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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 G & G CLOSED CIRCUIT EVENTS,  
12 LLC,

13 Plaintiff,

14 v.

15 VIRIDIANA HERNANDEZ, individually  
16 doing business as La Palapa Nayarit,

17 Defendant.

Case No. 20-cv-2112-MMA (RBB)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES  
AND COSTS**

[Doc. No. 10]

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19 G & G Closed Circuit Events, LLC (“Plaintiff”) brought this action against  
20 Viridiana Hernandez, individually doing business as La Palapa Nayarit, (“Defendant”)  
21 and alleged Defendant unlawfully “intercepted, received and published” a fight telecast at  
22 Defendant’s business. Doc. No. 1 (“Compl.”) ¶ 20. Plaintiff now moves for an award of  
23 attorneys’ fees and costs. *See* Doc. No. 10. The motion is unopposed. The Court found  
24 the matter suitable for determination on the papers and without oral argument pursuant to  
25 Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc. No. 11.  
26 For the reasons set forth below, the Court **GRANTS in part and DENIES in part**  
27 Plaintiff’s motion.

28 **I. BACKGROUND**

1 This action involves the prohibited broadcast of *Saul “Canelo” Alvarez v. Sergey*  
 2 *Kovalev Championship Fight Program* (“Program”) on November 2, 2019 at Defendant’s  
 3 establishment La Palapa Nayarit. Compl. ¶¶ 7, 15. Plaintiff brought four causes of  
 4 action against Defendant: (1) violation of the Communications Act, 47 U.S.C. § 605; (2)  
 5 violation of the Cable Television Consumer Protection and Competition Act, 47 U.S.C.  
 6 § 553; (3) conversion under state law; and (4) violation of the California Unfair  
 7 Competition Law, Cal. Bus. & Prof. Code §§ 17200–17210. *See id.* ¶¶ 14–46. On May  
 8 6, 2021, the Court granted Plaintiff’s motion for default judgment and awarded Plaintiff  
 9 \$9,000 in damages. *See* Doc. No. 8.

10 Pursuant to 47 U.S.C. § 605(e)(3)(B)(iii), Plaintiff now moves for an award of  
 11 attorneys’ fees in the amount of \$3,518.00 and costs in the amount of \$1,125.00. *See*  
 12 Doc. No. 10 at 3, 10.<sup>1</sup>

## 13 **II. ATTORNEYS’ FEES**

### 14 **A. Legal Standard**

15 “Once a party is found eligible for fees, the district court must then determine  
 16 what fees are reasonable.” *Roberts v. City of Honolulu*, 938 F.3d 1020, 1023 (9th Cir.  
 17 2019) (quoting *Klein v. City of Laguna Beach*, 810 F.3d 693, 698 (9th Cir. 2016)). In  
 18 order to determine the fee award, courts calculate the number of hours reasonably  
 19 expended on the litigation and then multiply that number by a reasonable hourly rate. *See*  
 20 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Vargas v. Howell*, 949 F.3d 1188, 1194  
 21 (9th Cir. 2020) (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). The resulting  
 22 calculation is referred to as “the lodestar figure” and “provides an objective basis on  
 23 which to make an initial estimate of the value of a lawyer’s services.” *Hensley*, 461 U.S.  
 24 at 433. To determine attorneys’ fees under § 605, courts use the loadstar method. *See G*  
 25 *& G Closed Cir. Events, LLC v. Parker*, No. 320-cv-00801-BEN-RBB, 2021 WL  
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 28 <sup>1</sup> All citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 164998, at \*2 (S.D. Cal. Jan. 19, 2021); *J & J Sports Prods., Inc. v. Brummell*, No. 15-  
2 cv-2601-MMA (MDD), 2016 WL 3552039, at \*1 (S.D. Cal. June 29, 2016).

3 “[T]he fee applicant bears the burden of establishing entitlement to an award and  
4 documenting the appropriate hours expended and hourly rate.” *Hensley*, 461 U.S. at 437.  
5 Further, the Ninth Circuit has made clear that plaintiffs requesting attorneys’ fees must  
6 demonstrate that the hourly rates requested are reasonable vis-à-vis the rates charged in  
7 “the forum in which the district court sits.” *Gonzalez v. City of Maywood*, 729 F.3d  
8 1196, 1205–06 (9th Cir. 2013) (quoting *Prison Legal News v. Schwarzenegger*, 608 F.3d  
9 446, 454 (9th Cir. 2010)); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1261–63  
10 (9th Cir. 1987) (“The fee applicant has the burden of producing satisfactory evidence, in  
11 addition to the affidavits of its counsel, that the requested rates are in line with those  
12 prevailing in the community for similar services of lawyers of reasonably comparable  
13 skill and reputation.”).

14 Additionally, the Ninth Circuit “requires that courts reach attorneys’ fee decisions  
15 by considering some or all of twelve relevant criteria set forth in *Kerr v. Screen Extras*  
16 *Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975).” *Quesada v. Thomason*, 850 F.2d 537, 539 (9th  
17 Cir. 1988). The *Kerr* factors are:

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19 (1) the time and labor required, (2) the novelty and difficulty of the  
20 questions involved, (3) the skill requisite to perform the legal service  
21 properly, (4) the preclusion of other employment by the attorney due to  
22 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or  
23 contingent, (7) time limitations imposed by the client or the circumstances,  
24 (8) the amount involved and the results obtained, (9) the experience,  
25 reputation, and ability of the attorneys, (10) the “undesirability” of the case,  
26 (11) the nature and length of the professional relationship with the client,  
27 and (12) awards in similar cases.

26 *Kerr*, 526 F.2d at 70.

## 27 **B. Discussion**

1 Reasonable attorneys' fees and costs are recoverable by the prevailing party  
2 pursuant to 47 U.S.C. § 605(e)(3)(B)(iii). Because the Court has granted default  
3 judgment in Plaintiff's favor on the Communications Act claim, *see* Doc. No. 8 at 5, 10,  
4 Plaintiff is eligible to request reasonable attorneys' fees under § 605(e)(3)(B)(iii).

5 The Court proceeds by assessing whether Plaintiff's sought fees are reasonable.  
6 *See Roberts*, 938 F.3d at 1023 (quoting *Klein*, 810 F.3d at 698). Plaintiff seeks an  
7 attorneys' fee award of \$ 3,518.00. *See* Doc. No. 10 at 10. The sought award comprises  
8 work completed by attorney Thomas Riley ("Riley"), an unnamed research attorney, and  
9 an administrative assistant. *See* Riley Decl., Doc. No. 10-1 ¶¶ 5, 6, 8; Riley Decl., Exh.  
10 1, Doc. No. 10-1 at 7–9. In particular, Plaintiff seeks fees for (1) 2.35 hours of work  
11 billed at an hourly rate of \$550.00 for Mr. Riley, (2) 4 hours of work billed at an hourly  
12 rate of \$300.00 for the unnamed research attorney, and (3) 9.33 hours of work billed at an  
13 hourly rate of \$110.00 for the administrative assistant. *See* Riley Decl., Doc. No. 10-1  
14 ¶¶ 5, 6, 8; Riley Decl., Exh. 1, Doc. No. 10-1 at 9.

### 15 **1. Mr. Riley**

16 As to Mr. Riley, Plaintiff demonstrates that his hourly rate of \$550 is reasonable.  
17 Mr. Riley explains that he is a member of good standing in the bars of three states, has  
18 been practicing law for twenty-eight years, and has worked in a firm that specializes in  
19 signal piracy claims since 1994. *See* Riley Decl., Doc. No. 10-1 ¶¶ 3–4. Mr. Riley also  
20 points to a recent case in this district that found his requested hourly rate of \$550  
21 reasonable. *See* Doc. No. 10 at 7–8 (citing *Parker*, 2021 WL 164998, at \*5). The Court  
22 finds that Mr. Riley's requested hourly rate is reasonable.

23 As to the number of hours expended, Mr. Riley provides a billing statement  
24 outlining the time expended on each task in this case. *See* Riley Decl., Exh. 1, Doc. No.  
25 10-1 at 7–9. In this action, Mr. Riley worked 2.35 hours. In his accompanying  
26 declaration, Mr. Riley explains that "[b]illable hours for legal services rendered are  
27 *reconstructed by way of a thorough review of the files themselves.*" *See* Riley Decl.,  
28 Doc. No. 10-1 ¶ 7 (emphasis added). Thus, the "reconstructed" billing records are not

1 contemporaneous. This appears to be Mr. Riley’s standard practice. *See Parker*, 2021  
2 WL 164998, at \*7; *J & J Sports Prods., Inc. v. Barajas*, No. 1:15-cv-01354-DAD-JLT,  
3 2017 WL 469343, at \*3 (E.D. Cal. Feb. 2, 2017). Noncontemporaneous billing records  
4 are inherently less reliable and more likely to be inaccurate. *See Parker*, 2021 WL  
5 164998, at \*7; *J & J Sports Prods. Inc. v. Cervantes*, No. 1:16-cv-00485-DAD-JLT, 2019  
6 WL 935387, at \*4 (E.D. Cal. Feb. 26, 2019). Courts may reduce the awardable hours  
7 where an attorney fails to keep contemporaneous billing records. *See Hensley*, 461 U.S.  
8 at 438 n.13 (“In addition, the District Court properly considered the reasonableness of the  
9 hours expended, and reduced the hours of one attorney by thirty percent to account for his  
10 inexperience and failure to keep contemporaneous time records.”). Although Mr. Riley’s  
11 billed hours and tasks do not appear to be unnecessary, excessive, or unreasonable, the  
12 noncontemporaneous billing records are inherently more likely to be inaccurate. The  
13 Court finds that a small 10% reduction of the Mr. Riley’s total hours is appropriate to  
14 mitigate against the risks associated with noncontemporaneous billing. Thus, of the 2.35  
15 hours billed by Mr. Riley, the number of hours reasonably expended by him is 2.12.

16 Accordingly, the Court finds that Mr. Riley has demonstrated that he is entitled to  
17 a reasonably hourly rate of \$550.00 and 2.12 hours reasonably expended—for a total of  
18 \$1,166.00 in attorneys’ fees.<sup>2</sup>

## 19 **2. Research Attorney**

20 As to the “research attorney” referenced in Mr. Riley’s declaration and  
21 accompanying billing statement, the Court finds that Plaintiff has not met its burden to  
22 prove that the \$300 hourly rate is reasonable. Mr. Riley states that the research attorney  
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26 <sup>2</sup> In coming to this determination, the Court took the *Kerr* factors into consideration: the minimal time  
27 and labor required, the straightforward nature of the issues presented in this action, the fact that Mr.  
28 Riley was not precluded from taking other employment, Mr. Riley’s customary fee, the lack of time  
limitations imposed by the client, the \$9,000.00 award obtained, Mr. Riley’s experience, the lack of an  
“undesirability” issue, and similar approaches in other cases. *See* Doc. No. 10 at 5–6.

1 has assisted him for over ten years and is a member in good standing in the bars of two  
2 states and Washington, D.C. *See* Riley Decl., Doc. No. 10-1 ¶ 3.

3         However, the research attorney is not given a name, and there is no supporting  
4 information that demonstrates that his \$300 hourly rate is reasonable in this forum.  
5 Because Plaintiff fails to meet its burden to prove that the \$300 hourly rate is reasonable,  
6 the Court finds that Plaintiff is not entitled to an award of attorneys’ fees requested for  
7 the unnamed “research attorney.” *See Rutherford v. Cam-Mar Growers*, No. 19-cv-1864-  
8 MMA (AHG) (S.D. Cal. Apr. 4, 2020), ECF No. 13 at 10–11 (finding that the plaintiff  
9 failed to meet his burden to show that the hourly rate was reasonable for an unnamed  
10 “associate attorney” that lacked other specifics on her or his experience); *Munson v.*  
11 *Murad*, No. 17-cv-2499-MMA (BGS) (S.D. Cal. June 26, 2018), ECF No. 18 at 8  
12 (finding that the plaintiff failed to meet his burden to show reasonable hourly rates for  
13 attorneys that were not given full names and failed to demonstrate that the hourly rates  
14 were reasonable in the forum); *see also Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152,  
15 1160 (9th Cir. 2018) (“In a case in which a defendant fails to appear or otherwise defend  
16 itself, however, the burden of scrutinizing an attorney’s fee request—like other  
17 burdens—necessarily shifts to the court.”).

### 18         **3. Administrative Assistant**

19         As to the “administrative assistant,” courts in this circuit have routinely “declined  
20 to award fees for clerical work by administrative assistants, particularly where there is a  
21 lack of specificity in such billing by administrative assistants and the billing is  
22 duplicative of attorney time.” *Cervantes*, 2019 WL 935387, at \*4 (providing a list of  
23 example cases). Certain tasks—such as “filing, transcript, and document organization”—  
24 are clerical and should be absorbed into a firm’s overhead rather than billed at a set rate.  
25 *See Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009); *see also Neil v. Comm’r of*  
26 *Soc. Sec.*, 495 F. App’x 845, 847 (9th Cir. 2012) (“We find that the district court did not  
27 abuse its discretion in declining to award [the plaintiff’s] attorney’s fees for purely  
28 clerical tasks such as filing documents and preparing and serving summons.”); *cf.*

1 *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 288 n.10 (1989) (“Of course, purely clerical  
2 or secretarial tasks should not be billed at a paralegal rate, regardless of who performs  
3 them.”). Moreover, courts have “cautioned Mr. Riley regarding billing of clerical work  
4 using administrative assistants, lack of specificity in such billing by administrative  
5 assistants, and duplicative billing by Mr. Riley and his administrative assistant in the  
6 past.” *J&J Sports Prods., Inc. v. Marini*, No. 1:16-cv-0477-AWI-JLT, 2018 WL  
7 2155710, at \*2 (E.D. Cal. May 10, 2018) (first citing *J & J Sports Prods., Inc. v. Corona*,  
8 No. 1:12-cv-01844-LJO, 2014 WL 1513426, at \*2 (E.D. Cal. Apr. 16, 2014), *report and*  
9 *recommendation adopted*, No. 1:12-cv-01844-AWI, 2014 WL 1767691 (E.D. Cal. May  
10 2, 2014); and then citing *J & J Sports Prods., Inc. v. Pagliaro*, No. 1:12-cv-1507-LJO-  
11 SAB, 2014 WL 7140605, at \*2 (E.D. Cal. Dec. 12, 2014)).

12 As in other cases where Mr. Riley has sought to collect fees for work performed by  
13 administrative assistants, “the use of block billing makes it unclear how much time the  
14 administrative assistant spent on ‘preparation’ versus ‘filing and service’ of documents,  
15 and many of the billings for attorney Riley and his administrative assistant appear to be  
16 identical.” *Cervantes*, 2019 WL 935387, at \*4; *see* Riley Decl., Exh. 1, Doc. No. 10-1 at  
17 7–9 (billing for “preparation, filing, and service”; “review and filing”; and “filing and  
18 service” in blocks). Moreover, this oversight is compounded by the lack of  
19 contemporaneous billing records. *See* Riley Decl., Doc. No. 10-1 ¶ 7 (“Billable hours for  
20 legal services rendered are *reconstructed by way of a thorough review* of the files  
21 themselves.” (emphasis added)); *Parker*, 2021 WL 164998, at \*7 (finding that Mr.  
22 Riley’s failure to track time contemporaneously makes the billing records “more likely to  
23 be inaccurate”). Given the continued problematic practices that multiple courts have  
24 highlighted, this Court additionally declines to award fees for tasks completed by the  
25 unnamed administrative assistant.

### 26 **C. Conclusion**

27 Accordingly, the Court awards Plaintiff attorneys’ fees in the amount of \$1,166.00.

### 28 **III. COSTS**

1 In addition to reasonable attorneys' fees, § 605 states that the court "shall direct the  
2 recovery of full costs . . . to an aggrieved party who prevails." 47 U.S.C.  
3 § 605(e)(3)(B)(iii). Here, Plaintiff seeks a costs award of \$1,125.00. *See* Doc. No. 10 at  
4 10. In particular, Plaintiff seeks costs associated with a pre-filing investigative fee of  
5 \$650.00, the complaint filing fee of \$400.00, and the service of process fee of \$75.00.  
6 *See* Riley Decl., Exh. 1, Doc. No. 10-1 at 9. Plaintiff provides invoices for the  
7 investigative and service of process expenses. *See* Riley Decl., Exhs. 2–3, Doc. No. 10-1  
8 at 12, 14.

9 The Court awards Plaintiff costs for reimbursement of the \$400.00 filing fee. *See*  
10 *Parker*, 2021 WL 164998, at \*9; *Brummell*, 2016 WL 3552039, at \*2. The Court also  
11 awards Plaintiff costs for the \$75.00 service of process fee. *See Cervantes*, 2019 WL  
12 935387, at \*5; *G & G Closed Cir. Events, LLC v. Aguilar*, No. 18-cv-465 JM (BGS),  
13 2018 WL 6445883, at \*3 (S.D. Cal. Dec. 10, 2018); *see also* CivLR 54.1.b.1.

14 However, the Court declines to award Plaintiff's request for the pre-filing  
15 investigative fee. This Court has previously declined to award costs for pre-filing  
16 investigation fees. *See Brummell*, 2016 WL 3552039, at \*2; *see also Aguilar*, 2018 WL  
17 6445883, at \*3; *Langer v. Murad Enterprises, LLC*, No. 20-cv-34-MMA (BLM) (S.D.  
18 Cal. June 6, 2020), ECF No. 15 at 12 n.3. Plaintiff acknowledges that there is a split  
19 amongst the district courts on this issue. *See* Doc. No. 10 at 10; *see also Parker*, 2021  
20 WL 164998, at \*9 (noting the split on this issue but ultimately declining to award  
21 investigator fees); *Barajas*, 2017 WL 469343, at \*5 (same). The Court declines to depart  
22 from its previous determination that pre-filing investigative fees are not recoverable  
23 costs. Additionally, there is also no information detailing what the investigative services  
24 provided or the investigator's qualifications. *See Parker*, 2021 WL 164998, at \*9;  
25 *Cervantes*, 2019 WL 935387, at \*5.

26 Accordingly, the Court awards costs in the amount of \$475.00 for reimbursement  
27 of the filing fee and service of process fee.

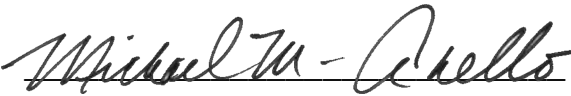
#### 28 **IV. CONCLUSION**



1 For the foregoing reasons, the Court **GRANTS in part and DENIES in part**  
2 Plaintiff's motion for attorneys' fees and costs. The Court **AWARDS** Plaintiff attorneys'  
3 fees in the amount of **\$1,166.00** and costs in the amount of **\$475.00**.

4 **IT IS SO ORDERED.**

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6 Dated: August 2, 2021

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8 Hon. Michael M. Anello

9 United States District Judge

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