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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 HEATHER TURRY, et al.,

13 Plaintiffs,

14 v.

15 VERVENT, INC., etc., et al.

16 Defendants.
17

Case No.: 20-cv-697-DMS-AHG

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES**

18 Pending before the Court is Plaintiffs' supplemental motion for attorneys' fees.
19 (Supplemental Motion, ECF No. 386). Defendants filed a response in opposition, (Opp'n,
20 ECF No. 389), and Plaintiffs filed a reply. (Reply, ECF No. 394). The matter is suitable
21 for resolution without oral argument pursuant to Civil Local Rule 7.1(d)(1). (ECF
22 No. 395). For the reasons discussed below, the Court finds that Plaintiffs are entitled to
23 **\$76,971** in attorneys' fees.

24 **I. BACKGROUND**

25 The background of this case has been summarized in numerous prior orders. (ECF
26 Nos. 128, 140, 151, 180, 384, 385). After receiving a favorable jury verdict on their RICO
27 claim in this consumer class action, Plaintiffs moved for attorneys' fees, costs, and service
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1 awards. At approximately the same time, Defendants moved for judgment as a matter of
2 law under Rule 50(b). The Court denied Defendants’ Rule 50(b) motion and granted in
3 part Plaintiffs’ attorneys’ fees motion. (Initial Fees Order, ECF No. 385). Plaintiffs now
4 file a Supplemental Motion to recover additional attorneys’ fees incurred for opposing
5 Defendants’ Rule 50(b) motion and filing the initial attorneys’ fees motion, the present
6 motion, and all other briefings and filings related to the fees motions. (Supplemental
7 Motion, at 2).

8 As the Court previously held in the Initial Fees Order, Plaintiffs are entitled to
9 reasonable attorneys’ fees under RICO for their successful prosecution. *See* Initial Fees
10 Order, at 3; *Valadez v. Aguillo*, No. C-08-03100 JW, 2009 WL 10680866, at *4 (N.D.
11 Cal. Dec. 10, 2009), *aff’d*, 433 Fed. App’x 536 (9th Cir. 2011)). Additionally, “time spent
12 in establishing the entitlement to and amount of the fee is compensable.” *Camacho v.*
13 *Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir. 2008) (citation omitted). Accordingly,
14 Plaintiffs are entitled to recover reasonable attorneys’ fees for work performed in opposing
15 Defendants’ Rule 50(b) motion and filing motions for recovery of fees and costs. Thus,
16 the only debate now is over the amount of Plaintiffs’ additional fees.

17 II. DISCUSSION

18 “Under the lodestar method, the district court ‘multiplies the number of hours the
19 prevailing party reasonably spent on litigation by a reasonable hourly rate to determine a
20 presumptively reasonable fee award.’” *In re Apple Inc. Device Performance Litig.*, 50
21 F.4th 769, 784 (9th Cir. 2022) (quoting *Kim v. Allison*, 8 F.4th 1170, 1180 (9th Cir. 2021)).
22 After the initial lodestar calculation, the court may apply upward or downward adjustments
23 “to account for factors such as ‘the quality of representation, the benefit obtained for the
24 class, the complexity and novelty of the issues presented, and the risk of nonpayment.’”
25 *Id.* (quoting *Kim*, 8 F.4th at 1180–81).

26 A. Reasonable Hourly Rate

27 Plaintiffs’ counsel Blood Hurst & O’Reardon, LLP (“BHO”) and Langer, Grogan &
28 Diver P.C. (“LGD”) request hourly rates that are identical to the rates they requested in

1 their initial fees motion. Davis Decl., ECF No. 386-2 ¶ 10; Nagdeman Decl., ECF No. 386-
2 3 ¶ 12. Defendants do not dispute the reasonableness of these rates. *See generally* Opp’n.
3 Accordingly, the Court incorporates its reasoning as to the reasonableness of counsels’
4 hourly rates from its previous order and finds the requested rates are reasonable. *See* Initial
5 Fees Order, 4–6.

6 **B. Reasonable Number of Hours Expended**

7 “In determining the appropriate number of hours to be included in a lodestar
8 calculation, the district court should exclude hours that are excessive, redundant, or
9 otherwise unnecessary.” *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009)
10 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). Plaintiffs “bear[] the burden of
11 documenting the appropriate hours expended in the litigation and must submit evidence in
12 support of those hours worked.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir.
13 1992). Defendants bear the “burden of rebuttal that requires submission of evidence to the
14 district court challenging the accuracy and reasonableness of the hours charged or the facts
15 asserted by the prevailing party in its submitted affidavits.” *Id.* at 1397–98.

16 Plaintiffs request a collective lodestar based on 142.85 hours. Davis Decl. ¶ 10;
17 Nagdeman Decl. ¶ 12. Counsel attest that these hours were reasonably incurred and
18 represent only time spent on briefing the initial and present fee motions, preparing the
19 opposition to Defendants’ Rule 50(b) motion, and drafting Plaintiffs’ proposed final
20 judgment. *See* Davis Decl. ¶ 5; Nagdeman Decl. ¶ 6. The distribution of hours is as
21 follows:

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Category	LGD Hours	BHO Hours
Initial Attorneys’ Fees Motion	8.75	1.5
Initial Fees Reply Brief	58.8	29.4
Notice of Supplemental Authority re Attorneys’ Fees	1.7	0.5
Proposed Final Judgment	3.5	4.7

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Rule 50(b) Opposition	12.5	14
Supplemental Fee Motion	5.7	1.8
Total:	90.95	51.9

1. Sufficient Documentation

In the Initial Fees Order, the Court applied a 5% reduction to the fees award to reflect “gaps in an otherwise satisfactory record” to the amount of fees requested. (Initial Fees Order, at 10–11). Defendants suggest those gaps still exist and a commensurate reduction is warranted here. (Opp’n, at 4–5) (arguing the Court should reduce Plaintiffs’ supplemental fees request by the “same percentage by which Plaintiffs’ underlying ‘merits fees’ were reduced”). Plaintiffs’ counsel disagree, noting that they have “describe[d] precisely which fees they exclude[,]” and that the fees requested “relate exclusively to Plaintiffs’ successful RICO claim, and not [Plaintiffs’ unsuccessful claims].” (Supplemental Motion, at 7).

The Court agrees with Plaintiffs that a 5% reduction is not warranted on the present motion. Plaintiffs’ initial fees request was supported only by general descriptions of what hours were not billed, and summarized in Plaintiffs’ voluntary 11% reduction of fees. (Initial Fees Order, at 10). In contrast, the present motion carefully details the number of hours spent by counsel on tasks relating to the fees motions and opposing Defendants’ Rule 50(b) motion. *See* Davis Decl. ¶ 10; Nagdeman Decl. ¶ 12. Accordingly, the Court declines to reduce the fees requested here on this ground.

2. Time Spent Reviewing Billing Entries for Initial Fees Reply Brief

Defendants next argue the Court should exclude time spent reviewing time entries and billing records for preparing the initial fees reply brief.¹ (Opp’n, at 5–7). Plaintiffs disagree and argue that the time entry review was necessary to “prepare BHO’s time

¹ Most of the hours billed towards reviewing time entries and billing records were logged by BHO attorney Jim Davis and LGD paralegal Kim Ferrari. Davis Decl., at 4 n.1; Nagdeman Decl., at 5 n.1.

1 entries . . . for submission if ordered by this court, (Davis Decl., at 4 n.1), and to “confirm[]
2 the exact numbers of hours and lodestar that LGD excluded from the initial fee motion.”
3 Nagdeman Decl., at 5 n.1.

4 “[A] prevailing . . . plaintiff is entitled to recover a reasonable attorney’s fee for
5 every item of service which, at the time rendered, would have been undertaken by a
6 reasonable and prudent lawyer to advance or protect his client’s interest in the pursuit of a
7 successful recovery of . . . damages.” *Moore v. James H. Matthews & Co.*, 682 F.2d 830,
8 839 (9th Cir. 1982) (quoting *Twin City Sportservice v. Charles O. Finley & Co.*, 676 F.2d
9 1291, 1313 (9th Cir. 1982)). Thus, it may be reasonable for a court to award attorney’s
10 fees for work that was never filed “as long as the work is ‘useful’ or a task ‘of a type
11 ordinarily necessary’ to secure the final result.” *United States ex rel. Cretney-Tsosie v.*
12 *Creekside Hospice II, LLC*, No. 13-cv-00167-APG-PAL, 2018 WL 4409367, at *5 (D.
13 Nev. Sept. 17, 2018) (quoting *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*,
14 478 U.S. 546, 561 (1986)).

15 Plaintiffs’ proffer for re-reviewing time entries and billing records justifies the fees-
16 on-fees request. Preparing time entries for potential submission to this Court was a
17 “useful” or “ordinarily necessary” task for Plaintiffs’ initial fees motion because many
18 courts, including this Court, have requested such records where the circumstances of a
19 particular case warrant such review. *See, e.g.*, ECF No. 370, at 15 (collecting cases);
20 *Aispuro v. Ford Motor Co.*, No. 18-CV-2045 DMS (KSC), 2020 WL 4582677, at *6 (S.D.
21 Cal. Aug. 10, 2020); *Spangler v. Nat’l College of Tech. Instruction*, No. 14-cv-3005 DMS
22 (RBB), 2018 WL 846930, at *3 (S.D. Cal. Jan. 5, 2018). That this Court issued its Initial
23 Fees Order without requesting line-by-line billing records does not undercut the
24 reasonableness of Plaintiffs’ efforts on the present motion.

25 Accordingly, the Court declines to omit time spent reviewing time entries and billing
26 records. The Court further finds that Plaintiffs’ counsel reasonably devoted 142.85 hours
27 to the tasks identified in the present motion. The resulting lodestar calculation based on
28 the foregoing discussion is **\$76,971**, calculated as follows:

Fees Motion			
BHO			
Individual	Hours	Rate	Total
Timothy G. Blood	9.55	\$960	\$9,168
Leslie Hurst	.2	\$810	\$162
James M. Davis	53.2	\$500	\$26,600
Dafne Maytorena	11.95	\$280	\$3,346
LGD			
John Grogan	5	\$950	\$4,750
David Nagdeman	5.7	\$550	\$3,135
Kim Ferrari	22.5	\$280	\$6,300
Rule 50(b) Opposition and Proposed Final Judgment			
BHO			
Individual	Hours	Rate	Total
Timothy G. Blood	3.5	\$960	\$3,360
Leslie Hurst	3.5	\$810	\$2,835
James M. Davis	8.8	\$500	\$4,400
Dafne Maytorena	.25	\$280	\$70
LGD			
John Grogan	6.4	\$950	\$6,080
David Nagdeman	12.3	\$550	\$6,765
Kim Ferrari	0	\$280	\$0
Total	142.85		\$76,971

D. Adjustments to the Lodestar

As discussed in the Court’s Initial Fees Order, the lodestar is presumptively reasonable. (Initial Fees Motion, at 12). However, the Court may adjust the lodestar by an appropriate multiplier “reflecting a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)) (internal quotations omitted). Of these factors, “a party’s success in the litigation is the ‘most critical.’” *Id.* (quoting *Hensley*, 461 U.S. at 436). “[W]here the plaintiff has achieved ‘only limited success,’ counting *all* hours expended on the litigation—even those reasonably spent—may produce an ‘excessive amount.’” *In re Bluetooth*, 654 F.3d at 942 (quoting *Hensley*, 461 U.S. at 436).

A district court may “reduce the fees-on-fees requested without providing an additional explanation for its actions . . . [when] it already has provided a ‘concise but clear explanation of its reasons for the [merits] fee award’ and that same explanation underlies and supports the decision to award fee-on-fees in the same (or, as here, about the same) percentage.” *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 909 (9th Cir. 1995). However, a district court may also renew its adjustment analysis for fees-on-fees litigation. *See Atkins v. Apfel*, 154 F.3d 986, 990 (9th Cir. 1998) (noting “*Hensley*’s results obtained analysis applies to such [fees-on-fees] as well and that ‘fees for fee litigation should be excluded to the extent that the applicant ultimately fails to prevail in such litigation’” (quoting *Comm’r, I.N.S. v. Jean*, 496 U.S. 154, 163 n.10 (1998))).

The Court adjusted the lodestar by 15% in its Initial Fees Order to reflect Plaintiffs’ degree of success. (Initial Fees Order, at 15). Defendants argue the Court should adjust the present lodestar by the same amount. (Opp’n, at 2). Plaintiffs argue that reapplication of the Initial Fees Order lodestar multiplier is inappropriate because the present motion only seeks fees incurred for Plaintiffs’ successful opposition to Defendants’ Rule 50(b) motion and prosecution of the RICO claim. (Supplemental Motion, at 3).

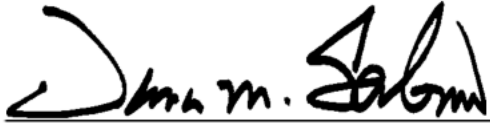
1 Regarding Defendants' Rule 50(b) motion, Plaintiffs' opposition brief focused
2 solely on defeating Defendants' motion (which they did) and preserving their RICO
3 verdict. The Court declines to adjust the lodestar for time billed to oppose Defendants'
4 Rule 50(b) motion under those circumstances. Regarding the RICO prosecution, the initial
5 merits fees request was reduced because the RICO claim was the only claim of five closely
6 related claims on which Plaintiffs prevailed. (Initial Fees Order, at 12–14). In contrast,
7 the fees-on-fees request here is based only on the successful RICO prosecution.
8 Accordingly, the Court declines to adjust the lodestar on the present motion.

9 **III. CONCLUSION**

10 For these reasons, Plaintiffs are awarded **\$76,971** in attorneys' fees.

11 **IT IS SO ORDERED.**

12 Dated: May 9, 2025

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15 Hon. Dana M. Sabraw
16 United States District Judge
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