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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,¹
5 finding willful infringement of the MK brand and
6 awarding AECOM \$1,802,834,672 ("\$1.8 billion") in
7 damages.² 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, 2021.³ Following remand, this

17
18 ¹ 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 ² 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 ³ 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.⁴ 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 ⁴ The Court also bound Defaulting Defendants to this Order.
28 See generally Order re: Mot. for Sanctions, ECF No. 417.

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:⁵

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26 ⁵ 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	TOTAL	\$372,473.60

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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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1 **III. CONCLUSION**

2 Based on the foregoing, the Court awards AECOM
3 **\$372,473.60** in attorneys' fees incurred after remand
4 from the Ninth Circuit. The Court also affirms its
5 previous attorneys' fees award of **\$873,628.02**. As such,
6 the cumulative total of attorneys' fees awarded to AECOM
7 is **\$1,246,101.62**. The Court will amend AECOM's Proposed
8 Final Judgment to reflect as much.

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11 **IT IS SO ORDERED.**

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13 DATED: May 9, 2022

/s/ Ronald S.W. Lew

14 **HONORABLE RONALD S.W. LEW**
15 Senior U.S. District Judge
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