TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
tpeterson@petersonbaker.com
NIKKI L. BAKER, ESQ., Bar No. 6562
nbaker@petersonbaker.com
PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
Telephone: 702.786.1001
Facsimile: 702.786.1002

JEFFREY VOCKRODT, ESQ. *(Admitted Pro Hac Vice)*
jvockrodt@cm.law
CM LAW LLP
National Litigation Support Center
13101 Preston Road, Suite 110-1510
Dallas, TX 75240

Attorneys for Plaintiffs Wealthy Inc. and Dale Buczkowski

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WEALTHY INC. and DALE BUCZKOWSKI,

Plaintiffs,

v.

SPENCER CORNELIA, CORNELIA MEDIA LLC, and CORNELIA EDUCATION LLC,

Defendants.

Case No.: 2:21-cv-01173-JCM-EJY

PLAINTIFFS' OPPOSITION TO THE CORNELIA DEFENDANTS' MOTION TO ALTER OR AMEND ORDER ON COSTS AND ATTORNEYS' FEES (ECF NO. 299)

WEALTHY INC. and DALE BUCZKOWSKI,

Plaintiffs,

v.

JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC, and OPTIMIZED LIFESTYLE LLC

Defendants.

Consolidated With:
Case No.: 2:22-cv-00740-JCM-EJY

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

Plaintiffs Wealthy Inc. and Dale Buczkowski oppose the motion of Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC (the "Cornelia defendants") to alter or amend the October 19, 2026 order on fees. ECF No. 299. Plaintiffs base this opposition on the following memorandum, the papers on file, and any argument the Court permits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The October 19 order awarded the Cornelia defendants $263,847.80 under NRS 41.670: $233,847.80 under NRS 41.670(1)(a) and $30,000 under NRS 41.670(1)(b). ECF No. 298 at 9:14–15, 11:1–2. The Cornelia defendants now ask the Court to more than double it, to $516,519.00 under (1)(a) and a $546,519.00 judgment, joint and several, with post-judgment interest. ECF No. 299 at 23:2–19. They do so by rearguing every reasonableness judgment the Court made: the rates, the hours, the 40% reduction, the scope of recoverable work, and the finding that their classification of time was an attempt to take advantage of the statute. Rule 59(e) offers "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." It "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); LR 59-1(b). Disagreement with a discretionary fee ruling is not manifest error.

There is also a threshold problem. As Plaintiffs explain in their concurrently filed Rule 59(e) motion, NRS 41.670 should not apply in federal court at all after *Berk v. Choy*, 607 U.S. 187 (2026). ECF No. 300. Every additional dollar the Cornelia defendants seek rests on that statute. Plaintiffs ask the Court to decide that motion first. If the Court vacates the NRS 41.670 awards, this motion is moot. If it does not, the Court should still decline to increase the award, for the reasons below.

II. Background

The fee motion and response. After the Ninth Circuit reversed the denial of the special motion, ECF No. 291 at 14, the Cornelia defendants renewed their fee motion and sought $645,912.50: $589,905 under NRS 41.670(1)(a) for 1,145.5 hours, $30,000 under NRS

41.670(1)(b), and $26,007.50 in expert fees, with the Lanham Act as an alternative basis. ECF No. 298 at 2:4–11, 4:6–8 (summarizing ECF No. 293). Plaintiffs opposed. They showed that the Cornelia defendants had not carried their burden on reasonableness. The spreadsheet included clerical work, discovery that served purposes unrelated to the defense, and work for a co-defendant. The Cornelia defendants never apportioned the $502,762.50 of the request they called "inextricably intertwined" time. Plaintiffs also showed that the requested rates "exceed the prevailing Las Vegas market," noting a 25% client discount and Mr. Cornelia's own statement that "Randazza is $625/hr after my 25% discount." ECF No. 294 at 2, 4–18. The Cornelia defendants replied. ECF No. 296.

The order. The Court held the Cornelia defendants entitled to reasonable fees under NRS 41.670(1)(a). ECF No. 298 at 3:13–16. It recognized *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021), but found that "awarding attorneys' fees for the entirety of this action would be unreasonable." ECF No. 298 at 4:9–13. It found the Cornelia defendants' categorization of "intertwined" time—which the order describes as "inexplicably intertwined" and, later on the same page, as "inextricably intertwined"—vague and unexplained. Id. at 5:5–8, 5:19–24. It contrasted the 38.3 hours of non-Lanham Act work in the original motion with the 1,118 hours attributed to anti-SLAPP work in the renewed motion. *Id.* at 5:8–15. It found that much of the "intertwined" work went to "unrelated reply briefs, motions, and trial prep work" and post-motion matters. *Id.* at 5:16–24. "[H]aving independently reviewed the billing records," it then reduced the hours by 40%, to 687.3. *Id.* at 6:6–12. It rejected the Laffey matrix and set Las Vegas rates of $550, $385, $275, and $75. *Id.* at 6:13–7:28. It awarded the full $30,000 under (1)(b), denied expert fees, and denied Lanham Act fees. *Id.* at 8:1–25, 9:16–10:24. It directed that the award be "paid by Plaintiff." *Id.* at 11:1–2.

The motion. ECF No. 299 asks the Court to do five things. First, adopt the requested rates of up to $1,000 an hour. ECF No. 299 at 4–13, 12:18–21. Second, withdraw the "take advantage" finding and the 40% reduction. *Id.* at 13–15. Third, award all hours except the 27.5 hours attributed solely to the Lanham Act claim, including 993 "intertwined" hours and 420.2 post-October 13, 2023 hours billed at $247,462.50, about 290 of them on appeal. *Id.* at 14:6–9, 15:18–27, 23:14–17. Fourth, correct Mr. Wolman's hours under Rule 60(a). *Id.* at 22:13–16. Fifth, make the award joint

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

and several against both Plaintiffs, add post-judgment interest, and enter a single Rule 58(d) judgment of $546,519.00. *Id.* at 22:17–24, 23:8–10. The motion attaches, for the first time, a 2018 declaration by Plaintiffs' local counsel from another case. ECF No. 299-1.

III. Legal Standard

Rule 59(e) relief is appropriate only where the court "is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Kona*, 229 F.3d at 890; *Carroll*, 342 F.3d at 945. A motion for reconsideration may not repeat arguments already made. LR 59-1(b). Rule 60(a) permits correction of "a clerical mistake or a mistake arising from oversight or omission." Fed. R. Civ. P. 60(a). It reaches only conforming the record to what the court actually decided. It does not authorize a substantive change to the decision itself.

The amount of a fee award is committed to the district court's discretion, "in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The court of appeals reviews fee awards for abuse of discretion. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118 (9th Cir. 2000); *see PSM Holding Corp. v. Nat'l Farm Fin. Corp.*, 884 F.3d 812, 828 (9th Cir. 2018) (applying that standard to an award of fees under state law). A reduction of more than 10% requires "a concise but clear explanation of its reasons." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013); *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). The order gave that explanation. ECF No. 298 at 2:18–21, 4:9–6:12. Nevada law, which supplies the fee standard, is to the same effect. A court "can follow any rational method so long as it applies the *Brunzell* factors," *Smith v. Zilverberg*, 137 Nev. 65, 73, 481 P.3d 1222, 1231 (2021) (citing *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015)), and a reviewing court upholds an award that is "supported by substantial evidence," *id.* at 73 (quoting *Logan*, 131 Nev. at 266–67, 350 P.3d at 1143). *See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). ECF No. 298 at 3:18–4:4.

/ / /

/ / /

/ / /

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

IV. Argument

A. Every additional dollar rests on NRS 41.670, whose application in federal court is the subject of Plaintiffs' concurrent motion

The Cornelia defendants' motion is confined to the award under NRS 41.670. By their own description, it "concerns two parts of the award under NRS 41.670(1)(a): the hourly rates and the 40% reduction in hours," and it does not challenge the denial of Lanham Act fees. ECF No. 299 at 1:25–27; *see* ECF No. 298 at 9:16–10:24. That denial is not irrelevant to this motion. It limits what NRS 41.670 can reach, as Part IV.C explains. Each component of the request depends on one premise: that NRS 41.670 supplies a valid rule of decision in this federal action. NRS 41.670(1) applies only "[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660." *Berk* holds that when a valid Federal Rule "answers the question in dispute," a federal court "bypasses *Erie*'s inquiry altogether," and "the substantive nature of [a state] law, or its substantive purpose, makes no difference." 607 U.S. at 192, 199. A state screening rule that cannot fit within the Federal Rules "has no place there." *Id.* at 197.

The Cornelia defendants' own motion shows that the Federal Rules answered the question here. The special motion and the summary-judgment motion "were the same document." ECF No. 299 at 16:16–17. On appeal, the second prong of the anti-SLAPP analysis was "simply 'collapsed' into the summary judgment standard under Fed. R. Civ. P. 56," and the Ninth Circuit found it satisfied because it affirmed summary judgment. *Id.* at 16:22–26 (quoting ECF No. 291 at 14). The special motion did no work that Rule 56 did not do. What it added was the fee consequence that NRS 41.670 attaches to it. The Ninth Circuit has treated *Berk*'s effect on its anti-SLAPP precedent as a serious open question. It ordered supplemental briefing on whether *Berk* is "clearly irreconcilable" with that precedent under *Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc), and then expressly declined to decide it. *Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model Curriculum Consortium*, Nos. 24-7676, 25-3436 (9th Cir.), Dkt. 86 (May 4, 2026); *id.*, Dkt. 103, slip op. at 8 n.2 (Sept. 4, 2026). Two other circuits have applied that displacement principle to state and District of Columbia anti-SLAPP provisions. The D.C. Circuit relied principally on its earlier decision in *Abbas v. Foreign Policy Group, LLC*, 783 F.3d

1328 (D.C. Cir. 2015), and read *Berk* to confirm that analysis. *Akhmetshin v. Browder*, 181 F.4th 1307, 1318–19 (D.C. Cir. 2026). That appeal reached the court on a Rule 12(b)(2) dismissal rather than a merits judgment. But the displacement principle the court applied is the same one *Berk* states. The Fifth Circuit reached the same result, explaining that a federal court must apply the Federal Rules "unless the federal rules violate the Rules Enabling Act." *Sahs v. Loyola Univ. New Orleans*, No. 25-30263, slip op. at 19 (5th Cir. Sept. 11, 2026).

The relief sought also shows why the threshold question should come first. The request to enlarge the award rests on *Zilverberg*, which the Cornelia defendants read to require fees for all but 27.5 of 1,145.5 hours. ECF No. 299 at 17–18, 23. But *Zilverberg* arose under Nevada's own procedure. In Nevada court, a party must file a special motion within 60 days after service absent good cause, and the statute stays discovery while the motion is pending. NRS 41.660(2), (3)(e). The Cornelia defendants filed this special motion, ECF No. 61, 465 days after service. They concede they could bring it only "as a motion for summary judgment," after "factual development and responding to discovery." ECF No. 299 at 21:13–16. That posture exists only because federal law displaced Nevada's timing and discovery limits. *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016) (anti-SLAPP filing deadline directly collides with the more permissive timing rule of Rule 56); *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 845–46 (9th Cir. 2001) (discovery-limiting provisions cannot apply in federal court); *see Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th Cir. 2018), amended, 897 F.3d 1224 (9th Cir. 2018). No Nevada court has decided, or in the ordinary course could decide, whether *Zilverberg* reaches fees for full discovery and two rounds of appeals on a motion Nevada procedure would not have entertained. This Court itself acknowledged *Zilverberg*'s whole-action rule but limited fees to motion-related work under *Banerjee* and *Century Surety*. ECF No. 298 at 4:9–6:5. The prediction problem is therefore live in this case, not hypothetical. An increase would require a federal-only forecast about a scenario that cannot arise in a Nevada court. If NRS 41.670 does not apply here, the Court needs no forecast.

Plaintiffs' objection is timely as to the relief now sought. The Cornelia defendants ask the Court to find a substantially larger fee reasonable, to make it joint and several, to add interest, and

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

to enter a new judgment. Granting any of that would be a new exercise of authority under NRS 41.670. This is Plaintiffs' first opportunity to respond to it. The objection does not concern particular hours or rates. It is a pure question of law. Plaintiffs recognize that *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), and *Planned Parenthood* bind this Court unless *Berk* is clearly irreconcilable with them, and they raise the point now to present and preserve it.[1] At a minimum, the Court should not enlarge an NRS 41.670 award while its statutory foundation is under challenge.

B. The order did not commit manifest error in limiting fees under Zilverberg

The Cornelia defendants' central claim is that the order "applies the motion-only rule that *Zilverberg* rejected." ECF No. 299 at 17:6. It did not. The order quoted *Zilverberg*'s holding that fees run "from the inception of the litigation," and then made the judgment Nevada law requires: whether the fees claimed are reasonable. ECF No. 298 at 4:9–13. *Zilverberg* itself frames the inquiry that way. The award must be "reasonable," and "the district court can follow any rational method so long as it applies the *Brunzell* factors." 137 Nev. at 73, 481 P.3d at 1231 (citing *Logan*, 131 Nev. at 266, 350 P.3d at 1143); NRS 41.670(1)(a) ("reasonable costs and attorney's fees"). *Zilverberg* holds that work is not excluded merely because it was not performed on the special motion. It does not hold that every hour billed in a five-year case is reasonable. Nor does it hold that a party must pay for work unrelated to the claims the special motion resolved. The Cornelia defendants concede that *Zilverberg* has limits. ECF No. 299 at 18:4–5. The decision they cite for that concession supplies the measure.

In *Rosenbrook v. Lloyd*, 142 Nev. Adv. Op. 36, 588 P.3d 1281 (May 14, 2026), the Nevada Supreme Court addressed how a district court is to fix fees under NRS 41.670, and it reversed an award that the trial court had granted in full. Adopting the framework of *Malin v. Singer*, 159 Cal. Rptr. 3d 292, 309 (Cal. Ct. App. 2013), the court held that a district court determines "the lodestar amount for the hours expended on the successful claims," and, where the successful and

[1] Plaintiffs recognize that this Court may consider itself bound by circuit precedent on this question if *Berk* does not meet the *Miller v. Gammie* standard. They raise it here, and in their concurrently filed motion, so that the record fully presents and preserves it for further review, including review in the court of appeals and in the Supreme Court.

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

unsuccessful work overlaps, "should then consider the defendant's relative success on the motion in achieving his or her objective, and reduce the amount if appropriate." The relevant factors are "the extent to which the defendant's litigation posture was advanced by the motion, whether the same factual allegations remain to be litigated, whether discovery and motion practice have been narrowed, and the extent to which future litigation expenses and strategy were impacted by the motion." The fee "should be commensurate with the extent to which the motion changed the nature and character of the lawsuit in a practical way." *Id.* Nevada courts are not confined to the lodestar and "may begin with any method rationally designed to calculate a reasonable amount." *Rosenbrook*, 142 Nev. Adv. Op. 36, 588 P.3d 1281, 1292 (quoting *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005)). Those factors describe this record. The Cornelia defendants filed the special motion 465 days after service, after full discovery, and it was the summary-judgment motion. ECF No. 299 at 16:16–17, 21:13–16. It did not narrow discovery, it did not narrow motion practice, and it did not change the nature or character of the litigation beyond what Rule 56 accomplished. *Rosenbrook* confirms what the order assumed: *Zilverberg*'s inception-of-litigation rule marks the outer boundary of what a prevailing defendant may claim, not the amount a court must award.

The award itself refutes any charge of unreasonableness. A motion-only award in this District has never exceeded 144.35 hours. ECF No. 298 at 4:19–22 (citing *Banerjee v. Cont'l Inc.*, 2018 WL 4469006, at *7 (D. Nev. Sept. 17, 2018)). The order awarded 687.3 hours, nearly five times that figure. *Id.* at 6:10–12. An award of that size necessarily includes work beyond the special motion, including summary-judgment, discovery, and intertwined work. The order declined to pay only the residue it found unreasonable. It found some work vaguely categorized. *Id.* at 5:5–8. It found other time spent on "unrelated reply briefs, motions, and trial prep." *Id.* at 5:16–18. And on its review of the records, it found that the Cornelia defendants had not shown other entries to relate to the anti-SLAPP issues. *Id.* at 5:19–24. The order cited *Century Sur. Co. v. Prince*, 782 F. App'x 553, 558 (9th Cir. 2019), and *Banerjee* for the proposition that unrelated work is not recoverable. ECF No. 298 at 5:25–6:5. That proposition survives *Zilverberg* for two reasons. NRS 41.670(1)(a) authorizes only "reasonable" fees, and work unrelated to the defense the statute compensates is not

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

reasonably incurred. And *Rosenbrook* requires the award to be commensurate with the practical effect of the special motion, which forecloses reading *Zilverberg* as a command to pay every hour billed in the action. The Court's own pre-*Zilverberg* award in *Century Surety*, which the Cornelia defendants invoke, ECF No. 299 at 18:16–22, likewise awarded only "reasonable" fees, and the Ninth Circuit vacated the part of it that covered unrelated work. 782 F. App'x at 558.

The record supported that judgment. Plaintiffs showed that the spreadsheet included clerical tasks, discovery pursued for content and for use outside this case, and work in aid of a co-defendant. They also showed that the Cornelia defendants had not apportioned the "intertwined" time at all. ECF No. 294 at 4–18. The burden on reasonableness was the Cornelia defendants'. *Hensley*, 461 U.S. at 437. The order found that they did not carry it as to the residue. That is a factual determination, not an error of law.

The posture of the special motion reinforces the point. The Cornelia defendants concede that they could bring their motion only as a summary-judgment motion after "factual development and responding to discovery." ECF No. 299 at 21:13–16. They then cite that history as the reason the hours are so high, *id.* at 21:17–19, and invoke *Fore Stars, Ltd. v. Omerza*, 2024 Nev. Unpub. LEXIS 887 (Nev. 2024), as a whole-action award of similar size. ECF No. 299 at 20:18–21:2. But NRS 41.660(2) is designed to bring the special motion at the outset, within 60 days, before discovery. A late, post-discovery motion is not the kind of early-stage motion Nevada's fee rule addresses. Treating the full cost of discovery and summary-judgment litigation as the cost of a special motion that, by its proponents' own account, was the summary-judgment motion would be unreasonable. The order's observation that "[t]he overwhelming majority of anti-SLAPP awards are granted in the early stages of litigation," ECF No. 298 at 4:22–23, fairly describes the statute's design. Plaintiffs do not contend that any court has reduced a fee award because a special motion was late. The point is narrower. A court weighing reasonableness under *Brunzell* may consider that most of the litigation for which the movant seeks payment occurred outside the procedure the statute contemplates. *Fore Stars* affirmed a state trial court's discretionary finding of reasonableness under that court's own procedure. 2024 Nev. Unpub. LEXIS 887, at *3,* 5. It does not hold that a lower award would have been an abuse of discretion, and Nevada's appellate courts

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

defer to the trial court's *Brunzell* judgment in both directions. *Zilverberg*, 137 Nev. at 73, 481 P.3d at 1231.

The appellate hours do not change the analysis. The Cornelia defendants say about 290 of the 420.2 post-October 13, 2023 hours relate to the appeal. ECF No. 299 at 15:18–27. Plaintiffs do not dispute that a defendant who successfully challenges the denial of a special motion on appeal may recover fees for defending the SLAPP-related appeal. *See Gopher Media LLC v. Melone*, 154 F.4th 696, 703 n.4 (9th Cir. 2025) (en banc). That is not what most of these hours were. Much of the appellate work defended summary judgment on Plaintiffs' claims, including the Lanham Act claim, against Plaintiffs' appeal. Because the Court denied Lanham Act fees, NRS 41.670 cannot shift the hours spent defending the Lanham Act judgment on appeal, for the reasons given in Part IV.C. *Fabbrini v. City of Dunsmuir*, 631 F.3d 1299, 1302 (9th Cir. 2011). That judgment is also the same Rule 56 judgment the Cornelia defendants say made the special motion succeed. ECF No. 299 at 16:22–26. The Cornelia defendants have not separated the appellate time spent on the SLAPP-related questions from the time spent defending the balance of the judgment, and that separation is their burden. *Hensley*, 461 U.S. at 437. *Northon v. Rule*, 637 F.3d 937, 938–39 (9th Cir. 2011), on which they rely, involved a fee motion made to the court of appeals for the appeal itself. Their reliance on *Gunn v. Drage*, 2021 U.S. Dist. LEXIS 41577, *15 (D. Nev. Mar. 5, 2021), ECF No. 299 at 17:2–5, is misplaced. That case did not involve a need to separate time spent on a federal claim for which no fees could be awarded. The governing question remains whether the fees claimed are reasonable. NRS 41.670(1)(a); *Zilverberg*, 137 Nev. at 73, 481 P.3d at 1231. Appellate time spent defending the balance of the judgment is not reasonably incurred in the defense NRS 41.670 compensates. *See Century Surety*, 782 F. App'x at 558.

C. Ninth Circuit law required apportioning the Lanham Act work, and the 40% reduction is independently justified as a rough approximation of that apportionment

Because the Court denied Lanham Act fees, ECF No. 298 at 9:16–10:24, the Cornelia defendants cannot recover time spent on the Lanham Act claim under NRS 41.670. When a claim carries its own federal fee standard and the movant does not meet that standard, a state anti-SLAPP fee award may not include work on that claim, even work intertwined with the special motion.

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

Fabbrini, 631 F.3d at 1302. In *Fabbrini* the district court awarded anti-SLAPP fees for hours on a § 1983 claim that were "inextricably intertwined" with the anti-SLAPP motion. The Ninth Circuit vacated that portion of the award. The district court "erred in awarding fees for the City's defense against the § 1983 claim, even if that work was intertwined with the anti-SLAPP portion of the motion," and, absent a finding satisfying the federal fee standard, "the City is entitled to fees only for work that is exclusively attributable to the anti-SLAPP motion." *Id.* An award for intertwined federal-claim work, the court explained, "is not compatible with the federal policy imposing restrictions on fee awards to § 1983 defendants." *Id.* at 1302 n.2. *Fabbrini* arose under the frivolousness standard that governs fee awards to prevailing § 1983 defendants. But its principle applies with equal force to any claim whose own federal fee standard a state fee award would circumvent. Lanham Act fees require an "exceptional" case, 15 U.S.C. § 1117(a); *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553–54 (2014), and the Court found that standard unmet. Shifting the same work under NRS 41.670 would override that federal determination. Ninth Circuit law independently requires fee claimants to apportion between claims for which fees are and are not recoverable. *Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1230 (9th Cir. 1997); *Gracie v. Gracie*, 217 F.3d 1060, 1069 (9th Cir. 2000), overruled on other grounds by *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179 (9th Cir. 2016) (en banc). Plaintiffs raised the point in their response. ECF No. 294 at 16:20–17:23.

The Cornelia defendants did not apportion. In ECF No. 251 they placed 629.8 of 668.1 hours in the Lanham Act column. ECF No. 294 at 17:7–9 (citing ECF No. 251 at 16). In ECF No. 293 they attributed only 27.5 hours to the Lanham Act claim alone, ECF No. 293-5 at 3, and claimed $502,762.50 for "intertwined" work. They now ask for every hour except those 27.5. ECF No. 299 at 23. Under *Fabbrini*, intertwined work on the Lanham Act claim is not recoverable under NRS 41.670 once Lanham Act fees are denied.

The order did not frame its reduction as an apportionment. But the 40% reduction is independently justified as a rough approximation of the apportionment Ninth Circuit law requires. "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection," and courts "may use estimates in calculating and allocating an attorney's time." *Fox v.*

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

Vice, 563 U.S. 826, 838 (2011). A court "may attempt to identify specific hours that should be eliminated, or it may simply reduce the award." *Hensley*, 461 U.S. at 436–37. Measured against the Cornelia defendants' own earlier allocation, which placed more than 94% of the hours in the Lanham Act column, a 40% reduction is generous to them. Because the record independently supports the reduction, there is no manifest error to correct.

D. The 40% reduction and the "take advantage" finding were explained and supported

The order gave the "concise but clear explanation" *Gonzalez* requires. 729 F.3d at 1203. It identified four grounds. First, the categorization of "intertwined" time was vague and unexplained. ECF No. 298 at 5:5–8. Second, the 38.3 hours of non-Lanham Act work reported in ECF No. 251 conflicted with the 1,118 hours attributed to anti-SLAPP work in ECF No. 293. *Id.* at 5:8–15. Third, counsel spent time on unrelated briefs, motions, and trial preparation. *Id.* at 5:16–18. Fourth, the Cornelia defendants had not shown that post-motion entries related to the special motion. *Id.* at 5:19–24. The Court then reduced the hours "[h]aving independently reviewed the billing records." *Id.* at 6:6–12. This is not the unexplained cut the Ninth Circuit vacated in *Moreno* and *Gonzalez*. In each of those cases the district court gave no reason tied to the record. Here the Court gave several, and the Cornelia defendants' disagreement with them is the kind of argument Rule 59(e) does not entertain. *Kona*, 229 F.3d at 890.

The motion's principal attack is on the second ground. The Cornelia defendants say ECF No. 251 used the same three categories as ECF No. 293 and that the 38.3 hours were only category (1). ECF No. 299 at 13:23–14:5. They made that argument in their reply. *Id.* at 14:25–26 (citing ECF No. 296 at 11). The Court had it and ruled. Repeating it is not a basis for relief. LR 59-1(b). The explanation also confirms the Court's concern. By the Cornelia defendants' own account, the time moved between columns from one motion to the next. They reallocated about 36 hours from "intertwined" to "anti-SLAPP only." They added about 57 hours of pre-2023 time. And they moved the intertwined hours that ECF No. 251 had placed in the Lanham Act column for fee purposes into a column of their own, recoverable under NRS 41.670. ECF No. 299 at 14:15–26. They presented the same work first as Lanham Act work, when the Lanham Act was the available fee basis, and

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

then as anti-SLAPP work, when NRS 41.670 became available. The Court was entitled to find that the available fee statute, rather than the work, drove the classification, and to discount it. That is what the "take advantage" finding says: that the classification of "essentially all" work as anti-SLAPP related was an attempt to take advantage of the statute. ECF No. 298 at 5:13–15, 5:25–27. It is a finding about the fee request, not about counsel's candor, and it rests on the record.

Even if the Court accepted the Cornelia defendants' reading of ECF No. 251, the reduction would stand on its other grounds. The first, third, and fourth grounds do not depend on ECF No. 251 at all. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007), on which the Cornelia defendants rely, vacated a reduction for block billing because the district court applied it to entries that were not block billed. ECF No. 299 at 15:1–3. Here the Court did not impose the reduction for a defect in a subset of entries. It reflected the Court's judgment, after review, about the reasonable scope of the defense the statute compensates.

Nor is the reduction inconsistent with the NRS 41.670(1)(b) award. ECF No. 299 at 22:3–8. The finding that many hours were "necessitated by Wealthy Inc.'s litigation tactics," ECF No. 298 at 8:7–11, explains why the Court awarded the discretionary amount, which exists to deter. It is not a finding that every hour billed was reasonable or related to the special motion, and the Court made the opposite finding as to the residue it excluded. *Id.* at 5:16–6:12. The Court was entitled to address the cost of litigation tactics through the deterrent award the statute provides for that purpose, rather than through the compensatory award. Plaintiffs maintain their objection to the (1)(b) award, ECF No. 294 at 21, but the two rulings are not in tension. The same is true of the order's observation that an award for all 1,145.5 hours "would impose an unfair deterrent effect inconsistent with the statute's objectives." ECF No. 298 at 5:3–4. A reasonable award serves deterrence. Shifting the cost of work the Court found unrelated or unreasonable does not. *Cf. Hensley*, 461 U.S. at 434 (hours "not reasonably expended" are excluded).

E. The rates were within the Court's discretion

The order applied the correct standard: "the rate prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." ECF No. 298 at 6:17–20 (quoting *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)). It rejected

the Laffey matrix because it measures the Washington, D.C. market. *Id.* at 6:21–23. It then set rates by reference to recent awards in this District for lawyers of comparable experience, including a 2026 decision. *Id.* at 7:1–22. That is a reasoned exercise of discretion.

Plaintiffs did contest the rates. They argued that the requested rates "exceed the prevailing Las Vegas market," that counsel's declaration did not establish a prevailing Las Vegas rate, that counsel had raised rates mid-litigation, and that the client received a 25% discount, under which Mr. Cornelia himself described Mr. Randazza's rate as "$625/hr." ECF No. 294 at 18:5–16. The fee applicant bears the burden of producing satisfactory evidence that the requested rates are in line with the prevailing market. *Camacho*, 523 F.3d at 980. The Court weighed the applicant's evidence against the market data and found it unpersuasive. That is not a "wholesale rejection" of unrebutted evidence. ECF No. 299 at 5:15–17.

Most of the motion's rate argument is new. It offers inflation calculations, compiles state-court awards not previously presented, and attaches a 2018 declaration by Plaintiffs' local counsel in an unrelated case. ECF No. 299 at 6–13; ECF No. 299-1. New factual evidence and argument that "could reasonably have been raised earlier" are not a basis for Rule 59(e) relief. *Carroll*, 342 F.3d at 945; *Kona*, 229 F.3d at 890. Plaintiffs' concurrent motion is different in kind. It presents no new evidence, only a pure question of law on a settled record that the Ninth Circuit itself has identified as open. *Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model Curriculum Consortium*, Nos. 24-7676, 25-3436, Dkt. 103, slip op. at 8 n.2 (9th Cir. Sept. 4, 2026); *see Bolker v. Comm'r*, 760 F.2d 1039, 1042 (9th Cir. 1985). The declaration is in any event not evidence of the market for this work: it describes another lawyer's practice in a different kind of case eight years ago. The prior rate determinations the Cornelia defendants did submit, ECF Nos. 251-6 to 251-8, 293-9, were before the Court. Rate findings in other cases are evidence, not mandates, and a court that considers them and reaches a different number has not abused its discretion. *See Hensley*, 461 U.S. at 437.

/ / /

/ / /

/ / /

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

F. Rule 60(a) and Mr. Wolman's hours

The Cornelia defendants say the order's table awards Mr. Wolman 4.88 of his 12.2 claimed hours. That is a 60% reduction, rather than the 7.32 hours a 40% reduction would yield. They ask for correction under Rule 60(a). ECF No. 299 at 22:13–16. If the Court determines that the entry is a clerical mistake in applying the reduction it announced, Plaintiffs do not oppose a mechanical correction of that entry alone: 7.32 hours at $550, or $4,026, an increase of $1,342. Rule 60(a) authorizes no more than that. The Cornelia defendants cannot use it to revisit the rate, the reduction, or any other substantive determination, and any correction should apply the order's 40% reduction and $550 rate as stated. ECF No. 298 at 6:8–9, 7:14–16. If the Court undertakes any Rule 60(a) correction, however, it should reconcile the itemized table as a whole to the 687.3 hours the order found reasonable, rather than adjust a single entry in the movants' favor. *Id*. at 6:10–12, 9:1–13.

G. Any judgment, and its terms, should await the pending Rule 59(e) motions

The request for a Rule 58(d) judgment of $546,519.00, joint and several, with interest from October 19, 2026, is premature. ECF No. 299 at 22:17–24, 23:8–10. Two timely reconsideration motions are pending against the same order. Their disposition will determine whether there is any NRS 41.670 award and, if so, its amount. A timely Rule 59(e) motion postpones the time to appeal until the order disposing of it is entered. Fed. R. App. P. 4(a)(4)(A)(iv). A judgment entered now would require amendment once the Court decides the motions. It could also create needless confusion about appellate deadlines. The Court should decide both motions first and then, if any award remains, direct the form of judgment.

Post-judgment interest under 28 U.S.C. § 1961 follows by operation of statute from the entry of a money judgment, and no amendment need add it. The Court should address the date from which interest would run on any fee award, if at all, when it determines the form of judgment after deciding the pending motions.

/ / /

/ / /

/ / /

/ / /

V. Conclusion

The Court should first decide Plaintiffs' concurrently filed Rule 59(e) motion. If it vacates the NRS 41.670 awards, it should deny ECF No. 299 as moot to the extent it seeks fees under NRS 41.670. In any event, it should deny ECF No. 299, except that Plaintiffs do not oppose a mechanical Rule 60(a) correction of Mr. Wolman's entry if the Court finds it clerical. In the alternative, the Court should defer ECF No. 299 until Plaintiffs' motion is decided, and should decline to enter a separate judgment, or to make any award joint and several, until both motions are resolved.

DATED: November 9, 2026.

/s/ Tamara Beatty Peterson

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
tpeterson@petersonbaker.com
PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101

JEFFREY VOCKRODT, ESQ. *(Admitted Pro Hac Vice)*
jvockrodt@cm.law
CM LAW LLP
National Litigation Support Center
13101 Preston Road, Suite 110-1510
Dallas, TX 75240

Attorneys for Plaintiffs Wealthy Inc. and Dale Buczkowski

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 9, 2026, I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO THE CORNELIA DEFENDANTS' MOTION TO ALTER OR AMEND ORDER ON COSTS AND ATTORNEYS' FEES (ECF NO. 299)** with the Clerk of the United States District of Nevada using the CM/ECF system, which sends notice to all counsel of record in the above-entitled action, as listed below:

MARC J. RANDAZZA, ESQ.
mjr@randazza.com
RONALD D. GREEN, JR., ESQ.
rdg@randazza.com
ALEX J. SHEPARD, ESQ.
ajs@randazza.com
RANDAZZA LEGAL GROUP, PLLC
8991 West Flamingo Rd. Suite B
Las Vegas, NV 89147
Attorneys for Defendants Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC

JAMES A. KOHL, ESQ.
jak@h2law.com
JOANNA M. MYERS, ESQ
jmm@h2law.com
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Attorneys for Defendant Optimized Lifestyle LLC

TYLER WATSON, ESQ.
tjwatson@sjwlawfirm.com
L. RENEE GREEN, ESQ.
rgreen@sjwlawfirm.com
MARTA DUNNING, ESQ.
mdunning@sjwlawfirm.com
SCHNITZER JOHNSON & WATSON, CHTD.
8985 So. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorneys for Defendants John Anthony Lifestyle, LLC and John Mulvehill

/s/ Julia Melnar
On behalf of Peterson Baker, PLLC