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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 PINTEREST, INC.,
7 Pinterest,
8 v.
9 PINTRIPS, INC.,
10 Pintrips.
11

Case No. 13-cv-04608-RS (KAW)

**ORDER GRANTING MOTION FOR
SANCTIONS**

Re: Dkt. No. 102

12 Pinterest, Inc. moves for sanctions against Pintrips, Inc. and its law firm, Kenyon and
13 Kenyon LLP, pursuant to Federal Rule of Civil Procedure 37 and Civil Local Rule 37-4. Pintrips
14 opposes the motion. For the reasons set forth below, the motion is GRANTED.

15 **I. BACKGROUND**

16 This motion for sanctions stems from Pintrips' deficient responses to Pinterest's First Set of
17 Interrogatories,¹ and its subsequent noncompliance with two court orders on the subject. The
18 parties initially sought intervention from this Court on May 30, 2014, when Pinterest requested a
19 telephonic conference pursuant to Section 15 of this Court's General Standing Order. (Pl.'s Req.,
20 Dkt. No. 48.) Pinterest claimed that a telephonic conference was necessary because Pintrips had
21 not cooperated in the filing of a joint letter concerning its responses to Pinterest's First Set of
22 Interrogatories. (Id.) Pinterest withdrew its request for a telephonic conference on June 2, 2014,
23 stating that Pintrips had provided supplemental information in response to the interrogatories and
24 agreed to cooperate in the filing of a joint letter, which was docketed that same day. (Pl.'s Notice,
25 Dkt. No. 49.)

26 In the joint letter, the parties outlined their discovery dispute for the Court. (June 2, 2014,
27

28 ¹ The interrogatories were deemed served on March 17, 2014. July 28, 2014 Joint Ltr., Dkt. No. 63.

1 Joint Ltr., Dkt. No. 50.) The Court determined that the parties had not sufficiently met and
2 conferred, and it ordered the parties to do so in person, and in good faith, to reach a resolution.
3 (June 9, 2014 Order at 1, Dkt. No. 51.) To guide the parties' meet and confer efforts, the Court
4 also ordered Pinterest to consider whether its interrogatories, as written, were sufficiently detailed
5 to invite a meaningful response. (Id. at 1.) In addition, Pinterest was to identify the
6 interrogatories for which supplemental responses were appropriate, and Pintrips was to provide
7 further verified responses. (Id.) The parties were permitted to file an updated joint letter if they
8 were unsuccessful in resolving their dispute. (Id.)

9 That joint letter followed on July 28, 2014.² (July 28, 2014 Joint Ltr., Dkt. No. 63.) In the
10 filing, the parties identified the two interrogatories giving rise to their dispute. (Id.) The first
11 interrogatory at issue asks that Pintrips "[i]dentify all communications between You and any third
12 party which refer or relate to Pinterest." (Id. at 11, Interrog. No. 16.) The second interrogatory at
13 issue is similar; it reads: "Identify all communications between You and any third party which
14 refer or relate to the above-captioned action." (Id. at 12, Interrog. No. 17.) Pintrips' response to
15 both interrogatories was identical:

16 [M]embers of the press have interviewed Stephen Gotlieb on several occasions. In
17 addition, Stephen Gotlieb discussed the above-captioned litigation with potential
18 investors and certain advisors on several occasions.

18 (Id. at 12.)

19 In the joint letter, Pinterest argued that Pintrips should be required to disclose the names,
20 locations, and employers of the potential investors, certain advisors, and anyone else with whom
21 Pintrips has communicated about this trademark dispute. (Id. at 2.) Pintrips, in turn, expressed its
22 objection to providing the requested information. (Id. at 7.) It claimed:

23 As a small startup, Pintrips has little to no revenue, and relies on investors for the
24 necessary funds to continue to build its business. Involving investors in this
25 litigation has the clear potential of alienating the investors and cutting off Pintrips'
26 funding. The effect on Pintrips' business would be more than burdensome and
oppressive; it would be catastrophic. If Pintrips were even to ask the investors if
they would object to being identified in discovery responses, Pintrips would run the

27 _____
28 ² The Court terminated an earlier version of the parties' joint letter because it did not include the
specific interrogatories and responses at issue and did not adhere to the formatting requirements
described in the Court's General Standing Order. July 18, 2014 Order at 1, Dkt. No. 60.

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risk of losing funding.

(Id. at 7.)

On August 7, 2014, the Court issued an order resolving the parties' discovery dispute. (Aug. 7, 2014 Order, Dkt. No. 68.) The Court reasoned that the potential investors and certain advisors with whom Pintrips has discussed this case may have information on the issue of Pintrips' intent, which is one of the elements a court may consider in connection with Pinterest's claim for trademark dilution. (Id. at 3 (citing 15 U.S.C. § 1125(c)(2)(B)(v).) The Court rejected Pintrips' arguments that identifying these individuals would result in catastrophic harm and dismissed Pintrips' assertion that such disclosure would risk funding for its venture as speculation. (Id.) The remainder of the Court's August 7 order reads:

Accordingly, Pintrips shall supplement its responses to interrogatory numbers 16 and 17 with the names and locations of the potential investors and certain advisors it referred to in its interrogatory responses. Pintrips, however, need not supply any information relating to these individuals' employers. That information is not necessary to satisfy Rule 26(b)(1), which allows for discovery of "the identity and location of persons who know of any discoverable matter."

(Aug. 7, 2014 Order at 4.)

Pintrips did not comply. Instead, it moved for a protective order (1) requiring Pinterest to "seek leave of the Court before issuing any subpoenas or otherwise attempting to contact any of the investors and/or potential investors that Pintrips will identify pursuant to the Court's Order of August 7, 2014 (Dkt. No. 68)," (2) providing Pintrips "the opportunity to respond to any such leave that Pinterest may seek," and (3) giving Pintrips three "business days to notify the investor or potential investor that a subpoena will be forthcoming, prior to Pinterest issuing the subpoena." (Def.'s Mot. Protective Order at 3, 4, Dkt. No. 73 (emphasis supplied); Proposed Order, Dkt. No. 73-1.)³

Pintrips argued that such an order was warranted for three reasons. First, it claimed that Pinterest should be required to propound discovery on already-identified sources before seeking

³ In its motion, Pintrips made sure to express its intent to comply with the Court's August 7 order, upon which it had yet to act because of Pinterest's supposed discovery tactics. Def.'s Mot. Protective Order at 3, 5.

1 information from third-party investors. (Id. at 6, 7.) Second, it argued that Pinterest was
2 deliberately raising the costs of litigation by not following this approach.⁴ (Id. at 8.) Third,
3 Pintrips asserted that permitting Pinterest to propound discovery on third-party investors posed a
4 serious threat to its business, which according to its founder and CEO, cannot generate revenue
5 sufficient to meet its capital needs. (Id. at 9; Gotlieb Decl. ¶ 8 ("[Pintrips] relies on investor
6 funding for the capital necessary to develop its business. Revenues to date for [Pintrips] are
7 insufficient to supply that capital."))

8 In ruling on Pintrips' motion for a protective order, the Court referred back to its August 7
9 order and reiterated that Pintrips' concern about investors withdrawing funding or deterring
10 potential investors from providing funding was speculation. (Sept. 4, 2014 Order at 2, Dkt. No.
11 83.) It also rejected the argument that Pinterest was engaging in a fishing expedition or other
12 conduct warranting judicial intervention. (Id. at 3.) The Court thus denied Pintrips' motion for a
13 protective order, as it had not made the requisite showing. (Id. at 3-4.) Pintrips was to
14 "supplement its responses to interrogator[y] nos. 16 and 17, as set forth in this Court's August 7,
15 2014 order, by no later than September 8, 2014." (Id. at 4.)

16 When Pintrips failed to comply a second time, Pinterest moved for sanctions.⁵ (Pl.'s Mot.,
17 Dkt. No. 102.) Pintrips filed its opposition to the motion on November 12, 2014. (Def.'s Opp'n,
18 Dkt. No. 106.) Pinterest's reply followed on November 19, 2014. (Pl.'s Reply, Dkt. No. 109.)
19 The Court held a hearing on the motion on December 18, 2014.

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21 ⁴ Pintrips further contended that Pinterest wanted "to get at [its] investors, jeopardize [its] sources
22 of funding, and put [it] out of business." Def.'s Mot. Protective Order at 2. Pintrips claimed that it
23 had identified three advisors during discovery, and that if Pinterest "really wanted to obtain
information from third parties regarding [Pintrips'] communications with its advisors," it could
have obtained the information from the advisors Pintrips lists on its website." (Id.)

24 ⁵ Pinterest initially moved for sanctions on August 27, 2014, and the parties stipulated to having
25 the motion heard on shortened time. Pl.'s Mot. Sanctions, Dkt. No. 76. The Court, however, did
26 not hear the motion on shortened time and ordered Pinterest to re-notice its motion for hearing
according to Civil Local Rule 7-2. Aug. 29, 2014 Order, Dkt. No. 79. It was not until after the
27 Court issued another order, warning that the motion would be deemed withdrawn, that Pinterest
re-noticed its motion. Oct. 17, 2014 Order, Dkt. No. 96. The purported re-notice, however, was
28 improper. The filing was actually an amended motion for sanctions. See Dkt. No. 100. Pinterest
finally filed its motion using the correct docketing event on October 28, 2014, nearly two months
after the Court had first ordered it to re-notice its motion.

1 **II. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 37 provides:

3 If a party or a party's officer, director, or managing agent--or a witness designated under
4 Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or permit discovery, including
5 an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue
6 further just orders. They may include the following:

- 7 (i) directing that the matters embraced in the order or other designated facts be
8 taken as established for purposes of the action, as the prevailing party claims;
- 9 (ii) prohibiting the disobedient party from supporting or opposing designated
10 claims or defenses, or from introducing designated matters in evidence;
- 11 (iii) striking pleadings in whole or in part;
- 12 (iv) staying further proceedings until the order is obeyed;
- 13 (v) dismissing the action or proceeding in whole or in part;
- 14 (vi) rendering a default judgment against the disobedient party; or
- 15 (vii) treating as contempt of court the failure to obey any order except an order to
16 submit to a physical or mental examination.

17 Fed. R. Civ. P. 37(b)(2). The rule also authorizes the court where the action is pending to order
18 sanctions when:

- 19 (i) a party or a party's officer, director, or managing agent--or a person
20 designated under Rule 30(b)(6) or 31(a)(4)--fails, after being served with proper
21 notice, to appear for that person's deposition; or
- 22 (ii) a party, after being properly served with interrogatories under Rule 33
23 or a request for inspection under Rule 34, fails to serve its answers, objections, or
24 written response.

25 Fed. R. Civ. P. 37(d)(1)(A). "Sanctions may include any of the orders listed in Rule
26 37(b)(2)(A)(i)-(vi)," and "[i]nstead of or in addition to these sanctions the court must require the
27 party failing to act, the attorney advising that party, or both to pay the reasonable expenses,
28 including attorney's fees, caused by the failure, unless the failure was substantially justified or
other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(d)(3).

In this district, Civil Local Rule 37-4 requires a party seeking sanctions, including an
award of attorneys' fees, in connection with a dispute about disclosure or discovery under Rule 37
to file a declaration: (1) stating the facts and circumstances supporting the motion, (2) describing
the party's efforts to secure compliance without court intervention, and (3) "itemiz[ing] with
particularity the otherwise unnecessary expenses, including attorney fees," incurred as a result of
the other party's violation. The moving party must also provide appropriate justification for the
hourly rates claimed. (Id.)

1 **III. DISCUSSION**

2 Here, Pinterest seeks sanctions based on Pintrips' failure to comply with two orders of this
3 Court and its "related gamesmanship." (Pl.'s Mot. at 1, Dkt. No. 102.) Specifically, it claims that
4 Pintrips has not identified the certain advisors with whom its CEO has discussed Pinterest or this
5 litigation. (Id. at 1, 2; 1st Thompson Decl. ¶¶ 19, 22, Dkt. No. 102-1.) It seeks an order requiring
6 Pintrips and its law firm to pay at least \$26,250 in attorneys' fees incurred as a result of their
7 failure to do so.⁶ (Pl.'s Reply at 4, Dkt. No. 109; Levich Decl. ¶ 6, Dkt. No. 110.)

8 In its opposition, Pintrips argues that it provided the requested information months ago.
9 (Def.'s Opp'n at 1.) It asserts that it has not disobeyed or otherwise failed to comply with any
10 court order. (Id.) According to Pintrips:

11 Pintrips' list of advisors is publicly available, on Pintrips' Web site, and has
12 been during the time that Pinterest has sought the identity of those advisors.
13 Pintrips drew Pinterest's attention to this in Pintrips's Motion for a Protective Order,
14 filed August 21, 2014. Dkt. 73, p. 2, referring to [http://www.pintrips.com/#/
15 about_us](http://www.pintrips.com/#/about_us). Bernstein Declaration, Ex. 1. So what Pinterest is complaining about, at
16 best, is that Pintrips has not put, in an interrogatory response, publicly available
17 information.

18 (Def.'s Opp'n at 1-2.)

- 19 1. Pintrips has not answered interrogatory numbers 16 and 17 as ordered by
20 the Court.

21 Pintrips' position is not persuasive. Indeed, the Court noted this argument when it denied
22 the motion for a protective order. (See Sept. 4, 2014 Order at 1 n.1 ("[Pintrips] asserts that it has
23 identified three advisors during discovery, and that if [Pinterest] 'really wanted to obtain
24 information from third parties regarding [Pintrips'] communications with its advisors' it could have
25 obtained the information from the advisors [Pintrips] lists on its website.")) Notwithstanding that
26 argument, the Court ordered Pintrips to "supplement its responses to interrogator[y] nos. 16 and
27 17, as set forth in this Court's August 7, 2014 order." (Sept. 4, 2014 Order at 4.)

28 Pintrips' most recent responses to interrogatory numbers 16 and 17 are dated October 22,
2014. (1st Thompson Decl. ¶ 22 & Ex. K at 3.) That list consists of the names of 64 "investors

⁶ Pinterest also asks that Pintrips be held in contempt unless and until it obeys this Court's orders. Pl.'s Mot. at 2-3. Pinterest, however, has not briefed any of the applicable factors, and the Court declines to marshal arguments on the party's behalf.

1 and potential investors." (1st Thompson Decl. Ex. K at 3.) It does not include names of any of the
2 "certain advisors" with whom Pintrips has admittedly discussed Pinterest or this litigation, and
3 Pintrips cannot point to any interrogatory response in which it identifies the certain advisors at
4 issue. Nor has it directed the Court to any legal authority that stands for the proposition that a
5 party need not respond to a propounded interrogatory where the information responsive to that
6 interrogatory is publicly-available on the Internet.

7 For these reasons, Pintrips has not answered interrogatory numbers 16 and 17 as required
8 by this Court's previous orders.

9 2. Pintrips' conduct was not substantially justified.

10 During the hearing on the motion, Pintrips began by explaining, unsuccessfully, why it
11 believed that it had complied with the Court's prior orders. It then proceeded to offer unacceptable
12 excuses for its noncompliance.

13 Pinterest first argued that an award of expenses would be unjust given its belief that it had
14 complied with the Court's orders when it incorporated its September 4, 2014 list of "investors and
15 potential investors" into a formal supplemental interrogatory response, dated October 22, 2014.
16 This belief is unfounded. According to Pintrips, the parties had reached an understanding that all
17 Pintrips needed to do to sufficiently respond to interrogatory numbers 16 and 17 was to formalize
18 the September 4, 2014 list as a supplemental interrogatory response. Pintrips represents that it did
19 so on October 22, 2014, and as a result, thought it had complied with the Court's orders. Yet,
20 when asked whether the list of investors and potential investors included in its October 22, 2014
21 responses included the names of the certain advisors at issue, Pintrips responded, "no."⁷

22 Pintrips then asserted that identifying the certain advisors its CEO alluded to in the
23 company's interrogatory responses was a matter of "burden and memory tests." This is
24 unconvincing. An earlier version of Pintrips' interrogatory responses indicated that Mr. Gotlieb
25 discussed the above-captioned litigation with potential investors and certain advisors on several

26 _____
27 ⁷ At one point during the hearing, Pintrips indicated that some of the potential investors and
28 investors are also advisors. This, however, is not indicated on either the September 4, 2014 list or
in the October 22, 2014 interrogatory response.

1 occasions, so he remembers talking to these certain advisors. (July 28, 2014 Joint Ltr., Dkt. No.
2 63.) After all, he has repeatedly emphasized that his company is a "small, closely-held start-up."
3 (See Dec. 9, 2014 Gotlieb Decl., Dkt. No. 120-1 ¶¶ 4, 5; see also Aug. 21, 2014 Gotlieb Decl. ¶ 8.)
4 Pintrips' next argument—that identifying these certain advisors would have required it "to go
5 through documents it had produced"—is equally unpersuasive. Pintrips has offered nothing to
6 support its assertion that identifying these certain advisors was, as it claims, "virtually an
7 impossible task."

8 In light of the above, the Court finds that Pintrips' conduct was not substantially justified.

9 3. There are no circumstances that would make an award of expenses unjust.

10 Pinterest asks that Pintrips and its law firm pay at least \$26,250⁸ to cover the attorneys'
11 fees incurred as a result of the Pintrips' failure to identify the certain advisors at issue. (Pl.'s Reply
12 at 4, Dkt. No. 109; Levich Decl. ¶ 6, Dkt. No. 110.)

13 At the hearing on the motion, Pintrips argued that an award of expenses would be unjust
14 given its belief that it had complied with the Court's orders when it incorporated its September 4,
15 2014 list of "investors and potential investors" into a formal supplemental interrogatory response,
16 dated October 22, 2014. As discussed above, this belief is unfounded. The Court does not
17 understand how Pintrips could maintain such a belief when, in open court, it admitted that the
18 certain advisors alluded to in Pintrips' initial responses were not identified anywhere in the
19 company's October 22, 2014 supplemental responses. The only plausible explanation here is that
20 Pintrips simply refused to name those advisors and did so in outright defiance of this Court's
21 orders.

22 In this case, then, the Court finds that there are no circumstances that would make an
23 award of expenses unjust.

24 4. Reasonableness of attorneys' fees

25 Pinterest has established its entitlement to an award of sanctions. The next issue to be
26 decided is whether the Court should award sanctions based on the total amount of attorneys' fees
27

28 ⁸ As discussed below, Pinterest has increased this figure to \$31,962.50 in its most recent filing.

1 Pinterest attributes to Pintrips' misconduct.

2 Courts in the Ninth Circuit calculate an award of attorney's fees using the lodestar method,
3 whereby a court multiplies "the number of hours the prevailing party reasonably expended on the
4 litigation by a reasonable hourly rate." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th
5 Cir. 2008) (citation omitted). A party seeking attorneys' fees bears the burden of demonstrating
6 that the rates requested are "in line with the prevailing market rate of the in the community." *Id.*
7 Typically, affidavits of counsel "regarding prevailing fees in the community and rate
8 determinations in other cases . . . are satisfactory evidence of the prevailing market rate." *United*
9 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (citation omitted).
10 The "community is the forum in which the district court sits." *Camacho*, 523 F.3d at 979 (citation
11 omitted).

12 Pinterest originally requested sanctions in the amount of \$22,125 based on the following:
13 "**about** 26 hours [spent] preparing two motions for sanctions about Pintrips' responses to
14 interrogatory numbers 16 and 17 . . . , **about** 14 hours [spent] on an opposition to a related motion
15 for a protective order . . . , **at least** 7 hours [spent] meeting and conferring with opposing counsel
16 about Pintrips's responses to interrogatory numbers 16 and 17 . . . , and **about** 12 hours [spent] on
17 joint letters about Pintrips's responses to interrogatory numbers 16 and 17." (Pl.'s Mot. at 3; 1st
18 Thompson Decl. ¶ 1.) Pinterest then amended that amount to \$26,250, for the additional \$3,000 in
19 attorney's fees it incurred "for review of the opposition brief and preparation of the reply brief on
20 this motion," and the additional \$1,125 it "expect[ed] to incur . . . for attending at the hearing on
21 this motion." (Pl.'s Reply at 4; Levich Decl. ¶ 6.)

22 At the hearing on the motion, the Court alerted Pinterest to the deficiencies in its
23 submission. The Court noted that the supporting papers did not comply with Civil Local Rule 37-
24 4(b)(3). That rule provides that a motion for sanctions must be accompanied by competent
25 declarations which "itemize with particularity the otherwise unnecessary expenses, including
26 attorney fees, directly caused by the alleged violation or breach, and set forth an appropriate
27 justification for any attorney-fee hourly rate claimed" if attorney fees or other costs or expenses
28 are requested. *Id.* The Court also explained that it could not determine the reasonableness of

1 claimed attorney fees based on estimates alone. In light of these deficiencies, the Court gave
2 Pinterest the option of providing actual billing records or submitting a supplemental declaration
3 that substantiated the amounts claimed, with the requisite particularity

4 Pinterest filed a supplemental declaration on December 23, 2014. (2d Thompson Decl.,
5 Dkt. No. 126.) In the filing, Pinterest once again requests an increased amount of attorneys' fees,
6 this time increasing the total amount sought to \$31,962.50. (Id. ¶ 42.) Even assuming that
7 Pinterest could be entitled to that amount despite its failure to request it in its original moving
8 papers, the Court finds that only \$9,075 is a reasonable amount of attorney fees to award as a
9 sanction.

10 The reduction is not based on the reasonableness of the hourly rates claimed, \$375.00 for
11 Mr. Thompson, and \$350.00 for Ms. Levich, or the reasonableness of the hours billed for
12 particular tasks. This Court is aware of the prevailing rates in the community for similar services
13 performed by attorneys of comparable skill, experience, and reputation, and it finds that both the
14 hourly rates claimed and the hours billed for specific tasks are reasonable. See, e.g., *Recouvreur v.*
15 *Carreon*, 940 F.Supp.2d 1063, 1070 (N.D. Cal. 2013) (finding an ordinary billing rate of \$300 per
16 hour reasonable for a lawyer in private practice); see also 2d Thompson Decl., Ex. B. Rather, the
17 reduction is warranted based on the Pinterest's failure to remedy the deficiencies the Court
18 highlighted during the hearing on the motion, namely, that relying on estimates is insufficient, as it
19 precludes the Court from properly scrutinizing the amounts claimed.

20 For example, the supplemental declaration contains such entries as:

21 Between August 22, 2014 and August 27, 2014, I spent **at least** 26 hours – valued
22 at \$9,750 – drafting, editing, and filing: (a) Pinterest's motion for sanctions arising
23 from Pintrips's failure to comply with the Court Order dated August 7, 2014 (**at**
24 **least** 16 hours); and (b) Pinterest's opposition to Pintrips's motion for a protective
25 order that had been filed as an apparent pretext to delay its compliance with Court
26 Order dated August 7, 2014 (**at least** 10 hours). See Dkt. ##76, 77. I cannot
27 perfectly separate the time spent preparing the former motion from time spent
28 opposing the latter motion, since I worked on both simultaneously and since they
served complementary purposes. I found it particularly time consuming to prepare
a statement of facts in support of the motion for sanctions since this required
sorting through my extensive communications with opposing counsel to identify
the most salient evidence (the same declaration was also cited in opposition to the
motion for protective order). See Dkt. #76-1. I also found it particularly time

1 consuming to edit both motions in order to convey as succinctly as possible how
2 Pintrips's had engaged in sanctionable conduct and how Pinterest had not engaged
in any conduct that warranted a protective order.

3 . . .

4 Between September 4, 2014 and October 28, 2014, I spent **at least** 8.5
5 hours – valued at \$3,187.50 – preparing a second motion for sanctions to explain
6 Pintrips's continued noncompliance with the Orders dated August 7, 2014 and
7 September 4, 2014. See Dkt. #102. I note that by October 28, 2014, Pintrips had
8 produced verified interrogatory responses identifying all of its "investors and
potential investors" (but not advisors). In light of the changed circumstances, I did
not consider it appropriate to re-notice the previously filed motion for sanctions
without modification (which would risk misleading the Court). Accordingly, I
considered a second motion for sanctions to be necessary.

9 . . .

10 Between November 12, 2014 and November 19, 2014, I spent **at least** 9.4 hours –
11 valued at \$3,525 – on the following tasks: (a) preparing an opposition to Pintrips's
12 "motion to renew" Pinterest's motion to seal documents filed in support of
Pinterest's motion for sanctions (**at least** 1.3 hours) (See Dkt. #108); (b) reviewing
13 the opposition to Pinterest's second motion for sanctions (**at least** 0.2 hours) (See
Dkt. #106); and (c) preparing a reply in support of Pinterest's second motion for
14 sanctions (**at least** 7.8 hours) (See Dkt. #109). In connection with the third task, I
found it particularly time-consuming to review Pintrips's document production
15 (with the assistance of Ms. Levich) to find evidence which disproved certain
representations that Pintrips had made in its opposition. Indeed, a careful review
16 revealed the names of at least a dozen individuals with whom Pintrips had
apparently communicated about Pinterest and this case. See Dkt. #110.

17 (2d Thompson Decl. ¶¶ 28, 34, 36 (emphasis supplied).)

18 It is unclear why Pinterest relied on estimates in its supplemental declaration. In the filing,
19 counsel states in preparing it, he reviewed his firm's billing reports. (2d Thompson Decl. ¶ 1.)
20 According to him, the reports "identify the dates services were performed, a description of the
21 services performed that day, the name of the attorney who performed the services, the number of
22 hours devoted to those services, and the monetary value of those services." (Id.) Yet, instead of
23 providing the actual billing reports, which would have provided the Court with actual time
24 expended on tasks, Pinterest has instead relied solely on its counsel's declaration. That
25 declaration, however, seems internally inconsistent. On the one hand, counsel states that the firm's
26 billing reports provide specifics. On the other hand, he provides estimates on the time he spent on
27 certain tasks, and he gives a date range, rather than a date certain, during which he completed
28 certain work. In light of this, then, the Court questions the accuracy of any estimates provided by

1 counsel, and given that Pinterest declined the Court's invitation to provide actual billing records,⁹
2 the Court finds that Pinterest's use of estimates to substantiate its claimed attorneys' fees is
3 inconsistent with the requirement that such fees be "itemize[d] with particularity." See Civil L.R.
4 37-4(b)(3). The Court, therefore, finds it appropriate to exclude these entries, which total **at least**
5 \$22,887.50, from Pinterest's attorney fee award.

6 **IV. CONCLUSION**

7 For the reasons set forth above, Pinterest's motion for sanctions is GRANTED. Pintrips
8 and its law firm, Kenyon and Kenyon LLP, are hereby sanctioned in the amount of \$9,075. Both
9 are jointly and severally liable for payment, which is to be made to Pinterest by no later than
10 March 13, 2015.

11 **IT IS SO ORDERED.**

12 Dated: 01/12/15

13 
14 KANDIS A. WESTMORE
15 United States Magistrate Judge
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25 _____
26 ⁹ In his declaration, Plaintiff's counsel states that "[u]pon request, [he] would be pleased to file a
27 redacted copy of [the] billing report in this matter with the Court." 2d Thompson Decl. ¶ 1. If
28 Pinterest wished to rely on the billing report to support its claimed attorneys' fees, it should have
been filed as an exhibit to the supplemental declaration. At the hearing on the motion, Pinterest
was given the option of either providing actual billing records or a sufficiently detailed declaration
that supported the amounts claimed. It has elected the latter. The Court will not now request
information that Pinterest has had ample opportunity to provide.