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17
18 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
19 **SAN FRANCISCO COUNTY**

20
21 *In re Subpoena to:*
Reddit, Inc.,

Case No. 3:24-mc-80005-JD

22 **REDDIT, INC.'S NOTICE OF MOTION**
23 **AND MOTION FOR FEES**

24 Date: August 7, 2025
Time: 10:00 a.m.
25 Judge: Hon. James Donato

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1 I. INTRODUCTION

2 In three separate cases now, Reddit has defeated what is essentially the same motion to
 3 compel, brought by the same group of movants,¹ by the same counsel, seeking to enforce
 4 effectively the same unnecessary and irrelevant subpoena. The three judges in this District to have
 5 reviewed these motions—on four occasions—have uniformly sided with Reddit. Movants’
 6 repeated motions practice against nonparty Reddit is no longer justifiable; Reddit seeks its fees
 7 incurred in defending against Movants’ most recent motion to compel, as provided by Rules 37
 8 and 45 of the Federal Rules of Civil Procedure.

9 Rule 37 mandates that a party who moves to compel and loses must pay the other side’s
 10 reasonable expenses, including attorney’s fees, unless the motion was “substantially justified” or
 11 “other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(B). Here,
 12 Movants moved to compel Reddit, Inc. (“Reddit”) to comply with a non-party subpoena, Reddit
 13 opposed the motion, and this Court denied it. This subpoena was far from “substantially
 14 justified.” To the contrary, in denying that motion, this Court recognized that the connection
 15 between the Movants’ subpoena and their underlying litigation was “very, very weak” (Dkt. 45 at
 16 14:6-8) and that the requested discovery would have “zero impact” on Movants’ lawsuit. *Id.* at
 17 9:18-21.

18 Reddit is also concerned that Movants are continuing to drag Reddit into motions practice
 19 for an improper purpose, sanctionable under Rule 45(d). As Reddit articulated during litigation
 20 over Movants’ second subpoena, Movants have expended such considerable resources and time
 21 pursuing these unnecessary subpoenas that they appear intended to publicly threaten Reddit users
 22 to stop discussing piracy on the platform. Reddit should be granted its reasonable fees (in the
 23

24 ¹ The complete list of Movants here includes: Voltage Holdings, LLC, Screen Media Ventures,
 25 LLC, Killing Link Distribution, LLC, Family of the Year Productions, LLC, and Laundry Films,
 26 Inc. The prior actions referred to are *In re Reddit, Inc.*, 671 F. Supp. 3d 1022 (N.D. Cal. 2023)
 27 (“*Reddit I*”) and *In re Reddit, Inc.*, No. 3:23-mc-80173, 2023 WL 4849434 (N.D. Cal. July 29,
 2023) (“*Reddit II*”). Voltage Holdings was also a movant in *Reddit I*. Both Voltage Holdings and
 Screen Media Ventures were movants in *Reddit II*. *See also* Dkt. 20 at 2-4.

1 amount of \$55,204.19) to discourage Movants from continuing to waste court (and Reddit's)
2 resources in Movants' anti-piracy publicity campaign.

3 **II. BACKGROUND**

4 Reddit assumes the Court's familiarity with the record in this matter and so will only
5 briefly summarize it here. Reddit is an online platform that allows users to communicate
6 pseudonymously without requiring their legal names or addresses. Dkt. 20 at 2. Movants are
7 copyright holders of films that they believe were pirated by users of the internet service provider
8 ("ISP") Frontier Communications, whom Movants sued in federal bankruptcy court for secondary
9 copyright infringement. *In re: Frontier Comms. Corp.*, No. 20-22476 (S.D.N.Y. Bankr.); *see also*
10 Dkt. 20 at 4. This subpoena issued from that underlying bankruptcy action. *See, e.g.*, Dkt. 1 at 3.

11 Movants subpoenaed Reddit for the IP addresses of six Reddit users who had posted about
12 torrenting on networks provided by Frontier. After Reddit objected to the subpoena, Movants
13 moved to compel. Dkt. 1. That motion to compel was denied by Magistrate Judge Hixson. Dkt.
14 26. Movants then moved for *de novo* review by this Court. Dkt. 29. The Court affirmed
15 Magistrate Judge Hixson's ruling and denied Movants' motion to compel, finding that the
16 subpoena sought information from Reddit that was neither necessary for Movants' bankruptcy
17 action nor even relevant to that action. Dkts. 37, 41.

18 This was the third nearly identical subpoena to Reddit that Movants and Movants' counsel
19 have sought to have this District enforce in recent years. Reddit's previous briefing describes the
20 two prior subpoenas that Movants unsuccessfully sought to enforce against Reddit in secondary
21 copyright infringement cases against different ISPs. Doc. 20, at 2–3 (describing *Reddit I* and
22 *Reddit II*). In both of these prior instances, Movants' motions to compel Reddit were denied.
23 *Reddit I*, 671 F. Supp. 3d 1022; *Reddit II*, 2023 WL 4849434. As here, Movants sought non-party
24 discovery from Reddit that was essentially irrelevant to their claims when Movants could have
25 obtained far more relevant information from party sources without unduly burdening non-party
26 Reddit or trampling free speech rights.

27 After this Court denied Movants' motion for *de novo* review in this matter, Movants
28

1 appealed to the Ninth Circuit. Dkt. 46; *see also In re Reddit, Inc.*, No. 24-3893 (9th Cir. Jun. 25,
 2 2024). After completion of appellate briefing but before any decision, Movants voluntarily
 3 dismissed the appeal after resolving the underlying bankruptcy case (without any records from
 4 Reddit). *Id.*, ECF No. 55.

5 The appeal now resolved with this Court’s denial order intact, Reddit moves pursuant to
 6 Rules 37(a)(5)(B) and 45(d) for its reasonable attorneys’ fees incurred in successfully defeating
 7 Movants’ unwarranted motion to compel compliance with an irrelevant subpoena.

8 **III. ARGUMENT**

9 **A. Rule 37 mandates that Movants pay Reddit’s reasonable expenses and** 10 **attorneys’ fees incurred in opposing the motion to compel.**

11 Under Federal Rule 37, if a Court denies a party’s motion to compel discovery, the Court
 12 “*must . . . require the movant . . . to pay . . . reasonable expenses incurred in opposing the motion,*
 13 *including attorney’s fees.*” Fed. R. Civ. P. 37(a)(5)(B) (emphasis added). Rule 37 does not require
 14 a showing of willfulness or improper intent but rather creates a “presumption about the
 15 appropriateness” of fee-shifting. *Cunningham v. Hamilton County*, 527 U.S. 198, 208 n.5 (1999));
 16 *see also Celano v. Marriot Int’l, Inc.*, No. C05-4004 PJH, 2007 WL 2070220, at *4 (N.D. Cal.
 17 July 13, 2007). “The great operative principle” of Rule 37 “is that the loser pays.” 8B Wright &
 18 Miller’s Federal Practice & Procedure § 2288 (3d ed. 2014).

19 A litigant is subject to mandatory Rule 37 fee-shifting where it unsuccessfully moves to
 20 compel a non-party to comply with a subpoena issued under Rule 45. *See Olagues v. Schmidt*,
 21 897 F.2d 533 (9th Cir. 1990) (granting fees under Rule 37 to a non-party for successfully
 22 quashing a Rule 45 subpoena). “Rule 37(a)(5) ‘is really aimed at curbing discovery abuses and
 23 preventing waste of judicial time when there is no genuine dispute.’ The provisions of the Rule 37
 24 fee-shift apply to disputes arising under Rule 45.” *Rodriguez v. AmericanWest Bank*, No. CV 15-
 25 5831 MRW, 2017 WL 11470636, at *3 (C.D. Cal. Apr. 20, 2017) (granting fees for successfully
 26 defending against a Rule 45 subpoena); *see also MGA Ent., Inc. v. Nat’l Prods. Ltd.*, No. CV 10-
 27

1 7083 JAK (SSx), 2012 WL 12883974, at *7 (C.D. Cal. Jan. 19, 2012) (“[w]hile Rule 45 does not
 2 expressly identify . . . motions to quash as a basis for sanctions, district courts have imposed
 3 reasonable expenses” under Rule 37 following motions to quash Rule 45 subpoenas); *Glass Egg*
 4 *Digit. Media v. Gameloft, Inc.*, No. 17-CV-04165-MMC (RMI), 2020 WL 906714, at *9 (N.D.
 5 Cal. Feb. 25, 2020) (permitting a defendant to recover attorneys’ fees under Rule 37 for quashing
 6 Rule 45 subpoenas issued by plaintiff against third-parties).

7 Movants moved to compel Reddit to comply with its subpoena, and they lost that motion.
 8 In fact, they lost it twice. Dkts. 26, 37, 41. The only exceptions to this operative principle are if
 9 the movant can prove its motion was “substantially justified” or that “other circumstances make
 10 an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(B). The losing party bears the burden of
 11 proving either exception. *Hyde & Drath v. Baker*, 24 F.3d 1162, 1171 (9th Cir. 1994). Because
 12 neither exception applies here, the Court must award Reddit its reasonable fees incurred in
 13 defeating Movants’ motion to compel and subsequent motion for de novo review.² See Fed. R.
 14 Civ. P. 37(a)(5)(B).

15 **1. Movants’ motion to compel was not substantially justified.**

16 A motion is not substantially justified unless the losing party demonstrates that it
 17 presented a “genuine dispute” such that “‘reasonable people could differ’ as to the
 18 appropriateness of the motion.” *JSR Micro, Inc. v. QBE Ins. Corp.*, No. C-09-03044 PJH (EDL),
 19 2010 WL 1957465, at *2 (N.D. Cal. May 14, 2010) (citation omitted). No reasonable person
 20 could believe that Movants’ motion to compel was appropriate here. A non-party subpoena that
 21 lacks basic relevance to a party’s case unduly burdens a non-party, regardless of how onerous it
 22 would be to the non-party to produce the requested information. See, e.g., *Cacique, Inc. v. Robert*
 23 *Reiser & Co., Inc.*, 169 F.3d 619, 622–25 (9th Cir. 1999) (rejecting need for non-party discovery
 24 that was “not an important part of the liability issues to be decided” in the underlying case);
 25 *Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (denying motion to compel for information

26 _____
 27 ² To be clear, Reddit is *not* seeking in this motion to recover its fees incurred in defending the
 28 Court’s ruling before the Ninth Circuit on appeal.

1 that “was only minimally relevant”).

2 As the Court recognized during the hearing on Movants’ motion for de novo review,
3 Movants’ subpoena was wholly irrelevant to their claims in the underlying bankruptcy case.
4 Movants failed to explain at the hearing how obtaining the identities of six Reddit users merely
5 discussing piracy in an online forum could possibly impact their case against Frontier. When
6 pressed by the Court, Movants’ counsel argued that it would allow them to show that Frontier had
7 not reasonably enforced its copyright infringement policy. But as this Court articulated, the six
8 examples from Reddit are “such a small sample, it seems largely irrelevant” and “has zero impact
9 on whether Frontier was reasonably enforcing [against piracy] or not” since six out of thousands
10 of Frontier users was not sufficient evidence for “a reasonable judge [to] say that that was
11 unreasonable enforcement of a policy.” Dkt. 45 at 9:6-7, 9:18-21, 10:17-18; *see also id.* at 4:12-
12 13 (“How is this relevant to anything that you have in your bankruptcy claims against Frontier? I
13 don't see the relevance.”); *id.* at 14:6-8 (“The relevance to proving that Frontier was not
14 reasonably enforcing a repeat infringer policy under Section 512 of the DMCA is just very, very
15 weak.”). On this basis alone, Movants’ motion to compel was not substantially justified because
16 there was no reasonable basis for Movants to move to compel a non-party to comply with a
17 subpoena that sought such trivial information, let alone move for de novo review after their
18 motion to compel was correctly denied by Magistrate Judge Hixson.

19 The lack of justification for Movants’ motion is further evidenced by the fact that
20 Movants had already lost two nearly identical motions to compel Reddit’s compliance with the
21 subpoenas in *Reddit I* and *Reddit II*, which were basically identical to this subpoena here. These
22 two prior subpoenas were also issued to Reddit by some of the same Movants using the same
23 counsel. *See* Dkt. 20 at 2–3. They also involved the same type of underlying secondary copyright
24 infringement claims against ISPs and similarly sought the IP addresses for Reddit users who had
25 posted about torrenting. *Id.* Movants’ counsel in those matters—the same counsel as here—
26 presented substantially the same theory for relevancy as they did here before this Court. *See*
27 *Reddit I*, 671 F. Supp. 3d 1022; *Reddit II*, 2023 WL 4849434. Yet their motions to compel were
28

denied in both *Reddit I* and *Reddit II* because their subpoenas sought insufficiently relevant information,³ just as this Court found in this case. *Reddit I*, 671 F. Supp. 3d at 1026 (“Crucially for purposes of this subpoena, the plaintiffs have not shown that ‘the identifying information is directly and materially relevant to [a core] claim or defense’”); *id.* (“Comments like these are not ‘directly and materially relevant to [a core] claim or defense’ in this case — if they are relevant at all.”); *Reddit II*, 2023 WL 4849434, at *4 (finding that even if “information may be relevant, . . . it also is attenuated: it is at best weak evidence about Grande’s [the ISP’s] insufficient policy regarding repeat infringers or its appeal to pirating subscribers”). This pattern of repeated failure by Movants to compel substantially identical subpoenas to Reddit underscores that Movants’ motions here were not substantially justified.

2. Awarding fees here would not be unjust.

Movants cannot prove any extraordinary circumstances here warranting deviation from Rule 37’s fee-shifting. Examples of circumstances warranting deviation include the indigency of a movant⁴ or the sufficiency of a prior sanction against the movant in the same action.⁵ Neither applies here, and Movants can present no reason why awarding fees for their unnecessary issuance of subpoenas would be unjust.

B. Rule 45 provides an alternative means for Reddit to recoup its fees for defending against an unduly burdensome subpoena.

While Reddit is entitled to its reasonable attorneys’ fees under Rule 37, Rule 45 provides an alternative basis for the Court to award Reddit its fees for defeating Movants’ motion to compel. Rule 45(d)(1) states that:

³ The *Reddit I* and *Reddit II* courts analyzed relevancy through the lens of *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001), which asks whether there is a “compelling need for the discovery sought that outweighs the First Amendment rights of the anonymous speaker.” *Id.* at 1095. In *Reddit I*, *Reddit II*, and here, the court has found these subpoenas unenforceable.

⁴ *Cabralles v. BAE Sys. San Diego Ship Repair, Inc.*, No. 21-CV-02122-AJB-DDL, 2023 WL 5985517, at *2 (S.D. Cal. Sept. 13, 2023).

⁵ *Pete’s Seats, Inc. v. Pete’s Sports & Ent., LLC*, No.: 1:14-cv-0777-JLT, 2016 WL 6084392 (E.D. Cal. Oct. 17, 2016).

1 A party or attorney responsible for issuing and serving a subpoena
 2 must take reasonable steps to avoid imposing undue burden or
 3 expense on a person subject to the subpoena. The court for the district
 4 where compliance is required must enforce this duty and impose an
 5 appropriate sanction—which may include lost earnings and
 6 reasonable attorney’s fees—on a party or attorney who fails to
 7 comply.

8 Fed. R. Civ. P. 45(d)(1). Under Rule 45, “[a] court may . . . impose sanctions when a party
 9 issues a subpoena in bad faith, for an improper purpose, or in a manner inconsistent with existing
 10 law.” *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013).⁶

11 District courts within the Ninth Circuit recognize that Rule 45(d)(1) may support an award
 12 of fees for imposing an undue burden on a nonparty, even where the burden arises from defending
 13 against an improper subpoena. For example, in *ESG Capital Partners LP v. Stratos*, No. 2:13-cv-
 14 01639-ODW-SHX, 2014 WL 12588637 (C.D. Cal. May 16, 2014), the court permitted a nonparty
 15 to recover attorneys’ fees for defending a Rule 45 subpoena under both Rule 37(a)(5) and Rule
 16 45(d)(1). *Id.* at *8. Similarly, the *McAllister v. St. Louis Rams, LLC*, No. 2:17-mc-157-AB (KSX),
 17 2018 WL 6164281 (C.D. Cal. July 2, 2018), court observed that the Ninth Circuit has found that
 18 “failure to narrowly tailor a subpoena may be a ground for sanctions.” *Id.* at *8 (quoting *Legal*
 19 *Voice*, 738 F.3d at 1185 (contemplating the possibility of imposing sanctions under Rule 45(d)(1)
 20 for a denied motion to compel a non-party subpoena, and post-dating *Mount Hope Church*); see
 21 also *S.E.C. v. Schooler*, No. 3:16-cv-00517-MMD-WGC, 2016 WL 6821079 (D. Nev. Nov. 17,
 22 2016). Prior to *Mount Hope Church*, the Ninth Circuit had also affirmed an award of attorneys’
 23 fees to a non-party associated with it quashing an overbroad subpoena under Rule 45(c)(1) (which
 24 today is Rule 45(d)(1)). See *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813–14 (9th

25 ⁶ In the spirit of candor, Reddit informs the Court that the Ninth Circuit initially interpreted a
 26 prior version of this Rule to refer specifically to the burden of actually complying with a
 27 subpoena, rather than the burden associated with contesting one. See *Mount Hope Church v. Bash*
 28 *Back!*, 705 F.3d 418, 428 (9th Cir. 2012) (“[h]olding that Rule 45(c)(1) [analogous to today’s
 Rule 45(d)(1)] cannot properly support a sanction where the cost of complying with the subpoena
 is minimal and there is no showing that the subpoena was facially defective or issued in bad
 faith”). But *Legal Voice* supplies the Ninth Circuit’s present interpretation of Rule 45.

1 Cir. 2003). *Mount Hope Church* cites *Mattel* approvingly. 705 F.3d at 428 (stating that *Mattel*
 2 found sanctions appropriate in a case where the subpoena was served for an improper purpose and
 3 thus constituted bad faith).

4 Here, Movants’ subpoena was unduly burdensome and improperly motivated. First, this
 5 subpoena had virtually no relevance to the underlying litigation. Discussed *supra*, Part III(A)(1).
 6 Second, this was the third nearly identical subpoena issued by Movants and their counsel *despite*
 7 the fact that the two prior subpoenas were found to have little, if any, relevance and not
 8 enforceable. *See Reddit I*, 671 F. Supp. 3d at 1026 (questioning if the information sought by
 9 Movants was “relevant at all”); *Reddit II*, 2023 WL 4849434, at *4 (calling the information
 10 sought “at best weak evidence”).

11 Movants’ dogged pursuit of discovery litigation despite loss after loss, together with the
 12 complete irrelevance of the information sought, demonstrates their improper purpose—an attempt
 13 to chill lawful speech by Reddit’s users. *See* Dkt. 20 at 9-10, n. 6 (explaining how Movants
 14 labeling Reddit users “criminal[s]” was aimed at chilling speech); Dkt. 33 at 8-9 (giving example
 15 of when Reddit *did* provide Movants with a user’s IP address and Movants hounded that user
 16 with needless discovery to chill speech); *In re Subpoena to Reddit, Inc.*, No. 24-3893 (9th Cir.
 17 Dec. 16, 2024), Dkt. 29.1 at 6-7 (Appellee Reddit’s Answering Brief) (“As reflected by those
 18 prior Reddit decisions, Appellants have engaged in something of a campaign against Reddit users.
 19 Indeed, given Appellants’ persistence despite numerous adverse rulings, it is difficult to avoid the
 20 conclusion that their ultimate goal is to chill Redditors’ lawful speech.”).

21 While Reddit maintains that speech *concerning* copyright infringement is protected by the
 22 First Amendment (as opposed to speech *constituting* copyright infringement), the Court need not
 23 reach that issue to rule for Reddit here. Chilling non-party speech (protected or not) is not a
 24 proper purpose for issuing a subpoena. Sanctions under Rule 45 are appropriate to deter Movants
 25 from continuing to abuse non-party discovery to try to intimidate Reddit’s users.

26 **C. Reddit’s requested attorney fees were reasonable.**

27 Having established entitlement to fees, Reddit now requests those fees in the amount of
 28

1 \$55,204.19. This amount is properly supported by the accompanying evidence and is presumed
2 reasonable under the lodestar method of multiplying (1) “the number of hours reasonably
3 expended on the litigation,” and (2) “a reasonable hourly rate.” *Hensley v. Exkerhart*, 461 U.S.
4 424, 433 (1983).

5 First, the number of hours requested here (roughly 70 hours across three lawyers) is
6 reasonable. As reflected in the accompanying **Exhibit A**, Reddit has taken an extremely
7 conservative position in identifying the time incurred only in connection with its response to the
8 motions to compel and for de novo review. The requested time omits all charges except the core
9 legal work performed by Reddit’s primary attorneys in response to those two motions—it does
10 not include any expenses for paralegal or administrative assistants’ time or any work performed
11 by Perkins Coie partners other than Mr. Schottlaender. Schottlaender Decl. ¶ 4. Reddit also seeks
12 to recover only the hours that were “actually charged to the client,” which weighs strongly in
13 favor of finding them reasonable. *E-Pass Techs., Inc. v. 3Com, Inc.*, No. C-00-2255 DLJ (EDL),
14 2008 WL 2899719, at *1 (N.D. Cal. July 22, 2008); *see also* Schottlaender Decl. ¶ 5. The 71.4
15 combined hours billed by Reddit’s counsel are reasonable considering the amount of litigation
16 required to respond to both of Movants’ motions, the need to prepare for and attend oral
17 argument, and the importance of the issues to Reddit’s core business. *See id.* ¶ 8; *see also FBC*
18 *Mortg., LLC v. Skarg*, No. 23-CV-00143-CRB (RMI), 2024 WL 4469695, at *4 (N.D. Cal. Oct.
19 9, 2024) (finding 102.7 hours of attorney work reasonable to litigate a motion to compel,
20 including 37.1 hours to research case law in support of the motion); *Nat.-Immunogenics Corp. v.*
21 *Newport Trial Grp.*, No. 815CV02034JVSJCGX, 2018 WL 6168031, at *5 (C.D. Cal. Jan. 4,
22 2018) (finding roughly 60 hours of attorney work reasonable to contest a single motion to modify
23 a protective order).

24 Second, the rates requested are also reasonable. Again, the requested fees are those that
25 were “actually charged to the client,” net of significant discounts provided to Reddit in this
26 matter, as explained in the accompanying declaration. Schottlaender Decl. ¶ 7. The rates for
27 Reddit’s counsel are comparable to those found reasonable for the industry in this district.

1 *Compare* Schottlaender Decl. ¶¶ 12–14 (listing qualifications of Reddit’s counsel and their billing
 2 rates of \$813.75 per hour for partner time, \$748.13 per hour for senior associate time, and
 3 \$568.75 per hour for mid-level associate time), *with Farella Braun + Martel LLP v. Fed. Deposit*
 4 *Ins. Corp.*, No. 24-CV-01306-SI, 2025 WL 1745763, at *2 (N.D. Cal. June 24, 2025) (granting a
 5 discovery sanctions fee motion and finding that rates of \$1,095 per hour for a partner and \$820
 6 per hour for a senior associate were reasonable for the industry). The rates charged to Reddit in
 7 this matter were warranted given the special expertise of counsel in representing online platforms
 8 in litigation over demands for user data, and given the importance of this litigation to Reddit.
 9 Schottlaender Decl. ¶¶ 8, 12–14.

10 Since “‘awarding attorneys’ fees to prevailing parties . . . is a tedious business,’ the Court
 11 ‘should normally grant the award in full’ if [Movants] cannot come up with specific reasons for
 12 reducing the fee request.” *Apple, Inc. v. Samsung Elecs. Co.*, No. C 11-1846 LHK PSG, 2012
 13 WL 5451411, at *3 (N.D. Cal. Nov. 7, 2012) (quoting *Moreno v. City of Sacramento*, 534 F.3d
 14 1106, 1116 (9th Cir. 2008)).

15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court should grant Reddit’s motion and award Reddit
 17 \$55,204.19 in attorneys’ fees incurred in opposing Movants’ motion to compel and subsequent
 18 motion for de novo review.

19 Dated: July 1, 2025

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