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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 HERRING NETWORKS, INC.,
12 Plaintiff,
13 v.
14 RACHEL MADDOW, et al.,
15 Defendants.

Case No.: 3:19-cv-1713-BAS-AHG

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR ATTORNEY FEES
AND COSTS**

[ECF No. 35]

16
17 Before the Court is Defendants' Motion for Attorney Fees and Costs. ECF No. 35.
18 This matter was referred to the undersigned by District Judge Cynthia Bashant. ECF No. 30
19 at 16. For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN**
20 **PART** Defendants' motion.

21 **I. BACKGROUND**

22 Plaintiff Herring Networks, Inc. ("Plaintiff") filed a complaint for defamation
23 against Defendants Rachel Maddow, Comcast Corporation, NBCUniversal Media, LLC,
24 and MSNBC Cable LLC (collectively, "Defendants"). ECF No. 1. Plaintiff's claim
25 stemmed from a statement Rachel Maddow made on The Rachel Maddow Show on
26 MSNBC. *Id.* Soon after Plaintiff filed suit, Defendants filed a special motion to strike
27 pursuant to California Code of Civil Procedure § 425.16, commonly known as the Anti-
28 Strategic Lawsuits Against Public Participation ("anti-SLAPP") law. ECF No. 18. After
considering the parties' arguments, the Court found that "the contested statement is an

1 opinion that cannot serve as the basis for a defamation claim” and granted Defendants’
2 special motion to strike. ECF No. 30 at 16. Because the Court granted the anti-SLAPP
3 motion, Defendants were permitted to file a motion for attorney fees and costs. *Id.* (citing
4 CAL. CIV. PROC. CODE § 425.16(c)(1)). After Defendants filed their motion for attorney
5 fees and costs (ECF No. 35), the Court set a briefing schedule. ECF No. 36. Plaintiff timely
6 filed its opposition brief, and Defendants timely filed their reply brief. ECF Nos. 37, 38.
7 Plaintiff also filed objections to evidence submitted in Defendants’ motion and reply brief.
8 ECF Nos. 37-4, 39. This Order follows.

9 **II. LEGAL STANDARD**

10 Under California’s anti-SLAPP statute, “a prevailing defendant on a special motion
11 to strike shall be entitled to recover his or her attorney[] fees and costs.” CAL. CIV. PROC.
12 CODE § 425.16(c)(1). Under the anti-SLAPP statute, an award of attorney fees to a
13 prevailing defendant is mandatory. *Ketchum v. Moses*, 17 P.3d 735, 741 (Cal. 2001);
14 *Christian Research Inst. v. Alnor*, 81 Cal. Rptr. 3d 866, 871 (Ct. App. 2008). The anti-
15 SLAPP statute is “intended to compensate a defendant for the expense of responding to a
16 SLAPP suit. To this end, the provision is broadly construed so as to effectuate the
17 legislative purpose of reimbursing the prevailing defendant for expenses incurred in
18 extracting herself from a baseless lawsuit.” *Graham-Sult v. Clainos*, 756 F.3d 724, 752
19 (9th Cir. 2014) (quoting *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 45
20 Cal. Rptr. 3d 633, 637 (Ct. App. 2006)).

21 To determine a reasonable attorney fee award for an anti-SLAPP motion, the
22 California Supreme Court has found that “the lodestar adjustment approach should be
23 applied.” *Ketchum*, 17 P.3d at 744. For the lodestar approach, the Court begins by
24 “multiplying the number of hours reasonably spent on the litigation by a reasonable hourly
25 rate.” *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (citing *Hensley v.*
26 *Eckerhart*, 461 U.S. 424, 433 (1983)).

27 The party seeking attorney fees and costs carries the initial burden of production to
28 establish the reasonableness of the requested fee. *United States v. \$28,000.00 in U.S.*
Currency, 802 F.3d 1100, 1105 (9th Cir. 2015) (citing *Blum v. Stenson*, 465 U.S. 886, 895

1 n.11 (1984) and *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)). “To
2 inform and assist the court in the exercise of its discretion, the burden is on the fee applicant
3 to produce satisfactory evidence—in addition to the attorney’s own affidavits—that the
4 requested rates are in line with those prevailing in the community for similar services by
5 lawyers of reasonably comparable skill, experience and reputation.” *Blum*, 465 U.S. at 896
6 n.11. Once the applicant meets its burden of production, the court then determines whether
7 the fee is reasonable. *\$28,000.00 in U.S. Currency*, 802 F.3d at 1105 (citing *Blum*, 465 U.S.
8 at 895 n.11 and *Camacho*, 523 F.3d at 980). A court has broad discretion in determining
9 what is reasonable. *See Metabolife Int’l, Inc. v. Wornick*, 213 F. Supp. 2d 1220, 1222 (S.D.
10 Cal. 2002); *see, e.g., Garrison v. Ringgold*, No. 19cv244-GPC-RBB, 2019 WL 5684401,
11 at *3 (S.D. Cal. Nov. 1, 2019) (explaining that the “court has wide discretion in determining
12 the reasonableness of attorney[] fees.”) (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1398
13 (9th Cir. 1992)).

14 **III. DISCUSSION**

15 In the instant case, Defendants request an award of attorney fees in the amount of
16 \$347,244, based on 384.28 hours incurred in the process of strategizing, researching, and
17 briefing the anti-SLAPP motion, and the fee motion. ECF No. 38 at 3–5; *see* ECF No.
18 35-1 at 13–14.¹ Additionally, Defendants request costs in the amount of \$10,724.36. ECF
19 No. 38 at 6–7. Plaintiff counters that the Court should substantially reduce the fees to
20 \$84,995.80. ECF No. 37 at 6, 18. Plaintiff does not contend that Defendants’ requested
21 costs should be reduced. *Compare* ECF No. 35-2 at 26 (Defendants initially requested
22 \$9,706.28 in costs) *with* ECF No. 37 at 17 (Plaintiffs listed \$9,706.28 as a “reasonable []
23 rate” for initial costs).

24 **A. Evidentiary Objections**

25 As a preliminary matter, the Court considers Plaintiff’s evidentiary objections. First,
26 Plaintiff objects to various statements made within the Edelman declaration in support of
27 _____

28 ¹ Due to discrepancies between original and imprinted page numbers, page numbers for docketed materials cited in this Order refer to those imprinted by the Court’s electronic case filing system.

1 Defendants' attorney fees motion. ECF No. 37-4 (citing ECF No. 35-2). Second, Plaintiff
2 objects to evidence included in Defendants' reply brief. ECF No. 39. The Court will
3 address these objections in turn.

4 ***1. Objections to the Declaration of Scott A. Edelman in support of***
5 ***Defendants' Motion for Attorney Fees and Costs***

6 Plaintiff objects to fifteen statements in the Edelman declaration. ECF No. 37-4 at
7 2–9. A few examples of Mr. Edelman's statements at issue include his representations that
8 “[s]ubstantial efforts went into the preparation of this dispositive motion;” “Defendants’
9 counsel also researched the case law surrounding substantially true speech;” “Gibson Dunn
10 was retained on a modified contingency fee basis NBCU agreed to pay Defendants’ counsel
11 a rate of \$100,000 for the filing and argument on the Anti-SLAPP Motion;” and “[b]ased
12 on my reading of the relevant case law, fee applications submitted in other district courts
13 in California, and my overall familiarity with rates charged by my firm’s competitors, it is
14 my understanding that these rates are comparable to the rates charged by peer firms and
15 attorneys with similar skill and experience.” *Id.* (quoting ECF No. 35-2). Plaintiff’s
16 objections are based on a range of evidentiary principles, such as hearsay, relevance,
17 vagueness, lack of foundation, speculation, lack of authentication, improper legal
18 conclusions, and unfair prejudice outweighing probative value. ECF No. 37-4 at 2–9.
19 Defendants contend that Plaintiff’s objections lack merit and are “nothing more than a
20 collateral” attack on Defendants’ motion. ECF No. 38 at 5 n.3. Defendants argue that the
21 facts and observations set forth in the Edelman declaration are based on his personal
22 knowledge and experience, and relate directly to their motion. *Id.*

23 Plaintiff’s objections are largely boilerplate objections that cite to evidentiary rules
24 without analysis. *See, e.g., Obesity Research Inst., LLC v. Fiber Research Int’l, LLC*, 310
25 F. Supp. 3d 1089, 1107 (S.D. Cal. 2018). Plaintiff’s objections based on lack of personal
26 knowledge, lack of foundation, improper opinion, and hearsay are overruled. There is no
27 information to contradict Mr. Edelman’s testimony that the statements in his declaration
28 are within his personal knowledge and based on his review of the business records in this
case. *See Makaeff v. Trump Univ., LLC*, No. 10cv940-GPC, 2015 WL 1579000, at *2–*3,

1 *4 n.5 (S.D. Cal. April 9, 2015) (overruling similar objections); *Banga v. First USA, NA*,
2 29 F. Supp. 3d 1270, 1275 n.2 (N.D. Cal. 2014) (“personal knowledge can come from the
3 review of the contents of business records and an affiant may testify to acts that she did not
4 personally observe but which have been described in business records”).

5 As for the remaining objections, “[t]he Court notes the objections. To the extent that
6 the evidence is proper under the Federal Rules of Evidence, the Court considered the
7 evidence. To the extent the evidence is not proper, the Court did not consider it.” *Makaeff*,
8 2015 WL 1579000, at *4 n.5.

9 **2. Objections to Defendants’ Reply Brief**

10 Plaintiff also objects to evidence included in Defendants’ reply brief, specifically
11 Defendants’ submission of a 2014 motion for attorney fees filed by Plaintiff’s counsel,
12 Miller Barondess LLP, in *Margosian v. Bank of the West*. ECF No. 39 at 2 (citing ECF No.
13 38-3). Since reply briefs are limited to matters raised by the opposition or unforeseen at the
14 time of the original motion, Plaintiff argues that it was improper for Defendants to submit
15 the *Margosian* fee application for the first time with its reply. ECF No. 39 at 2.

16 The remainder of Plaintiff’s objection contains unauthorized argument,
17 distinguishing *Margosian* to undermine Defendants’ fee application in the instant case by
18 noting the differences in procedural posture, hourly rates, and staffing levels. ECF No. 39
19 at 2–3. Although the Court would normally consider striking information from a reply that
20 raises new evidence or argument, it will not do so here. Plaintiff is not prejudiced by
21 Defendants’ reference to the *Margosian* fee application, since the Court will also consider
22 the arguments presented by Plaintiff in its objections, which are in effect an unauthorized
23 sur-reply.²

24 //

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26
27 ² The practical effect of this is minimal, since the *Margosian* fee application is entitled to
28 little weight. The *Margosian* fee application is from a state court within the Eastern District
of California, outside the relevant community for attorney rates, and the court’s ruling on
the motion offers no analysis of the court’s reasoning. *See Margosian v. Bushell*, No. 10-
VCU-238202, 2014 WL 12650875, at *5 (Cal. Super. Ct. Oct. 24, 2014).

1 **B. Parties’ Positions Regarding Attorney Fees**

2 In their motion, Defendants seek fees for 384.28³ hours of work, and contend that
3 the number of hours are reasonable because they are related to briefing the anti-SLAPP
4 motion, responding to Plaintiff’s motion to supplement the record, or briefing the instant
5 attorney fees motion and reply brief. ECF No. 35-1 at 13–14; ECF No. 38 at 3. Defendants
6 seek hourly rates ranging from \$1,335 to \$1,525 per hour for partners, \$625 to \$960 per
7 hour for associates, \$460 per hour for paralegals, and \$270 for researchers. ECF No. 35-2
8 at 5–6. Defendants contend that these billing rates are reasonable by touting the experience
9 of their staff and comparing their rates with fee awards in multiple cases in the Central
10 District and Northern District of California. ECF No. 35-1 at 17–18. In support of their
11 motion, Defendants provided a declaration from Mr. Edelman itemizing time spent on each
12 task and amount spent on each cost (ECF No. 35-2); biographies of the partners, senior
13 associate, and mid-level associates who worked on the case (ECF Nos. 35-3, 35-4, 35-5,
14 35-6, 35-7); the transcript of the oral argument on the anti-SLAPP motion (ECF No.
15 35-8); an April 2020 Northern District bankruptcy court attorney fee application from
16 another law firm with similar billing rates (ECF No. 35-9); and excerpts from the 2020 and
17 2018 Thomson Reuters Public Rates Reports (ECF Nos. 35-10, 35-11).

18 As for Defendants’ hourly rate, Plaintiff argues that Defendants are not relying on
19 the “relevant community,” the district in which the lawsuit is pending, which is the
20 Southern District of California. Plaintiff notes that the reasonable rates in the Southern
21 District are much lower than the examples used by Defendants from the Central District or
22 Northern District. ECF No. 37 at 5–6, 9–11. Thus, Plaintiff requests that the Court reduce
23 the recoverable hourly rates to \$535 for partners, \$300 for senior associates, and \$260 for
24 junior associates. *Id.* at 11–12. As for Defendants’ request for paralegal and researcher fees,
25 Plaintiff argues that Defendants failed to meet their burden of establishing prevailing rates,
26 and thus those should be eliminated. *Id.* at 12–13.

27 _____
28 ³ 355.5 hours relate to briefing the anti-SLAPP motion or responding to Plaintiff’s motion
to supplement the record, and 28.78 hours relate to briefing the instant attorney fees motion
and reply brief. ECF No. 38 at 3.

1 As for Defendants' hours worked, Plaintiff argues that they are excessive relative to
2 the procedural posture of the case. ECF No. 37 at 13. Plaintiff also argues that many of the
3 hours worked are duplicative, noting that junior associates' work was revised by a senior
4 associate and then again by two partners. *Id.* at 14–15. Plaintiff submits that only one of
5 the partners' hours should be considered, and that the remaining hours should be subject to
6 a 10% reduction. *Id.* at 15. Plaintiff also argues that certain categories of work performed
7 were not related to the anti-SLAPP motion or were ministerial, and requests that those
8 thirteen hours be deducted. *Id.* at 15–16. Plaintiff's proposed final recoverable amount is
9 \$84,995.80. *Id.* at 18.

10 Defendants respond that although the Southern District is the focus for the
11 reasonable rate inquiry, the Court should consider attorney rates and fee approvals from
12 neighboring districts. ECF No. 38 at 7. Defendants also included numerous cases from the
13 Southern District to support their fees. *Id.* at 7–9. Defendants contend that their paralegal
14 and researcher rates are reasonable because a court has approved similar rates for the same
15 paralegal and researcher in another case. *Id.* at 8–9. As for the hours worked, Defendants
16 respond that the entire lawsuit is the subject of the anti-SLAPP motion and thus all attorney
17 fees expended in the case are recoverable. *Id.* at 3. Defendants further respond that their
18 team structure was reasonable, and that junior attorneys always spend substantial time
19 researching and writing, and more senior attorneys then write, revise, and fine-tune
20 arguments. *Id.* at 5. Defendants also reiterate their detailed time entries and argue that
21 counsel did not overlap by researching the same issues or cases. *Id.* Additionally, upon
22 completing the briefing on the attorney fees motion, Defendants included the time entries
23 for preparation of the motion and reply brief, which brings the updated total requested to
24 384.28 hours and \$347,244.00. *Id.*

25 **C. Reasonable Attorney Fees**

26 “When the district court makes its award, it must explain how it came up with the
27 amount. The explanation need not be elaborate, but it must be comprehensible.” *Moreno*
28 *v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). To determine a reasonable
attorney fee award under the lodestar approach, the Court first considers whether the hourly

1 rates and number of hours expended are both reasonable.

2 ***1. Reasonable Hourly Rates***

3 To determine the reasonable hourly rate, the Court looks to the “rate prevailing in
4 the community for similar work performed by attorneys of comparable skill, experience,
5 and reputation.” *Camacho*, 523 F.3d at 979 (internal quotation marks and citation omitted).
6 The burden is on the party requesting attorney fees to produce “satisfactory evidence, in
7 addition to the affidavits of its counsel, that the requested rates are in line with those
8 prevailing in the community for similar services of lawyers of reasonably comparable skill
9 and reputation.” *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 (9th Cir. 1987); *see*
10 *Roberts v. City & County of Honolulu*, 938 F.3d 1020, 1025 (9th Cir. 2019) (“It is the
11 responsibility of the attorney seeking fees to submit evidence to support the requested
12 hourly rate”). Evidence that the Court should consider includes “[a]ffidavits of the
13 [movant’s] attorney and other attorneys regarding prevailing fees in the community, and
14 rate determinations in other cases, particularly those setting a rate for the [movant’s]
15 attorney.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.
16 1990). A court can consider other factors, including its own knowledge of the relevant legal
17 market, the complexity of the legal issues at stake, and the reputation and experience of
18 counsel. *See FlowRider Surf, Ltd. v. Pac. Surf Designs, Inc.*, No. 15cv1879-BEN-BLM,
19 2020 WL 5645331, at *3–*4 (S.D. Cal. Sept. 21, 2020); *569 E. Cnty. Boulevard LLC v.*
20 *Backcountry Against the Dump, Inc.*, 212 Cal. Rptr. 3d 304, 314 (Ct. App. 2016).

21 The parties disagree as to the relevant legal community for setting a reasonable rate
22 in this case. Generally, the relevant community is the forum in which the district court sits.
23 *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) (citing *Davis v. Mason County*, 927
24 F.2d 1473, 1488 (9th Cir. 1991)). Rates outside the forum may be used “if local counsel
25 was unavailable, either because they are unwilling or unable to perform because they lack
26 the degree of experience, expertise, or specialization required to handle properly the case.”
27 *Gates*, 987 F.2d at 1405. Plaintiff argues that the Southern District of California is the
28 relevant community. ECF No. 37 at 9–11. Defendants do not dispute that “the Southern
District of California is the focus of the reasonable rate inquiry,” but they also point out

1 that courts within the Southern District have relied on cases from the Central and Northern
2 Districts to establish a reasonable rate within this district. ECF No. 38 at 7.

3 The Court finds that the relevant community is the Southern District of California.
4 *Camacho*, 523 F.3d at 979. Although the Southern District is the Court’s primary focus,
5 the Court will consider rates for similar work in neighboring and nearby districts, albeit
6 they will be accorded minimal weight. *See, e.g., Smith v. Aetna Life Ins. Co.*, No.
7 18cv1463-JLS-WVG, 2020 WL 6055147, at *6 (S.D. Cal. Oct. 14, 2020) (explaining that
8 “Plaintiff also cites to numerous other cases in which courts have approved similar rates as
9 reasonable, although these all appear to be cases in the Northern and Central Districts of
10 California. [] However, ‘the relevant community is the Southern District of California
11 because it is the forum in which the district court sits.’ [] Accordingly, the Court accords
12 minimal weight to these authorities from outside the Southern District of California”);
13 *Brighton Collectibles, Inc. v. RK Tex. Leather Mfg.*, No. 10cv419-GPC-WVG, 2014 WL
14 5438532, at *4 n.5 (S.D. Cal. Oct. 24, 2014) (noting that “Plaintiff also presents attorney
15 fee awards in other districts in California; however, those cases are not considered the
16 relevant community for purposes of a reasonable hourly rate and not helpful to the Court”);
17 *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011) (considering rates from the
18 Central and Northern Districts, but relying on the Court’s “familiarity with the rates
19 charged by other firms in the San Diego area”); *Deanda v. Savings Investment, Inc.*, No.
20 05cv0139-DMS-RBB, 2006 WL 8443522, at *4 (S.D. Cal. June 8, 2006) (reducing
21 attorney’s rate based on his approved rate in the Central District).

22 *a. Attorneys*

23 Defendants seek hourly rates for Theodore J. Boutrous, Jr., a partner at Gibson Dunn,
24 who charged \$1,450 for 2019 and \$1,525 for 2020.⁴ ECF No. 35-1 at 16. Mr. Boutrous has
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27 ⁴ As a preliminary matter, just because an attorney charges clients a certain amount does
28 not conclusively make that amount the prevailing market rate—i.e., an attorney’s usual
hourly rate is relevant, but not determinative, evidence of the prevailing market rate. *See*
Carson v. Billings Police Dep’t, 470 F.3d 889, 892 (9th Cir. 2006).

1 over 30 years of legal experience and has received numerous awards for his work as a First
2 Amendment attorney. ECF No. 35-1 at 16. Defendants seek hourly rates for
3 Scott A. Edelman, a partner at Gibson Dunn, of \$1,335 for 2019 and \$1,395 for 2020. ECF
4 No. 35-1 at 16. Mr. Edelman has over 30 years of experience, and has received numerous
5 awards for his work as a media and entertainment attorney. *Id.* Defendants seek hourly
6 rates for Nathaniel L. Bach, a senior associate at Gibson Dunn, of \$915 for 2019 and \$960
7 for 2020. *Id.* Mr. Bach has over ten years of legal experience working as a media and
8 entertainment litigator. *Id.* Defendants seek hourly rates for Marissa B. Moshell, a mid-
9 level associate at Gibson Dunn, of \$625 for 2019 and \$740 for 2020. *Id.* at 17. Ms. Moshell
10 has three years of legal experience, working on a variety of commercial disputes, including
11 First Amendment, anti-SLAPP, and other media and entertainment actions. *Id.* Defendants
12 seek an hourly rate for Daniel Rubin, a mid-level associate at Gibson Dunn, of \$625 for
13 2019. *Id.* Mr. Rubin has three years of legal experience as a general commercial litigator,
14 including experience with media and entertainment disputes. *Id.*

15 To support these rates, Defendants rely principally on court-approved hourly rates
16 in the Central and Northern Districts. *See* ECF No. 35-1 at 17–18. One of the cases cited
17 from the Central District involved attorneys from Gibson Dunn. *See ScripsAmerica, Inc. v.*
18 *Ironridge Global LLC*, No. CV14-03962-SJO-AGR_x, 2016 WL 6871280, at *4–*5 (C.D.
19 Cal. Jan. 12, 2016). Defendants also provided a recent fee application from the PG&E
20 bankruptcy case in the Northern District, where the attorneys sought similar rates. ECF No.
21 35-1 at 18 (referring to ECF No. 35-9). Additionally, Defendants provided the Public Rates
22 Report issued by Thomson Reuters in 2020 (“2020 Rates Report”), which includes rates
23 from the Central and Northern Districts, and the Public Rates Report issued by Thomson
24 Reuters in 2018 (“2018 Rates Report”), which includes rates from the Central, Eastern,
25 Northern, and Southern Districts. ECF No. 35-1 at 18; ECF No. 35-2 at 7 (referring to ECF
26 Nos. 35-10, 35-11). In their reply brief, Defendants cited five cases from the Southern
27 District that approved a range of \$622 to \$943. ECF No. 38 at 7–8.

28 Plaintiff responds that these billing rates are excessive, and that Mr. Boutrous and
Mr. Edelman should instead rate \$525, Mr. Bach should instead rate \$300, and Ms. Moshell

1 and Mr. Rubin should instead rate \$260. ECF No. 37 at 9–11. Plaintiff focused much of its
2 argument on Defendants’ lack of support from the Southern District as the relevant
3 community, and presented four cases from the Southern District that purport to illustrate
4 the district’s lower rates. *Id.* at 11. Plaintiff also listed figures from Defendants’ 2018 Rate
5 Report, which showed lower rates in the Southern District than those requested by
6 Defendants. *Id.* at 10.

7 For the most part, the Court does not find the cases that Defendants rely on from the
8 Central and Northern Districts to be persuasive. They are outside the relevant community,
9 and the subject matter and complexity of the cases are not analogous. Although it is from
10 the Central District, the Court finds that *ScriptsAmerica*, a 2016 case from the Central
11 District that analyzed the rates of attorneys from the same law firm, Gibson Dunn, to be
12 relevant. There, the court approved rates of \$950 for a partner with 37 years of experience
13 and numerous awards, \$700 for a ten-year associate, and \$450 for a three-year associate.
14 2016 WL 6871280, at *4–*5 (reducing from counsel’s initial requests of \$1,125 for a 37-
15 year partner, \$770 for a ten-year associate, and \$625 for a three-year associate). The Court
16 has also considered Defendants’ proffered 2018 Rate Report insofar as it documents
17 Southern District rates, although these figures refer to rates from 2011 to 2015 and are
18 somewhat dated. *See Camacho*, 523 F.3d at 981 (“in determining the prevailing market
19 rate a [] court abuses its discretion to the extent it relies on cases decided years before the
20 attorneys actually rendered their services.”). The Court has also considered recent fee
21 awards in the Southern District. *See Moreno*, 534 F.3d at 1115 (“judges can certainly
22 consider the fees awarded by other judges in the same locality in similar cases”); *see, e.g.,*
23 *San Diego Comic Convention v. Dan Farr Productions*, No. 14cv1865-AJB-JMA, 2019
24 WL 1599188, at *13–*14 (S.D. Cal. Apr. 15, 2019) (in a complex, well-known trademark
25 infringement case, finding reasonable the hourly rates of \$760 for partners with 28–29
26 years of experience, \$685 for a partner with 14 years of experience, \$585 for attorney with
27 16 years of experience, \$545 for an associate with 5 years of experience, from a Top 100
28 law firm), *attorney fees aff’d by* 807 F. App’x 674 (9th Cir. Apr. 20, 2020); *Kikkert v.*
Berryhill, No. 14cv1725-MMA-JMA, 2018 WL 3617268, at *2, *2 n.1 (S.D. Cal. July 30,

1 2018) (an unopposed fee motion after a successful social security appeal, finding *de facto*
2 hourly rate of \$943 reasonable, citing other decisions in the district approving rates from
3 \$656 to \$886); *Medina v. Metropolitan Interpreters & Translators, Inc.*, 139 F. Supp. 3d
4 1170, 1179 (S.D. Cal. 2015) (in a consolidated employment case, finding \$850 for a partner
5 with 38 years of experience, \$625 for a partner with 17 years of experience, and \$295 for
6 an associate with 3 years of experience was reasonable); *Makaeff*, 2015 WL 1579000, at
7 *4–*5 (in a complex class action with a successful anti-SLAPP motion, finding reasonable
8 the rates of \$250 to \$440 for associates and \$600 to \$825 for partners).

9 The Court has also considered the complexity of the legal issues at stake and the
10 reputation and experience of counsel. *See FlowRider Surf*, 2020 WL 5645331, at *3–*4.
11 Although the issue of defamation is not complex, the posture of this litigation demonstrates
12 that the stakes were high. This case was brought by a competing media outlet and has
13 achieved a high degree of publicity. Defendants had a great incentive to hire the most
14 experienced and qualified counsel available to protect their reputation. Defendants’ counsel
15 have a strong reputation for expertise in First Amendment issues and in high-stakes
16 litigation. *See* ECF No. 35-3 (noting Mr. Boutrous’s credentials, including numerous
17 awards, his experience arguing “more than 100 appeals, including before the Supreme
18 Court of the United States, 12 different federal circuit courts of appeals, nine different state
19 supreme courts and a multitude of other appellate and trial courts in complex civil,
20 constitutional and criminal matters[,]” and his success in representing the prevailing parties
21 in three recent, high-stakes Supreme Court cases); ECF No. 35-4 (noting Mr. Edelman’s
22 credentials, including numerous awards and accolades, and his success in several high-
23 stakes, complex, multi-week jury trials); ECF No. 35-5 (noting Mr. Bach’s credentials,
24 including being awarded “2020 Litigator of the Week,” and listing his numerous successful
25 high-stakes case outcomes). The Court also relies on its own knowledge of and familiarity
26 with rates in the relevant community. *See PLCM Group v. Drexler*, 997 P.2d 511, 519 (Cal.
27 2000) (“The value of legal services performed in a case is a matter in which the trial court
28 has its own expertise.”).

 Based on all of this information, the Court finds that reasonable rates for comparable

1 work in San Diego are not as high as Defendants assert, but not as low as Plaintiff suggests.
2 The Court finds that reasonable rates in San Diego for attorneys of comparable skill,
3 experience, and reputation are as follows: \$1,150 for Mr. Boutrous, \$1,050 for
4 Mr. Edelman, \$720 for Mr. Bach, \$470 for Ms. Moshell, and \$470 for Mr. Rubin.⁵

5 *b. Paralegals*

6 Defendants also seek fees for two paralegals. ECF No. 35-1 at 17. The paralegals
7 are “Lolita Gadberry, a paralegal with 35 years of experience with a standard hourly rate
8 of \$460 in 2019 and \$480 in 2020, and Duke Amponsah, a paralegal with over twenty years
9 of experience with a standard hourly rate of \$480 in 2020.” *Id.* Defendants rely on the same
10 cases and information to support the reasonable rate for their paralegals. Plaintiff argues
11 that Defendants have not met their burden as to the paralegal and researcher fees, because
12 they presented no evidence of prevailing rates in the relevant community. ECF No. 37 at
13 12. Plaintiff also points to two cases from the Southern District, in which the courts denied
14 paralegal fees because insufficient facts were presented. *Id.* (citing *Zest IP Holdings, LLC*
15 *v. Implant Direct Mfg., LLC*, No. 10cv0541-GPC-WVG, 2014 WL 6851612, at *6 (S.D.
16 Cal. Dec. 3, 2014) and *Brighton Collectibles*, 2014 WL 5438532, at *5).

17 The 2018 Rates Report attached to the motion includes paralegal rates in the
18 Southern District from 2011 to 2014. ECF No. 35-11. The range of these rates varies widely
19 from \$50 to \$305. ECF No. 35-11 at 73, 118, 167–69, 185–87, 197–98, 200–01, 212, 214–
20 16, 258, 261–62, 313–14, 324, 356. Courts in the Southern District have recently approved
21 paralegal fees in the middle of this range. *See, e.g., Aispuro v. Ford Motor Co.*, No.
22 18cv2045-DMS-KSC, 2020 U.S. Dist. LEXIS 142806, at *11 (S.D. Cal. Aug. 10, 2020)
23 (\$200); *James Holcomb & Rotoco, Inc. v. BMW of N. Am., LLC*, No. 18cv475-JM-BGS,
24

25
26
27 ⁵ Though Defendants separately list rates for work done in 2019 and in 2020 (see ECF No.
28 35-2 at 5–6), the Court has determined that the current rates listed above are reasonable,
without a distinction regarding the year the work was completed. *See Gates*, 987 F.2d at
1406 (finding that “district courts have the discretion to compensate prevailing parties for
any delay in the receipt of fees by awarding fees at current rather than historic rates in order
to adjust for inflation and loss of the use funds.”).

1 2020 U.S. Dist. LEXIS 26094, at *15–*16 (S.D. Cal. Feb. 14, 2020) (\$100); *Puccio v.*
2 *Love*, No. 16cv2890-W-BGS, 2020 WL 434481, at *4 (S.D. Cal. Jan. 28, 2020) (\$195);
3 *San Diego Comic Convention*, 2019 WL 1599188, at *15 (\$290); *Lewis v. County of San*
4 *Diego*, No. 13cv2818-H-JMA, 2017 WL 6326972, at *12–*13 (S.D. Cal. Dec. 11, 2017)
5 (\$100 and \$200).

6 Based on its judgment and extensive experience in the Southern District, its thorough
7 review of the parties’ submissions regarding paralegal fees, and its independent review of
8 recent paralegal fee awards in the district, the Court finds that, in light of her 35 years of
9 experience, \$280 is a reasonable paralegal fee for Ms. Gadberry and, in light of his 20 years
10 of experience, \$265 is a reasonable paralegal fee for Mr. Amponsah.

11 *c. Researchers*

12 Defendants also seek fees for two researchers, Erin Kurinsky and Carla Jones, who
13 charge a standard hourly rate of \$270. ECF No. 35-1 at 17. With respect to the researchers,
14 the Court finds that Defendants have failed to produce satisfactory evidence to support the
15 requested rates. Defendants offer no information or documentation justifying the rates for
16 Ms. Kurinsky or Ms. Jones, such as a curriculum vitae, resume, or description of their
17 educational background or work experience. *See* ECF No. 35-1 at 17. “In the absence of
18 any evidence as to the background and experience of the [researchers], the Court is unable
19 to determine the prevailing rate.” *Makaeff*, 2015 WL 1579000, at *5. Because Defendants
20 have failed to carry their burden to demonstrate that the researchers’ hourly rates are
21 reasonable, the Court denies their request for researcher fees. *See cf. Garrison*, 2019 WL
22 5684401, at *4; *Zest IP Holdings*, 2014 WL 6851612, at *6.

23 *d. Summary*

24 In sum, the Court concludes that reasonable rates in this district for those of
25 comparable skill, experience, and reputation are as follows: \$1,150 for Mr. Boutrous,
26 \$1,050 for Mr. Edelman, \$720 for Mr. Bach, \$470 for Ms. Moshell, \$470 for Mr. Rubin,
27 \$280 for Ms. Gadberry, and \$265 for Mr. Amponsah. The Court denies Defendants’ request
28 for fees for researchers Erin Kurinsky and Carla Jones.

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1 **2. Reasonable Hours Expended**

2 The party seeking fees bears the “burden of establishing entitlement to an award and
3 documenting the appropriate hours expended and hourly rates.” *Computer Xpress, Inc. v.*
4 *Jackson*, 113 Cal. Rptr. 2d 625, 649 (Ct. App. 2001) (internal quotation marks and citation
5 omitted). Although “it is not necessary to provide detailed billing timesheets to support an
6 award of attorney fees under the lodestar method,” *Concepcion v. Amscan Holdings, Inc.*,
7 168 Cal. Rptr. 3d 40, 53 (Ct. App. 2014), the “evidence should allow the court to consider
8 whether the case was overstaffed, how much time the attorneys spent on particular claims
9 and whether the hours were reasonably expended.” *Christian Research Inst.*, 81 Cal. Rptr.
10 3d at 870. To that end, the Court may require a prevailing party to produce records
11 sufficient to provide “a proper basis for determining how much time was spent on particular
12 claims.” *Computer Xpress*, 113 Cal. Rptr. 2d at 649 (internal quotation marks and citation
13 omitted). The Court should exclude hours ““that are excessive, redundant, or otherwise
14 unnecessary.”” *McCown*, 565 F.3d at 1102 (quoting *Hensley*, 461 U.S. at 434).

15 Here, Defendants seek an award for 384.28 hours. ECF No. 38-1 at 5. This includes
16 time spent analyzing Plaintiff’s complaint and discussing initial strategy; researching and
17 drafting the anti-SLAPP Motion and supporting documents; responding to Plaintiff’s
18 opposition brief and evidentiary submission; responding to Plaintiff’s *ex parte* Application
19 to Supplement the Record; preparing for and attending the motion hearing; and researching
20 and drafting the attorney fees motion, reply, and supporting documents. ECF No. 35-1 at
21 13, ECF No. 35-2 at 8–22; ECF No. 38-1 at 3–4.

22 Plaintiff contends that the hours requested are excessive. ECF No. 37 at 13. First,
23 Plaintiff contends that Mr. Edelman’s and Mr. Boutrous’s hours should be reduced, or
24 Mr. Edelman’s hours completely excluded, because hiring two renowned partners was
25 redundant and unnecessary. *Id.* at 14. Second, Plaintiff contends that Defendants
26 overstaffed this case and used it as a training opportunity. *Id.* at 14–15. Third, Plaintiff
27 contends that the anti-SLAPP fee provision only applies to motion to strike, and not the
28 entire action. *Id.* at 15. Fourth, Plaintiff asserts that Defendants should not recover for
ministerial or administrative tasks. *Id.* at 16. The Court will address these challenges in

1 turn.

2 a. *Whether Fees Beyond the Anti-SLAPP Motion should be*
3 *Considered*

4 As a threshold issue, the Court will examine whether Defendants' request for
5 attorney fees should be limited to those fees directly related to the anti-SLAPP motion.
6 Plaintiff cites three cases in support of its argument: *S. B. Beach Props. v. Berti*, 138 P.3d
7 713, 717 (Cal. 2006); *Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.*, 46 Cal. Rptr. 2d
8 542, 544–45 (Ct. App. 1995), and *Christian Research Inst.*, 81 Cal. Rptr. 3d at 872–74.
9 ECF No. 37 at 15. In *Lafayette Morehouse*, the court reversed the fee award because the
10 trial court awarded fees for work other than on the anti-SLAPP motion. However, *Lafayette*
11 *Morehouse* was decided prior to the 1997 amendment of section 425.16, which mandated
12 the statute be construed broadly. *See* CAL. CIV. CODE § 425.16; *see also Metabolife*, 213 F.
13 Supp. 2d at 1222–24 (discussing *Lafayette Morehouse* after the 1997 amendment of
14 § 425.16). In addition, the *Lafayette Morehouse* court reduced fees to those directly related
15 to the anti-SLAPP motion because the motion concerned only one of seven causes of
16 action. 46 Cal. Rptr. 2d at 545 (referring to 44 Cal. Rptr. 2d. 46 (Ct. App. 1995)). Plaintiff's
17 references to *Christian Research Institute* and *S. B. Beach Properties* are likewise
18 unpersuasive. In *Christian Research Institute*, the court affirmed the trial court's reductions
19 to the requested 600 hours, not based on counsel working on non-anti-SLAPP filings, but
20 because the case was vastly overstaffed for a simple motion and the billing entries were
21 vague. 81 Cal. Rptr. 3d at 874. In *S. B. Beach Properties*, the court affirmed the trial court's
22 denial of defendants' fee motion, because they were seeking fees for an anti-SLAPP motion
23 they never filed—the plaintiff voluntarily dismissed the case the day before they planned
24 to file the anti-SLAPP motion. 138 P.3d at 715, 717–18.

25 In this case, “granting the special motion to strike effectively dismissed all of
26 plaintiff[’s] claims against defendant[s]. Thus, the entire lawsuit here is subject to the anti-
27 SLAPP motion and, therefore, all attorney[] fees and costs expended in this case ‘occurred
28 in the context of, and were inextricably intertwined with, the anti-SLAPP motion.’”
Zwebner v. Coughlin, No. 05cv1263-JAH-AJB, 2006 WL 8455423, at *2 (S.D. Cal. Jan.

1 24, 2006) (quoting *Metabolife*, 213 F. Supp. 2d at 1223). Thus, as in *Metabolife* and
2 *Zwebner*, “[a]ll of [Defendant]’s attorney fees and expenses were in incurred in connection
3 with the anti-SLAPP motion.” *Metabolife*, 213 F. Supp. 2d at 1223 (internal quotation
4 marks omitted). Accordingly, the Court finds Plaintiff’s initial argument unavailing, and
5 will consider all of the requested hours, not just the hours spent preparing the anti-SLAPP
6 motion.

7 *b. Overstaffing*

8 Regarding the use of multiple attorneys, the Ninth Circuit has recognized that “the
9 participation of more than one attorney does not necessarily constitute an unnecessary
10 duplication of effort.” *McGrath v. County of Nevada*, 67 F.3d 248, 255 (9th Cir. 1995)
11 (quoting *Kim v. Fujikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989). Instead, “[a] reduction
12 of fees is warranted only if the attorneys are *unreasonably* doing the *same* work. An award
13 for time spent by two or more attorneys is proper as long as it reflects the distinct
14 contribution of each lawyer to the case and the customary practice of multiple-lawyer
15 litigation.” *Noyes v. Grossmont Union High Sch. Dist.*, 331 F. Supp. 2d 1233, 1250 (S.D.
16 Cal. 2004) (emphasis in original) (internal quotations omitted).

17 Thus, the Court is not persuaded that Defendants should have been limited to one
18 partner. *See, e.g., Hammett v. Sherman*, No. 19cv605-JLS-AHG, 2020 U.S. Dist. LEXIS
19 49793, at *82 (S.D. Cal. Mar. 23, 2020) (approving anti-SLAPP fees for two partners with
20 over 30 years of experience); *Zwebner*, 2006 WL 8455423, at *3 n.2 (noting approval of
21 the use of five attorneys in anti-SLAPP case). Similarly, the Court is not persuaded that the
22 pyramid law firm model of having associates complete work that is then reviewed by
23 partners, without more, is a reason to reduce hours. *Cf. Moreno*, 534 F.3d at 1114–15, 1114
24 n.2 (discussing various law firm models and concluding that it was error for the district
25 court to speculate “that other firms could have staffed the case differently”).

26 However, the Court finds that some of the time spent was duplicative. “[C]ounsel
27 should not bill for attending the same meetings, internal communications, and
28 communicating with each other, as such time is unnecessary.” *Salgado v. T-Mobile USA, Inc.*,
No. 17cv339-JLT, 2020 WL 3127931, at *21–*22 (E.D. Cal. June 12, 2020). Courts

1 have “reduced fee awards for time spent in ‘interoffice conferences’ or other internal
2 communications.” *Id.*; *Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1194–
3 95 (S.D. Cal. 2003). Here, Plaintiff points out many examples of internal communications
4 between co-counsel, totaling approximately 19.6 hours. ECF No. 37-1 at 4–5. Accordingly,
5 while the Court recognizes the value of coordination between co-counsel, the Court
6 believes a 5%⁶ reduction to the requested fees is appropriate, to more accurately reflect the
7 time billed. *See Moreno*, 534 F.3d at 1112 (explaining that the “court can impose a small
8 reduction, no greater than 10 percent—a ‘haircut’—based on its exercise of discretion and
9 without a more specific explanation”); *see also Klein v. Gordon*, No. 8:17-cv-00123-AB-
10 JPRx, 2019 WL 1751839, at *4 (C.D. Cal. Feb. 12, 2019) (exercising discretion to impose
11 a ten percent “haircut” reduction for clerical work, conferences calls, conversations
12 amongst co-counsel, and preparation of submissions).

13 *c. Ministerial or Administrative Tasks*

14 “[P]urely clerical or secretarial tasks should not be billed at a paralegal [or lawyer’s]
15 rate, regardless of who performs them.” *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989)
16 (noting that “[i]t is appropriate to distinguish between legal work, in the strict sense, and
17 investigation, clerical work, compilation of facts and statistics and other work which can
18 often be accomplished by non-lawyers but which a lawyer may do because he has no other
19 help available”); *Lewis*, 2017 WL 6326972, at *8 (“A fee award should not include time
20 spent on clerical matters, whether billed at an attorney’s or paralegal’s hourly rate”). Thus,
21 courts have discounted billing entries for “clerical tasks.” *Nadarajah v. Holder*, 569 F.3d
22 906, 921 (9th Cir. 2009).

23 Plaintiff identified three entries that it labels ministerial. The first, from
24 May 17, 2020, where Ms. Moshell corresponded with the court reporter about the hearing
25 transcript, is already subsumed in the Court’s earlier reduction for interoffice
26

27
28 ⁶ In recognition of the value of coordination between co-counsel, and in the interest of
transparent calculations, the Court exercises its discretion to reduce the 384.28 requested
hours by 5% (i.e., 19.2 hours) instead of excluding the approximately 19.6 hours identified
by Plaintiff.

1 communication, since the same entry includes her speaking with Mr. Boutrous and Mr.
2 Bach. *Compare* ECF No. 37-1 at 9 *with id.* at 7. As to the second, the Court does not agree
3 that finalizing a stipulation is ministerial, and will not exclude that entry. ECF No. 37-1
4 at 9. However, the Court does agree with Plaintiff that the time spent “research[ing] court
5 reporting and hearing transcription” is ministerial, and will exclude 0.3 hours from
6 Ms. Moshell’s total accordingly. ECF No. 37-1 at 9.

7 *d. Summary*

8 Using the Court’s judgment and experience, and upon a thorough review of the hours
9 expended in this case, in light of the case’s complexity and procedural history, the
10 remaining billing entries and total hours billed are appropriate. *See Moreno*, 534 F.3d at
11 1112 (“By and large, the court should defer to the winning lawyer’s professional judgment
12 as to how much time he was required to spend on the case; after all, he won, and might not
13 have, had he been more of a slacker.”).

14 In sum, Defendants’ requested 384.28 hours are reduced to 363.1 as follows: Mr.
15 Boutrous’s hours are reduced from 56.4 to 53.5; Mr. Edelman’s hours are reduced from
16 20.1 to 19.1; Mr. Bach’s hours are reduced from 137.5 to 130.6; Ms. Moshell’s hours are
17 reduced from 134.9 to 128.2 and then to 127.9; Mr. Rubin’s hours are reduced from 16.6
18 to 15.8; Ms. Gadberry’s hours are reduced from 15.7 to 14.9; Mr. Amponsah’s hours are
19 reduced from 1.4 to 1.3; Ms. Kurinsky’s hours are reduced from 1.58 to 0; and Ms. Jones’s
20 hours are reduced from 0.1 to 0.

21 **D. Costs**

22 Defendants request costs in the amount of \$10,724.36. ECF No. 35-2 at 24–26; ECF
23 No. 38-1 at 6–7. These costs include transcript costs, research costs, photocopying costs,
24 process server costs, document retrieval service costs, and courier costs. *Id.* Plaintiff does
25 not contend that Defendants’ requested costs should be reduced. *Compare* ECF No. 35-2
26 at 26 (Defendants initially requested \$9,706.28 in costs) *with* ECF No. 37 at 17 (Plaintiffs
27 listed \$9,706.28 as a “reasonable [] rate” for initial costs).

28 Attorneys charging “such expenses to paying clients separate from their hourly rates,
[] is consistent with the Court’s experience, as well as prior orders in this District

1 addressing the issue of awardable non-statutory costs.” *See Smith*, 2020 WL 6055147, at
2 *12 (collecting cases from the Southern District which approved costs such as: copying
3 fees, courier and messenger fees, mailing charges, legal research fees, electronic research
4 costs, telephone charges, filing fees, and court reporter fees). Accordingly, the Court finds
5 the \$10,724.36 in costs included⁷ by Defendants as part of their fee request reasonable.

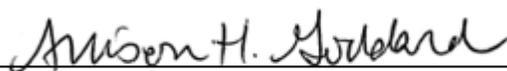
6 **IV. CONCLUSION**

7 For the reasons set forth above, the Court **GRANTS IN PART** and **DENIES IN**
8 **PART** Defendants’ Motion for Attorney Fees. ECF No. 35. The Court awards Defendants
9 **fees in the amount of \$247,667.50** representing 53.5 hours billed by Mr. Boutrous at
10 \$1,150 per hour, 19.1 hours billed by Mr. Edelman at \$1,050 per hour, 130.6 hours billed
11 by Mr. Bach at \$720 per hour, 127.9 hours billed by Ms. Moshell at \$470 per hour,
12 15.8 hours billed by Mr. Rubin at \$470 per hour, 14.9 hours billed by Ms. Gadberry at \$280
13 per hour, and 1.3 hours billed by Mr. Amponsah at \$265 per hour, and **costs in the amount**
14 **of \$10,724.36.**

15 As explained by District Judge Bashant in her order granting Defendants’ anti-
16 SLAPP motion: “[a]fter Defendants’ motion for attorney fees is resolved, the Court will
17 instruct the Clerk to close this case.” ECF No. 30 at 17.

18 **IT IS SO ORDERED.**

19 Dated: February 5, 2021

20 
21 _____
22 Honorable Allison H. Goddard
23 United States Magistrate Judge
24
25
26

27 ⁷ Both Federal Rule of Civil Procedure Rule 54(d) and this district’s Civil Local Rule 54.1,
28 requiring a bill of costs, are based on an entry of judgment, which has not yet occurred
here. *See* ECF No. 30 at 17; ECF No. 12 n.2; *see also James Holcomb & Rotoco, Inc.*, 2020
U.S. Dist. LEXIS 26094, at *25–*27 (rejecting argument that prevailing party is not
entitled to costs because they failed to submit a bill of costs).