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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES MATTHEW ERHART,

Plaintiff,

v.

BOFI FEDERAL BANK,

Defendant.

Case No. 15-cv-02287-BAS-NLS
consolidated with
15-cv-02353-BAS-NLS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR ATTORNEYS’ FEES
(ECF No. 384)**

And Consolidated Case

In 2015, Defendant BofI Federal Bank terminated one of its internal bank auditors—
Plaintiff Charles Matthew Erhart—after learning he reported information to the
Government. Seven years later, after a winding journey, a jury found BofI violated the law
and awarded Erhart \$1.5 million.

Erhart now turns to three statutes to recover \$3 million in attorneys’ fees. He asks
the Court to enhance the fee award, resulting in a grand total of \$7.3 million. BofI responds
with a stack of spreadsheets and a long list of arguments. The Bank contends the Court
should deny the request or substantially reduce the requested fees.

1 The Court agrees Erhart is entitled to recover fees. That said, some of the hours his
2 counsel spent will not be included in the lodestar. And the motion stumbles when it comes
3 to justifying counsel’s hourly rates. Ultimately, the Court awards \$2,405,559.20 in
4 attorneys’ fees.

5 **BACKGROUND¹**

6 Erhart worked in Boff’s Internal Audit Department for approximately eighteen
7 months. The narrative Erhart presented throughout this case—and the one that prevailed
8 at trial—is that he was an internal auditor in a turbulent corporate environment. Time and
9 time again, Erhart battled against pressure from senior management as he discovered
10 wrongful conduct. But when Erhart believed the events were hitting a flashpoint, his
11 supervisor abruptly quit. Erhart then informed the Bank’s principal regulator of his
12 findings. In the aftermath, Boff terminated and defamed Erhart, claiming he was
13 incompetent at his job.

14 Erhart later filed this lawsuit for whistleblower retaliation under state and federal
15 law. Erhart’s initial complaint included ten causes of action and described over a dozen
16 instances of believed wrongdoing at the Bank. His counsel also tipped off *The New York*
17 *Times*, leading to a morning edition article about the lawsuit. Boff’s stock plummeted
18 thirty percent, and the first of several securities class action lawsuits soon followed.

19 The Bank responded by pulling out all the stops. Instead of waiting to file a
20 counterclaim, the Bank brought another suit with eight claims under state and federal law.
21 The Bank’s counternarrative claimed Erhart not only lacked a reasonable belief that Boff
22 violated the law, but also wanted to “bring down the bank” and abandoned his job. The
23 Bank quickly papered Erhart with a barrage of motions: a motion to dismiss and strike his
24 complaint, a motion for a preliminary injunction, a motion for a determination that Erhart
25 waived attorney-client privilege over certain documents, a motion for summary
26

27
28 ¹ The Court has summarized this dispute in a variety of orders. Except where noted otherwise,
the Court draws these facts from the evidence presented at trial.

1 adjudication of Erhart’s affirmative defenses to BofI’s claims, and a motion for spoliation
2 sanctions.

3 After denying BofI’s request for extraordinary relief, the Court consolidated the
4 parties’ dispute while ruling on the first of several challenges to the pleadings. Over the
5 next several years, the parties whittled the case down before trial. The Court dismissed
6 Erhart’s California causes of action for violation of the Confidentiality of Medical
7 Information Act, breach of the implied covenant of good faith and fair dealing, and
8 intentional infliction of emotional distress. Then, at the summary judgment phase, the
9 Court grappled with the core of Erhart’s lawsuit: his four whistleblower retaliation and
10 wrongful termination claims. The Court held some of the wide-ranging factual predicates
11 for these claims could not support liability as a matter of law, but most survived scrutiny.
12 Then, in the run-up to trial, BofI abandoned one of its state law claims, and the Court
13 eliminated another. Finally, during trial, the Court summarily resolved one of Erhart’s
14 federal whistleblower retaliation causes of action.

15 Although most of Erhart’s case reached the jury, one of the Court’s rulings limited
16 his recoverable damages. The Court found Erhart’s counsel disregarded Federal Rule of
17 Civil Procedure 26 by failing to provide any estimate of Erhart’s calculable damages
18 throughout discovery. This ruling meant he could seek only emotional distress damages,
19 reputational damages, and punitive damages at trial.

20 Over the course of a three-week jury trial in spring 2022, the parties presented their
21 competing narratives and intersecting claims. Erhart prevailed. The jury found BofI
22 violated the Sarbanes-Oxley Act, California Labor Code section 1102.5, and California
23 public policy when the Bank terminated him. (Jury Verdict 2–3, ECF No. 314.) In line
24 with the Court’s damages ruling, the jury assessed Erhart’s “emotional distress or harm to
25 his reputation” for these claims. (*Id.* 4.) The jury awarded him \$1 million. (*Id.*) Erhart
26 also prevailed on his California state law defamation claim, and the jury awarded him
27 \$500,000. (Jury Verdict 5–6.) The jury found BofI’s conduct warranted punitive damages
28 under state law but deadlocked on the amount to award. (ECF No. 359.) The Court held

1 a limited retrial on the punitive damages issue, and a second jury found punitive damages
2 were not appropriate. (ECF No. 370.)

3 Erhart now moves for \$7.3 million in attorneys’ fees and \$1.19 million prejudgment
4 interest. (Mot., ECF No. 384-1.) The Court addresses the fee request here. The motion is
5 fully briefed, including a sur-reply. (ECF Nos. 390, 394, 402.) Altogether, the parties’
6 filings eclipse 1,000 pages, and the Court finds the motion suitable for determination on
7 the papers submitted and without oral argument. *See* Fed. R. Civ. P. 78(b); Civ. L.R.
8 7.1(d)(1).

9 ANALYSIS

10 I. Entitlement to Fees

11 The starting point is whether Erhart is entitled to recover his attorneys’ fees. He
12 prevailed on federal and state law claims. “In a pure federal question case brought in
13 federal court, federal law governs attorney fees.” *Disability L. Ctr. of Alaska, Inc. v.*
14 *Anchorage Sch. Dist.*, 581 F.3d 936, 940 (9th Cir. 2009). “State law governing attorneys’
15 fees can also apply to state law claims over which federal courts exercise supplemental
16 jurisdiction.” *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 65 F.4th 1145,
17 1148 (9th Cir. 2023). State law applies if it is substantive under the *Erie* doctrine and “the
18 fee award is ‘connected to the substance of the case.’” *Northon v. Rule*, 637 F.3d 937, 938
19 (9th Cir. 2011) (quoting *Price v. Seydel*, 961 F.2d 1470, 1475 (9th Cir. 1992)). Stated
20 differently, “so long as ‘state law does not run counter to a valid federal statute or rule of
21 court . . . state law denying the right to attorney’s fees or giving a right thereto, which
22 reflects a substantial policy of the state, should be followed.’” *Indep. Living Ctr. of S.*
23 *California, Inc. v. Kent*, 909 F.3d 272, 281–82 (9th Cir. 2018) (alteration in original)
24 (quoting *MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999)).

25 Erhart contends three laws entitle him to recover attorneys’ fees: Sarbanes–Oxley,
26 California Labor Code section 1102.5(j), and California Code of Civil Procedure section
27 1021.5. (Mot. 1:22–24.) Federal law, of course, controls whether Erhart can recover fees
28 under Sarbanes–Oxley. *See Chicken Ranch*, 65 F.4th at 1148. As for the two California

1 statutes, these are substantive laws under *Erie*. They reflect substantial policies of the State
2 and apply to Erhart’s successful state law claims brought under the supplemental
3 jurisdiction statute. *Cf. Indep. Living Ctr. of S. Cal.*, 909 F.3d at 282 (applying section
4 1021.5 to state law cause of action removed under federal question statute after considering
5 *Erie* principles). Hence, the Court will consider whether these state laws also entitle Erhart
6 to fees. *See Klein v. City of Laguna Beach*, 810 F.3d 693, 701–02 (9th Cir. 2016); *see also*
7 *Chicken Ranch*, 65 F.4th at 1151 (explaining “it is the nature of the claim on which a party
8 prevailed (federal or state) that determines the law that applies (federal or state) to any
9 request for attorneys’ fees”).

10 **A. Sarbanes–Oxley**

11 Erhart’s clearest path to recovering attorneys’ fees is under Sarbanes–Oxley’s anti-
12 retaliation provision. Under federal law, litigants pay their own attorneys’ fees unless a
13 statute or contract provides otherwise. *Chicken Ranch*, 65 F.4th at 1148. Sarbanes–Oxley
14 contains such an exception. An employee who prevails under its anti-retaliation provision
15 is entitled to recover “compensation for any special damages sustained as a result of the
16 discrimination, including litigation costs, expert witness fees, and reasonable attorney
17 fees.” 18 U.S.C. § 1514A(c)(2)(C). This language echoes other federal statutes that
18 authorize reasonable attorneys’ fees for the prevailing plaintiff. *See, e.g.*, 49 U.S.C. §
19 20109(e)(2)(C); 31 U.S.C. § 3730(h)(2); 29 U.S.C. § 216(b).

20 Erhart prevailed on his Sarbanes–Oxley anti-retaliation claim at trial. He is therefore
21 entitled to recover reasonable attorneys’ fees under 18 U.S.C. § 1514A(c)(2)(C).

22 **B. California Labor Code Section 1102.5**

23 Erhart also seeks fees under California Labor Code section 1102.5. California has
24 the same default rule: litigants pay their own attorneys’ fees with a panoply of statutory
25 and equitable exceptions. *Trope v. Katz*, 11 Cal. 4th 274, 278 (1995). The law invoked
26 here, Labor Code section 1102.5, is “California’s general whistleblower statute.” *McVeigh*
27 *v. Recology San Francisco*, 213 Cal. App. 4th 443, 468 (2013).

1 When Erhart filed this case, Labor Code section 1102.5 did not include fee-shifting.
2 The California Legislature amended the law as of January 1, 2021. A.B. 1947, 2019 Leg.
3 (Cal. 2020). The statute now includes subsection (j), which provides: “The court is
4 authorized to award reasonable attorney’s fees to a plaintiff who brings a successful action
5 for a violation of these provisions.” Cal. Lab. Code § 1102.5(j).

6 Erhart prevailed at trial in 2022. He argues section 1102.5(j) applies because this
7 case was not final when the legislature’s amendment became effective in 2021. (Mot.
8 8:15–9:21.) BofI counters that section 1102.5(j) is inapplicable because statutes ordinarily
9 apply prospectively. (Opp’n 21:14–22:9.)

10 Neither party points to a California decision determining whether Labor Code
11 section 1102.5(j)’s applies to cases pending at the time of amendment. BofI cites to a
12 district court that concluded “no authority supports the provision’s retrospective
13 application.” (Opp’n 21:14–22:9 (quoting *Nikmanesh v. Wal-Mart Stores, Inc.*, No. SACV
14 15-202 JGB (JCGx), 2022 WL 1837515, at *15 (C.D. Cal. Feb. 25, 2022)).) *See also*
15 *Bahra v. Cnty. of San Bernardino*, No. EDCV 16-1756 JGB SPx, 2022 WL 6653533, at *5
16 (C.D. Cal. Sept. 7, 2022). The district court reached that conclusion, however, after the
17 plaintiff cited to “a hodgepodge of authority,” without any explanation, to suggest
18 otherwise. *Nikmanesh*, 2022 WL 1837515, at *15 n.5. In contrast, Erhart identifies ample
19 support in California law for his position that section 1102.5(j) applies here. (Mot. 8:15–
20 9:21.)

21 Erhart’s showing is persuasive. No doubt, under California law, the “general rule is
22 that absent a clear, contrary indication of legislative intent,” courts “interpret statutes to
23 apply prospectively.” *USS-Posco Indus. v. Case*, 244 Cal. App. 4th 197, 217–18 (2016).
24 But this rule is a general one for good reason. “Fee and cost eligibility statutes” under
25 California law “are a ‘special category within the general topic of the prospective or
26 retroactive application of statutes’ subject to an ‘extensive line of authority.’” *Id.* (quoting
27 *Quarry v. Doe I*, 53 Cal. 4th 945, 956 (2012)). Indeed, “the California Supreme Court and
28 many, many Courts of Appeal have treated legislation affecting the recovery of costs,

1 including attorney fees, as addressing a ‘procedural’ matter that is ‘prospective’ in
2 character and thus not at odds with” this presumption. *Id.* at 221.

3 Two California Supreme Court cases—*Stockton Theatres, Inc. v. Palermo*, 47 Cal.
4 2d 469 (1956), and *Woodland Hills Residents Ass’n, Inc. v. City Council*, 23 Cal. 3d 917
5 (1979)—stand for the proposition “that in the absence of express legislative intent to the
6 contrary, ‘a new statute authorizing an award of attorney fees’ or a statute ‘increasing or
7 decreasing litigation costs, including attorneys’ fees’ applies to actions pending at the time
8 of enactment.” *USS-Posco Indus.*, 244 Cal. App. 4th at 220; *see also K.M. v. Grossmont*
9 *Union High Sch. Dist.*, 84 Cal. App. 5th 717, 739 (2022) (reasoning cases analyzing the
10 retroactivity of attorneys’ fees statutes “remain distinct” from the caselaw assessing
11 damages). “This is true even though the costs or fees at issue were incurred prior to the
12 effective date of the new statute.” *Reyes v. Beneficial State Bank*, 76 Cal. App. 5th 596,
13 616 (2022).

14 BofI does not discuss this California authority. (Opp’n 20:14–22:9.) The Bank does,
15 however, highlight a California Senate Judiciary Committee analysis of the bill amending
16 section 1102.5. (ECF No. 390-26.)² That bill both added fee shifting and adjusted the
17 statute of limitations for whistleblower retaliation claims. The legislative history notes the
18 bill “is silent about its effect on pre-existing claims.” (ECF No. 390-26.) That said, when
19 one reads on, it is clear that this analysis is addressing the change to the statute of
20 limitations, not the addition of fee-shifting under subsection (j). The committee’s analysis
21 concludes the bill would not revive “claims based on incidents for which the existing period
22 has expired, or will expire prior to enactment of this bill.” (*Id.*) Simply put, this legislative
23 history lends little support to BofI’s position.

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27 ² The Bank’s request for judicial notice of this report is granted. *See Anderson v. Holder*, 673
28 F.3d 1089, 1094 n.1 (9th Cir. 2012) (“Legislative history is properly a subject of judicial notice.”); *see also Anders v. Superior Ct.*, 192 Cal. App. 4th 579, 590 (2011) (considering similar report when analyzing legislative history of statute).

1 Given the California caselaw addressing similar fee statutes, and the lack of a
2 response from BofI addressing this authority, the Court finds section 1102.5(j) applies.
3 And although the conclusion may be different under federal law, section 1102.5 is a state
4 statute, and state law controls its application here. *See Northon*, 637 F.3d at 938. The
5 statute authorizes an award of attorneys’ fees to Erhart because this action was pending
6 when section 1102.5(j) became effective. *See, e.g., Woodland Hills*, 23 Cal. 3d at 925;
7 *USS-Posco Indus.*, 244 Cal. App. 4th at 220; *Reyes*, 76 Cal. App. 5th at 616.

8 **C. California Code of Civil Procedure Section 1021.5**

9 Third, Erhart seeks fees under California’s Private Attorney General Statute, Cal.
10 Civ. Proc. Code § 1021.5. Under this provision, “a court may award attorneys’ fees to a
11 successful party against one or more opposing parties” if the action “has resulted in the
12 enforcement of an important right affecting the public interest” and several additional
13 requirements are satisfied. *Id.*

14 Section 1021.5 is “[a]n important exception” in California “to the American rule that
15 litigants are to bear their own attorney fees.” *Graham v. DaimlerChrysler Corp.*, 34 Cal.
16 4th 553, 565 (2004). California enacted the provision “as a codification of the private
17 attorney general doctrine of attorney fees developed in prior judicial decisions.” *Maria P.*
18 *v. Riles*, 43 Cal. 3d 1281, 1288 (1987). This doctrine “rests upon the recognition that
19 privately initiated lawsuits are often essential to the effectuation of the fundamental public
20 policies embodied in constitutional or statutory provisions, and that, without some
21 mechanism authorizing the award of attorney fees, private actions to enforce such
22 important public policies will as a practical matter frequently be infeasible.” *Woodland*
23 *Hills*, 23 Cal. 3d at 933. “Thus, the fundamental objective of the doctrine is to encourage
24 suits enforcing important public policies by providing substantial attorney fees to
25 successful litigants in such cases.” *Riles*, 43 Cal. 3d at 1289.

26 Erhart is a successful party under the Private Attorney General Statute. He prevailed
27 on his California claims for wrongful discharge in violation of public policy, violation of
28 Labor Code section 1102.5, and defamation.

1 He must still satisfy section 1021.5's remaining requirements to obtain a fee award.
2 Cal. Civ. Proc. Code § 1021.5. These requirements are "established when (1) plaintiffs'
3 action has resulted in the enforcement of an important right affecting the public interest,
4 (2) a significant benefit, whether pecuniary or nonpecuniary has been conferred on the
5 general public or a large class of persons, and (3) the necessity and financial burden of
6 private enforcement are such as to make the award appropriate." *Millview Cty. Water Dist.*
7 *v. State Water Res. Control Bd.*, 4 Cal. App. 5th 759, 768 (2016) (internal quotation marks
8 omitted) (quoting *Summit Media LLC v. City of Los Angeles*, 240 Cal. App. 4th 171, 187
9 (2015)). The party seeking fees under section 1021.5 has the burden "to demonstrate all
10 elements of the statute." *Id.* (citing *Norberg v. Cal. Coastal Comm'n*, 221 Cal. App. 4th
11 535, 545–546 (2013)).

12 Fees under Code of Civil Procedure section 1021.5 are not warranted here. First, as
13 discussed above, Erhart is already entitled to seek fees under Labor Code section 1102.5.
14 He succeeded on two other state law claims—wrongful termination in violation of public
15 policy and defamation. Erhart's wrongful termination claim could serve as a basis for an
16 award of fees under the Private Attorney General Statute, but this claim was
17 undistinguishable from his Labor Code section 1102.5 claim. Meaning, Erhart can already
18 recover for the work done on these twin claims.

19 Erhart's remaining successful claim, defamation, does not plainly implicate section
20 1102.5, and Erhart does not mention this claim in his moving papers. (*See Mot. 6:14–7:5.*)
21 *See Albin v. Trustmark Ins. Co.*, No. CV 13-5788 PSG (AGR), 2013 WL 12191722, at *14
22 (C.D. Cal. Nov. 25, 2013) (reasoning a claim for attorneys' fees under section 1021.5 for
23 defamation fails as a matter of law).

24 But even if there is some benefit to Erhart also being entitled to fees on this ground,
25 the Court finds he does not carry his burden to show the requirements of section 1102.5
26 are met. One missing requirement is that "the necessity and financial burden of private
27 enforcement" must be "such as to make the award appropriate." Cal. Civ. Proc. Code §
28 1021.5.

1 This requirement examines whether there were “insufficient financial incentives to
2 justify the litigation in economic terms.” *Millview*, 4 Cal. App. 5th at 768. An award under
3 section 1102.5 is not warranted where “the plaintiff had a ‘personal financial stake’ in the
4 litigation ‘sufficient to warrant [the] decision to incur significant attorney fees and costs in
5 the vigorous prosecution’ of the lawsuit.” *Id.* at 768–69 (alteration in original) (quoting
6 *Summit Media*, 240 Cal. App. 4th at 193–94). To illustrate, in *Davis v. Farmers Insurance*
7 *Exchange*, 245 Cal. App. 4th 1302, 1310 (2016), the trial court rejected the plaintiff’s
8 request for fees under section 1021.5, and the Court of Appeal affirmed on this issue. *Id.*
9 at 1338. In discussing the financial burden inquiry, the court determined the plaintiff’s
10 “reasonable expectation of financial benefits from the litigation was sufficient to motivate
11 him to pursue the litigation.” *Id.* at 1329. It noted the plaintiff “sought over ten million
12 dollars in damages for his allegedly wrongful discharge,” and “he expected to recover
13 hundreds of thousands of dollars for improper wage deductions.” *Id.* at 1330. Thus, the
14 court concluded “it was reasonable for the [trial] court to find that at every critical juncture
15 [the plaintiff] expected a substantial financial recovery, and that this was sufficient
16 motivation to pursue the case”—making a fee award under section 1021.5 inappropriate.
17 *Id.*

18 Here, Erhart’s Motion does not brief the financial burden element, which dooms his
19 request under section 1021.5. *See Millview*, 4 Cal. App. 5th at 773. Regardless, the Court
20 notes there were adequate financial incentives here. Erhart sought millions of dollars in
21 compensatory damages and millions more in punitive damages. He succeeded at
22 recovering \$1 million for his whistleblower retaliation claims, and he came within a hair’s
23 breadth of a seven-to-eight figure punitive damages award. The Court is persuaded that at
24 the critical junctures in this action, Erhart “expected a substantial financial recovery, and
25 that this was sufficient motivation to pursue the case.” *See Davis*, 245 Cal. App. 4th 1302,
26 1310. Consequently, Erhart is not entitled to recover fees under California’s Private
27 Attorney General Statute.
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1 **II. Lodestar Calculation**

2 Erhart is entitled to recover fees under both federal and state law. When it comes to
3 calculating his fee award, these laws are largely coextensive. California law permits the
4 trial court to use the lodestar method to calculate a reasonable fee. *E.g., PLCM Grp. v.*
5 *Drexler*, 22 Cal. 4th 1084, 1095 (2000). Fees under Sarbanes–Oxley are likewise
6 determined under the lodestar method. *See Roberts v. City of Honolulu*, 938 F.3d 1020,
7 1023 (9th Cir. 2019); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983) (“The
8 standards set forth in this opinion are generally applicable in all cases in which Congress
9 has authorized an award of fees to a ‘prevailing party.’”).³

10 It is no surprise, then, that Erhart almost exclusively relies on federal decisions when
11 proposing his lodestar. (Mot. 2:2–6:12; 9:23–15:2.) He has the burden on the fee motion.
12 The Court thus takes the same approach and considers nuances of California law only
13 where the parties’ arguments call for it. *See Chaudhry v. City of Los Angeles*, 751 F.3d
14 1096, 1106 (9th Cir. 2014); *see also Hiken v. Dep’t of Def.*, 836 F.3d 1037, 1046 (9th Cir.
15 2016) (“[A] court is not required to ‘manufacture arguments’ on behalf of litigants.”).

16 Determining the lodestar amount is a “two-step process.” *Roberts*, 938 F.3d at 1023
17 (quoting *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016)). “First, a court multiplies
18 the number of hours ‘reasonably expended on a case by a reasonable hourly rate.’” *Id.*
19 (quoting *Kelly*, 822 F.3d at 1099). Then, the “court retains discretion to adjust the lodestar
20 figure upward or downward based on a variety of factors ‘not subsumed in the lodestar
21 figure.’” *Id.* (quoting *Kelly*, 822 F.3d at 1099).

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25 ³ Aside from Erhart arguing fees under Sarbanes–Oxley are mandatory (Mot. 4:3–5), neither party
26 suggests the standards used in decisions applying other federal fee-shifting statutes do not apply with
27 equal force to this context. *See Van Asdale v. Int’l Game, Tech.*, No. 3:04-CV-00703-RAM, 2011 WL
28 2118637, at *6 (D. Nev. May 24, 2011) (rejecting the argument that the Supreme Court’s decision in
Hensley and its progeny do not apply to Sarbanes–Oxley’s fee provision); *Wooten v. BNSF Ry. Co.*, 387
F. Supp. 3d 1078, 1107 (D. Mont. 2019) (importing the same standards when applying antiretaliation
provision with identical language under the Federal Railroad Safety Act).

1 Litigants seeking fees have the “initial burden of production,” under which they
2 “must ‘produce satisfactory evidence’ establishing the reasonableness of the requested
3 fee.” *United States v. \$28,000.00 in U.S. Currency*, 802 F.3d 1100, 1105 (9th Cir. 2015)
4 (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)). If this burden is met, “the court
5 then proceeds to a factual determination as to whether the requested fee is reasonable.” *Id.*

6 **A. Reasonable Hours**

7 The lodestar calculation begins with assessing “how many hours were reasonably
8 expended on the litigation.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.
9 2008). “Determining the number of hours reasonably expended requires ‘considering
10 whether, in light of the circumstances, the time could reasonably have been billed to a
11 private client.’” *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir. 2020) (quoting *Moreno*,
12 534 F.3d at 1111); *see also \$28,000.00 in U.S. Currency*, 802 F.3d at 1107–08 (“Hours not
13 reasonably expended are those that are ‘excessive, redundant, or otherwise unnecessary.’”
14 (quoting *Hensley*, 461 U.S. at 434)).

15 Erhart claims 4,470 hours were reasonably incurred on this case. (Mot. 10:8–13;
16 Gillam Decl. ¶ 37, ECF No. 384-2.) This total breaks down as follows: Erhart’s lead
17 counsel expended approximately 1,581 hours, her associate spent 2,069 hours, their
18 paralegals labored for 780 hours, and one additional attorney worked 40 hours. (Gillam
19 Decl. ¶ 37.)

20 Boffi argues these hours are unreasonable and asks the Court to exclude 1,265 hours
21 on five grounds. (Opp’n 7:23–14:19.) First, Erhart wrongly includes hours for work
22 performed in other litigation. (*Id.* 8:6–2:9.) Second, there are numerous entries “for work
23 that did not occur or did not occur on the dates claimed.” (*Id.* 9:3–10:7.) Third, Erhart
24 cannot recover fees related to Boffi’s claims. (*Id.* 10:21–12:7.) Fourth, fees are not
25 recoverable for tasks related to Erhart’s defamation claim. (*Id.* 12:8–13:6.) And finally,
26 there are various “other issues relating to the people who were doing the work, work done
27 prior to the filing of the lawsuit, the narratives provided, and block billing.” (*Id.* 13:7–
28 14:19.)

1 Although the Court will address Boff’s arguments, the Court is mindful “that the
2 determination of fees ‘should not result in a second major litigation.’” *Fox v. Vice*, 563
3 U.S. 826, 838 (2011) (quoting *Hensley*, 461 U.S. at 437). District “courts need not, and
4 indeed should not, become green-eyeshade accountants.” *Id.* “The essential goal in
5 shifting fees” to Boff “is to do rough justice, not to achieve auditing perfection.” *See id.*

6 **1. Related Claims**

7 Three of Boff’s five arguments strike at the same issue: whether Erhart can recover
8 attorneys’ fees for work performed beyond his fee-shifting whistleblower retaliation
9 claims. The parties clash over a state law doctrine on interrelated claims but do not discuss
10 any federal caselaw. (Opp’n 10:8–21; Reply 4:26–5:6.)

11 The bedrock case touching upon these issues is *Hensley v. Eckerhart*, 461 U.S. 424
12 (1983). There, the Supreme Court analyzed 42 U.S.C. § 1988, which—like Sarbanes–
13 Oxley—authorizes “a reasonable attorney’s fee.” 42 U.S.C. § 1988(b). And the issue was
14 “whether a partially prevailing plaintiff may recover an attorney’s fee for legal services on
15 unsuccessful claims.” *Hensley*, 461 U.S. at 426.

16 The Supreme Court observed that in some cases, plaintiffs bring “distinctly different
17 claims for relief that are based on different facts and legal theories.” *Hensley*, 461 U.S. at
18 434. In that circumstance, the time spent on a claim that is unsuccessful and unrelated to
19 the fee-shifting claim should be excluded. *Id.* at 434–35. Congress’s “intent to limit
20 awards to prevailing parties requires” that such a claim be treated as if it had been raised
21 in a separate lawsuit, and “therefore no fee may be awarded for services on the unsuccessful
22 claim.” *Id.* at 435.

23 By comparison, “[i]n other cases the plaintiff’s claims for relief will involve a
24 common core of facts or will be based on related legal theories.” *Hensley*, 461 U.S. at 435.
25 “Much of counsel’s time will be devoted generally to the litigation as a whole, making it
26 difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be
27 viewed as a series of discrete claims.” *Id.* Further, where plaintiffs obtain “excellent
28 results,” their counsel “should recover a fully compensatory fee.” *Id.*

1 The Ninth Circuit distills *Hensley*'s guidance into two prongs. First, "did the
2 plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded?"
3 *Ibrahim v. U.S. Department of Homeland Security*, 912 F.3d 1147, 1172 (9th Cir. 2019)
4 (en banc) (quoting *Hensley*, 461 U.S. at 434). This question "rests on whether the related
5 claims involve a common core of facts or are based on related legal theories, with the focus
6 on whether the claims arose out of a common course of conduct." *Id.* (cleaned up) (citing
7 *Webb v. Sloan*, 330 F.3d 1158, 1168 (9th Cir. 2003); *Schwarz v. Sec'y of Health & Hum.*
8 *Servs.*, 73 F.3d 895, 903 (9th Cir. 1995)). Second, did "the plaintiff achieve a level of
9 success that makes the hours reasonably expended a satisfactory basis for making a fee
10 award?" *Id.* (alteration omitted) (quoting *Hensley*, 461 U.S. at 434). If "the prevailing
11 party achieved 'excellent results,'" the court "may permit a full fee award—that is, the
12 entirety of those hours reasonably expended on both the prevailing and unsuccessful but
13 related claims." *Id.* (citing *Hensley*, 461 U.S. at 435; *Schwarz*, 73 F.3d at 905–06).

14 **i. Defamation Claim**

15 The Court first considers Bofl's argument that Erhart "cannot recover an award for
16 fees incurred in connection with his defamation claim" and those tasks related to Bofl's
17 "defense to Erhart's defamation claim." (Opp'n 12:8–13:6.) This point is unconvincing.
18 Erhart succeeded on his defamation claim at trial. So, the Court does not reach the first
19 step of the inquiry under *Hensley*, which concerns deducting hours for *unsuccessful* claims.
20 *See Ibrahim*, 912 F.3d at 1172 (explaining the first question is whether the plaintiff "fail[s]
21 to prevail" on unrelated claims); *see also Hensley*, 461 U.S. at 439 (directing that the court
22 should exclude "hours spent on [an] unsuccessful claim" if "the plaintiff has failed to
23 prevail on a claim that is distinct in all respects from his successful claims"); *Muniz v.*
24 *United Parcel Serv., Inc.*, 738 F.3d 214, 224 (9th Cir. 2013) (noting hours can be "deducted
25 specifically for unsuccessful claims" that are "distinct in both fact and law").

26 Moreover, to leave no doubt, all Erhart's claims, including the defamation cause of
27 action, are related to his successful, fee-shifting Sarbanes–Oxley claim. The Ninth Circuit
28 does "not require commonality of *both* facts *and* law to conclude that claims are related."

1 *Ibrahim*, 912 F.3d at 1174. All Erhart’s claims stemmed from his employment relationship
2 with BofI, his reporting of believed wrongdoing to the government, and BofI’s response to
3 his conduct. The Court thus considers Erhart’s success in assessing the overall
4 reasonableness of the fee award below, but it is not appropriate to exclude any hours spent
5 on Erhart’s defamation claim from the lodestar calculation.⁴

6 **ii. BofI’s Claims**

7 The Bank argues “Erhart’s defense against BofI’s cross-complaint is not subject to
8 an award of attorneys’ fees,” and therefore hours incurred to defend BofI’s claims should
9 be excluded from the lodestar calculation. (Opp’n 10:21–12:7.) Having followed this
10 thread to the end, the Court is again unpersuaded.

11 To recap, six days after Erhart sued BofI, the Bank filed a countersuit raising state
12 and federal claims against Erhart. This countersuit tried to plead around Erhart’s federal
13 and state retaliation claims and hold him responsible for allegedly lying to other employees,
14 accessing information without permission, and publishing BofI’s confidential information.
15 For example, in bringing a state law negligence claim against Erhart, BofI alleged he
16 “failed to act reasonably and to exercise due care in the performance of his job duties when
17 he conducted rogue investigations and when he misappropriated” BofI’s confidential
18 information. (BofI’s Compl. ¶ 70.) There are some procedural wrinkles, but these counts
19 were counterclaims in all but name. *See* Fed. R. Civ. P. 13.⁵ BofI used these claims to
20

21 ⁴ The Court similarly rejects BofI’s footnote argument that the hours spent on the punitive
22 damages retrial should be excluded from the lodestar. (Opp’n 14 n.9.) Erhart’s request for punitive
23 damages was predicated on his successful state law claims, which as mentioned, were also related to his
24 successful federal claim. *Cf. Flitton v. Primary Residential Mortg., Inc.*, 614 F.3d 1173, 1177 (10th Cir.
25 2010) (reasoning where plaintiff prevailed at first trial on fee-shifting retaliation claim, district court did
26 not abuse its discretion “by refusing to exclude the fees accrued during the second jury trial” on
27 unsuccessful, related claims for punitive damages and discrimination); *see also Vines v. O’Reilly Auto*
28 *Enters., LLC*, 74 Cal. App. 5th 174, 183 (2022) (“California law is consistent with federal law’ that, ‘[i]f
a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims
unrelated to the successful claims” (emphasis added) (quoting *Chavez v. City of Los Angeles*, 47 Cal. 4th
970, 989 (2010))).

⁵ Erhart worked for BofI Federal Bank. He initially brought his claims against BofI Holding, Inc.,
the publicly-traded holding company for BofI Federal Bank. When BofI filed its countersuit, it brought

1 harry Erhart throughout the litigation, which drove up the cost of litigation, increased the
2 effort required to prepare for trial, and sidetracked Erhart’s counsel repeatedly.

3 Given the close overlap between the parties’ claims, the Court *sua sponte* ordered
4 consolidation of the countersuit because of the “numerous common questions of law or
5 fact that are related to Erhart’s alleged whistleblowing and his tenure at BofI.” (ECF No.
6 22 at 31:13–32:7.)⁶ From there on out, all filings were in Erhart’s whistleblower retaliation
7 action, and the parties’ competing claims were tried together. As the evidence at trial
8 showed, one area where these claims particularly overlapped was the parties’ defenses.
9 Erhart claimed any breach of BofI’s confidentiality agreement or his other duties to BofI
10 was lawful because he engaged in protected activity under Sarbanes–Oxley and California
11 state law. Conversely, the Bank claimed it would have terminated Erhart anyways because
12 of his wrongful conduct. BofI similarly argued that it discovered evidence of Erhart’s
13 purported wrongdoing after termination that should limit Erhart’s damages.

14 It is understandable, then, that the great majority of Erhart’s counsel’s time was
15 “devoted generally to the litigation as a whole.” *See Hensley*, 461 U.S. at 435. Although
16 BofI identifies some time entries that concern only the Bank’s claims, these hours are but
17 a small fraction of the time Erhart seeks to recover.

18 Moreover, if the Court funnels BofI’s claims through the *Hensley* analysis, they meet
19 the same fate as the defamation claim. Erhart successfully defeated all BofI’s claims; the
20 jury awarded the Bank nothing. If the law instructs the Court to only exclude time spent
21 on unsuccessful, unrelated claims, then why should the Court exclude counsel’s time spent
22 on the successful defense of closely related claims? *See Ibrahim*, 912 F.3d at 1172. These
23 hours “contribute[d] to the ultimate victory in the lawsuit.” *See Cabrales v. Cnty. of Los*
24

25 the claims in the name of BofI Federal Bank, not the holding company. Erhart later amended his complaint
26 to pursue claims against BofI Federal Bank. (Second Am. Compl. ¶ 4.)

27 ⁶ Although the Court ordered consolidation early on in these proceedings, it notes the only reason
28 it did not happen even sooner is because the Court first devoted its resources to resolving BofI’s request
for extraordinary relief. Once the Court denied BofI’s request for a preliminary injunction, the Court
resolved the first motion to dismiss, resulting in the *sua sponte* consolidation of the parties’ claims.

1 *Angeles*, 935 F.2d 1050, 1052 (9th Cir. 1991). And given the overlap in factual issues, the
2 Court cannot say this time “did not aid in proving” Erhart’s “successful claims.” *See*
3 *Muniz*, 738 F.3d at 224. Having adjudicated the parties’ dispute from start to finish, it
4 makes no sense to slice-and-dice counsel’s time “on a claim-by-claim basis” and treat this
5 dispute “as a series of discrete claims.” *See Hensley*, 461 U.S. at 435. The Court thus will
6 not exclude time from the lodestar that was spent on Boff’s claims.

7 In addition, even though the Court has focused on federal law up to this point,
8 California’s doctrine on intertwined claims likewise provides a path for Erhart to recover
9 these hours. Erhart succeeded on his California Labor Code section 1102.5 claim, which
10 includes fee-shifting, whereas Boff’s competing claims do not. Under California law:
11 “Attorney’s fees need not be apportioned when incurred for representation on an issue
12 common to both a cause of action in which fees are proper and one in which they are not
13 allowed.” *Reynolds Metals Co. v. Alperson*, 25 Cal. 3d 124, 129–30 (1979); *accord*
14 *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 159–60 (2006). “Further,
15 ‘[a]pportionment is not required when the claims for relief are so intertwined that it would
16 be impracticable, if not impossible, to separate the attorney’s time into compensable and
17 noncompensable units.’” *Maxim Crane Works, L.P. v. Tilbury Constructors*, 208 Cal. App.
18 4th 286, 298 (2012) (quoting *Bell v. Vista Unified Sch. Dist.*, 82 Cal. App. 4th 672, 687
19 (2000)). In addition, “as the one who has ‘heard the entire case,’ it is the trial court who is
20 ‘in the best position to determine whether any further allocation of attorney fees [i]s
21 required or whether the issues were so intertwined that allocation would be impossible.’”
22 *Cruz v. Fusion Buffet, Inc.*, 57 Cal. App. 5th 221, 235 (2020) (quoting *Thompson Pac.*
23 *Constr., Inc. v. City of Sunnyvale*, 155 Cal. App. 4th 525, 556 (2007)).

24 This rule is well-established when applied to a plaintiff’s claims. *E.g.*, *Cruz v.*
25 *Fusion Buffet, Inc.*, 57 Cal. App. 5th 221, 230 (2020) (determining court did not abuse its
26 discretion in refusing to apportion fees where the plaintiff’s “meal and rest break claims
27 [for which fees would not be recoverable] are inextricably intertwined with her other wage
28 and hour claims for which fees are recoverable” (alteration in original)); *Taylor v. Nabors*

1 *Drilling USA, LP*, 222 Cal. App. 4th 1228, 1251 (2014) (affirming trial court’s refusal to
2 apportion fees between successful employment discrimination claim and three related,
3 unsuccessful causes of action). The rule can also apply, however, to defending
4 counterclaims—cross-complaints in California’s lexicon. *See Calvo Fisher & Jacob LLP*
5 *v. Lujan*, 234 Cal. App. 4th 608, 623 (2015) (applying rule “where the plaintiff’s defense
6 against a cross-claim is necessary to success on the plaintiff’s contract claim”); *Maxim*
7 *Crane Works*, 208 Cal. App. 4th at 297 (applying rule where defense against an indemnity
8 cross-complaint was intertwined with defense against an underlying tort suit); *Siligo v.*
9 *Castellucci*, 21 Cal. App. 4th 873, 879 (1994) (applying same rule to fraud crossclaim
10 where the plaintiff “was required to defend against fraud in order to succeed on his
11 complaint to enforce” business-sale agreements).

12 For the reasons explained above, Erhart’s and BofI’s claims were “so intertwined
13 that it would be impracticable, if not impossible, to separate” Erhart’s counsel’s “time into
14 compensable and noncompensable units.” *See Maxim Crane Works*, 208 Cal. App. 4th at
15 298. The fact that BofI has identified some time entries that are related only to its claims
16 does not prove otherwise. Rather, as mentioned, these entries indicate much of Erhart’s
17 counsel’s time was devoted to the litigation as whole, and it would be impracticable to now
18 divide up those hours, especially the time spent at trial. Consequently, when the Court
19 approaches this issue under California law for Erhart’s fee-shifting state law claim, the
20 Court likewise concludes no hours should be excluded from the lodestar to account for
21 BofI’s unsuccessful claims.

22 **iii. Claims in Other Litigation**

23 Moving beyond the claims in this dispute, BofI argues Erhart’s proposed lodestar
24 improperly includes fees for work performed in other litigation. (Opp’n 8:6–9:2.) For
25 example, Erhart’s fee request includes 111 hours spent on a California case, *BofI Federal*
26 *Bank v. Cornell*, Case No. 37-2016-00016599-CU-NP-CT. (*Id.* Ex. C, ECF No. 390-5.)
27 That litigation involved BofI’s efforts to recover purported confidential information that
28 Erhart placed on the defendant’s laptop. Erhart’s time entries also include six hours spent

1 on another California state court case, *Garrabrants v. Erhart*, Case No. 37-2017-
2 00039440-CU-NP-CTL. (*Id.* Ex. D.) That lawsuit involved BofI’s CEO suing Erhart for
3 disclosing his private information.

4 Attorneys’ fees incurred outside the bounds of the litigation may be recoverable if
5 “the work product . . . was both useful and of a type ordinarily necessary to advance
6 the . . . litigation.” *Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir. 2003) (quoting *Webb*
7 *v. Bd. of Educ. of Dyer Cnty., Tenn.*, 471 U.S. 234, 243 (1985)); *see also Gates v. Gomez*,
8 60 F.3d 525, 535 (9th Cir. 1995) (awarding attorneys’ fees for time expended filing amicus
9 brief in separate proceeding); *Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 638 (9th Cir. 1989)
10 (same). For example, in *Armstrong*, the plaintiffs asked to recover fees for counsel’s work
11 on an amicus brief in a separate case before the Supreme Court. 318 F.3d at 971. The
12 district court reasoned this time was recoverable because the appeal “involved an issue
13 central to the litigation,” and it was both useful and necessary for counsel to file the brief.
14 *Id.* The Ninth Circuit affirmed, reasoning the Supreme Court was deciding an issue that
15 “was likely to have an important effect on the outcome in *Armstrong*.” *Id.* at 972.

16 Erhart does not invoke this authority or adequately respond to BofI’s challenge. He
17 fails to meet his burden to demonstrate the time spent in the two state court matters was
18 “necessary to advance” this litigation, i.e., his whistleblower retaliation claims. *See*
19 *Armstrong*, 318 F.3d at 971; *see also Hiken*, 836 F.3d at 1046 (“[A] court is not required
20 to ‘manufacture arguments’ on behalf of litigants.”). Nor does the Court find California’s
21 rule on intertwined claims applies here. The claims in those cases involved additional
22 parties and were not “so intertwined” with Erhart’s claims here that any allocation would
23 be impracticable or impossible. *See Maxim Crane Works*, 208 Cal. App. 4th at 298. Thus,
24 the Court excludes the hours listed in BofI’s Exhibits C and D from the lodestar.

1 **2. Content of Entries**

2 The Court jointly addresses Boff’s remaining two arguments concerning the hours
3 reasonably expended on the litigation. As mentioned, Boff contends: (1) there are
4 numerous entries “for work that did not occur or did not occur on the dates claimed;” and
5 (2) there are various “other issues relating to the people who were doing the work, work
6 done prior to the filing of the lawsuit, the narratives provided, and block billing.” (Opp’n
7 9:3–10:7, 13:7–14:19.) These arguments call for the Court to step into the weeds. Keeping
8 in mind that the goal “is to do rough justice, not to achieve auditing perfection,” *see Fox*,
9 563 U.S. at 838, the Court includes an appendix that summarily resolves these challenges.
10 The result is that the Court will exclude 195.6 hours from the lodestar in light of these
11 arguments.

12 **B. Reasonable Hourly Rate**

13 The court next must determine a reasonable hourly rate for the lodestar calculation.
14 *Roberts v. City of Honolulu*, 938 F.3d 1020, 1023 (9th Cir. 2019). “The reasonable hourly
15 rate is determined by assessing ‘the prevailing market rate in the relevant community.’” *Id.*
16 at 1024 (quoting *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016)). The prevailing
17 market rate is the amount charged “in the community for similar work performed by
18 attorneys of comparable skill, experience, and reputation.” *Camacho*, 523 F.3d at 979
19 (quoting *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997)).

20 “It is the responsibility of the attorney seeking fees to submit evidence to support the
21 requested hourly rate.” *Roberts*, 938 F.3d at 1024. Satisfactory evidence includes
22 declarations from the “plaintiffs’ attorneys and other attorney[s] regarding prevailing fees
23 in the community.” *Camacho*, 523 F.3d at 980 (alteration in original) (quoting *United*
24 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Those
25 submissions, though, “do not conclusively establish the prevailing market rate.” *Id.* The
26 opposing party may submit evidence “challenging the accuracy and reasonableness” of the
27 moving party’s declarations. *Id.* (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th
28 Cir. 1992)).

1 Further, “courts may consider the fees awarded by others in the same locality for
2 similar cases.” *Sam K. ex rel. Diane C. v. Hawaii Dep’t of Educ.*, 788 F.3d 1033, 1041
3 (9th Cir. 2015). Courts likewise may “use their ‘own knowledge of customary rates and
4 their experience concerning reasonable and proper fees.’” *Id.* (quoting *Ingram v.*
5 *Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011)).

6 Erhart proposes the following hourly rates: \$995 for his lead counsel, \$625 for her
7 associate, \$695 for another counsel, and \$195 for paralegals. (Mot. 10:3–6.) Bofl argues
8 these rates are unreasonably high for several reasons.

9 1. Relevant Community

10 Bofl first argues that Erhart incorrectly relies “on declarations from attorneys based
11 outside of the San Diego area” to address “rates outside of the San Diego area.” (Opp’n
12 3:11–13.) Indeed, Erhart contends that because Sarbanes–Oxley cases are rare “in the
13 Southern District of California, the ‘relevant community’ is more properly the greater
14 Southern California / Los Angeles area, where all counsel in this case primarily practice.”
15 (Mot. 4:23–27.) In support, Erhart’s lead counsel declares she is “not aware of any
16 attorneys in the San Diego area who could or would have handled this case,” despite
17 knowing “all the leading plaintiffs’ employment attorneys in San Diego.” (Gillam Decl. ¶
18 26.) Bofl argues this claim is not only “insulting to San Diego’s employment attorneys”
19 but “also inconsistent with the prevailing law.” (Opp’n 7:2–7; *see also* Jardini Decl. ¶ 46
20 (“The San Diego bar has numerous plaintiff employment rights counsel who work on a
21 contingency issue.”).)⁷

22
23
24 ⁷ Erhart objects to an attorney declaration submitted by Bofl from André E. Jardini. (ECF No.
25 394-3.) Erhart’s objections violate this Court’s Standing Order for Civil Cases, which provides:
26 “[O]bjections to evidence submitted in support of an opposition must be contained within the reply brief.
27 No separate statements of objections will be allowed.” Erhart’s objections both run afoul of this rule and
28 reinforce its purpose. Many of the objections are impermissible argument that quibble with the weight—
not the admissibility—of Mr. Jardini’s declaration. (*See id.* (objecting to a statement about a law firm
taking on Erhart’s case as being “delusional” and arguing Mr. Jardini lacks experience in Sarbanes–Oxley
cases). To leave no doubt, the Court finds Mr. Jardini’s declaration relevant for determining a reasonable
hourly rate, but the Court is independently assessing the caselaw and computing a lodestar for Erhart’s

1 “Generally, when determining a reasonable hourly rate, the relevant community is
2 the forum in which the district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
3 979 (9th Cir. 2008). “However, rates outside the forum may be used ‘if local counsel was
4 unavailable, either because they are unwilling or unable to perform because they lack the
5 degree of experience, expertise, or specialization required to handle properly the case.’”
6 *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) (quoting *Gates*, 987 F.2d at 1405).⁸
7 For example, in *Gates*, a district court properly used rates from San Francisco—in lieu of
8 Sacramento—where the plaintiffs “offered numerous declarations of San Francisco and
9 Sacramento attorneys” to “support their contention that Sacramento attorneys and law
10 firms with the requisite expertise and experience to handle [a] type of complex institutional
11 prison reform litigation were unavailable” in Sacramento. 987 F.3d at 1405.

12 Erhart’s attorneys are not the first ones to test the waters on this issue. The prevailing
13 rates in the Southern District of California are generally lower than the Central District of
14 California. *E.g.*, *T.B. v. San Diego Unified Sch. Dist.*, 293 F. Supp. 3d 1177, 1188 (S.D.
15 Cal. 2018). And it is commonplace for attorneys based in one district to solicit work in the
16 other. Courts nevertheless reject attorneys’ attempts to cherry-pick and run with higher
17 rates from the Central District. *See, e.g., id.* (rejecting argument “that the Central District
18 of California, where counsel maintain their offices, is the appropriate relevant
19 community”); *Dalfio v. Hanna*, No. 21-CV-910 JLS (AHG), 2022 WL 3578261, at *2
20 (S.D. Cal. Aug. 19, 2022) (rejecting attempt to use “significantly higher” rates from Los
21 Angeles); *Bedwell v. Hampton, Tr. of Hampton Fam. Bypass Tr.*, No. 22cv138-LL-BGS,
22 2023 WL 3103806, at *5 (S.D. Cal. Apr. 26, 2023) (same). Further, Erhart’s counsel’s
23 statement about a lack of local counsel is unconvincing compared to the “numerous”
24

25 _____
26 counsel. *See Kries v. City of San Diego*, No. 17-CV-1464-GPC-BGS, 2021 WL 120830, at *2–4 (S.D.
27 Cal. Jan. 13, 2021).

28 ⁸ California state law is comparable. The court must consider counsel’s “home market rate”
instead of the “local market rate” when a plaintiff needs to hire out-of-town counsel because local counsel
is unavailable. *Caldera v. Dep’t of Corr. & Rehab.*, 48 Cal. App. 5th 601, 609 (2020).

1 declarations from Sacramento and San Francisco attorneys in *Gates* that supported the
2 unavailability of counsel in Sacramento. *See* 987 F.3d at 1405 & n.15.

3 Moreover, Erhart’s declaration does not persuasively demonstrate local counsel was
4 unavailable. Erhart states that when seeking counsel, he searched online for whistleblower
5 lawyers and “looked at numerous attorney websites,” but “did not find any that seemed to
6 offer the expertise [he] needed, including in the San Diego area.” (Erhart Decl. ¶ 3, ECF
7 No. 384-5.) He then reached out to a former colleague in New York who suggested
8 Erhart’s Los Angeles-based counsel. (*Id.* ¶ 4.)

9 By comparison, one court found a stronger showing on this issue to still be
10 insufficient. There, an Idaho plaintiff sought counsel for a disability discrimination action
11 against a well-resourced defendant: Union Pacific. *Campbell v. Union Pac. R.R. Co.*, No.
12 4:18-CV-00522-BLW, 2022 WL 43878, at *4 (D. Idaho Jan. 4, 2022). The plaintiff stated
13 “that he ‘spoke with at least six different law firms in Idaho and surrounding States but was
14 unsuccessful in getting anyone to represent . . . [him] against Union Pacific,’ because ‘it
15 would take too long and they lacked the resources necessary’ to handle the case.” *Id.* at
16 *3. The court found this showing was inadequate to justify out-of-forum rates. *Id.* It
17 reasoned the plaintiff failed to provide specific details about his search, including the types
18 of firms he contacted, and the court was aware of local counsel who practiced in the
19 relevant area of law. *Id.* at *4.

20 The Court is unconvinced by Erhart’s weaker showing here; he does not state he
21 spoke with any counsel in the Southern District or provide other details about his search.
22 The undersigned is likewise knowledgeable of local, skilled counsel who practice in the
23 employment and wrongful termination context. *Cf. Sam K.* 788 F.3d at 1041 (providing
24 the court can draw on its own knowledge in the rate-setting context); *see also Campbell*,
25 2022 WL 43878, at *3; *Howard G. v. Dep’t of Educ.*, No. CV 11-00523 DKW-RT, 2020
26 WL 2563275, at *14 (D. Haw. May 5, 2020). This case may have presented challenging
27 issues, but the Court rejects the claim that San Diego lacked counsel who “could have or
28 would have handled this case.” (*See Gillam Decl.* ¶ 26.) Consequently, the default rule

1 applies. The relevant community for assessing a reasonable hourly rate is the Southern
2 District. *See Camacho*, 523 F.3d at 979.

3 2. **Current vs. Historical Rates**

4 Erhart asks the Court to use the current hourly rate for fees, instead of historical
5 rates. (Gillam Decl. ¶ 34.) BofI points out that these rates are significantly higher than
6 earlier years “when the lion’s share of the work was done.” (Opp’n 4:3–4.) For example,
7 according to an attorney rate report discussed below, the median hourly rate for a labor and
8 employment partner in San Diego was approximately \$382 in 2015, compared to a median
9 of \$456 in the second quarter of 2022—an increase of about 20%. (ECF No. 390-24.)

10 The Supreme Court has explained that “part of a ‘reasonable attorney’s fee’” may
11 include an adjustment for “for delay in payment.” *Missouri v. Jenkins by Agyei*, 491 U.S.
12 274, 282 (1989). Hence, “district courts have the discretion to compensate prevailing
13 parties for any delay in the receipt of fees by awarding fees at current rather than historic
14 rates in order to adjust for inflation and loss of the use funds.” *Gates*, 987 F.2d at 1406;
15 *accord Bell v. Clackamas Cnty.*, 341 F.3d 858, 868 (9th Cir. 2003); *Welch v. Metro. Life*
16 *Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007). Alternatively, if the court chooses to enhance
17 the lodestar to compensate for the delay, “the amount of the enhancement must be
18 calculated using a method that is reasonable, objective, and capable of being reviewed on
19 appeal, such as by applying a standard rate of interest to the qualifying outlays of
20 expenses.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 555–56 (2010); *see also In re*
21 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (explaining
22 that the court’s use of “the last rates charged by attorneys who left prior to the fee petition,
23 without a prime rate enhancement, inadequately compensate[d] the firm for the delay in
24 receiving its fees”).

25 The delay in payment here is significant—over seven years. Like others, the Court
26 finds an adjustment is necessary to compensate for this magnitude of delay. *See, e.g.,*
27 *Theme Promotions, Inc. v. News Am. Mktg. FSI, Inc.*, 731 F. Supp. 2d 937, 949–50 (N.D.
28 Cal. 2010). In compensating for the delay, a prime rate enhancement could lead to a higher

1 fee award than applying current rates because of compound interest over a seven-year
2 period. *See id.* at 951, App. Table H. However, Erhart did not provide his counsel’s
3 historical hourly rates or propose a prime rate enhancement calculation. *See Wit v. United*
4 *Behav. Health*, 578 F. Supp. 3d 1060, 1075 (N.D. Cal. 2022) (noting prime rate
5 enhancement approach resulted in a higher lodestar than current rate calculation); *Ryan v.*
6 *Editions Ltd. W., Inc.*, No. 5:06-CV-04812-PSG, 2016 WL 233093, at *5 (N.D. Cal. Jan.
7 19, 2016) (reasoning attorney’s failure to provide necessary variables “militates against the
8 use of the prime rate enhancement method of compensating for delay in payment”). The
9 Court thus will look to current rates. *See Wit*, 578 F. Supp. 3d at 1075 (using current rates
10 for a six-year delay); *Oldoerp v. Wells Fargo & Company Long Term Disability Plan*, No.
11 3:08-CV-05278 RS, 2014 WL 2621202, at *4 (N.D. Cal. June 12, 2014) (using current
12 rates for a case pending five years); *Harlick v. Blue Shield of California*, No. C 08-3651-
13 SC, 2013 WL 2422900, at *4 (N.D. Cal. June 3, 2013) (same).

14 **3. Rates for Attorneys**

15 The Court turns to assessing the prevailing market rate in the Southern District as of
16 the time of the fee petition. Beyond its own experience, the Court draws on three sources:
17 the attorney declarations submitted, a billing rate report, and analogous fee decisions from
18 the community.

19 Declarations. Erhart’s lead counsel, Gillam, submits a declaration setting forth her
20 qualifications and experience. Of note, she has been practicing law for more than forty-
21 four years. (Gillam Decl. ¶ 2.) After starting her career in Chicago, she worked for a
22 preeminent Los Angeles law firm before serving as an Assistant U.S. Attorney for six
23 years. (*Id.* ¶¶ 10–13.) Since 1994, Gillam has been in private practice with a decorated
24 career in the labor and employment context. (*Id.* ¶¶ 2–6; 18–19.)

25 Gillam’s associate, Heum, likewise submits a declaration. (Heum Decl., ECF No.
26 384-3.) Heum graduated from law school in 2012 and later joined Gillam’s firm in 2015.
27 (Gillam Decl. ¶ 36, Heum Decl. ¶ 2.) Therefore, as of the fee application, Heum had
28

1 approximately ten years of experience, with much of her time spent on employment
2 matters. (See Heum Decl. ¶ 2.)

3 The fee motion also includes declarations from several practitioners who vouch for
4 the proposed hourly rates. (Alexander Decl., ECF No. 384-4; Harrison Decl., ECF No.
5 384-7; Pine Decl., ECF No. 384-8; Zukerman Decl., ECF No. 384-9.) “That other
6 attorneys may think that a given rate is ‘reasonable’ does not necessarily say what the
7 prevailing market rates actually are.” *Sam K. ex rel. Diane C. v. Hawaii Dep’t of Educ.*,
8 788 F.3d 1033, 1041 (9th Cir. 2015). This admonition is particularly warranted here,
9 where, as indicated above, there is a disconnect between the evidence submitted and the
10 relevant community. Three of the supporting declarants are Los Angeles-based litigators;
11 the remaining one is a partner at a Washington, D.C. firm. The Court thus assigns these
12 supporting declarations reduced weight on the issue of the prevailing rate in the San Diego
13 community.

14 Rate Report. BofI submits the Real Rate Report, a national publication that provides
15 statistical data on attorneys’ fees by location and practice areas. (2022 Rate Report, ECF
16 No. 390-25.) This report “has been cited with approval by courts inside and outside this
17 district.” *Kries v. City of San Diego*, No. 17-cv-1464-GPC-BGS, 2021 WL 120830, at *7
18 (S.D. Cal. Jan. 13, 2021); *accord Sarabia v. Ricoh USA, Inc.*, No. 8:20-cv-00218-JLS-
19 KES, 2023 WL 3432160, at *8 (C.D. Cal. May 1, 2023); *see also, e.g., Kohler v. Eddie*
20 *Bauer LLC*, 792 F. App’x 446, 448 (9th Cir. 2019) (“The court reasonably considered the
21 2015 Real Rate Report (RRR), a national publication that provides statistical data on
22 attorneys’ fees by location and practice areas.”); *Aispuro v. Ford Motor Co.*, No. 18-CV-
23 2045 DMS (KSC), 2020 WL 4582677, at *4 (S.D. Cal. Aug. 10, 2020) (looking to Real
24 Rate Report to help set prevailing rate for San Diego); *Nguyen v. BMW of N. Am., LLC*,
25 No. 3:20-CV-2432-JLS-BLM, 2023 WL 173921, at *3 (S.D. Cal. Jan. 12, 2023) (same).

26 The relevant category in the Real Rate Report is “Employment and Labor,” which
27 encompasses retaliation and wrongful termination cases. For employment and labor
28 partners in the San Diego area, the median hourly rate was \$456, and the third quartile

1 hourly rate was \$553. (2022 Rate Report at 118.) For associates in this category, the
2 median hourly rate was \$325, and the third quartile hourly rate was \$380. (*Id.*) And more
3 broadly, for associates with seven or more years of experience in all practice areas, the
4 median is \$380, and the third quartile is \$421. (*Id.* at 27.)

5 Decisions. The Court also looks to rates awarded in this locality for analogous cases.
6 See *Sam K.*, 788 F.3d at 1041. Unfortunately, Erhart points to no decisions for the Court’s
7 consideration, but instead faults BofI for not finding good enough comparisons in this
8 district. (Reply 3:9–11.) Erhart, of course, is the one who has the burden on this motion.
9 Notwithstanding Erhart’s failure to cite to any Southern District cases, the Court finds the
10 following data points helpful:

- 11 • In a 2020 civil rights and employment action containing retaliation claims, the court
12 found \$550 an hour to be a reasonable rate for an attorney with fourteen years of
13 experience and \$310 an hour reasonable for an attorney with one year of experience.
14 *Kailikole v. Palomar Cmty. Coll. Dist.*, No. 18-CV-02877-AJB-MSB, 2020 WL
15 6203097 (S.D. Cal. Oct. 22, 2020).
- 16 • In a 2021 decision under the Fair Labor Standards Act, the court found \$600 and
17 \$650 hourly rates reasonable for partners with more than thirty years of experience.
18 The court also found \$500 an hour reasonable for an attorney with fourteen years of
19 experience and \$400 an hour reasonable for an attorney with six years of experience.
20 *Kries*, 2021 WL 120830, at *8.
- 21 • In a 2021 civil rights case, the court found \$650 an hour reasonable for an attorney
22 with twenty-five years of experience and whose work “was of the highest quality.”
23 The court also found \$485 an hour reasonable for an attorney with nine years of civil
24 rights experience. *Soler v. Cnty. of San Diego*, No. 14CV2470-MMA (RBB), 2021
25 WL 2515236, at *5 (S.D. Cal. June 18, 2021).
- 26 • In a 2022 defamation and federal Privacy Act decision, the court found \$500 an hour
27 a reasonable rate for a lead counsel with fourteen years of experience and \$425 an
28 hour reasonable for an attorney with eleven years of experience. *Gallagher v.*

1 *Philipps*, No. 20CV00993-LL-BLM, 2022 WL 848329, at *3 (S.D. Cal. Mar. 22,
2 2022).

3 Attorney Hourly Rates. Having considered the items above, the Court finds \$750 is
4 a reasonable hourly rate for Gillam. This rate is substantially higher than the median rate
5 in the Real Rate Report for partners in Gillam’s cohort, which reflects Gillam’s wealth of
6 experience and accolades. The rate also reflects that this case demanded more expertise
7 than required for a garden-variety wrongful termination or wage-and-hour action. Finally,
8 this rate reflects the Court’s assessment of the quality of the representation provided by
9 Gillam. As for Heum, the Court finds \$505 is a reasonable rate, which is again substantially
10 higher than the median rate in the Real Rate Report for Heum’s cohort. This rate reflects
11 her decade of experience, particularly in labor and employment matters, and again accounts
12 for the nature of this case and the Court’s assessment of the quality of the representation
13 provided by Heum.⁹

14 **4. Rate for Paralegals**

15 As mentioned, Erhart also seeks to recover 780 hours of paralegal time at \$195 an
16 hour, for a total of \$152,000. (Gillam Decl. ¶ 37.) The same standard applies for discerning
17 the prevailing rate for paralegals. *Holcomb v. BMW of N. Am., LLC*, No. 18CV475 JM
18 (BGS), 2020 WL 759285, at *5 (S.D. Cal. Feb. 14, 2020) (quoting *Payne v. Bay Area*
19 *Rapid Transit Dist.*, No. C 08-2098 WDB, 2009 WL 1626588, at *1 (N.D. Cal. June 5,
20 2009)). Despite this standard, BofI flags that Erhart provides no information for all but
21

22 ⁹ Erhart also seeks to recover 40 hours of time spent by one additional attorney at a rate of \$695.
23 Erhart’s counsel provides only two sentences about this attorney’s background and qualifications, noting
24 he is a former colleague who has worked at national firms and is experienced in securities matters. (Gillam
25 Decl. ¶ 30.) His experience practicing law in California is unclear. However, unlike the unidentified
26 paralegals discussed below, the Court can connect this attorney’s claimed time to a specific billing record.
27 There is a single entry for 39.6 hours with the description: “Research and draft opposition to MSJ . . .
28 (from 5/10/19-6/5/19).”

Given the inadequate showing for this attorney’s experience and qualifications, the Court assigns
a rate of \$380 for this work—the median rate for associates with more than seven years of experience
across all practice areas in San Diego. The Court also imposes a 10% haircut on these hours. *See Moreno*
v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). Hence, this component of the lodestar is
\$13,543.20 (35.4 hours x \$380 rate).

1 two of these supporting professionals. (Opp’n 4:2 n.3; *see also* Gillam Decl. ¶ 31.) For
2 example, timekeeper “KXG” worked 166 hours (ECF No. 384-10), but Erhart’s moving
3 papers provide no information about this individual (*see* Gillam Decl. ¶ 31), such as the
4 individual’s job title, experience, and educational background.

5 As for the two paralegals Erhart does identify, these are law graduates who
6 apparently worked on the case in its final phases. Their initials do not match any
7 timekeepers on the billing records through 2019. (*See* ECF No. 384-10 at 36.) In addition,
8 from 2019 onward, the billing records list only “Paralegal Paralegal” as the timekeeper and
9 do not identify the individual(s) who spent 461 hours’ worth of time on the case. (ECF
10 No. 384-12 at 52.) Hence, the Court cannot discern how much time the two identified law
11 clerks spent on the case compared to the various other individuals lumped under the
12 paralegal category. BofI is thus correct that “it is impossible to tell what work they actually
13 performed.” (Opp’n 13:14.) Erhart tries to fill in the gaps in his reply, but this pitfall is
14 paradigmatic of the tripwires Erhart has triggered throughout this case. *See Townsend v.*
15 *Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1027 (C.D. Cal. 2018) (“New evidence
16 submitted as part of a reply is improper’ because it does not allow the defendant an
17 adequate opportunity to respond.”). He also does not introduce any evidence to support
18 \$195 is the prevailing paralegal rate in the community.

19 Having reviewed the billing records and the parties’ arguments, the Court finds
20 Erhart’s showing is woefully inadequate. In a case this contentiously litigated, both
21 prudence and the law demanded Erhart specify the qualifications and time these individuals
22 spent before seeking \$152,000 for their work. Because “insufficient facts were presented,”
23 the Court could deny the “request for reimbursement of paralegal fees.” *See Zest IP*
24 *Holdings, LLC v. Implant Direct Mfg., LLC*, No. 10-CV-0541-GPC WVG, 2014 WL
25 6851612, at *6 (S.D. Cal. Dec. 3, 2014); *see also Garrison v. Ringgold, No. 19CV244-*
26 *GPC(RBB)*, 2019 WL 5684401, at *4 (S.D. Cal. Nov. 1, 2019) (denying request for
27 paralegal fees that lacked supporting evidence); *Brighton Collectibles, Inc. v. RK Texas*
28 *Leather Mfg.*, No. 10-CV-419-GPC WVG, 2014 WL 5438532, at *5 (S.D. Cal. Oct. 24,

1 2014) (same). The Court is reluctant to do so, however, given the volume of challenged
2 paralegal work.

3 As another solution, some courts have reduced the hourly rate to the lower end of
4 the possible range to reflect the failure to provide information about the paralegals’
5 experience. *See, e.g., Sunbelt Rentals, Inc. v. Three Bros. Elec. Contractors, Inc.*, No. 1:21-
6 cv-01357 JLT SKO, 2023 WL 5103739, at *5 (E.D. Cal. Aug. 9, 2023); *Freshko Produce*
7 *Servs., Inc. v. Write On Mktg., Inc.*, No. 1:18-cv-01703-DAD-BAM, 2019 WL 3798491,
8 at *3 (E.D. Cal. Aug. 13, 2019). The Court adopts this approach and assigns a rate of \$115
9 an hour for the paralegal work. *Cf. Holcomb*, 2020 WL 759285, at *7 (adopting \$100 an
10 hour rate for paralegals in the Southern District where evidence submitted for proposed
11 rate of \$195 was inadequate). The Court also reduces the hours billed by 15% in light of
12 the paralegal time records being vague, listing unidentified timekeepers, and reflecting
13 clerical work, which results in an adjusted hour total of 662.92. *See id.* at *6; *Missouri v.*
14 *Jenkins by Agyei*, 491 U.S. 274, 288 n.10 (1989) (“Of course, purely clerical or secretarial
15 tasks should not be billed at a paralegal rate, regardless of who performs them.”).

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Considering the rulings above, the Court computes the initial lodestar below.

Timekeepers

Lodestar	CG	SH	KKN	PA
Starting Hours	1,581.00	2,069.90	39.60	779.90
Bofl Ex. C	(22.20)	(89.00)	-	-
Bofl Ex. D	(1.00)	(5.40)	-	-
Court App. 1	(82.80)	(13.40)	-	(117.00)
Court n.9	-	-	(4.00)	-
Reasonable Hours	1,475.00	1,962.10	35.60	662.90
Reasonable Rate	\$750.00	\$505.00	\$ 380.00	\$115.00
Subtotal	\$1,106,250.00	\$990,860.50	\$13,528.00	\$76,233.50

Total: \$2,186,872.00

III. Reasonableness

“Although the analysis begins by multiplying a reasonable number of hours by a reasonable rate, it does not end there.” *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir. 2020). The court next “determines whether to modify the lodestar figure, upward or downward, based on factors not subsumed in the lodestar figure.” *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016); *accord Parsons v. Ryan*, 949 F.3d 443, 466 (9th Cir. 2020).¹⁰

¹⁰ The full list of factors is “set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975).” *Carter v. Caleb Brett LLC*, 757 F.3d 866, 868–69 (9th Cir. 2014).

The Kerr factors are (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the

1 The court should tread carefully, however, because there is “a ‘strong presumption
2 that the lodestar is sufficient.’” *Chambers v. Whirlpool Corp.*, 980 F.3d 645, 665 (9th Cir.
3 2020) (quoting *Perdue*, 559 U.S. at 546). Enhancing the lodestar with “a multiplier is
4 warranted only in ‘rare and exceptional circumstances.’” *Id.* (quoting *Perdue*, 559 U.S. at
5 552); accord *Kelly*, 822 F.3d at 1102.¹¹

6 The positive adjustments upheld in *Kelly*, 822 F.3d at 1102–1105, illustrate these
7 circumstances. The Ninth Circuit held there was no abuse of discretion when the district
8 court applied 1.3 and 2.0 multipliers to two attorneys’ work on an action under the Prison
9 Litigation Reform Act—a context where fees are limited to “150 percent of the hourly rate
10 set for counsel appointed in criminal cases.” *Id.* at 1093. The court appropriately
11 considered counsel’s “excellent results for their clients under extreme time pressure” and
12 that “the quality of the work that produced these results [was] underrepresented in the
13 hourly fee.” *Id.* (alteration in original). So, too, did the court properly consider that an
14 enhancement was necessary to attract competent counsel in the PLRA context because of
15 the limitation on recoverable fees. *Id.*

16 A downward adjustment may be appropriate in other circumstances. The court
17 referenced one such context above: where a plaintiff achieved “limited success.” *Hensley*,
18 461 U.S. at 436–37; see also *Ibrahim*, 912 F.3d at 1172–80. As mentioned, if the plaintiff
19 has both “prevailing and unsuccessful but related claims,” the court can consider whether
20

21 preclusion of other employment by the attorney due to acceptance of the case; (5) the
22 customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by
23 the client or the circumstances; (8) the amount involved and the results obtained; (9) the
24 experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case;
25 (11) the nature and length of the professional relationship with the client; and (12) awards
in similar cases.

26 *Id.* at 869. Aside from many of these factors being subsumed in the lodestar, “one factor is no longer
valid—whether the fee was fixed or contingent.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d
27 935, 942 n.7 (9th Cir. 2011); see also *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.9 (9th Cir. 1996).

28 ¹¹ One extraordinary circumstance is where “an attorney’s performance involves exceptional delay
in the payment of fees.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010). The Court already
accounted for this circumstance above by calculating the lodestar with current hourly rates. See *id.*

1 the “level of success” justifies “a full fee award.” *Ibrahim*, 912 F.3d at 1172. For example,
2 where a plaintiff “initially sued several defendants, but prevailed against only one,” the
3 court may apply a “reduction to reflect that kind of limited success.” *Webb*, 330 F.3d at
4 1168.

5 Erhart argues the “*Kerr* factors overwhelmingly support an upward adjustment of
6 the lodestar by a factor of not less than 2.0.” (Mot. 10:21–22.) Bofl contends many of
7 these factors are subsumed in the Court’s lodestar analysis and argues the remaining factors
8 are either inapplicable or weigh in favor of a downward adjustment. (Opp’n 15:15–20:13.)
9 The Court agrees that its lodestar analysis above subsumes many of the *Kerr* factors, see
10 *supra* note 10, and addresses several of the parties’ arguments below.

11 Degree of Success. The Court considers “the degree of success obtained,” which “is
12 ‘the most critical factor’ in determining the reasonableness of a fee award.” *Bravo v. City*
13 *of Santa Maria*, 810 F.3d 659, 666 (9th Cir. 2016) (quoting *Farrar v. Hobby*, 506 U.S. 103
14 (1992)); *see also Kerr*, 526 F.2d at 70 (providing the court should consider “the amount
15 involved and the results obtained”). Although “the amount of damages recovered is
16 relevant to the amount of attorney’s fees awarded,” the Ninth Circuit has “instructed that
17 ‘courts should not reduce lodestars based on relief obtained simply because the amount of
18 damages recovered on a claim was less than the amount requested.’” *Evon v. L. Offs. of*
19 *Sidney Mickell*, 688 F.3d 1015, 1033 (9th Cir. 2012) (quoting *Quesada v. Thomason*, 850
20 F.2d 537, 539 (9th Cir. 1988)). Indeed, in *Bravo*, where the plaintiffs “won only \$5,002 at
21 trial” but achieved a public benefit and recovered \$360,000 from settling with other
22 defendants, the district court appropriately awarded the plaintiffs \$1.023 million in
23 attorneys’ fees. 810 F.3d at 666.

24 The Court is persuaded that the lodestar calculated above is reasonable considering
25 the success Erhart obtained. Erhart failed to prevail on some of his many claims, but these
26 unsuccessful claims were related to his successful claims that reached the jury. Hence, a
27 deduction for limited success is not appropriate here. *See Ibrahim*, 912 F.3d at 1172; *see*
28 *also Hensley*, 461 U.S. at 435 (“In these circumstances the fee award should not be reduced

1 simply because the plaintiff failed to prevail on every contention raised in the lawsuit.”).
2 Further, even though Erhart may not have recovered as large of a recovery as he had hoped
3 for, he still obtained an excellent result. He prevailed on his surviving whistleblower
4 retaliation claims and defeated all the Bank’s counterclaims after over seven years of
5 litigation. *Cf. Van Asdale v. Int’l Game, Tech.*, No. 3:04-CV-00703-RAM, 2011 WL
6 2118637, at *7 (D. Nev. May 24, 2011) (reasoning plaintiffs’ success on their Sarbanes–
7 Oxley claim after “protracted litigation for a period of more than six years” was significant,
8 despite that their \$2 million recovery was “small in comparison with the amount Plaintiffs
9 requested at trial”). And his recovery for reputational and emotional distress damages was
10 substantial; this case is not one where the jury awarded nominal damages or where Erhart
11 settled his claims for nuisance value. *See, e.g., Bravo*, 810 F.3d at 672.

12 At the same time, the Court is unpersuaded that Erhart’s degree of success justifies
13 an upward adjustment to the lodestar or the requested 2.5 multiplier. *Cf. Kelly*, 822 F.3d
14 at 1103–04 (reasoning enhancement was appropriate where counsel’s “rare” and
15 “exceptional” representation included “excellent results . . . under extreme time pressure”).
16 BofI’s countervailing arguments likewise fall short. The Bank criticizes the proportionality
17 of Erhart’s damages recovery to his attorneys’ fees and contends a downward adjustment
18 is appropriate. (Opp’n 18:7–19:5) Yet the Bank is well-aware that its litigation strategy
19 required Erhart’s counsel to spend more time on this dispute. BofI undoubtedly “had the
20 right to play hardball in contesting” Erhart’s claims, but it is also appropriate for the Bank
21 “to bear the cost” of its all-out strategy. *See Burgess v. Premier Corp.*, 727 F.2d 826, 841
22 (9th Cir. 1984). In short, having assessed Erhart’s degree of success, the Court finds the
23 \$2,186,872.00 lodestar is reasonable.

24 Awards in Similar Cases. The Court can consider awards in similar cases to gauge
25 the reasonableness of the lodestar. *Kerr*, 526 F.2d at 70. Erhart contends “there are so few
26 verdicts in [Sarbanes–Oxley] cases that it is hard to compare results, except to note that
27 most of them never get to a jury.” (Mot. 12:19–25.) The Court agrees the dataset is limited,
28 but what is available does not support an adjustment here. In *Van Asdale*, the Sarbanes–

1 Oxley plaintiffs recovered approximately \$2 million in damages and reasonably expended
2 about 3,300 hours on the protracted litigation. 2011 WL 2118637, at *1, 4. The court
3 awarded \$1.08 million in attorneys’ fees and “saw no basis for making any further
4 enhancement or reduction” after considering the relevant *Kerr* factors. *Id.* at *5. Also, in
5 *McEuen v. Riverview Bancorp, Inc.*, No. C12-5997 RJB, 2014 WL 2197851, at *1 (W.D.
6 Wash. May 27, 2014), the Sarbanes–Oxley plaintiff accepted an offer of judgment for
7 \$110,000 on the eve of trial. The court awarded \$430,000 in attorneys’ fees for 1,638 hours
8 of work in a “hotly contested” dispute. *Id.* at *7–8. The court also found no adjustment to
9 the lodestar was appropriate. *Id.* at *7. Having reviewed the circumstances of those cases,
10 the court finds these comparable awards show Erhart’s lodestar is within the bounds of
11 reasonableness. Those awards do not, however, persuade the Court that the circumstances
12 here are exceptional and justify an enhancement—or a downward adjustment, for that
13 matter. *See Perdue*, 559 U.S. at 552.

14 Remaining Factors. The Court has considered the parties’ arguments on the
15 remaining factors, including time limitations and the claimed undesirability of the case.
16 (*See* Mot. 11:20–12:25; Opp’n 17:8–20:13.) On balance, the *Kerr* factors show no
17 adjustment to the lodestar is appropriate. The Court finds the “strong presumption that the
18 lodestar is sufficient” carries here. *See Perdue*, 559 U.S. at 549.

19 **IV. State Law Multiplier**

20 Finally, although the Court will not enhance the lodestar under federal law, the Court
21 considers whether it is nonetheless appropriate to do so under state law. “Unlike federal
22 law, California law allows for a multiplier of the lodestar to compensate for the risk of
23 contingent representation.” *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1112 (9th
24 Cir. 2014) (citing *Ketchum v. Moses*, 24 Cal. 4th 1122, 1135–38 (2001)). This distinction
25 stems from *City of Burlington v. Dague*, 505 U.S. 557, 567 (1992), where the Supreme
26 Court held a federal fee-shifting statute authorizing reasonable attorneys’ fees does not
27 permit an “enhancement for contingency” to the lodestar. The California Supreme Court
28 later declined to adopt the policy arguments underpinning *Burlington* and reaffirmed that

1 a lodestar enhancement is available for “contingent risk” under state law. *Ketchum*, 24
2 Cal. 4th at 1138.

3 Hence, when considering whether to adjust a lodestar, California courts assess “the
4 contingent nature of the fee award,” along with “the novelty and difficulty of the questions
5 involved,” “the skill displayed in presenting them,” and “the extent to which the nature of
6 the litigation precluded other employment by the attorneys.” *California DUI Laws. Assn.*
7 *v. Dep’t of Motor Vehicles*, 77 Cal. App. 5th 517, 535–36 (2022). Yet the court “should
8 not consider these factors to the extent they are already encompassed within the lodestar.”
9 *Ketchum*, 24 Cal. 4th at 1138. For example, the skill factor is particularly “susceptible to
10 improper double counting; for the most part, the difficulty of a legal question and the
11 quality of representation are already encompassed in the lodestar.” *Id.* Similarly, where
12 the reasonable hourly rates used in the lodestar are already adjusted for contingency risk, a
13 court should not “consider that factor again in determining whether to apply an
14 enhancement.” *California DUI Laws. Assn.*, 77 Cal. App. 5th at 537. “Of course, the trial
15 court is not *required* to include a fee enhancement to the basic lodestar figure for contingent
16 risk” or the other factors. *Ketchum*, 24 Cal. 4th at 1138; *see also Kennedy Comm’n v. City*
17 *of Huntington Beach*, 91 Cal. App. 5th 436, 467 (2023) (“The award of a multiplier is in
18 the end a discretionary matter largely left to the trial court.”).

19 The purpose of an adjustment based on contingency risk “is to fix a fee at the fair
20 market value for the particular action.” *Ketchum*, 24 Cal. 4th at 1132. The court, in effect,
21 “determines, retrospectively, whether the litigation involved a contingent risk . . . justifying
22 augmentation of the unadorned lodestar in order to approximate the fair market rate for
23 such services.” *Id.* The party seeking a multiplier bears the burden of proof. *Id.* at 1138.

24 Erhart correctly identifies the Court may consider contingency risk for his state law
25 fee-shifting claim. (Mot. 5 n.1.) His counsel states this case “was a huge risk as a
26 contingency matter” given the scope of litigation, including “scores of depositions of
27 current and former employees and three experts.” (Gillam Decl. ¶ 22; *see also id.* ¶ 35.)
28 The declarations from supporting practitioners mentioned above likewise express that

1 contingency enhancements are necessary in circumstances like here to compensate for the
2 risk Erhart’s counsel assumed. (Pine Decl. ¶¶ 14–15; Harrison Decl. ¶¶ 39, 40–42.) The
3 Bank’s Opposition argues no multiplier is appropriate but does not wade into California
4 law on contingency enhancements, which is unsurprising given Boff believes Erhart is not
5 entitled to recover fees under state law.¹²

6 Comparable cases span the spectrum. And they often involve additional factors
7 aside from contingency risk. *See, e.g., Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776
8 (9th Cir. 2018) (affirming 2.0 state law multiplier where court considered counsel’s
9 “substantial financial risk,” “the difficulty of representing prisoners with the . . . highest
10 security classifications,” and “the opportunity costs the years-long litigation” required);
11 *Sargent v. Bd. of Trustees of Cal. State Univ.*, 61 Cal. App. 5th 658, 675 (2021) (affirming
12 2.0 multiplier based on “novelty and difficulty of the questions presented, the skill
13 displayed in presenting them, and the extent to which the nature of the litigation precluded
14 other employment”); *Polee v. Cent. Contra Costa Transit Auth.*, 516 F. Supp. 3d 993, 1003
15 (N.D. Cal. 2021) (awarding 1.2 state law multiplier “to account for the contingent risk and
16 preclusion of other work, as well as the results obtained, which as noted *supra* consisted of
17 a significant monetary award to a civil rights plaintiff as well as conferring a public
18 benefit”); *Herron v. Cnty. of Los Angeles*, No. B295184, 2021 WL 5818378, at *12 (Cal.
19 Ct. App. Dec. 8, 2021) (affirming trial court’s denial of multiplier in employment case
20 where results were modest, lawyers were competent but not highly skilled, and the market
21 rate of the plaintiff’s attorneys adequately compensated for their contingency risk and
22

23
24 ¹² Boff’s expert declaration addresses this point and cites a California Court of Appeal decision,
25 *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128 (1998), to argue a contingency enhancement is
26 inappropriate here. (Jardini Decl. ¶ 65.) This legal argument belongs in a brief, not an expert declaration.
27 Regardless, the *Weeks* decision predates the seminal California Supreme Court case on contingency
28 enhancements and is therefore questionable authority. *See Rodriguez v. Cal. Dep’t of Just.*, No. C064756,
2012 WL 272135, at *16 (Cal. Ct. App. Jan. 31, 2012) (“To the extent the *Weeks* court downplayed the
significance of the contingent nature of a fee award in a FEHA case as a basis for applying a multiplier,
we find that court’s discussion inconsistent with our Supreme Court’s later discussion of the contingency
factor in *Ketchum v. Moses*”).


1 skill); *McElwain v. Kaiser Found. Hosps.*, No. G055049, 2018 WL 6696696, at *4–5 &
2 n.4 (Cal. Ct. App. Dec. 20, 2018) (affirming negative multiplier in discrimination case
3 where market rates compensated for contingency risk and plaintiff achieved limited
4 success).

5 Here, the Court underscores that it “is not required to include a fee enhancement to
6 the basic lodestar figure for contingent risk.” *Ketchum*, 24 Cal. 4th at 1138 (emphasis
7 omitted). Moreover, Erhart does not persuasively show the requested 2.0 to 3.0 multiplier
8 is justified based on contingency risk—or any other factor. Ultimately, having considered
9 Erhart’s counsel’s submissions, this case’s circumstances, and the caselaw, the Court finds
10 a modest multiplier of 1.1 is appropriate to account for contingency risk, which adjusts the
11 fee total from \$2,186,872.00 to \$2,405,559.20.

12 CONCLUSION

13 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
14 Erhart’s Motion for Attorneys’ Fees. The Clerk of Court shall enter an amended judgment
15 that awards Erhart \$2,405,559.20 in attorneys’ fees.

16
17 **DATED: September 28, 2023**

18 
19 **Hon. Cynthia Bashant**
20 **United States District Judge**

Appendix 1: Challenges to Accuracy & Content of Time Entries

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	9/5/2016	CG	Draft documents: Finalize motion opp docs	3.3	3.3	<i>See Fischer v. SJB-P.D. Inc.</i> , 214 F.3d 1115, 1121 (9th Cir. 2000) (noting court may reduce a fee request that is “not based on contemporaneous records,” “poorly documented,” or “excessive”)
Work in entry did not occur or did not occur on the date claimed	10/13/2016	CG	Deposition: Prep for and defend client depo	9.2	9.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	3/15/2017	CG	Deposition: Prep client for depo	1.4	1.4	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	3/16/2017	CG	Deposition: Prep for and defend client depo	8.8	8.8	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	3/20/2017	CG	Court hearing: Prep for and attend MSC	8.3	8.3	Counsel concedes this entry was a mistake
Work in entry did not occur or did not occur on the date claimed	3/22/2017	CG	Draft documents: Draft opp to motion for reconsideration	1.9	1.9	<i>See Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	3/12/2018	CG	Draft documents: Review, revise notice of interested parties	0.3	0.3	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	3/13/2018	CG	Deposition: Prep for and take Tolla depo (+PMQ)	7.7	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/5/2018	CG	Draft documents: Review and review joint motion for PO	0.4	0.4	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	10/14/2018	CG	Draft documents: Review and revise joint motion re disco dispute 5	0.2	0.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	11/11/2018	CG	Draft documents: Research and draft reply to MJP	2.2	2.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	12/2/2018	CG	Deposition: Prep for Koll depo	3.3	0.8	<i>See Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	12/3/2018	CG	Deposition: Prep for and travel to Koll depo in Texas	9.9	2.5	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	12/4/2018	CG	Deposition: Prep for and take Koll depo in Texas, return to LA	12.2	3.1	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	12/13/2018	CG	Draft documents: Review and revise jt motion on disco dispute 7	0.4	0.4	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	6/13/2019	CG	Draft documents: Research and draft opp to MSJ	8.8	8.8	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	6/14/2019	CG	Draft documents: Finalize opp to MSJ (numerous docs)	5.1	5.1	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	6/26/2019	CG	R&D Reply brief to Daubert motion R&D Opp MSJ R&D joint statement	10.6	10.6	<i>See Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	6/27/2019	CG	Draft documents: Finalize pleadings re motions	3.4	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	8/15/2019	CG	Draft documents: Review and revise joint motion re disco dispute 4	0.4	0.4	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	8/16/2019	CG	Draft documents: Review and revise ex parte app, supporting dec to continue deadline to bring motion re disco responses	1.6	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	8/21/2019	CG	Review documents: Review opp to ex parte app	0.2	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	8/22/2019	CG	Review documents: Review order denying ex parte app	0.1	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/4/2019	CG	Review documents: Review detailed order re MTC	0.3	0.3	<i>See Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	9/5/2019	CG	Review documents: Review motion for judgment on pleadings	0.6	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/6/2019	CG	Draft documents: Review and revise joint motion re experts scheduling	0.4	0.4	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	9/6/2019	CG	Draft documents: Review motion for amended scheduling order	1.2	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/22/2019	CG	Draft documents: Research and draft opp to motion for judgment on pleadings	2.2	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/24/2019	CG	Draft documents: Review and revise dec ISO opp to MJP	0.3	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/24/2019	CG	Draft documents: Draft section on UCL	0.6	0.0	Counsel satisfactorily explains there was a typographical error

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	9/25/2019	CG	Draft documents: Finalize opp to motion for judgment on pleadings	1.7	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	9/26/2019	CG	Review documents: Review order granting motion to continue trial	0.2	0.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	10/3/2019	CG	Review documents: Review reply to motion for judgment on pleadings	0.2	0.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	4/11/2021	CG	Draft documents: R&D opps to MILS	2.6	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	4/12/2021	CG	Draft documents: R&D opps to MILS	1.5	0.0	Counsel satisfactorily explains there was a typographical error
Work in entry did not occur or did not occur on the date claimed	4/13/2021	CG	Draft documents: Finalize opps to MILS	2.2	0.0	Counsel satisfactorily explains there was a typographical error

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work in entry did not occur or did not occur on the date claimed	1/27/2022	CG	Court hearing: Prep for and attend status conference (court confirm trial proceeding on 2/1/22)	1.2	1.2	<i>See Fischer</i> , 214 F.3d at 1121
Work in entry did not occur or did not occur on the date claimed	4/16/2022	CG	Draft documents: Draft TCR, exhibit thereto	1.3	1.3	<i>See Fischer</i> , 214 F.3d at 1121;
Work in entry did not occur or did not occur on the date claimed	8/29/2022	CG	Trial: Prep and deliver closing, rebuttal	7.9	0.0	Counsel satisfactorily explains there was a typographical error
Ehart provides insufficient details for paralegals	Various	PA	Various	779.9	117.0	<i>See supra</i> Order Part II.B.4 (discussing inadequate paralegal entries)

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done prior to lawsuit that is not necessary precursor to the suit	3/22/2015	CG	Review client docs: Review client docs, research and draft SEC whistleblower complaint necessities	2.6	2.6	<i>See Hensley v. Eckerhart</i> , 461 U.S. 424, 434 (1983) (providing the fee claimant has the burden to demonstrate that the number of hours spent was “reasonably necessary” to the litigation and that counsel made “a good faith effort to exclude from [the] fee request hours that are excessive, redundant, or otherwise unnecessary”); <i>see also Webb v. Bd. of Educ. of Dyer Cnty., Tenn.</i> , 471 U.S. 234, 235 (1985) (reasoning no abuse of discretion to exclude prelitigation time where plaintiff did not show the work performed “was both useful and of a type ordinarily necessary to advance the . . . litigation”)
Work done prior to lawsuit that is not necessary precursor to the suit	4/10/2015	CG	Draft documents: Research and draft IRS complaint	1.9	1.9	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	4/13/2015	CG	Draft documents: Research and draft TCR	2.3	2.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done prior to lawsuit that is not necessary precursor to the suit	4/15/2015	CG	Correspond with: Emails with associate, staff re more revisions to SEC TCR	1.1	1.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	4/16/2015	CG	Correspond with: Emails with staff confirming SEC must sign for package with complaint, USB	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	4/30/2015	CG	Correspond with: Email from IRS re WB complaint	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	5/18/2015	CG	Correspond with: emails t/f client re NYT reporter reached out (Said ignore for now)	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	7/24/2015	CG	Correspond with: emails t/f client re speaking to reporter	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done prior to lawsuit that is not necessary precursor to the suit	7/26/2015	CG	Telecon: telecom w/client re press inquiry etc.	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	8/17/2015	CG	Telecon: Prep for and telecom w/Eavis	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done prior to lawsuit that is not necessary precursor to the suit	8/22/2015	CG	Review documents: review extensive article re BofI; emails re same	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Webb</i> , 471 U.S. at 235
Work done during lawsuit that is not reasonably necessary	10/14/2015	SH	Calls re various public inquiries, correspondence w/ CG and individuals re same.	1.1	1.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook v. City of Westminster</i> , 177 F.3d 839, 877 (9th Cir. 1999) (noting court has discretion to determine if “media and public relations activities . . . contributed directly and substantially to” the plaintiff’s victory)
Work done during lawsuit that is not reasonably necessary	10/14/2015	SH	Call w/ SEC re files.	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	12/16/2015	CG	Telecon SEC re filing amicus brief; discuss same with client	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/1/2016	CG	Telecon: telecom with SEC and then with client re WB protections	0.9	0.9	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/11/2016	CG	Review documents: Review Houston MPES amended complaint	0.3	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/20/2016	SH	Review Houston complaint, correspondence.	0.4	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	8/17/2016	SH	Review media coverage, corr. w/ client and CG re case, discovery. Review doc production from Bofl.	0.9	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	2/22/2017	SH	Review media re case.	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	3/3/2017	SH	Draft press release and correspondence re rulings on MTQ and MSA. Corr. w/ CG re same.	1.8	1.8	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	3/13/2017	SH	Review whistleblower news relevant to case.	0.4	0.4	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	4/8/2017	CG	Review documents: Review numerous media stories about case, holding	0.4	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	4/25/2017	SH	Draft response re media inquiry.	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	9/14/2017	SH	Draft submission to media re MTD.	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	1/8/2018	SH	Review corr. from AAA re hearing date.	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	7/2/2018	CG	Correspond with: Emails re dismissal of shareholder suits	0.2	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	8/5/2018	CG	Correspond with: Emails t/f client re status of SEC investigation, TCRs etc.	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	10/29/2018	SH	Review corr. re co-counsel.	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	5/17/2019	SH	Review file, prep materials for possible co-counsel.	2.1	2.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/1/2020	CG	Review documents: Review court's 90 page ruling on MSJs; emails with client, press re same	0.8	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	4/1/2020	SH	Review correspondence from CNS re Court Order	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	4/1/2020	SH	Various correspondence with CG re CNS inquiry re Court order	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	4/1/2020	SH	Review documents: news re MSJ	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	4/6/2020	CG	Correspond with: Review notice of withdrawal	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/6/2020	SH	Review documents: notice of withdrawal	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/9/2021	SH	Correspond with CG re class case	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	4/9/2021	SH	Correspond with counsel re class case	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	4/10/2020	CG	Review documents: Review national publication article on MSJ ruling	0.2	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877
Work done during lawsuit that is not reasonably necessary	2/10/2021	SH	Analyze issues re Houston lawsuit, corr. w/ CG re same	0.5	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	2/10/2021	SH	Review correspondence from CG re Houston lawsuit	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	7/26/2021	CG	Correspond with: Emails t/f counsel in SH. Suit v. BofI	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	10/5/2021	PA	Attorney conference with Benson (class action against BofI)	0.5	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	10/8/2021	PA	Check witness information for Benson	0.2	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	10/12/2021	PA	Call to Benson, attorneys in class action against BofI	0.7	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/28/2021	SH	Interoffice correspondence re Mika's appearance	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/28/2021	SH	Interoffice correspondence re Mika's appearance	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/28/2021	SH	Interoffice correspondence re Mika's appearance	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/28/2021	SH	Interoffice correspondence re notice of appearance further	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/29/2021	SH	Interoffice correspondence re counsel agreements	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	12/29/2021	SH	Interoffice correspondence re counsel agreements further	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/29/2021	SH	Interoffice correspondence re counsel agreements further	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	12/29/2021	SH	Review documents: executed fee sharing consent form	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	1/14/2022	SH	Interoffice correspondence re emails re MH appearance	0.4	0.4	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	1/14/2022	SH	Research re MH appearance issues	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	1/19/2022	SH	Interoffice correspondence re arb stip	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	2/8/2022	SH	Interoffice correspondence re Bofl shareholder suit	0.3	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	2/8/2022	SH	Research re Bofl shareholder suit settlement	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	2/8/2022	SH	Interoffice correspondence re Bofl shareholder suit further	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	2/23/2022	SH	Research re D-F issue	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/17/2022	SH	Interoffice correspondence re MH withdrawal	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/17/2022	SH	Research re MH withdrawal	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	3/17/2022	SH	Interoffice correspondence re MH withdrawal	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/22/2022	SH	Review documents withdrawal motion for Mika	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/22/2022	SH	Interoffice correspondence re withdrawal motion for Mika	0.2	0.2	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/22/2022	SH	Interoffice correspondence re appearance at hearing	0.3	0.3	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	3/29/2022	SH	Correspond with CG re securities case	0.1	0.0	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121
Work done during lawsuit that is not reasonably necessary	5/23/2022	SH	Draft documents press release re verdict	0.8	0.8	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877 (noting hours spent publicizing verdicts not compensable)

Challenge	Date	Name	Narrative	Hours Claimed	Hours Excluded	Explanation
Work done during lawsuit that is not reasonably necessary	5/24/2022	SH	Further edit press release and submit to outlets, interoffice corr. re same	2.1	2.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877 (noting hours spent publicizing verdicts not compensable)
Work done during lawsuit that is not reasonably necessary	6/10/2022	SH	Draft documents: answers to verdict write-up questions	0.4	0.4	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877 (noting hours spent publicizing verdicts not compensable)
Work done during lawsuit that is not reasonably necessary	6/24/2022	SH	Review documents: FAC re verdict write-up, corr. w/ CG re same	0.1	0.1	<i>See Hensley</i> , 461 U.S. at 434; <i>see also Fischer</i> , 214 F.3d at 1121; <i>Gilbrook</i> , 177 F.3d at 877 (noting hours spent publicizing verdicts not compensable)
Time spent on fee motion is excessive	Various	CH SH PA	Preparation of fee motion	100.4	0	Erhart is entitled to recover fees for seeking fees, <i>see Gonzalez v. City of Maywood</i> , 729 F.3d 1196, 1210 (9th Cir. 2013), and the time spent is not excessive in light of the scope of the motion

Totals:

CH	82.8
SH	13.4
PA	117