



1 73 at 5-8. Even where a motion to compel is granted in full, the Court should not award expenses  
2 where the “opposing party’s nondisclosure, response, or objection was substantially justified.” Rule  
3 37(a)(5)(A)(ii).<sup>1</sup> “The burden is on the losing party to affirmatively demonstrate that its discovery  
4 conduct was substantially justified.” *Am. Gen. Life Ins. Co. v. Futrell*, 2012 WL 4962997, at \*1 (D.  
5 Nev. Oct. 16, 2012). Substantial justification exists when the losing party has shown that there is  
6 a genuine dispute or that reasonable people could differ as to the appropriateness of the contested  
7 action. *Id.* (quoting *Devaney v. Cont’l Am. Ins. Co.*, 989 F.2d 1154, 1163 (11th Cir. 1993)).

8 The Court finds that Defendant has not met its burden of showing that its discovery conduct  
9 was substantially justified. Defendant’s opposition to providing the discovery at issue centered on  
10 the relevance and sensitive nature of the material requested. *See, e.g.*, Docket No. 64 at 3. First, the  
11 Court finds that reasonable minds could not differ as to the relevance of the discovery sought. *See,*  
12 *e.g., id.* Second, as Plaintiff notes, Defendant could not reasonably assert that the protective order  
13 already in place – which resulted from its own negotiations with Plaintiff – was insufficient to  
14 safeguard its information. *See, e.g.*, Docket No. 74 at 2-3. The Court thus concludes that Plaintiff  
15 is entitled to recover its expenses in bringing the motion to compel.

### 16 **III. LODESTAR CALCULATION**

17 Having determined that Plaintiff is entitled to recover its expenses in bringing its motion to  
18 compel, the Court turns to the calculation of the fees. Reasonable attorneys’ fees are generally  
19 calculated based on the traditional “lodestar” method. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d  
20 973, 978 (9th Cir. 2008). Under the lodestar method, the Court determines a reasonable fee by  
21 multiplying “the number of hours reasonably expended on the litigation” by “a reasonable hourly  
22 rate.” *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The lodestar figure is presumptively  
23 reasonable. *Cunningham v. Cty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988).

24 The party requesting attorneys’ fees must show, *inter alia*, that the hourly rates sought are  
25 “in line with those prevailing in the community for similar services by lawyers of reasonably

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27 <sup>1</sup> Unless otherwise stated, references to “Rules” denote the Federal Rules of Civil Procedure.

1 comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).  
2 “Affidavits of the [movant’s] attorney and other attorneys regarding prevailing fees in the  
3 community, and rate determinations in other cases, particularly those setting a rate for the [movant’s]  
4 attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v.*  
5 *Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The Court may also rely on its own  
6 familiarity with the rates in the community to analyze those sought in the pending case. *Ingram v.*  
7 *Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011). “Rate determinations in other cases in the District  
8 of Nevada have found hourly rates as much as \$450 for partners and \$250 for an experienced  
9 associate to be the prevailing market rate in this forum.” *Crusher Designs, LLC v. Atlas Copco*  
10 *Powercrusher GmbH*, 2015 WL 6163443, at \*2 (D. Nev. Oct. 20, 2015) (report and recommendation  
11 adopted by Navarro, C.J.). “Courts awarding attorneys’ fees in intellectual property or other  
12 complex cases routinely award fees based on rates within that range.” *Id.*

13 The Court finds the pending motion and supporting materials insufficient to conduct the  
14 lodestar analysis at this time. The attached declaration indicates that Mr. Vigil has 16 years of  
15 experience as an attorney, and has garnered various honors. Docket No. 68 at 9-10. The declaration  
16 provides information about Ballard Spahr’s reputation as a whole, and asserts that the attorneys’  
17 rates in this case are “consistent” with “rates customarily charged in the Las Vegas, Nevada  
18 metropolitan area.” *Id.* This is insufficient. Plaintiff seeks to recover fees charged by five different  
19 attorneys working on a single motion to compel: Abran E. Vigil, Roger P. Thomasch, Peter  
20 Haviland, Gregory P. Szewczyk, and J. Matt Thornton. *Id.* at 10-11. The motion for attorneys’ fees  
21 itself only specifies Mr. Vigil’s position, and vaguely refers to the individuals who worked on the  
22 motion as “attorneys at different year levels.” *See id.* at 4-5. Additionally, no declaration was filed  
23 specifying the positions held by anyone other than Mr. Vigil, let alone evidencing their skill,  
24 experience, and reputation such that the Court can determine the reasonableness of the rates sought.  
25 This shortcoming is especially problematic given that it appears the rates sought are significantly  
26 higher than the prevailing rates in this District. *See, e.g., Crusher Designs*, 2015 WL 6163443, at

1 \*2.

2           Accordingly, the pending motion for attorneys' fees is hereby **DENIED** without prejudice.  
3 Docket No. 68. Any renewed motion shall be filed no later than February 10, 2017, and shall  
4 provide all information necessary under the Rules and the caselaw for the Court to conduct a proper  
5 lodestar analysis. If a renewed motion is filed that fails to comply in full with the Rules and the  
6 caselaw, the Court will deny Plaintiff's request for fees.

7           IT IS SO ORDERED.

8           DATED: January 30, 2017

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11 NANCY J. KOPPE  
12 United States Magistrate Judge  
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