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IN THE 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 **DEFENDANTS' REPLY IN SUPPORT OF 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

Defendants Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC ("Defendants") file their reply in support of their Motion to Alter or Amend Order on Costs and Attorneys' Fees (ECF No. 299) (the "Motion").

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MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Plaintiffs' Opposition (ECF No. 301) to the Motion makes new arguments Plaintiffs never raised opposing the Anti-SLAPP Motion (ECF No. 61) or in two rounds of fee briefing: (1) that NRS 41.670 does not apply in federal court; and (2) *Fabbrini v. City of Dunsmuir*, 631 F.3d 1299 (9th Cir. 2011), bars recovery for work intertwined with the Lanham Act claim. Plaintiffs argue that Rule 59(e) "may not be used to raise arguments…for the first time when they could reasonably have been raised earlier" (ECF No. 301 at 2) (*quoting Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)), and then do that. Plaintiffs forfeited both arguments, and neither is correct anyway.

On the issues actually before the Court, Plaintiffs make dispositive concessions. They concede that under *Smith v. Zilverberg*, 481 P.3d 1222 (2021), "work is not excluded merely because it was not performed on the special motion." ECF No. 301 at 7. They concede that a defendant who wins reversal of the denial of a special motion "may recover fees for defending the SLAPP-related appeal." *Id.* at 10. They concede that the judgment Defendants defended on appeal "is also the same Rule 56 judgment" that satisfied the second prong of the anti-SLAPP analysis. *Id.* And they concede that the Order (ECF No. 298) "did not frame its reduction as an apportionment" of Lanham versus non-Lanham work. *Id.* at 11. Plaintiffs also ignore that the Order excluded intertwined and appellate work because it post-dated the filing of the Anti-SLAPP Motion and was not incurred "in the anti-SLAPP process." ECF No. 298 at 5–6. That ruling was specifically based on a California-only rule the Nevada Supreme Court rejected. The Court's discretion to determine the amount of a reasonable fee does not include discretion in what legal rules to apply.

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As for hourly rates, Plaintiffs still have provided no evidence of a market rate. The only figure they offer, Randazza's discounted rate of $625,[1] is legally irrelevant and in any event, exceeds the $550 the Order adopted, anyway.

2.0 ARGUMENT

2.1 Plaintiffs Forfeited The Argument That NRS 41.670 Does Not Apply in Federal Court

Plaintiffs opposed the Anti-SLAPP Motion, Defendants' Original Fee Motion (ECF No. 251), and the Renewed Fee Motion (ECF No. 293) without ever arguing that Nevada's anti-SLAPP law does not apply in federal court. Their response to the Renewed Fee Motion contested only the reasonableness of the fees, not Defendants' entitlement to them. *See* ECF No. 294; ECF No. 301 at 3 (describing ECF No. 294). On appeal, they waited until after the Ninth Circuit ruled against them to raise this argument (and their unsuccessful certiorari petition to the U.S. Supreme Court was based in part on this argument), but it was far too late by then for Plaintiffs to make such arguments. At the District Court level, Plaintiffs' argument appears for the first time in their own motion for reconsideration (ECF No. 300) and in the Opposition.

Rule 59(e) "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." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Carroll*, 342 F.3d at 945; *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). The rule includes "arguments," not just evidence, so Plaintiffs do not help themselves by calling their theory "a pure question of law." ECF No. 301 at 14. It could reasonably have been raised earlier. Plaintiffs' own cases show that whether anti-

[1] The fact that Randazza provided a public interest discount to Mr. Cornelia as part of a commitment to access to justice in free speech cases does not justify giving a discount to an abusive plaintiff who violated the anti-SLAPP statute. *Evans Hotels, LLC v. Unite Here! Local 30*, 2025 U.S. Dist. LEXIS 80458, at *3 (S.D. Cal. Apr. 28, 2025) ("The standard of reasonable market value 'applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel"'); *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986) ("Determination of a reasonable hourly rate is not made by reference to rates actually charged the prevailing party").

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SLAPP statutes apply in federal court has been litigated in this Circuit since at least *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999). And *Berk v. Choy*, 607 U.S. 187 (2026), was decided in January 2026, more than three months before Defendants filed the Renewed Fee Motion and nine months before the Order. *Berk* is not an "intervening change in the controlling law," *Kona*, 229 F.3d at 890. Plaintiffs were aware of *Berk* at all relevant times, as they based their post-decision appellate briefing at the Ninth Circuit and their Supreme Court certiorari petition on it. The absence of this argument from their opposition to the Renewed Fee Motion must have been deliberate.

Plaintiffs try to get around their forfeiture of this argument by claiming a larger fee award would be "a new exercise of authority under NRS 41.670." ECF No. 301 at 6–7. That is gibberish. The Motion asks the Court to correct the amount of the fee award and asks for less than what was requested in the Renewed Fee Motion. The Court has already determined Defendants are entitled to anti-SLAPP fees, ECF No. 298 at 3, and before that the Ninth Circuit directed that the Anti-SLAPP Motion be granted. ECF No. 291 at 14. Under NRS 41.670(1)(a), fees are mandatory. If a request to correct the amount of an award reopened every question about its legal basis, then no objection to a fee award could ever be forfeited. And because the Ninth Circuit's Mandate rests on the premise that Nevada's anti-SLAPP statute applies here, this Court '"cannot vary it, or examine it for any purpose other than execution."' *Vizcaino v. U.S. Dist. Ct.*, 173 F.3d 713, 719 (9th Cir. 1999) (*quoting In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895)).

Plaintiffs also concede that *Newsham* and *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828 (9th Cir. 2018), bind this Court unless *Berk* is "clearly irreconcilable" with them, and that the Ninth Circuit has declined to make such a finding. ECF No. 301 at 5, 7 & n.1. An opposition to a Rule 59(e) motion is not the way to preserve a forfeited argument. Defendants will separately address Plaintiffs' motion for reconsideration in their opposition to it.

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2.2 The Order Directly Conflicts With *Zilverberg*

Plaintiffs' main argument is that the Order made a discretionary judgment on the reasonableness of fees. ECF No. 301 at 7–8. The Court has broad discretion to determine a reasonable fee for recoverable work, but it does not have discretion to decide which work is recoverable in a way that conflicts with controlling Nevada law. Whether a category of fees is recoverable under NRS 41.670 is a question of law. *Rosenbrook v. Lloyd*, 588 P.3d 1281, 1291 (2026). A court "abuses that discretion if it makes an error of law." *Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp.*, 618 F.3d 988, 993 (9th Cir. 2010). The "any rational method" language Plaintiffs quote, ECF No. 301 at 7, governs the method by which a court calculates a reasonable fee. *Zilverberg*, 481 P.3d at 1231. It is not a license to disregard legal rules in determining what fees are recoverable.

The Order made a mistake of controlling law in two ways. First, it limited recovery to work directly connected with the Anti-SLAPP Motion. Plaintiffs concede that *Zilverberg* "holds that work is not excluded merely because it was not performed on the special motion." ECF No. 301 at 7. But the Order excluded intertwined work on the premise that "matters unrelated to the anti-SLAPP motion are not entitled to attorneys' fees" and that "fee recovery is only appropriate for fees actually incurred in the anti-SLAPP process," *citing Century Surety*, *Banerjee*, and *Platypus Wear*. ECF No. 298 at 5–6. Each of those cases applied California's rule from *Lafayette Morehouse*, which *Zilverberg* expressly rejected. 481 P.3d at 1231 & n.8. Second, the Order excluded all of the work performed after the Anti-SLAPP Motion was filed, including the appeal that resulted in the motion being granted, because that work "could not have reasonably been related" to the motion. ECF No. 298 at 5. That doesn't make any sense. It was not just "related"; it was how the very motion came to be granted. Plaintiffs concede that a defendant who wins reversal of the denial of a special motion "may recover fees for defending the SLAPP-related appeal." ECF No. 301 at 10. The Order's categorical post-filing exclusion of fees is incompatible with Plaintiffs' concession and *Zilverberg*'s holding that fees run "from the inception of the litigation." 481 P.3d at 1231.

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In an attempt to reconcile the Order with *Zilverberg*, Plaintiffs purport to split the appeal into "SLAPP-related" work and work defending this Court's grant of summary judgment, but they fail. They acknowledge that the Ninth Circuit found the second prong of the anti-SLAPP analysis satisfied *because it affirmed summary judgment*, and that the grant of the Anti-SLAPP Motion "is also the same Rule 56 judgment" that entitled Defendants to a fee award. ECF No. 301 at 5, 10; ECF No. 291 at 14. Defending the grant of summary judgment was the same thing as trying to reverse the denial of the Anti-SLAPP Motion. The cross-appeal, the rehearing petition that resulted in the superseding opinion, and the oppositions to Plaintiffs' motions to stay and for rehearing, as well as opposing their *certiorari* petition, all secured and preserved the grant of the Anti-SLAPP Motion. ECF No. 299 at 15–16.

Nor does the size of the award show that the Order applied the right standard. Plaintiffs claim that the number of hours the Court found were compensable exceeds the hours in "motion-only" anti-SLAPP fee awards, and so the work found compensable must have involved "work beyond the special motion." ECF No. 301 at 8. Awarding more hours than a pleading-stage case does not mean the hours excluded were excluded for a proper reason. The 40% reduction rests in substantial part on the motion-only and post-filing premises, which are incompatible with controlling Nevada Supreme Court case law. When a percentage cut rests on both permissible and impermissible grounds, no one can tell how much of the cut was proper once the impermissible grounds are removed. The Court must revisit its reduction.

Plaintiffs cite *Rosenbrook* as another attempt to circumvent *Zilverberg*, but it is inapposite. *Rosenbrook* adopted a framework for determining how to apportion fees where an anti-SLAPP motion is only partly successful, such that the litigation continues afterward. 588 P.3d at 1291–92. Here, the Anti-SLAPP Motion was granted in its entirety and every claim against Defendants was resolved in their favor. ECF No. 291 at 7, 14. Nothing remains to be litigated other than post-judgment issues like attorneys' fees. *Rosenbrook* does not apply.

Plaintiffs also argue, again for the first time, that *Zilverberg* should not permit recovery of fees for an anti-SLAPP motion filed after discovery. ECF No. 301 at 6, 9. They are wrong. NRS

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41.670(1)(a) mandates an award of fees for the prevailing movant. It has no exception for motions brought in federal court. And while in state court, anti-SLAPP motions are typically resolved at an early stage, the statute specifically allows for discovery related to the anti-SLAPP motion and a state court is free to allow the filing of an anti-SLAPP motion beyond the normal 60-day deadline for good cause.

There is nothing in Nevada law preventing a state-court anti-SLAPP motion from being brought after discovery. The 60-day period can be, and regularly is, extended in state court. In any event, the timing of Defendants' Anti-SLAPP Motion and bringing it as a summary judgment motion were required under Ninth Circuit law applying the Anti-SLAPP statute. *Planned Parenthood*, 890 F.3d at 833. And much of the discovery inflating the fees was propounded by Plaintiffs. ECF No. 299 at 21. Plaintiffs concede that no court has ever reduced a fee award because a special motion was late. ECF No. 301 at 9. And the Nevada Supreme Court has affirmed a fee award based on all fees incurred in the case (including appellate fees), whether or not related to an anti-SLAPP motion, after an anti-SLAPP motion was denied, reversed on appeal, and granted on remand. *Fore Stars, Ltd. v. Omerza*, 2024 Nev. Unpub. LEXIS 887, at *3, *5 (Nev. Nov. 13, 2024); *see also Dibiasi v. Starbucks Corp.*, 584 F. App'x. 778, 778 (9th Cir. 2014) (in affirming fee award under Washington's anti-SLAPP statute, finding "it was necessary for Appellees to conduct discovery and then move for summary judgment" to establish defenses essential to defeat the plaintiff's claims).

The real issue Plaintiffs complain of here is that their absurd case was not dismissed sooner and thus more cheaply. In state court, it very well might have been disposed of faster, because there is a stay on discovery available in state court and an interlocutory appeal if the case is not dismissed immediately. We do not have that in federal court, because those elements have been deemed to be procedural, unlike the substantive right to fees.

But, Plaintiffs made a conscious decision to forum shop this into federal court, to avoid the procedural elements of the anti-SLAPP law itself. Now that the consequences for that have landed in their laps, they are upset. Next time they file a case with no foundation in law or fact, they

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should do it in state court, where the price would be lower. And even in this forum, the manner in which they litigated this case caused it to be more expensive. Then their own appeal—seeking rehearing en banc, and seeking certiorari—ran up the bill, and now Plaintiffs are upset that it has been run up. They have nobody to blame but themselves for the elevated cost of this case.

2.3 Plaintiffs' *Fabbrini* Argument Is Forfeited and Cannot Support the Reduction

Plaintiffs next argue that, because the Court denied Lanham Act fees, *Fabbrini* bars recovery for any work intertwined with the Lanham Act claim. ECF No. 301 at 10–12. *Fabbrini* was decided in February 2011. It was available when Plaintiffs opposed the Original Fee Motion in 2023 and the Renewed Fee Motion in 2026, yet they waited until their Opposition to the instant Motion to bring it up in this Court. Plaintiffs say they "raised the point" in their opposition to the Renewed Fee Motion (ECF No. 301 at 11), but they did not provide any authority to support it at that time. A party who could have made an argument in opposing a fee motion may not hold it back and raise it after the court has ruled. *See Kona*, 229 F.3d at 890; *Carroll*, 342 F.3d at 945.

Plaintiffs also concede that "[t]he order did not frame its reduction as an apportionment." ECF No. 301 at 11. That concession is fatal. A reduction of more than ten percent must rest on the district court's own "concise but clear explanation of its reasons for choosing a given percentage reduction." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013); *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Plaintiffs pretend that the Court did, in fact, provide an apportionment and that its 40% reduction is warranted by that apportionment, despite conceding the Court did no such thing. Calling the 40% cut a "rough approximation" of an apportionment is an inaccurate characterization of the Order. As explained in the Motion, this 40% cut was the same kind of categorical hacksaw that *Gonzalez* calls reversible error.

The *Fabbrini* argument is also wrong. *Fabbrini* rested on "the federal policy imposing restrictions on fee awards to § 1983 defendants," 631 F.3d at 1302 n.2, under which a prevailing civil-rights defendant may recover fees only for frivolous claims. The Lanham Act does not have a comparable policy. 15 U.S.C. § 1117(a) authorizes fees to prevailing plaintiffs and defendants alike under the same flexible, totality-of-the-circumstances standard. *SunEarth, Inc. v. Sun Earth*

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Solar Power Co., 839 F.3d 1179, 1181 (9th Cir. 2016) (en banc) (*applying Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014)). There is no policy within the Lanham Act of protecting Lanham Act plaintiffs from fees that another statute independently imposes, and Plaintiffs do not cite any cases extending *Fabbrini* or its reasoning beyond a defendant's fees under § 1983. Furthermore, *Fabbrini* applied California's statute, which limits recovery to fees incurred on the motion itself, a rule Nevada rejected in *Zilverberg*.

Plaintiffs' apportionment cases undercut their position. *Entertainment Research Group* and *Gracie* limit Lanham Act fees to Lanham Act work, but do not require apportionment where claims are "so inextricably intertwined that even an estimated adjustment would be meaningless." *Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000); *see Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). They say nothing about whether intertwined work is recoverable under a separate statute that authorizes fees for the related claims. And Plaintiffs' "94%" figure of "Lanham Act" time claimed in the Original Fee Motion (ECF No. 301 at 12) counts intertwined time as Lanham Act time, as Plaintiffs acknowledge when they say ECF No. 251 placed the intertwined hours "in the Lanham Act column for fee purposes." *Id.* The only time attributable solely to the Lanham Act claim is 27.5 hours, which Defendants do not seek in this Motion. ECF No. 293 at 18.

2.4 The "Take Advantage" Finding Rests on a Misreading of the Record and on Legal Error

Plaintiffs do not defend the Order's erroneous reading of the Renewed Fee Motion. The Order states that the Renewed Fee Motion "asserts that its counsel spent 1,118 hours on anti-SLAPP work" and attempted "to classify essentially all of its work as anti-SLAPP related matters." ECF No. 298 at 5. The Renewed Fee Motion did not do that. It classified 125 hours as anti-SLAPP-only, 27.5 hours as Lanham Act-only, and 993 hours as intertwined, and it presented those categories in a summary table. ECF No. 293 at 18; ECF No. 293-6. The 1,118 figure is the sum of two categories the Renewed Fee Motion reported separately. A finding that Defendants tried to pass off intertwined work as anti-SLAPP work cannot rest on a filing that labeled the intertwined work as intertwined.

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Plaintiffs instead offer a new theory: that Defendants presented the same work "first as Lanham Act work, when the Lanham Act was the available fee basis, and then as anti-SLAPP work, when NRS 41.670 became available." ECF No. 301 at 12–13. That argument concedes the Order's premise for its reduction was mistaken. If ECF No. 251 placed the intertwined hours "in the Lanham Act column for fee purposes" with the notation that it included intertwined time, *id.* at 12, then the 38.3-hour figure was never Defendants' calculation of all time recoverable under NRS 41.670. Defendants presented the same work as intertwined both times. ECF No. 251 at 15; ECF No. 293 at 18. Intertwined work is, by definition, work on both sets of claims, and it is recoverable under whichever fee-shifting statute applies to the related claims. *See Hensley*, 461 U.S. at 435 ("Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis."). In 2023, before the Ninth Circuit reversed the denial of the Anti-SLAPP Motion, the available basis for fees was the Lanham Act. In 2026, after the Ninth Circuit directed that the special motion be granted, NRS 41.670 became an additional avenue for recovering fees. Plaintiffs are merely reinforcing that the vast majority of work on the case was inextricably intertwined. Defendants' position has always been consistent, and they have never tried to improperly "take advantage" of anything.

Plaintiffs claim that this explanation impermissibly repeats arguments made in Defendants' reply. ECF No. 301 at 12. But it is proper to do so because the Order did not address this explanation. The Order rests on an erroneous characterization of the record after Defendants already explained how that reading was erroneous, with no acknowledgement of Defendants' explanation. Pointing out the Court's clear error is a basis for reconsideration. LR 59-1(a).

Nor are the Order's other grounds for reducing the requested award independently valid, as Plaintiffs contend. ECF No. 301 at 13. The "unrelated reply briefs, motions, and trial prep work" and the post-filing entries were excluded under the motion-only and post-filing rules discussed in Section 2.2 that the Nevada Supreme Court has rejected. ECF No. 298 at 5. The criticism that the intertwined category was vague cannot support a 40% cut when the Order does not identify a single time entry, task, or category it found deficient in a spreadsheet that detailed and categorized every

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billing entry. ECF No. 293-6; *Gonzalez*, 729 F.3d at 1203. And the Court's finding that "many, if not a majority, of the hours" were "necessitated by Wealthy Inc.'s litigation tactics," ECF No. 298 at 8, is incompatible with a finding that the claimed hours are excessive or not compensable. Work a party is forced to do by its opponent is work reasonably expended. The additional award under NRS 41.670(1)(b) is specifically for the purpose of deterring future SLAPPs, not to recoup fees Defendants incurred in defending themselves. *Zilverberg*, 481 P.3d at 1232 (noting that amounts awarded under this section are "in addition to reasonable costs and attorney's fees").

2.5 Plaintiffs Still Offer No Evidence of a Prevailing Market Rate

Plaintiffs claim they "did contest the rates" of Defendants' counsel (ECF No. 301 at 14), but ignore that they did not provide any evidence of what a reasonable hourly rate would be and did not even propose reasonable rates. Once the movant submits evidence of prevailing rates, the opponent "has a burden of rebuttal that requires submission of evidence . . . challenging the accuracy and reasonableness" of that evidence. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008). Plaintiffs' assertion that the rates "exceed the prevailing Las Vegas market" (ECF No. 294 at 18), without so much as a single case citation, did not carry that burden. Plaintiffs never proposed hourly rates of $550, $385, $275, or $75. No one contemplated rates that low prior to the Court issuing its Order.

The only dispute on rates Plaintiffs attempt to substantiate is Defendants' 25% discount and Spencer Cornelia's statement that Mr. Randazza's rate was $625 after the discount. ECF No. 301 at 14. The rate actually charged to a client is irrelevant to the lodestar analysis. A reasonable rate is the prevailing market rate, and its determination "'is not made by reference to the rates actually charged the prevailing party.'" *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (*quoting Mendenhall v. Nat'l Transp. Safety Bd.*, 213 F.3d 464, 471 (9th Cir. 2000)). The Nevada Supreme Court has affirmed an NRS 41.670 award over the objection that the defendants had not directly incurred the fees at all. *Fore Stars*, 2024 Nev. Unpub. LEXIS 887, at *3, *5. And even if the discounted rates mattered, the discounted rates are still higher than the rates the Court found reasonable.

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Plaintiffs object to Defendants providing new authority in the Motion not cited in connection with the Renewed Fee Motion. ECF No. 301 at 14. But these authorities were provided to address new issues that did not arise until the Order was issued. Plaintiffs did not propose the rates the Order adopted, and the parties did not brief the authorities on which the Order relied, including *Kajan Johnson v. Zuffa, LLC*, which was decided on September 16, 2026, after briefing on the Renewed Fee Motion had closed. ECF No. 298 at 7. Defendants had no earlier occasion to show why those figures and authorities are wrong. Correcting "manifest errors of law or fact upon which the judgment rests" is the purpose of Rule 59(e). *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). The Court may properly consider additional decisions showing that its specific rate reductions, which Plaintiffs never requested, are unsupportable and unreasonable. Judicial decisions are legal authority, not new evidence. In any event, the core evidence, five prior determinations of Defendants' attorneys' rates, was included in both fee motions. ECF Nos. 251-6 to 251-8, 293-9. The Order does not mention these cases, and so Plaintiffs' claim that the Court "weighed" them (ECF No. 301 at 14) is unsupported.

Plaintiffs also object to the Motion's introduction of attorney Tamara Peterson's 2018 declaration in a fee motion in this District. But that is a court filing of which this Court may take judicial notice. Fed. R. Evid. 201(b); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (noting that "[w]e may take judicial notice of court filings and other matters of public record"). Plaintiffs do not dispute its accuracy or authenticity. Their complaint that it is eight years old, ECF No. 301 at 14, only illustrates Defendants' point: Plaintiffs' own counsel testified that, the better part of a decade ago, rates well above $550 were reasonable in Nevada. ECF No. 299-1 ¶¶ 9, 13–14.

2.6 The Wolman Correction and the Form of Judgment

Plaintiffs do not oppose correcting attorney Jay Wolman's time in the fee award calculation to 7.32 hours, or $4,026. ECF No. 301 at 15. Their further suggestion that the Court "reconcile the itemized table as a whole" to 687.3 hours, *id.*, is a request for affirmative relief that must be made in a separate motion, not in an opposition. LR IC 2-2(b). Plaintiffs do not identify any other

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erroneous time entries or calculations, and they acknowledge that Fed. R. Civ. P. 60(a) cannot be used "to revisit . . . any other substantive determination." ECF No. 301 at 15. The Court should make the correction Plaintiffs do not oppose and decline the one they have not properly requested.

Plaintiffs do not dispute the requested changes to the form of the judgment, specifically that the award specify it is against both Plaintiffs jointly and severally, and that it bear post-judgment interest. ECF No. 301 at 15. Plaintiffs concede that interest is permitted under 28 U.S.C. § 1961. *Id.* Interest on a fee award runs from the date the right to fees is established, which here was October 19, 2026, the date of the Order. *Friend v. Kolodzieczak*, 72 F.3d 1386, 1391–92 (9th Cir. 1995). The amended order should say so.

3.0 CONCLUSION

Plaintiffs' new arguments are forfeited, and their remaining arguments only serve to highlight the factual and legal errors in the Order. Defendants respectfully request that the Court grant the Motion, alter or amend the Order (ECF No. 298) as set forth in the Motion, ECF No. 299 at 23, and decline Plaintiffs' request to defer ruling pending resolution of ECF No. 300.

Dated: November 16, 2026.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 16, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza
Marc J. Randazza

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