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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AECOM ENERGY &  
CONSTRUCTION, INC.,  
  
Plaintiff,  
  
v.  
  
GARY TOPOLEWSKI, et al.,  
  
Defendants.

CV17-5398-RSWL-AGRx

**ORDER re:  
PLAINTIFF'S  
SUPPLEMENTAL BRIEFING  
TO ESTABLISH ATTORNEYS'  
FEES**

Plaintiff AECOM Energy & Construction, Inc. ("AECOM") brought this Action for injunctive relief and damages against Defendants Morrison Knudsen Corporation; Morrison-Knudsen Company, Inc.; Morrison-Knudsen Services, Inc.; Morrison-Knudsen International, Inc. (collectively, "Corporate Defendants"); and Gary Topolewski ("Defendant Topolewski") (collectively, "Defendants"). The Action arises out of Defendants' infringing use of the identity and goodwill of Morrison Knudsen Corporation ("MK IP" or "MK brand"), which AECOM

1 owns the rights to.

2 Currently before the Court is a supplemental  
3 briefing ("Supplement") [419] filed by AECOM to  
4 establish the amount of attorneys' fees pursuant to this  
5 Court's Order granting AECOM's Motion for Sanctions  
6 [417]. AECOM seeks \$387,902.40 in post-remand  
7 attorneys' fees in addition to \$873,628.02 that was  
8 previously awarded for the initial phase of this  
9 litigation. Having reviewed all papers submitted  
10 pertaining to the Supplement, the Court **NOW FINDS AND**  
11 **RULES AS FOLLOWS:** the Court reduces AECOM's post-remand  
12 attorneys' fees to **\$372,473.60** and affirms its previous  
13 attorneys' fees award of **\$873,628.02**, thus awarding  
14 AECOM a total of **\$1,246,101.62** in attorneys' fees.

## 15 I. BACKGROUND

### 16 A. Factual Background

17 The facts underlying this Action are stated at  
18 length in this Court's previous Order granting AECOM's  
19 Motion for Summary Judgment and Permanent Injunction.  
20 See generally Order re: Pl.'s Mot. for Summ. J., ECF  
21 Nos. 242, 243. Moreover, the facts giving rise to this  
22 Supplement are stated in this Court's previous Order  
23 granting AECOM's Motion for Sanctions, where the Court  
24 granted AECOM's request for attorneys' fees and costs  
25 and ordered AECOM to provide supplemental briefing to  
26 establish the amount of such fees and costs. See  
27 generally Order re: Pl.'s Mot. for Sanctions, ECF No.  
28 417. Because the facts are well-known to the parties,

1 the Court need not restate them here.

2 **B. Procedural Background**

3 On November 8, 2018, this Court granted [242, 243]  
4 AECOM's Motion for Summary Judgment against Defendants,<sup>1</sup>  
5 finding willful infringement of the MK brand and  
6 awarding AECOM \$1,802,834,672 ("\$1.8 billion") in  
7 damages.<sup>2</sup> On February 21, 2019, Defendants filed a  
8 Motion for Alteration, Amendment, or Reconsideration  
9 [268] of the Court's Order granting AECOM's Motion for  
10 Summary Judgment, which the Court denied [305] on April  
11 24, 2019. Also on April 24, 2019, the Court granted  
12 AECOM's Motion to Set Attorneys' Fees [262] and awarded  
13 AECOM \$873,628.02 in attorneys' fees [305].

14 Defendants appealed the \$1.8 billion damages award,  
15 which the Ninth Circuit reversed and remanded to this  
16 Court [339] on March 24, 2021.<sup>3</sup> Following remand, this

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17  
18 <sup>1</sup> AECOM also named four additional individual defendants in  
19 its Complaint: Bud Zulakoff, John Ripley, Todd Hale, and Henry  
20 Blum (collectively, "Defaulting Defendants"). See generally  
21 Compl., ECF No. 1. On December 4, 2017, the court clerk entered  
22 default as to these four individuals. See generally Default by  
23 Clerk. On November 9, 2018, AECOM filed a Motion for Default  
24 Judgment against Defaulting Defendants. See generally Mot. for  
25 Default J., ECF No. 244. On January 24, 2019, the Court granted  
26 AECOM's motion, finding Defaulting Defendants jointly and  
27 severally liable for AECOM's damages. See generally Order re:  
28 Mot. for Default J.

24 <sup>2</sup> The Court also granted AECOM's request for a permanent  
25 injunction, ordering Defendants to cease their use of the MK IP,  
26 and awarded AECOM its attorneys' fees. See Order re: Pl.'s Mot.  
for Summ. J. 45:5-55:8.

27 <sup>3</sup> Defendants also argued on appeal that AECOM lacked Article  
28 III standing, which the Ninth Circuit rejected. See Ninth Cir.  
Mem. at 2-3, ECF No. 339.

1 Court reopened discovery on damages.

2 On December 16, 2021, Defendants filed Motions for  
3 Summary Judgment [395, 396], arguing that AECOM could  
4 not prove that Defendants profited from their  
5 infringement scheme. On December 17, 2021, AECOM filed  
6 a Motion for Sanctions [398], requesting evidentiary  
7 sanctions, terminating sanctions, and monetary  
8 sanctions. On February 24, 2022, this Court granted in  
9 part and denied in part [417] AECOM's Motion for  
10 Sanctions and denied [417] Defendants' Motions for  
11 Summary Judgment. Specifically, this Court: (1) granted  
12 AECOM's request for evidentiary sanctions and deemed as  
13 true that Defendants performed and collected on a \$36  
14 million construction contract; (2) granted AECOM's  
15 request for terminating sanctions and entered default  
16 judgment against Defendants in the amount of \$36  
17 million; (3) denied AECOM's requests for compensatory  
18 and coercive sanctions; and (4) granted AECOM attorneys'  
19 fees and costs in an amount to be established by  
20 supplemental briefing.<sup>4</sup> On March 14, 2022, AECOM filed  
21 the instant Supplement [419] and lodged its Proposed  
22 Final Judgment [420]. On March 21, 2022, Defendant  
23 Topolewski objected [422] to the Proposed Final  
24 Judgment, taking issue with the requested attorneys'  
25 fees amount.

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27 <sup>4</sup> The Court also bound Defaulting Defendants to this Order.  
28 See generally Order re: Mot. for Sanctions, ECF No. 417.

1 **II. DISCUSSION**

2 **A. Legal Standard**

3 "Attorneys' fees can be recovered only to the  
4 extent they are reasonable." SAS v. Sawabeh Info.  
5 Servs. Co., No. CV1104147MMMMANX, 2015 WL 12763541, at  
6 \*4 (C.D. Cal. June 22, 2015) (citing In re SNTL Corp.,  
7 F.3d 826, 842 (9th Cir. 2009)). Courts routinely use  
8 the lodestar method to determine the reasonableness of  
9 attorneys' fees. See Christensen v. Stevedoring Servs.  
10 of Am., 557 F.3d 1049, 1053 (9th Cir. 2009); City of  
11 Burlington v. Dague, 505 U.S. 557, 562 (1992) ("[T]he  
12 'lodestar' figure has . . . become the guiding light of  
13 [the court's] fee-shifting jurisprudence."). The  
14 lodestar figure is calculated by multiplying the hours  
15 reasonably spent on the litigation by a reasonable  
16 hourly rate. See, e.g., Gonzalez v. City of Maywood,  
17 729 F.3d 1196, 1202 (9th Cir. 2013).

18 **B. Discussion**

19 AECOM seeks \$387,902.40 in attorneys' fees incurred  
20 after remand from the Ninth Circuit, in addition to the  
21 previous award of \$873,628.02, for a total of  
22 \$1,261,530.42 in attorneys' fees. Proposed Amen. Final  
23 J. 2:7-14, ECF No. 420-1. Defendant Topolewski takes  
24 issue with the requested fee award, objecting to both  
25 the reasonableness of the hours expended by AECOM's  
26 counsel and the reasonableness of the rates charged.  
27 See generally Topolewski Objections to Proposed Amen.  
28 Final J. ("Topolewski Objs."), ECF No. 422. The Court

1 examines the reasonableness of the hours expended by  
2 AECOM's counsel and the reasonableness of the rates  
3 charged in turn below.

4 1. Reasonable Hours

5 Defendant Topolewski appears to argue that AECOM  
6 cannot recover attorneys' fees for time spent on the  
7 unsuccessful stages of this litigation. See generally  
8 Topolewski Objs. Namely, Defendant Topolewski argues  
9 that AECOM cannot recover fees for certain work because:  
10 (1) Magistrate Judge Rosenberg granted Defendant  
11 Topolewski's motion for protective order and therefore  
12 prevented AECOM from compelling third-party discovery  
13 regarding Defendant Topolewski; and (2) the Ninth  
14 Circuit reversed AECOM's \$1.8 billion damages award.  
15 Id. Defendant Topolewski is mistaken, however.

16 AECOM can, indeed, recover attorneys' fees for  
17 hours spent on the stages of this litigation that were  
18 not fruitful. Federal jurisprudence in this area is  
19 clear, stating that plaintiffs may, and should, recover  
20 attorneys' fees for the unsuccessful stages of  
21 litigation if those stages contributed to the ultimate  
22 victory of the lawsuit. See Cabrales v. Cty. of Los  
23 Angeles, 935 F.2d 1050, 1053 (9th Cir. 1991) (citing  
24 Hensley v. Eckerhart, 461 U.S. 414 (1983)) ("Rare,  
25 indeed, is the litigant who doesn't lose some skirmishes  
26 on the way to winning the war. Lawsuits usually involve  
27 many reasonably disputed issues and a lawyer who takes  
28 on only those battles he is certain of winning is

1 probably not serving his client vigorously enough;  
2 losing is part of winning."); see also Hensley, 461 U.S.  
3 at 435 ("Where a plaintiff has obtained excellent  
4 results, his attorney should recover a fully  
5 compensatory fee . . . encompass[ing] all hours  
6 reasonably expended on the litigation . . . . [T]he fee  
7 award should not be reduced simply because the plaintiff  
8 failed to prevail on every contention raised in the  
9 lawsuit.").

10        Though unsuccessful, AECOM's efforts in litigating  
11 the third-party subpoenas and the \$1.8 billion damages  
12 award were essential to its ultimate success in securing  
13 terminating sanctions. The Court reminds Defendant  
14 Topolewski that it is due to his collective failure with  
15 Corporate Defendants to provide financial discovery that  
16 AECOM had to litigate the \$1.8 billion damages award,  
17 serve third-party discovery requests, and move for  
18 terminating sanctions in the first place. Yet,  
19 unabashedly, Defendant Topolewski asks this Court to  
20 carve out AECOM's litigation failures in calculating the  
21 attorney's fees. The Court will do no such thing.  
22 Cabrales, 935 F.2d at 1053 ("[Defendant] would have us  
23 scalpel out attorney's fees for every setback, no matter  
24 how temporary, regardless of its relationship to the  
25 ultimate disposition of the case. This makes little  
26 sense.").

27        Accordingly, AECOM is entitled to attorneys' fees  
28 expended on the third-party discovery requests,

1 including time spent unsuccessfully opposing Defendant  
2 Topolewski's Motion for Protective Order, and time spent  
3 litigating the \$1.8 billion damages award that was  
4 ultimately overturned by the Ninth Circuit. See Pierce  
5 v. Cty. of Orange, 905 F. Supp. 2d 1017, 1032 (C.D. Cal.  
6 2012) (citing Cabrales, 935 F.2d at 1053; O'Neal v. City  
7 of Seattle, 66 F.3d 1064, 1069 (9th Cir. 1995)) ("[T]ime  
8 spent unsuccessfully opposing motions or requests on the  
9 way to prevailing in a case may be compensable."); see  
10 also Cabrales, 935 F.2d at 1053 (awarding attorneys'  
11 fees to plaintiff even though judgment was vacated by  
12 the Supreme Court because plaintiff ultimately won her  
13 case on remand).

14 To be clear, the Court notes that AECOM may only  
15 recover attorneys' fees for hours *reasonably* expended.  
16 See Van Gerwen v. Guarantee Mut. Life Co., 214 F.3d  
17 1041, 1045 (9th Cir. 2000) (quoting Hensley, 461 U.S. at  
18 434) ("A district court should exclude from the lodestar  
19 amount hours that are not reasonably expended because  
20 they are 'excessive, redundant, or otherwise  
21 unnecessary.'"). Looking at the billing statement  
22 submitted by AECOM, the Court finds that the 5.7 hours  
23 billed by legal assistants for trial preparation are  
24 somewhat unreasonable. See Declaration of Yungmoon  
25 Chang ("Chang Decl.") 2:8, ECF No. 419-1. While some  
26 trial preparation was necessary, including researching  
27 the Court's trial procedures and preparing the  
28 stipulation to continue trial, the Court finds that such



1 work could have been completed in 3.7 hours.  
2 Accordingly, the Court reduces the hours billed by legal  
3 assistants for trial preparation by two hours. See  
4 Gonzalez, 729 F.3d at 1202 (noting that courts may  
5 perform an "hour-by-hour analysis" of attorneys' fees  
6 requests and "exclude those hours for which it would be  
7 unreasonable to compensate the prevailing party"). The  
8 Court reduces these hours based on Senior Paralegal  
9 Keith Catuara's hourly rate because Mr. Catuara  
10 performed most of the trial preparation work. The Court  
11 otherwise finds that the hours expended on this  
12 litigation post-remand by AECOM's counsel are  
13 reasonable.

## 14 2. Reasonable Rates

15 Reasonable hourly rates are calculated according to  
16 the "prevailing market rates in the relevant legal  
17 community for similar services by lawyers of reasonably  
18 comparable skill, experience, and reputation." Valentin  
19 v. Grant Mercantile Agency, Inc., 2017 WL 6604410, at \*9  
20 (E.D. Cal. Dec. 27, 2017) (citing Blum v. Stenson, 465  
21 U.S. 886, 895 (1984)). The relevant legal community is  
22 the forum in which the district court sits. Carson v.  
23 Billings Police Dep't, 470 F.3d 889, 891 (9th Cir.  
24 2006). In determining whether rates are reasonable,  
25 "[t]he Court [may] also draw[] on precedent from other  
26 courts, its knowledge of the prevailing community rates,  
27 and its evaluation of the quality of the work performed  
28 by counsel. Toyo Tire & Rubber Co. Ltd v. Hong Kong

1 Tri-Ace Tire Co., No. SACV1400054CJCJPRX, 2018 WL  
2 702851, at \*3 (C.D. Cal. Jan. 24, 2018) (citation  
3 omitted).

4 AECOM's billing statement reflects that the  
5 following hourly rates were charged in 2021:

6  
7 Diana Torres (lead partner) \$1,116/hour

8  
9 Yungmoon Chang (senior associate) \$876/hour

10  
11 Maria Beltran (midlevel associate) \$656/hour

12  
13 Adrineh Shakelian (first year associate) \$550/hour

14  
15 Keith Catuara (senior paralegal) \$396/hour

16  
17 Thomas Ambrus (junior paralegal) \$251/hour

18  
19 Hector Alejandro (junior paralegal) \$226/hour

20  
21 While these rates have increased since the Court  
22 last granted AECOM attorneys' fees in 2018, they remain  
23 within or minimally above market range. See Univ.  
24 Elecs., Inc. v. Univ. Remote Control, Inc., 130 F. Supp.  
25 3d 1331, 1337 (C.D. Cal. 2015) (noting intellectual  
26 property partners at major law firms bill in the range  
27 of \$600 to \$1,100 per hour); see also Perfect 10, Inc.  
28 v. Giganews, Inc., No. CV 11-07098-AC SHX, 2015 WL

1 1746484, at \*20 (C.D. Cal. Mar. 24, 2015) (noting that  
2 attorney rates ranging from \$390 to \$1,002.96 per hour  
3 and paralegal rates between \$240 and \$345 per hour were  
4 reasonable for the Los Angeles area). As such, the  
5 rates here are reasonable and the Court rejects  
6 Defendant Topolewski's unsupported and unpersuasive  
7 arguments to the contrary.

### 8 3. Lodestar Calculation

9 As stated above, the Court reduces the hours billed  
10 by legal assistants by two hours according to Mr.  
11 Catuara's hourly rate of \$396/hour. The Court also  
12 notes that there were several errors in the table  
13 provided in the Chang Declaration where the amounts  
14 charged did not correspond to the hours billed. See,  
15 e.g., Chang Decl. 2:1-10 (stating that Diana Torres  
16 charged \$1505 for one hour of trial work, when Ms.  
17 Torres' fee is \$1,116 per hour). After an extensive  
18 analysis of the billing sheet submitted by AECOM's  
19 counsel, the accurate lodestar calculation is as  
20 follows:<sup>5</sup>

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26 <sup>5</sup> AECOM did not provide hourly rates for work done by Mark  
27 Malone, Daniel Shin, La Tonya D., Stephanie Rosa, or Library  
28 Factual. See generally Ex. A ("Billing Statement"), ECF No. 419-  
2. As such, the Court calculates their hourly rates based on the  
billing statement submitted by AECOM's counsel. See id.

1	Diana Torres	51.8 hours @ \$1,116/hour
2		= \$57,808.80
3		
4	Yungmoon Chang	202.9 hours @ \$876/hour
5		= \$177,740.40
6		
7	Maria Beltran	36.2 hours @ \$656/hour
8		= \$23,747.20
9		
10	Adrineh Shakelian	106.1 hours @ \$550/hour
11		= \$58,335.00
12		
13	Keith Catuara	117.5 hours - 2 hours =
14		115.5 hours @ \$396/hour
15		= \$45,738.00
16		
17	Thomas Ambrus	11.1 hours @ \$251/hour
18		= \$2,786.10
19		
20	Hector Alejandro	13 hours @ \$226/hour
21		= \$2,938.00
22		
23	Mark Malone	1.8 hours @ \$374/hour
24		= \$673.20
25		
26	Daniel Shin	0.5 hours @ \$361/hour
27		= \$180.50
28		

1	La Tonya D.	4.6 hours @ \$308/hour
2		= \$1,416.80
3		
4	Stephanie Rosa	1.7 hours @ \$229/hour
5		= \$389.30
6		
7	Library Factual	2.1 hours @ \$343/hour
8		= \$720.30
9		
10	<b>TOTAL</b>	<b>\$372,473.60</b>

11

12       Given the lodestar amount, the Court reduces the

13 post-remand attorneys' fees sought by AECOM from

14 \$387,902.40 to **\$372,473.60** and affirms its previous

15 attorneys' fees award of **\$873,628.02**, reflecting a total

16 of **\$1,246,101.62**.

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