

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION ATHLETIC  
GRANT-IN-AID CAP ANTITRUST  
LITIGATION

Case No. 14-md-02541-CW (NC)

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES,  
EXPENSES, SERVICE  
AWARDS, AND TAXED COSTS  
AND REQUESTING FURTHER  
SUBMISSION**

Re: Dkt. Nos. 1169, 1184, 1193,  
1194, 1244, 1250, 1257

Before the Court is the plaintiffs' motions for attorneys' fees and costs in this class action where plaintiff student-athletes succeeded in gaining injunctive relief against defendant the National Collegiate Athletic Association. Plaintiffs seek \$31,955,620.50 in attorneys' fees, multiplied by 1.5, for a total fee request of \$47,933,430.75. Dkt. No. 169. Plaintiffs also request \$1,393,351.00 in costs, including \$305,476.77 already taxed by the Clerk. *Id.*; Dkt. No. 1190. The NCAA opposes Plaintiffs' motion, arguing that Plaintiffs seek fees for non-compensable activities and request excessive and unsupported costs. The Court finds that some of the billing entries and cost requests are unreasonable but that most are properly compensable. As such, the Court GRANTS IN PART and DENIES IN PART the motion for attorneys' fees and costs at Dkt. No. 1169. The Court awards

1 \$1,393,351.00 in total costs and orders the parties to meet and confer to file a joint  
2 proposed order as to the total amount of attorneys' fees to be awarded, consistent with this  
3 Order.

4 Additionally, the Court addresses the parties' disputes over the Clerk's Taxation of  
5 Costs at Dkt. Nos. 1193 and 1194, the parties' joint discovery letter briefs at Dkt. Nos.  
6 1184 and 1244, and the administrative motions to file under seal at Dkt. Nos. 1250 and  
7 1257.

### 8 **I. Background**

9 After five years and over fifty thousand hours in attorney and staff time culminating  
10 in a ten-day bench trial, Plaintiffs successfully won a permanent injunction invalidating the  
11 NCAA's limitations on the amount and type of education-related benefits and academic  
12 achievement awards available to class members. Another antitrust case against the NCAA,  
13 *Jenkins v. National Collegiate Athletic Association*, was kept separate from the  
14 consolidated class relevant to this motion and is currently stayed. Case No. 14-cv-02758-  
15 CW. The consolidated class here has already been awarded attorneys' fees and costs  
16 covering only the damages portion of this case as part of a settlement agreement. Dkt. No.  
17 745. In injunctive relief, the consolidated class achieved a historic outcome resulting in  
18 the college athletes' opportunity to each receive tens of thousands of dollars in benefits and  
19 awards each year. The case required tremendous effort on both sides: multidistrict  
20 litigation coordination, motion practice, class certification, millions of pages of documents  
21 in discovery, over sixty fact and eight expert depositions, a ten-day bench trial and now  
22 appeal. Plaintiffs prevailed on some, but not all, of their desired injunctive relief.  
23 Plaintiffs sought to enjoin all of Defendants' rules limiting compensation and benefits  
24 available to student-athletes; the District Court granted injunctive relief that prohibited  
25 restriction of education-related compensation and benefits, but maintained a cap on grant-  
26 in-aid and allowed the NCAA to limit compensation unrelated to education. Both parties  
27 have appealed the District Court's final judgment to the Ninth Circuit. Dkt. Nos. 1167,  
28 1175.

1 District Court Judge Claudia Wilken referred the motions for fees and costs to the  
2 undersigned. Dkt. Nos. 1170, 1196. The plaintiffs' motion for attorneys' fees was filed  
3 without detailed billing records. Dkt. No. 1169. This Court ordered the parties to meet  
4 and confer over the billing records and to provide supplementary briefing. Dkt. No. 1220.  
5 Plaintiffs provided billing records to the defense and both parties filed supplementary  
6 briefs addressing Defendants' objections to the records. Dkt. Nos. 1250, 1257. The  
7 supplementary briefing resulted in some voluntary reductions in Plaintiffs' fee requests.  
8 Dkt. No. 1257.

## 9 **II. Legal Standard**

10 Under the Clayton Antitrust Act, a plaintiff who substantially prevails in an action  
11 for injunctive relief is entitled to attorneys' fees and reasonable costs. 15 U.S.C. § 26.  
12 This mandatory award of fees and costs is designed to incentivize private enforcement of  
13 antitrust laws. *Costco Wholesale Corp. v. Hoen*, 538 F.3d 1128, 1136–37 (9th Cir. 2008).  
14 In this Circuit, reasonable attorneys' fees and costs include items which would have been  
15 undertaken by a reasonable and prudent lawyer to advance or protect his client's interest.  
16 *See Twin City Sportservice, Inc. v. Charles O. Finley & Co., Inc.*, 676 F.2d 1291, 1313  
17 (9th Cir. 1982). Courts in this Circuit use the "lodestar" to determine the reasonableness  
18 of an attorneys' fees request. *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir.  
19 1987). This method starts with calculating the number of hours reasonably spent on the  
20 litigation and then multiplies that amount by a market-based hourly rate. *Id.* This amount  
21 is strongly presumed to be a reasonable fee. *Id.* The Court may revise the lodestar upward  
22 or downward in rare circumstances. *Van Gerwin v. Guarantee Mut. Life Co.*, 214 F.3d  
23 1041, 1045 (9th Cir. 2000).

## 24 **III. Discussion**

### 25 **A. Attorneys' Fees**

26 Plaintiffs seek \$31,955,620.05 in attorneys' fees, multiplied by 1.5, for a total fee  
27 request of \$47,933,430.75. Dkt. No. 1257. They also seek \$1,393,519.00 in costs  
28 (including \$305,476.77 in costs already taxed by the Clerk at Dkt. No. 1190). Defendants

1 object to the fees, arguing that Plaintiffs’ counsel seeks compensation for tasks for which  
 2 they are not entitled recovery. Generally, Defendants do not object to Plaintiffs’ hourly  
 3 rates, only to the inclusion of non-compensable work in the fee request. Specifically,  
 4 defendants object to: (1) work related to the *Jenkins* case and work to keep *Jenkins*  
 5 separate from the consolidated class action; (2) work attributable to the damages phase of  
 6 the case; (3) clerical tasks; (4) filing an amicus brief in *O’Bannon*; (5) appealing this  
 7 action; (6) preparing depositions and testimony for witnesses who did not testify; (7) vague  
 8 entries; (8) media activities; and (9) fees not supported by billing records. Dkt. No. 1250.  
 9 The Court addresses each of these objections in turn.

10 The parties’ supplemental briefing included color-coded billing entries indicating  
 11 which entries Defendants challenged. Plaintiffs red-lined those color-coded records to  
 12 indicate entries they voluntarily withdrew from their request. Dkt. Nos. 1250, 1257.  
 13 However, Plaintiffs did not file any breakdown totaling the amount they voluntarily  
 14 withdrew from distinct categories of fees. Moreover, the Court’s rulings on Defendants’  
 15 objections to the fee requests do not comport precisely with the categorial breakdowns  
 16 proposed in either parties’ briefing. For these reasons, the Court offers the following  
 17 guidance as its ruling on the motion for attorneys’ fees and orders the parties to meet and  
 18 confer to file a joint proposed order with exact dollar amounts, broken down by category,  
 19 consistent with the rulings in this Order, for the Court to award in fees. This proposed  
 20 order will be discussed in more detail in the conclusion to this Order.

### 21 **1. Hourly Rates**

22 Defendants do not contest the hourly rates billed by Plaintiffs’ attorneys. These  
 23 rates range from \$85 per hour for review attorneys to \$1,515 for certain partners. Dkt. No.  
 24 1169, Kessler Decl. ¶ 19; Berman Decl., Ex. A; Simon Decl., Ex. B; Pritzer Decl., Ex. A.  
 25 The Court FINDS that these hourly rates are reasonable.

### 26 **2. *Jenkins***

27 Attorneys’ fees are properly granted for work that “involve[s] a common core of  
 28 facts” and that is “devoted generally to the litigation as a whole.” *Hensley v. Eckerhart*,

1 461 U.S. 424, 435 (1983).

2 Here, Defendants argue that Plaintiffs inappropriately request compensation for  
3 time related to *Jenkins v. National Collegiate Athletic Association*, 14-cv-02758 (N.D.  
4 Cal.), a case that Plaintiffs successfully argued to keep separate from this consolidated  
5 action. Defendants argue that because Plaintiffs refused to consolidate *Jenkins* with this  
6 class, Plaintiffs should not recover \$524,947.35 for time spent related to *Jenkins*. In  
7 response, Plaintiffs have removed their request for reimbursement for fees incurred  
8 defending a recent post-trial motion to dismiss in *Jenkins*. Dkt. No. 1257, Kessler Decl. ¶  
9 11. However, Plaintiffs still seek compensation for all pre-trial *Jenkins* work such as  
10 preparing complaints, opposing transfer by the Judicial Panel on Multidistrict Litigation of  
11 all Plaintiffs' claims to the Southern District of Indiana, and arguing that *Jenkins* be  
12 litigated separately from this action. Plaintiffs argue that all of this work involved a  
13 common core of facts and assisted in their success in this litigation as a whole. In  
14 particular, Plaintiffs believed that keeping their claims in this District rather than the  
15 Southern District of Indiana was advantageous to their clients. Further, Plaintiffs point out  
16 that the strategy and analysis of early *Jenkins* work, like drafting complaints, benefitted  
17 this class due to the common facts underlying both cases.

18 The Court FINDS that the pre-trial *Jenkins* work involved a common core of facts  
19 and therefore work spent on *Jenkins* before trial was devoted generally to this litigation as  
20 a whole and benefitted this class's success. As such, the Court accepts Plaintiffs'  
21 exclusion of post-trial work as reflected in Dkt. No. 1257, Kessler Decl., Ex. 1. The Court  
22 REDUCES the fee award by the amount reflecting the post-trial *Jenkins* work.

### 23 **3. Damages Phase**

24 Defendants' review of Plaintiffs' billing records revealed some entries reflecting  
25 time spent on the damages portion of the case, rather than the injunctive relief portion  
26 appropriate for this motion. Plaintiffs are not entitled to those fees here because they have  
27 already received more than \$40 million from a settlement for that purpose. *See* Dkt. Nos.  
28 688, 745. Defendants argue that \$31,130.29 worth of billing entries went toward the

1 damages phase. However, Plaintiffs point out that many damages-related tasks were  
 2 actually performed for this consolidated injunctive-relief class, such as this class’s counsel  
 3 (not the damages class’s counsel) reviewing filings from the damages case to determine  
 4 any impact on this case. The Court is persuaded that much of this work was indeed done  
 5 in furtherance of this litigation and is properly compensable here. The Court approves  
 6 Plaintiffs’ voluntary removal of certain damages-only tasks reflected at Dkt. No. 1257,  
 7 Pritzker Decl. ¶, Ex. 1. The Court REDUCES the fee award by the amount reflected by  
 8 Plaintiffs’ withdrawn entries for damages-only tasks.

#### 9 **4. Clerical Tasks**

10 Tasks which are purely secretarial should not be billed at a lawyer’s rate. *de Jesus*  
 11 *Ortega Melendres v. Arpaio*, 2017 WL 10808812, at \*8 (9th Cir. Mar. 2, 2017).  
 12 Defendants challenge \$949,680.11 worth of entries that they call “clerical tasks.” Dkt. No.  
 13 1250 at 3. However, many of the tasks Defendants identify are not, in fact, “*purely*  
 14 *clerical.*” *Yates v. Vishal Corp.*, 2014 WL 572528, at \*6 (N.D. Cal. Feb. 4, 2014)  
 15 (emphasis added). For instance, the challenged entries include preparing documents for a  
 16 summary judgment filing and researching NCAA financial records. The Court finds that  
 17 these tasks are properly compensable at the rates requested because, as Judge Wilken  
 18 found in *O’Bannon*, they are “unquestionably for substantive work.” *O’Bannon v. NCAA*,  
 19 Case No. 09-cv-3329-CW, 2016 WL 1255454, at \*10 (Mar. 31, 2016). The Court  
 20 therefore declines to reduce the fee request for these tasks.

#### 21 **5. Amicus Brief in *O’Bannon***

22 Defendants object to Plaintiffs’ request for compensation for time spent preparing  
 23 an amicus brief in the appeal of *O’Bannon* on behalf of *Jenkins*. 802 F.3d 1049 (9th Cir.  
 24 2015). Two amicus briefs were filed: one on behalf of this consolidated class, and one by  
 25 counsel for *Jenkins*. Defendants call these two briefs “wholly duplicative and  
 26 unnecessary.” Dkt. No. 1250 at 3. Whether or not the two briefs were duplicative or  
 27 unnecessary, the Court agrees that counsel for the consolidated class should not be  
 28 compensated for preparing both amicus briefs because all of those hours were not

1 necessary to the success of this case. *Hensley*, 461 U.S. at 434. Only one amicus brief  
2 was necessary to protect the needs of this class. As such, the Court reduces the attorneys'  
3 fees award by \$124,079.12 for work performed on the amicus brief by *Jenkins* counsel.

#### 4 **6. Appealing this Action**

5 Defendants next object to time Plaintiffs' counsel spent on appealing this action,  
6 arguing that they have not won the appeal. Indeed, Plaintiffs will not be eligible for any of  
7 the fees awarded in this Order unless they succeed on appeal. With no other grounds for  
8 their objection, the Court finds that Defendants have not met their burden in challenging  
9 this fee request and does not reduce the award for time spend on appeal. The Court  
10 declines to reduce the fee award for these entries. However, the Court notes that this Order  
11 is intended only to cover costs and fees incurred through October 30, 2019, and not to  
12 work on appealing this case past that date.

#### 13 **7. Depositions and Preparation for Witnesses Who Did Not Testify**

14 Plaintiffs request \$49,055.54 in fees for time spent preparing for four depositions  
15 that did not occur and preparing one witness for trial who they did not call. Dkt. No. 1250  
16 at 4. Defendants argue that this time did not contribute to the success of the case. *Id.*  
17 However, the Court finds that these efforts were not on non-compensable "extraneous"  
18 tasks. *U.S. ex. rel. McCartan v. Cochise Health Alliance Med. Grp. P.C.*, 2005 WL  
19 2416353, at \*4 (D. Ariz. Sept. 27, 2005). To the contrary, strategizing which witnesses to  
20 depose or to call to testify (and which not to) over the course of a five-year case is not only  
21 reasonable but is necessary and important. This strategy, preparation, and decision-making  
22 surely contributed to plaintiffs' success. Moreover, Defendants provide no case law to  
23 support their contention that time preparing potential witnesses who do not testify is not  
24 compensable. The Court declines to reduce the fee award for this activity.

#### 25 **8. Vague Entries**

26 Defendants point to \$34,879.25 worth of entries that they say are so vague as to be  
27 impossible to assess for reasonableness. The Court's review of these entries reveals that  
28 many are easily understandable in context of other entries. For example, on June 28, 2016,

1 attorney Greenspan worked on “correspondence” and, on the same day, attorney Parsigian  
2 “confer[red] with team regarding financial documents motion and 30(b)(b) topics.” In  
3 light of the billing records as a whole, the meaning of even some less detailed entries can  
4 be ascertained. The Court agrees, however, that some identified entries are difficult to  
5 understand and therefore reduces the fees sought for these vague entries by 10%, or  
6 \$3,487.93.

### 7 **9. Media Activities**

8 Plaintiffs seek compensation for media activities including participating in  
9 continuing education panels and updating the firm’s website. Other media activities, such  
10 as advising clients on publicity matters, are not challenged by Defendants. Judge Wilken  
11 in *O’Bannon* found that media activities were properly compensable due to the high-  
12 profile nature of the class action where counsel needed to engage in media work to  
13 successfully represent the class. 2016 WL 1255454, at \*8. However, this Court agrees  
14 with Defendants that not all media activities included in the fee request meaningfully  
15 contributed to the success of the class. While updating the firm’s website about the  
16 litigation might be necessary in a case with media attention like this one, voluntarily  
17 participating on an educational panel is too disconnected from this case to be compensable.  
18 As such, the Court reduces the \$36,316.46 of the fee award challenged by Defendants  
19 related to media activities by half, or \$18,158.23.

### 20 **10. Fees Not Supported by Billing Records**

21 Finally, Plaintiffs have voluntarily withdrawn a \$3,500 entry and another \$975  
22 attributed to clerical errors as they were not supported by the billing records. Dkt. No.  
23 1257, Pritzer Decl. at ¶ 6; Kessler Decl., Ex. 1.

### 24 **11. Multiplier**

25 A court may revise a fee award upward or downward based on factors not included  
26 in the lodestar analysis such as (1) the quality of the representation, (2) the benefit obtained  
27 for the class, (3) the complexity and novelty of the issues presented, and (4) the risk of  
28 nonpayment. *In re Bluetooth Headset Prod. Liability Litig.*, 654 F.3d 935, 942 (9th Cir.



1 2011). Because of the strong presumption that the lodestar is a reasonable fee, a multiplier  
2 is only appropriate in “rare and exceptional cases.” *Van Gerwin*, 214 F.3d at 1045.

3 Defendants argue for a negative multiplier and Plaintiffs request a 1.5x multiplier.  
4 The Court finds that these factors balance such that neither a positive nor negative  
5 multiplier is appropriate in this case. Representation was of excellent quality on both sides  
6 of this litigation, and counsel for both sides expertly handled this exceedingly complex  
7 case. But the Court finds that this quality and complexity are already reflected in  
8 Plaintiffs’ counsels’ hourly rates and the number of hours billed. *Perdue v. Kenny A ex*  
9 *rel. Winn*, 559 U.S. 542, 553 (2010). Moreover, while Plaintiffs indeed secured a historic  
10 victory for their clients including significant injunctive relief, their success was only partial  
11 in terms of the injunction sought. That both parties appealed the final judgment in the case  
12 indicates that neither wholly succeeded on their claims. Unlike in *Kim v. Space Pencil,*  
13 *Inc.*, where the court granted a 1.8x multiplier for significant injunctive relief, here  
14 Plaintiffs’ injunctive success was quite limited. 2012 WL 5948951 (N.D. Cal. Nov. 28,  
15 2012). On the other hand, Plaintiffs’ success was greater than in *Shwarz v. Secretary of*  
16 *Health & Human Servcs.*, where the court reduced the lodestar by 75% based on the  
17 success of only 25% of Plaintiffs’ claims. 73 F.3d 895, 904–05 (9th Cir. 1995). Finally,  
18 Plaintiffs’ counsel has already recovered for fees and costs incurred related to the damages  
19 portion of this case as part of a settlement agreement and separately for work on  
20 *O’Bannon*. Accordingly, the Court declines both the Defendants’ request for a negative  
21 multiplier and Plaintiffs’ request for a 1.5x multiplier.

## 22 **B. Costs**

23 Federal Rule of Civil Procedure 54(d)(1) directs the Clerk of Court to tax costs to  
24 the prevailing party. The losing party bears the burden of showing why costs should not  
25 be awarded. *Quan v. Computer Scis. Corp.*, 623 F.3d 870, 888 (9th Cir. 2010). If a party  
26 seeks judicial review of the Clerk’s taxation of costs, the Court reviews the Clerk’s  
27 determination *de novo*. *Lopez v. San Francisco Unified Sch. Dist.*, 385 F. Supp. 2d 981,  
28 1000 (N.D. Cal. Aug. 16, 2005).

1           **1. Clerk’s Taxed Costs**

2           Plaintiffs filed a Bill of Costs seeking \$363,783.03 in costs and the Clerk taxed  
3 Defendants \$305,476.77 of those costs. Dkt. Nos. 1169, 1190. Defendants did not object  
4 to the Bill of Costs due to a misunderstanding regarding which objection deadlines applied  
5 to which motions. Dkt. Nos. 1194, 1199. Plaintiffs moved for judicial review of  
6 \$49,905.699 of the disallowed costs and later reduced that request to judicial review of  
7 \$45,689.05 of the disallowed costs. Dkt. Nos. 1193, 1199. First, the Court finds that  
8 Defendants’ objections to the Bill of Costs raised at Dkt. No. 1194 are timely due to the  
9 lack of clarity in the Court’s modifications of the briefing schedules on the fee and cost  
10 disputes. Dkt. Nos. 1170, 1173, 1182, 1190. The Court therefore addresses Defendants’  
11 objections to the Taxed Costs as well as Plaintiffs’ request for judicial review of the taxed  
12 costs here. The administrative motion to vacate the taxed costs order at Dkt. No. 1194 is  
13 hereby DENIED as moot because the parties have briefed the taxed costs issues at Dkt.  
14 Nos. 1193, 1195, and 1199 and had further opportunity to brief these issues in their  
15 supplemental filings at Dkt. Nos. 1250 and 1257.

16                   **a. Realtime and Expedited Deposition Transcripts**

17           The Clerk of Court excluded \$26,902.28 of Plaintiffs’ requested \$77,845.86 in  
18 deposition transcript and video recording costs, taxing a total of \$50,943.58 in this  
19 category. Dkt. No. 1190. The excluded costs were for expedited production of twenty-one  
20 deposition transcripts, videotaping of all depositions, and the use of Realtime technology.  
21 Plaintiffs contend that these costs were incurred out of necessity due to the complexity,  
22 size, and busyness of this case. Dkt. No. 1193 at 4. Plaintiffs have provided the Court  
23 with a detailed explanation of why each expedited deposition transcript was necessary  
24 within the calendared deadlines of the case. *Id.* Plaintiffs also cite to case law within this  
25 District finding that enhanced deposition costs like Realtime and video recording are  
26 reimbursable as “normal and necessary features of complex” litigation like this. *In re*  
27 *TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. 10-cv-4572-SI, 2014 WL 12635766,  
28 at \* 10 (N.D. Cal. Feb. 3, 2014). The Court agrees that expediting the twenty-one

1 identified deposition transcripts was necessary in context, and that use of video recording  
2 and Realtime were appropriate in a case like this. As such, the Court GRANTS the  
3 Plaintiffs' motion for review of the Clerk's taxed costs as to the Realtime, expedited  
4 deposition transcripts, and video recording costs for a total of \$26,902.28 in additional  
5 costs.

6 **b. *O'Bannon* Trial Transcripts and Transcripts of Other Proceedings**

7 Plaintiffs also request the Court's review of the Clerk's exclusion of \$18,786.77 in  
8 costs for expedited trial transcripts and other hearing transcripts.<sup>1</sup> Defendants argue that  
9 the party seeking expedited trial transcripts must demonstrate that expedited delivery was  
10 necessary for their case. *Plantronics, Inc. v. Aliph, Inc.*, Case No. 09-cv-01714-WHA,  
11 2012 WL 6761576, at \*6 (N.D. Cal. Oct. 23, 2012). The Court is satisfied that Plaintiffs  
12 have demonstrated that necessity: Plaintiffs required these daily trial transcripts for  
13 purposes of appeal, and more urgently for use in the ongoing proceedings. Courts in this  
14 District have taxed daily trial transcripts because they are obtained as a general practice  
15 and because they are necessary for appeal. *Phoenix Techs. Ltd. v. VMWare, Inc.*, Case No.  
16 15-cv-01414-HSG, 2018 WL 4700347, at \*2 (N.D. Cal. Sept. 30, 2018).

17 The Court finds that the additional transcripts, including those from *O'Bannon*,  
18 were also necessary to litigate this case given the frequency and importance of both  
19 parties' arguments about *O'Bannon* throughout this litigation. Defendants' arguments that  
20 these transcripts were not necessary because they were not admitted into the record as trial  
21 exhibits is not persuasive. As such, the Court GRANTS the Plaintiffs' motion for review  
22 of the Clerk's taxed costs as to the daily trial transcripts, *O'Bannon* transcripts, and  
23 transcripts of other proceedings for a total of \$18,786.77 in additional costs.

24 **c. Color Copy Costs**

25 Defendants challenge the Clerk's taxing of \$210,101.60 in unspecified color copy  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs originally requested review of \$23,003.41 in this category but voluntarily  
withdrew their request for review of \$4,216.64 of these costs. Dkt. No. 1199, n. 2; Dkt.  
No. 1129.

1 printing costs. Dkt. No. 1197 at 3, n. 1. At minimum, Defendants argue that a 50%  
2 reduction in these costs is warranted because the total fee is unnecessary and excessive.  
3 But Defendants fail to provide any rationale for why the copy costs were unwarranted in  
4 the context of this litigation. Plaintiffs properly documented these costs in their Bill of  
5 Costs submitted to the Clerk, while Defendants have not met their burden in showing why  
6 these costs are excessive beyond simply calling them so. The Court declines the  
7 Defendants' request to reduce the requested and taxed color copy costs.

## 8 **2. Other Costs**

9 In other costs separate from those taxed by the Clerk, Plaintiffs request  
10 \$979,745.41. This amount takes into account multiple cost requests withdrawn by  
11 Plaintiffs due to duplication or other errors (a full summary of the cost calculations was  
12 presented to the Court at the hearing on this issue on August 21, 2019, and is available at  
13 Dkt. No. 1229; Defendants responded to these calculations at Dkt. No. 1230). Defendants  
14 object generally to the lack of invoices or receipts filed to support this cost request. Dkt.  
15 No. 1198 at 14–15. Moreover, Defendants take issue with Plaintiffs' requests for travel  
16 expenses, miscellaneous costs, professional services, and video streaming services.

17 First, the Court is less than sympathetic to Defendants' critique of Plaintiffs' lack of  
18 supporting documentation due to Defendants' multiple opportunities to acquire that  
19 information throughout this dispute. Plaintiffs filed a declaration stating that they offered  
20 additional information to enable Defendants to oppose their cost request but that no further  
21 information was timely requested. Dkt. No. 1169, Berman Decl. ¶ 27. Then, this Court  
22 ordered the parties to engage in an extensive meet and confer process for Plaintiffs to  
23 provide Defendants with billing records that were not filed with the original fees motion.  
24 Dkt. No. 1220. The parties had ample opportunity to seek and produce any necessary  
25 information over the course of the seven months between the filing of the fees motion and  
26 the filing of the supplemental briefing ordered by this Court.

27 Defendants' supplemental briefing raised no new issues regarding costs, so the  
28 Court addresses Defendants' previously-raised arguments on the costs here.

1 Costs that “would normally be charged to a fee paying client” are compensable.  
 2 *Trustees of Const. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*, 460 F.3d  
 3 1253, 1257 (9th Cir. 2006). The costs challenged by defendants here—travel expenses,  
 4 professional services such as secretarial overtime and investigative research, and video  
 5 streaming services—all appear to be costs that Plaintiffs’ counsel would ordinarily charge  
 6 to a fee-paying client. For instance, video streaming services used to test equipment before  
 7 trial is reasonable and necessary; Defendants’ challenge to the use of video streaming  
 8 services because it was used on a non-trial day is not compelling. Rather, these costs all  
 9 appear to be properly compensable. Defendants have not met their burden in showing  
 10 otherwise. As such, the Court awards the Plaintiffs \$979,745.41 in costs.

### 11 **C. Awards to Named Plaintiffs**

12 Service awards may be awarded to class representatives to incentivize those who  
 13 incur the risks and responsibilities of serving in that role. *Rodriguez v. West Publ’g Corp.*,  
 14 563 F.3d 948, 958–59 (9th Cir. 2009). Plaintiffs request service awards of \$15,000 each  
 15 for plaintiffs Alston, Hartman, and Jenkins, who were deposed and testified at trial, and  
 16 \$10,000 each for plaintiffs Hayes and James, who sat for depositions and participated  
 17 generally in the case. Dkt. No. 1169 at 23–24. Defendants do not oppose this request.  
 18 Accordingly, it is GRANTED.

### 19 **D. Costs and Fees Incurred Through October 30, 2019**

20 Plaintiffs filed declarations as to the amount of fees and costs they incurred through  
 21 the October 16, 2019 filing in relation to this motion and estimated expenses anticipated  
 22 through the October 30, 2019 close of this briefing schedule. Dkt. Nos. 1244–1249. They  
 23 request the following:

24 <b>Additional Fees</b>	<b>Amount</b>
25 Hagens Berman Fees through October 16, 2019	\$195,710.00
26 Hagens Berman Anticipated Fees through October 30, 2019	\$20,000
27 Pearson, Simon, & Warshaw Fees through October 16, 2019	\$159,555.00
28 PSW Anticipated Fees through October 30, 2019	\$19,131.29

1	Winston & Strawn Fees through October 16, 2019	\$1,620,111.40
2	Winston & Strawn Anticipated Fees through October 30, 2019	\$196,811.95

3 Additionally, Winston & Strawn seeks \$62,877.77 in additional costs incurred through  
4 October 16, 2019. Dkt. No. 1247, Kessler Decl. ¶ 13. The Court GRANTS these requests.

#### 5 **E. Motions to Seal**

6 The parties filed administrative motions to file under seal materials associated with  
7 this Order at Dkt. Nos. 1250 and 1257. For good cause shown, the Court GRANTS the  
8 motions to seal.s

#### 9 **F. Conclusion: Meet and Confer to File Proposed Order**

10 The Court hereby AWARDS the Plaintiffs \$1,393,351.00 in costs as follows:

11	<b>Costs</b>	<b>Amount</b>
12	Sought in Motion, Minus Plaintiffs' Voluntary Withdrawals	\$979,475.41
13	Additional Taxed Costs Following Court's Review	\$45,689.05
14	Costs Incurred through October 30, 2019	\$62,877.77
15	Costs Already Taxed by Clerk in Bill of Costs	\$305,476.77
16	<b>Total:</b>	<b>\$1,393,511.00</b>

17 The Court also AWARDS service fees of \$15,000 each for plaintiffs Alston,  
18 Hartman, and Jenkins, and \$10,000 each for plaintiffs Hayes and James.

19 The Court hereby REDUCES the attorneys' fees requested as follows:

20	<b>Reduction</b>	<b>Amount</b>
21	Plaintiffs' voluntarily identified post-trial <i>Jenkins</i> work	Parties to meet and confer
22	Plaintiffs' voluntarily identified damages-phase work	Parties to meet and confer
23	Amicus brief in <i>O'Bannon</i> by <i>Jenkins</i> counsel	\$124,079.12
24	10% of entries identified by Defendants as "vague"	\$3,487.93
25	50% of entries identified by Defendants as "media activity"	\$18,158.23
26	Plaintiffs' voluntarily identified errors in billing records	\$4,475

United States District Court  
Northern District of California

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The parties are hereby ORDERED to meet and confer and to file a joint proposed order detailing the total reductions appropriate for the post-trial *Jenkins* work and for the damages-phase work that Plaintiffs have agreed to remove from their fee request. The parties must propose a total reduction and a total fee award based on those calculations and provide the Court with both a breakdown by category and a summary total accounting for the rulings in this Order. The joint proposed order must be filed by **December 20, 2019**.

This is not the Court’s final order on the motions for fees and costs. The Court will issue a final order following the parties’ filing of their proposed order by December 20.

**IT IS SO ORDERED.**

Dated: December 6, 2019

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge