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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

17 OPTRONIC TECHNOLOGIES, INC. d/b/a
 18 Orion Telescopes & Binoculars, a California
 corporation,

19 Plaintiff,

20 v.

21 NINGBO SUNNY ELECTRONIC CO., LTD.,
 22 SUNNY OPTICS, INC., MEADE
 23 INSTRUMENTS CORP., and DOES 1-25,,

24 Defendant.

Case No. 5:16-cv-06370-EJD-VKD
 Assigned to: Honorable Edward J. Davila

**DEFENDANT NINGBO SUNNY
 ELECTRONIC CO., LTD'S OPPOSITION
 TO PLAINTIFF'S MOTION FOR
 ATTORNEYS' FEES AND COSTS
 PURSUANT TO 15 U.S.C. § 15(a)**

Compl. Filed: November 1, 2016
 First Am. Compl. Filed: November 3, 2017
 Trial Date: October 22, 2019
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 Time: 9:00 a.m.

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1 **I. INTRODUCTION**

2 Instead of carrying its burden to show that its claimed fees and costs are reasonable, Orion
3 summarily asserts that they must be because Defendants purportedly (1) billed more, and (2)
4 engaged in “dilatory tactics” in the course of litigation. Pl.’s Mot. for Attorneys’ Fees & Costs
5 (“Pl.’s Mot.” or “Motion”) at 10:7-12:14, ECF No. 558.¹ This argument is not a substitute for the
6 evidence Orion was required to produce, and did not, in support of its Motion.

7 Orion’s request for attorneys’ fees fails because Orion has not provided documentation to
8 support the reasonableness or necessity of any of the fees it claims. In addition, with respect to
9 Orion’s claims for contract attorney, paralegal, and legal assistant time, Orion did not provide
10 evidence of the prevailing hourly rate for such services in this District. Orion’s request for
11 attorneys’ fees also fails because Orion did not meet and confer as required by Civil Local Rule
12 54-5.

13 Orion’s request for costs is equally unavailing for largely the same reasons, namely that
14 Orion failed to (1) provide “[a]ppropriate documentation to support each item” of costs it claims,
15 *see* N.D. Cal. Civ. L.R. 54-1(a); and (2) meet and confer in compliance with the Local Rules, *id.*
16 Moreover, even if the Court were to examine the cost report appended to the Hagey Declaration,
17 ECF No. 558-1, it appears that the majority of Orion’s claimed costs are impermissible as a matter
18 of law.

19 For each and all of these reasons, Ningbo Sunny respectfully requests that the Court deny
20 Orion’s request for fees and costs.

21 **II. ORION MISREPRESENTS THE PROCEDURAL HISTORY OF THIS CASE**

22 As a preliminary matter, Orion argues *ad hominem* that its fees and costs must be
23 reasonable because of “Defendants’ dilatory tactics[,]” in producing discovery and providing
24 responses to written discovery. Pl.’s Mot. at 10:22-11:12:14. This argument is irrelevant to
25 satisfying Orion’s burden in the instant Motion even if it were true, which it is not. But since this
26 argument is the primary support Orion relies upon to establish the reasonability of its fees, it is
27

28 ¹ All pin cites to ECF-filed documents are to the page numbers that appear in the ECF header.

1 important to note that Orion strategically omits that Judge DeMarchi already rejected the same
 2 arguments about Defendants’ conduct in denying the vast majority of relief Orion sought in its
 3 motion for sanctions. *See* Order (1) Granting in Party and Denying in Part Pl.’s Mot. for
 4 Sanctions; (2) Denying as Moot Defs.’ Mot. to File Sur-Reply/Mot. to Strike, ECF No. 189. In
 5 that Order, Judge DeMarchi acknowledged that Defendants provided supplemental responses to
 6 written discovery shortly after Orion raised issues with same, prioritized production according to
 7 Orion’s demands, and repeatedly requested search terms from Orion to facilitate the collection and
 8 production of ESI, which Orion stymied. *Id.* at 4:7-14; *id.* at 5:4-7:5. Judge DeMarchi ultimately
 9 held that “Defendants appear to have cooperated in discovery in a number of respects, and the
 10 Court finds no basis to conclude that they have acted in bad faith.” *Id.* at 7:6-7:7; *id.* at 4:26-27.

11 Setting aside this red herring, Orion’s Motion is meritless because Orion has not provided
 12 the requisite support to demonstrate the reasonability, necessity, or legal validity of *any* of its
 13 claimed fees and costs, as discussed below.

14 **III. ARGUMENT**

15 **A. Orion’s Request for Attorneys’ Fees Should Be Denied.**

16 1. Orion’s Request for Attorneys’ Fees Should Be Denied Because Orion Has 17 Failed to Produce Records to Support Its Request.

18 Courts in the Ninth Circuit calculate attorneys’ fees using the lodestar method, whereby a
 19 court multiplies “the number of hours the prevailing party reasonably expended on the litigation
 20 by a reasonable hourly rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir.
 21 2008). “The party petitioning for attorneys’ fees ‘bears the burden of submitting detailed time
 22 records justifying the hours claimed to have been expended.’” *In re Washington Pub. Power*
 23 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (quoting *Chalmers v. City of Los*
 24 *Angeles*, 796 F.2d 1205, 1210 (9th Cir.1986)) (explaining fee applicant “bore the risk of failing to
 25 provide adequate back-up documentation for its fee request”). “In calculating the number of hours
 26 reasonably expended, a district court is to exclude hours that are ‘excessive, redundant, or
 27 otherwise unnecessary.’” *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 955 (9th Cir. 2007).
 28 The court may also reduce hourly rates for tasks that could have been performed for less-skilled

1 personnel. *MacDougal v. Catalyst Nightclub*, 58 F. Supp. 2d 1101, 1105 (N.D. Cal. 1999)
2 (citation omitted) (“[T]he Court does not approve of ‘[t]he wasteful use of highly skilled and
3 highly priced talent for matters easily delegable to non-professionals or less experienced
4 associates . . . A Michelangelo should not charge Sistine Chapel rates for painting a farmer’s
5 barn.”). At bottom, a trial court is correct to “refuse[] to accept uncritically plaintiffs’ counsel’s
6 representations concerning the time expended.” *Frank Music Corp. v. Metro-Goldwyn-Mayer*
7 *Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989) (citing *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378,
8 1385 (9th Cir.1984)).

9 Orion has not provided any time records here, or any other “appropriate documentation for
10 the Court to review” supporting its request for attorneys’ fees. *See* Nov. 26, 2019 Trial Tr. at
11 2830:11-14 (Davila, J.). It has only provided the Hagey Declaration, which lists names, an
12 overview of the general categories of work attorneys, paralegals, and legal assistants were
13 involved in throughout the case, and the aggregate number of hours each person billed. Courts in
14 this District have found such documentation to be “inadequate to support an award of fees.” *E.g.*,
15 *Van v. Language Line, LLC*, No. 14-CV-03791-LHK, 2016 WL 5339805, at *13 (N.D. Cal. Sept.
16 23, 2016), *aff’d sub nom. Van v. Language Line Servs., Inc.*, 733 F. App’x 349 (9th Cir. 2018)
17 (“[T]he general description of the hours spent does not permit the Court to determine whether the
18 hours expended are reasonable, and the limited information provided about the attorneys is
19 insufficient to justify the requested rates. Accordingly, Plaintiff fails to meet her burden to show
20 that the requested rates and hours are reasonable.”).

21 As in *Van*, Orion has not provided the Court with adequate information to evaluate the
22 reasonableness or necessity of *any* of the hours it claims. But even with the minimal information
23 provided in Orion’s Motion and the Hagey Declaration, it is apparent that Orion is seeking
24 attorneys’ fees that are not recoverable. For instance, Orion admits that it is seeking
25 reimbursement for its “lengthy investigation prior to filing the Complaint” in this action, Pl.’s
26 Mot. at 8:25, including attorneys’ fees for Ms. Schueller’s “extensive pre-filing research and
27 investigation of Orion’s claims, including interviewing witnesses, fact-gathering, researching the
28 telescope market, and researching numerous legal and factual issues in support of Orion’s

1 pleadings[.]” Hagey Decl. ¶ 34. But in this Circuit, the Court may only “award attorneys’ fees for
2 pre-litigation work that is *necessary* to the filing of an action. This requires the court to determine
3 what is necessary and *exclude that which may be merely relevant.*” *Sierra Club v. U.S. E.P.A.*,
4 625 F. Supp. 2d 863, 870 (N.D. Cal. 2007) (emphases added); *cf. Albany Bank & Tr. Co. v. Exxon*
5 *Mobil Corp.*, 310 F.3d 969, 975 (7th Cir. 2002) (prelitigation costs are not recoverable at all).

6 Without Orion’s billing records, it is impossible for the Court to determine what
7 investigation was actually “necessary” to *this case*—especially because Orion’s counsel has made
8 it known that it investigated a potential class action claim (not involving Orion), *see* Caseria Decl.
9 ¶ 4, as well as potential claims against Celestron and Suzhou Synta relating to their compliance
10 with the Settlement Agreement (to which Defendants are not parties). Indeed, during trial, Orion’s
11 counsel and witnesses acknowledged that they were engaged in separate efforts to enforce the
12 terms of that agreement against the Synta Entities. *See, e.g.*, Trial Tr. 1745:8-1748:5 (Mr. Hagey
13 discussing the “analysis of the cost overcharges and the issues that Orion has [had] with Synta”);
14 TX 1409 (describing Orion’s investigation into harm to its margins given Synta’s purported
15 conduct). There may be additional unrelated matters reflected in Orion’s billing records, as there
16 are in its request for costs (*see infra* at 7).

17 Similarly, Orion seeks paralegal and legal assistant fees for “tasks like managing the
18 uploading of documents into our e-discovery systems, . . . categorizing and tracking documents as
19 requested by attorneys, assisting with court filings, . . . and preparing and organizing voluminous
20 documents for trial, hearings, and depositions.” Hagey Decl. ¶ 51. Such clerical work is not
21 compensable, however, as it “should be ‘subsumed in firm overhead rather than billed at paralegal
22 rates.’” *LaToya A. v. San Francisco Unified Sch. Dist.*, No. 3:15-CV-04311-LB, 2016 WL
23 344558, at *9 (N.D. Cal. Jan. 28, 2016) (citations omitted); *see also Yates v. Vishal Corp.*, No. 11-
24 cv-00643-JCS, 2014 WL 572528, at *6 (N.D. Cal. Feb. 4, 2014) (finding tasks such as posting
25 letters for mail, photocopying, three-hole punching, internal filing, calendaring, and preparing the
26 summons and complaint for filing to be “purely clerical”).

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2. Orion's Request for Contract Attorney, Paralegal, and Legal Assistant Fees Should Be Denied Because Orion Has Not Provided Any Evidence of a Reasonable Hourly Rate.

Orion has the burden of demonstrating that its request for between \$175 and \$275 per hour for paralegal and legal assistant time, as well as between \$225 and \$450 an hour for contract attorney time, reflects the prevailing community rates for similar services. *See Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006); *Hawaii Annuity Tr. Fund for Operating Engineers v. Kauai Veterans Express Co., Ltd.*, No. CV 16-00615 JMS-RT, 2019 WL 3916492, at *4 (D. Haw. July 31, 2019), report and recommendation adopted, No. CV 16-00615 JMS-RT, 2019 WL 3892404 (D. Haw. Aug. 19, 2019) (citing *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001)). Orion has submitted no evidence to support its requested rates for such assistance. Nor has Orion provided the qualifications of these staff members. These are each grounds for denying Orion's request for such fees. *See, e.g., Makaeff v. Trump Univ., LLC*, No. 10CV0940 GPC WVG, 2015 WL 1579000, at *6 (S.D. Cal. Apr. 9, 2015) (collecting authorities) (“[B]ecause Makaeff has failed to carry her burden to demonstrate that the staff attorney and paralegal hourly rates are reasonable, the Court DENIES Makaeff's request for staff attorney and paralegal fees.”); *Beauford v. E.W.H. Grp. Inc.*, No. 1:09-CV-00066-AWISMS, 2009 WL 3162249, at *6 (E.D. Cal. Sept. 29, 2009) (“Plaintiff has not met her burden of production and all fee requests attributed to associate Patrick McManaman and paralegal Barbara Kosinski are denied.”).

3. Orion's Request for Attorneys' Fees Should Be Denied Because Orion Failed to Meet and Confer.

Civil Local Rule 54-5(a) requires that counsel for the respective parties “meet and confer for the purpose of resolving all disputed issues relating to attorney's fees before making a motion for award of attorney's fees.” Local Rule 54-5(b) further requires that a motion for attorney's fees be supported by a declaration “that counsel have met and conferred for the purpose of attempting to resolve any disputes . . . or a statement that no conference was held, with certification that the applying attorney made a good faith effort to arrange such a conference, setting forth the reason the conference was not held.” Discussions of a forthcoming attorneys' fees motion without “the amount or type of fees that [a plaintiff's] attorney may seek” are not sufficient to satisfy the

1 requirement. *See Van*, 2016 WL 5339805, at *12.

2 The required meet and confer never occurred here. Mr. Hagey's declaration *falsely* states
3 that Messrs. Borden and Fisher conferred with counsel for Defendants on December 12, 2019
4 regarding the substance of Orion's motion. *See Hagey Decl.* ¶ 66. However, the meet and confer
5 that took place on December 12, 2019 only concerned a briefing schedule for post-trial motions, as
6 requested by the Court, not the substance of those motions. *See Caseria Decl.* ¶¶ 2-3. This is
7 clearly reflected in Orion's same-day email memorializing the meet and confer. *See id.* ¶ 2, Ex. A.

8 "Such a violation of the meet and confer requirement 'is a permissible ground for the
9 denial of a motion for attorney's fees.'" *Van*, 2016 WL 5339805, at *12 (collecting cases);
10 *Johannson v. Wachovia Mortg., FSB*, No. C 11-02822 WHA, 2012 WL 2793204, at *2 (N.D. Cal.
11 July 9, 2012) ("Defendant failed to comply with the local rules governing the filing of a motion
12 for attorney's fees. Thus, the motion is DENIED.').

13 **B. Orion's Request for Costs Should Be Denied.**

14 "Orion seeks \$778,117.02 in costs relating to experts, jury consultants, translation services,
15 court reporters and videographers, transportation, lodging, meals, and other expenses[,] which
16 Orion claims is detailed in the cost report attached as Exhibit 1 to the Hagey Declaration. Pl.'s
17 Mot. at 7:2-5 (citing Hagey Decl., Ex. 1). As the party seeking costs, Orion has the burden "to
18 establish the amount of compensable costs and expenses to which it is entitled." *Miele v. Franklin*
19 *Res., Inc.*, No. 15-CV-00199-LB, 2019 WL 1517720, at *2 (N.D. Cal. Apr. 8, 2019) (internal
20 quotations omitted) (quoting *City of Alameda v. Nuveen Mun. High Income Opportunity Fund*,
21 No. C 08-4575 SI, 2012 WL 177566, at *1 (N.D. Cal. Jan. 23, 2012)). Orion has failed to carry
22 its burden for at least three reasons.

23 *First*, Orion has failed to provide "[a]ppropriate documentation to support each item
24 claimed" as a recoverable cost. N.D. Cal. Civ. L.R. 54-1(a). Exhibit 1 to the Hagey Declaration
25 underscores why such records are necessary, as the cost report contains several dubious costs that
26 Orion is seeking, including (just to name a few):

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- 1 • A March 26, 2018 payment of \$3,000 to “Startegix”—a “strategic communications”
2 firm that shows companies “how to engage media” and “power marketing” for “PR
3 Outreach”;²
- 4 • A June 24, 2019 filing fee of \$148.08 for a matter pending in “LA Superior Court”;
- 5 • An October 31 and November 30, 2019 charge of \$962.21 and \$1,178.18 respectively
6 for unspecified services provided by “TaskRabbit”;
- 7 • Two \$2,250 charges from October 29 and November 22, 2019 for “Airbnb” “Cleaning
8 Fees”;
- 9 • “Local Counsel” fees from Winthrop & Weinstine in the amount of \$5,281.15 and
10 RJM Litigation³ in the amount of \$7,242 for unspecified services;
- 11 • A December 13, 2019 invoice for \$35 for a Courtcall appearance when no hearing in
12 this matter took place that day; and
- 13 • A December 23, 2019 filing fee paid to the “USDC Santa Ana[,]” which appears to be
14 a cost associated with Orion’s filing in the separate bankruptcy proceeding.

15 Not only has Orion failed to show that these costs are allowable under 28 U.S.C. § 1920 and
16 Federal Rule of Civil Procedure 54(d), *see Twentieth Century Fox Film Corp. v. Goldwyn*, 328
17 F.2d 190, 224 (9th Cir. 1964), it appears some of these costs—like the fees from Los Angeles
18 Superior Court, the District Court in Santa Ana, and Courtcall—are not even related to this matter.
19 Orion’s failure to provide any appropriate documentation to support the costs it claims in this
20 matter is grounds for denial. *See Van*, 2016 WL 5339805, at *17-19 (plaintiff was not entitled to
21 costs for deposition transcripts, “pretrial copies to defendants[,]” “image charges[,]” “binders[,]”
22

23 ² *Startegix Strategic Communications*, Startegix.com, <http://www.startegix.com/> (last visited Jan.
24 27, 2020).

25 ³ RJM Litigation appears to be based in San Francisco like BHB; accordingly, it is unclear why
26 Orion would require RJM’s “local counsel” services. *See Attorney Licensee Profile for Richard*
27 *James Mooney*, The State Bar of California, [http://members.calbar.ca.gov/fal/Licensee/](http://members.calbar.ca.gov/fal/Licensee/Detail/176486)
28 [Detail/176486](http://members.calbar.ca.gov/fal/Licensee/Detail/176486) (last visited Jan. 28, 2020).

1 an “ADR services” charge, and postage fees under Civ. L.R. 54-1(a) because plaintiff failed to
 2 submit “[a]ppropriate documentation to support each item claimed”); *Makreas v. Moore Law*
 3 *Grp., A.P.C.*, No. C-11-2406 MMC, 2012 WL 1458191, at *1 (N.D. Cal. Apr. 26, 2012) (denying
 4 plaintiff’s request for all disputed costs where plaintiff “failed to offer any evidence to
 5 demonstrate he actually incurred any of the additional expenses” he sought, and provide
 6 “[a]ppropriate documentation to support each item claimed”).

7 *Second*, Orion’s request for costs fails from the outset because Plaintiff failed to file a bill
 8 of costs as required by Civil Local Rule 54-1, which provides:

9 No later than 14 days after entry of judgment or order under which costs may be
 10 claimed, ***a prevailing party claiming taxable costs must serve and file a bill of***
 11 ***costs***. The bill must state separately and specifically each item of taxable costs
 12 claimed. ***It must be supported by an affidavit***, pursuant to 28 U.S.C. §1924, that
 13 the costs are correctly stated, were necessarily incurred, and are allowable by law.
 Appropriate documentation to support each item claimed must be attached to the
 bill of costs ***Any party who fails to file a bill of costs within the time period***
provided by this rule will be deemed to have waived costs.

14 (Emphases added). Orion admits that it did not file a bill of costs or affidavit in compliance with
 15 Local Rule 54-1, but claims it was not required to “[b]ecause Orion is entitled to all of its costs
 16 under the Clayton Act’s fee shifting provision” Pl.’s Mot. at 7 n.3. Not only does Orion
 17 misrepresent the scope of the Clayton Act,⁴ but Judge Freeman rejected a substantially similar
 18 argument in *Lopez v. CIT Bank, N.A.*, No. 15-CV-00759-BLF, 2016 WL 3163175, at *10 (N.D.
 19 Cal. June 7, 2016). There, plaintiffs argued that they were not required to comply with Local Rule
 20 54-1 because “‘both the FCRA and the [CCRAA] allow[] for the recovery of expenses obviating
 21 the need for a cost memo,’ and that should the Court find the need for a bill of costs, Plaintiffs
 22 should be granted leave to file one.” *Id.* Judge Freeman rejected plaintiffs’ argument, and
 23 enforced the local rules. *Id.* at *11. Numerous courts are in accord. *See, e.g., Lytle v. Carl*, 382

24 _____
 25 ⁴ As explained by the court in *Twentieth Century Fox Film Corp.*, 328 F.2d at 224, “the only costs
 26 recoverable by a successful plaintiff in a private antitrust suit are those which are normally
 27 allowable under 28 U.S.C. § 1920 and Rule 54(d)” —not “all” costs as Orion claims. *Cf.* Pl.’s
 28 Mot. at 7 n.3.

1 F.3d 978, 989 (9th Cir. 2004) (upholding district court’s denial of plaintiff’s request for costs
 2 where plaintiff failed to file timely bill of costs as required by local rule); *Grove v. Wells Fargo*
 3 *Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010) (same); *San Francisco Bay Area Rapid Transit*
 4 *Dist. v. Spencer*, No. C 04-04632 SI, 2007 WL 1450350, at *14 (N.D. Cal. May 14, 2007) (“The
 5 Court finds that BART was required to file its bill of costs by April 6, 2007. BART did not file its
 6 bill of costs until April 12, 2007, and has shown no good cause for granting an extension to the
 7 time to file. Pursuant to Civil Local Rule 54-1, the Court deems BART to have waived costs, and
 8 hereby STRIKES BART’s bill of costs.”); *Lazaro v. Lomarey Inc.*, No. C-09-02013 RMW, 2012
 9 WL 2428272, at *2 (N.D. Cal. June 26, 2012) (“Courts in this district have required plaintiffs to
 10 ‘make a request for taxable costs in strict compliance with the civil local rules Since
 11 plaintiffs’ counsel is apparently familiar with the procedure for submitting a bill of costs, the court
 12 finds no grounds for excusing his failure to do so. Thus, the court will not award any costs.”);
 13 *Stein v. Pac. Bell*, No. C 00 2915 SI, 2007 WL 2221054, at *1 (N.D. Cal. Aug. 1, 2007)
 14 (defendant waived costs by failing to comply with N.D. Cal. Civ. L.R. 54-1). Indeed, courts have
 15 deemed costs waived merely for failing to comply with the affidavit requirement of Local Rule
 16 54-1. *See, e.g., Jones v. City of Oakland*, No. 11-CV-4725 YGR, 2013 WL 3793893, at *2 (N.D.
 17 Cal. July 18, 2013) (“[T]he City’s costs should not be awarded. The City’s Bill of Costs, though
 18 filed timely, did not comply with the affidavit requirement of [] Local Rule [54-1].”).

19 *Third*, in any event, most of the costs claimed in the cost report are barred either by Local
 20 Rule or by applicable law, including:

- 21 • The costs of court reporters’ transcripts unless obtained (1) for an appeal, (2) to prepare
 22 a formal order pursuant to a Judge’s statement from the bench, or (3) pursuant to Court
 23 approval or stipulation (Civ. L.R. 54-3(b));
- 24 • The expenses of counsel for attending depositions (Civ. L.R. 54-3(c)(2));
- 25 • The cost of reproducing copies of motions, pleadings, notices, and other routine case
 26 papers, to the extent claimed (Civ. L.R. 54-3(d)(3));
- 27 • Expert witness fees beyond those permitted under 28 U.S.C. § 1821, *i.e.*, forty dollars
 28 per day per witness (Civ. L.R. 54-3(e); *First Nat. Mortg. Co. v. Fed. Realty Inv. Tr.*,

1 631 F.3d 1058, 1071 (9th Cir. 2011) (“[F]ederal law allows the plaintiff to recover only
 2 forty dollars per day per witness, 28 U.S.C. § 1821(b).”); *Crawford Fitting Co. v. J. T.*
 3 *Gibbons, Inc.*, 482 U.S. 437, 439 (1987) (applying prior version of Section 1821; in
 4 consolidated appeal arising in part from antitrust action, the Court held “when a
 5 prevailing party seeks reimbursement for fees paid to its own expert witnesses, a
 6 federal court is bound by the limit of § 1821(b), absent contract or explicit statutory
 7 authority to the contrary.”));

- 8 • Jury consultant fees, including the \$97,259.80 paid to Bonora Rountree (*see Rimini St.,*
 9 *Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019) (internal citations omitted) (“Our
 10 cases, in sum, establish a clear rule: A statute awarding ‘costs’ will not be construed as
 11 authorizing an award of litigation expenses beyond the six categories listed in §§ 1821
 12 and 1920, absent an explicit statutory instruction to that effect And §§ 1821 and
 13 1920 in turn do not authorize an award for expenses such as expert witness fees, e-
 14 discovery expenses, and jury consultant fees”));
- 15 • Costs associated with e-discovery hosting, which constitute approximately \$32,149.65
 16 of Orion’s claimed costs (*Linex Techs., Inc. v. Hewlett-Packard Co.*, No. 13-CV-
 17 00159-CW (MEJ), 2014 WL 5494906, at *4 (N.D. Cal. Oct. 30, 2014), adopted, No. C
 18 13-159 CW, 2014 WL 6482602 (N.D. Cal. Nov. 18, 2014) (collecting cases)
 19 (“Importantly, e-discovery hosting costs and associated fees are not compensable.”);
 20 *Ancora Techs., Inc. v. Apple, Inc.*, No. 11-CV-06357 YGR, 2013 WL 4532927, at *3-4
 21 (N.D. Cal. Aug. 26, 2013) (“Costs incurred in hosting documents electronically . . .
 22 simply do not fit under Section 1920’s narrow limit of ‘exemplification and the costs of
 23 making copies of any materials where the copies are necessarily obtained for use in the
 24 case’”));
- 25 • Courier fees and “postage and handling charges that exceed the rate of first-class mail
 26 plus handling” (*City of Alameda, Cal. v. Nuveen Mun. High Income Opportunity Fund*,
 27 No. C 08-4575 SI, 2012 WL 177566, at *3 (N.D. Cal. Jan. 23, 2012) (citing
 28

1 *Intermedics, Inc. v. Ventritex, Inc.*, No. C-90-20233 JW (WDB),1993 WL 515879, at
2 *3 (N.D.Cal. Dec.2, 1993));

3 • “[A]ny expenditures associated with driving to the courthouse” as “such expenditures,
4 as a matter of law, are not recoverable” (*Makreas*, 2012 WL 1458191, at *1 (citation
5 omitted));

6 • Translation of written materials (*Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 572
7 (2012) (“§ 1920(6) does not apply to translators of written materials”));

8 • The costs for books and treatises that BraunHagey Borden purchased for its law
9 library, including at least a June 26, 2019 payment of \$5,135 for an “Antitrust Law
10 Book” and a September 11, 2019 payment of \$233 for the ABA Model Jury
11 Instructions in Civil Antitrust Cases, 2016 Edition (*Invessys, Inc. v. McGraw-Hill Cos.,*
12 *Ltd.*, 369 F.3d 16, 23 (1st Cir. 2004) (a “law book library” is “customarily treated as
13 overhead to be covered by the hourly or other fee rather than billed as a disbursement”
14 such that it is not a recoverable cost));

15 • Costs for exemplification and making copies that were not “necessary” for use in the
16 case (28 U.S.C. § 1920); and

17 • The costs of electronic research to the extent they were not actually charged to Orion
18 (*Invessys, Inc.*, 369 F.3d at 23; *Gable v. Nat’l Broad. Co.*, No. CV084013SVWFFMX,
19 2010 WL 11506430, at *12 (C.D. Cal. Aug. 6, 2010) (“As long as the cost of
20 computer-assisted research (for example, through Lexis or Westlaw) is in fact paid to a
21 third-party provider and billed by the firm to its client, a reasonable cost for such
22 research may be recoverable”)).

23 These are a few of the costs that Orion is not entitled to as a matter of law. Given the dearth of
24 information in the records Orion provided, it is impossible to determine whether additional costs
25 are also barred.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Ningbo Sunny respectfully requests that the Court deny
3 Plaintiff's Motion.

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5 Dated: January 30, 2020

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6
7 By

/s/ Leo D. Caseria

LEO D. CASERIA

Attorneys for Defendant

NINGBO SUNNY ELECTRONIC CO., LTD.

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