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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

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

**DEFENDANTS' OPPOSITION TO
AVCP PLAINTIFFS' MOTIONS FOR ATTORNEY'S FEES**

In the course of this litigation, the Association of Village Council Presidents, Ivan M. Ivan, and Betty Magnuson (AVCP) 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 Intervenor. For its efforts, AVCP is now seeking over \$600,000 in attorney’s fees. That is on top of the other three Intervenor, who also wrote or joined only three substantive briefs and who are also asking for similar amounts. AVCP is seeking fees of up to \$1,305 per hour for its work before the Supreme Court. All told, the four Intervenor 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 Intervenor 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 AVCP’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: AVCP, the Kuskokwim River Inter-Tribal Fish Commission (KRITFC), Ahtna, and the Alaska Federation of Natives (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

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 Intervenor, 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 Intervenor again filed their own briefs, largely duplicating their briefs from the district court. The Ninth Circuit affirmed. The Intervenor 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 Intervenor 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 Intervenor appear to have all independently performed overlapping work. For example, AFN and KRITFC both independently drafted their own briefs in opposition and then

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 Intervenor 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 Intervenor’s Brief in Opposition.¹⁵ For these efforts producing one 32-page brief, the Intervenor collectively ask for \$742,436 in fees.

After the Supreme Court denied the State’s petition for certiorari, the Intervenor 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:

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.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

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.¹⁹

¹³ Dkt. 169 at 4-5; Dkt. 178 at 6 ¶15.

¹⁴ *See* Joint Brief in Opposition, perma.cc/UZC2-9U5Q. The United States’ and Intervenor’s Ninth Circuit and Supreme Court briefs are publicly available. For the convenience of the Court, the State is providing them with this opposition.

¹⁵ *Id.*

¹⁶ Dkts. 169, 177, 181, 182.

¹⁷ Dkt. 182.

¹⁸ Dkt. 181.

¹⁹ Dkt. 169.

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.²⁰

All told, the Intervenor seeks 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 AVCP’s request for attorney’s fees because the State has sovereign immunity. Alternatively, the Court should significantly reduce AVCP’s fees because its hourly rates are excessive and its hours spent are duplicative and unreasonable.

I. AVCP’s request for fees is barred by sovereign immunity under the Eleventh Amendment.

This Court has ruled that Intervenor is 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

²⁰ Dkt. 177.

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)).

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

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

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).

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); *see also PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 500 (2021) (noting limited “waivers of sovereign immunity to which all States implicitly consented at the founding” that are inapplicable here).

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”); Dkt. 109 at 33 (KRITFC asserting same); Dkt. 113 at 14 (Ahtna asserting same); Dkt. 115 at 53 (AVCP asserting same).

²⁹ *Quillin*, 127 F.3d at 1138-39 (quoting *Edelman v. Jordan*, 415 U.S. 651, 673 (1974)).

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 AVCP intervened into that action. AVCP and the other Intervenors all asserted the same claims as the United States.³¹ The first time §3117 was ever mentioned by any party was in the Intervenors' motion for fees.³² Now that AVCP has invoked §3117, the State is appropriately raising sovereign immunity as a defense. Because AVCP's request under §3117 is barred by the Eleventh Amendment, AVCP should not receive any attorney's fees from the State.

II. AVCP'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 AVCP recognizes, the fees it seeks must be "reasonable."³³ "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."³⁴ 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

³⁰ Dkt. 1 at 5, 24.

³¹ Dkt 12-1 at 2 (KRITFC's complaint incorporating the United States' complaint); Dkt. 19-2 at 2 (AVCP's complaint doing the same); Dkt. 38-1 at 2 (Ahtna's complaint doing the same); Dkt. 89-1 at 2 (AFN's complaint doing the same); *see also Alabama v. North Carolina*, 560 U.S. 330, 355 (2010).

³² *See, e.g.*, Dkt. 133.

³³ Dkt. 182 at 11.

³⁴ *Hamby v. Walker*, 2015 WL 1712634, at *2 (D. Alaska Apr. 15, 2015).

and hours are duplicated; or the hours expended are excessive or otherwise unnecessary.”³⁵ “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.’”³⁶ “Careful scrutiny is warranted” when a “large amount of attorney’s fees [are being] requested.”³⁷

Here, the Court should reduce AVCP’s requested fees because both its rates and hours are excessive. The State urges the Court to significantly reduce the fees requested by AVCP, by at least a 50% reduction.³⁸

A. AVCP’s hourly rates are excessive.

First, AVCP failed to provide adequate evidence to support its requested rates as to Mr. Powell. AVCP’s own counsel merely asserted that his rates were reasonable “[b]ased on my knowledge and the rates that other Intervenors have detailed in their filings.”³⁹ 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.’”⁴⁰ When par-

³⁵ *Seward Prop., LLC v. Arctic Wolf Marine, Inc.*, 2022 WL 17414964, at *2 (D. Alaska Dec. 5, 2022) (Gleason, J.).

³⁶ *Id.* (cleaned up).

³⁷ *Id.*

³⁸ *See, e.g., id.* at *4 (applying 50% reduction in fees due to excessive hours and other factors).

³⁹ Dkt. 182-2 at 6 ¶9.

⁴⁰ *Seward Prop.*, 2022 WL 17414964, at *3 (quoting *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)).

ties fail “to provide a single declaration of an attorney unrelated to the present proceedings,” courts regularly reduce the parties’ requested fees.⁴¹ The Court should reduce AVCP’s requested rates due to this deficiency.

Unlike the other three Intervenors, AVCP supports the reasonableness of the fees charged by its district court attorneys by relying on a declaration from James Torgerson, who says that he is familiar with “the nature and quality of work performed by NARF attorneys in the NARF Alaska office” and that their rates were justified by their experience and expertise.⁴² But this evidence is not dispositive where the outside declaration endorses rates that exceed what the Court has previously awarded and does not reflect the Court’s own experience with local market rates.⁴³

Second, AVCP’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 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.”⁴⁴ In the Ninth Circuit, such “rate determinations in other cases ...

⁴¹ *Hamby*, 2015 WL 1712634, at *4 (citing *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)); see also *Chellino v. Kaiser Found. Health Plan*, 2010 WL 583970, at *5 (N.D. Cal. Feb. 16, 2010) (“Typically, counsel will attach to a fee motion declarations from colleagues attesting to similar billing rates; counsel has not done so.”).

⁴² Dkt. 138-5 at 2-3.

⁴³ See *Viveros v. Donahoe*, 2013 WL 1224848, at *4-5 (C.D. Cal. Mar. 27, 2013) (rejecting rates supported by outside declarations where they contradicted fees awarded in other cases and the court’s own experience); *Cosby v. Autozone, Inc.*, 2016 WL 1626997, at *7-8 (E.D. Cal. Apr. 25, 2016) (same).

⁴⁴ *Johnson v. Barber & Assocs. LLC*, 2025 WL 417786, at *3 (D. Alaska Feb. 6, 2025) (Gleason, J.).

are satisfactory evidence of the prevailing market rate” and thus suffice to contest the declarations that AVCP submitted.⁴⁵ For this reason, the Court has previously adjusted downward requested rates of \$528 to \$639 for law firm partners, even very experienced ones, to \$400.⁴⁶ The Court should do the same here for Ms. Lynch’s requested rate of \$500 per hour, Ms. Kendall-Miller’s requested rate of \$600 per hour, Ms. Tarzwell’s requested rate of \$500 per hour, and Mr. Newman’s requested rate of \$450 per hour, and it should adjust Ms. Saunder’s requested associate rate of \$300 down to \$265 per hour, which is commensurate with the rates this Court has previously awarded for associates and that other Intervenor are seeking in this case.⁴⁷

Third, AVCP’s requested rates for its Supreme Court specialists are far in excess of any fees that this Court (to the State’s knowledge) has ever awarded. AVCP is seeking rates of \$1,305 for Mr. Powell.⁴⁸ AVCP seeks to justify these rates as “the fair market rate in Washington, D.C., for an attorney with this level of specialized expertise.”⁴⁹ 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.”⁵⁰ That market is Alaska, not

⁴⁵ *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

⁴⁶ *TD Ameritrade, Inc. v. Matthews*, 2022 WL 17752138, at *7 (D. Alaska Dec. 19, 2022) (Gleason, J.).

⁴⁷ Dkt. 182-2 at 3; *see* Dkt. 170 at 3 (AFN requesting \$265 per hour for associate Ms. Schlesinger’s work).

⁴⁸ Dkt. 182-2 at 6 ¶9.

⁴⁹ *Id.* at 6 ¶9.

⁵⁰ *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996) (cleaned up).

Washington D.C. The Ninth Circuit has held that rates outside of the local forum are justified only where “local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle properly the case.”⁵¹ But that exception does not apply here, where several other AVCP attorneys have experience before the Supreme Court, including Ms. Kendall-Miller who “litigated and argued the landmark case *Alaska, ex rel. Yukon Flats School District v. Native Village of Venetie*, before the United States Supreme Court” and Ms. Tarzwell, who represented Tribes in *Haaland v. Brackeen*, 599 U.S. 255 (2023).⁵² AVCP provides no authority for why Mr. Powell should receive fees *more than three times* what this Court has recognized as reasonable (for partner-level legal work) and more than twice what AVCP is seeking for any of its other attorneys who worked on the joint brief in opposition, including those with Supreme Court litigation experience.⁵³

Yet even accepting AVCP’s argument that the relevant metric is the typical rates for Supreme Court practitioners in Washington D.C., its request still falls short. As explained above, AVCP provides no evidence to support what those rates are, other than the fees sought by other Intervenors in this litigation.⁵⁴ Simply put, AVCP has fallen woefully

⁵¹ *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

⁵² Dkt. 138-2 at 4 ¶6, 7 ¶10.

⁵³ *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.”).

⁵⁴ Dkt. 182-2 at 2 ¶4, 5 ¶9 n.7.

short of its burden. AVCP's rates should likewise be reduced to no greater than \$400 an hour for Mr. Powell.

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

First, AVCP's hours billed are excessive because its legal work was duplicative of work done by the United States and the other Intervenors.⁵⁵ At every stage of the litigation, AVCP 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.⁵⁶ And while AVCP made alternative arguments that *Katie John* could be upheld under various Constitutional powers—which no court ever addressed—those same arguments were also made by AFN.⁵⁷

AVCP, 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."⁵⁸ Other courts have applied an across-the-board reduction to an intervenor's fees

⁵⁵ *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").

⁵⁶ *See, e.g.*, Dkts. 101, 109, 110, 113, 115.

⁵⁷ *Compare* Dkt. 110, *with* Dkt. 115.

⁵⁸ *Am. Pub. Gas Ass'n v. FERC*, 587 F.2d 1089, 1099 (D.C. Cir. 1978).

where they duplicate the efforts of the United States as lead plaintiff because “an intervenor is only entitled to fees for non-duplicative efforts.”⁵⁹ The Court should do the same here.

Second, and relatedly, substantial portions of AVCP’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.”⁶⁰ The few arguments that AVCP made that were not made by the United States—related to various constitutional authorities of Congress to enact ANILCA—were never addressed by any court at any stage of the litigation. As a consequence, AVCP’s arguments here did not “substantially contribute to the resolution of the issues presented by the matter” so as to warrant attorney’s fees.⁶¹

Third, even putting aside the duplication of efforts with the United States and the other Intervenor, AVCP’s hours are excessive standing on their own. AVCP’s request for fees for work at the Supreme Court is the most egregious. As AVCP admits, it did not draft the joint brief in opposition, but instead merely “collaborated on a single brief in opposition.”⁶² For this “collaboration,” AVCP is seeking \$152,298 for 262 hours of attorney

⁵⁹ *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”).

⁶⁰ *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1535 (9th Cir. 1985).

⁶¹ *MDT Corp. v. New York Stock Exch., Inc.*, 858 F. Supp. 1028, 1035 (C.D. Cal. 1994).

⁶² Dkt. 182 at 14.

time.⁶³ 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.⁶⁴

AVCP needed only to file a single opposition brief of no more than 9,000 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, AVCP never explains why 262 hours of attorney time were needed for tasks involving editing a 32-page brief and coordinating with other Intervenors.

AVCP’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.”⁶⁶ While it “may behoove a party to hire extremely experienced Supreme Court practitioners to craft a petition for certiorari, the need for ex-

⁶³ Dkt. 182-2 at 7.

⁶⁴ *Compare* USA Opp. to Petition for Cert., perma.cc/XJ87-CN3Q, with Intervenors’ Opp to Petition for Cert., perma.cc/UZC2-9U5Q.

⁶⁵ See S. Ct. R. 33(g) (limiting briefs in opposition to 9,000 words or less). That each Intervenor could have filed its own opposition separately doesn’t mean that each is entitled to attorney’s fees up to the hypothetical amount necessary to prepare such a brief. Indeed, the Intervenors weren’t even required to file a brief in opposition at all. See S. Ct. R. 15 (briefs in opposition are “not mandatory” and parties can “waive[] the right to file a brief in opposition”); *Deal ex rel Deal v. Hamilton Cnty Dep’t of Educ.*, 2006 WL 2854463, at *16 (E.D. Tenn. 2006) (discussing same). For strategic reasons, the Intervenors chose to file one consolidated brief, and in no reasonable universe can a 32-page brief cost \$742,436. Moreover, even if each Intervenor had drafted its own brief in opposition, it still should not have spent more than about \$40,000, as explained below—yet each now seeks vastly higher fees for filing a single brief.

⁶⁶ *Deal*, 2006 WL 2854463, at *15.

perienced practitioners is not as great when drafting an opposition to a petition for certiorari.”⁶⁷ But AVCP’s lead counsel Ms. Lynch billed an astounding 128.9 hours solely to tasks related to editing this 32-page brief, which she did not draft, communicating with other intervenors about it, and performing unnecessary research for potential merits briefing.⁶⁸ Billing a client 262 hours to edit a 9,000 word brief in opposition and communicate with other parties about it is not typical, even within the world of Supreme Court practice.

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.”⁶⁹ 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.”⁷⁰ 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.”⁷¹ For briefs in opposition, Mr. Phillips “typically would bill 20 hours to an opposition, have an-

⁶⁷ *Id.*

⁶⁸ Dkt. 182-5 at 7; Dkt. 182-5 at 5-6 (3.9 hours for “Additional Totemoff research in preparation for possible merits briefing.”).

⁶⁹ Ex. 8 to Connolly Declaration at 2 ¶4.

⁷⁰ *Id.* at 2 ¶5.

⁷¹ *Id.*

other 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.”⁷² In other words, to draft, edit, polish, and file a brief in opposition his firm would expend approximately *25 percent of the time* that Ms. Lynch spent simply editing the brief in this case. And she is only one of the attorneys for whom AVCP seeks fees for work on this brief. 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 not make them reasonable.”⁷³ The district court agreed with Mr. Phillips, reducing the firm’s requested Supreme Court fees by 74%.⁷⁴

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,⁷⁵ AVCP is seeking fees for six attorneys’ time,⁷⁶ and the Intervenors collectively seek fees for *24 attorneys’* time.⁷⁷ Moreover, accounting for inflation, a brief in opposition should generally cost no more than \$40,154, according to Mr. Phillips.⁷⁸ Yet AVCP and the other private intervenors are requesting fees that are *18 times* higher than

⁷² *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.”).

⁷³ *Id.* at 2 ¶5.

⁷⁴ *Deal*, 2006 WL 2854463, at *15-17.

⁷⁵ *See supra* n.72.

⁷⁶ Dkt. 182-2 at 7.

⁷⁷ Dkts. 170-5 at 1-10; 178-3 at 16; 179-1 at 1-4; 181-1 at 1, 22; 182-2 at 7.

⁷⁸ *See* CPI Inflation Calculator, U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm.

that amount—an astounding \$742,436. All for legal work that resulted in the production of a single 32-page brief in opposition.⁷⁹ By any measure, that request for fees is highly unreasonable.

AVCP's requested fees for its Ninth Circuit work is excessive too. AVCP is requesting \$147,260 for 315 hours of attorney time.⁸⁰ But the vast majority of its work involved drafting a single appellee brief that largely reiterated the same arguments it made in its opposition to Defendants' motion for summary judgment before this Court.⁸¹ AVCP also billed 34 hours for three of its attorneys to travel to and attend oral argument, even though none of them presented oral argument, which was handled by attorneys for AFN and KRITFC.⁸² Courts regularly reduce high hours claims for appellate briefs that largely repeat arguments already developed before the district court.⁸³ The Court should reduce AVCP's hours billed on appeal.

⁷⁹ See Joint Brief in Opposition, perma.cc/UZC2-9U5Q.

⁸⁰ 9th Cir. Dkt. 101.2 at 29.

⁸¹ Compare 9th Cir. Dkt. 41.1, with Dkt. 115.

⁸² 9th Cir. Dkt. 101.2 at 20, 22, 24. While it is true that “a lawyer who has worked on the case and will be working on it subsequently may need to observe argument to judge how to proceed later,” AVCP could have accomplished that by watching the Ninth Circuit's livestream of the argument; there is no indication that the ACVP attorneys attended because “their assistance is or may be needed by the lawyer[s] arguing the case.” *Democratic Party of Washington State v. Reed*, 388 F.3d 1281, 1287 (9th Cir. 2004).

⁸³ 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).

In the district court, eight AVCP attorneys billed \$302,602 for 673 hours of time.⁸⁴ That district court fee total is more than twice the already excessive district court fees requested by two other intervenors in this litigation, who filed a comparable number of papers to what AVCP filed. Ms. Lynch by herself billed 198.85 hours during the first stage of litigation, which primarily involved a single opposition to the state’s motion for summary judgment. This included many tasks typically delegated to associates, such as legal research, writing first drafts of briefs and motions, “[l]ook[ing] for 1996 files,” and “[p]ull[ing] materials from NARF library.”⁸⁵ Ms. Miller, for whom AVCP is seeking its highest rate of \$600 per hour, billed 16.5 hours over three days to “Draft merits section of summary judgment brief.”⁸⁶ Courts regularly reduce attorney’s fees awards where partners billed for associate-level work.⁸⁷ The Court should do the same here.

Fourth, AVCP’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.”⁸⁸ If seeking fees, block billing is “an improper recording of time expended in a case because

⁸⁴ Dkt. 182-2 at 3-4

⁸⁵ Dkt. 138-4 at 6, 7; *see, e.g.*, Dkt. 138-4 at 7 (“Research for brief...Research and write all day...Additional subsistence litigation research”); Dkt. 138-4 at 8 (“Draft brief, Katie John section...Draft and revise brief”).

⁸⁶ Dkt. 138-4 at 11.

⁸⁷ *Aung v. Watts*, 2025 WL 2659222, at *5 (C.D. Cal. Aug. 7, 2025) (collecting cases).

⁸⁸ *Luben v. Comm’r of Soc. Sec.*, 2023 WL 1992601, at *3 (D. Alaska Feb. 14, 2023).

it is ‘more difficult to determine how much time was spent on particular activities.’”⁸⁹ Accordingly, “[w]here time is billed in blocks, the Court may ‘simply reduce[] the fee to a reasonable amount.’”⁹⁰ In the Ninth Circuit, a district court can reduce a fee award by 10% to 30% for block billing.⁹¹

Here, AVCP’s time logs for much of its district-court fee requests utilized block billing.⁹² To take one example, on November 2, 2023, Ms. Lynch billed 15.4 hours based on the following seven activities: “Additional revisions to brief. Convo with Syd and Wes re: additional reorganization. Rearrange and add final sections. Circulate to intervenors. Work with Syd re: TOA TOC. Late night review of all appendix files, which to keep, remove interesting but not relevant. Circulate draft to NARF team.”⁹³ Neither the State nor the Court has any way of evaluating how much time was spent on each of these seven 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.

Finally, a number of AVCP’s billing entries are unreasonably vague. For instance, on October 18, 2023, Ms. Lynch billed 3.2 hours to “Look for 1996 files for Heather, send.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *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).

⁹² Dkts. 138-4 at 3-9; 182-3 at 4-6; 182-5 at 2-7.

⁹³ Dkt. 138-4 at 8.

Work on brief.”⁹⁴ Between August 30 and September 6, 2024, Mr. Furlong recorded six entries totaling 27.2 hours for “Draft response brief.”⁹⁵ These entries are unreasonably vague because they fail to specify the portions of the brief being drafted or the research that was presumably being conducted. 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.”⁹⁶ The Court should do the same here.

CONCLUSION

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

⁹⁴ Dkt. 138-4 at 6.

⁹⁵ 9th Cir. Dkt. 101.2 at 23.

⁹⁶ *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 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 26, 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
J. Michael Connolly

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Attorneys for the State of Alaska

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

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

(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