

Consolidated Appeal Nos. 24-3849, 25-2135, 25-2137, 25-3454

**In The United States Court Of Appeals
For The Ninth Circuit**

HEATHER TURREY, OLIVER FIATY, JORDAN HERNANDEZ, and
JEFFREY SAZON, individually, and on behalf of all others similarly situated,

Plaintiffs-Appellees.

v.

VERVENT, INC.; ACTIVATE FINANCIAL, LLC; and DAVID JOHNSON,
Defendants-Appellants.

Appeal From the United States District Court
for the Southern District of California
No. 3:20-cv-00697-DMS-AHG, Hon. Dana M. Sabraw

**APPELLEES' MOTION FOR ATTORNEY FEES AND
NON-TAXED EXPENSES ON APPEAL**

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INTRODUCTION AND STATEMENT OF TIMELINESS

Appellees/Plaintiffs prevailed after a two-week jury trial on claims that Appellants/Defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962(d). Judgment was entered in favor of Plaintiffs and the class of students with loans from the PEAKS student loan program.

Defendants appealed multiple aspects of the judgment and then consolidated their appeals. The Ninth Circuit affirmed the judgment in a published opinion. *Turrey v. Vervent, Inc.*, __ F.4th __, (9th Cir. Aug. 12, 2026) (hereinafter “Opinion”).

Pursuant to Ninth Circuit Rule 39-1.6 and 18 U.S.C. § 1964(c), Appellees/Plaintiffs hereby request attorney fees and reimbursement of non-taxed expenses incurred in the consolidated appeals. Plaintiffs seek attorney fees of \$676,905, which represents a 1.5 multiplier on their counsels’ lodestar of \$451,270. They seek non-taxed expenses of \$4,925.27. This motion demonstrates that Plaintiffs are entitled to attorney fees and expenses on appeal, that counsels’ rates and hours are reasonable and that the lodestar multiplier is justified.

This motion is timely under Circuit Rule 39-1.6(a) because it is

filed no later than September 9, 2026, i.e., no later than 14 days after the expiration of the period within which a petition for rehearing by Appellants may have been filed.

ARGUMENT

I. Plaintiffs Are the Prevailing Party on Appeal

Plaintiffs are the prevailing party on appeal having successfully defended the judgment entered against Defendants after trial. Defendants appealed the judgment on two primary issues: statute of limitations and RICO causation.

Plaintiffs prevailed on both issues and the district court's judgment was unconditionally affirmed. Opinion at 22. Because the panel rejected all of Defendants' assignments of error and left the jury's liability determination and damages award completely intact, Plaintiffs have achieved a total victory that satisfies any federal definition of a prevailing party. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

II. Plaintiffs Are Legally Entitled to Fees and Expenses

A request for attorney fees on appeal must show that the party seeking fees is legally entitled to them. Ninth Circuit Rule 39-1.6(b).

RICO provides that the prevailing party “shall recover” “the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). The Ninth Circuit recognizes that § 1964(c) authorizes attorney fees for prevailing plaintiffs, including fees incurred on appeals. *Chang v. Chen*, 95 F.3d 27, 28 (9th Cir. 1996); *see also* Dist. Ct. Dkt. 385 at 9 (“[C]ourts in this circuit and others have routinely held that RICO authorizes reimbursement for attorneys’ fees spent on appeal.”).

Under RICO, the injured party shall also recover “the costs of the suit.” 18 U.S.C. § 1964(c). This permits recovery of “standard out-of-pocket litigation expenses, such as printing and legal research, as well as costs that are normally non-taxable, such as travel expenses.” Dist. Ct. Dkt. 385 at 15 (citation omitted); *see also* *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010) (“[W]e repeatedly have allowed prevailing plaintiffs to recover non-taxable costs where statutes authorize attorney’s fees awards to prevailing parties.”).

Further, “[g]enerally, a party that is entitled to an award of attorneys’ fees in the district court is also entitled to an award of attorneys’ fees on appeal.” *Legal Voice v. Stormans Inc.*, 757 F.3d 1015, 1016 (9th Cir. 2014).

Below, the district court held that Plaintiffs were entitled to reasonable attorney fees and non-taxable expenses under RICO for prevailing on their RICO claim at trial. Defendants did not contest or appeal Plaintiffs' entitlement to attorney fees and expenses as the prevailing party under RICO. App. Dkt. 30-1 at 46; Dist. Ct. Dkt. 385 at 3.

III. The Attorney Fees Sought Are Reasonable

Under RICO and other fee-shifting statutes, the court starts with the lodestar amount. *Grisbrecht v. Barnhart*, 535 U.S. 789, 801 (2002) (“The ‘lodestar’ figure has ... become the guiding light of our fee-shifting jurisprudence.”) (quoting *Burlington v. Dague*, 505 U.S. 557, 562 (1992)).

“The lodestar calculation begins with the multiplication of the number of hours reasonably expended by a reasonable hourly rate.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (citation omitted). The lodestar represents a “presumptively reasonable fee.” *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) (citation omitted). In federal statutory fee-shifting cases, the court may also apply an upward multiplier or enhancement when there

is evidence the hourly rate falls short of the prevailing reasonable rate or in payment delays. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554–56 (2010).

A. The Hourly Rates Are Reasonable

Reasonable hourly rates are determined by prevailing market rates in the relevant community, which is typically where the district court sits. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Plaintiffs’ counsel are entitled to the hourly rates charged by attorneys of comparable skill, experience, and reputation engaged in class action and RICO litigation. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454–55 (9th Cir. 2010).

The Ninth Circuit recently approved partner hourly rates of \$1,314 and an hourly rate of \$1,001 for the “three more junior colleagues who worked on the case” as appropriate prevailing rates for litigators in the Central District of California. *LA Int’l Corp. v. Prestige Brands Holdings, Inc.*, 126 F.4th 608, 624 (9th Cir. 2026). The court emphasized that the reasonable prevailing rate is “meant to compare *lawyers*, not *firms*” and it criticized the district court’s finding that it was “unreasonable to award big law rates to a four-person firm” *Id.*

at 625 (emphasis original and citation omitted). “A firm’s small size should not automatically result in its attorneys receiving a reduced hourly rate. A firm’s size does not directly bear on the factors we must consider when awarding fees—the lawyers’ skill, experience, and reputation. Indeed, some of the most skillful, experienced, and reputable attorneys strike out on their own or with several colleagues.” *Id.* at 626 (internal citation omitted).

Here, the lodestar is comprised of partner rates that range from \$710 to \$960, and associate rates that range from \$500 to \$550. Blood Decl., ¶ 27; Grogan Decl., ¶ 29.

These rates are manifestly reasonable—indeed they are on the low side—and have been accepted as such by courts in numerous other class action cases. “[R]ate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Blood Decl., ¶¶ 19–21; Grogan Decl., ¶¶ 20–22 (listing courts that have approved Plaintiffs’ counsels’ rates as reasonable); *see also Guam Soc’y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996) (declarations

regarding the prevailing rate in the relevant community suffice to establish a reasonable hourly rate).

Moreover, counsels' hourly rates sought for their work on appeal are the same hourly rates approved by the district court for counsels' work in the trial court. The district court found: "After reviewing Plaintiffs' counsels' rates, the Court finds them to be reasonable. They are approximately in line with past hourly rates approved in this district." Dist. Ct. Dkt. 385 at 5. Also important here, "Defendants d[id] not dispute these hourly rates." *Id.*

The rates previously approved for counsels' work in the district court should be approved as reasonable for their successful work on appeal.

B. The Hours Expended on the Appeals Are Reasonable

Plaintiffs' counsel spent a total of 701.55 hours on the consolidated appeals and work related to the appeal such as the appeal bond, settlement discussions with the Ninth Circuit mediator and this fee brief. Blood Decl., ¶ 27; Grogan Decl., ¶ 29.

These hours are reasonable given the complex issues raised by the appeal and the extensive trial court record on which the appeals were

based. Defendants crafted their appeal using novel procedural issues to get around issues of waiver and failure to preserve issues for appeal while also raising detailed, substantive RICO arguments.

Defendants appealed the district court's denial of their pre-trial motion for summary judgment and denial of their post-trial Rule 50(a) and Rule 50(b) motions for judgment as a matter of law. Appealing these rulings in turn involved numerous aspects of the trial, such as jury instructions and the verdict form and whether the jury had substantial evidence for its findings.

Substantively, Defendants asserted the RICO claim was barred by the statute of limitations. They had argued on summary judgment that Plaintiffs knew or should have known of their RICO injury when government regulators investigated and filed complaints against ITT regarding the PEAKS loan program. Opinion at 9. In their Rule 50(b) motion, Defendants argued the statute of limitations started running when the PEAKS loans were issued, or at the latest, when students began making payments on the loans. *Id.* at 11. On appeal, Defendants also argued that the district court applied the wrong legal standard under the injury-discovery rule applicable in RICO cases. App. Dkt.

30.1 at 28–32. Alternatively, Defendants argued the separate accrual doctrine did not apply as a matter of law and hence Plaintiff's claims were not timely filed. *Id.* at 35–39; Opinion at 9, 11.

In addition to appealing the statute of limitations, Defendants argued on appeal that RICO's causation requirement had not been met and that the district court erred by denying their motion for summary judgment as to the issue of proximate causation. Opinion at 19. Defendants proposed that the RICO claim failed as a matter of law because Plaintiffs did not show that their injury was caused by the fraudulent predicate racketeering acts and that at best Plaintiffs' injuries were a collateral aspect of the RICO scheme. App. Dkt. 30.1 at 30–31.

Plaintiffs addressed every argument in their answering brief. App. Dkt. 37. They also raised alternate grounds for affirmance, specifically that Defendants had waived their statute of limitations defense and failed to preserve their causation argument. *Id.* at 27–29, 41–47. Plaintiffs prevailed on the statute of limitations substantive arguments (Opinion at 12–19) and procedurally on causation, with the panel finding that Defendants had not preserved the RICO causation issue for

appellate review. *Id.* at 19–22.

Not surprisingly, the briefing was lengthy. Defendants’ opening and reply briefs collectively came in at 76 pages and 17,795 words. App. Dkts. 30.1, 43. Plaintiffs’ answering brief was 59 pages and 10,768 words. App. Dkt. 37.1. Defendants’ excerpt of record was 4 volumes totaling 794 pages. App. Dkts. 31-01–31-05. Plaintiffs’ supplemental excerpt of record was 4 volumes and 826 pages. App. Dkts. 39-01–39-05; *see also* Blood Decl., ¶ 14.

The number of hours spent by Plaintiffs’ counsel is also reasonable because they are hours spent on appellate work. Appellate work is distinct from trial level efforts, and the measure of a reasonable fee award for appellate services reflects the differences. “Appellate work is most assuredly not the recycling of trial level points and authorities.” *In re Marriage of Shaban*, 88 Cal. App. 4th 398, 408 (2001). “For better or worse, appellate briefs receive greater judicial scrutiny than trial level points and authorities, ...” *Id.* at 409.

Hence, as the Ninth Circuit has recognized, an appeal requires counsel to spend substantial hours re-examining the record, updating legal research, and re-substantiating key arguments. *Moreno v. City of*

Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). “When a case goes on for many years, a lot of legal work product will grow stale; a competent lawyer won’t rely entirely on last year’s, or even last month’s research ... A lawyer also needs to get up to speed with research previously performed. All this is duplication, of course, but it’s *necessary* duplication; it is inherent in the process of litigation over time.” *Id.* (emphasis original).

Further, because the orientation of an appellate court addresses whether the trial court committed a prejudicial error of law, successful appellate defense demands a separate structural orientation, comprehensive record cross-referencing, and original strategic drafting. This necessary investment of time routinely justifies substantial hours on appeal, even where the underlying issues were previously litigated below. *See id.*; *see also Center for Biological Diversity v. Cnty. of San Bernardino*, 188 Cal. App. 4th 603, 622–23 (2010) (reasonable that hours incurred on appeal exceeded hours spent on trial); *Citizens Against Rent Control v. City of Berkeley*, 181 Cal. App. 3d 213, 233–34 (1986) (billing 1,940 hours for one year of appellate work was reasonable).

Indeed, Plaintiffs' success on appeal was founded on their counsels' sedulous preparation. For the appeal, Plaintiffs' counsel reviewed the trial transcript and related documents such as the proposed and final jury instructions and verdict forms. They delved into the contested district court orders denying summary judgment and the Rule 50(a) and 50(b) orders as well as the briefing underlying those motions. Plaintiffs' counsel researched each issue in the appeal afresh and also researched and developed the alternate grounds for affirmance, and succeeded on disposing of Defendants' causation argument on grounds the issue had not been properly preserved for review on appeal. Counsel spent considerable time drafting the answering brief to achieve organized, cogent arguments whereby the reader would not get lost among the myriad issues raised by Defendants and so that Plaintiffs' alternate grounds for affirmance were not lost in the shuffle. Blood Decl., ¶¶ 9–13; Grogan Decl., ¶¶ 10–14.

As to oral argument, because it occurred almost seven months after Plaintiffs filed their answering brief, case law had to be reread and summarized (with key cases read multiple times), every issue

outlined, and then narrowed, focused and re-outlined following multiple mock sessions of oral argument. Blood Decl., ¶ 15.

The hours spent on the appeal are also reasonable because they include the time incurred on collateral issues which include the appeal bond, this fee motion and the motion to transfer the fee request to the district court. Courts “have consistently held that time spent establishing the entitlement to and amount of the fee is compensable.” *Vortex Marine Constr. v. Grimm*, 878 F.3d 709, 710 (9th Cir. 2017). “This is so because it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir. 2008). Below, the district court awarded Plaintiffs fees-on-fees and rejected Defendants’ arguments that the hours spent on the fee motion should be reduced. Dist. Ct. Dkt. 398 at 8.

The hours Plaintiffs’ counsel spent on the appeal and collateral issues are reasonable.

C. A 1.5 Multiplier Is Appropriate

The lodestar is presumptively reasonable. However, this presumption may be overcome in exceptional circumstances where evidence demonstrates that the baseline lodestar does not adequately compensate the true value and economic realities of the representation. *Perdue*, 559 U.S. at 554–56; *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). In *Perdue*, the Supreme Court recognized that an upward enhancement is legally justified where: (1) the baseline hourly rate fails to capture the attorneys’ true market value; (2) the representation requires an outlay of expenses over extremely protracted litigation; or (3) circumstances involve an exceptional delay in the payment of fees. *Perdue*, 559 U.S. at 554–56.

These factors are satisfied here and readily support the moderate 1.5 multiplier requested.

1. Undervalued Hourly Rates

A lodestar enhancement is appropriate when the “hourly rate employed in the lodestar calculation does not adequately measure the attorney’s true market value, as demonstrated in part during the litigation.” *Perdue*, 559 U.S. at 554–55. “This may occur if the hourly

rate is determined by a formula that takes into account only a single factor (such as years since admission to the bar) or perhaps only a few similar factors. In such a case, an enhancement may be appropriate so that an attorney is compensated at the rate that the attorney would receive in cases not governed by the federal fee-shifting statutes.” *Id.* at 555.

Here, Plaintiffs’ counsels’ hourly rates are conservative baseline rates approved for trial-court work, determined largely by chronological years since admission to the bar. Blood Decl., ¶¶ 19–21; Grogan Decl., ¶¶ 20–23. They fall significantly below the market rates commanded by the national appellate specialists hired by Defendants. While Plaintiffs’ partner rates range from \$710 to \$960, Defendants utilized appellate counsel from Morrison & Foerster LLP who command standard partner ranges between \$1,475 and \$2,475 per hour.

Defendants’ primary appellate counsel were Joseph Palmore and Aileen McGrath. Mr. Palmore was identified in a 2023 federal fee application at an hourly rate of \$1,650. Blood Decl., Ex. 5 at 3. And last year, Morrison & Foerster identified the firm’s 2025 standard U.S. hourly rate range for partners and senior of counsel as \$1,475 to \$2,475,

and declared to the court that its rates are “reasonable and comparable to the rates charged by other firms of similar standing in the legal market.” Blood Decl., Ex. 6 at 5. Ms. McGrath, a San Francisco partner in Morrison & Foerster’s appellate practice falls within that partner category.

The Ninth Circuit recently recognized that a boutique firm’s small size or lower overhead should not result in a reduced hourly rate relative to the actual skill and elite opposition faced. *LA Int’l Corp.*, 126 F.4th at 625–26.

Because Plaintiffs’ counsels’ baseline lodestar utilizes historical, trial-level rates (Blood Decl., ¶ 22; Grogan Decl., ¶ 23), it underrepresents the true market value of the specialized skill required to successfully defend a multi-million dollar RICO judgment on appeal against former Supreme Court clerks and top-tier national appellate specialists.¹

¹ Aileen McGrath conducted much of the work on Defendants’ appeal including oral argument. Ms. McGrath earned her J.D. *magna cum laude* from Harvard Law School and is “a leading appellate attorney” who “represents clients in high-stakes appeals in the U.S. Supreme Court, the Ninth Circuit, the California Supreme Court, and appellate courts across the country ...” Ms. McGrath is “[k]nown for her exceptional legal writing, strategic acumen, and oral advocacy, ...”

Recently, Judge Richard Seeborg of the Northern District of California awarded a 1.5 multiplier under a fee shifting statute because *inter alia* plaintiff's counsel's rates were demonstrably lower than rates charged by defendant's appellate counsel. Blood Decl., Ex. 7 at 4.

2. The Protracted Nature of the Appeal Justifies the Enhancement

An enhancement is also justified where an appeal requires a large, uncompensated expenditure of attorney time and resources against specialized, multi-firm adversarial teams. *Perdue*, 559 U.S. at 555.

Faced with a massive trial record and an opposing team consisting of appellate specialists from Morrison & Foerster LLP, augmented with

Ms. McGrath “served as a law clerk to Justice Steven Breyer of the U.S. Supreme Court and then-Chief Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. She also served as a chambers attorney at the California Supreme Court for Justice Mariano-Florentino Cuellar.” *Id.* Ms. McGrath is lauded for her skill and strategy in “complex, bet-the-company cases.” <http://www.mofo.com/people/aileen-mcgrath>.

Joseph Palmore chairs Morrison & Foerster's appellate and Supreme Court practice and “leads high-stakes appeals in the U.S. Supreme Court, federal courts of appeals, and state appellate courts, ...” He has argued 13 cases in the U.S. Supreme Court and obtained “landmark ruling[s].” *Id.* Mr. Palmore comes with degrees from University of Virginia (J.D. and M.A.) and Harvard (A.B. *magna cum laude*). He clerked for Justice Ruth Bader Ginsberg of the U.S. Supreme Court, Judge Dennis Jacobs of the Second Circuit Court of Appeals, and Judge John Gleeson of the Eastern District of New York. <http://www.mofo.com/people/joseph-palmore>.

attorneys from ArentFox Schiff LLP and Troutman Pepper Locke LLP, Plaintiffs' counsel had to dedicate an extraordinary volume of concentrated billing hours to the appeal. Counsel successfully executed multi-layered procedural and substantive parsing to defeat Defendants' complex legal and fact-based, evidentiary arguments concerning RICO proximate causation and the injury-discovery rule. They also presented alternate grounds for affirmance on both of the major issues, one of which was successful and obviated Defendants' substantive arguments on RICO causation. This allocation of the firms' limited resources to match an augmented elite corporate defense team represents an extraordinary outlay of legal capital by Plaintiffs' counsel. Blood Decl., ¶ 24; Grogan Decl., ¶ 25. The efficiency with which Plaintiffs' counsel contained their total hours, despite navigating a complex two-week trial record and extensive research and briefing, constitutes an outlay of talent and labor that is not captured by the unenhanced lodestar.

3. The Delay in Payment, Exacerbated by Voluntary Baseline Restraint, Justifies the Multiplier

An enhancement is also justified if there is an extraordinary or unanticipated delay in payment, particularly when that delay is

exacerbated or dragged out by prolonged defense strategies. *Purdue*, 559 U.S. at 556. While courts frequently compensate for multi-year delays by calculating fees at *current* market rates, the Ninth Circuit explicitly permits historical rates to be utilized alongside a corresponding upward lodestar enhancement to achieve present value. *In re Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994); *see also Purdue*, 559 U.S. at 556 (compensation for delay can be made by a lodestar enhancement).

This litigation has now spanned nearly seven years. Rather than inflating the fee application by substituting higher current rates, Plaintiffs' counsel voluntarily exercised billing judgment by calculating the lodestar using their conservative historical rates previously approved by the district court for the trial court work. Blood Decl., ¶ 19; *id.*, Ex. 3; Grogan Decl., ¶ 19. This restraint preserves judicial efficiency but leaves counsel undercompensated for the opportunity costs and inflation occurring during Defendants' unsuccessful appellate strategy that took over two years, excluding the ongoing time to be incurred on this fee application. Because the baseline lodestar deliberately utilizes past historical parameters, a 1.5 multiplier is an authorized legal

mechanism to compensate for this defense-driven delay.

For all the above reasons, the Court should apply a modest multiplier of 1.5 to the lodestar.

IV. The Expenses Sought Are Reasonable

Plaintiffs' counsel have submitted declarations identifying the \$4,925.27 in non-taxed expenses incurred on appeal. Blood Decl., ¶ 30; Grogan Decl., ¶ 32. These expenses are for the non-taxed costs associated with in-house printing of research and case law for the appeal and counsel's travel expenses to attend oral argument before the Ninth Circuit panel. *Id.*; Blood Decl., ¶ 30.

CONCLUSION

Appellees/Plaintiffs respectfully request that their motion be granted, and that the Court issue an order awarding \$676,905 in attorney fees and \$4,925.27 in non-taxed expenses.

Respectfully Submitted,

Dated: September 9, 2026

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CERTIFICATE OF COMPLIANCE

1. This document complies with type volume limits of Fed. R. App. P. 27(d)(2)(A) and 9th Cir. Rule 27-1(1)(d) because this document contains 3,749 words, and is 20 pages. The documents listed at FRAP 27(a)(2)(B) and 32(f) are excluded from the length limit calculation.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook.

Dated: September 9, 2026

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 9, 2026

By: s/ Timothy G. Blood

TIMOTHY G. BLOOD