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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, *Plaintiff*,	)	
KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, *et al.*, *Intervenor Plaintiffs*,	)	Case No. 1:22-cv-54 (SLG)
v.	)	
STATE OF ALASKA, *et al.*, *Defendants*.	)	

DEFENDANTS' OPPOSITION TO
ALASKA FEDERATION OF NATIVES' MOTIONS FOR ATTORNEY'S FEES

In the course of this litigation, the Alaska Federation of Natives filed only three substantive briefs on the merits: a brief in opposition to summary judgment, an appellate brief at the Ninth Circuit, and a joint opposition to a petition for certiorari. In each brief, its arguments were duplicated by others—either the United States, which filed the original suit, or the other three sets of Intervenors. For its efforts, AFN is now seeking nearly $500,000 in attorney's fees. That is on top of the other three Intervenors, who also wrote or joined only three substantive briefs and who are also asking for similar amounts. AFN is seeking fees of more than $1,300 per hour and the other Intervenors are seeking rates that are *double* that, at $2,650 per hour. All told, the four Intervenors are collectively seeking nearly $2.2 *million* in attorney's fees for a case that was done on the papers with no discovery and with only one oral argument.

To be sure, this was an important case, and the four Intervenors were entitled to press their positions. They also had the right to hire the most well-known and expensive Supreme Court litigators in the country. But that doesn't mean that the State of Alaska must pay full freight for their excessive and duplicative efforts. This case was brought by the United States—the most well-resourced litigant in the country—and the United States vigorously litigated it against the State of Alaska from start to finish. Congress never would have intended for *four* sets of intervenors to recover these types of duplicative fees when their efforts, in the end, were the equivalent of amicus briefs at each stage of the litigation.

The Court should deny or significantly reduce AFN's request for attorney's fees.

BACKGROUND

In 2022, the United States brought this action against the State of Alaska seeking declaratory and injunctive relief related to Alaska's fishing orders.[1] Four sets of private intervenors were allowed to intervene: Association of Village Council Presidents (AVCP), the Kuskokwim River Inter-Tribal Fish Commission (KRITFC), Ahtna, and AFN.[2] Before this Court, there was no discovery and the parties filed cross-motions for summary judgment. The United States opposed the State's motion for summary judgment. All four sets of intervenors also filed their own oppositions to the State's motion. This Court ruled in favor of the United States and the Intervenors.[3]

Following this Court's ruling, the Intervenors moved for attorney's fees.[4] The State asked this Court to defer ruling on the Intervenors' fee requests until appellate proceedings had concluded.[5] The Court denied the motion in part.[6] The Court instructed that the State should "address only the applicability of 16 U.S.C. §3117" and the Intervenors' reply briefs "shall be limited to that one topic"; the Court would then "rule on that one issue of the fee motions only."[7] After the parties briefed the issue, the Court issued an order agreeing with

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[1] Dkt. 1 at 5, 24.
[2] Dkts. 29, 37, 47, 96.
[3] Dkt. 129 at 29.
[4] Dkts. 133, 135, 137, 138.
[5] Dkt. 142.
[6] Dkt. 150.
[7] *Id*. at 6.

the Intervenors, holding that they could "seek attorney's fees pursuant to 16 U.S.C. §3117 at the conclusion of this litigation."[8]

On appeal to the Ninth Circuit, all four sets of Intervenors again filed their own briefs, largely duplicating their briefs from the district court. The Ninth Circuit affirmed. The Intervenors then filed motions for fees with the Ninth Circuit. Those motions were transferred to the district court and were stayed pending the Supreme Court's resolution of the State's petition for certiorari.

Before the Supreme Court, the four Intervenors adopted an unusual, duplicative, and expensive briefing strategy. Rather than ask one lawyer or law firm to write their brief in opposition, they each brought in new, expensive Supreme Court counsel to assist them. AFN hired Jenner & Block, which is seeking rates up to $1,369 per hour.[9] KRITFC hired Sidley Austin, which is seeking rates up to $2,650 per hour.[10] Ahtna hired Clement & Murphy, which is seeking rates up to $2,650 per hour.[11] And AVCP added an additional attorney with appellate experience to its team for Supreme Court proceedings, for whom it is seeking $1,305 per hour.[12] Further, instead of having one of these counsel take the lead, the Intervenors appear to have all independently performed overlapping work. For example, AFN and KRITFC both independently drafted their own briefs in opposition and then

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[8] Dkt. 154 at 10. The State could not appeal this order because it was not a "final" order. *See Jensen Elec. Co v. Moore*, 873 F.2d 1327, 1329 (9th Cir. 1989).

[9] Dkt. 170 at 5 ¶12.

[10] Dkt. 179 at 2 ¶6.

[11] Dkt. 181-1 at 6 ¶13.

[12] Dkt. 182-2 at 6 ¶9 & n.7.

worked to "merge" the briefs together.[13] In the end, the Intervenors filed one consolidated brief in opposition.[14] None of the newly hired Supreme Court counsel entered an appearance at the Supreme Court or appeared as counsel on the Intervenors' Brief in Opposition.[15] For these efforts producing one 32-page brief, the Intervenors collectively ask for $742,436 in fees.

After the Supreme Court denied the State's petition for certiorari, the Intervenors renewed their motions for attorney's fees with this Court.[16] AFN filed its motion for fees on February 16, and Ahtna, KRITFC, and AVCP filed their motions for fees on February 26. They each seek the following:

> AFN seeks a total of $494,423 in attorney's fees, including $144,399 for district court litigation; $196,822 for the Ninth Circuit appeal; and $153,202 for the Supreme Court brief in opposition.[17]
>
> Ahtna seeks a total of $401,923 in attorney's fees, including $147,050 for district court litigation; $108,500 for the Ninth Circuit appeal; and $146,373 for the Supreme Court brief in opposition.[18]
>
> KRITFC seeks a total of $660,243 in attorney's fees, including $199,800 for district court litigation; $173,020 for the Ninth Circuit appeal; and $287,423 for the Supreme Court brief in opposition.[19]
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> AVCP seeks a total of $632,241 in attorney's fees, including $302,603 for district court litigation; $174,200 for the Ninth Circuit appeal; and $155,438 for the Supreme Court brief in opposition.[20]

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[13] Dkt. 169 at 4-5; Dkt. 178 at 6 ¶15.
[14] *See* Joint Brief in Opposition, perma.cc/UZC2-9U5Q.
[15] *Id*.
[16] Dkt. 169.
[17] *Id.*
[18] Dkt. 181.
[19] Dkt. 177.
[20] Dkt. 182.

All told, the Intervenors seek a total of $2,188,830 in attorney's fees, including $793,852 for district court litigation; $652,542 for the Ninth Circuit appeal; and $742,436 for the Supreme Court brief in opposition.

ARGUMENT

The Court should deny AFN's request for attorney's fees because the State has sovereign immunity. Alternatively, the Court should significantly reduce AFN's fees because its hourly rates are excessive and its hours spent are duplicative and unreasonable.

I. AFN's request for fees is barred by sovereign immunity under the Eleventh Amendment.

This Court has ruled that Intervenors are eligible for fees under §3117.[21] The State respectfully disagrees for the reasons laid out in its prior filing.[22] But with the applicability of §3117 addressed, the next question is whether sovereign immunity applies. It does.

The Eleventh Amendment "'prevents congressional authorization of suits by private parties against unconsenting States.'"[23] A state is immune from such lawsuits unless there has been "'a valid abrogation of that immunity or an express waiver by the state.'"[24] Eleventh Amendment immunity also applies to "'an arm of the state,' its instrumentalities, or its agencies."[25]

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[21] Dkt. 154.

[22] Dkt. 151; *see also* Order, *Alaska Dep't of Fish & Game v. Fed. Subsistence Bd.*, No. 24-179 (9th Cir. Sept. 17, 2025) (holding that an intervenor-defendant in an ANILCA case was "not entitled to attorney's fees because Alaska did not file [the] suit under Section [3117]").

[23] *Quillin v. Oregon*, 127 F.3d 1136, 1138 (9th Cir. 1997) (quoting *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996)).

[24] *Hibbs v. Dep't of Hum. Res.*, 273 F.3d 844, 850 (9th Cir. 2001).

[25] *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995).

Here, Congress did not abrogate Alaska's sovereign immunity "pursuant to a constitutional provision granting Congress the power to abrogate."[26] Section 5 of the Fourteenth Amendment "is the only constitutional provision that the Supreme Court recognizes as granting Congress the power to abrogate the states' immunity."[27] And Congress was not legislating within its Fourteenth Amendment enforcement power when it enacted ANILCA.[28]

The State also has not waived its immunity. Waiver of immunity "will be found 'only where stated 'by the most express language or by such overwhelming implications from the text as (will) leave no room for any other reasonable construction.'"[29] The State never expressly waived its sovereign immunity. Nor did the State silently waive its sovereign immunity by participating in these proceedings. The original suit was brought by the United States of America under 28 U.S.C. §§1331, 1345, 2201, and 2202,[30] and AFN intervened into that action. The first time §3117 was ever mentioned by any party was in the Intervenors' motion for fees.[31] Now that AFN has invoked §3117, the State is appropriately

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[26] *Seminole Tribe*, 517 U.S. at 59. Though this Court disagrees, *see* Dkt. 154 at 9-10, the State respectfully believes that Congress also did not "'unequivocally'" express its intent to authorize fees against the State here under §3117. *Townsend v. University of Alaska*, 543 F.3d 478, 484 (9th Cir. 2008) (quoting *Seminole Tribe*, 517 U.S. at 55).

[27] *Franks v. Ky. Sch. for the Deaf*, 142 F.3d 360, 363 (6th Cir. 1998) (citing *Seminole Tribe*, 517 U.S. at 59).

[28] *See, e.g.*, Dkt. 110 at 44 (AFN asserting that Congress enacted ANILCA "pursuant to its … combined Commerce Clause, Property Clause, and Native affairs powers").

[29] *Quillin*, 127 F.3d at 1138 (quoting *Edelman v. Jordan*, 415 U.S. 651, 673 (1974)).

[30] Dkt. 1 at 5, 24.

[31] *See, e.g.*, Dkt. 133.

raising sovereign immunity as a defense. Because AFN's request under §3117 is barred by the Eleventh Amendment, AFN should not receive any attorney's fees from the State.

II. AFN's requested fees are excessive and should be reduced.

Under 16 U.S.C. §3117(a), "[l]ocal residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees." As AFN recognizes, the fees it seeks must be "reasonable."[32] "The prevailing party bears the burden of presenting 'satisfactory evidence' of the prevailing market rate and detailed time records documenting the number of hours expended on litigation."[33] While this Court begins with the hours and rates claimed by the prevailing party, "it may reduce those hours if documentation is inadequate; the case was overstaffed and hours are duplicated; or the hours expended are excessive or otherwise unnecessary."[34] "Courts need not embark on a line-by-line evaluation of a party's legal invoices; instead, they have authority to make an across-the-board percentage cut in the hours claimed to 'trim the fat.'"[35] "Careful scrutiny is warranted" when a "large amount of attorney's fees [are being] requested."[36]

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[32] Dkt. 169 at 2.

[33] *Hamby v. Walker*, 2015 WL 1712634, at *2 (D. Alaska Apr. 15, 2015).

[34] *Seward Prop., LLC v. Arctic Wolf Marine, Inc.*, 2022 WL 17414964, at *2 (D. Alaska Dec. 5, 2022) (Gleason, J.).

[35] *Id.* (cleaned up).

[36] *Id*.

Here, the Court should reduce AFN's requested fees because both its rates and hours are excessive. The State urges the Court to significantly reduce the fees requested by AFN, by at least a 50% reduction.[37]

A. AFN's hourly rates are excessive.

First, AFN failed to provide adequate evidence to support its requested rates. AFN supports the reasonableness of its fees by relying on two declarations from Ms. Lindemuth, its counsel of record.[38] But as this Court has recognized, an "affidavit submitted only by the attorney representing the party seeking fees fails to 'conclusively establish the prevailing market rate.'"[39] When parties fail "to provide a single declaration of an attorney unrelated to the present proceedings," courts regularly reduce the parties' requested fees.[40] AFN's declarations also fail to properly identify "the amount charged to the client, if any," as required by Local Rule 54.2. The Court should reduce AFN's requested rates due to these deficiencies.[41]

Second, AFN's requested fees for its primary counsel exceed the rates that this Court has awarded for comparable attorney work within this District. As this Court recently

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[37] *See, e.g.*, *id*. at *4 (applying 50% reduction in fees due to excessive hours and other factors).

[38] Dkts. 134, 170.

[39] *Seward Prop.*, 2022 WL 17414964 at *3 (quoting *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)).

[40] *Hamby*, 2015 WL 1712634 at *4 (citing *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)).

[41] AFN's only other evidence of reasonable rates are to other fee requests from the Intervenors and to a fee request in an unidentified state court proceeding. *See* Dkt. 170 at 3-4, ¶¶9-10.

recognized, "'federal and state courts in Alaska have found rates ranging from $275 to $400 per hour to be reasonable for Alaska attorneys, depending on their years of experience and the subject matter.'"[42] For this reason, the Court has previously adjusted downward requested rates of $528 to $639 for law firm partners, even very experienced ones, to $400.[43] The Court should do the same here for Ms. Lindemuth's requested rate of $525 per hour, and it should adjust Mr. Kendall's requested of-counsel rate of $495 down to $315 per hour.[44]

Third, AFN's requested rates for its "Supreme Court specialists" from Jenner & Block LLP are far in excess of any fees that this Court (to the State's knowledge) has ever awarded.[45] AFN is seeking rates of $1,368 for Mr. Unikowsky, $1,254 for Mr. Galbraith, and $1,109 for Mr. Marshall.[46] AFN seeks to justify these rates as "below the market rates for attorneys of their experience practicing in the U.S. Supreme Court."[47] But "the proper reference point in determining an appropriate fee award is the rates charged by private attorneys in the same legal market as prevailing counsel."[48] That market is Alaska, not

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[42] *Johnson v. Barber & Assocs. LLC*, 2025 WL 417786, at *3 (D. Alaska Feb. 6, 2025) (Gleason, J.).

[43] *TD Ameritrade, Inc. v. Matthews*, 2022 WL 17752138, at *7 (D. Alaska Dec. 19, 2022) (Gleason, J.).

[44] *See Sycks v. Transamerica Life Ins. Co.*, 2025 WL 1114030, at *2 (D. Alaska Apr. 14, 2025) (Gleason, J.) (concluding $315 is a reasonable rate for an of-counsel attorney).

[45] Dkt. 169 at 4.

[46] Dkt. 170 at 5 ¶12.

[47] *Id.* at 5 ¶13.

[48] *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996) (cleaned up).

Washington D.C. Indeed, none of the Jenner & Block attorneys ever even entered an appearance at the Supreme Court or appeared on the brief.[49] AFN provides no authority for why these attorneys should receive fees *more than triple* what this Court has recognized as reasonable (for partner-level legal work).[50]

Yet even accepting AFN's argument that the relevant metric is the typical rates for Supreme Court practitioners in Washington D.C., AFN provides no evidence to support what those rates are, other than a reference to the rates requested by the other Intervenors.[51] But those Intervenors likewise provide nothing but their own declarations.[52] Simply put, AFN has fallen woefully short of its burden. Jenner & Block's rates should likewise be reduced to no greater than $400 an hour for the partners (Mr. Unikowsky and Mr. Galbraith) and $265 an hour for Mr. Marshall.[53]

B. AFN's hours billed are duplicative and excessive.

First, AFN's hours billed are excessive because its legal work was duplicative of work done by the United States and the other Intervenors.[54] At every stage of the litigation,

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[49] *Supra* n.15.

[50] *See also Trinity Lutheran v. Comer*, 2018 WL 5848994, at *4 (W.D. Mo. Nov. 7, 2018) ("Plaintiff has not presented—and the Court has not found—case law suggesting that different rates should apply to work performed before the U.S. Supreme Court than apply to the other work in the case.").

[51] Dkt. 170 at 5 ¶13.

[52] Dkts. 179, 181-1 at 6 ¶¶13-14 .

[53] *Compare* Dkt. 170 at 3 ¶6 (requesting $265 an hour for Associate Sara Schlesigner), *with* Jonathan J. Marshall, Jenner & Block, www.jenner.com/en/people/jonathan-j-marshall (indicating that Mr. Marshall is a sixth-year associate).

[54] *Seward Prop.*, 2022 WL 17414964 at *2 (D. Alaska Dec. 5, 2022) (courts reduce requested hours where "hours are duplicated; or the hours expended are excessive or otherwise unnecessary").

AFN was making the same arguments that were being made by the United States and the other Intervenors: namely, that *Katie John* was still good law and *Sturgeon* did not control.[55] And while AFN made alternative arguments that *Katie John* could be upheld under other constitutional powers—which no court ever addressed—those same arguments were also made by AVCP.[56]

AFN, of course, was entitled to make these duplicative arguments in support of its interests. But it does not follow that it is entitled to attorney's fees for filing briefs that duplicate the work of other litigants. When intervenors' briefs "duplicate what is presented by the government agency responsible for the order or regulation involved, their costs are essentially for their own account, a kind of extra insurance for which they pay the premium."[57] Other courts have applied an across-the-board reduction to an intervenor's fees where they duplicate the efforts of the United States as lead plaintiff because "an intervenor is only entitled to fees for non-duplicative efforts."[58] The Court should do the same here.

Second, and relatedly, substantial portions of AFN's briefing at the district court and the Ninth Circuit were alternative arguments that were never addressed by any court. In the Ninth Circuit, "[a]wards to intervenors should not be granted unless the intervenor plays a significant role in the litigation."[59] The few arguments that AFN made that were

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[55] *See, e.g.*, Dkts. 101, 109, 110, 113, 115.

[56] *Compare* Dkt. 110, *with* Dkt. 115.

[57] *Am. Pub. Gas Ass'n v. FERC*, 587 F.2d 1089, 1099 (D.C. Cir. 1978).

[58] *United States v. City of New York*, 2013 WL 5542459, at *10-11 (E.D.N.Y. Aug. 30, 2013) (applying an across-the-board reduction "for duplicative efforts with the United States").

[59] *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1535 (9th Cir. 1985).

not made by the United States—related to the constitutional authority of Congress to enact ANILCA—were never addressed by any court at any stage of the litigation. As a consequence, AFN's arguments here did not "substantially contribute to the resolution of the issues presented by the matter" so as to warrant attorney's fees.[60]

Third, even putting aside the duplication of efforts with the United States and the other Intervenors, AFN's hours are excessive standing on their own. AFN's request for fees for work at the Supreme Court is the most egregious. As AFN admits, it "drafted its own brief, separate from the other Intervenor-Plaintiff's joint brief, to make different points" only to "merge its brief" with that of the other Intervenors.[61] AFN nowhere explains what new arguments this brief offered or whether they were duplicative of arguments the other private intervenors were already making before they merged their briefs. Indeed, according to KRITFC, its draft—not AFN's—was the "foundation for the Intervenors' Joint Brief in Opposition."[62] And this merged private brief in opposition was, of course, in addition to the United States' brief in opposition, which made essentially the same arguments as the Intervenors.[63]

For its work at the Supreme Court, AFN is seeking $153,202 for 291 hours of attorney time.[64] But AFN needed only to file a single opposition brief of no more than 9,000

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[60] *MDT Corp. v. New York Stock Exch., Inc.*, 858 F. Supp. 1028, 1035 (C.D. Cal. 1994).

[61] Dkts. 169 at 4-5, 170 at 6 ¶15.

[62] Dkt. 177 at 4.

[63] *Compare* USA Opp. to Petition for Cert., perma.cc/XJ87-CN3Q, *with* Intervenors' Opp to Petition for Cert., perma.cc/UZC2-9U5Q.

[64] Dkt. 170-5 at 1

words—one that it was joining with three other sets of Intervenors and that was alongside the United States, which also opposed certiorari.[65] Moreover, AFN never explains why Ms. Lindemuth, who argued this case at the Ninth Circuit, could not have taken the lead for all the Intervenors at the U.S. Supreme Court. Ms. Lindemuth has "handled more than thirty appellate cases before the Alaska Supreme Court, Ninth Circuit Court of Appeals and United States Supreme Court."[66] She also "was involved in the *Sturgeon v. United States* case that twice went to the United States Supreme Court that was central to the State of Alaska's challenge in this case."[67] Surely this continuation of representation would have been a more efficient use of resources. Or AFN could have allowed one of the other capable Supreme Court practitioners hired by the other Intervenors to write the brief. Indeed, it appears that AFN received a draft of the brief in opposition as early as September 30 from Carter Phillips, "one of the most experienced Supreme Court and appellate lawyers in the country" who has "argued 82 cases before the Supreme Court, more than any other lawyer in private practice."[68] AFN's expenditure of resources is especially high given that the case was only at the certiorari stage, not the merits. "Filing a petition for certiorari is a very different task from opposing a petition for certiorari."[69] While it "may behoove a party to

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[65] *See* S. Ct. R. 33(g) (limiting briefs in opposition to 9,000 words or less).

[66] Jahna Lindemuth, Cashion Gilmore & Lindemuth, https://cashion-gilmore.com/anchorage-attorneys/jahna-lindemuth/.

[67] Dkt.170 at 3 ¶8.

[68] Dkt. 170-3 at 2; Carter Phillips, Sidley, www.sidley.com/en/people/p/phillips-carter-g.

[69] *Deal ex rel Deal v. Hamilton Cnty Dep't of Educ.*, 2006 WL 2854463, at *15 (E.D. Tenn. 2006).

hire extremely experienced Supreme Court practitioners to craft a petition for certiorari, the need for experienced practitioners is not as great when drafting an opposition to a petition for certiorari."[70]

In 2006, Carter Phillips, KRITFC's Supreme Court counsel, submitted a declaration in another case involving attorney's fees, where the opposing party was seeking more than $150,000 in fees for opposing a petition for certiorari. According to Mr. Phillips, "there is no way to characterize legal fees in excess of $150,000 to prepare and file an opposition to a petition for certiorari as anything other than grossly excessive."[71] In his legal career, Mr. Phillips had "prepared and filed more than 200 oppositions to petitions for certiorari and all but two of them have been successful."[72] In that time, he "almost invariably agree[d] to cap [his] firm's legal fees at $25,000 in preparing oppositions because they are inherently not time-intensive, as any experienced advocate before the Supreme Court knows."[73] For briefs in opposition, Mr. Phillips "typically would bill 20 hours to an opposition, have another lawyer bill two to three hours to reviewing the petition and the opposition and commenting on the latter and then have a legal assistant devote ten hours to cite checking and proofreading the brief for filing."[74] As Mr. Phillips explained, "[o]nly in the context of a fee-shifting arrangement is it conceivable that such fees could be generated. But that does

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[70] *Id*.
[71] Exhibit A at 2 ¶4.
[72] *Id*. at 2 ¶5.
[73] *Id*.
[74] *Id*. at 4 ¶12; *see also id*. at 2 ¶6 ("The notion embedded in the fees request that an opposition to a petition warrants the participation of eight timekeepers is completely unreasonable.").

not make them reasonable."[75] The district court agreed with Mr. Phillips, reducing the firm's requested Supreme Court fees by 74%.[76]

While Mr. Phillips' declaration was made in 2006, the same principles hold true today. Whereas Mr. Phillips would typically charge for only two attorneys' time to prepare a brief in opposition,[77] AFN is seeking fees for six attorneys' time,[78] and the Intervenors collectively seek fees for *24 attorneys'* time.[79] Moreover, accounting for inflation, a brief in opposition should generally cost no more than $40,154, according to Mr. Phillips.[80] Yet AFN and the other private intervenors are requesting fees that are *18 times* higher than that amount—an astounding $742,436. All for legal work that resulted in the production of a single 32-page brief in opposition.[81] By any measure, that request for fees is highly unreasonable.

AFN's requested fees for its Ninth Circuit work is excessive too. AFN is requesting $192,535 for 471 hours of attorney time.[82] But the vast majority of its work involved drafting a single appellee brief that largely reiterated the arguments that it had made in its opposition to Defendants' motion for summary judgment before this Court.[83] Courts regularly

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[75] *Id*. at 2 ¶5.
[76] *Deal ex rel Deal*, 2006 WL 2854463 at *15-17.
[77] *See supra* n.74.
[78] Dkt. 170-5 at 1-10.
[79] Dkts. 170-5 at 1-10; 178-3 at 16; 179-1 at 1-4; 181-1 at 1, 22; 182-2 at 7.
[80] *See* CPI Inflation Calculator, U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm.
[81] *See* Joint Brief in Opposition, perma.cc/UZC2-9U5Q.
[82] 9th Cir. Dkt. 102.3 at 12.
[83] *Compare* 9th Cir. Dkt. 40.1, *with* Dkt. 110.

reduce high hours claims for appellate briefs that largely repeat arguments already developed before the district court.[84] The Court should make a similar reduction here.

Fourth, AFN's hours are unreasonable because its use of block billing obscures any ability to discern how much time its attorneys spent on a particular task. Block billing is "the practice of reporting multiple tasks in the same matter in a single block of time."[85] If seeking fees, block billing is "an improper recording of time expended in a case because it is 'more difficult to determine how much time was spent on particular activities.'"[86] Accordingly, "[w]here time is billed in blocks, the Court may 'simply reduce[] the fee to a reasonable amount.'"[87] In the Ninth Circuit, a district court can reduce a fee award by 10% to 30% for block billing, with a higher percentage warranted where, as here, all of the bills were block-billed.[88]

Here, all of AFN's time logs utilized block billing.[89] To take one example, on September 22, 2023, Ms. Lindemuth billed 5.4 hours based on the following five activities:

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[84] *See, e.g.*, *Sotomura v. Hawaii County*, 679 F.2d 152, 153 (9th Cir. 1982); *Palila v. Hawaii Dep't of Land & Nat. Res.*, 512 F. Supp. 1006, 1010 (D. Haw. 1981) (reducing requested hours for opening brief based on summary judgment motion from 144.75 to 60 hours).

[85] *Luben v. Comm'r of Soc. Sec.*, 2023 WL 1992601, at *3 (D. Alaska Feb. 14, 2023).

[86] *Id.*

[87] *Id.*

[88] *Banas v. Colcano Corp.*, 47 F. Supp. 3d 957, 968-69 (N.D. Cal. 2014) (citing *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007)) (reducing fees by 20% for block billing); *Lahiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216, 1222-23 (9th Cir.2010) (affirming district court's reduction of hours by 30% to account for block billing).

[89] Dkt. 134-1; 9th Cir. Dkt. 102.3; Dkt. 170-1.

"Contact counsel regarding intervention; review edits from team; research; exchange calls and emails with team; edit declaration."[90] Neither the State nor the Court has any way of evaluating how much time was spent on each of these five tasks or whether that amount of time was reasonable. This practice makes it impossible for the State to determine the amount of time expended on individual activities and thereby assess the appropriateness of the fees requested.

In some of AFN's entries, it has also broken down the entries by category.[91] But these notations provide no meaningful clarification because they do not identify time entries for each task. For example, on September 10, 2024, Ms. Sherman billed 6.7 hours for multiple tasks and AFN included the notation "Legal Research 6.30; Interviews and Conferences .40."[92] Moreover, to the extent these annotations were added after the fact, they are less reliable because "[a]n attorney's time records are properly compiled contemporaneously with their performance."[93] In these circumstances, an across-the-board percentage reduction of all block-billed entries is warranted.

Finally, a number of AFN's billing entries are unreasonably vague. For instance, on September 1, 2024, Ms. Lindemuth recorded 6.2 hours for "Research brief."[94] On October 13 and 14 2023, Ms. Lindemuth billed 7.4 hours to "draft brief" and then another 6.1

[90] Dkt. 134-1 at 3.
[91] *See, e.g.*, 9th Cir. Dkt. 102.3 at 1-12.
[92] 9th Cir. Dkt. 102.3 at 5.
[93] *Reyna v. Astrue*, 2011 WL 6100609, at *4 (E.D. Cal. Dec. 6, 2011).
[94] 9th Cir. Dkt. 102.3 at 4.

hours to "draft brief; telephone conference with L. Sherman."[95] These entries are unreasonably vague because they fail to specify the portions of the brief being drafted or the research being conducted. Moreover, numerous entries never identify the subject matter of the activities, which again makes scrutinizing these entries exceedingly difficult. For example, the entries include: "Communicate with Mr. Toy; communicate with Ms. Lindemuth" and "[t]elephone conferences with S. Starkey."[96] Courts have significantly reduced fees when they find that "counsel's billing entries [are] so vague as to prevent the Court from assessing the reasonableness of the time and rate billed."[97] The Court should do the same here.

CONCLUSION

The Court should hold that the AFN's request for fees is barred under the Eleventh Amendment. Alternatively, the Court should significantly reduce the amount awarded to AFN—by at least 50%—for the reasons provided above.

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[95] Dkt. 134-1 at 5.

[96] *See, e.g.*, Dkt.170-3 at 2, 6.

[97] *See, e.g.*, *Tait v. BSH Home Appliances Corp.*, 2015 WL 4537463, at *12 (C.D. Cal. July 27, 2015) (objecting to entries such as "'brief' (6.0 hours)" and reducing vague fee entries by 50%).

DATED: March 9, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on March 9, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, serving all counsel of record.

/s/ J. Michael Connolly
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, *Plaintiff*,	)	
KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, *et al.*, *Intervenor Plaintiffs*,	)	Case No. 1:22-cv-54 (SLG)
v.	)	
STATE OF ALASKA, *et al.*, *Defendants*.	)	

(PROPOSED) ORDER DENYING MOTIONS FOR ATTORNEY'S FEES

The Court having considered Intervenor-Plaintiff's motion for attorney's fees and the State Defendants' opposition, hereby determines as follows:

1.) The motion is DENIED.

-OR-

2.) The motion is GRANTED in part. Attorney's fees shall be awarded in the amount of _____.

_____ _____

Dated The Honorable Sharon L. Gleason