 2278137, at *12 (D. Ariz. May 30, 2008) ("Some of the tasks for which primarily
8 paralegal Murphy billed are secretarial or clerical in nature, and thus are not recoverable
9 as part of a reasonable attorneys' fee award.").

10 The Court finds that there are a few issues with Plaintiff's fee request for the three
11 support personnel. First, American Family correctly points out that without an affidavit for
12 these three individuals, the Court is unable to determine whether the rates charged by the
13 three were reasonable.⁵ In fact, without affidavits, it is even unclear what firm these
14 individuals worked with the exception of Florence Lirato whose entries are interspersed
15 with those of Mr. Chami. (Doc. 219-2.) Next, some of the items billed by the three support
16 personnel are clearly clerical in nature.⁶ Lastly, the entries from the support staff include
17 several block billed entries, including one from James Dey where he credits himself with
18 a 47-hour entry for the 11 days between the start to the end of trial.⁷ (Doc. 219-6 at 2.) In
19 light of these issues, the Court will exercise its discretion to decline to award fees for the
20 three support staff. Thus, the Court will subtract \$15,342.50 from the total fee award for
21 the fees of James Dey, \$10,875 for the fees of Mallory Crow, and \$3,495 for the fees of
22 Florence Lirato.

23 **3. Reasonableness of Fees Charged by Plaintiff's Counsel**

24 _____
25 ⁵ James Day charged \$95 per hour, (Doc. 219-6), Mallory Crow charged \$150 per hour,
(Doc. 219-5), and Florence Lirato charged \$150 per hour. (Doc. 219-2.)

26 ⁶ For example, Florence Lirato's entries include time scanning and uploading, saving,
27 filing, mailing, and printing. (Doc. 219-2.)

28 ⁷ In the entry, Mr. Dey credits himself or "taking care of our client." (Doc. 219-6 at 2.)
Presumably, this meant that Mr. Dey was taking care of Mr. Jarman. This is not a billable
task.

1 The lodestar method is calculated by multiplying the number of hours the prevailing
2 party reasonably expended by a reasonable hourly rate. *Ferland v. Conrad Credit Corp.*,
3 244 F.3d 1145, 1149, n. 4 (9th Cir. 2002). The fee applicant has the burden of producing
4 “satisfactory evidence—in addition to the attorney’s own affidavits—that the requested
5 rates are in line with those prevailing in the community for similar services by lawyers of
6 reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886,
7 895 (1984).

8 American Family argues that the fees charged by Plaintiff’s counsel are higher than
9 reasonable. In support of its argument, American Family points out that Mr. Chami, Mr.
10 Shah, and Ms. Gerardy do not provide evidence to support their fees besides citations to
11 previous attorney fee awards that Mr. Chami received in consumer and employment
12 matters. It is true that this is the only evidence Plaintiff cites to besides his attorneys’ own
13 affidavits despite the fact that Plaintiff concedes that he has the burden of producing
14 evidence that his lawyers’ rates are in line with those prevailing in the community by
15 lawyers of similar skill and experience. *See Blum*, 465 U.S. at 895. American Family also
16 argues that the cases cited by Plaintiff to support the reasonableness of his counsels’ hourly
17 rates are not comparable to this case because one was an employment case, one is a
18 California consumer law case, and one involved fees for a discovery dispute in a consumer
19 litigation matter. *See Sullivan v. Salt River Project*, 12-01810 (D. Ariz. Oct. 23, 2014)
20 (awarding Mr. Chami \$400 per hour); *Parker v. Peters & Freedman, LLP*, No. SA CV 17-
21 0667-DFM, 2019 WL 174979 (C.D. Cal. Jan. 11, 2019) (awarding Mr. Chami \$500 per
22 hour); *Gross v. Citibank, N.A.*, 18-02013 (D. Ariz. Nov. 13, 2019) (awarding Mr. Chami
23 \$500 per hour). In *Parker*, Mr. Chami submitted a letter from a California attorney
24 experienced in consumer litigation who attested that \$500 per hour for Mr. Chami’s rate
25 was reasonable. *Parker*, 2019 WL 174979, at *3. Here, Plaintiff has not submitted a letter
26 or affidavit from another attorney experienced in personal injury or bad faith insurance
27 claims attesting that the rates charged by counsel are reasonable. American Family urges
28 the Court to reduce Mr. Chami, Mr. Shah, and Ms. Gerardy’s fees to those rates listed in

1 the 2019 edition of the State Bar of Arizona’s Economics of Law Practice Report.⁸

2 In his reply, Plaintiff argues that a statewide survey does little to determine the
3 appropriate billing rate for an attorney in Phoenix. *See Kaufman v. Warner Bros. Ent. Inc.*,
4 No. CV-16-02248-PHX-JAT, 2019 WL 2084460, at *12 (D. Ariz. May 13, 2019) (“the
5 statewide survey submitted by Plaintiff ‘does little to determine the appropriate billing rate
6 for an attorney in Phoenix that is experienced in [intellectual property] litigation.’”
7 (alterations original) (citing *Jackson v. Wells Fargo Bank, N.A.*, No. CV-13-00617-PHX-
8 SPL, 2015 WL 13567069, at *2 (D. Ariz. Oct. 23, 2015))). The Court notes that *Kaufman*
9 pointed out that the statewide survey had little application to Phoenix *intellectual property*
10 attorneys.

11 Plaintiff has failed to produce enough evidence of the reasonableness of his
12 counsels’ fees. While Plaintiff does point to fees his counsel obtained in other cases, he
13 fails to produce any other evidence, besides his counsels’ own affidavits, to prove that the
14 rates charged by his attorneys are reasonable in this matter. This failure is relevant to the
15 fifth lodestar factor, the customary fee charged in matters of the type involved. In Plaintiff’s
16 analysis of this factor, he concedes that “[t]he hourly rate must be based on ‘customary
17 fees in cases of like difficulty.’” (Doc. 219 (quoting *Semar v. Platte Valley Fed. Sav. &*
18 *Loan Ass’n*, 791 F.2d 699, 706 (9th Cir. 1986))). Nonetheless, Plaintiff failed to produce
19 any such evidence. Thus, the Court has determined that this factor warrants a reduction in
20 hourly rates.

21 It is clear that Mr. Chami and Mr. Shah are quite experienced and have been
22 successful considering their limited years of experience in the legal field. Thus, the Court
23 does believe that they warrant fees that are higher than the average Arizona attorney with
24 similar years of experience. Accordingly, the Court determines that a reasonable rate for
25 Mr. Chami is \$450 per hour and that a reasonable rate for Mr. Shah is \$400 per hour. The

26
27 ⁸ The report lists the average and mediate hourly rate for a 10-19 year attorney as \$308, 5-
28 9 year attorney as \$288, and an attorney with less than 5 years of experience as \$248. Mr.
Chami had been licensed for roughly 10 years at the conclusion of the trial, Mr. Shah had
been licensed for roughly 7 years, and Ms. Gerardy had been licensed for roughly 2 years.

1 Court will not reduce Ms. Gerardy's hourly rate in light of the fact that it is comparable to
2 that of an attorney with her same experience. The reduction in the hourly rate of Mr. Chami
3 and Mr. Shah will reduce Mr. Chami's total fee award from \$556,210 to \$456,165 (1013.7
4 hours⁹ multiplied by \$450) and Mr. Shah's total fee award from \$284,500 to \$227,600. The
5 Court finds that these fees are reasonable in light of the remaining lodestar factors.

6 American Family contends that although Mr. Chami claims that his rate changed
7 from \$500 per hour to \$550 per hour on January 1, 2020, that Mr. Chami inexplicably asks
8 this Court for \$550 per hour from June 15, 2017 to November 2018. American Family is
9 correct. Plaintiff appears to have made a clerical error in asking for \$550 for these dates
10 instead of \$500. The Court has corrected this error by calculating his total fee by
11 multiplying all of Mr. Chami's hours billed by \$450 per hour.

12 **4. Reasonableness of Time Spent on the Case**

13 American Family next takes exception with Ms. Gerardy's time entries, pointing
14 out that most of her entries are rounded to the nearest half hour. Because of this, American
15 Family contends that her entries "do not appear credible." While many of her entries indeed
16 are recorded in half hour increments, that is not the case for all her entries. The Court is
17 unwilling to find that Ms. Gerardy's entries lack credibility just because most of her billing
18 was done in half hour increments.

19 American Family argues that Mr. Chami billed over 12 hours on the case on 13 days
20 between July 14, 2020 and August 20, 2020. All of these days were prior to the start of
21 trial. The Court finds that the fees are not unreasonable simply because Mr. Chami billed
22 over 12 hours a day for 13 days as he prepared for trial. American Family also complains
23 that Mr. Chami billed 44 hours between March 14, 2019 to March 18, 2019 for three
24 depositions that took only 7.5 hours combined. The Court is unwilling to find that this is
25 unreasonable enough to warrant a reduction.

26 American Family also argues that the fee application unreasonably seeks fees
27

28 ⁹ Above, the Court cut 16.3 hours from Mr. Chami's hours for the time spent preparing the
fee application for failing to confer with American Family.

1 relating to dismissed Defendants Efficient Electric and Sedgwick Claims Management
2 Services, Inc (“Sedgwick”). In Exhibit 1 to American Family’s response, American Family
3 lists entries in which Mr. Chami, Mr. Shah, and Ms. Gerardy include time billed against
4 Efficient Electric and Sedgwick. After reviewing the entries relating to Efficient Electric
5 and Sedgwick, the Court finds that all three attorneys billed time that was solely attributable
6 to the Efficient Electric and Sedgwick Defendants. Mr. Chami billed 11.9 hours, Mr. Shah
7 billed 1.5 hours, and Ms. Gerardy billed one hour attributable to the dismissed Defendants.
8 The Court will reduce the total fee award by these hours.

9 American Family next argues that Plaintiff has not identified hours billed for the
10 claim of intentional infliction of emotional distress and its punitive damages claim. It is
11 true that Plaintiff has failed identify which billing entries relate to these claims. However,
12 since all claims were related to the same facts, the Court finds that it was not unreasonable
13 to differentiate between different claims in billing entries.

14 **5. Costs and Expenses**

15 American Family also urges the Court to disallow Plaintiff’s non-taxable costs and
16 expense such as clothes for Mr. Jarman, a hotel stay for Mr. Jarman, and demonstrative
17 exhibits. “Allowing a party to recover non-taxable costs under the guise of attorneys’ fees
18 would undermine the legislative intent expressed in A.R.S. § 12-332.” *Ahwatukee Custom*
19 *Ests. Mgmt. Ass’n, Inc. v. Bach*, 973 P.2d 106, 107 (Ariz. 1999) (finding that non-taxable
20 costs and expenses are not recoverable as attorneys’ fees pursuant to A.R.S. § 12-341.01).
21 In its reply, Plaintiff states, “Mr. Jarman is confident this court can differential [*sic*] which
22 costs with [*sic*] inadvertently included and which costs are properly recoverable in this
23 case.” In other words, Plaintiff is hoping that the Court will do the hard work for him. A
24 party requesting an award of attorney’s fees pursuant to A.R.S. § 12-341.01(A) has the
25 burden of proving entitlement to such an award. *Woerth v. City of Flagstaff*, 808 P.2d 297,
26 304 (Ariz. Ct. App. 1990). Even the LRCiv 54.2(e)(3) warns, “Failure to itemize and verify
27 costs may result in their disallowance by the court.” It’s clear that Plaintiff’s costs and
28 expenses contain non-taxable costs. The Court refuses to go through line-by-line and

1 analyze which ones are non-taxable.¹⁰ Accordingly, Plaintiff's request for \$74,008.24 in
2 costs will be denied in its entirety.

3 **D. Post Judgment Interest**

4 Plaintiff claims that he is entitled to post judgment interest, starting from the date of
5 the judgment. (Doc. 219 at 14.) In his motion, Plaintiff promised to "supply the court with
6 the appropriate interest rate and daily calculator until the judgment is paid when his reply
7 brief [was] filed." However, Plaintiff failed to do so. The Court will resolve this issue by
8 separate motion if one is submitted by Plaintiff.

9 **IV. CONCLUSION**

10 The Court will award the following fees for Plaintiff's counsel: 1,001.8 hours at
11 \$450 per hour for Mr. Chami; 567.5 at \$400 per hour for Mr. Shah; and 434.65 at \$250 per
12 hour for Ms. Gerardy. The total fee awards for each attorney are as follows: \$450,810 for
13 Mr. Chami; \$227,000 for Mr. Shah; and \$108,662.50 for Ms. Gerardy for a total fee award
14 of \$786,472.50.

15 Accordingly,

16 **IT IS ORDERED** that Plaintiff's Motion for Attorneys' Fees, Non-Taxable
17 Expenses, and Pre- and Post-Judgment Interest is granted in part and denied in part. (Doc.
18 219.) Plaintiff's request for attorneys' fees is granted with the reductions explained above.
19 Plaintiff's request for costs and expenses is denied.

20 **IT IS FURTHER ORDERED** that Plaintiff is awarded \$786,472.50 in attorneys'
21 fees to be paid by American Family pursuant to A.R.S. § 12-341.01.

22 Dated this 13th day of May, 2021.

23
24 
25 _____
26 Honorable Susan M. Brnovich
United States District Judge

27
28 ¹⁰ "As the Seventh Circuit observed in its now familiar maxim, '[j]udges are not like pigs,
hunting for truffles buried in briefs.'" *Indep. Towers of Washington v. Washington*, 350
F.3d 925, 929 (9th Cir. 2003).