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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TARLA MAKAEFF, et al., on Behalf  
of Herself and All Others Similarly  
Situated,

Plaintiffs,

vs.

TRUMP UNIVERSITY, LLC, (aka  
Trump Entrepreneur Initiative) a New  
York Limited Liability Company,  
DONALD J. TRUMP, and DOES 1  
through 50, inclusive,

Defendants.

Case No. 10cv0940 GPC (WVG)

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFF/COUNTER  
DEFENDANT TARLA  
MAKAEFF’S REQUEST FOR  
FEES AND COSTS**

[Dkt. No. 331.]

TRUMP UNIVERSITY, LLC,

Counterclaimant,

vs.

TARLA MAKAEFF, and DOES 1  
through 10, inclusive,

Counter Defendant.

**INTRODUCTION**

Before the Court is Plaintiff/Counter Defendant Tarla Makaeff’s (“Makaeff”) Bill of Fees and Costs pursuant to California Code of Civil Procedure § 425.16, commonly known as California’s Anti-Strategic Lawsuits Against Public Participation (“anti-SLAPP”) statute. (Dkt. No. 331.) Defendant/Counterclaimant Trump

1 University, LLC (“Trump University”) has opposed. (Dkt. No. 335.) Pursuant to this  
2 Court’s order, the Parties also submitted supplemental briefing. (Dkt. Nos. 358, 364,  
3 367.) For the reasons set forth below, the Court hereby **GRANTS IN PART AND**  
4 **DENIES IN PART** Makaeff’s request for fees and costs. The Court **AWARDS**  
5 Makaeff fees in the amount of **\$790,083.40**, and costs in the amount of **\$8,695.81**.

### 6 **BACKGROUND**

7 Beginning in August 2008, Makaeff attended Trump University’s real estate  
8 programs. (Dkt. No. 1 ¶ 10.) On April 30, 2010, Makaeff brought a class action  
9 lawsuit against Trump University accusing it of, among other things, deceptive  
10 business practices. (Dkt. No. 1.) On May 26, 2010, Trump University filed a  
11 defamation counterclaim against Makaeff. (Dkt. No. 4.)

12 On June 30, 2010, Makaeff filed a special motion to strike Trump University’s  
13 defamation counterclaim under California’s anti-SLAPP statute, California Code of  
14 Civil Procedure § 425.16. (Dkt. No. 14.)

15 On August 23, 2010, Judge Irma E. Gonzalez denied Makaeff’s anti-SLAPP  
16 motion. (Dkt. No. 24.) Makaeff’s subsequent motion for reconsideration was denied  
17 on September 20, 2010. (Dkt. No. 40.)

18 On January 3, 2011, Makaeff appealed the denial of her anti-SLAPP motion to  
19 the Ninth Circuit (Dkt. No. 43), which reversed and remanded on April 17, 2013.<sup>1</sup>  
20 *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 271 (9th Cir. 2013). In addition, the  
21 Ninth Circuit granted Makaeff’s unopposed request that the issue of appellate  
22 attorney’s fees be transferred to the district court. (Dkt. No. 284.) On June 16, 2014,  
23 this Court granted Makaeff’s anti-SLAPP motion to strike Trump University’s  
24 defamation counterclaim. (Dkt. No. 328.)

25 On July 3, 2014, pursuant to this Court’s direction, Makaeff filed a Bill of Fees  
26 and Costs to substantiate the amount of reasonable attorney’s fees and costs associated

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28 <sup>1</sup>In the interim, the case was transferred to the undersigned judge. (Dkt. No.  
190.)

1 with bringing the anti-SLAPP motion, related appeal, and supplemental briefing. (*Id.*  
2 at 18-19; Dkt. No. 331.)<sup>2</sup> Trump University filed an opposition on July 18, 2014. (Dkt.  
3 No. 335.) On July 22, 2014, Makaeff filed a “Notice of Deficiency and Intended Non-  
4 Response Absent Court Request.” (Dkt. No. 336.)

5 On November 18, 2014, this Court ordered Makaeff to submit “additional  
6 briefing detailing the amount of time each attorney spent on each task” and further  
7 “substantiating the costs requested.” (Dkt. No. 358.) Makaeff filed her supplemental  
8 briefing on December 15, 2014, and Trump University filed its supplemental  
9 opposition on December 23, 2014.<sup>3</sup> (Dkt. Nos. 364, 367.) On January 7, 2015,  
10 Makaeff filed an *ex parte* application for leave to file a limited response.<sup>4</sup> (Dkt. No.  
11 368.)

## 12 LEGAL STANDARD

13 Under California’s anti-SLAPP statute, “a prevailing defendant on a special  
14 motion to strike *shall* be entitled to recover his or her attorney’s fees and costs.”  
15 Cal. Civ. Proc. Code § 425.16(c)(1) (emphasis added); *see also Ketchum v. Moses*, 17  
16 P.3d 735, 741 (Cal. 2001) (“[A]ny SLAPP defendant who brings a successful motion  
17 to strike is entitled to mandatory attorney fees.”).

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

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25 <sup>2</sup>Page number citations such as this one are to the page numbers reflected on the  
26 Court’s CM/ECF system and not to page numbers assigned by the parties.

27 <sup>3</sup>On December 16, 2014, the Court granted Makaeff’s motion to quash Trump  
28 University’s subpoenas of Plaintiffs’ counsels’ time records, and denied Trump  
University’s motion to compel the production of documents. (Dkt. No. 366.)

<sup>4</sup>The Court **GRANTS** Makaeff’s unopposed *ex parte* application.

1 An award of fees and costs in an anti-SLAPP case must be reasonable, and courts  
2 have broad discretion in determining what is reasonable. *See Metabolife Int'l, Inc. v.*  
3 *Wornick*, 213 F. Supp. 2d 1220,1222 (S.D. Cal. 2002).

#### 4 DISCUSSION

5 In the instant case, Makaeff requests an award of attorney's fees in the amount  
6 of \$1,333,004.25, based on 2,226.35 hours incurred in the process of strategizing,  
7 researching and briefing the anti-SLAPP motion, subsequent successful appeal and  
8 opposing Trump University's petition for rehearing en banc, discovery, supplemental  
9 briefing, and the fee brief. (Dkt. No. 331 at 16, 18; Dkt. No. 331 (Jensen Decl.) ¶ 58;  
10 Dkt. No. 331-2 (Eck Decl.) ¶ 55; Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 2; Dkt. No.  
11 364-2 (Eck Supp. Decl.) ¶ 2.) Additionally, Makaeff requests costs in the amount of  
12 \$9,209.27. (Dkt. No. 331 at 18; Dkt. No. 331 (Jensen Decl.) ¶ 59; Dkt. No. 331-2 (Eck  
13 Decl.) ¶ 57; Dkt. No. 364 at 19 n.11; Dkt. No. 364-1 (Jensen Supp. Decl.) ¶¶ 2, 31 n.1;  
14 Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 33.) Trump University counters that the Court  
15 should deny Makaeff's fee request entirely, or substantially reduce the fees to no more  
16 than \$147,675.00, and deny all costs. (Dkt. No. 335 at 27; Dkt. No. 367 at 27.)

#### 17 I. Evidentiary Objections and Motions to Strike

18 As a preliminary matter, the Court considers Trump University's evidentiary  
19 objections and motions to strike. Trump University objects to the majority of the two  
20 supplemental declarations of Makaeff's counsel, Rachel L. Jensen and Amber L. Eck,  
21 on the ground that they contain inadmissible hearsay. (Dkt. Nos. 367-3, 367-4.)  
22 Specifically, Trump University contends that the portions of the two supplemental  
23 declarations regarding the time spent by other attorneys and paralegals – who did not  
24 submit their own declarations – are inadmissible hearsay because the two declarants  
25 do not purport to have personally observed the amount of time spent by these other  
26 individuals.

27 Trump University relies on the Ninth Circuit's recent decision in *Muniz v. United*  
28 *Parcel Serv., Inc.*, 738 F.3d 214, 222-23 (9th Cir. 2013), which held that an attorney's

1 declaration regarding his paralegal's hours was inadmissible hearsay. In *Muniz*, the  
2 declaring attorney averred that he watched the paralegal reconstruct her hours and the  
3 spreadsheet he attached to his declaration showed her hours. *Id.* The Ninth Circuit  
4 held that the attorney's declaration stating the number of hours worked by the paralegal  
5 was inadmissible hearsay because it merely repeated the paralegal's out of court  
6 statements concerning the hours she had worked. *Id.* at 223. Therefore, the Ninth  
7 Circuit vacated in part and remanded to the district court "to determine, in the first  
8 instance, whether any hearsay exception applies to [the attorney's] declaration  
9 regarding fees for paralegal work in this case." *Id.* at 227.

10 Trump University argues that here, similar to *Muniz*, the two supplemental  
11 declarations regarding the time spent and tasks performed by other individuals are  
12 inadmissible hearsay because they are "undoubtedly based on out of court statements  
13 or [the declarant's] own opinion" and are not based on "personal knowledge or  
14 observation." (Dkt. No. 367-3 at 3; Dkt. No. 367-4 at 3.) *See also Knickerbocker v.*  
15 *Corinthian Colls.*, No. 12-cv-1142-JLR, 2014 WL 3927227, at \*3 n.2 (W.D. Wash.  
16 Aug. 12, 2014) (attorney's declaration of another attorney's hours worked was  
17 inadmissible hearsay based on *Muniz*); *Kranson v. Fed. Express Corp.*, No. 11-cv-  
18 5826-YGR, 2013 WL 6503308, at \*5 (N.D. Cal. Dec. 11, 2013) (attorney's declaration  
19 of paralegal's hours worked was inadmissible hearsay based on *Muniz*).

20 Makaeff counters that *Muniz* is distinguishable because the initial and  
21 supplemental declarations of Makaeff's counsel, Ms. Jensen and Ms. Eck, regarding  
22 other individuals are based on their personal knowledge working on the matters,  
23 overseeing the work of others, and their personal review of their respective law firms'  
24 business records. (Dkt. No. 368-1 at 5-6.) *See Banga v. First USA, NA*, 29 F. Supp.  
25 3d 1270, 1275 n.2 (N.D. Cal. 2014) ("[P]ersonal knowledge can come from the review  
26 of the contents of business records and an affiant may testify to acts that she did not  
27 personally observe but which have been described in business records." (citing *Aniel*  
28 *v. GMAC Mortg., LLC*, No. 12-cv-4201-SBA, 2012 WL 5373388, \*6 (N.D. Cal. Oct.

1 30, 2012))). Both Ms. Jensen and Ms. Eck declare that they personally reviewed their  
2 firm's time and expense records maintained in the ordinary course of business. (Dkt.  
3 No. 331-1 (Jensen Decl.) ¶¶ 43, 54-55, 61; Dkt. No. 331-2 (Eck Decl.) ¶ 53; Dkt. No.  
4 364-1 (Jensen Supp. Decl.) ¶ 4).

5 The Court agrees with Makaeff that the portions of the two supplemental  
6 declarations regarding the time spent by other attorneys and paralegals are not  
7 inadmissible hearsay because they are based on Ms. Jensen's and Ms. Eck's personal  
8 knowledge, including their overseeing of the work of others and their personal review  
9 of business records. *See Banga*, 29 F. Supp. 3d at 1275 n.2; *see also* Fed. R. Evid.  
10 803(6) (outlining business records exception to hearsay rule).

11 Trump University also argues that the supplemental declarations disregard the  
12 best evidence rule by describing the contents of writings (i.e., time and expense  
13 records) not submitted into evidence. (Dkt. No. 367-3 at 3; Dkt. No. 367-4 at 3) *See*  
14 Fed. R. Evid. 1002. However, under California law, "an award of attorney fees may  
15 be based on counsel's declarations, without production of detailed time records."  
16 *Raining Data Corp. v. Barrenechea*, 97 Cal. Rptr. 3d 196, 205 (Ct. App. 2009).

17 Accordingly, the Court **DENIES** Trump University's evidentiary objections to  
18 and motion to strike portions of the supplemental declarations of Ms. Jensen and Ms.  
19 Eck on the grounds of hearsay and best evidence, as well as lack of foundation, lack  
20 of personal knowledge, and improper opinion.<sup>5</sup>

## 21 **II. Reasonable Attorney's Fees**

22 To determine a reasonable attorney's fee award under the lodestar approach, the  
23 Court first considers whether Makaeff's counsel's hourly rates and number of hours  
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26 <sup>5</sup> Trump University also filed evidentiary objections to the original Declarations  
27 of Rachel L. Jensen, Amber L. Eck, Carol A. Sobel, Eric Alan Issacson, and Karl Olson  
28 in support of Makaeff's Bill of Fees and Costs. (Dkt. Nos. 335-2, 335-3, 335-4, 335-5  
and 335-6.) Makaeff argues that the objections are "not well-taken." (Dkt. No. 336 at  
n.1.) The Court notes the objections. To the extent that the evidence is proper under  
the Federal Rules of Evidence, the Court considered the evidence. To the extent the  
evidence is not proper, the Court did not consider it.

1 expended are both reasonable. The Court then considers Makaeff's request for an  
2 upward multiplier.

3 **A. Reasonable Hourly Rates**

4 To determine the reasonable hourly rate, the Court looks to the "rate prevailing  
5 in the community for similar work performed by attorneys of comparable skill,  
6 experience, and reputation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th  
7 Cir. 2008) (internal quotation marks and citation omitted). In this case, the relevant  
8 community is the Southern District of California because it is "the forum in which the  
9 district court sits." *Id.* The burden is on the party requesting attorney's fees to produce  
10 "satisfactory evidence, in addition to the affidavits of its counsel, that the requested  
11 rates are in line with those prevailing in the community for similar services of lawyers  
12 of reasonably comparable skill and reputation." *Jordan v. Multnomah County*, 815  
13 F.2d 1258, 1263 (9th Cir. 1987); *see also Blum v. Stenson*, 465 U.S. 886, 895 n.11  
14 (1984). Evidence that the Court should consider includes "[a]ffidavits of the  
15 [movant's] attorney and other attorneys regarding prevailing fees in the community,  
16 and rate determinations in other cases, particularly those setting a rate for the  
17 [movant's] attorney." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d  
18 403, 407 (9th Cir. 1990).

19 Here, Makaeff's counsel seek attorney hourly rates ranging from \$250 to \$440  
20 for associates, and \$600 to \$825 for partners. (Dkt. No. 331-1 (Jensen Decl.) ¶ 58; Dkt.  
21 No. 331-2 (Eck Decl.) ¶ 55.) Makaeff's counsel argues that its rates are reasonable  
22 because the two law firms have extensive class action experience, and their hourly rates  
23 are comparable to those that have been previously approved by this Court and in this  
24 District in class action settlements. (Dkt. No. 331 at 14-15; Dkt. No. 331-1 (Jensen  
25 Decl., Ex. 4-7); Dkt. No. 331-2 (Eck Decl., Ex. 3-4.) Makaeff's counsel also points to  
26 the National Law Journal's annual large law firm rate survey, which does not list any  
27 San Diego law firms for 2013, and lists only one San Diego law firm, Luce Forward  
28 Hamilton & Scripps LLC ("Luce Forward"), for 2007, who at that time charged

1 associate rates of \$220 to \$450 per hour, and partner rates of \$325 to \$725 per hour.  
2 (Dkt. No. 331 at 14; Dkt. No. 331-1 (Jensen Decl., Ex. 3) at 120.) Makaeff's counsel  
3 contends its rates are within this range, given that the survey rates are from seven years  
4 ago. (Dkt. No. 331 at 14.) Further, Makaeff's counsel argues that even if their rates  
5 are above average for the Southern District, it is justified by their credentials, track  
6 record and the contingent nature of the litigation. (*Id.* at 14-15.)

7 Trump University argues that Makaeff's counsel's rates are unreasonable and  
8 should be reduced to a blended rate of \$300 per hour. (Dkt. No. 335 at 18-21.) Trump  
9 University points to Makaeff's own submission of a "Real Rate Report Snapshot,"  
10 which lists for 2012: (1) San Diego average hourly rates of \$278.30 for associates, and  
11 \$443.69 for partners; (2) law firms of 101-250 attorneys average hourly rates of  
12 \$277.81 for associates, and \$422.35 for partners; (3) San Diego partner average hourly  
13 rates of \$483.88 for fewer than 21 years experience; (4) San Diego associate average  
14 hourly rates of \$318.52 for three to fewer than seven years experience; and (5) San  
15 Diego litigation average hourly rates of \$197.88 for associates, and \$279.03 for  
16 partners. (Dkt. No. 331-4 (Olson Decl., Ex. A) at 27, 29, 33, 37, 62.) Trump  
17 University also notes that Makaeff's own expert declares that her counsel's rates  
18 "appear to be higher than the average billing rates in San Diego." (*Id.* ¶ 14.) In  
19 addition, Trump University argues that Makaeff's counsel's rates should be reduced  
20 because her counsel admits that they had no experience with anti-SLAPP motions, and  
21 because they were improperly staffed with too many partners working on a simple  
22 motion. (Dkt. No. 335 at 19.) Trump University further relies on other cases in this  
23 District awarding attorney's fees for anti-SLAPP motions which used lower hourly  
24 rates. (*Id.* at 19-20.) *See, e.g., Ravet v. Stern*, No. 07-cv-31-JLS (CAB), 2010 WL  
25 3076290, at \*5 (S.D. Cal. Aug. 6, 2010) (finding \$350 hourly rate reasonable for anti-  
26 SLAPP motion based on attorney declarations, "the complex and lengthy nature of this  
27 case, and the Court's familiarity of the rates charged in the San Diego community").  
28



1           The Court determines that Makaeff has produced satisfactory evidence that the  
2 hourly rates for its associates and partners are reasonable. The hourly rates are  
3 consistent with Luce Forward’s 2007 rates in the National Law Journal survey, with  
4 those previously approved by this Court and in this District in class action settlements,  
5 and with this Court’s familiarity of the rates charged in the San Diego community.  
6 Trump University’s reliance on the average rates in the Real Rate Report Snapshot  
7 survey and other anti-SLAPP motion cases are misplaced given the complex and  
8 lengthy nature of the anti-SLAPP motion in the instant case. Makaeff has also  
9 provided the declaration of an attorney with extensive experience with anti-SLAPP  
10 motions who opines that “the experience, credentials, and effectiveness of Makaeff’s  
11 counsel in this case justify above-average billing rates.” (Dkt. No. 331-4 (Olson Decl.)  
12 ¶ 14.) As such, the Court finds that the associate and partner rates charged by Makaeff  
13 are reasonable.

14           However, the Court determines that Makaeff has failed to produce satisfactory  
15 evidence to support its requested rates for staff attorneys and paralegals. Makaeff seeks  
16 hourly rates of \$350 for “staff attorneys” and ranging from \$250 to \$295 for paralegals.  
17 (Dkt. No. 331-1 (Jensen Decl.) ¶ 58; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 2.)<sup>6</sup> Makaeff  
18 has not provided sufficient evidence of the prevailing market rates for staff attorneys  
19 and paralegals in this District. The only supporting evidence the Court located in the  
20 Makaeff’s filings regarding prevailing rates in this District was that in prior class action  
21 settlements (which used the common fund approach rather than the lodestar approach),  
22 Makaeff’s counsel submitted hourly rates of \$380 for a “project attorney” and \$280 for  
23 a “paralegal / law clerk” in one action, and \$175 for a paralegal in two other actions.  
24 (Dkt. No. 331-1 (Jensen Decl. Ex. 7) at 211 ¶ 54; Dkt. No. 331-2 (Eck Decl. Ex. 3-4)  
25 at 46 ¶ 3, 60 ¶ 6.) There is also some evidence regarding national rates for staff  
26 attorneys and paralegals, but it is Makaeff’s burden to show prevailing rates in this  
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28           <sup>6</sup>The Court notes that Ms. Eck’s initial declaration omitted the \$125 in paralegal fees. (Dkt. No. 331-2 (Eck. Decl.) ¶ 55.)

1 District. (Dkt. No. 331-1 (Jensen Decl. Ex. 2) at 98, 100; Dkt. No. 331-4 (Olson Decl.  
2 Ex. A) at 22.)

3 In addition, Makaeff has not provided any evidence as to the background and  
4 experience of the staff attorneys or paralegals, which might allow the Court to conduct  
5 an independent review to determine the prevailing rate. For example, in *Brighton*  
6 *Collectibles, Inc. v. Coldwater Creek Inc.*, No. 06-cv-1848-H (POR), 2009 WL 160235,  
7 at \* 4 (S.D. Cal. Jan. 20, 2009), the court concluded that \$90 to \$210 per hour was  
8 reasonable for paralegal work. However, \$90 to \$210 per hour is a wide range  
9 depending on the education, skill and experience of the particular paralegal. Here,  
10 Makaeff offers no information or documentation justifying the rates for the staff  
11 attorneys and paralegals, such as a curriculum vitae, resume, or description of the  
12 individual's educational background or litigation experience. For instance, for the staff  
13 attorneys, there is no indication whether they are admitted to practice law in California,  
14 and if so when. In the absence of any evidence as to the background and experience  
15 of the staff attorneys and paralegals, the Court is unable to determine the prevailing  
16 rate.

17 Therefore, because Makaeff has failed to carry her burden to demonstrate that  
18 the staff attorney and paralegal hourly rates are reasonable, the Court **DENIES**  
19 Makaeff's request for staff attorney and paralegal fees. *See Zest IP Holdings, LLC v.*  
20 *Implant Direct Mfg., LLC*, No. 10-cv-541-GPC (WVG), 2014 WL 6851612, at \*6 (S.D.  
21 Cal. Dec. 3, 2014) (denying paralegal fees because insufficient facts were presented as  
22 to the paralegal hourly rate); *Brighton Collectibles, Inc. v. RK Texas Leather Mfg.*, No.  
23 10-cv-419-GPC (WVG), 2014 WL 5438532, at \*5 (S.D. Cal. Oct. 24, 2014) (same);  
24 *J & J Sports Prods., Inc. v. Ortiz*, No. 12-cv-05766-LHK, 2014 WL 1266267, at \*3-4  
25 (N.D. Cal. Mar.24, 2014) (denying attorney's fees, including for "research attorney,"  
26 because plaintiff failed to provide evidence of prevailing market rates or attorneys'  
27 experience).

28

1 In sum, the Court concludes that Makaeff has shown that the hourly rates for  
2 associates and partners are reasonable, but has not shown that the staff attorney and  
3 paralegal hourly rates are reasonable. Accordingly, the Court **EXCLUDES** the staff  
4 attorney total fees of **\$121,047.50** and the paralegal total fees of **\$90,542.50**. (Dkt. No.  
5 331-1 (Jensen Decl.) ¶ 58; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 2.)

### 6 **B. Reasonable Hours Expended**

7 The party seeking fees bears the “burden of establishing entitlement to an award  
8 and documenting the appropriate hours expended and hourly rates.” *ComputerXpress,*  
9 *Inc. v. Jackson*, 113 Cal. Rptr. 2d 625, 649 (Ct. App. 2001) (internal quotation marks  
10 and citation omitted). Although “it is not necessary to provide detailed billing  
11 timesheets to support an award of attorney fees under the lodestar method,”  
12 *Concepcion v. Amscan Holdings, Inc.*, 168 Cal. Rptr. 3d 40, 53 (Ct. App. 2014), the  
13 “evidence should allow the court to consider whether the case was overstaffed, how  
14 much time the attorneys spent on particular claims and whether the hours were  
15 reasonably expended.” *Christian Research Inst. v. Alnor*, 81 Cal. Rptr. 3d 866, 870  
16 (Ct. App. 2008). To that end the Court may require a prevailing party to produce  
17 records sufficient to provide “a proper basis for determining how much time was spent  
18 on particular claims.” *ComputerXpress, Inc.*, 113 Cal. Rptr. 2d at 649 (internal  
19 quotation marks and citation omitted). The Court should exclude hours ““that are  
20 excessive, redundant, or otherwise unnecessary.”” *McCown*, 565 F.3d at 1102 (quoting  
21 *Hensley*, 461 U.S. at 434).

22 The Court previously determined that the declarations submitted by Makaeff  
23 failed to provide enough information to ascertain if the hours expended on this case  
24 were reasonable because Makaeff’s attorneys provided only a summary chart showing  
25 the total amount of hours each individual spent on the anti-SLAPP litigation, and  
26 provided no showing of the specific tasks and the time spent on each task. (Dkt. No  
27 331-1 (Jensen Decl.) ¶ 58; Dkt. No. 331-2 (Eck. Decl.) ¶ 55; Dkt. No. 358.) As such,  
28

1 the Court ordered Makaeff to submit “additional briefing detailing the amount of time  
2 each attorney spent on each task.” (Dkt. No. 358 at 6.)

3 In response, Makaeff has provided supplemental declarations for Ms. Jensen and  
4 Ms. Eck which divide the hours spent on the anti-SLAPP litigation into twenty-five  
5 procedural categories (e.g., initial anti-SLAPP motion before the district court, district  
6 court reply brief, etc.). (Dkt. No. 364-1 (Jensen Supp. Decl.); Dkt. No. 364-2 (Eck  
7 Supp. Decl.)) Trump University argues that these supplemental declarations still fail  
8 to provide sufficient information, and that the hours sought by Makaeff are  
9 unreasonable, and should be denied or substantially reduced, for three main reasons:  
10 (1) “lumped” descriptions of tasks; (2) duplicative hours; and (3) improper staffing.  
11 (Dkt. No. 367.) The Court considers each of Makaeff’s twenty-five procedural  
12 categories, and Trump University’s arguments, to determine whether the expended  
13 hours are reasonable.

#### 14 1. Initial Anti-SLAPP Motion Before the District Court

15 Makaeff’s counsel states that the following amount of time was spent on the  
16 initial anti-SLAPP motion by the various attorneys:<sup>7</sup>

17 Name	18 Law Firm	19 Position	20 Hourly Rate	21 Hours Expended	22 Amount
23 Rachel Jensen	RGRD <sup>8</sup>	Partner	\$660	39.75	\$26,235.00
24 Paula Roach	RGRD	Associate	\$360	43.75	\$15,750.00
25 Amber Eck	ZHE	Partner	\$690	30.50	\$21,045.00
26 Helen Zeldes	ZHE	Partner	\$600	2.50	\$1,500.00
27 Aaron Olsen	ZHE	Associate	\$410	9.25	\$5,550.00

28 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 5; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 4.)

<sup>7</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 84.25 staff attorney hours and 21.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 5.)

<sup>8</sup>“RGRD” refers to Ms. Jensen’s firm, Robbins Geller Rudman & Dowd LLP. “ZHE” refers to Ms. Eck’s firm, Zeldes Haeggquist & Eck, LLP.

1 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
2 additional descriptions of the tasks performed. Ms. Jensen “spent several hours on the  
3 phone with other practitioners and my co-counsel to formulate our strategy,” “met with  
4 our team,” and “reviewed the research memoranda, read key cases, . . . made substantial  
5 revisions to the motion, including drafting, and then . . . reviewed and revised the  
6 supporting draft declarations.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 5; *see also* Dkt.  
7 No. 331-1 (Jensen Decl.) ¶ 15.) Ms. Roach “provid[ed] a first draft of the opening  
8 motion and the declarations.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 5; *see also* Dkt.  
9 No. 331-1 (Jensen Decl.) ¶ 15.) Ms. Eck’s “firm’s” tasks involved “reviewing Trump  
10 University’s counterclaim; conducting extensive legal research; conversations and  
11 emails with defense counsel . . . requesting (unsuccessfully) that Trump University  
12 provide copies of the letters it contended were defamatory; conducting factual research  
13 and having numerous conversations with Tarla Makaeff regarding ascertaining the  
14 allegedly defamatory documents; and assisting Tarla Makaeff in preparing a detailed  
15 declaration.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 4; *see also* Dkt. No. 331-2 (Eck  
16 Decl.) ¶¶ 18-22.)

17 Trump University argues that these hours should be reduced because the  
18 descriptions lump together the time spent on multiple tasks, preventing the Court from  
19 determining if the hours spent are reasonable. (Dkt. No. 367 at 11.) For example, there  
20 is no break down of how many hours Ms. Roach spent on providing a first draft of the  
21 motion versus the declarations. (*Id.*) Trump University also argues that the time is  
22 duplicative, with three partners, two associates, and one staff attorney working on the  
23 motion. (*Id.*)

24 The Court agrees with Trump University that Makaeff’s lumping together of  
25 time, rather than breaking down time by tasks, makes it difficult to assess whether the  
26 time spent on each discrete task was reasonable. Overall, the time spent on the initial  
27 anti-SLAPP motion seems high. The lumping together of tasks makes it hard to  
28 evaluate whether all of the time spent was necessary. For example, it is impossible to

1 determine how much time was spent on legal research, and as a result whether such  
2 amount of time was reasonable.

3       Makaeff’s lumping together of multiple tasks is similar to “block billing.” *See*  
4 *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007) (“‘Block billing’  
5 is ‘the time-keeping method by which each lawyer and legal assistant enters the total  
6 daily time spent working on a case, rather than itemizing the time expended on specific  
7 tasks.’” (citation omitted)). Although “block billing” is “not objectionable per se,” its  
8 use may obscure “the nature of some of the work claimed.” *Christian Research Inst.*,  
9 81 Cal. Rptr. 3d at 873-74. As such, courts have discretion to reduce blocked billed  
10 hours because it “makes it more difficult to determine how much time was spent on  
11 particular activities.” *Welch*, 480 F.3d at 948 (citing *Role Models Am., Inc. v.*  
12 *Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004) (reducing requested hours because  
13 counsel’s practice of block billing “lump[ed] together multiple tasks, making it  
14 impossible to evaluate their reasonableness”)); *see also Heritage Pac. Fin., LLC v.*  
15 *Monroy*, 156 Cal. Rptr. 3d 26, 55 (Ct. App. 2013) (“Trial courts retain discretion to  
16 penalize block billing when the practice prevents them from discerning which tasks are  
17 compensable and which are not.”). When presented with block billing in a fee request,  
18 “the trial court should exercise its discretion in assigning a reasonable percentage to the  
19 entries or simply cast them aside.” *Bell v. Vista Unified Sch. Dist.*, 98 Cal. Rptr. 2d  
20 263, 275 (Ct. App. 2000). However, an across-the-board reduction on hours should not  
21 be applied to all requested hours and should instead be specific to counsel’s block  
22 billed hours, and the district court should “‘explain how or why . . . the reduction . . .  
23 fairly balance[s]’ those hours that were actually billed in block format.” *Welch*, 480  
24 F.3d at 948 (citation omitted).

25       The Court determines that a 20 percent reduction is warranted for the hours spent  
26 on the initial anti-SLAPP motion because the lumping together of tasks makes it  
27 difficult to evaluate whether a reasonable amount of time was expended. In *Welch*, the  
28 Ninth Circuit approved of a 20 percent fee reduction for block billing because a

1 California State Bar Committee report concluded that block billing “may increase time  
2 by 10% to 30%” and 20 percent was in the “middle range.” *Welch*, 480 F.3d at 948.  
3 Similarly here, the Court finds a 20 percent reduction warranted.<sup>9</sup>

4 The Court also excludes Ms. Zeldes’s and Mr. Olsen’s time because there is no  
5 clear indication what tasks they performed.

6 Accordingly, the Court **EXCLUDES \$19,656.00** in fees for the initial anti-  
7 SLAPP motion.

## 8 2. District Court Reply Brief

9 Makaeff’s counsel states that the following amount of time was spent on the  
10 district court reply brief by the various attorneys:<sup>10</sup>

11 Name	12 Law Firm	13 Position	14 Hourly Rate	15 Hours Expended	16 Amount
17 Rachel Jensen	18 RGRD	19 Partner	20 \$660	21 6.00	22 \$3,960.00
23 Paula Roach	24 RGRD	25 Associate	26 \$360	27 20.75	28 \$7,470.00
29 Amber Eck	30 ZHE	31 Partner	32 \$690	33 27.00	34 \$18,630.00

35 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 6; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 5.)

36 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
37 additional descriptions of the tasks performed. Ms. Jensen “reviewed and edited  
38 Makaeff’s supplemental declaration drafted by co-counsel.” (Dkt. No. 364-1 (Jensen  
39 Supp. Decl.) ¶ 6; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 17.) Ms. Roach “drafted the  
40  
41

42 <sup>9</sup>The Court notes that Makaeff has offered to provide additional information to  
43 the Court, including the underlying time entries and records. (Dkt. No. 364 at 9 n.5;  
44 Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 3; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 35.)  
45 However, the Court has already generously provided Makaeff two opportunities to  
46 offer sufficient evidence. Moreover, the burden of culling sufficient information from  
47 contemporaneous records properly rests with the fee applicant, not the Court. *See In*  
48 *re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1327 (C.D. Cal. 1977)  
49 (“The burden is clearly on counsel to file adequately-documented applications for fees  
50 and those who fail to meet that burden do so at their own risk.”). As such, the Court  
51 will not entertain Makaeff’s offer to provide additional information.

52 <sup>10</sup>Because it has already excluded all staff attorney and paralegal fees, the Court  
53 does not include the 43.25 staff attorney hours and 16.50 paralegal hours. (Dkt. No.  
54 364-1 (Jensen Supp. Decl.) ¶ 6.)

1 reply brief.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 6; *see also* Dkt. No. 331-1 (Jensen  
2 Decl.) ¶ 17.) Ms. Eck’s tasks involved “reviewing Trump University’s Opposition to  
3 our Anti-SLAPP motion; conducting extensive legal research regarding the issues  
4 involved; numerous conversations with Makaeff regarding relevant facts; review of  
5 documents relating to the Bank of America letter and Better Business Bureau (‘BBB’)  
6 letter that Trump University produced for the first time, attached to their opposition;  
7 and assisting Makaeff in preparing a detailed supplemental declaration.” (Dkt. No.  
8 364-2 (Eck Supp. Decl.) ¶ 5; *see also* Dkt. No. 331-2 (Eck Decl.) ¶¶ 23-24.)

9 Trump University argues that these hours should be reduced because Ms. Eck  
10 has provided a lumped description of her numerous tasks, making it difficult to  
11 determine whether the hours spent were reasonable. (Dkt. No. 367 at 12.) In addition,  
12 Trump University argues that there appears to be duplication of efforts because two  
13 partners worked on Makaeff’s declaration, and Ms. Eck spent time “conducting  
14 extensive legal research” at the same time that a staff attorney was conducting legal  
15 research. (*Id.*)

16 The Court agrees with Trump University that Ms. Eck’s hours should be reduced  
17 due to the lumping together of tasks, which makes it difficult for the Court to determine  
18 if the hours spent are reasonable. As such, for the reasons discussed above, the Court  
19 applies a 20 percent reduction to Ms. Eck’s hours. *See Welch*, 480 F.3d at 948.  
20 However, the Court does not reduce Ms. Jensen’s and Ms. Roach’s hours.

21 Accordingly, the Court **EXCLUDES \$3,726.00** in fees for the district court reply  
22 brief.

### 23 3. Opposition to Motion to Strike

24 Makaeff’s counsel states that the following amount of time was spent on the  
25 opposition to Trump University’s motion to strike by the various attorneys:<sup>11</sup>

26  
27  
28 <sup>11</sup>Because it has already excluded all paralegal fees, the Court does not include  
the 4.25 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 7.)



Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Rachel Jensen	RGRD	Partner	\$660	1.50	\$990.00
Paula Roach	RGRD	Associate	\$360	2.75	\$990.00
Amber Eck	ZHE	Partner	\$690	9.75	\$6,727.50

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 7; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 6.)

Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following additional descriptions of the tasks performed. Ms. Jensen states that her “firm took the lead in researching and drafting the opposition brief.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 7; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 18.) Ms. Eck states that “we were required to research, prepare, and file an Opposition to the motion to strike.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 6; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 25.)

Trump University argues that these hours should be reduced because the descriptions lump together the time spent on multiple tasks, preventing the Court from determining if the hours spent are reasonable. (Dkt. No. 367 at 12.) Trump University also argues that the time spent by two firms researching and drafting is duplicative. (*Id.*)

The Court agrees with Trump University that the hours should be reduced due to lumping together of tasks, which makes it difficult for the Court to determine if the hours spent are reasonable. For example, Ms. Jensen states that her counsel at her firm “took the lead,” and yet Ms. Eck’s firm spent over twice as much time on the opposition. Moreover, Ms. Eck vaguely describes tasks that “we” performed, even though she is the only individual from her firm who expended hours. As such, the Court applies a 20 percent reduction to the hours expended on the opposition to the motion to strike. *See Welch*, 480 F.3d at 948.

In addition, the Court excludes Ms. Roach’s hours because there is no clear indication what tasks she performed.

1 Accordingly, the Court **EXCLUDES \$2,533.50** in fees for the opposition to the  
2 motion to strike.

#### 3 4. District Court Hearing and Preparation

4 Makaeff's counsel states that the following amount of time was spent on the  
5 district court hearing regarding the anti-SLAPP motion by the various attorneys:

6 Name	7 Law Firm	8 Position	9 Hourly Rate	10 Hours Expended	11 Amount
12 Rachel Jensen	13 RGRD	14 Partner	15 \$660	16 1.25	17 \$825.00
18 Paula Roach	19 RGRD	20 Associate	21 \$360	22 1.00	23 \$360.00
24 Amber Eck	25 ZHE	26 Partner	27 \$690	28 23.5	\$16,215.00

11 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 8; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 7.)

12 Ms. Jensen's and Ms. Eck's supplemental declarations provide the following  
13 additional descriptions of the tasks performed. Ms. Jensen's "firm assisted co-counsel  
14 with preparation for the hearing and reviewed Trump's sur-reply." (Dkt. No. 364-1  
15 (Jensen Supp. Decl.) ¶ 8; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 19.) Ms. Eck, who  
16 "personally argued" the anti-SLAPP motion, "spent a substantial amount of time  
17 preparing for the hearing, which included: additional research regarding the issues  
18 involved; additional review and analysis of all cases cited in our briefs and Trump  
19 University's briefs; and further conversations with Makaeff." (Dkt. No. 364-2 (Eck  
20 Supp. Decl.) ¶ 7; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 26.) Additional attorneys from  
21 both firms attended the hearing, but Makaeff is not seeking reimbursement for their  
22 time. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 8; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 7.)

23 Trump University argues that the hours should be reduced because the lumping  
24 together of tasks makes it impossible to assess the reasonableness of hours, and there  
25 appears to be duplication of efforts, with two attorneys preparing a third attorney for  
26 the hearing. (Dkt. No. 367 at 12-13.)

27 The Court agrees with Trump University that the hours should be reduced due  
28 to lumping together of tasks, which makes it difficult for the Court to determine if the

1 hours spent are reasonable. For example, Ms. Eck’s declaration lumps together the  
 2 time for additional research, review of cases, conversations with Makaeff, and the  
 3 actual argument. As such, the Court applies a 20 percent reduction to the hours  
 4 expended on the district court hearing and preparation. *See Welch*, 480 F.3d at 948.

5 In addition, the Court excludes Ms. Roach’s hours because there is no clear  
 6 indication what tasks she preformed.

7 Accordingly, the Court **EXCLUDES \$3,768.00** in fees for the district court  
 8 hearing and preparation.

### 9 5. Motion for Reconsideration

10 Makaeff’s counsel states that the following amount of time was spent on the  
 11 motion for reconsideration by the various attorneys:<sup>12</sup>

12 Name	13 Law Firm	14 Position	15 Hourly Rate	16 Hours Expended	17 Amount
18 Eric Isaacson	RGRD	Partner	\$825	1.50	\$1,237.50
19 Rachel Jensen	RGRD	Partner	\$660	9.50	\$6,270.00
20 Paula Roach	RGRD	Associate	\$360	4.50	\$1,620.00
21 Amber Eck	ZHE	Partner	\$690	66.00	\$45,540.00
22 Helen Zeldes	ZHE	Partner	\$600	5.00	\$3,000.00

23 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 9; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 8.)

24 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
 25 additional descriptions of the tasks performed. Mr. Isaacson, Ms. Jensen, and Ms.  
 26 Roach all helped revise the motion. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 9; *see also*  
 27 Dkt. No. 331-1 (Jensen Decl.) ¶ 20.) Ms. Eck “spent a considerable amount of time  
 28 researching for the motion for reconsideration, including: reviewing treatises on  
 defamation and Anti-SLAPP motions; reading a large number of cases; and speaking  
 with numerous first amendment and Anti-SLAPP experts, professors, and consultants.”

<sup>12</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 22.00 staff attorney hours and 17.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 9.)

1 (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 8; *see also* Dkt. No. 331-2 (Eck Decl.) ¶¶ 27-28.)  
 2 In addition, “[w]e then spent additional time preparing” the motion. (Dkt. No. 364-2  
 3 (Eck Supp. Decl.) ¶ 8.)

4 Trump University argues that these hours should be reduced because the  
 5 descriptions lump together time spent on multiple tasks, which prevents the Court from  
 6 determining if the hours spent are reasonable. (Dkt. No. 367 at 13.) Trump University  
 7 also argues that the hours are duplicative, because it took four partners, an associate,  
 8 and a staff attorney to prepare a simple, and ultimately unsuccessful, motion for  
 9 reconsideration. (*Id.*)

10 The Court excludes Ms. Zeldes’s time because there is no indication what tasks  
 11 she performed. In addition, the Court agrees with Trump University that the lumping  
 12 together of tasks makes it difficult for the Court to evaluate whether the hours are  
 13 reasonable. As such, the Court applies a 20 percent reduction to the other hours  
 14 expended on the motion for reconsideration. *See Welch*, 480 F.3d at 948.

15 Accordingly, the Court **EXCLUDES \$13,933.50** in fees for the motion for  
 16 reconsideration.

### 17 **6. Motion for Reconsideration Reply Brief**

18 Makaeff’s counsel states that the following amount of time was spent on the  
 19 motion for reconsideration reply brief by the various attorneys:<sup>13</sup>

20 <b>Name</b>	21 <b>Law Firm</b>	22 <b>Position</b>	23 <b>Hourly Rate</b>	24 <b>Hours Expended</b>	25 <b>Amount</b>
26 Rachel Jensen	RGRD	Partner	\$660	3.00	\$1,980.00
27 Amber Eck	ZHE	Partner	\$690	27.50	\$18,975.00

28 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 10; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 9.)

<sup>13</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 24.00 staff attorney hours and 16.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 10.)

1 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
 2 additional descriptions of the tasks performed. Ms. Jensen declares that “[w]e . . .  
 3 reviewed and revised the reply brief drafted by co-counsel.” (Dkt. No. 364-1 (Jensen  
 4 Supp. Decl.) ¶ 10; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 21.) Ms. Eck declares that  
 5 “[p]reparation of the Reply in support of our Motion for Reconsideration involved:  
 6 reviewing and analyzing Defendant’s motion for reconsideration . . . , including all  
 7 cases cited therein; additional legal research; additional consultation with Anti-SLAPP  
 8 experts; and preparation of the Reply.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 9.)

9 Trump University argues the hours should be reduced because the descriptions  
 10 lump together time spent on multiple tasks, which prevents the Court from determining  
 11 if the hours spent are reasonable. (Dkt. No. 367 at 14.) Trump University also argues  
 12 that Ms. Jensen’s declaration vaguely states that “we” reviewed and revised the reply  
 13 brief, which evidences duplicative efforts. (*Id.*)

14 The Court agrees with Trump University that the lumping together of tasks  
 15 makes it difficult for the Court to evaluate whether the hours are reasonable. As such,  
 16 the Court applies a 20 percent reduction to the hours expended on the motion for  
 17 reconsideration reply brief. *See Welch*, 480 F.3d at 948.

18 Accordingly, the Court **EXCLUDES \$4,191.00** in fees for the motion for  
 19 reconsideration reply brief.

### 20 7. Appeal Opening Brief

21 Makaeff’s counsel states that the following amount of time was spent on the  
 22 appeal opening brief by the various attorneys:<sup>14</sup>

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	221.75	\$182,943.75
Rachel Jensen	RGRD	Partner	\$660	10.00	\$6,600.00

23  
 24  
 25  
 26  
 27  
 28 <sup>14</sup>Because it has already excluded all paralegal fees, the Court does not include the 77.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 11.)

1	Amanda Frame	RGRD	Associate	\$440	45.50	\$20,020.00
2	Amber Eck	ZHE	Partner	\$690	12.50	\$8,625.00
3	Helen Zeldes	ZHE	Partner	\$600	0.50	\$300.00

4 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 11; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 10.)

5 Ms. Jensen’s and Ms. Eck’s supplemental declarations, as well as Mr. Isaacson’s  
6 declaration, provide the following additional descriptions of the tasks performed. Mr.  
7 Isaacson “took the lead on researching and briefing the appeal,” while Ms. Jensen  
8 “reviewed and revised the brief and request for judicial notice.” (Dkt. No. 364-1  
9 (Jensen Supp. Decl.) ¶ 11; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 22.) Mr. Isaacson  
10 declares that he read a variety of legal research, consulted with outside attorneys, and  
11 briefed the appeal. (Dkt. No. 331-3 (Isaacson Decl.) ¶¶ 14-15, 19, 22.) Ms. Eck  
12 declares that: “I and my firm assisted in research, preparation, and revision of the  
13 appellate brief, and in compiling Trump University and Donald Trump articles, letters,  
14 emails, advertisements, website snapshots, and other such documents for use on  
15 appeal.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 10; *see also* Dkt. No. 331-2 (Eck Decl.)  
16 ¶¶ 35-36.)

17 Trump University argues that these hours should be reduced for several reasons.  
18 (Dkt. No. 367 at 14.) First, Trump University argues that the descriptions lump  
19 together time spent on multiple tasks, which prevents the Court from determining if the  
20 hours spent are reasonable. (*Id.*) Second, Trump University argues that there is  
21 duplication, with Ms. Jensen and Ms. Eck reviewing the work of Mr. Isaacson. (*Id.*)  
22 Third, Trump University argues that there was improper staffing, with Ms. Eck, a  
23 partner, working on relatively simple tasks. (*Id.*) Finally, Trump University argues  
24 that Mr. Isaacson spent excessive time on the opening brief, because it was unnecessary  
25 for him to consult with outside attorneys and read books on Trump University and  
26 Donald Trump. (Dkt. No. 367-2 at 79.)

27 The Court excludes Ms. Frame’s and Ms. Zeldes’s time because there is no  
28 indication what tasks they performed. The Court also excludes Ms. Eck’s time because

1 her tasks were either duplicative of other attorneys, or improper tasks for a high billing  
 2 partner. For Mr. Isaacson and Ms. Jensen, the Court agrees with Trump University that  
 3 the lumping together of tasks makes it difficult for the Court to evaluate whether the  
 4 hours are reasonable, and as such, applies a 20 percent reduction to their hours. *See*  
 5 *Welch*, 480 F.3d at 948.

6 Accordingly, the Court **EXCLUDES \$66,853.75** in fees for the appeal opening  
 7 brief.

### 8 **8. Opposition to Motion to Stay**

9 Makaeff’s counsel states that the following amount of time was spent on the  
 10 opposition to Trump University’s motion to stay the action pending appeal by the  
 11 various attorneys:<sup>15</sup>

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	4.75	\$3,918.75
Rachel Jensen	RGRD	Partner	\$660	9.00	\$5,940.00
Amber Eck	ZHE	Partner	\$690	27.50	\$18,975.00

12 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 12; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 13.)

13 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
 14 additional descriptions of the tasks performed. Ms. Eck spoke with Trump University’s  
 15 counsel regarding withdrawing the motion, and then “research[ed] and draft[ed] [the]  
 16 opposition.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 12; *see also* Dkt. No. 331-2 (Eck  
 17 Decl.) ¶¶ 32-34.) Ms. Jensen and Mr. Isaacson “reviewed and edited the opposition  
 18 brief prepared by co-counsel.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 12; *see also*  
 19 Dkt. No. 331-1 (Jensen Decl.) ¶ 23.)

20 Trump University argues that the hours should be reduced because the  
 21 descriptions lump together time spent on multiple tasks, which prevents the Court from  
 22

23  
 24  
 25  
 26  
 27  
 28 <sup>15</sup>Because it has already excluded all paralegal fees, the Court does not include  
 the 13.75 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 12.)

1 determining if the hours spent are reasonable. (Dkt. No. 367 at 15.) Trump University  
 2 also argues that the time is duplicative, with two partners reviewing the work of a third  
 3 partner. (*Id.*)

4 The Court agrees with Trump University that some of the hours are duplicative,  
 5 and it was unnecessary for the opposition drafted by one partner to be reviewed by two  
 6 other partners. As such, the Court excludes Ms. Jensen's hours. For Ms. Eck and Mr.  
 7 Isaacson, the Court agrees with Trump University that the lumping together of tasks  
 8 makes it difficult for the Court to evaluate whether the hours are reasonable, and  
 9 therefore applies a 20 percent reduction to their hours. *See Welch*, 480 F.3d at 948.

10 Accordingly, the Court **EXCLUDES \$10,518.75** in fees for the opposition to  
 11 the motion to stay.

#### 12 9. Ninth Circuit Settlement Conference

13 Makaeff's counsel states that the following amount of time was spent on the  
 14 Ninth Circuit Settlement Conference by the various attorneys:

15 Name	16 Law Firm	17 Position	18 Hourly Rate	19 Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	4.50	\$3,712.50
Rachel Jensen	RGRD	Partner	\$660	1.25	\$825.00
Amber Eck	ZHE	Partner	\$690	2.75	\$1,897.50

20 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 13; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 14.)

21 Ms. Jensen's and Ms. Eck's supplemental declarations provide the following  
 22 additional descriptions of the tasks performed. Mr. Isaacson and Ms. Jensen prepared  
 23 for and participated in the telephonic settlement conference. (Dkt. No. 364-1 (Jensen  
 24 Supp. Decl.) ¶ 13.) Ms. Eck attended the conference, and "had conversations with  
 25 Makaeff both before and after the" conference, "in order to prepare a settlement offer  
 26 and to relay the results." (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 14; *see also* Dkt. No.  
 27 331-2 (Eck Decl.) ¶ 31.) Ms. Eck notes that she did not charge two of the hours she  
 28



1 spent preparing for and attending the conference. (Dkt. No. 364-2 (Eck Supp. Decl.)  
2 ¶ 14.)

3 Trump University argues that the hours should be reduced because the  
4 descriptions lump together time spent on multiple tasks, which prevents the Court from  
5 determining if the hours spent are reasonable. (Dkt. No. 367 at 15.) Trump University  
6 also argues that the time is duplicative, with three partners participating in the  
7 telephonic conference. (*Id.*)

8 The Court agrees with Trump University that it was excessive to have three  
9 partners participating in the settlement conference, and therefore excludes Ms. Jensen's  
10 hours. The Court also agrees with Trump University that the lumping together of tasks  
11 makes it difficult for the Court to evaluate whether the hours are reasonable, and as  
12 such, applies a 20 percent reduction to the other hours. *See Welch*, 480 F.3d at 948.

13 Accordingly, the Court **EXCLUDES \$1,947.00** in fees for the Ninth Circuit  
14 Settlement Conference.

#### 15 **10. Work with Amicus on Appeal**

16 Makaeff's counsel states that the following amount of time was spent soliciting  
17 public support and coordinating amici and amicus briefs by the various attorneys:

18 <b>Name</b>	19 <b>Law Firm</b>	20 <b>Position</b>	21 <b>Hourly Rate</b>	22 <b>Hours Expended</b>	23 <b>Amount</b>
Eric Isaacson	RGRD	Partner	\$825	12.75	\$10,518.75
Kevin Green	RGRD	Partner	\$720	7.75	\$5,580.00
Rachel Jensen	RGRD	Partner	\$660	3.50	\$2,310.00
Amber Eck	ZHE	Partner	\$690	6.00	\$4,140.00

24 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 14; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 16.)

25 Ms. Jensen's and Ms. Eck's supplemental declarations, as well as Mr. Isaacson's  
26 declaration, provide the following additional descriptions of the tasks performed. Mr.  
27 Isaacson, Mr. Green, and Ms. Jensen "consulted with lawyers for the American Civil  
28 Liberties Union ('ACLU') and Consumer Attorneys of California concerning issues

1 relevant to the opening appeal brief and reply appeal brief, as well as providing  
2 feedback on amicus briefs they submitted to the Ninth Circuit and keeping amici  
3 informed of developments.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 14; *see also* Dkt.  
4 No. 331-1 (Jensen Decl.) ¶ 25; Dkt. No. 331-3 (Isaacson Decl.) ¶¶ 16-18.) Ms. Eck  
5 spoke with attorneys for the Consumer Attorneys of California and the BBB regarding  
6 submitting amicus briefs, reviewed amicus briefs filed by the ACLU and Consumer  
7 Attorneys of California, and communicated with amici and Makaeff regarding the  
8 briefs. (Dkt. No. 364-2 (Eck Supp. Decl.) ¶¶ 15-16; *see also* Dkt. No. 331-2 (Eck  
9 Decl.) ¶¶ 37-38.)

10 Trump University argues that the hours should be denied entirely as unnecessary,  
11 duplicative, and excessive. (Dkt. No. 367 at 16.) Trump University questions why it  
12 took four partners to consult with amici. (*Id.*) Further, the descriptions lump together  
13 time spent on multiple tasks, which prevents the Court from determining if the hours  
14 spent are reasonable. (*Id.*)

15 The Court agrees with Trump University that much of the time appears  
16 duplicative, which is exacerbated by the failure to differentiate how much time was  
17 spent on different tasks by different attorneys. For example, it is unclear whether all  
18 four partners consulted with the Consumer Attorneys of California. Therefore, the  
19 Court excludes the hours of Mr. Green and Ms. Jensen as duplicative. The Court also  
20 agrees with Trump University that the lumping together of tasks makes it difficult for  
21 the Court to evaluate whether the hours of Mr. Isaacson and Ms. Eck are reasonable,  
22 and as such, applies a 20 percent reduction to their hours. *See Welch*, 480 F.3d at 948.

23 Accordingly, the Court **EXCLUDES \$10,821.75** in fees for working with  
24 amicus on appeal.

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### 11. Request for Judicial Notice Reply Brief

Makaeff's counsel states that the following amount of time was spent on the request for judicial notice reply brief by the various attorneys:<sup>16</sup>

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	26.50	\$21,862.50
Thomas Merrick	RGRD	Partner	\$685	0.75	\$513.75
Rachel Jensen	RGRD	Partner	\$660	0.25	\$165.00

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 15.)

Ms. Jensen's supplemental declaration provides the following additional descriptions of the tasks performed. Mr. Isaacson "took the lead on researching and drafting the request for judicial notice reply brief." (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 15; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 26.) Mr. Merrick and Ms. Jensen reviewed the brief. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 15.)

Trump University argues that these hours should be reduced for several reasons. (Dkt. No. 367 at 16.) First, Trump University argues that the descriptions lump together time spent on multiple tasks, which prevents the Court from determining if the hours spent are reasonable. (*Id.*) Second, Trump University argues that there was improper staffing, with an \$825 per hour partner researching and drafting a simple request for judicial notice reply brief. (*Id.*) Third, Trump University argues that the time is duplicative in having two partners review the work of a third partner. (*Id.*)

The Court agrees with Trump University that Mr. Merrick's and Ms. Jensen's time appears duplicative, and therefore excludes their time. The Court also agrees with Trump University that Mr. Isaacson's hours seem excessive and improperly staffed for a request for judicial notice reply brief. As such, the Court reduces Mr. Isaacson's time by 50 percent, which would make his hourly rate more in line with that of an associate.

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<sup>16</sup>Because it has already excluded all paralegal fees, the Court does not include the 8.00 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 15.)

1 Accordingly, the Court **EXCLUDES \$11,610.00** in fees related to the request  
2 for judicial notice reply brief.

### 3 12. Appeal Reply Brief

4 Makaeff's counsel states that the following amount of time was spent on the  
5 appeal reply brief by the various attorneys:<sup>17</sup>

6 Name	7 Law Firm	8 Position	9 Hourly Rate	10 Hours Expended	11 Amount
Eric Isaacson	RGRD	Partner	\$825	88.00	\$72,600.00
Thomas Merrick	RGRD	Partner	\$685	2.50	\$1,712.00
Amanda Frame	RGRD	Associate	\$440	14.50	\$6,380.00
Amber Eck	ZHE	Partner	\$690	3.25	\$2,242.50

12 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 16; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 17.)

13 Ms. Jensen's and Ms. Eck's supplemental declarations provide the following  
14 additional descriptions of the tasks performed. Mr. Isaacson "took the lead in  
15 researching and preparing the reply brief, with research assistance from Ms. Frame."  
16 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 16; *see also* Dkt. No. 331-1 (Jensen Decl.)  
17 ¶ 27.) Mr. Merrick "also assisted with reviewing and revising the brief." (Dkt. No.  
18 364-1 (Jensen Supp. Decl.) ¶ 16.) Ms. Eck's time reflects reviewing and revising both  
19 the appeal reply brief and the supplemental request for judicial notice. (Dkt. No. 364-2  
20 (Eck Supp. Decl.) ¶ 17; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 39.)

21 Trump University argues that these hours should be reduced for several reasons.  
22 (Dkt. No. 367 at 16-17.) First, Trump University argues that the descriptions lump  
23 together time spent on multiple tasks, which prevents the Court from determining if the  
24 hours spent are reasonable. (*Id.*) Second, Trump University argues that there was  
25 improper staffing, with a \$685 per hour partner reviewing the work of an \$825 per hour  
26 partner. (*Id.* at 17.) Third, Trump University argues that the time is duplicative

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28 <sup>17</sup>Because it has already excluded all paralegal fees, the Court does not include the 33.00 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 16.)

1 because two partners reviewed the work of a third partner, and because Ms. Frame and  
2 Mr. Isaacson both conducted research. (*Id.*)

3 The Court agrees with Trump University that Mr. Merrick's and Ms. Eck's  
4 hours, reviewing and revising Mr. Isaacson's work, reflect improper staffing and  
5 duplication of effort. As such, the Court excludes their hours. The Court also agrees  
6 with Trump University that the lumping together of tasks makes it difficult for the  
7 Court to evaluate whether the hours of Mr. Isaacson and Ms. Frame are reasonable, and  
8 therefore, applies a 20 percent reduction to their hours. *See Welch*, 480 F.3d at 948.

9 Accordingly, the Court **EXCLUDES \$19,751.00** in fees related to the appeal  
10 reply brief.

### 11 13. Supplemental Request for Judicial Notice

12 Makaeff's counsel states that the following amount of time was spent on the  
13 supplemental request for judicial notice by the various attorneys:<sup>18</sup>

14 Name	15 Law Firm	16 Position	17 Hourly Rate	18 Hours Expended	19 Amount
20 Eric Isaacson	RGRD	Partner	\$825	13.50	\$11,137.50
21 Thomas Merrick	RGRD	Partner	\$685	0.75	\$513.75

22 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 17.)

23 Ms. Jensen's supplemental declaration provides the following additional  
24 descriptions of the tasks performed. Mr. Isaacson "researched and prepared Makaeff's  
25 supplemental request for judicial notice and reply." (Dkt. No. 364-1 (Jensen Supp.  
26 Decl.) ¶ 17; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 28.) There is no mention of Mr.  
27 Merrick's tasks.

28 Trump University argues that these hours should be reduced for several reasons.  
(Dkt. No. 367 at 17.) First, Trump University argues that the descriptions lump  
together time spent on multiple tasks, which prevents the Court from determining if the

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<sup>18</sup>Because it has already excluded all paralegal fees, the Court does not include the 7.25 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 17.)

1 hours spent are reasonable. (*Id.*) Second, Trump University argues that there was  
 2 improper staffing, with an \$825 per hour partner researching and drafting a  
 3 supplemental request for judicial notice. (*Id.*) Third, Trump University argues that  
 4 there is no explanation for why Mr. Merrick needed to spend any time on the  
 5 supplemental request. (*Id.*)

6 The Court agrees with Trump University that Mr. Merrick's time should be  
 7 excluded because there is no indication what tasks he performed. The Court also  
 8 agrees with Trump University that Mr. Isaacson's hours seem excessive and improperly  
 9 staffed for a supplemental request for judicial notice. As such, the Court reduces Mr.  
 10 Isaacson's time by 50 percent, which would make his hourly rate more in line with that  
 11 of an associate.

12 Accordingly, the Court **EXCLUDES \$6,082.50** in fees related to the  
 13 supplemental request for judicial notice.

#### 14 **14. Ninth Circuit Appeal Strategy**

15 Makaeff's counsel states that the following amount of time was spent by the  
 16 various attorneys on strategy for the Ninth Circuit appeal:

17 <b>Name</b>	18 <b>Law Firm</b>	19 <b>Position</b>	20 <b>Hourly Rate</b>	21 <b>Hours Expended</b>	22 <b>Amount</b>
23 Eric Isaacson	RGRD	Partner	\$825	1.75	\$1,443.75
24 Rachel Jensen	RGRD	Partner	\$660	0.25	\$165.00

25 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 18.)

26 Ms. Jensen's supplemental declaration provides the following additional  
 27 descriptions of the tasks performed. Mr. Isaacson and Ms. Jensen spent a total of two  
 28 hours "strategizing and thinking about our approach to the anti-SLAPP litigation that  
 does not easily fit into another category" such "as "exploring potential avenues to bring  
 to the Court's attention misrepresentations made by Trump's counsel." (*Id.*)

Trump University argues that these two hours should be denied entirely because  
 the descriptions lump time together and the time is duplicative. (Dkt. No. 367 at 17.)

1 The Court disagrees with Trump University, and determines that these two hours  
2 were reasonably expended.

3 Accordingly, the Court does not exclude any fees for the Ninth Circuit Appeal  
4 strategy.

### 5 15. Ninth Circuit Hearing

6 Makaeff's counsel states that the following amount of time was spent on the  
7 Ninth Circuit hearing by the various attorneys:<sup>19</sup>

8 Name	9 Law Firm	10 Position	11 Hourly Rate	12 Hours Expended	13 Amount
14 Eric Isaacson	RGRD	Partner	\$825	69.50	\$57,337.50
15 Thomas Merrick	RGRD	Partner	\$685	9.50	\$6,507.50
16 Amanda Frame	RGRD	Associate	\$440	8.50	\$3,740.00
17 Amber Eck	ZHE	Partner	\$690	1.00	\$690.00
18 Jessica Labrencis	ZHE	Associate	\$250	1.00	\$250.00

19 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 19; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 19.)

20 Ms. Jensen's and Ms. Eck's supplemental declarations, as well as Mr. Isaacson's  
21 declaration, provide the following additional descriptions of the tasks performed.  
22 According to Ms. Jensen, Mr. Isaacson "spent a substantial amount of time over the  
23 course of weeks prepar[ing] for the oral argument, including holding a mock argument  
24 in which two attorneys from [her] firm participated."<sup>20</sup> (Dkt. No. 364-1 (Jensen Supp.  
25 Decl.) ¶ 19; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 29.) Mr. Isaacson declares that  
26 he "devot[ed] many hours to" "preparing for oral argument" and "personally argued the  
27 appeal." (Dkt. No. 331-3 (Isaacson Decl.) ¶ 19.) Ms. Eck's "firm spent a total of one  
28 hour talking and e-mailing with Makaeff over the course of three separate days in  
preparation for the hearing, and one hour assisting in preparation for the Ninth Circuit

<sup>19</sup>Because it has already excluded all paralegal fees, the Court does not include the 3.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 19.)

<sup>20</sup>Ms. Eck and Ms. Labrencis also participated in the mock argument, but have not charged for this time. (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 19.)

1 hearing.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 18; *see also* Dkt. No. 331-2 (Eck Decl.)  
2 ¶ 35.) Makaeff only seeks to recoup Mr. Isaacson’s time and expenses for attending  
3 the hearing itself, even though additional attorneys also attended the hearing. (Dkt. No.  
4 364-1 (Jensen Supp. Decl.) ¶ 19; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 19; *see also* Dkt.  
5 No. 331-1 (Jensen Decl.) ¶ 30.)

6 Trump University argues that the hours should be reduced for several reasons.  
7 (Dkt. No. 367 at 18.) First, Trump University argues that the descriptions lump  
8 together time spent on multiple tasks, which prevents the Court from determining if the  
9 hours spent are reasonable. (*Id.*) For example, there is no indication how much of Mr.  
10 Isaacson’s time was spent on the actual argument, the mock argument, and other  
11 preparation. (*Id.*) Second, Trump University argues that Mr. Isaacson’s time appears  
12 excessive, and that it should not have taken him several weeks to prepare. (*Id.*) Third,  
13 Trump University contends that a mock argument was unnecessary for an experienced  
14 attorney like Mr. Isaacson, and that participation in the mock argument should not be  
15 billed as it is educational.<sup>21</sup> (*Id.*; *see also* Dkt. No. 335 at 18.) Finally, Trump  
16 University argues that Ms. Labrencis’s time is duplicative. (*Id.*)

17 The Court agrees with Trump University that the lumping together of tasks  
18 makes it difficult for the Court to evaluate whether the hours are reasonable. As such,  
19 the Court applies a 20 percent reduction to the hours expended on the Ninth Circuit  
20 hearing. *See Welch*, 480 F.3d at 948. The Court disagrees with Trump University that  
21 a mock argument was unnecessary to prepare for the hearing.

22 Accordingly, the Court **EXCLUDES \$13,705.00** in fees related to the Ninth  
23 Circuit hearing.

#### 24 **16. Research Regarding Possible 28(j) Letter**

25 Makaeff’s counsel states that the following amount of time was spent on  
26 researching submitting a letter under Federal Rule of Appellate Procedure 28(j):

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27 <sup>21</sup>Makaeff counters that it is precisely because of Mr. Isaacson’s experience that  
28 he knew that a mock argument is the best way to prepare for a Ninth Circuit oral  
argument. (Dkt. No. 364 at 17.)



Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	7.50	\$6,187.50

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 20.)

Ms. Jensen’s supplemental declaration provides the following additional descriptions of the tasks performed: “My firm considered submitting a Rule 28(j) letter to the Ninth Circuit with supplemental authorities that had come to our attention. We also considered sending a letter to the Ninth Circuit correcting misrepresentations made to the Court. However, we ultimately decided against submitting such a letter. . . . Mr. Isaacson spent [time] reviewing the record and researching a possible Rule 28(j) letter to submit to the Ninth Circuit.” (*Id.*)

Trump University argues that these hours should be denied entirely because the descriptions lump time together and the time appears excessive and unnecessary. (Dkt. No. 367 at 18.)

The Court agrees with Trump University that the lumping together of tasks makes it difficult for the Court to evaluate whether the hours are reasonable. The Court also agrees that these hours appear excessive and unnecessary. In addition, these hours appear duplicative because the Ninth Circuit appeal strategy category already included “exploring potential avenues to bring to the Court’s attention misrepresentations made by Trump’s counsel.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 18.) As such, the Court excludes Mr. Isaacson’s hours.

Accordingly, the Court **EXCLUDES \$6,187.50** in fees related to the Ninth Circuit hearing.

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1                                   **17. Opposition to Petition for Rehearing *En Banc***

2           Makaeff’s counsel states that the following amount of time was spent on the  
3 opposition to Trump University’s petition for rehearing *en banc* by the various  
4 attorneys:<sup>22</sup>

5

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	183.75	\$151,593.75
Kevin Green	RGRD	Partner	\$720	0.50	\$360.00
Thomas Merrick	RGRD	Partner	\$685	9.25	\$6,336.25
Rachel Jensen	RGRD	Partner	\$660	10.50	\$6,930.00
Amanda Frame	RGRD	Associate	\$440	8.20	\$3,608.00
Amber Eck	ZHE	Partner	\$690	13.00	\$8,970.00
Helen Zeldes	ZHE	Partner	\$600	0.50	\$300.00
Jessica Labrencis	ZHE	Associate	\$250	1.25	\$312.50

6           (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 21; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 20.)

7           Ms. Jensen’s and Ms. Eck’s supplemental declarations, as well as Mr. Isaacson’s  
8 declaration, provide the following additional descriptions of the tasks performed. Ms.  
9 Jensen declares that Mr. “Isaacson, with the assistance of Ms. Frame and [a staff  
10 attorney], drafted an opposition that was reviewed and revised by additional attorneys  
11 at my firm, including myself.” (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 21; *see also* Dkt.  
12 No. 331-1 (Jensen Decl.) ¶ 32.) Mr. Isaacson declares that: “[The fact that] separate  
13 concurring opinions both urged *en banc* rehearing meant that I would have to devote  
14 considerable time to review the law of federal courts and federal jurisdiction, and as  
15 well as the collateral-order doctrine – none of which had previously been at issue in the  
16 litigation.” (Dkt. No. 331-3 (Isaacson Decl.) ¶ 21.) “Because the concurring opinions  
17 and Trump University’s petition for en banc rehearing focused on questions of  
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28           <sup>22</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 84.55 staff attorney hours and 11.00 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 21.)

1 constitutional law and federal jurisdiction that had never been at issue in the litigation,  
 2 I could not rely on my previous work in the case, but instead had to review and digest  
 3 a further vast body of law in order to effectively oppose en banc rehearing.” (*Id.*) Ms.  
 4 Eck “communicated with Makaeff on several occasions regarding the Appeal and the  
 5 en banc petition” and her “firm assisted in researching and preparing the opposition to  
 6 the en banc petition.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 20; *see also* Dkt. No. 331-2  
 7 (Eck Decl.) ¶ 41.)

8 Trump University argues that the hours should be reduced for several reasons.  
 9 (Dkt. No. 367 at 18-19.) First, Trump University argues that the descriptions lump  
 10 together time spent on multiple tasks, which prevents the Court from determining if the  
 11 hours spent are reasonable. (*Id.*) Second, there appears to be duplication of efforts,  
 12 with several attorneys researching and drafting the opposition. (*Id.* at 19.) Third,  
 13 Trump University argues that there is no description of what was done by Mr. Green  
 14 and Mr. Merrick. (*Id.*)

15 The Court excludes the time for Mr. Green, Mr. Merrick, Ms. Zeldes, and Ms.  
 16 Labrencis because there is no clear indication what tasks they performed. The Court  
 17 agrees with Trump University that the lumping together of tasks makes it difficult for  
 18 the Court to evaluate whether the other hours are reasonable. As such, the Court  
 19 applies a 20 percent reduction to the hours expended by Mr. Isaacson, Ms. Jensen, Ms.  
 20 Frame, and Ms. Eck. *See Welch*, 480 F.3d at 948.

21 Accordingly, the Court **EXCLUDES \$41,529.10** in fees for the opposition to the  
 22 petition for rehearing *en banc*.

### 23 **18. Work with Amicus on *En Banc* Opposition**

24 Makaeff’s counsel states that the following amount of time was spent working  
 25 with amicus on the opposition to Trump University’s petition for rehearing *en banc* by  
 26 the various attorneys:

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount

1	Eric Isaacson	RGRD	Partner	\$825	12.25	\$10,106.25
2	Kevin Green	RGRD	Partner	\$720	2.25	\$1,620.00
3	Thomas Merrick	RGRD	Partner	\$685	2.50	\$1,712.50
4	Amber Eck	ZHE	Partner	\$690	3.25	\$2,242.50

5 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 22; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 21.)

6 Ms. Jensen’s and Ms. Eck’s supplemental declarations, as well as Mr. Isaacson’s  
7 declaration, provide the following additional descriptions of the tasks performed. Ms.  
8 Jensen declares that: [m]y partners also met with lawyers from the ACLU and  
9 Consumer Attorneys of California and with a number of anti-SLAPP practitioners  
10 concerning strategy, soliciting public support, and considering the submission of  
11 additional briefs in support of our opposition to the en banc petition.” (Dkt. No. 364-1  
12 (Jensen Supp. Decl.) ¶ 22; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 32.) Mr. Isaacson  
13 declares that he “again consulted extensively with lawyers from the ACLU and the  
14 Consumer Attorneys of California, and also with experienced practitioners specializing  
15 in Anti-SLAPP litigation,” and that “[o]nce again, the Consumer Attorneys of  
16 California submitted an amicus curiae brief supporting Makaeff, this time opposing the  
17 petition for *en banc* rehearing.” (Dkt. No. 331-3 (Isaacson Decl.) ¶¶ 22-23.) Ms. Eck  
18 “personally spoke with attorneys for the Consumer Attorneys and the BBB, and  
19 participated in various communications with them” regarding submitting amicus curiae  
20 briefs. (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 21.)

21 Trump University argues that these hours should be denied entirely for several  
22 reasons. (Dkt. No. 267 at 19.) First, Trump University argues that the descriptions  
23 lump together time spent on multiple tasks, which prevents the Court from determining  
24 if the hours spent are reasonable. (*Id.*) Second, there appears to be duplication of  
25 efforts, with four partners soliciting support from amici. (*Id.*) Third, Trump University  
26 argues that there is improper staffing, with high billing partners doing the task of an  
27 associate. (*Id.*)

28

1 The Court agrees with Trump University that much of the time appears  
 2 duplicative, which is exacerbated by the failure to differentiate how much time was  
 3 spent on different tasks by different attorneys. For example, it is unclear whether all  
 4 four partners consulted with the Consumer Attorneys of California. Therefore, the  
 5 Court excludes the hours of Mr. Green and Mr. Merrick as duplicative. The Court also  
 6 agrees with Trump University that the lumping together of tasks makes it difficult for  
 7 the Court to evaluate whether the hours of Mr. Isaacson and Ms. Eck are reasonable,  
 8 and as such, applies a 20 percent reduction to their hours. *See Welch*, 480 F.3d at 948.

9 Accordingly, the Court **EXCLUDES \$5,802.25** in fees for working with amicus  
 10 on the *en banc* opposition.

11 **19. Strategy Regarding the Remand and the Motion to Transfer**  
 12 **Fee Motion to District Court**

13 Makaeff's counsel states that the following amount of time was spent on  
 14 strategizing about the remand and researching the best vehicle for addressing attorney's  
 15 fees by the various attorneys:<sup>23</sup>

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	18.30	\$15,097.50
Kevin Green	RGRD	Partner	\$720	1.00	\$720.00
Rachel Jensen	RGRD	Partner	\$660	2.75	\$1,815.00
Amber Eck	ZHE	Partner	\$690	6.25	\$4,312.50

22 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 23; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 22.)

23 Ms. Jensen's and Ms. Eck's supplemental declarations, as well as Mr. Isaacson's  
 24 declaration, provide the following additional descriptions of the tasks performed. Mr.  
 25 Isaacson "researched, drafted, and filed a motion asking the Ninth Circuit to transfer  
 26 jurisdiction over the award of those fees to this Court." (Dkt. No. 331-3 (Isaacson

27 \_\_\_\_\_  
 28 <sup>23</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 30.80 staff attorney hours and 3.75 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 23.)

1 Decl.) ¶ 25; *see also* Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 23; Dkt. No. 331-1 (Jensen  
2 Decl.) ¶ 35.) Mr. Green reviewed the motion “after reading some relevant opinions.”  
3 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 23.) Ms. Jensen “spoke to Mr. Isaacson and  
4 reviewed the applicable rules and commented on the strategy and the draft as well.”  
5 (*Id.*) Ms. Eck “researched the logistics for submitting a motion for fees and  
6 transferring the issue of the fee motion to the District Court.” (Dkt. No. 364-2 (Eck  
7 Supp. Decl.) ¶ 22.)

8 Trump University argues that the hours should be reduced for several reasons.  
9 (Dkt. No. 367 at 19-20.) First, Trump University argues that the descriptions lump  
10 together time spent on multiple tasks, which prevents the Court from determining if the  
11 hours spent are reasonable. (*Id.* at 19.) Second, there appears to be duplication of  
12 efforts. (*Id.* at 20.) For example, Ms. Eck was conducting research at the same time  
13 as Mr. Isaacson and a staff attorney. (*Id.*) Third, Trump University argues that there  
14 was improper staffing because the drafting by Mr. Isaacson could have been done by  
15 a lower rate biller. (*Id.*)

16 The Court agrees that the hours by the four partners appear duplicative. As such,  
17 the Court excludes the hours of Mr. Green, Ms. Jensen, and Ms. Eck. The Court also  
18 agrees with Trump University that the lumping together of tasks makes it difficult for  
19 the Court to evaluate whether the hours of Mr. Isaacson are reasonable, and as such,  
20 applies a 20 percent reduction to his hours. *See Welch*, 480 F.3d at 948.

21 Accordingly, the Court **EXCLUDES \$9,867.00** in fees for the strategy regarding  
22 remand and motion to transfer fee motion to district court.

### 23 **20. Makaeff Deposition Preparation and Document Production**

24 Makaeff’s counsel states that the following amount of time was spent preparing  
25 Makaeff for an additional deposition and further discovery by the various attorneys:<sup>24</sup>  
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27  
28 <sup>24</sup>Because it has already excluded all staff attorney and paralegal fees, the Court  
does not include the 27.25 staff attorney hours and 24.50 paralegal hours. (Dkt. No.  
364-1 (Jensen Supp. Decl.) ¶ 24.)

<b>Name</b>	<b>Law Firm</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours Expended</b>	<b>Amount</b>
Jason Forge	RGRD	Partner	\$740	22.00	\$16,280.00
Rachel Jensen	RGRD	Partner	\$660	43.50	\$28,710.00
Amber Eck	ZHE	Partner	\$690	55.50	\$38,295.00
Aaron Olsen	ZHE	Associate	\$410	0.25	\$102.50
Jessica Labrencis	ZHE	Associate	\$250	2.25	\$562.50

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 24; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 26.)

Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following additional descriptions of the tasks performed. Ms. Jensen declares that she and Mr. Forge performed the following tasks “in connection with the negotiation of the Makaeff deposition terms and conditions, strategizing, traveling back and forth to Los Angeles, preparing Ms. Makaeff for her deposition, reviewing her anti-SLAPP documents and producing them to Trump’s counsel”:

My colleague Jason Forge and I had calls with Ms. Makaeff to discuss sitting for deposition again, had calls with our co-counsel Ms. Eck about the same, calls and emails with Trump’s counsel at first objecting to Ms. Makaeff sitting for another deposition session, calling Judge Gallo’s chambers, and then spending hours negotiating the terms and conditions of the deposition. Thereafter, I spent time strategizing about the deposition and helping Ms. Makaeff draft a supplemental declaration. After we finished a draft, Mr. Forge reviewed the draft declaration and provided comments. Then, my partner Jason Forge and I both spent separate days traveling to Los Angeles and meeting with Ms. Makaeff to prepare and defend her for the deposition. In the course of those meetings, Ms. Makaeff provided documents that were relevant to the SLAPP proceedings (which were previously stayed before the matter was remanded to this Court). I spent a day reviewing all the potentially responsive documents before they were produced, and finalized Makaeff’s supplemental declaration.

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 24; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 37.) Ms. Eck declares that “the Court . . . permitted additional discovery on the issue of actual malice” and “[w]e spent a substantial amount of time conferring with Makaeff and compiling, reviewing, and producing all potentially responsive documents, including hundreds of pages of e-mails and other documents that she discovered upon further review of her files.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 23; *see also* Dkt. No.

1 331-2 (Eck Decl.) ¶ 46.) In addition, “we spent numerous hours over the course of a  
2 week to prepare Makaeff for her deposition.”<sup>25</sup> (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 25;  
3 *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 45.)

4 Trump University argues that the hours should be reduced for several reasons.  
5 (Dkt. No. 367 at 20.) First, Trump University argues that the descriptions lump  
6 together time spent on multiple tasks, which prevents the Court from determining if the  
7 hours spent are reasonable. (*Id.*) For example, there is no break down of how much  
8 time was spent on negotiations, deposition preparation of Makaeff, travel time, etc.  
9 (*Id.*) Second, there appears to be duplication of efforts. (*Id.*) Third, Trump University  
10 argues that the hours were excessive because the deposition was limited to two hours  
11 and the issue of “actual malice,” and Makaeff was familiar with the deposition process  
12 having already sat for three depositions. (*Id.*)

13 The Court agrees with Trump University that much of the time appears  
14 duplicative and excessive, which is exacerbated by the failure to differentiate how  
15 much time was spent on different tasks by different attorneys. For example, it is  
16 unclear why it was necessary for at least three attorneys, two of which had to travel to  
17 Los Angeles, to prepare Makaeff for her two-hour deposition. Therefore, the Court  
18 excludes the time of Mr. Forge. The Court also excludes the time of Mr. Olsen and Ms.  
19 Labrencis because it is unclear what tasks they performed. In addition, the Court  
20 agrees with Trump University that the lumping together of tasks makes it difficult for  
21 the Court to evaluate whether the hours of Ms. Jensen and Ms. Eck are reasonable, and  
22 as such, applies a 20 percent reduction to their hours. *See Welch*, 480 F.3d at 948.

23 Accordingly, the Court **EXCLUDES \$30,346.00** in fees for Makaeff deposition  
24 preparation and document production.

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28 <sup>25</sup>Ms. Eck notes that she has not charged for her time in preparing for the  
deposition of Makaeff’s former boyfriend, which was later taken off-calendar. (Dkt.  
No. 364-2 (Eck Supp. Decl.) ¶ 26.)



## 21. Supplemental Brief Regarding Actual Malice

Makaeff's counsel states that the following amount of time was spent on this Court's request for supplemental briefing on the issue of actual malice by the various attorneys:<sup>26</sup>

Name	Law Firm	Position	Hourly Rate	Hours Expended	Amount
Eric Isaacson	RGRD	Partner	\$825	4.00	\$3,300.00
Jason Forge	RGRD	Partner	\$740	7.00	\$5,180.00
Rachel Jensen	RGRD	Partner	\$660	39.75	\$26,235.00
Amber Eck	ZHE	Partner	\$690	36.75	\$25,357.50

(Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 25; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 27.)

Ms. Jensen's and Ms. Eck's supplemental declarations provide the following additional descriptions of the tasks performed. Ms. Jensen personally drafted the supplemental brief, and Mr. Forge and Mr. Isaacson reviewed it. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 25; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 38; Dkt. No. 331-3 (Isaacson Decl.) ¶ 27.) Ms. Eck "spent a considerable amount of time preparing the supplemental brief and supplemental declaration of Makaeff, including legal research, factual research and review of relevant documents, and communications with Anti-SLAPP and actual malice experts." (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 27; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 43.) In addition, Ms. Eck "had numerous conversations with Makaeff throughout the briefing process." (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 27.)

Trump University argues that the hours should be reduced for several reasons. (Dkt. No. 367 at 20-21.) Trump University argues that the descriptions lump together time spent on multiple tasks, which prevents the Court from determining if the hours spent are reasonable. (*Id.*) In addition, Trump University argues that there is

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<sup>26</sup>Because it has already excluded all staff attorney and paralegal fees, the Court does not include the 29.75 staff attorney hours and 23.75 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 25.)

1 duplicative, excessive, and overstaffed time, with two partners reviewing Ms. Jensen’s  
2 brief, and Ms. Eck also working on the supplemental brief. (*Id.*)

3 The Court agrees with Trump University that Mr. Isaacson’s and Mr. Forge’s  
4 time is duplicative with that of Ms. Jensen and Ms. Eck, and therefore excludes their  
5 time. The Court also agrees with Trump University that the lumping together of tasks  
6 makes it difficult for the Court to evaluate whether the hours of Ms. Eck are reasonable,  
7 and as such, applies a 20 percent reduction to her hours. *See Welch*, 480 F.3d at 948.  
8 The Court does not reduce the hours of Ms. Jensen because all of her time was spent  
9 on the single task of drafting.

10 Accordingly, the Court **EXCLUDES \$13,551.50** in fees for the supplemental  
11 brief regarding actual malice.

## 12 22. Supplemental Reply Brief Regarding Actual Malice

13 Makaeff’s counsel states that the following amount of time was spent on the  
14 supplemental reply brief regarding actual malice by the various attorneys:<sup>27</sup>

15 Name	16 Law Firm	17 Position	18 Hourly Rate	19 Hours Expended	20 Amount
Eric Isaacson	RGRD	Partner	\$825	3.25	\$2,681.25
Rachel Jensen	RGRD	Partner	\$660	25.75	\$16,995.00
Amber Eck	ZHE	Partner	\$690	18.00	\$12,420.00
Aaron Olsen	ZHE	Associate	\$410	0.50	\$205.00

21 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 26; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 28.)

22 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
23 additional descriptions of the tasks performed. Ms. Jensen researched and prepared the  
24 supplemental reply brief, and Mr. Isaacson reviewed it and commented on it. (Dkt. No.  
25 364-1 (Jensen Supp. Decl.) ¶ 26; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 39; Dkt. No.  
26 331-3 (Isaacson Decl.) ¶ 27.) Ms. Eck’s “firm” also “researched for and prepared a

27  
28 <sup>27</sup>Because it has already excluded all paralegal fees, the Court does not include the 12.25 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 26; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 28.)

1 Reply.” (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 28; *see also* Dkt. No. 331-2 (Eck Decl.)  
2 ¶ 48.)

3 Trump University argues that the hours should be reduced because the  
4 descriptions lump together time spent on multiple tasks, which prevents the Court from  
5 determining if the hours spent are reasonable. (Dkt. No. 367 at 21.) For example, there  
6 is no breakdown of how much time was spent on research versus drafting. (*Id.*) In  
7 addition, Trump University argues that Ms. Eck’s time appears duplicative of Ms.  
8 Jensen’s firm. (*Id.*)

9 The Court agrees with Trump University that Ms. Eck’s time appears  
10 duplicative, which is exacerbated by the failure to differentiate how much time was  
11 spent on different tasks. Therefore, the Court excludes Ms. Eck’s hours. The Court  
12 also excludes Mr. Olsen’s hours because it is not clear what tasks he performed. The  
13 Court agrees with Trump University that the lumping together of tasks makes it  
14 difficult for the Court to evaluate whether the hours of Ms. Jensen and Mr. Isaacson are  
15 reasonable, and as such, applies a 20 percent reduction to their hours. *See Welch*, 480  
16 F.3d at 948.

17 Accordingly, the Court **EXCLUDES \$16,560.25** in fees for the supplemental  
18 reply brief regarding actual malice.

### 19 23. Hearing on Actual Malice

20 Makaeff’s counsel states that the following amount of time was spent on the  
21 hearing regarding actual malice by the various attorneys:<sup>28</sup>

22 Name	23 Law Firm	Position	Hourly Rate	Hours Expended	Amount
24 Eric Isaacson	RGRD	Partner	\$825	0.25	\$206.50
25 Jason Forge	RGRD	Partner	\$740	0.75	\$555.00
26 Rachel Jensen	RGRD	Partner	\$660	1.50	\$990.00

27  
28 <sup>28</sup>Because it has already excluded all paralegal fees, the Court does not include the 2.50 paralegal hours. (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 27.)

1	Amber Eck	ZHE	Partner	\$690	26.75	\$18,457.50
2	Helen Zeldes	ZHE	Partner	\$600	5.00	\$3,000.00
3	Aaron Olsen	ZHE	Associate	\$410	3.50	\$1,435.00

4 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 27; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 30.)

5 Ms. Jensen’s and Ms. Eck’s supplemental declarations provide the following  
6 additional descriptions of the tasks performed. Ms. Jensen prepared for oral argument,  
7 before it was rescheduled and Ms. Eck ultimately appeared at the oral argument  
8 (because Ms. Jensen was then out on maternity leave.) (Dkt. No. 364-1 (Jensen Supp.  
9 Decl.) ¶ 27; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶¶ 40-41.) Mr. Isaacson and Mr.  
10 Forge assisted Ms. Eck with her preparation for the hearing. (Dkt. No. 364-1 (Jensen  
11 Supp. Decl.) ¶ 27; Dkt. No. 331-3 (Isaacson Decl.) ¶ 27.) Ms. Jensen notes that  
12 additional attorneys also attended the hearing, but they are not seeking that time. (Dkt.  
13 No. 364-1 (Jensen Supp. Decl.) ¶ 27; *see also* Dkt. No. 331-1 (Jensen Decl.) ¶ 41.)

14 Ms. Eck “spent a considerable amount of time preparing for this hearing,  
15 reviewing all of the Anti-SLAPP motions and Orders to date, a voluminous amount of  
16 case law, the four volumes of Makaeff’s deposition testimony, Makaeff’s several  
17 declarations, and voluminous documents and exhibits submitted by both parties.” (Dkt.  
18 No. 364-2 (Eck Supp. Decl.) ¶ 29; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 49.) Ms. Eck  
19 notes that she is not seeking seven hours of her preparation time for the hearing. (Dkt.  
20 No. 364-2 (Eck Supp. Decl.) ¶ 29.) Ms. Zeldes and Mr. Olsen assisted in Ms. Eck’s  
21 preparation for the hearing. (*Id.*) Ms. Eck argued at the hearing before this Court.  
22 (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 30; *see also* Dkt. No. 331-2 (Eck Decl.) ¶ 50.)

23 Trump University argues that the hours should be reduced because the  
24 descriptions lump together time spent on multiple tasks, which prevents the Court from  
25 determining if the hours spent are reasonable. (Dkt. No. 367 at 21.) For example, there  
26 is no breakdown of how much time Ms. Eck spent preparing for the hearing, reviewing  
27 documents, and arguing at the hearing itself. (*Id.*) In addition, Trump University  
28

1 argues that there is a duplication of efforts, with three partners and one associate  
2 preparing another partner arguing the motion. (*Id.*)

3 The Court disagrees with Trump University that the time is duplicative.  
4 However, the Court agrees with Trump University that the lumping together of tasks  
5 makes it difficult for the Court to evaluate whether the hours of Ms. Eck are reasonable,  
6 and as such, applies a 20 percent reduction to her hours. *See Welch*, 480 F.3d at 948.

7 Accordingly, the Court **EXCLUDES \$3,691.50** in fees for the hearing on actual  
8 malice.

#### 9 24. Time Spent on Multiple Tasks

10 Makaeff’s counsel states that the following amount of time was spent on  
11 “multiple tasks” by the various attorneys:

12 Name	13 Law Firm	Position	Hourly Rate	Hours Expended	Amount
14 Eric Isaacson	RGRD	Partner	\$825	8.50	\$7,012.50
15 Rachel Jensen	RGRD	Partner	\$660	5.75	\$3,795.00

16 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 28.)

17 Ms. Jensen’s supplemental declaration states that these 14.25 hours pertain to  
18 multiple tasks related to the anti-SLAPP proceedings, but cannot be definitely assigned  
19 to the above procedural categories. (*Id.*) For example, Mr. Isaacson “spent time  
20 researching the potential for a Rule 28(j) letter and also preparing for 9th Circuit oral  
21 argument (which were occurring contemporaneously).” (*Id.*) Makaeff notes that she  
22 is willing to reduce her requested fees by these 14.25 hours. (Dkt. No. 364 at 11 n.6.)

23 Trump University argues that the hours should be denied entirely because the  
24 descriptions lump together time spent on multiple tasks, which prevents the Court from  
25 determining if the hours spent are reasonable. (Dkt. No. 367 at 21-22.) For example,  
26 there is not breakdown between how much time Mr. Isaacson spent researching versus  
27 preparing. (*Id.* at 22.) In addition, Trump University notes that the time appears  
28 duplicative of category 16 above, concerning research of a possible 28(j) letter. (*Id.*)

1 The Court agrees with Trump University that these hours should be denied  
 2 entirely. The vague description of “multiple tasks” related to the anti-SLAPP litigation  
 3 prevents the Court from determining if these hours were reasonable. Moreover,  
 4 Makaeff has stated that she is willing to omit these hours.

5 Accordingly, the Court **EXCLUDES \$10,807.50** in fees for work on multiple  
 6 tasks.

### 7 **25. Bill of Fees and Costs**

8 Makaeff’s counsel states that the following amount of time was spent on the  
 9 preparation of the Bill of Fees and Costs by the various attorneys:

10 <b>Name</b>	11 <b>Law Firm</b>	12 <b>Position</b>	13 <b>Hourly Rate</b>	14 <b>Hours Expended</b>	15 <b>Amount</b>
16 Amber Eck	ZHE	Partner	\$690	22.25	\$15,352.50
17 Aaron Olsen	ZHE	Associate	\$410	10.00	\$4,100.00

18 (Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 31.)

19 Ms. Eck states that “we spent considerable time researching and preparing the  
 20 motion, compiling all of our time records and expenses related to the Anti-SLAPP  
 21 issues over the past four years, and preparing a detailed declaration setting forth our  
 22 work performed in the case, time, lodestar, and expenses.” (*Id.*) She states that her  
 23 firm does not seek fees for additional time spent on the brief after June 27, 2014, or for  
 24 time spent preparing the supplemental brief or declarations. (*Id.*) Ms. Jensen states  
 25 that her firm also spent a “substantial amount of time” on the Bill of Fees and Costs,  
 26 but is not claiming this time to “demonstrate the reasonableness of the requested fees.”

27 (Dkt. No. 364-1 (Jensen Supp. Decl.) ¶ 28.)

28 Trump University argues the hours should be denied entirely because the  
 descriptions lump together time spent on multiple tasks, which prevents the Court from  
 determining if the hours spent are reasonable. (Dkt. No. 367 at 22.) Trump University  
 also argues that this Court’s supplemental briefing order did not explicitly invite  
 Makaeff to include these fees. (*Id.*)

1           The Court agrees with Trump University that the lumping together of tasks  
2 makes it difficult for the Court to evaluate whether the hours of Ms. Eck and Mr. Olsen  
3 are reasonable, and as such, applies a 20 percent reduction to their hours. *See Welch*,  
4 480 F.3d at 948. The Court appreciates that Ms. Jensen’s firm does not seek time for  
5 preparation of the Bill of Fees and Costs.

6           Accordingly, the Court **EXCLUDES \$3,890.50** in fees for the preparation of Bill  
7 of Fees and Costs.

### 8           **C. Upward Multiplier**

9           Makaeff argues that any reduction in fees should be offset by an upward  
10 multiplier because this is a contingency fee case. (Dkt. No. 331 at 17-18; Dkt. No. 364  
11 at 8, 20.) Trump University counters that no upward multiplier is justified here  
12 because, among other reasons, Makaeff’s counsel are not sole practitioners, but rather  
13 a large team of high billing attorneys. (Dkt. No. 335 at 21-25; Dkt. No. 367 at 23-25.)

14           The California Supreme Court has held that a court may adjust the lodestar figure  
15 based on various factors, including the contingent nature of the fee award. *Ketchum*,  
16 17 P.3d at 741. “The purpose of a fee enhancement, or so-called multiplier, for  
17 contingent risk is to bring the financial incentives for attorneys enforcing important  
18 constitutional rights, such as those protected under the anti-SLAPP provision, into line  
19 with incentives they have to undertake claims for which they are paid on a  
20 fee-for-services basis.” *Id.* at 742. A contingency enhancement “is intended to  
21 approximate market-level compensation for such services, which typically includes a  
22 premium for the risk of nonpayment or delay in payment of attorney fees.” *Id.* at 746.

23           The Court declines to apply an upward multiplier here due to the contingency fee  
24 nature of this case. The Court notes that Makaeff already argued that its higher than  
25 average hourly rates were also justified because this is a contingency case. (Dkt. No.  
26 331 at 15.) As such, an upward multiplier would be duplicative. Moreover, the basic  
27 lodestar figure adequately compensates Makaeff’s counsel, and Makaeff has not met  
28 her burden that a contingency fee enhancement is appropriate here. *See Ketchum*, 17

1 P.3d at 746 (“Of course, the trial court is not required to include a fee enhancement to  
 2 the basic lodestar figure for contingent risk, exceptional skill, or other factors, although  
 3 it retains discretion to do so in the appropriate case; moreover, the party seeking a fee  
 4 enhancement bears the burden of proof.”).

5 **D. Conclusion**

6 In sum, Makaeff has sought \$1,333,004.25<sup>29</sup> in fees, and the Court has excluded  
 7 a total of \$542,920.85 in fees as follows:

8 <b>Category</b>	<b>Fees Excluded</b>
9 Staff Attorney Fees	\$121,047.50
10 Paralegal Fees	\$90,542.50
11 1. Initial Anti-SLAPP Motion	\$19,656.00
12 2. District Court Reply Brief	\$3,726.00
13 3. Opposition to Motion to Strike	\$2,533.50
14 4. District Court Hearing and Preparation	\$3,768.00
15 5. Motion for Reconsideration	\$13,933.50
16 6. Motion for Reconsideration Reply Brief	\$4,191.00
17 7. Appeal Opening Brief	\$66,853.75
18 8. Opposition to Motion to Stay	\$10,518.75
19 9. Ninth Circuit Settlement Conference	\$1,947.00
20 10. Work with Amicus on Appeal	\$10,821.75
21 11. Request for Judicial Notice	\$11,610.00
22 12. Appeal Reply Brief	\$19,751.00
23 13. Supplemental Request for Judicial Notice	\$6,082.50
24 14. Ninth Circuit Appeal Strategy	\$0.00
25 15. Ninth Circuit Hearing	\$13,705.00

26 <sup>29</sup>The Court notes that the breakdown of fees in Ms. Jensen’s and Ms. Eck’s  
 27 supplemental declarations actually totals \$1,333,659.50, which is a difference of  
 28 \$655.25. (Dkt. No. 364-1 (Jensen Supp. Decl.); Dkt. No. 364-2 (Eck Supp. Decl.))  
 However, since neither party raised this difference, and using the lower figure benefits  
 Trump University, the Court uses \$1,333,004.25. (Dkt. No. 331 at 18; Dkt. No. 331  
 (Jensen Decl.) ¶ 58; Dkt. No. 331-2 (Eck Decl.) ¶ 55; Dkt. No. 364-1 (Jensen Supp.  
 Decl.) ¶ 2; Dkt. No. 364-2 (Eck Supp. Decl.) ¶ 2.)



1	16. Research Regarding Possible 28(j) Letter	\$6,187.50
2	17. Opposition to Petition for Rehearing <i>En Banc</i>	\$41,529.10
3	18. Work with Amicus on <i>En Banc</i> Opposition	\$5,802.25
4	19. Strategy Regarding Remand and Motion to Transfer	\$9,867.00
5	Fee Motion to District Court	
6	20. Makaeff Deposition Preparation and Document	\$30,346.00
7	Production	
8	21. Supplemental Brief Regarding Actual Malice	\$13,551.50
9	22. Supplemental Reply Brief Regarding Actual Malice	\$16,560.25
10	23. Hearing on Actual Malice	\$3,691.50
11	24. Work on Multiple Tasks	\$10,807.50
12	25. Preparation of Bill of Fees and Costs	\$3,890.50
13	<b>TOTAL FEES EXCLUDED</b>	<b>\$542,920.85</b>

13 Accordingly, the Court **AWARDS** Makaeff **\$790,083.40** in fees.

### 14 **III. Reasonable Costs**

15 In addition to attorney's fees, a prevailing defendant on an anti-SLAPP motion  
 16 is entitled to recover reasonable costs. Cal. Civ. Proc. Code § 425.16(c)(1). Here,  
 17 Makaeff seeks \$9,209.27 in costs for successfully litigating the anti-SLAPP motion.<sup>30</sup>  
 18 (Dkt. No. 331 at 18; Dkt. No. 364 at 19 n.11.) Specifically, Makaeff seeks the  
 19 following costs:

20 <b>Category</b>	<b>RGRD Costs</b>	<b>ZHE Costs</b>	<b>Total</b>
21 Meals, Hotel &	\$836.49	\$280.88	\$1,117.37
22 Transportation			
23 Messenger, Overnight	\$57.85		\$57.85
24 Delivery			

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 26  
 27 <sup>30</sup>Makaeff originally sought \$9,812.11 in costs, but is no longer seeking  
 28 approximately \$603 for the costs of postage, telephone, and photocopying charges, in  
 light of Trump University's observation that California Code of Civil Procedure  
 § 1033.5(b) applies. (Dkt. No. 335 at 26; Dkt. No. 364 at 19 n.11; Dkt. No. 364-1  
 (Jensen Supp. Decl.) ¶ 31 n.1; Dkt. No. 367 at 26.)

1	Video Deposition of	\$290.00		\$290.00
2	Makaeff			
3	Lexis, Westlaw, Online	\$4,931.21	\$2,057.80	\$6,989.01
4	Library Research			
5	Publications	\$299.79		\$299.79
6	Miscellaneous	\$455.25		\$455.25
7	Deposition Costs			
8	<b>TOTAL COSTS</b>	\$6,870.59	\$2,338.68	<b>\$9,209.27</b>

9 (Dkt. No. 331-1 (Jensen Decl.) ¶ 59); (Dkt. No. 331-2 (Eck Decl.) ¶ 57.)

10 The Court ordered Makaeff to “submit additional information substantiating  
11 the costs requested.” (Dkt. No. 358 at 6.) The supplemental declarations of Ms. Jensen  
12 and Ms. Eck provide additional details regarding costs. (Dkt. No. 364-1 (Jensen Supp.  
13 Decl.) ¶¶ 31-32; Dkt. No. 364-2 (Eck Supp. Decl.) ¶¶ 33-34.) Trump University argues  
14 that the Court should deny the costs entirely for various reasons. (Dkt. No. 367 at 26-  
15 27.)

16 The Court agrees with Trump University that the charge of \$225.05 for lunch  
17 after the Ninth Circuit hearing is not compensable since it was for the “team” and  
18 Makaeff admits that not all who attended the hearing were necessary. (*Id.*) The Court  
19 also excludes Mr. Forge’s \$288.41 in expenses for meals and hotel accommodations  
20 for preparing Makaeff for her deposition since the Court has already determined that  
21 his time was duplicative. (*Id.*) Otherwise, the Court determines that Makaeff’s costs  
22 are reasonable. For example, Trump University argues that the Court should not allow  
23 Mr. Isaacson’s online research costs because he has a high hourly rate. (*Id.* at 26.)  
24 However, the fact that Mr. Isaacson is a more experienced attorney would likely reduce  
25 his research costs.

26 Therefore, the Court excludes \$513.46 in costs. Accordingly, the Court  
27 **AWARDS** Makaeff **\$8,695.81** in costs.

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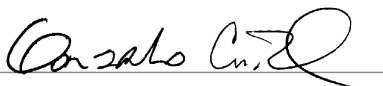
**CONCLUSION AND ORDER**

For the reasons set forth above, **IT IS HEREBY ORDERED:**

- (1) the Court **GRANTS IN PART AND DENIES IN PART** Makaeff's request for fees and costs (Dkt. No. 331);
- (2) the Court **AWARDS** Makaeff **\$790,083.40** in fees;
- (3) the Court **AWARDS** Makaeff **\$8,695.81** in costs;
- (4) the Court **GRANTS** Makaeff's *ex parte* application to file a limited response (Dkt. No. 368).

**IT IS SO ORDERED.**

DATED: April 9, 2015

  
HON. GONZALO P. CURIEL  
United States District Judge