

1 invited LG to submit evidence of their attorneys’ fees. (*Id.* at 25.¹) LG timely filed their
2 Motion for Attorneys’ Fees, which the Court now considers.

3 LEGAL STANDARD

4 The Lanham Act provides that in “exceptional cases” the court “may award
5 reasonable attorney fees to the prevailing party.” 15 U.S.C. § 1117(a).² “To determine what
6 fee should be awarded, the court must first determine the ‘lodestar,’ which is the number
7 of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.”
8 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 406 (9th Cir. 1990); *see*
9 *also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (“The most useful starting point for
10 determining the amount of a reasonable fee is the number of hours reasonably expended
11 on the litigation multiplied by a reasonable hourly rate.”). There is a “strong presumption”
12 that the lodestar represents the reasonable fee. *City of Burlington v. Dague*, 505 U.S. 557,
13 562 (1992). “Next, in appropriate cases, the district court may adjust the ‘presumptively
14 reasonable’ lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild,*
15 *Inc.*, 526 F.2d 67, 69–70 (9th Cir. 1975) (*Kerr*), *cert. denied*, 425 U.S. 951, 96 S. Ct. 1726,
16 48 L.Ed.2d 195 (1976), that have not been subsumed in the lodestar calculation.” *Intel*
17 *Corp. v. Terabyte Int’l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993).³ “The lodestar amount
18 presumably reflects the novelty and complexity of the issues, the special skill and
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21 ¹ Pin citations to docketed material refer to the CM/ECF numbers electronically stamped at the top of each
22 page.

23 ² The Court has already determined that this case is exceptional as applied to the Defaulting Defendants.
(*See* Amended D.J. Order 24–25.)

24 ³ The *Kerr* factors are: (1) the time and labor required, (2) the novelty and difficulty of the questions
25 involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other
26 employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is
27 fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount
28 involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the
‘undesirability’ of the case, (11) the nature and length of the professional relationship with the client, and
(12) awards in similar cases. *See Intel Corp.*, 6 F.3d at 622.

1 experience of counsel, the quality of representation, and the results obtained from the
2 litigation.” *Id.*

3 ANALYSIS

4 LG seek a total of \$383,134.35⁴ in attorneys’ fees apportioned per Defaulting
5 Defendant. The Court will now consider the reasonableness of the hourly rates and the
6 hours expended.

7 I. Reasonableness of Rate

8 “To inform and assist the court in the exercise of its discretion, the burden is on the
9 fee applicant to produce satisfactory evidence—in addition to the attorney’s own
10 affidavits—that the requested rates are in line with those prevailing in the community for
11 similar services by lawyers of reasonably comparable skill, experience and reputation.
12 *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). “The relevant community is that in which
13 the district court sits.” *Weeks v. Kellogg Co.*, 2013 WL 6531177, No. CV 0908102(MMM)
14 (RZx), at *32 (C.D. Cal. Nov. 23, 2013) (citing *Schwarz v. Sec’y of Health & Human*
15 *Servs.*, 73 F.3d 895, 906 (9th Cir. 1995)). “In establishing the reasonable hourly rate, the
16 court may take into account: (1) the novelty and complexity of the issues; (2) the special
17 skill and experience of counsel; (3) the quality of representation; and (4) the results
18 obtained.” *Kilopass Tech., Inc. v. Sidense Corp.*, 82 F. Supp. 3d 1154, 1170 (N.D. Cal.
19 2015).

20 The billing rates for Finnegan attorneys and summer associates working on this case
21 ranged from \$130 to \$890, depending on the individual’s experience. (Decl. of Mark
22 Sommers in Supp. of Pls.’ Mot. for Att’ys’ Fees (“Sommers Decl.”) ¶ 3, ECF No. 136-2.)
23 Mr. Sommers, the lead counsel for LG since the inception of this case, was the only
24 attorney charging \$850 to \$890 per hour, (*id.* ¶¶ 2–3), and LG further notes that Finnegan
25 partners billed an average of \$695 per hour, (Fee Mot. Suppl. Mem. 3). The billing rate for
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27 ⁴ LG originally sought \$405,443.69 in attorneys’ fees. (*See generally* Fee Mot.) However, LG is willing
28 to reduce the hourly rates of their paralegal work, which shaves \$22,309.34 off of the original request.
(Fee Mot. Suppl. Mem. 8.)

1 Finnegan paralegals ranged from \$210 to \$350, depending on the individual’s level of
2 experience and responsibilities. (*Id.* ¶ 12.) In support of these rates LG cites market reports
3 detailing the prevailing rates for intellectual property attorneys in San Diego and cases
4 from this district discussing and finding reasonable similar rates. For the reasons outlined
5 below, this evidence persuades the Court that these hourly rates are reasonable. *See United*
6 *Steelworkers*, 896 F.2d at 407 (“Affidavits of the plaintiffs’ attorney and other attorneys
7 regarding prevailing fees in the community, and rate determinations in other cases,
8 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the
9 prevailing market rate.”).

10 The Court finds these rates reasonable for a number of reasons. For one, Finnegan
11 is an international intellectual property firm with numerous accolades for its intellectual
12 property work. (Sommers Decl. ¶ 17 (collecting awards).) In addition, courts recognize that
13 intellectual property work requires specialized knowledge. *See, e.g., Yufa v. TSI Inc.*, No.
14 09-cv-01315-KAW, 2014 WL 4071902, at *5 (N.D. Cal. Aug. 14, 2014). Moreover, LG
15 obtained favorable results in this case, including a temporary restraining order, preliminary
16 and permanent injunctive relief, and statutory damages of over \$168,000,000 spread out
17 over the Defaulting Defendants. (*See generally* Amended D.J. Order.)

18 Furthermore, Finnegan’s hourly rates are in line with other cases in this district
19 approving similar fee requests by peer law firms. *See, e.g., Zest IP Holdings, LLC v.*
20 *Implant Direct Mfg., LLC*, No. 10-CV-0541-GPC WVG, 2014 WL 6851612, at *5 (S.D.
21 Cal. Dec. 3, 2014) (finding rates reasonable where plaintiffs sought “an hourly rate of
22 between \$170 per hour and \$895 per hour depending on the particular attorney or
23 paralegal” for work by a “multi-state/national law firm”). As for partner billing rates,
24 Finnegan’s rates appear to be within the median range of billing rates in 2015 for
25 intellectual property suits in San Diego. *See Flowrider Surf, Ltd. v. Pac. Surf Designs, Inc.*,
26 No. 15CV1879-BEN (BLM), 2017 WL 2212029, at *3 (S.D. Cal. May 18, 2017) (citing a
27 publication noting that the 2015 median billing rates for intellectual property partners in
28 San Diego was between \$585.04 and \$727.50). Although Mr. Sommers’ rate of \$783 is

1 higher than this range, the Court finds that it is nevertheless reasonable because it falls
2 within the range of rates charged by intellectual property partners of similar experience
3 (which is \$331–\$870), (Fee Mot. Suppl. Mem. 3 (citing AIPLA 2015 Report of the
4 Economic Survey (“AIPLA Survey”) I-25)), and is less than the lead counsel rate
5 previously approved in *Zest*. See *Zest*, 2014 WL 6851612, at *5 (finding reasonable an
6 hourly rate of \$850–\$895 for the plaintiffs’ lead counsel). Thus, the Court finds reasonable
7 the rates charged by Finnegan partners in this case.

8 The associate billing rates are also reasonable. Finnegan associates billed between
9 \$370 and \$488, for an average of \$415. (Fee Mot. Suppl. Reply 4.) This average is within
10 \$2 of the median billing rate in 2015 for intellectual property associates in San Diego, (*id.*
11 (citing *Flowrider Surf*, 2017 WL 2212029, at *3 (noting that the average was \$413.80)),
12 and in some cases is lower than the rates approved by other courts in this district, (*id.* at 4–
13 5 (citing *Zest*, 2014 WL 6851612, at *5–6)). LG notes that only one of its associate’s rate
14 of \$444 falls outside the AIPLA Survey range. (*Id.* at 5.) The Court nevertheless finds this
15 departure reasonable given that it is a small departure and that the *Zest* Court found
16 reasonable a \$565 hourly rate for an associate with similar experience. *Zest*, 2014 WL
17 6851612, at *5. Thus, the Court finds reasonable the rates charged by the Finnegan
18 associates in this case. (See also Fee Mot. Suppl. Mem. 5–6 (providing a chart that lists
19 each attorney’s experience level and billing rate (accounting for LG’s fee agreement) and
20 compares these rates to the AIPLA Survey, the 2016 Real Rate Report, and rates previously
21 found reasonable in this district).)

22 Finally, the Court finds reasonable the paralegal rates. Here, Finnegan paralegals
23 billed between \$184.80 and \$308 per hour, accounting for LG’s fee agreement. (Fee Mot.
24 Suppl. Mem. 7.) However, LG notes that in this District paralegal rates between \$125 and
25 \$175 are generally approved and have been approved as high as \$290. (*Id.* (citing *In re*
26 *Maxwell Techs., Inc., Derivative Litig.*, No. 13-cv-966-BEN (RBB), 2015 WL 12791166,
27 at *5 (S.D. Cal. July 13, 2015) (awarding \$225 paralegal rate to paralegals with “significant
28 experience”); *Brighton Collectibles, Inc. v. Coldwater Creek Inc.*, No. 06-cv-01848-H

1 (POR), 2009 WL 160235, at *4 (S.D. Cal. Jan. 20, 2009) (concluding that \$90 to \$210 per
2 hour was reasonable for paralegal work in a copyright infringement action); *Flowrider*
3 *Surf*, 2017 WL 2212029, at *3 (awarding paralegal fees of \$150 per hour in a patent
4 infringement case)).) Given this authority, LG is willing to reduce the hourly rate for most
5 of their paralegals to \$175 per hour. (*Id.*) The Court finds such a reduction reasonable,
6 particularly because Finnegan’s paralegals have significant experience in their respective
7 positions, in most cases over ten years. (*Id.* (citing Sommers Decl., ¶¶ 12–16).) Two
8 paralegals have a rate of \$225 per hour, which the Court finds reasonable given that they
9 both have been paralegals for over twenty years. (*Id.* (citing Sommers Decl. ¶¶ 12, 15));
10 *see also Maxwell Techs.*, 2015 WL 12791166, at *5 (approving a \$225 rate for paralegals
11 with “significant experience”). Thus, the Court finds reasonable the rates charged by
12 Finnegan paralegals in this case, and will adjust the final award accordingly. (*Id.* at 8
13 (providing downward calculations based on paralegal rate reduction).)

14 **II. Hours Reasonably Spent**

15 “The moving party bears the burden of documenting the appropriate hours spent in
16 the litigation and submitting evidence in support of the hours worked.” *Zest*, 2014 WL
17 6851612, at *6 (citing *Hensley*, 461 U.S. at 433); *see also Fischer v. SJB-P.D. Inc.*, 214
18 F.3d 1115, 1121 (9th Cir. 2000) (noting that a party satisfies its burden by listing the hours
19 spent and “identifying the general subject matter of [the] time expenditures”). “Even if the
20 opposing party has not objected to the time billed, the district court ‘may not uncritically
21 accept a fee request,’ but is obligated to review the time billed and assess whether it is
22 reasonable in light of the work performed and the context of the case.” *Zest*, 2014 WL
23 6851612, at *7 (citing *Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1079 (C.D. Cal.
24 2002)); *see also McGrath v. Cty. of Nev.*, 67 F.3d 248, 254 n.5 (9th Cir. 1995) (noting that
25 a court may not adopt the prevailing party’s representations without conducting an
26 independent review of the fee application).

27 The Court finds the hours spent reasonable for two reasons. First, LG provides
28 detailed monthly billing statements from counsel, as well as various charts summarizing

1 those statements. (Fee Mot. 3 (citing Sommers Decl. ¶ 19, Exs. 2–5).) These statements
2 reflect the date, amount, and nature of work LG’s attorney’s performed. (*Id.*) These fees
3 represent over a year of work on this case, from initiation to obtaining and enforcing a
4 temporary restraining and show cause order through default judgment. (*Id.* at 4.) After an
5 independent review of these billing statements, the Court finds that they reasonably
6 represent the hours spent in pertinent litigation against the Defaulting Defendants.

7 Second, LG reasonably apportioned their fees as to each Defendant. LG’s
8 calculation of the lodestar was complicated by the complex nature of this case, including
9 the large number of defendants (22) and claims involved. To accurately apportion their
10 fees, LG conducted a thorough analysis of their attorneys’ billing statements, excluding
11 billing entries for Defendants Doe 1, Phuong Nguyen, Lam Le, Bestcom Wireless
12 Network, Inc., and N&K Trading, Inc. (collectively, the “Non-Defaulting Defendants”).
13 (*Id.* (citing Sommers Decl. ¶ 20).) Out of an abundance of caution, LG further excluded
14 any billing entries that encompassed work relating to the Defaulting Defendants and the
15 Non-Defaulting Defendants (i.e., LG does not seek fees for any overlapping work). (*Id.*)
16 And LG excluded all travel and correspondence costs from their calculation. (*Id.*) LG
17 categorized the remaining billing entries as follows:

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19 • Category 1: Entries that relate to Finnegan’s work on LG’s claims
20 against all defendants, *e.g.*, investigatory and preparatory work for the
21 complaint, work relating to LG’s motion for a temporary restraining
22 order, service efforts, etc. For purposes of allocating fees to each
23 individual Defaulting Defendant, the total in Category 1 has been
24 divided by 22 to reflect fees incurred per defendant.
- 25 • Category 2: Entries that relate to Finnegan’s work on LG’s claims
26 against Shenzhen ZL Times Technology Co., Shenzhen Powerfire
27 Technology Co. Ltd., Shenzhen Newsinte Electronics Co. Ltd., and
28 Shenzhen Leisen Technology Co., Ltd. (the “Shenzhen Defendants”),
e.g., LG’s *ex parte* application for an order to show cause (Dkts. 19, 20)
and LG’s response to the Court’s request for additional briefing on this
matter (Dkt. 37). For purposes of allocating fees to each individual

1 Shenzhen Defendant, the total in Category 2 has been divided by 4 to
2 reflect fees incurred per defendant.

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- 4 • Category 3: Entries that relate to Finnegan’s work on LG’s claims
5 against the Defaulting Defendants, e.g., LG’s motion for default
6 judgment. For purposes of allocating fees to each individual Defaulting
7 Defendant, the total in Category 3 has been divided by 17 to reflect fees
8 incurred per defendant.
 - 9 • Category 4: Entries that relate to Finnegan’s work on LG’s claims
10 against Yoon Hee Park and Herman Wheeler, Inc., e.g. service efforts.
11 Where possible, these entries were allocated to the appropriate
12 defendant. The total for the remaining entries in Category 4 has been
13 divided by 2 to reflect fees incurred per defendant.

14 (*Id.*)

15 LG then added the amounts from each category per Defaulting Defendant to arrive
16 at the following individualized totals:⁵

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Defendant	Attorney’s Fees Claimed
Xiaowen	\$21,383.54
Enjoy	\$21,383.54
Hosphone Electronic	\$21,383.54
Shenzhen Bingos	\$21,383.54
Shenzhen ZL	\$31,161.66
Winding Electronic	\$21,383.54
Shenzhen Powerfire	\$31,161.66
Newkingser	\$21,383.54

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28 ⁵ The Court notes that these totals are necessarily adjusted based on LG’s decision to lower their hourly rates for Finnegan’s paralegal work; this chart was submitted prior to LG making their decision.

Little Link	\$21,383.54
King Flash	\$21,383.54
Shenzhen Newsinte	\$31,161.66
Smart Link	\$21,383.54
Ruilin Tech	\$21,383.54
Shenzhen Leisen	\$31,161.66
Herman Wheeler	\$22,844.96
Lu	\$31,161.66
Park	\$22,733.15
TOTAL:	\$405,443.69

(*Id.* at 5–6.) Given the foregoing, the Court finds that LG has met their burden of documenting the appropriate hours spent in this case. In addition, The Court finds that LG have made “a good faith effort to exclude from [their] fee request hours that are excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434. Accordingly, the Court concludes that LG’s requested attorneys’ fees are reasonable and thus **GRANTS** LG’s Motion for Attorneys’ Fees.

CONCLUSION

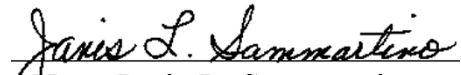
For the foregoing reasons, the Court **GRANTS** LG’s Motion for Attorneys’ Fees (ECF No. 136) and thus **AWARDS** LG \$383,134.35 in attorneys’ fees apportioned per Defendant pursuant to LG’s calculations, (Fee Mot. 5–6), and accounting for any variances in these calculations based on their decision to reduce the hourly rates of their paralegal work, (Fee Mot. Suppl. Mem. 8). Additionally, because this appears to be the final matter

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1 in this case, the Court **ORDERS** LG to show cause why this case should not be closed on
2 or before seven days from the date on which this Order is electronically docketed.

3 **IT IS SO ORDERED.**

4 Dated: September 5, 2017


5 Hon. Janis L. Sammartino
6 United States District Judge

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